Annex 11

International Labour Organization

Report III (Part A)

Application of International Labour Standards 2022

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

International Labour Conference
110th Session, 2022



Report III (Part A)

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

(articles 19, 22 and 35 of the Constitution)

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

General Report and observations concerning particular countries

International Labour Office, Geneva

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

(a) The **Reader's note** provides indications on the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference (their mandate, functioning and the institutional context in which they operate) **(Part A, pages 33–37)**.

(b) **Part I:** the **General Report** describes the manner in which the Committee of Experts undertakes its work and the extent to which Member States have fulfilled their constitutional obligations in relation to international labour standards, and it draws the attention to issues of general interest arising out of the Committee's work **(Part A, pages 39–86)**.

(c) **Part II: Observations concerning particular countries** cover the sending of reports, the application of ratified Conventions (see section I), and the obligation to submit instruments to the competent authorities (see section II) **(Part A, pages 87–830)**.

(d) **Part III: General Survey**, in which the Committee of Experts examines the state of the legislation and practice regarding a specific area covered by a given number of Conventions and Recommendations. This examination covers all member States regardless of whether or not they have ratified the given Conventions. The General Survey is published as a separate volume (Report III(Part B)) and this year it concerns the Nursing Personnel Convention, 1977 (No. 149), the Domestic Workers Convention, 2011 (No. 189), the Nursing Personnel Recommendation, 1977 (No. 157), and the Domestic Workers Recommendation, 2011 (No. 201) **(Part B)**.

The report of the Committee of Experts is also available at: www.ilo.org/normes.

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List of Conventions and Protocols by Subject

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

★ Convention revised in whole or in part by a subsequent Convention or Protocol.
● Convention no longer open to ratification as a result of the entry into force of a revising Convention.
♦ Convention or Protocol not in force.
■ Convention withdrawn.
□ Convention abrogated.

1	**Freedom of association, collective bargaining, and industrial relations**	
	C011	Right of Association (Agriculture) Convention, 1921 (No. 11)
	C084	Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84)
	C087	**Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**
	C098	**Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**
	C135	Workers' Representatives Convention, 1971 (No. 135)
	C141	Rural Workers' Organisations Convention, 1975 (No. 141)
	C151	Labour Relations (Public Service) Convention, 1978 (No. 151)
	C154	Collective Bargaining Convention, 1981 (No. 154)
2	**Forced labour**	
	C029	**Forced Labour Convention, 1930 (No. 29)**
	C105	**Abolition of Forced Labour Convention, 1957 (No. 105)**
	P029	Protocol of 2014 to the Forced Labour Convention, 1930
3	**Elimination of child labour and protection of children and young persons**	
★	C005	Minimum Age (Industry) Convention, 1919 (No. 5)
★	C006	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)
★	C010	Minimum Age (Agriculture) Convention, 1921 (No. 10)
□	C015	Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)
●	C033	Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)
★	C059	Minimum Age (Industry) Convention (Revised), 1937 (No. 59)
■	C060	Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)
	C077	Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)
	C078	Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)
	C079	Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)
	C090	Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)
★	C123	Minimum Age (Underground Work) Convention, 1965 (No. 123)
	C124	Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)
	C138	**Minimum Age Convention, 1973 (No. 138)**
	C182	**Worst Forms of Child Labour Convention, 1999 (No. 182)**
4	**Equality of opportunity and treatment**	
	C100	**Equal Remuneration Convention, 1951 (No. 100)**
	C111	**Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**
	C156	Workers with Family Responsibilities Convention, 1981 (No. 156)
♦	C190	Violence and Harassment Convention, 2019 (No. 190)
5	**Tripartite consultation**	
	C144	*Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*

6		**Labour administration and inspection**	
	●	C063	Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)
	★	C081	*Labour Inspection Convention, 1947 (No. 81)*
		C085	Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)
		C129	*Labour Inspection (Agriculture) Convention, 1969 (No. 129)*
		C150	Labour Administration Convention, 1978 (No. 150)
		C160	Labour Statistics Convention, 1985 (No. 160)
		P081	Protocol of 1995 to the Labour Inspection Convention, 1947
7		**Employment policy and promotion**	
		C002	Unemployment Convention, 1919 (No. 2)
	■	C034	Fee-Charging Employment Agencies Convention, 1933 (No. 34)
		C088	Employment Service Convention, 1948 (No. 88)
	●	C096	Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)
		C122	*Employment Policy Convention, 1964 (No. 122)*
		C159	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
		C181	Private Employment Agencies Convention, 1997 (No. 181)
8		**Vocational guidance and training**	
		C140	Paid Educational Leave Convention, 1974 (No. 140)
		C142	Human Resources Development Convention, 1975 (No. 142)
9		**Employment security**	
		C158	Termination of Employment Convention, 1982 (No. 158)
10		**Wages**	
		C026	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)
	★	C095	Protection of Wages Convention, 1949 (No. 95)
		C099	Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)
		C131	Minimum Wage Fixing Convention, 1970 (No. 131)
		C173	Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)

11 Working time

	C001	Hours of Work (Industry) Convention, 1919 (No. 1)
□	C004	Night Work (Women) Convention, 1919 (No. 4)
	C014	Weekly Rest (Industry) Convention, 1921 (No. 14)
	C020	Night Work (Bakeries) Convention, 1925 (No. 20)
	C030	Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
■	C031	Hours of Work (Coal Mines) Convention, 1931 (No. 31)
□	C041	Night Work (Women) Convention (Revised), 1934 (No. 41)
	C043	Sheet-Glass Works Convention, 1934 (No. 43)
■	C046	Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46)
	C047	Forty-Hour Week Convention, 1935 (No. 47)
	C049	Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49)
■	C051	Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51)
●	C052	Holidays with Pay Convention, 1936 (No. 52)
■	C061	Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61)
□	C067	Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67)
★	C089	Night Work (Women) Convention (Revised), 1948 (No. 89)
★	C101	Holidays with Pay (Agriculture) Convention, 1952 (No. 101)
	C106	Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
	C132	Holidays with Pay Convention (Revised), 1970 (No. 132)
	C153	Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)
	C171	Night Work Convention, 1990 (No. 171)
	C175	Part-Time Work Convention, 1994 (No. 175)
	P089	Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948

12 Occupational safety and health

	C013	White Lead (Painting) Convention, 1921 (No. 13)
	C045	Underground Work (Women) Convention, 1935 (No. 45)
●	C062	Safety Provisions (Building) Convention, 1937 (No. 62)
	C115	Radiation Protection Convention, 1960 (No. 115)
	C119	Guarding of Machinery Convention, 1963 (No. 119)
	C120	Hygiene (Commerce and Offices) Convention, 1964 (No. 120)
	C127	Maximum Weight Convention, 1967 (No. 127)
	C136	Benzene Convention, 1971 (No. 136)
	C139	Occupational Cancer Convention, 1974 (No. 139)
	C148	Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)
★	C155	Occupational Safety and Health Convention, 1981 (No. 155)
	C161	Occupational Health Services Convention, 1985 (No. 161)
	C162	Asbestos Convention, 1986 (No. 162)
	C167	Safety and Health in Construction Convention, 1988 (No. 167)
	C170	Chemicals Convention, 1990 (No. 170)
	C174	Prevention of Major Industrial Accidents Convention, 1993 (No. 174)
	C176	Safety and Health in Mines Convention, 1995 (No. 176)
	C184	Safety and Health in Agriculture Convention, 2001 (No. 184)
	C187	Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)
	P155	Protocol of 2002 to the Occupational Safety and Health Convention, 1981

13		**Social security**	
	★	C012	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
	★	C017	Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
	★	C018	Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)
		C019	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
	★	C024	Sickness Insurance (Industry) Convention, 1927 (No. 24)
	★	C025	Sickness Insurance (Agriculture) Convention, 1927 (No. 25)
	●	C035	Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)
	●	C036	Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)
	●	C037	Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)
	●	C038	Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)
	●	C039	Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39)
	●	C040	Survivors' Insurance (Agriculture) Convention, 1933 (No. 40)
	★	C042	Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)
	●	C044	Unemployment Provision Convention, 1934 (No. 44)
	●	C048	Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)
	★	C102	Social Security (Minimum Standards) Convention, 1952 (No. 102)
		C118	Equality of Treatment (Social Security) Convention, 1962 (No. 118)
		C121	Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)
		C128	Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
		C130	Medical Care and Sickness Benefits Convention, 1969 (No. 130)
		C157	Maintenance of Social Security Rights Convention, 1982 (No. 157)
		C168	Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)
14		**Maternity protection**	
	★	C003	Maternity Protection Convention, 1919 (No. 3)
	●	C103	Maternity Protection Convention (Revised), 1952 (No. 103)
		C183	Maternity Protection Convention, 2000 (No. 183)
15		**Social policy**	
	★	C082	Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82)
		C094	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
		C117	Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)
16		**Migrant workers**	
	□	C021	Inspection of Emigrants Convention, 1926 (No. 21)
	■	C066	Migration for Employment Convention, 1939 (No. 66)
		C097	Migration for Employment Convention (Revised), 1949 (No. 97)
		C143	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

17	**Seafarers**	
■	C007	Minimum Age (Sea) Convention, 1920 (No. 7)
□	C008	Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
□	C009	Placing of Seamen Convention, 1920 (No. 9)
□	C016	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
★	C022	Seamen's Articles of Agreement Convention, 1926 (No. 22)
★	C023	Repatriation of Seamen Convention, 1926 (No. 23)
□	C053	Officers' Competency Certificates Convention, 1936 (No. 53)
■	C054	Holidays with Pay (Sea) Convention, 1936 (No. 54)
★●	C055	Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
★●	C056	Sickness Insurance (Sea) Convention, 1936 (No. 56)
■	C057	Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
★●	C058	Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
★●	C068	Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
★●	C069	Certification of Ships' Cooks Convention, 1946 (No. 69)
★◆●	C070	Social Security (Seafarers) Convention, 1946 (No. 70)
	C071	Seafarers' Pensions Convention, 1946 (No. 71)
■	C072	Paid Vacations (Seafarers) Convention, 1946 (No. 72)
□	C073	Medical Examination (Seafarers) Convention, 1946 (No. 73)
□	C074	Certification of Able Seamen Convention, 1946 (No. 74)
★◆●	C075	Accommodation of Crews Convention, 1946 (No. 75)
■	C076	Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
□	C091	Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)
★●	C092	Accommodation of Crews Convention (Revised), 1949 (No. 92)
■	C093	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)
●	C108	Seafarers' Identity Documents Convention, 1958 (No. 108)
■	C109	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)
★●	C133	Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
★●	C134	Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
□	C145	Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
★●	C146	Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
★●	C147	Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
★●	C163	Seafarers' Welfare Convention, 1987 (No. 163)
★●	C164	Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
★●	C165	Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
★●	C166	Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
★●	C178	Labour Inspection (Seafarers) Convention, 1996 (No. 178)
■	C179	Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
■	C180	Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
	C185	Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185)
	MLC, 2006	Maritime Labour Convention, 2006 (MLC, 2006)
★●	P147	Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976

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

19	**Dockworkers**	
	C027	Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)
■	C028	Protection against Accidents (Dockers) Convention, 1929 (No. 28)
●	C032	Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)
	C137	Dock Work Convention, 1973 (No. 137)
	C152	Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)
20	**Indigenous and tribal peoples**	
□	C050	Recruiting of Indigenous Workers Convention, 1936 (No. 50)
□	C064	Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)
□	C065	Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)
□	C086	Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)
□	C104	Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104)
●	C107	Indigenous and Tribal Populations Convention, 1957 (No. 107)
	C169	Indigenous and Tribal Peoples Convention, 1989 (No. 169)
21	**Specific categories of workers**	
	C083	Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83)
★	C110	Plantations Convention, 1958 (No. 110)
	C149	Nursing Personnel Convention, 1977 (No. 149)
	C172	Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
	C177	Home Work Convention, 1996 (No. 177)
	C189	Domestic Workers Convention, 2011 (No. 189)
	P110	Protocol of 1982 to the Plantations Convention, 1958
22	**Final Articles Conventions**	
	C080	Final Articles Revision Convention, 1946 (No. 80)
	C116	Final Articles Revision Convention, 1961 (No. 116)

Reader's note

Overview of the ILO supervisory mechanisms

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

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

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

Role of employers' and workers' organizations

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

In practice, representative employers' and workers' organizations may submit to their governments' observations on the reports concerning the application of international labour standards. They may, for instance, draw attention to a discrepancy in law or practice regarding the application of a ratified Convention. Furthermore, any employers' or workers' organization may submit observations on the application of international labour standards directly to the Office. The Office will then forward these to the government concerned, which will have an opportunity to respond before the observations are examined by the Committee of Experts except in exceptional circumstances. [3]

[1] For detailed information on all the supervisory procedures, see ILO *Handbook of procedures relating to international labour Conventions and Recommendations*, International Labour Standards Department, Geneva, 2019.

[2] Reports are requested every three years for the fundamental Conventions and governance Conventions, and from now on, every six years for other Conventions. At its 334th Session the Governing Body decided to expand the reporting cycle for the latter category of Conventions from five to six years (GB.334/INS/5). Reports are due for groups of Conventions according to subject matter.

[3] General Report, paras 111–120.

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

During the early years of the ILO, both the adoption of international labour standards and the regular supervisory work were undertaken within the framework of the plenary sitting of the annual International Labour Conference. However, the considerable increase in the number of ratifications of Conventions rapidly led to a similarly significant increase in the number of annual reports submitted. It soon became clear that the plenary sitting of the Conference would not be able to examine all of these reports at the same time as adopting standards and discussing other important matters. In response to this situation, the Conference in 1926 adopted a resolution [4] establishing on an annual basis a Conference Committee (subsequently named the Conference Committee on the Application of Standards) and requesting the Governing Body to appoint a technical committee (subsequently named the Committee of Experts on the Application of Conventions and Recommendations) which would be responsible for drawing up a report for the Conference. These two committees have become the two pillars of the ILO regular supervisory system.

Committee of Experts on the Application of Conventions and Recommendations

Composition

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

Work of the Committee

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

- the periodic reports under article 22 of the Constitution on the measures taken by Member States to give effect to the provisions of the Conventions to which they are parties;
- the information and reports concerning Conventions and Recommendations communicated by Member States in accordance with article 19 of the Constitution;

[4] *Record of Proceedings* of the Eighth Session of the International Labour Conference, 1926, Vol. 1, Appendix VII.

[5] Terms of reference of the Committee of Experts, Minutes of the 103rd Session of the Governing Body (1947), Appendix XII, para. 37.

– information and reports on the measures taken by Member States in accordance with article 35 of the Constitution. [6]

The task of the Committee of Experts is to indicate the extent to which each Member State's legislation and practice are in conformity with ratified Conventions and the extent to which Member States have fulfilled their obligations under the ILO Constitution in relation to standards. In carrying out this task, the Committee adheres to its principles of independence, objectivity and impartiality. [7] The comments of the Committee of Experts on the fulfilment by Member States of their standards-related obligations take the form of either observations or direct requests. Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They are reproduced in the annual report of the Committee of Experts, which is then submitted to the Conference Committee on the Application of Standards in June every year. Direct requests are not published in the report of the Committee of Experts, but are communicated directly to the government concerned and are available online. [8] In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given number of Conventions and Recommendations chosen by the Governing Body. [9] The General Survey is based on the reports submitted in accordance with articles 19 and 22 of the Constitution, and it covers all Member States regardless of whether or not they have ratified the concerned Conventions. This year's General Survey is entitled *Securing decent work for nursing personnel and domestic workers, key actors in the care economy*.

Report of the Committee of Experts

As a result of its work, the Committee produces an annual report. The report consists of two volumes.

The first volume (Report III (Part A)) [10] is divided into two parts:

– **Part I:** the **General Report** describes, on the one hand, the progress of the work of the Committee of Experts and specific matters relating to it that have been addressed by the Committee and, on the other hand, the extent to which Member States have fulfilled their constitutional obligations in relation to international labour standards.

[6] Article 35 covers the application of Conventions to non-metropolitan territories.

[7] General Report, para. 23.

[8] General Report, para. 86. Observations and direct requests are accessible through the NORMLEX database available at: www.ilo.org/normes.

[9] By virtue of the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008, a system of annual recurrent discussions in the framework of the Conference has been established to enable the Organization to gain a better understanding of the situation and varying needs of its members in relation to the four strategic objectives of the ILO, namely: employment; social protection; social dialogue and tripartism; and fundamental principles and rights at work. The Governing Body considered that the recurrent reports prepared by the Office for the purposes of the Conference discussion should benefit from the information on the law and practice of Member States contained in General Surveys, as well as from the outcome of the discussions of General Surveys by the Conference Committee. In principle, the subjects of General Surveys have therefore been aligned with the four strategic objectives of the ILO. The importance of the coordination between the General Surveys and recurrent discussions was reaffirmed in the context of the adoption of a five-year cycle of recurrent discussions by the Governing Body in November 2016. In the context of discussing measures to strengthen the supervisory system in November 2018, the Governing Body invited the Committee of Experts to make proposals on its possible contribution to optimizing the use made of article 19, paragraphs 5(e) and 6(d), of the Constitution, in particular by considering measures to improve the presentation of General Surveys, so as to ensure a user-friendly approach and format that maximizes their value for constituents (document GB.334/INS/5).

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

– **Part II: Observations concerning particular countries** on the fulfilment of obligations in respect of the submission of reports, the application of ratified Conventions grouped by subject matter and the obligation to submit instruments to the competent authorities.

The second volume contains the **General Survey** (Report III(Part B)).

Committee on the Application of Standards of the International Labour Conference

Composition

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

Work of the Committee

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

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

The Committee is required to present its report to the plenary sitting of the Conference.

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

The Conference Committee on the Application of Standards discusses the report of the Committee of Experts, and the documents submitted by governments. The work of the Conference Committee starts with a general discussion based essentially on the General Report of the Committee of Experts. The Conference Committee then discusses the General Survey. It also examines cases of serious failure to fulfil reporting and other standards-related obligations. Finally, the Conference Committee examines a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. At the end of the discussion of each individual case, the Conference Committee adopts conclusions on the case in question.

In its report [11] submitted to the plenary sitting of the Conference for adoption, the Conference Committee on the Application of Standards may invite the Member State whose case has been discussed

[11] The report is published in the *Record of Proceedings* of the Conference. Since 2007, it has also been issued in a separate publication. See, for the last report, *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, International Labour Conference, 109th Session, Geneva, 2021.

to accept a technical assistance mission by the International Labour Office to increase its capacity to fulfil its obligations, or may propose other types of missions. The Conference Committee may also request a government to submit additional information or address specific concerns in its next report to the Committee of Experts. The Conference Committee also draws the attention of the Conference to certain cases, such as cases of progress and cases of serious failure to comply with ratified Conventions.

The Committee of Experts and the Conference Committee on the Application of Standards

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



Part I. General Report

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by Member States of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 92nd Session from 24 November to 11 December 2021. In the context of the ongoing COVID-19 pandemic, the Committee conducted its 92nd Session in a hybrid modality involving in-person participation by 11 members and online conferencing by six experts. The Committee has the honour to present its report to the Governing Body.

A. Composition of the Committee

2. The composition of the Committee is as follows: Mr Shinichi AGO (Japan), Ms Lia ATHANASSIOU (Greece), Ms Leila AZOURI (Lebanon), Mr James J. BRUDNEY (United States of America), Ms Graciela Josefina DIXON CATON (Panama), Mr Rachid FILALI MEKNASSI (Morocco), Mr Alain LACABARATS (France), Ms Elena E. MACHULSKAYA (Russian Federation), Ms Karon MONAGHAN (United Kingdom of Great Britain and Northern Ireland), Mr Sandile NGCOBO (South Africa), Ms Rosemary OWENS (Australia), Ms Mónica PINTO (Argentina), Mr Paul-Gérard POUGOUÉ (Cameroon), Mr Raymond RANJEVA (Madagascar), Ms Kamala SANKARAN (India), Ms Deborah THOMAS-FELIX (Trinidad and Tobago) and Mr Bernd WAAS (Germany). Appendix I of the General Report contains brief biographies of all the Committee members.

3. During its session, the Committee functioned with a reduced composition of 17 members following the end of the mandate of Judges Abdul G. Koroma and Lelio Bentes Corrêa and the resignation of Professor Vitit Muntarbhorn upon his appointment as United Nations Special Rapporteur on the Human Rights Situation in Cambodia. The Committee took note of this development and expressed its deep appreciation for the contribution that Professor Muntarbhorn made to its work during his 12-year tenure. The Committee wished Professor Muntarbhorn every success in fulfilling his important new mandate.

4. With regard to the process for filling the three currently open vacancies, the Committee took note of discussions on the methods of appointment of its members at the 341st and 343rd Sessions of the Governing Body (March and November 2021). It welcomed the decision to give wide publicity to these vacancies through a call for expressions of interest on the ILO's global and regional public website. The Committee expressed the firm hope that the three vacancies will be filled in time for the Committee's next meeting in November–December 2022 and that the new process will continue to lead to the selection of experts of the highest independence, expertise, professional standing and moral integrity.

5. This year, Ms Graciela Dixon Caton continued her mandate as Chairperson and Ms Rosemary Owens was elected as Reporter. Ms Dixon Caton was also re-elected for a second term as Chairperson for the period 2022–24.

B. Working methods

6. Consideration of its working methods by the Committee of Experts has been an ongoing process since its establishment. In this process, the Committee has always given consideration to the views expressed by the tripartite constituents most recently in the context of Governing Body discussions on strengthening the supervisory system.

7. In order to guide the Committee's reflection on continuous improvement of its work, a Subcommittee on Working Methods was set up in 2001 with the mandate to examine the working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee so that it can perform its functions in the best and most efficient manner possible and, in so doing, assist Member States in meeting their obligations in relation to international labour standards and enhance the functioning of the supervisory system. This year, under the Chairpersonship of Mr Bernd Waas, the Subcommittee on Working Methods met for the 21st time. The Subcommittee took note of the impact of the introduction of digital working methods and other adaptations introduced, inter alia, in the context of the COVID-19 pandemic and the organization of virtual sessions through videoconferencing facilities. The Subcommittee held an exchange on the improvements, challenges and opportunities generated by these developments for the effective holding of its sessions.

8. The Subcommittee also took note of the Governing Body's decision [1] to consider proposals at its 344th Session (March 2022) for extending the duration of the Committee's annual session to ensure that sufficient time is allocated for the discharge of its workload and held a preliminary discussion on the modalities of an extended session to take place in 2022.

9. The Subcommittee also considered ways to enhance a constructive dialogue with Member States for a more clear, concise and actionable communication of the Committee's recommendations which would, among other things, facilitate follow-up by the constituents at country level. One of the methods it considered in this regard was the use of hyperlinks to facilitate references to, for example, its previous comments, General Surveys and general observations.

10. The Subcommittee took stock of the positive impact that the recent practice of urgent appeals has had on the examination of files where reports have not been received for more than three years. It welcomed the positive comments made by the Conference Committee on this practice at the 109th Session (2021) of the International Labour Conference. The Subcommittee examined ways to enhance the visibility of urgent appeals in its General Report through the introduction of summary tables on the urgent appeals examined at its current session and those initiated for the next session. [2] It also held a discussion on the most appropriate ways to follow up on comments adopted in the absence of a report on the basis of an urgent appeal, emphasizing the importance of reinforced technical assistance by the Office.

11. The Subcommittee held a discussion on the need to plan appropriately given the implications for its workload regarding the handling of an increased number of reports expected following the marked increase in ratifications achieved, inter alia, as a result of the Director-General's Centenary ratification campaign and its aftermath.

12. Based on the preparatory work of the Subcommittee, the Committee examined the request put forward by Government members of the Conference Committee to consider the possibility of allowing a representative of the Government group to attend the next special sitting to which the Worker and Employer Vice-Chairpersons are invited. [3] The Committee replied positively to this request and asked its Chairperson to follow up on this matter.

13. The Committee also decided, based on a proposal by the Subcommittee, to extend a request to the Office of the High Commissioner for Human Rights for a meeting to be organized between the Chairperson of the Committee of Experts and the Chairpersons of the UN treaty bodies in order to explore synergies and questions of common interest in the context of a repositioned UN

[1] GB.343/LILS/3, para. 42, as amended by the Governing Body.

[2] See paras 73, 74 and 77 of the Report.

[3] ILC.109/Record No. 6A/P.I, para. 408.

development system and the UN Secretary-General's initiative known as the Call to Action for Human Rights. More information on this subject is provided in section II.D of this report on collaboration with the United Nations.

C. Relations with the Conference Committee on the Application of Standards

14. The Chairperson of the Committee was invited to participate in the general discussion of the Conference Committee at the 109th Session of the International Labour Conference which took place virtually in June 2021 after being deferred for one year due to the COVID-19 pandemic. In addition, the Chairperson of the Committee on Freedom of Association was again invited to address the Conference Committee in order to present the Committee's Annual Report.

15. As has become customary, the Chairperson of the Committee of Experts extended an invitation to the Employer Vice-Chairperson (Ms Sonia Regenbogen) and the Worker Vice-Chairperson (Mr Marc Leemans) to participate in a special sitting of the Committee at its present session. They both accepted this invitation.

16. In welcoming the two Vice-Chairpersons, the Chair of the Committee noted the positive synergies afforded by the meeting as both committees shared the same goal of maintaining an effective supervisory system and so supporting the role it plays in making decent work a reality, especially in this challenging time. A spirit of mutual respect, cooperation and responsibility has consistently prevailed over the years in the Committee's relations with the Committee on the Application of Standards of the International Labour Conference.

17. The Employer Vice-Chairperson then addressed a number of points to the meeting:

- The importance of the alignment of the two supervisory bodies around the common objective of long-lasting improved compliance with international labour standards both in law and practice was emphasized by the Employer Vice-Chairperson. She indicated that the global tripartite consensus around the Centenary Declaration on the Future of Work should be the key framework leading to a sustainable and resilient recovery from the COVID-19 pandemic. In fully recognizing the dramatic upheaval in the world of work, the ILO should listen to its constituents in order to understand their national circumstances and be able to give practical and effective guidance in respect of the application of international labour standards. The key consideration should continue to be national social dialogue and tripartism. The ILO, including the Conference Committee, the Committee of Experts and the Office supporting the work of both Committees, must continue to show its capacity for a pragmatic, balanced approach supporting a fast, resilient labour market recovery from the pandemic.
- This was an opportune moment for the supervisory system to pause and reflect on its effectiveness, the extent to which comments were geared to generate adequate responses, the way in which practical guidance was provided to ensure sustainable compliance in law and practice, and finally, how to safeguard the system's cohesion in the future. She encouraged the Committee to reflect on these questions.
- She emphasized the role of open dialogue and close cooperation among the Conference Committee, the Committee of Experts, the Office and the tripartite constituents at this challenging time. She called on the Committee of Experts to ensure that its comments, while non-binding, were sensitive to and responsive to the views expressed in the Conference Committee, in observations by employers' and workers' organizations under article 23 of the ILO Constitution and in Governing Body discussions in order to respond to them in a balanced manner.

- The long-standing issue of the right to strike was an example of an area where experts needed to better integrate the diversity of industrial relations systems in their assessments of compliance. The Employer Vice-Chairperson reiterated the view of the employers' group that the right to strike had no basis in the text of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) nor in its legislative history. The Conference Committee had overcome turbulent times by finding a modus vivendi on the right to strike that had enabled it to deliver its supervisory work. The Committee of Experts should contribute to this way forward by producing comments that helped build on this consensus rather than detract from it.
- The Employers' group had also highlighted in the Conference Committee their concerns over a number of interpretations of Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Employer Vice-Chairperson called upon the Committee of Experts to fully respect and appreciate the flexibility afforded by Article 4 of Convention No. 98 and allow employers and workers to find means of implementation which aligned with their national conditions, practices and traditions of industrial relations. Past experience had shown that where the two supervisory bodies reached convergent views, more positive responses were obtained from governments and the social partners leading to faster, better and more effective compliance. This was the key to a clear, effective and authoritative supervisory system.
- The Employer Vice-Chairperson also suggested certain changes in the substance and format of the report to achieve greater impact, including by:
  - adhering faithfully to the text of Conventions when assessing compliance;
  - avoiding generating confusion by asking governments to provide information on the application of the provisions of recommendations which complemented ratified conventions as there was no reporting obligation for recommendations;
  - clarifying the distinction between direct requests and observations, and avoiding excluding a large part of comments from tripartite scrutiny by including in observations all comments containing a substantive assessment of compliance;
  - providing clear explanations of the reasons for proposing a case for discussion at the Conference (double footnoted cases). The Conference Committee was asked to enhance transparency in the selection of cases and additional information from the Committee of Experts would help to increase transparency and enable the Vice Chairpersons to determine whether a case would be selected for discussion;
  - indicating how the needs of sustainable enterprises were incorporated in the Committee of Experts' assessments of compliance. She indicated that these should become more visible in order to ensure a more balanced supervision of standards in the world of work. This was a key consideration for the employers, especially as sustainable enterprises were expected to play a key role in the context of recovery from the pandemic; and
  - improving transparency by making government reports under article 22, as well as the social partners comments, accessible online.

18. She concluded by saying that open transparent dialogue did not undermine the independence of the Committee of Experts but rather strengthened it as the entire system was strengthened.

19. The Worker Vice-Chairperson emphasized the complementarity between the two Committees and their respective independence, and made the following points:

- He recalled the strong attachment of the Workers' group to the independence and impartiality of the Committee of Experts, both in the way it carried out its work and in the way in which its members were appointed. Independence was a condition sine qua non for the Committee's credibility which was the cornerstone of the ILO supervisory system.

- The Workers' group also attached great importance to the Committee's autonomy as regards its working methods. While agreeing with the Employers that article 22 of the Constitution did not compel governments to report on the application of Recommendations, nothing in that article prevented governments from providing information relative to the application of Recommendations that were linked to Conventions that they had voluntarily ratified. This communication of information could take place at the initiative of a government or on the basis of a request by the Committee of Experts and was part of the continuous dialogue that the latter had with governments in complete autonomy.
- While fully respecting the Committee's autonomy, the Worker Vice-Chairperson asked for clarification on the context in which questions raised by social partners in direct requests combined with a government's inadequate response to the Committee's previous comments, might give rise to an observation. He also emphasized how much the Workers' group appreciated General Surveys which made it possible to have a comprehensive picture on the state of application of various instruments on a particular topic and made it easier to understand trends and developments, linking the standards concerned to the Decent Work Agenda of which they were a very important component.
- The Worker Vice-Chairperson was pleased to note the Governing Body decision to examine the extension of the Committee's session at its March 2022 meeting with a view to facilitating the management of the workload which was increasing steadily.
- In the light of the wave of restrictions and derogations from workers' rights introduced as a result of the COVID-19 pandemic, he reiterated the request he had made in the Conference Committee for specific follow-up to be given by the Committee of Experts to these exceptional measures and asked that a specific section of the Committee's report be dedicated to this question. The world of work was in turmoil and there was no Member State that remained unaffected by the pandemic. The Centenary Declaration was very important, but it had been adopted at a moment when no one was aware of the sudden disruption that would take place a few months later. The world had stopped turning and was still not turning as it did prior to the pandemic. Workers faced very difficult circumstances, especially the most vulnerable and those in fragile situations such as seafarers. The ILO was founded on a promise of social justice and a fair world in which workers would not be a commodity nor victimized. In these dramatic times, the Committee should take on this core mission and place it at the heart of its activities in order to make sure that the pandemic did not stop the ILO from creating a fair and more inclusive society. The question to answer at the next Conference Committee would be how to take action in order to maintain the progress achieved over previous years and avoid moving into regression.

20. Finally, the Worker Vice Chairperson reiterated the Workers' full respect for the Committee and its pronouncements including with regard to the right to strike and the right to collective bargaining.

21. The Committee of Experts thanked the two Vice-Chairpersons for their important comments. It stressed that the examination of its working methods was an ongoing task and, in relation to that task, it always welcomed and gave serious consideration to the views of the constituents. Based on these views, the Committee had decided this year to make increased use of hyperlinks, where appropriate, in order to produce a more succinct and user-friendly report. It had also decided to strengthen the practice of urgent appeals, which seemed to deliver positive results by motivating governments to submit overdue reports. With regard to technical assistance on the ground, the Committee had been informed that assistance by the Office to Member States had been extended and reinforced including through tailored support to address urgent appeals. On the introduction of double footnotes, the Committee had always considered that the urgency of the matter was the most important criterion and considered that this urgency was well reflected in the content

of the corresponding observations. The Committee was also conscious of the need to maintain balance with regard to regions and Conventions. The Committee had heard the call for additional clarity on this matter. This was not an exact science and the aim had always been the greatest possible transparency and predictability. The Committee also referred to the question of consolidated comments, which had been raised at the Conference Committee, in order to clarify that this approach was implemented only where it added value in providing clear, comprehensive and practical recommendations. The Committee also acknowledged the views expressed on the right to strike by the Employers and the Workers as well as its own position on the matter, which had been expressed on more than one occasion. The Committee reiterated its appreciation for the special sitting as a positive opportunity to nourish the dialogue between the two supervisory bodies.

22. In conclusion, the Committee assured the two Vice Chairpersons that it had listened to their comments and would review them within the context of its independent functioning so as to continue to discharge the mandate entrusted to it. The Committee had a clear understanding of its own role and mandate and was aware of the pivotal role that it played in the supervisory system. The Committee had not suspended its work at all during the COVID-19 pandemic and had managed to ensure continuity in the discharge of its mandate by closely following developments in the world of work where enterprises and workers had been enveloped in the unprecedented crisis brought about by the pandemic. Finally, the Committee of Experts informed the two Vice-Chairpersons that it had noted the request from a Government group during the 2021 session of the Conference Committee and that it considered extending an invitation to the special sitting to a Government representative to be eventually identified by the Conference Committee.

D. Mandate

23. **The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO Member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by Member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.**

E. The role of international labour standards and effective and authoritative supervision as the foundation of the global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient

24. In its previous General Report, the Committee highlighted the role of international labour standards and authoritative supervision in addressing the impact of the COVID-19 pandemic emphasizing, inter alia, that the "crisis exposed the blind spots of pre-existing legal and policy frameworks exacerbating inequality and poverty and stalling, or even reversing, the progress made towards sustainable development and towards realizing the SDG 8 vision of full, productive and freely chosen employment and decent work for all". [4] The Committee notes with interest the rich discussion which its observations elicited in the Conference Committee on the Application of Standards and in particular, the recent experience shared by the tripartite constituents on the application of international labour standards in their respective countries.

25. The Committee also notes that the ILO Director-General referred to its observations in his Report to the International Labour Conference entitled *Work in the time of COVID* [5] and expanded on this subject further at a meeting with all Committee members during the Committee's session. The Committee is grateful to the Director-General for making time to do so. It shares the Director-General's view that the exacerbation of global inequalities calls upon the ILO to reaffirm its primary mandate of promoting social justice as has been elaborated and strengthened over the years by the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, the 2008 Declaration on Social Justice for a Fair Globalization and the Centenary Declaration on the Future of Work in 2019. The Committee was inspired by the Director-General's call to translate these foundational documents into concrete action making a difference in the lives of people in the midst of the COVID-19 pandemic.

26. The Committee welcomes the adoption by the International Labour Conference of a "Global Call to Action for a human-centred COVID-19 recovery", in which Member States commit to reinforcing respect for international labour standards, and to promoting their ratification, implementation and supervision, with particular attention to areas where serious gaps have been revealed by the crisis. The Call to Action provides that the ILO "must play a leadership role with its constituents and in the international system in advancing a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient. Through focused and accelerated implementation of the ILO Centenary Declaration for the Future of Work, it will strengthen its support of Member States' recovery efforts and leverage the support of other multilateral organizations and international institutions while contributing actively to the efforts of the United Nations system to expedite delivery of the 2030 Agenda." This road map for an economic and social recovery from the crisis that is fully inclusive, sustainable and resilient calls for "the promotion of legal and institutional frameworks based on international labour standards, including fundamental principles and rights at work, and a particular emphasis on occupational safety and health in the light of the experience of the COVID-19 pandemic". [6]

27. The Committee notes that the Call to Action is adopted at a time when the public health crisis generated by the pandemic continues unabated, exacerbating with every wave its devastating

[4] ILC, 109th Session (2021), Report III/Addendum (Part A), General Report, para. 47.

[5] ILC, 109th Session (2021), Document ILC.109/I/B.

[6] Global Call to Action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, ILC, 109th Session (2021), paras 12 and 13(b)(i).

impact on the world or work and broadening pre-existing inequalities. To date, the number of people who have died from the virus has increased to over 5 million worldwide. Containment measures, including lockdowns and related mobility restrictions have sapped economic activity, decimated the livelihoods of often the most vulnerable workers and disrupted supply chains and the lives of workers dependent on them. Meanwhile, downward pressure on the working conditions of key and frontline workers has intensified to the detriment of physical and mental health.

28. According to the ILO Monitor of October 2021, labour market recovery from the pandemic shock has stalled during 2021. [7] The loss of global working hours in the third quarter of 2021 compared to pre-pandemic levels amounts to the equivalent of 137 million jobs. Progress in vaccination has emerged as a critical factor for labour market recovery, exposing inequalities between developed and developing countries. The employment loss in low-income countries, where the share of fully vaccinated people is only 1.6 per cent, is 50 per cent larger than in high-income countries where the vaccination rate stands at 60 per cent. Fiscal stimulus packages continued to be the other key factor in the trajectories of recovery. Estimates show that on average, an increase in fiscal stimulus of 1 per cent of annual GDP increased annual working hours by 0.3 percentage points relative to the last quarter of 2019. However, fiscal capacities have been uneven: around 86 per cent of global stimulus measures has been concentrated in high-income countries. The "productivity gap" between developing and advanced economies has grown to the highest level since 2005 as lower-income countries, lower-productivity enterprises and lower-paid workers have been disproportionately harmed by the pandemic. Young people, especially young women, continue to face greater employment deficits.

29. The Committee notes that the follow up to the Call to Action includes Office activities aimed at building support for international labour standards across the multilateral system. The Committee encourages the Office to engage with the UN system in the framework of the Secretary-General's Call to Action for Human Rights with a view to ensuring that international labour standards, including supervisory body comments continue to inform the recovery process in consonance with the UN human rights mechanisms. The Committee also encourages further engagement with multilateral development banks in developing their social safeguards and advising them on standards-related issues that arise in the application of these safeguards in the interest of coherence between national policies that derive from standards-related commitments and resources drawn from development financing.

30. The Committee welcomes the planned development of a tracking framework enabling the Office to produce evidence-based assessments of the quantity, quality and social inclusivity of the recovery at the country level and to examine how the recovery strategies can be improved, from a human-centred perspective. The Committee considers such tracking framework will usefully complement its own legal assessment of measures taken by Member States to address the impact of the pandemic.

31. It also notes that as part of the follow up to the Call to Action, the ILO will invite all Member States to convene national dialogues on human-centred recovery with a view to building country strategies and host a Multilateral Policy Forum to take place in the early months of 2022. At a time when multilateral cooperation obtains crucial importance in promoting a human-centred recovery, the Committee recalls that the Declaration of Philadelphia, its echo resonating in the ILO Centenary Declaration, assigns to the ILO a special responsibility to examine and consider all international economic and financial policies and measures in the light of the fundamental objective of ensuring that "all human beings, irrespective of race, creed, or sex, have the right to

[7] ILO Monitor: COVID-19 and the world of work, 8th edition, 27 October 2021, p. 1.

pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity."[8] It trusts that the ratification and application of international labour standards will be an integral part of the follow up to the Call to Action along with tripartism. It also notes that social protection stands to be of particular significance as the crisis has elevated public and political awareness of the importance of social protection as an indispensable frontline and preventive public health response as well as a measure for stabilizing household incomes and responding to crises.

32. The Committee considers that the implementation of these initiatives should be facilitated by their alignment with "Our Common Agenda" proposed in September 2021 by the UN Secretary-General to accelerate the achievement of the Sustainable Development Goals (SDGs). As part of its principal commitment to leave no one behind, the Common Agenda recommends a renewed social contract anchored in human rights; a new era for universal social protection, including healthcare and basic income security, reaching the 4 billion unprotected; and to reinforce adequate housing, education and lifelong learning and decent work.

33. The Common Agenda also proposes a renewed commitment to abide by international law and justice, envisioning human rights as a problem-solving measure, including by comprehensive anti-discrimination laws and promoting participation; enshrining a new vision for the rule of law; and a global road map for the development and effective implementation of international law. In this regard, the Committee refers to its previous report for its observations on the relevance of international labour standards in giving expression to the human rights at work that are relevant to tackling response and recovery.

34. The Committee stresses that for human rights to be "problem-solving measures", it is critical to give effect to the full spectrum of civil, political, economic, social and cultural rights and the international labour standards giving expression to each of those rights. At a time when civic space has been shrinking under pressure from emergency measures, yet social dialogue is more than ever needed to forge consensus on the priority components of an inclusive, sustainable and resilient recovery in light of national circumstances, it must once again recall its long-standing view that crisis situations "cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity and on condition that any measures affecting [their] application are limited in scope and duration to what is strictly necessary to deal with the situation in question". [9] It draws attention once again to the parameters of international law which are relevant in this regard. [10]

- the principle of legality so that those constraints must not be arbitrary and must be based on law;
- the principle of necessity requiring the executive branch to prove that limitations are genuinely necessary according to the circumstances;
- the principle of proportionality positing the need to test constraining measures as proportionate to the risks and exigencies of the situation;
- the principle of non-discrimination against particular groups in society, while also respecting the corresponding requirements put forward in the respective human rights treaties.

35. The Committee is concerned that 20 years after the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, people of African descent, minority

[8] Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia), 1944, section II(a).

[9] ILC, 109th Session (2021), Report III /Addendum (Part A), General Report, para. 52.

[10] ILC, 109th Session (2021), Report III /Addendum (Part A), General Report, para. 51.

communities, indigenous peoples, migrants, refugees, and displaced persons continue to confront stigmatization, discrimination, and violence. Reversing their vulnerability and marginalization, exacerbated where different grounds of discrimination intersect, requires specific emphasis on repealing all discriminatory laws, including laws giving rise to discrimination in employment and occupation, as proposed in the UNSG Call to Action for Human Rights and the UN Common Agenda.

36. The Committee notes that the COVID-19 pandemic has had a disproportionate negative impact on specific groups of workers, including women, particularly those that also belong to disadvantaged groups. Multiple and intersectional discrimination have compounded existing inequalities, affecting both health and economic outcomes. As noted in the Global Call to Action, women have suffered disproportionate job and income losses. [11] Many continue to work on the front lines of the pandemic, while at the same time performing the majority of unpaid care work inside and outside of their homes, underscoring the need for a gender-responsive recovery.

37. The Committee welcomes the decision of the Governing Body to place the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work on the agenda of the 2022 International Labour Conference. It notes that certain occupational safety and health principles already highlighted in its previous report as emerging from international labour standards such as the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Health Services Convention, 1985 (No. 161) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), were proposed for accelerated action in the ILO Global Call to Action: the provision of tailored practical information and guidance; support for risk management including for the prevention of new outbreaks or other occupational risks; the introduction of appropriate control and emergency preparedness measures; and elaboration of protocols for compliance with health measures and other COVID-19 based rules and regulations.

38. The Committee notes that according to new global estimates, [12] the number of children in child labour has risen to 160 million worldwide – an increase of 8.4 million children in the last four years – with millions more at risk due to the impacts of COVID-19. The estimates point to a significant rise in the number of children aged 5 to 11 years in child labour, who now account for just over half of the total global figure. The number of children aged 5 to 17 years in hazardous work – defined as work that is likely to harm their health, safety or morals – has risen by 6.5 million to 79 million since 2016. The Committee deeply regrets that progress to end child labour has stalled for the first time in 20 years, reversing the previous downward trend that saw child labour fall by 94 million between 2000 and 2016. It renews its call on Member States to take advantage of the momentum generated by the universal ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182) to make special efforts to protect the very foundation of an inclusive, sustainable and resilient recovery from the pandemic.

39. The estimates also provide a useful reminder of the centrality of the right to social security and universal social protection, as expressed in the Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Social Protection Floors Recommendation, 2012 (No. 202), to the realization of other fundamental rights, such as the abolition of child labour: 9 million additional children are at risk of being pushed into child labour by the end of 2022 as a result of the pandemic. A

[11] Global Call to Action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, ILC 109th Session (2021), para. 4.

[12] *Child labour: Global estimates 2020 – Trends and the road forward*, ILO and UNICEF, New York, 2021.

simulation model [13] shows this number could rise to 46 million if they and their families do not have access to critical social protection coverage.

40. The Committee is of the view that in light of the disruptive impact of the pandemic on the world of work as well as unprecedented transformational pressures arising from climate, digital and demographic factors, it is crucial for its effectiveness and authority for it to be able to focus on the application of standards that are the most up to date and which respond to the changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises. [14] In that context, the Committee wishes to draw the attention of all Member States to its individual comments on the application of Conventions classified as outdated, encouraging them to consider ratifying the corresponding up-to-date instruments as recommended by the ILO Governing Body based on the work of the Standards Review Mechanism Tripartite Working Group.

41. The Committee noted that the Director-General's term of office would end in 2022 and took the opportunity at the end of its meeting with him to express its deep appreciation for his exemplary leadership, including in the area of international labour standards, and his support for strengthening the ILO's supervisory mechanisms. The Committee wishes the Director-General well in his future endeavours.

F. The impact of the COVID-19 pandemic on the application of international labour standards

42. As indicated by the Committee in its 2021 report, the central role of international labour standards as the tried-and-trusted foundation of the Decent Work Agenda is to reaffirm the framework within which any response to the COVID-19 pandemic may be formulated, in order to prevent regression and put recovery efforts on a stable footing, answering the call of the 2030 Development Agenda to leave no one behind. Standards and effective and authoritative supervision are a fundamental part of the solution to this crisis, in line with the guidance given in the Centenary Declaration on the Future of Work for addressing the profound transformative changes of today's world of work. [15] The Committee identified the following principles: [16]

(i) "The crisis does not suspend obligations under ratified international labour standards; any derogations should be exercised within clearly defined limits of legality, necessity, and proportionality and non-discrimination. Similarly, the obligation to report on measures taken to give effect to ratified and non-ratified standards under articles 19, 22 and 35 of the ILO Constitution is not suspended. Member States are invited to seek the support of the Office, which is now more necessary than ever, in order to ensure that rights at work are not sacrificed as a result of the crisis and that the ILO's normative system fulfils its primary purpose of providing much needed guidance towards building back better.

(ii) Consistent with lawful measures to protect the health of the public, every effort should be made to prevent a downward spiral in labour conditions and pursue a virtuous cycle of recovery and development with the support of the Office and development partners fully respecting rights at work. Recovery measures weakening the protection afforded by labour laws will only further undermine social cohesion and stability and erode citizens' confidence that policymakers heard the call for public policies to be responsive to people's needs. This

[13] ibid., pp. 8–9.

[14] Centenary Declaration, section IV.A.

[15] ILC, 109th Session (2021), Report III /Addendum (Part A), General Report, para. 48.

[16] ILC,109th Session (2021), Report III /Addendum (Part A), General Report, para. 49.

is simply the wrong solution. An open global economy as the driver of recovery, is more than ever linked to respect for rights at work.

(iii) Social dialogue is critically important in all aspects of the development, implementation, monitoring and review of COVID-19 policy responses to ensure that these are grounded in respect for rights at work, tailored to national circumstances and benefiting from local ownership."

43. This year, the Committee has recognized in its observations and direct requests the widespread ramifications of the COVID-19 pandemic and has noted the many instances in which measures have been taken by governments in light of its devastating impact on various economic sectors and sections of the labour workforce. The Committee is particularly concerned at the situation of groups in vulnerable situations who are exposed to the brunt of the pandemic, especially women, young workers, migrant workers, persons belonging to racial, ethnic or linguistic minorities, older workers, domestic workers, indigenous and tribal peoples, people living with or affected by HIV or AIDS and rural workers.

44. In this context, the Committee considers that its 2022 General Survey on *Securing decent work for nursing personnel and domestic workers, key actors in the care economy* is extremely timely. The Survey examines the application of the Nursing Personnel Convention, 1977 (No. 149) and its Recommendation (No. 157), as well as the Domestic Workers Convention, 2011 (No. 189) and its Recommendation (No. 201). The Committee notes that nursing and domestic work are both highly feminized occupations which form part of the larger care economy, in which women are over-represented. Many are also migrant workers, which increases their risk of decent work deficits. The General Survey highlights that the pandemic has placed the situation of nursing personnel into stark relief. While nurses have been hailed as heroes during the crisis, COVID-19 has also shone a spotlight on serious issues, including: understaffing due to persistent nursing shortages worldwide, long and stressful working hours, poor remuneration, precarious employment and heightened exposure to risk, particularly due to lack of access to personal protective equipment (PPE) and vaccines. Moreover, as noted in the General Survey, the ILO estimates that 73.7 per cent of domestic workers have been affected by the pandemic, suffering devastating job and income losses. They are also frontline workers, predominately women and often from disadvantaged groups. Domestic workers typically work long hours, often in informal jobs which are poorly remunerated and offer little or no access to social protection. Many live in their employers' households, where they are exposed to risk of infection due to their caregiving responsibilities. Moreover, both nursing personnel and domestic workers encounter high levels of workplace harassment, violence and abuse. The Committee underlines that the Global Call to Action calls for protection for workers at higher risk of exposure to COVID-19, calling for them to have access to vaccines and personal protective equipment. [17]

45. The Committee recalls from its 2021 General Report that, in addition to nursing personnel and domestic workers, other frontline workers and key workers ensuring continuity of functions critical to economic, environmental and public safety, such as seafarers and other transport workers, rural workers, food supply workers, waste pickers and law enforcement workers have continued to provide essential public goods during the pandemic. The Committee refers to the general observation adopted in 2020 on the Employment Policy Convention, 1964 (No. 122), as well as the 2021 Addendum to the 2020 General Survey on *Promoting employment and decent work*

[17] Global Call to Action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, ILC 109th Session (2021), section B.c.

in a changing landscape. It emphasizes the need to ensure that these categories of workers benefit from the full legal protection to which they are entitled under international law. [18]

46. Given the role of seafarers in maintaining the maritime supply chain during the pandemic thereby preventing a disruption in the global trade of essential goods, such as food and medicine, the Committee decided to include a specific comment on the situation of these frontline workers in this year's General Report.

COVID-19 and maritime labour issues

47. The Committee reiterates its ***deep concern*** regarding the challenges and the impact that restrictions and other measures adopted by governments around the world to contain the spread of the COVID-19 pandemic have had, and continue to have, on the protection of seafarers' rights as laid out in the Maritime Labour Convention, 2006, as amended (MLC, 2006).

48. The Committee notes the observations of the International Transport Workers' Federation (ITF) and of the International Chamber of Shipping (ICS), received on 4 October 2021, indicating that all ratifying States have failed to comply, to some extent, with several provisions of the MLC, 2006, during the pandemic. The Committee further notes the replies received from, and the information provided by, the Governments of France, Honduras, Indonesia, Morocco, Myanmar, Panama, Philippines, Portugal, Thailand, and Turkey concerning both its general observation and the observations of the ITF and the ICS.

49. The Committee recalls its general observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, adopted in 2020, which remains applicable in its entirety.

50. The Committee acknowledges the fact that, following the publication of its general observation on 10 December 2020, immediate action was taken at the international, regional and national level, as a response to its urgent call to restore the protection of seafarers' rights and fully comply with the provisions of the MLC, 2006. The Committee welcomes in particular the continuous cooperation between the ILO, the International Maritime Organization (IMO), other United Nations agencies and the ITF and ICS to address the crisis, as well as the Resolutions adopted at the Fourth Meeting (Part I) of the Special Tripartite Committee of the MLC, 2006 (STC) on this issue.

51. The Committee welcomes the fact that a number of countries which have ratified the MLC, 2006 have succeeded in adopting strategies and measures in line with the international guidance, in order to preserve public health in the context of the pandemic, while ensuring respect for seafarers' rights. These measures include, among others: (1) ensuring a high number of safe crew changes at their ports; (2) ensuring medical care on board and on shore, including dental care; (3) attending COVID-19 outbreaks on board and providing care in national hospitals when needed; (4) keeping borders open for the transit of seafarers in line with strict national protocols; (5) revising previous temporary guidance on Seafarer Employment Agreement's extensions to comply with the requirements of the Convention; (6) reinitiating rigorous port State control inspections focusing on employment agreements and wages; (7) developing services online to support shipowners and seafarers; (8) rehabilitating welfare services in port and keeping them open even if with some restrictions, for example, setting up Wi-Fi in ports to allow seafarers to establish online contact with welfare services; and (9) prioritizing seafarers for vaccination within national programmes.

52. The Committee also notes that in some cases consultations have taken place between different government entities and social partners to develop measures at national level and with consular

[18] ILC,109th Session (2021), Report III/Addendum (Part A), General Report, para. 87.

services to find solutions to concrete cases. Some governments indicated that they have taken part in increased international communication and collaboration, including in multilateral forums, to promote the designation of seafarers as key workers and facilitate their repatriation.

53. According to the observations of the ITF and the ICS, many of the requests formulated in the general observation have not been addressed by a number of flag States, port States and labour-supplying States.

54. The Committee is ***deeply concerned*** that violations of the Convention may further increase due to new restrictions adopted by governments to contain the variants of COVID-19. In this regard, the Committee notes with ***deep regret*** the existence of cases of denial of access to medical care ashore for seafarers, even in situations of the utmost urgency, as well as cases of consistent refusal to allow sick seafarers to disembark or to allow for the bodies of deceased seafarers to be removed from the vessels and for their repatriation.

55. Moreover, the Committee must again express its ***deep regret*** that a number of ratifying countries, continue to invoke force majeure as an overall reason to deny the right to shore leave and extend the duration of periods of service on board, beyond the agreed date and, in some cases, beyond the default maximum period of 11 months. These types of occurrences endanger not only the health and safety of the seafarers concerned but also the safety of navigation. In the same context, some labour-supplying countries have continued to refuse to accept the return of their national seafarers. As a result, these seafarers have been stranded without earnings, and with great uncertainty as to their return to their home country.

56. ***As stated in the 2020 general observation and given that almost two years have passed since the beginning of the pandemic, the Committee stresses that the notion of force majeure should not be regarded as a valid reason to deprive seafarers of their rights, as there are options available worldwide to comply with the provisions of the MLC, 2006.***

57. ***The Committee recalls the resolutions adopted by the STC, as well as the ILO Governing Body's Resolution concerning maritime labour issues and the COVID-19 pandemic, and the UN General Assembly's Resolution on international cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to supply global supply chains, and urges all ILO Member States to designate and treat seafarers as key workers. The Committee also urges them to facilitate crew changes, provide access to medical care ashore when needed, and prioritize seafarers for vaccination.***

58. ***As the world continues to rely on shipping and seafarers for the transport of more than 90 per cent of world trade, including food, medicines, and vital medical supplies, the Committee urges ratifying States, which have not yet done so, to adopt, without delay, all necessary measures to fully restore the protection of seafarers' rights and fully comply with their obligations under the MLC, 2006.***

59. ***The Committee will continue to examine issues raised regarding compliance with the MLC, 2006, during the pandemic and requests governments to provide information in their next reports on any temporary measures adopted in this regard, their duration and their impact on seafarers' rights. The Committee further encourages social partners, in accordance with article 23 of the ILO Constitution, to continue submitting observations on the implementation of the Convention. The Committee finally reminds governments that they may avail themselves of the technical assistance provided by the Office, in close cooperation with the IMO, the World Health Organization and with the United Nations Country Teams.***

II. Compliance with standards-related obligations

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

60. The Committee's principal task consists of the examination of the reports supplied by governments on Conventions that have been ratified by Member States (article 22 of the Constitution) and that have been declared applicable to non-metropolitan territories (article 35 of the Constitution).

Reporting arrangements

61. In accordance with the decision taken by the Governing Body at its 258th Session (November 1993), the reports due on ratified Conventions should be sent to the Office between **1 June and 1 September** of each year.

62. The Committee recalls that detailed reports should be sent in the case of first reports (a first report is due after ratification) or when specifically requested by the Committee of Experts or the Conference Committee. In all other cases, simplified reports are requested on a regular basis. [19]

63. The Committee also recalls that, at its 306th Session (November 2009), the Governing Body decided to increase from two to three years the regular reporting cycle for the fundamental and governance Conventions. At its 334th Session (October–November 2018) the Governing Body decided to increase the reporting cycle from five to six years for all other Conventions. In certain cases, reports may be requested outside of the regular reporting cycle. [20]

Compliance with reporting obligations

64. This year a total of 2,006 reports (1,865 reports under article 22 of the Constitution and 141 reports under article 35 of the Constitution) were requested from governments on the application of Conventions ratified by Member States, compared to 2,004 reports last year. At the end of the present session of the Committee, 1,357 reports were received by the Office corresponding to

[19] In 1993, a distinction was made between detailed and simplified reports. As explained in the report forms, in the case of simplified reports, information need normally be given only on the following points: (a) any new legislative or other measures affecting the application of the Convention; (b) replies to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations; and (c) replies to comments by the supervisory bodies. At its 334th Session, the Governing Body adopted a new report form to facilitate reporting by governments when they are expected to provide simplified reports (GB.334/INS/5).

[20] There are several ways in which a report can be requested outside of the regular reporting cycle: (i) the Committee can place a special request in a footnote at the end of a comment for a report to be sent earlier than the year it is due according to the reporting cycle (see General Report, paras 93–97) (ii) an "automatic" request is sent when the government has failed to send a report in the framework of the regular reporting cycle or the report sent did not contain an answer to the Committee's comments. If a government has failed to send a report for a number of years, the case is singled out in Part II (section I) of this report and examined every year by the Conference Committee during its discussion on serious failures to fulfil reporting obligations; (iii) the Conference Committee can ask a government to submit a report to the Committee of Experts outside of the reporting cycle following the examination of an individual case and when it discusses the cases of serious failure to report; (iv) the Governing Body may ask a government to send a report to the Committee of Experts outside of the reporting cycle based on the recommendations of tripartite committees established to examine representations under article 24 of the ILO Constitution or the recommendations of Commissions of Inquiry established to examine complaints under article 26 of the ILO Constitution.

67.6 per cent of the reports requested. [21] Last year, the Office received a total of 859 reports, representing 42.9 per cent. The Committee notes in particular that 65 of the 111 first reports due on the application of ratified Conventions were received by the time the Committee's session ended (last year, 5 of the 20 first reports due had been received).

65. The Committee observes that the number of reports received by the due date of 1 September increased this year after a sharp decrease last year in the unprecedented circumstances of the COVID-19 pandemic (841 reports representing 41.9 per cent of reports requested, compared with 26.5 per cent at the previous session). While the Committee welcomes this development, it also notes with ***concern*** that only half of reports due were received by the deadline.

66. Moreover, a number of article 22 and 35 reports are received each year after the deadline and their examination might be deferred due to their late arrival. This year, out of 2,006 reports due, 516 (25.7 per cent) were received after this deadline. The Committee wishes to recall that late submission of reports disturbs the sound operation of the supervisory mechanism as the examination of some of these reports in subsequent Committee sessions prevents the experts from fully focusing on the specific thematic areas due for discussion each year and also prevents governments and the social partners from obtaining timely feedback on their reports.

67. In the aftermath of the COVID-19 pandemic, the Committee would like to express its appreciation to the Member States which made special efforts to ensure compliance with their reporting obligations. ***It invites all Member States to make every effort to send the reports due under articles 19, 22 and 35 of the ILO Constitution, to do so within the deadlines and to submit complete answers to the Committee's requests so as to allow for a thorough examination by the Committee at its next session.***

68. The Committee recalls that ILO technical assistance remains fully at the disposal of Member States to help them comply with their constitutional obligations and invites them to avail themselves thereof to ensure the effective functioning of the supervisory system. It urges in particular those Member States who have received Office assistance to make special efforts to ensure timely submission of their reports.

69. When examining the failure by Member States to respect their reporting obligations, the Committee adopts "general" comments (contained at the beginning of Part II (section I) of this report). It makes general observations when none of the reports due have been sent for two or more years; or when a first report has not been sent for two or more years. It makes a general direct request when, in the current year, a country has not sent the reports due, or the majority of reports due; or it has not sent a first report due.

70. Furthermore, as of 2017 the Committee has gradually introduced a practice of urgent appeals according to which it may examine how a Convention is implemented in a ratifying country on the basis of information at its disposal if the Government has failed to submit a first report after ratification. As of 2018, the practice of urgent appeals was extended to all reports due for more than three years. In 2020, the Committee issued for the first time repetitions of previous comments with a new introductory text ("chapeau") informing the government concerned, in cases where reports had not been received for three years or more, [22] that if no report is supplied

[21] Appendix I to this Report provides an indication by country of whether the reports requested (under articles 22 and 35 of the Constitution) have been registered or not by the end of the meeting of the Committee. Appendix II shows, for the reports requested under article 22 of the Constitution, for each year since 1932, the number and percentage of reports received by the prescribed date, by the date of the meeting of the Committee of Experts and by the date of the session of the International Labour Conference.

[22] The introductory text ("chapeau") now reads: The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not

in time for examination by the Committee at its next session, then the Committee may proceed with the examination of the application of the Convention on the basis of information at its disposal.

71. This year, the Committee examined the following cases in the absence of a government report following an urgent appeal (table of countries and Convention).

List of cases in which the application of ratified Conventions was examined at the Committee's session in the absence of a report following an urgent appeal

State	Conventions Nos
Barbados	97, 102, 128
Belize	29, 97, 100, 111, 115, 138, 154, 155, 156, 182
Brunei Darussalam	138
Congo	29, 81, 87, 150, 152, 182, 188
Djibouti	17, 18, 19, 24, 29, 37, 38, 105, 138, 182
Dominica	12, 14, 19, 26, 29, 81, 87, 95, 97, 100, 105, 111, 135, 138, 150, 169, 182
Equatorial Guinea	1, 14, 29, 30, 87, 98, 103, 105, 111, 138, 182
Grenada	97
Guinea	118
Guyana	97
Haiti	12, 17, 19, 24, 25, 29, 42, 77, 78, 87, 98, 100, 111, 138, 182
Papua New Guinea	100, 111
Saint Lucia	5, 17, 19, 29, 87, 98, 100, 111, 154, 182
Saint Vincent and the Grenadines	100
Tajikistan	97
Uganda	17, 95, 123, 124, 143, 162

72. Based on the information provided in the "general" comments (Part II, section I of the report), none of the reports due have been sent for the past two or more years from the following **18** countries: **Afghanistan, Antigua and Barbuda, Botswana, Chad, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Haiti, Lebanon, Madagascar, Saint Lucia, South Sudan, Syrian Arab Republic, Tuvalu, Uganda, Vanuatu** and **Yemen.** ***The Committee urges the Governments concerned to make every effort to supply the reports requested on ratified Conventions.***

73. In particular, the Committee launches an urgent appeal to the Member States that have failed to submit a report for more than three years, drawing their attention to the fact that if the reports are not received in time for examination by the Committee at its next session, it may proceed to examine the application of the Conventions concerned on the basis of public information at its disposal: **Congo, Dominica, Equatorial Guinea, Lebanon, Madagascar, Saint Lucia** and **Vanuatu**.

supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

74. This year, the Committee launches an urgent appeal in its repetitions of previous comments to which a reply has not been received, requesting the following countries to submit a report with replies to the Committee's comments at its next session: [23]

State	Conventions Nos
Afghanistan	100, 111, 140, 141, 142, 144
Antigua and Barbuda	87, 135, 144, 151
Barbados	87, 100, 111, 122, 144
Belize	87, 88, 98, 140, 144
Chad	87
Congo	98, 100, 105, 111, 144, 149
Djibouti	71, 81, 87, 98, 100, 111, 122, 144
Dominica	94, 144, 147
Equatorial Guinea	68, 92
Grenada	100, 105, 111, 138, 144, 182
Guinea	140
Kenya	142
Lebanon	29, 81, 88, 100, 105, 111, 122, 138, 142, 150, 159, 172, 182
Madagascar	29, 88, 100, 105, 111, 117, 122, 138, 144, 159, 182
Mongolia	181
Mozambique	88
Papua New Guinea	29, 98, 122, 158
Saint Kitts and Nevis	MLC, 2006
Saint Lucia	108, 158
Saint Vincent and the Grenadines	122
Sao Tome and Principe	138, 182
Somalia	29
Tajikistan	103, 105, 149
Uganda	29, 81, 94, 105, 138, 182
Vanuatu	182

75. In relation to first reports, the Committee notes that **seven** countries have failed to supply a first report for two or more years:

State	Conventions Nos
Albania	– Since 2018: MLC, 2006
Congo	– Since 2015: Convention No. 185, – Since 2016: MLC, 2006, and – Since 2018: Convention No. 188

[23] See para. 70 of the General Report.

State	Conventions Nos
Equatorial Guinea	– Since 1998: Conventions Nos 68 and 92
Gabon	– Since 2016: MLC, 2006
Guinea	– Since 2019: Convention No. 167
Sao Tome and Principe	– Since 2019: Convention No. 183
Tunisia	– Since 2019: MLC, 2006

76. The Committee urges the governments concerned to make a special effort to supply the first reports due.

77. The Committee launches an urgent appeal drawing the attention of the following Governments which have not sent a first report for more than three years to the fact that if the first report is not received in time for examination by the Committee at its next session, it may proceed to examine the application of the Convention in the countries concerned on the basis of public information at its disposal:

List of cases in which the Committee has launched an urgent appeal to submit a first report at the Committee's next session	
State	**Conventions Nos**
Albania	MLC, 2006
Guinea	C.167
Sao Tome and Principe	C.183
Tunisia	MLC, 2006

78. The Committee, like the Conference Committee, emphasizes the particular importance of first reports, which provide the basis on which the Committee makes its initial assessment of the application of the specific Conventions concerned. The Committee is aware that, where no reports have been sent for some time, it is likely that administrative or other problems are at the origin of the difficulties encountered by governments in fulfilling their constitutional obligations. The COVID-19 pandemic has been an additional factor aggravating such difficulties. [24] The Committee would like to express its appreciation to the governments which submitted eight first reports this year. [25] ***It recalls the importance for governments to request assistance from the Office, and for such assistance to be provided rapidly, for the preparation of first reports.***

79. The Committee is pleased to note that this year, all countries provided information concerning communication of reports to workers' and employers' organizations in all or the majority of their reports. The Committee recalls that, in accordance with the tripartite nature of the ILO, this constitutional obligation is intended to enable representative organizations of employers and workers to participate fully in supervision of the application of international labour standards. [26]

[24] In certain exceptional cases, the absence of reports is a result of more general difficulties related to the national situation, which prevents the provision of any technical assistance by the Office.

[25] Guinea (Conventions Nos 176, 187 and 189), Jamaica (Convention No. 189), Maldives (MLC, 2006), Romania (MLC, 2006), Sri Lanka (MLC, 2006) and United Republic of Tanzania (Convention No. 185).

[26] General Report, paras 111 et seq.

In the context of COVID-19, participation by employers' and workers' organizations in the supervision of international labour standards is even more important.

Replies to the comments of the Committee

80. Governments are requested to reply in their reports to the observations and direct requests made by the Committee. This year, no information has been received as regards all or most of the observations and direct requests of the Committee to which a reply was requested for the following countries: **Afghanistan, Antigua and Barbuda, Bahamas, Barbados, Belize, Plurinational State of Bolivia, Botswana, Chad, Comoros, Congo, Democratic Republic of Congo, Djibouti, Dominica, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea, Haiti, Hungary, India, Jamaica, Jordan, Kenya, Kiribati, Lebanon, Madagascar, Morocco, Netherlands (Sint Maarten), North Macedonia, Papua New Guinea, Philippines, Romania, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Serbia, Singapore, Slovenia, Somalia, South Sudan, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Timor-Leste, Tunisia, Tuvalu, Uganda, United Kingdom (British Virgin Islands), United Republic of Tanzania, Vanuatu** and **Yemen.** [27]

81. The Committee notes with ***concern*** that the number of comments to which replies have not been received remains significantly high. The Committee underlines that the value attached by ILO constituents to the dialogue with the supervisory bodies on the application of ratified Conventions is considerably diminished by the failure of governments to fulfil their obligations in this respect. ***The Committee urges the countries concerned to provide all the information requested and recalls that they may avail themselves of the technical assistance of the Office in this regard.***

Follow-up to cases of serious failure by Member States to fulfil reporting obligations mentioned in the report of the Committee on the Application of Standards

82. As the functioning of the supervisory system is based primarily on the information provided by governments in their reports, both the Committee and the Conference Committee considered that failure by Member States to fulfil their obligations in this respect has to be given the same level of attention as non-compliance relating to the application of ratified Conventions. The two Committees have therefore decided to strengthen, with the assistance of the Office, the follow-up given to these cases of failure.

83. The Committee notes that pursuant to the discussions of the Conference Committee in June 2021 and technical assistance provided by the Office, 2 out of 5 first reports have been received after the launching of urgent appeals. [28]

84. The Committee welcomes the fruitful collaboration that it maintains with the Conference Committee on this matter of mutual interest which is essential to the proper discharge of their respective tasks. It asks the Office to maintain the sustained technical assistance that it has been providing to Member States in this respect.

[27] See also paras 73 and 74 of the General Report.

[28] Maldives (MLC, 2006), Romania (MLC, 2006).

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

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

86. The Committee wishes to inform Member States that it examined all reports that were brought to its attention.

Observations and direct requests

87. First of all, the Committee considers that it is worthy of note that in 166 cases it has found, following examination of the corresponding reports, that no further comment was called for regarding the manner in which a ratified Convention had been implemented.

88. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form of either "observations", which are reproduced in the report of the Committee, or "direct requests", which are not published in the Committee's report, but are communicated directly to the governments concerned and are available online. [29]

89. Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They point to important discrepancies between the obligations under a Convention and the related law and/or practice of Member States. They may address the absence of measures to give effect to a Convention or to take appropriate action following the Committee's requests. They may also highlight progress, as appropriate. Direct requests allow the Committee to be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature. They can also be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which the obligations are fulfilled. Direct requests are also used to examine the first reports supplied by governments on the application of Conventions.

90. This year the Committee made 525 observations and 1,031 direct requests. The Committee's observations appear in Part II of this report, together with, for each subject, a list of direct requests. An index of all observations and direct requests, classified by country, is provided in Appendix VII to the report.

Follow-up to the conclusions of the Committee on the Application of Standards

91. The Committee examines the follow-up to the conclusions of the Committee on the Application of Standards as this information forms an integral part of the Committee's dialogue with the governments concerned. This year, the Committee has examined the follow-up to the conclusions adopted by the Committee on the Application of Standards during the last session of the International Labour Conference (109th Session, June 2021) in the following cases:

[29] Observations and direct requests are accessible through the NORMLEX database, on the ILO website (www.ilo.org/normes).

List of cases in which the Committee has examined the follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)		
State	**Conventions Nos**	**Page**
Belarus	87	104
Bolivia (Plurinational State of)	131	709
Cambodia	87	117
China – Hong Kong Special Administrative Region	87	125
El Salvador	144	622
Ghana	182	471
Honduras	169	793
Iraq	111	532
Kazakhstan	87	206
Kiribati	182	480
Maldives	MLC, 2006	784
Namibia	111	542
Romania	98	296
Tajikistan	81	672
Turkmenistan	105	368
Zimbabwe	105	372

Follow-up of representations under article 24 of the Constitution and complaints under article 26 of the Constitution

92. In accordance with the established practice, the Committee also examines the measures taken by governments pursuant to the recommendations of tripartite committees (set up to examine representations under article 24 of the Constitution) and commissions of inquiry (set up to examine complaints under article 26 of the Constitution). The corresponding information forms an integral part of the Committee's dialogue with the governments concerned. The Committee considers it useful to indicate more clearly the cases in which it follows up on the effect given to the recommendations made under these constitutional supervisory procedures, as indicated in the following tables.

List of cases in which the Committee has examined the measures taken by governments to give effect to the recommendations of commissions of inquiry (complaints under article 26)	
State	**Conventions Nos**
Belarus	87
Venezuela (Bolivarian Republic of)	26, 87, 144
Zimbabwe	87

List of cases in which the Committee has examined the measures taken by governments to give effect to the recommendations of tripartite committees (representations under article 24)	
State	**Convention No.**
Lesotho	26

Follow-up given to legislative aspects referred by the Committee on Freedom of Association

93. In accordance with established practice, the Committee also examines the legislative aspects referred to it by the Committee on Freedom of Association. At the latter's request, the Committee decided to indicate these cases in the following table.

List of cases in which the Committee has examined the follow-up given to legislative aspects referred to it by the Committee on Freedom of Association		
State	**Conventions Nos**	**Page**
China – Hong Kong Special Administrative Region	87	125
Guatemala	87	166
Honduras	98	185
Jordan	98	202
Kyrgyzstan	87	215
Malaysia	98	226
Maldives	87, 98	232, 236
Romania	98	296

Special notes

94. As in the past, the Committee has indicated by special notes (traditionally known as "footnotes") at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has deemed it appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2022.

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

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

– the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers' health, safety and

well-being, as well as any adverse impact, including at the international level, on workers and other categories of protected persons;

- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

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

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

99. This year, the Committee has requested governments to supply full particulars to the Conference at its next session in 2022 in the following cases:

List of the cases in which the Committee has requested governments to supply full particulars to the Conference at its next session in June 2022

State	Conventions Nos
Azerbaijan	105
Central African Republic	182
China	111
Malawi	111
Myanmar	87

100. In addition, the Committee has requested a full reply to its comments, or a detailed report, outside of the reporting cycle in the following cases:

List of the cases in which the Committee has requested a full reply to its comments outside of the reporting cycle

State	Conventions Nos
Bangladesh	81
Belarus	87
Belize	115/155, 151, 154
Bolivia (Plurinational State of)	131, 136/162, 167
Bosnia and Herzegovina	138
Brazil	98
Burundi	26
Chile	MLC, 2006
Congo	87, 152, 188
Dominica	87
Ecuador	87, 98, 131
El Salvador	144

List of the cases in which the Committee has requested a full reply to its comments outside of the reporting cycle	
State	**Conventions Nos**
Equatorial Guinea	1/14/30, 87, 98
Eritrea	98
Guatemala	98, 141
Guinea-Bissau	26
Haiti	87, 98
Honduras	87, 169
Jamaica	MLC, 2006
Japan	87
Jordan	98
Kazakhstan	81/129
Malawi	155/184/187
Malaysia	MLC, 2006
Malaysia – Peninsular	19
Malaysia – Sarawak	19
Maldives	MLC, 2006
Mauritius	MLC, 2006
Mongolia	MLC, 2006
Montenegro	MLC, 2006
Nicaragua	87
Nigeria	MLC, 2006
Peru	169
Saint Lucia	87
Tajikistan	95
Thailand	188
Turkmenistan	105
Uganda	26/95, 162
Ukraine	95/131/173, 100, 115
Venezuela (Bolivarian Republic of)	26/95

List of the cases in which the Committee has requested detailed reports outside of the reporting cycle	
State	**Convention No.**
Iraq	87
Netherlands – Sint Maarten	87

Cases of progress

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

102. At its 80th and 82nd Sessions (2009 and 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

(1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.

(2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measures adopted by the government concerned.**

(3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.

(4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.

(5) If the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up measures for its practical application.

(6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

103. Since first identifying cases of satisfaction in its report in 1964, [30] the Committee has continued to follow the same general criteria. The Committee expresses ***satisfaction*** in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

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

104. Details concerning these cases of progress are found in Part II of this report and cover 28 instances in which measures of this kind have been taken in 22 countries. The full list is as follows:

List of the cases in which the Committee has been able to express its satisfaction at certain measures taken by the governments of the following countries

State	Conventions Nos
Angola	105
Belize	105
Burkina Faso	29
Colombia	98, 182
Cote d'Ivoire	138
Ecuador	182
Georgia	87, 98
Guyana	138

[30] Report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference, para. 16.

List of the cases in which the Committee has been able to express its satisfaction at certain measures taken by the governments of the following countries	
State	**Conventions Nos**
Latvia	98, 183
Mexico	87
Mongolia	100, 111
Montenegro	98
New Zealand	98
Nigeria	111
Peru	111
Portugal	100
Republic of Moldova	81/129
Solomon Islands	182
Spain	111
Thailand	100
United Arab Emirates	100
Zambia	100, 111

105. Thus the total number of cases in which the Committee has been led to **express its satisfaction** at the progress achieved following its comments has risen to **3,161** since the Committee began listing them in its report.

106. Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979.[31] In general, cases of ***interest*** cover **measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

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

[31] Report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference, para. 122.

107. Details concerning the cases in question are found either in Part II of this report or in the requests addressed directly to the governments concerned, and include **150** instances in which measures of this kind have been adopted in **83** countries. The full list is as follows:

List of the cases in which the Committee has been able to note with interest certain measures taken by the governments of the following countries	
State	**Conventions Nos**
Angola	29
Bangladesh	59, 81
Barbados	29
Belize	115
Benin	138
Bosnia Herzegovina	138
Bulgaria	77/78/124
Burkina Faso	105, 182
Burundi	12, 138
Cambodia	87
Cameroon	94
Central African Republic	94
Chile	138, 182
China	122
Colombia	98, 138
Côte d'Ivoire	138
Croatia	MLC, 2006
Cyprus	29
Czechia	144
Democratic Republic of the Congo	158
Egypt	105, 138
Fiji	29, 138
Georgia	87, 98, 122
Germany	87, 122
Greece	87, 98
Guinea-Bissau	17
Guyana	182
Honduras	98, 169, MLC, 2006
Iceland	144
India	122
Ireland	MLC, 2006
Italy	87, 151
Japan	144
Kyrgyzstan	87, 98, 160
Latvia	81/129, 98
Lithuania	181
Luxembourg	115, 159
Malawi	158, 159
Malaysia	98
Malaysia – Peninsular	19
Malaysia – Sarawak	19

List of the cases in which the Committee has been able to note with interest certain measures taken by the governments of the following countries	
State	**Conventions Nos**
Maldives	98
Mali	144
Malta	98
Mauritania	122
Mauritius	12/17/19, 98, 159
Mexico	98
Mongolia	98, 100, 103, MLC, 2006
Montenegro	139/148, 151, 159
Morocco	122
Myanmar	63
Namibia	111
Netherlands	160
New Zealand	98, 144
Niger	98
Nigeria	155
Norway	176
Panama	111, 169
Papua New Guinea	138
Peru	100, 169
Poland	111
Portugal	97, 111, 143, 156
Republic of Korea	135, MLC, 2006
Republic of Moldova	122, 184
Rwanda	122
Saudi Arabia	111
Senegal	111
Seychelles	MLC, 2006
Sierra Leone	105, 138
Solomon Islands	182
Spain	97, 100, 122, 156
St Vincent and the Grenadines	105
Sweden	143
Switzerland	100, 111, 189
Tajikistan	81, 160
Togo	111
Tunisia	111
Turkey	55/68/69/92/108/133/134/146/164/166
Uganda	122
Ukraine	23/69/92/108/133/147, 111
United Kingdom of Great Britain and Northern Ireland	111
United Kingdom of Great Britain and Northern Ireland – Bermuda	MLC, 2006

List of the cases in which the Committee has been able to note with interest certain measures taken by the governments of the following countries	
State	**Conventions Nos**
United Kingdom of Great Britain and Northern Ireland – Gibraltar	MLC, 2006
Uruguay	32
Uzbekistan	111
Viet Nam	98, 111
Zimbabwe	105

Practical application

108. As part of its assessment of the application of Conventions in practice, the Committee notes the information contained in governments' reports, such as information relating to judicial decisions, statistics and labour inspection. The supply of this information is requested in almost all report forms, as well as under the specific terms of some Conventions.

109. The Committee notes that reports often contain supplementary information on the practical application of Conventions including information on national jurisprudence, statistics and labour inspection.

110. In the context of the COVID-19 pandemic such information is indispensable to complete the examination of national legislation and to help the Committee identify the issues arising from real problems of application in practice. The Committee wishes to emphasize to governments the importance of submitting such information and also encourages employers' and workers' organizations to submit clear and up-to-date information on the application of Conventions in practice.

Observations made by employers' and workers' organizations

111. At each session, the Committee recalls that the contribution by employers' and workers' organizations is essential for the Committee's evaluation of the application of Conventions in national law and in practice. Member States have an obligation under article 23, paragraph 2, of the Constitution to communicate to the representative employers' and workers' organizations copies of the reports supplied under articles 19 and 22 of the Constitution. Compliance with this constitutional obligation is intended to enable organizations of employers and workers to participate fully in the supervision of the application of international labour standards. In some cases, governments transmit the observations made by employers' and workers' organizations with their reports, sometimes adding their own comments. However, in the majority of cases, observations from employers' and workers' organizations are sent directly to the Office which, in accordance with the established practice, transmits them to the governments concerned for comment, so as to ensure respect for due process. For reasons of transparency, the record of all observations received from employers' and workers' organizations on the application of ratified Conventions since the last session of the Committee is included as Appendix III to its report. Where the Committee finds that the observations are not within the scope of the Convention or do not contain information that would add value to its examination of the application of the Convention, it will not refer to them in its comments. Otherwise, the observations received from employers' and workers' organizations may be considered in an observation or in a direct request, as appropriate.

In a reporting year

112. At its 86th Session (2015), the Committee made the following clarifications on the general approach developed over the years for the treatment of observations from employers' and workers' organizations. The Committee recalled that, **in a reporting year**, when observations from employers' and workers' organizations are not provided with the government's report, they should be received by the Office by 1 September at the latest, so as to allow the government concerned to have a reasonable time to respond, thereby enabling the Committee to examine, as appropriate, the issues raised at its session the same year. When observations are received after 1 September, they would not be examined in substance in the absence of a reply from the government, except in exceptional cases. Over the years, the Committee has identified exceptional cases as those where the allegations are sufficiently substantiated and there is an urgent need to address the situation, whether because they refer to matters of life and death or to fundamental human rights or because any delay may cause irreparable harm. In addition, observations referring to legislative proposals or draft laws may also be examined by the Committee in the absence of a reply from the government, where this may be of assistance for the country at the drafting stage.

Outside of a reporting year

113. At its 88th Session (2017), following its consideration of the Governing Body's review of the reporting cycle for technical Conventions from five to six years, the Committee indicated its willingness to consider the manner in which it might broaden the very strict criteria for breaking its cycle of review when receiving comments from workers' or employers' organizations on a specific country under article 23, paragraph 2, of the ILO Constitution and decided that inspiration in this regard could be drawn from those criteria used for "footnoting" cases and set out in paragraph 73 of that year's General Report.

114. In light of the November 2018 Governing Body decision (GB.334/INS/5) expanding the reporting cycle for technical Conventions from five to six years and expressing its understanding that the Committee would further review, clarify and, where appropriate, broaden the criteria for breaking the reporting cycle with respect to technical Conventions, the Committee proceeded with the review of the criteria mentioned above at its 89th Session (2018).

115. The Committee recalls that, **in a non-reporting year**, when employers' and workers' organizations send observations which simply repeat comments made in previous years, or refer to matters already raised by the Committee, such comments will be examined in the year when the government's report is due, in accordance with the regular reporting cycle. In this case, a report will not be requested from the government outside of that cycle.

116. Where the observations on a technical Convention meet the criteria set out in paragraph below, the Committee will request the office to issue a notification to governments that the article 23 observations received will be examined at its subsequent session with or without a response from the government. This would ensure that governments have sufficient notice while ensuring that the examination of matters of importance are not further delayed.

117. The Committee would thus review the application of a **technical Convention** outside of a reporting year following observations submitted by employers' and workers' organizations having due regard to the following elements:

- the seriousness of the problem and its adverse impact on the application of the Convention;
- the persistence of the problem; and

– the relevance and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

118. With respect to **any Convention (fundamental, governance or technical)**, recalling its well-established practice, the Committee will examine employers' and workers' observations in a non-reporting year in the year received in the exceptional cases set out in the paragraph above, even in the absence of a reply from the government concerned.

119. The Committee emphasized that the procedure set out in the paragraphs above aims at giving effect to decisions taken by the Governing Body which have extended the reporting cycle and called for safeguards in that context, to ensure that effective supervision of the application of ratified Conventions is maintained. One of these safeguards consists in giving due recognition to the possibility afforded to employers' and workers' organizations to draw the attention of the Committee to matters of particular concern arising from the application of ratified Conventions, even in a year when no report is due. The approach above also pays particular attention to the importance of providing due notice to governments, except in exceptional circumstances, and in all cases the Committee will indicate its reasons for breaking the cycle.

120. The Committee notes that since its last session, it has received **1,280** observations (compared to 757 last year), 356 of which (compared to 230 last year) were communicated by employers' organizations and 924 (compared to 527 last year) by workers' organizations. The great majority of the observations received (**901** compared to 695 last year) related to the application of ratified Conventions; [32] **264** of these observations (compared to 243 last year) concerned the application of fundamental Conventions, **82** (compared to 75 last year) related to governance Conventions and **555** (compared to 377 last year) concerned the application of other Conventions. Moreover, **379** observations were received in relation to the 2022 General Survey on *Securing decent work for nursing personnel and domestic workers, key actors in the care economy*. The Committee notes that, 573 of the observations received this year on the application of ratified Conventions were transmitted directly to the Office. In 328 cases, the governments transmitted the observations made by employers' and workers' organizations with their reports. The Committee notes that in general the employers' and workers' organizations concerned endeavoured to gather and present information on the application of ratified Conventions in specific countries, both in law and in practice. The Committee recalls that observations of a general nature relating to certain Conventions are more appropriately addressed within the framework of the Committee's consideration of General Surveys or within other forums of the ILO.

Cases in which the need for technical assistance has been highlighted

121. The combination of the work of the supervisory bodies and the practical guidance given to Member States through development cooperation and technical assistance has always been one of the key dimensions of the ILO supervisory system.

122. The Committee notes that the Office reacted swiftly to the COVID-19 pandemic by providing much needed technical assistance for labour law reforms aimed at addressing the immediate impact of the pandemic and by supporting social dialogue processes in this framework. The Office reallocated resources to addressing the COVID-19 pandemic with special emphasis placed on international labour standards and social dialogue. Moreover, comprehensive partnerships have been established with major donors in support of Member States facing serious reporting and application gaps in Africa, Asia and Latin America. These projects draw upon the guidance of the

[32] Appendix III to this Report.

ILO supervisory bodies in order to strengthen national capacities to engage in trade relationships based on respect for fundamental principles and rights at work, which are now more important than ever for sustainable recovery.

123. The Committee notes in particular, that:

- The Trade for Decent Work project which is supported by the European Commission currently covers 13 countries in Asia, Africa and the Americas in order to promote improved compliance with ratified fundamental Conventions and SDG 8, as well as improved labour relations and working conditions.
- Moreover, a project on "Supporting the State of Guatemala in meeting the commitments in the road map on freedom of association and collective bargaining (ILO Conventions Nos 87 and 98)" is under elaboration with the support of the European Union following the closing of an article 26 complaint against Guatemala.
- SDG indicator 8.8.2 continues to represent a unique indicator in the UN system drawing directly on the textual sources of ILO supervisory bodies' reports in order to assess progress made towards meeting SDG commitments. It is the only indicator in the 2030 Agenda to draw upon supervisory body comments in assessing progress towards meeting the goal of national compliance with labour rights and especially freedom of association and collective bargaining.
- The first phase of the technical cooperation programme established in agreement with the Government of Qatar in 2018 ended in June 2021, having led to a historical breakthrough through the enactment of the abolition of the sponsorship system along with other improvements to the labour law which have been noted in the Committee's comments concerning the application of ratified Conventions by this country. The Committee looks forward to continued progress during the project's second phrase which aims, inter alia, at effective implementation of the reforms and sustainability of results.

124. The Committee welcomes information according to which the ILO International Training Centre in Turin (ITC–ILO) has swiftly reacted to the pandemic by converting its capacity-building programmes and notably the International Labour Standards Academy into online courses to be delivered virtually. It also welcomes the new regional focus of the Academy which this year brought together more than 120 participants from Latin America and the Caribbean representing the ILO constituents, judges, law professors and other legal professionals and the media from across the region. The Committee notes the ILS Academy's important contribution to building the reporting capacities of governments, employers' and workers' organizations including in countries facing serious weaknesses in this field. The Committee also notes that in addition to the ILS Academy, the ITC–ILO delivered:

- Online courses on reporting in English and French as well as tailor made training on reporting to constituents from 20 countries in the Africa region.
- ILS training to more than 70 judges in the Americas region.
- A series of capacity-building events with a focus on promoting the ratification and legal implementation of the MLC, 2006, as well as reporting thereon.

125. In addition to cases of serious failure by Member States to fulfil certain specific obligations related to reporting, the cases for which, in the Committee's view, technical assistance from the Office would be particularly useful in helping Member States to address gaps in law and in practice in the implementation of ratified Conventions, particularly in the context of the COVID-19 pandemic, are highlighted in the following table and details can be found in Part II of this report.

List of the cases in which technical assistance would be particularly useful in helping Member States	
State	**Conventions Nos**
Angola	12/17/18/19
Belize	105
Bolivia (Plurinational State of)	131
Bosnia Herzegovina	138
Central African Republic	94
Chile	MLC, 2006
Colombia	29
Congo	81, 188
Djibouti	29, 138, 182
Dominica	29, 105, 138
El Salvador	144
Equatorial Guinea	182
France	94
Ghana	182
Grenada	81
Guinea	100, 121, 187
Guyana	94, 100, 138
Haiti	12/17/24/25/42, 138
Iraq	22/23/92/146/147, 111
Lesotho	26
Malawi	100, 111, 155/184/187
Malaysia – Peninsular	19
Malaysia – Sarawak	14, 19
Maldives	MLC, 2006
Mali	13
Mauritania	62
Mauritius	12/17/19, MLC, 2006
Mexico	45
Morocco	94
Mozambique	1/30, 17/18
Myanmar	63
Netherlands – Aruba	94
Nigeria	26/95, 81
Panama	169
Papua New Guinea	100, 111, 138
Republic of Moldova	95
Romania	MLC, 2006
Saint Vincent and the Grenadines	100, 111
San Marino	160
Seychelles	100
Sierra Leone	17, 100, 138
Solomon Islands	138, 182
Togo	100, MLC, 2006

List of the cases in which technical assistance would be particularly useful in helping Member States	
State	**Conventions Nos**
Trinidad and Tobago	147
Tunisia	100
Turkey	55/68/69/92/108/133/134/146/164/166
Turkmenistan	105
Uganda	26/95
Ukraine	95/131/173, 100
United Republic of Tanzania	185
Uruguay	23/108/134, 100
Venezuela (Bolivarian Republic of)	22
Zambia	100
Zimbabwe	105

C. Reports under article 19 of the Constitution

126. The Committee recalls that the Governing Body decided that the subjects of General Surveys should be aligned with those of the annual recurrent discussions in the Conference under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008. This year, governments were requested to supply reports under article 19 of the Constitution for the General Survey on the Nursing Personnel Convention, 1977 (No. 149), the Domestic Workers Convention, 2011 (No. 189), the Nursing Personnel Recommendation, 1977 (No. 157) and the Domestic Workers Recommendation, 2011 (No. 201). [33] The General Survey has been prepared on the basis of a preliminary examination by a working party comprising five members of the Committee in accordance with the practice followed in previous years.

127. The Committee notes with ***regret*** that, for the past five years, none of the reports on unratified Conventions and on Recommendations requested under article 19 of the Constitution have been received from the following **23** countries: **Angola, Belize, Brunei Darussalam, Chad, Congo, Djibouti, Dominica, Grenada, Guyana, Haiti, Lesotho, Liberia, Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Somalia, South Sudan, Timor-Leste, Tuvalu** and **Yemen**.

128. The Committee once again urges governments to provide the reports requested so that its General Surveys can be as comprehensive as possible and provide a complete picture of developments relevant to the impact of COVID-19 in areas that are particularly affected by the pandemic.

D. Collaboration with the United Nations

129. In recent years, the Office has engaged closely with the UN system in the area of human rights coordination with a view to ensuring that international labour standards remain part and parcel of human rights norms and standards which lie at the basis of the 2030 Agenda and are promoted through the repositioned UN Development System. These system-wide processes included notably the UNSDG Task Team on Human Rights, Leaving No-One Behind and the Normative

[33] Report III(Part B), International Labour Conference, 110th Session, Geneva, 2022.

Agenda, which concluded its work in March 2021, and the Interagency Working Group on the Secretary-General's Call to Action for Human Rights.

130. The Call to Action for Human Rights was launched in February 2020 at the occasion of the 75th anniversary of the UN and has recently been linked to the Secretary-General's "Our Common Agenda" presented to the UN General Assembly in September 2021. The Call to Action for Human Rights establishes a whole-of-system approach to human rights to the effect that no UN organization can any longer develop its action at country level without linking this to human rights in coordination with the UN system. It aims at creating enhanced synergies and impact on the ground, notably at country level, drawing on each organization's specificities and recognized strengths.

131. In this context, the Committee would like to recall that labour rights are human rights. The ILO pioneered human rights through standard-setting, before the birth of the United Nations and the articulation of human rights. Ever since the ILO was created in 1919, its international labour standards have sought to set forth the aspirations, values and rights that were eventually expressed in the United Nations Charter (1945) and proclaimed in the Universal Declaration of Human Rights (1948): faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and determination to promote social progress and better standards of life in larger freedom. Nowhere more than in the world of work – the sphere of human activity driving social and economic progress – must human rights be protected by the rule of law, including international labour standards, if "freedom from fear and want" is to be realized as "the highest aspiration of the common people". [34] International labour standards have become the touchstone for law and actions by governments, employers, workers and everyone actively engaged with human rights at work.

132. International labour standards are not only the foundation of the institutions that permit labour markets around the world to deliver economic and social progress to billions of people. As precursors, they have inspired the core international human rights instruments to date, notably the two International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities.

133. Today, international labour standards give expression to human rights in the civil and political sphere, such as the right to freedom of thought, conscience and religion; the right to freedom of expression; the right to freedom of association; the right of peaceful assembly; the right to equal and effective protection against discrimination; and the right to freedom from slavery, servitude and forced or compulsory labour.

134. In the economic, social and cultural sphere, international labour standards substantiate within the world of work human rights such as the right to work; the right to social security; the right to safe and healthy working conditions; the right to fair wages and equal remuneration for work of equal value without distinction of any kind; the right to rest, leisure and reasonable limitation of working hours and periodic holidays with pay; or the right to maternity protection.

135. International labour standards complement international human rights law by adding key dimensions that facilitate the duty of States to respect, protect and fulfil the human rights at work of individuals within their territory and/ or jurisdiction, notably:

[34] Preamble, Universal Declaration of Human Rights.

- pursuing social dialogue at all levels (including labour dispute settlement mechanisms) as an essential means of realizing human rights at work, complementing laws or regulations;
- establishing labour market institutions that make the protection or promotion of human rights at work a daily practice (examples include standards for labour inspection services promoting compliance with measures taken to realize the right to safe and healthy working conditions; or standards for public employment services pursuing the best possible organization of the labour market with a view to realizing the right to work without discrimination and "leaving no one behind");
- benchmarking or operationalizing human rights at work declared in UN instruments (examples include providing a system of minimum working ages to support children's right to be protected from economic exploitation and from performing hazardous or harmful work; or stipulating measures to prevent forced labour and trafficking of persons for forced labour).

136. Respecting human rights and relevant international standards is also a corporate responsibility. The ILO has developed a close collaboration with the UN Working Group on Business and Human Rights (UNWG) established by the UN Human Rights Council in 2011, to "promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights" (Ruggie principles). This collaboration is based on the provisions of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy which draws on relevant international labour standards and follows up on the Committee's comments on the application of these standards in an implicit albeit important way. For example, the ratification and implementation of relevant international labour standards is taken into account when governments elaborate national action plans (NAPs), as requested by the UNWG, in order to provide a framework for the implementation of the UNGPs. The work of the ILO supervisory bodies, including this Committee, serves as the basis for identifying actions to be incorporated in NAPs in relation to the implementation of standards.

137. The Committee invites the UN treaty bodies to a joint reflection over ways to strengthen synergies and complementarities with the Committee drawing on each body's respective and distinct mandates. It also asks the Office to make available information on the relationship between international labour standards and human rights on the ILO website and to take all necessary steps within the limits of available resources in order to help build the capacities of a wide range of stakeholders across the UN system on this subject.

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

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

(a) information on measures taken to submit to the competent authorities the instruments adopted by the Conference from June 1970 (54th Session) to June 2019 (108th Session) (Conventions Nos 131 to 190, Recommendations Nos 135 to 206 and Protocols); and

(b) replies to the observations and direct requests made by the Committee at its 91st Session (November–December 2020).

139. Appendix IV of Part II of the report contains a summary of the most recent information received indicating the competent national authorities to which the Protocol of 2014 to the Forced Labour

Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, as well as the Violence and Harassment Convention (No. 190), and the Violence and Harassment Recommendation, 2019 (No. 206), adopted at the 108th Session of the Conference, were submitted and the date of submission. In addition, Appendix IV summarizes the information supplied by governments with respect to the instruments adopted in earlier years and submitted to the competent authorities in 2021.

140. Additional statistical information is found in Appendices V and VI of Part II of the report. Appendix V, compiled based on information provided by governments, shows where each Member State stands in terms of its constitutional obligation of submission. Appendix VI shows the overall submission status of each instrument adopted since the 54th Session (June 1970) of the Conference. All instruments adopted prior to the 54th Session of the Conference have been submitted. The statistical data in Appendices V and VI are regularly updated by the competent units of the Office and can be accessed in NORMLEX.

103rd Session

141. At its 103rd Session in June 2014, the Conference adopted the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). The Committee notes that 117 governments have provided information on the submission of the Protocol of 2014 to the Forced Labour Convention, 1930, whereas 102 governments have provided information on the submission of Recommendation No. 203 to their competent national authorities. It also notes with ***interest*** that the Protocol of 2014 to the Forced Labour Convention, 1930, which entered into force on 9 November 2016, has been ratified by **56** Member States: **Antigua and Barbuda, Argentina, Austria, Belgium, Bosnia and Herzegovina, Canada, Chile, Comoros, Costa Rica, Cyprus, Czechia, Côte d'Ivoire, Denmark, Djibouti, Estonia, Finland, France, Germany, Iceland, Ireland, Israel, Jamaica, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritania, Mozambique, Namibia, Netherlands, New Zealand, Niger, Norway, Panama, Peru, Poland, Portugal, Russian Federation, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Tajikistan, Thailand, United Kingdom, Uzbekistan** and **Zimbabwe**. ***The Committee encourages all governments to continue their efforts to submit the instruments adopted by the Conference at its 103rd Session to their legislatures and to report on any action taken with regard to these instruments.***

104th Session

142. At its 104th Session in June 2015, the Conference adopted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The 12-month period for submission of Recommendation No. 204 to the competent authorities ended on 12 June 2016, and the 18-month period (in exceptional circumstances) on 12 December 2016. The Committee notes that 101 governments have provided information on the submission to the competent authorities of Recommendation No. 204. It refers in this regard to Appendix IV of Part II of the report, which contains a summary of information supplied by governments on submission, including with respect to Recommendation No. 204. ***The Committee encourages all governments to continue their efforts to submit Recommendation No. 204 to their legislatures and to report on any action taken with regard to this instrument.***

105th and 106th Sessions

143. The Committee recalls that no instrument was adopted at the 105th Session of the Conference (May–June 2016). At its 106th Session in June 2017, the Conference adopted the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). The 12-month period for submission of Recommendation No. 205 to the competent authorities ended on 16 June 2018, and the 18-month period (in exceptional circumstances) ended on 16 December 2018. The Committee notes that 81 governments have provided information on the submission of Recommendation No. 205 to the competent national authorities. ***The Committee welcomes the information provided to date and encourages all governments to submit Recommendation No. 205 to their legislatures and to report on any action taken with regard to this instrument.***

107th and 108th Sessions

144. The Committee recalls that no instrument was adopted at the 107th Session of the Conference (May–June 2018). At its 108th Session in June 2019, the Conference adopted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, 2019 (No. 206). The 12-month period for submission of Convention No. 190 and Recommendation No. 206 to the competent authorities ended on 21 June 2020, and the 18-month period (in exceptional circumstances) ended on 21 December 2020. The Committee notes that 61 governments have provided information on the submission of Convention No. 190, whereas 55 governments have provided information on the submission of Recommendation No. 206 to their competent national authorities. It also notes with ***interest*** that Convention No. 190, which entered into force on 25 June 2021, has been ratified by **10** Member States: **Argentina, Ecuador, Fiji, Greece, Italy, Mauritius, Namibia, Somalia, South Africa** and **Uruguay**. ***The Committee welcomes the information provided to date and encourages all governments to submit Convention No. 190 and Recommendation No. 206 to their legislatures and to report on any action taken with regard to this instrument.***

Cases of progress

145. The Committee notes with ***interest*** the information provided by the Governments of the following countries: **Armenia, Barbados, Fiji, Mongolia, Pakistan** and **Uruguay.** It welcomes the efforts made by these Governments in overcoming significant delays in submission and taking important steps toward fulfilling their constitutional obligation to submit to their legislature the instruments adopted by the Conference over a number of years.

Special problems

146. To facilitate the work of the Conference Committee on the Application of Standards, this report only mentions those governments that have not submitted the instruments adopted by the Conference to their competent authorities for at least seven sessions. These special problems are referred to as cases of "serious failure to submit". **This time frame begins at the 99th Session (2010) and concludes at the 108th Session (2019), bearing in mind that the Conference did not adopt any Conventions or Recommendations during its 97th (2008), 98th (2009), 102nd (2013), 105th (2016) and 107th (2018) Sessions.** Thus, this time frame was deemed long enough to warrant inviting the governments concerned to a special sitting of the Conference Committee so that they could account for delays in submission. In addition, the Committee is also providing information in its observations concerning cases of "failure to submit", in relation to governments that have not submitted to the competent authorities the instruments adopted at the last six sessions of the Conference.

147. The Committee notes that, at the closure of its 92nd Session on 11 December 2021, the following **45** (31 in 2017, 39 in 2018, 36 in 2019 and 48 in 2020) Member States were in the category of "serious failure to submit": **Albania, Angola, Bahamas, Bahrain, Belize, Plurinational State of Bolivia, Brunei Darussalam, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Eswatini, Gabon, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Hungary, Kazakhstan, Kuwait, Lebanon, Liberia, Libya, Malaysia, Maldives, Marshall Islands, North Macedonia, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu, Yemen** and **Zambia**.

148. The Committee is aware of the exceptional circumstances that have affected some of these countries for years, as a result of which some of them have been deprived of the institutions needed to fulfil their obligation to submit instruments. At the 109th Session of the Conference (June 2021), some Government delegations supplied information explaining why their countries had been unable to meet the constitutional obligation to submit Conventions, Recommendations and Protocols to their national legislatures. Following the concerns raised by the Committee of Experts, the Conference Committee also expressed great concern at the failure to respect this obligation. It pointed out that compliance with this constitutional obligation, which means submitting the instruments adopted by the Conference to national legislatures, is of the utmost importance in ensuring the effectiveness of the Organization's standards-related activities.

149. The above-mentioned countries have been identified in observations published in this report, and the Conventions, Recommendations and Protocols that have not been submitted are indicated in the statistical appendices. **The Committee wishes to alert the governments concerned so as to enable them immediately, and as a matter of urgency, to take appropriate steps to bring themselves up to date and into compliance with this obligation.** The Committee recalls that governments may benefit from the technical assistance that the Office is prepared to provide, upon their request, to assist them in taking the steps required for the rapid submission to their legislature of the pending instruments.

Comments of the Committee and replies from governments

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

151. As the Committee has already pointed out, it is important that governments send the information and documents required by the questionnaire appended to the Memorandum adopted by the Governing Body in March 2005. The Committee must receive for examination a summary or a copy of the documents submitting the instruments to the legislative bodies, an indication of the date of submission, and be informed of the proposals made as to the action to be taken on the instruments submitted. The obligation of submission is discharged only once the instruments adopted by the Conference have been submitted to the legislature and a decision has been taken on them. The Office must be informed of this decision, as well as of the submission of instruments to the legislature. The Committee hopes to continue to note cases of progress in this matter in its next report. It again reminds governments that they may seek technical assistance from the ILO, particularly through the standards specialists in the field.

* * *

152. Lastly, recalling all the challenges posed by operating at a time when a pandemic is raging, and in particular the challenges posed by convening the meeting of the Committee in a hybrid modality this year, the Committee would like to express its profound appreciation for the invaluable assistance rendered to it by the officials of the Office, whose expertise, competence and devotion to duty make it possible for the Committee to accomplish its complex task in such difficult circumstances.

Geneva, 11 December 2021

Graciela Josefina Dixon Caton
Chairperson

Rosemary Joan Owens
Reporter

Appendix to the General Report

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

Mr Shinichi AGO (Japan)

Professor and Director, Kyoto Museum for World Peace, Ritsumeikan University, former Law Dean and Vice-President of Kyushu University; member of the Asian Society of International Law, the International Law Association and the International Society for Labour and Social Security Law; President of the Asian Development Bank Administrative Tribunal.

Ms Lia ATHANASSIOU (Greece)

Full Professor of Maritime and Commercial Law at the National and Kapodistrian University of Athens (Faculty of Law); Elected Member of the Deanship Council of the Faculty of Law and Director of the Postgraduate Programme on Business and Maritime Law; President of the Organizing Committee of the International Conference on Maritime Law held in Piraeus (Greece) every three years; Ph.D. from the University of Paris I-Sorbonne; authorization by the same university to supervise academic research; LL.M. Aix-Marseille III; LL.M. Paris II Assas; visiting scholar at Harvard Law School and Fulbright Scholar (2007–08); member of Legislative Committees on various commercial law issues. She has lectured and effectuated academic research in several foreign institutions in France, the United Kingdom, Italy, Malta, the United States, etc. She has published extensively on maritime, competition, industrial property, company, European and transport law (eight books and more than 60 papers and contributions in collective works in Greek, English and French); practising lawyer and arbitrator specializing in European, commercial and maritime law.

Ms Leila AZOURI (Lebanon)

Doctor of Law; Professor of Labour Law at the Faculty of Law at Sagesse University, Beirut until 2020; former Director of Research at the Doctoral School of Law of the Lebanese University; former Director of the Faculty of Law of the Lebanese University; member of the Executive Bureau of the National Commission for Lebanese Women; Chairperson of the national commission responsible for the preparation of the reports submitted by the Government of Lebanon to the UN Committee on the Elimination of Discrimination against Women (CEDAW) until 2017; legal expert for the Arab Women Organization until 2017; member of the "ILO Policy Advisory Committee on Fair Migration" in the Middle East.

Mr James J. BRUDNEY (United States of America)

Professor of Law, Fordham University School of Law, New York, NY; Co-Chairperson of the Public Review Board of the United Automobile Workers Union of America (UAW); member, UAW Ethics Advisory Committee; former Visiting Fellow, Oxford University, United Kingdom; former Visiting Faculty, Harvard Law School; former Professor of Law, The Ohio State University Moritz College of Law; former Chief Counsel and Staff Director of the United States Senate Subcommittee on Labour; former attorney in private practice; and former law clerk to the United States Supreme Court.

Ms Graciela Josefina DIXON CATON (Panama)

Former President of the Supreme Court of Justice of Panama; former President of the Penal Court of Cassation and of the Chamber of General Business Matters of the Supreme Court of Panama; former President of the International Association of Women Judges; former President of the Latin American Federation of Judges; former National Consultant for the United Nations Children's Fund (UNICEF); currently Judge of the Inter-American Development Bank Administrative Tribunal; Consulting Partner of the Panamanian Law Firm BRITTON & IGLESIAS; member of the list of Arbitrators of the Court of Arbitration of the Official Chamber of Commerce of Madrid; Arbitrator at the Center for Dispute Resolution (CESCON) of the Panamanian Chamber of Construction, as well as for the Conciliation and Arbitration Center of the Panamanian Chamber of Commerce; and legal adviser and international consultant.

Mr Rachid FILALI MEKNASSI (Morocco)

Doctor of Law; former Professor at the University Mohammed V of Rabat; member of the Higher Council of Education, Training and Scientific Research; consultant with national and international public bodies, Professor Filali Meknassi was the founder and director of several national NGOs and responsible for numerous development cooperation projects, including the ILO project "Sustainable Development through the Global Compact" (2005–08). Since 2000, he has collaborated in the training activities of the International Training Centre of the ILO in Turin. He is a member of several scientific committees and institutes and the author of about 100 publications in French and Arabic, some of which have been translated into Spanish and English.

Mr Alain LACABARATS (France)

Judge at the Court of Cassation; former President of the third Civil Chamber of the Court of Cassation; former President of the Social Chamber of the Court of Cassation; former member of the Higher Council of the Judiciary; former member of the European Network of Councils for the Judiciary and the Consultative Council of European Judges (Council of Europe); former Vice-President of the Paris Regional Court; former President of the Paris Appellate Court Chamber; former lecturer at several French universities and author of many publications. Currently a member of the ethical support and monitoring service of the Higher Council of the Judiciary and of several other ethics boards.

Ms Elena E. MACHULSKAYA (Russian Federation)

Professor of Law, Department of Labour Law, Faculty of Law, Moscow State Lomonosov University; Secretary, Russian Association for Labour and Social Security Law; 2011–16 member of the European Committee of Social Rights; member of the President's Committee of the Russian Federation on the Rights of Persons with Disabilities (non-paid basis).

Ms Karon MONAGHAN (United Kingdom of Great Britain and Northern Ireland)

Queen's Counsel; former Deputy High Court Judge (2010–19); former Judge of the Employment Tribunal (2000–08); practising lawyer with Matrix Chambers, specializing in discrimination and equality law, human rights law, European Union law, public law and employment law; Honorary Visiting Professor, Faculties of Laws, University College London.

Mr Sandile NGCOBO (South Africa)

Former Chief Justice of the Republic of South Africa; former Judge and acting Judge President of the Labour Appeal Court of South Africa; former Judge of the Supreme Court, Cape of Good Hope Provincial Division; acting Judge of the Supreme Court of Namibia; presiding officer of the Electoral Tribunal of the Independent Election Commission during the first democratic election in

South Africa in 1994; visiting Professor of Law at the Harvard Law School, the University of New York Law School, and former visiting Professor of Law at the Columbia University School of Law and the Cornell Law School; former Chairperson of the South African Presidential Remuneration Review Commission of Inquiry; former attorney in law firms in South Africa and the United States.

Ms Rosemary OWENS (Australia)

Professor Emerita of Law, Adelaide Law School, The University of Adelaide; former Dame Roma Mitchell Professor of Law (2008–15); former Dean of Law (2007–11); Officer of the Order of Australia; Fellow of the Australian Academy of Law (and Director (2014–16)); former editor and currently member of the editorial board of the Australian Journal of Labour Law; member of the scientific and editorial board of the Révue de droit comparé du travail et de la sécurité sociale; member of the Australian Labour Law Association (and former member of its National Executive); International Reader for the Australian Research Council; Chairperson of the South Australian Government's Ministerial Advisory Committee on Work–Life Balance (2010–13); Chairperson and member of the Board of Management of the Working Women's Centre (SA) (1990–2014).

Ms Mónica PINTO (Argentina)

Professor Emerita, Universidad de Buenos Aires. Member of the Institut de droit international. Counsel in international law cases and arbitrator/member of ad hoc Committees in foreign investment cases. She has appeared before universal and regional human rights instances, arbitral tribunals and the International Court of Justice as counsel and as expert. Former Dean of the Law School, UBA (2010–18). Visiting Professor at University of Columbia, Paris I & II, Rouen. She taught at The Hague Academy of International Law, at the Inter-American and European Institutes on Human Rights. She held several mandates for the UN in the area of human rights. Judge and President of the Administrative Tribunals of the World Bank and of the IADB. Vice-President of the Advisory Committee for Nominations for the ICC (2013–18), member of the Independent Expert Review (2020). She published five books and several articles in periodical publications in Latin America, the United States and Europe.

Mr Paul-Gérard POUGOUÉ (Cameroon)

Professor of Law (agrégé), Professor Emeritus, Yaoundé University; guest or associate professor at several universities and at the Hague Academy of International Law; on several occasions, President of the jury for the agrégation competition (private law and criminal sciences section) of the African and Malagasy Council for Higher Education (CAMES); former member (1993–2001) of the Scientific Council of the Agence universitaire de la Francophonie (AUF); former member (2002–12) of the Council of the International Order of Academic Palms of CAMES; member of the International Society for Labour and Social Security Law, the International Foundation for the Teaching of Business Law, the Association Henri Capitant and the Society of Comparative Law; founder and Director of the review Juridis périodique; President of the Association for the Promotion of Human Rights in Central Africa (APDHAC); Chairperson of the Scientific Board of the Labour Administration Regional African Centre (CRADAT); Chairperson of the Scientific Board of the Catholic University of Central Africa (UCAC).

Mr Raymond RANJEVA (Madagascar)

Honorary President of the Madagascar Academy (National Academy of Arts, Letters and Sciences of Madagascar), elected Member in 1974 and President (2017–21); former member (1991–2009), Vice-President (2003–06) and senior judge (2006–09) of the International Court of Justice (ICJ), and President (2005) of the Chamber formed by the ICJ to deal with the Benin/Niger frontier dispute; Bachelor's degree in Law (1965), University of Madagascar, Antananarivo; Doctorate of Law, University of Paris II; former student of the National School of Administration of Madagascar

(graduated 1966); Agrégé of the Faculties of Law and Economics, Public Law and Political Science section, Paris (1972); Doctor honoris causa of the Universities of Limoges, Strasbourg and Bordeaux-Montesquieu; former Professor at the University of Madagascar (1981–91), Dean of the Faculty of Law, Economics, Management and Sociology (1984–88) and several other national and foreign institutions; former First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegation to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties (1976–77); former first Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the Court of Arbitration of the International Chamber of Commerce; member of the Court of Arbitration for Sport; member and former Vice-President of the Institute of International Law; member of numerous national and international professional and academic societies; Curatorium of the Hague Academy of International Law; member of the Pontifical Council for Justice and Peace; President of the African Society of International Law since 2012; former Vice-Chairman of the International Law Institute (2015–17); Chairperson of the ILO Commission of Inquiry on Zimbabwe; associate of the Académie de Sciences d'Outre-mer (Paris) and President of the African Academy of Religious, Social and Political Sciences since 2021.

Ms Kamala SANKARAN (India)

Professor, Faculty of Law, University of Delhi. Formerly, Vice-Chancellor, Tamil Nadu National Law University; Dean, Legal Affairs, University of Delhi; Research Professor, Indian Law Institute; member, Task Force to Review Labour Laws, National Commission for Enterprises in the Unorganised and Informal Sector, Government of India; Fellow, Stellenbosch Institute of Advanced Study, South Africa; Visiting South Asian Research Fellow, School of Interdisciplinary Area Studies, University of Oxford; Fulbright Post-Doctoral Research Scholar, Georgetown University Law Center, Washington, DC. She is a member, International Advisory Board, *International Journal of Comparative Labour Law and Industrial Relations*; member, Editorial team, *University of Oxford Human Rights Hub Journal*; member Editorial Advisory Board, *Indian Journal of Labour Economics*, and has served as Editor, *Delhi Law Review*.

Ms Deborah THOMAS-FELIX (Trinidad and Tobago)

President of the Industrial Court of Trinidad and Tobago; Judge of the International Monetary Fund Administrative Tribunal ; former President the United Nations Appeals Tribunal; former Second Vice-President of the United Nations Appeals Tribunal; former Chair of the Trinidad and Tobago Securities and Exchange Commission; former Chair of the Caribbean Group of Securities Regulators; former Deputy Chief Magistrate of the Judiciary of Trinidad and Tobago; former President of the Family Court of Saint Vincent and the Grenadines; Hubert Humphrey Fulbright Fellow; Georgetown University Leadership Seminar Fellow; and Commonwealth Institute of Judicial Education Fellow. She is a published author on Labour Law and Industrial Relations.

Mr Bernd WAAS (Germany)

Professor of Labour Law and Civil Law at the University of Frankfurt; Coordinator and member of the European Labour Law Network; Coordinator of the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE); President of the German Society for Labour and Social Security Law and member of the Executive Committee of the International Society for Labour and Social Security Law (ISLSSL); member of the Advisory Committee of the Labour Law Research Network (LLRN).



Part II. Observations concerning particular countries

I. Observations concerning reports on ratified Conventions (articles 22 and 35, of the Constitution)

Observations on serious failure to report

Afghanistan

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Nine reports are now due on fundamental and technical Conventions which should have included information in reply to the Committee's comments. While taking note of the complexity of the national situation, the Committee trusts that all responsible authorities will honour their international commitments and provide information in this regard as soon as the circumstances so permit.

Albania

The Committee notes with ***deep concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006) due since 2018 has not been received. The Committee launches an ***urgent appeal*** to the Government to send its first report concerning the MLC, 2006 without delay, and advises the Government that, even in the absence of this report, the Committee may fully review the application of this Convention at its next meeting on the basis of available information.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee firmly hopes that the Government will soon submit this first report in accordance with its constitutional obligation.

Antigua and Barbuda

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Twelve reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments. The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Botswana

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Four reports are now due on fundamental Conventions, which should have included information in reply to the Committee's comments. The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Chad

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Six reports are now due on fundamental and governance Conventions, which should have included information in reply to the Committee's comments. Recalling

that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Congo

The Committee notes with ***deep concern*** that, the first report on the Seafarer's Identity Documents Convention (Revised), 2003, (No. 185), as amended, due since 2015, the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006) due since 2016, and the first report on the Work in Fishing Convention, 2007 (No. 188), due since 2018, have not been received. The Committee again notes with ***deep concern*** that, for the fourth year, the reports due on ratified Conventions have not been received. Sixteen reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments.

On the basis of the decision of the Committee concerning the treatment of urgent appeals for countries that have not supplied reports due for the past three years or more, the Committee decided to examine at this session the application of Conventions Nos 29, 81, 87, 150, 152, 182 and 188 based on public information at its disposal.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Democratic Republic of the Congo

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Nine reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Dominica

The Committee notes with ***deep concern***, that for the ninth year, the reports due on ratified Conventions have not been received. Twenty-four reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments.

On the basis of the decision of the Committee concerning the treatment of urgent appeals for countries that have not supplied reports due for the past three years or more, the Committee decided to examine at this session the application of Conventions Nos 12, 19, 26, 29, 81, 87, 95, 97, 100, 105, 111, 135, 138, 150, 169 and 182 based on public information at its disposal.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Equatorial Guinea

The Committee notes with ***deep concern*** that, for the last 15 years, the reports due on ratified Conventions have not been received. Fourteen reports are now due on fundamental and technical Conventions, most of which should have included information in reply to the Committee's comments. Of these 14 reports, two are first reports on the application of the Food and Catering (Ships' Crews) Convention, 1946 (No. 68), and the Accommodation of Crews Convention (Revised), 1949 (No. 92), due since 1998. Even in the absence of these first reports, the Committee decided to examine last year the application of these Conventions on the basis of public information at its disposal.

On the basis of the decision of the Committee concerning the treatment of urgent appeals for countries that have not supplied reports due for the past three years or more, the Committee decided to examine at this session the application of Conventions Nos 87, 98, 100, 103, 105, 111, 138 and 182 based on public information at its disposal.

Recalling that technical assistance was provided on these issues by the ILO Decent Work Team for Central Africa, the Committee firmly hopes that the Government will soon submit all its reports due in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Gabon

The Committee notes with ***deep concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006), due since 2016 has not been received. Even in the absence of this first report, the Committee decided to examine last year the application of this Convention on the basis of public information at its disposal. The Committee also notes that none of the reports requested this year have been received. Nine reports are now due this year on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee firmly hopes that the Government will soon submit this first report on the application of the MLC, 2006 due since 2016, as well as the other reports due this year in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Guinea

The Committee notes with ***deep concern*** that the first report on the Safety and Health in Construction Convention, 1988 (No. 167) due since 2019 has not been received. The Committee also notes that only 6 of the 15 reports requested have been received (9 reports are still due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments).

The Committee launches an ***urgent appeal*** to the Government to send its first report without delay, and advises the Government that, even in the absence of this report, the Committee may fully review the application of this Convention at its next meeting on the basis of available information.

The Committee firmly hopes that the Government will soon submit this first report on the application of Convention No. 167 due since 2019, as well as the other reports due this year, in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Haiti

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Twenty-four reports are now due on fundamental, governance

and technical Conventions, most of which should have included information in reply to the Committee's comments.

On the basis of the decision of the Committee concerning the treatment of urgent appeals, the Committee decided to examine at this session the application of Conventions Nos 12, 24, 25, 29, 42, 77, 78, 87, 98, 100, 111, 138 and 182, based on public information at its disposal, because the reports for these Conventions have not been received for three years or more.

The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Lebanon

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Thirty-five reports are now due on fundamental, governance and technical Conventions, including the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006). In addition most of these reports should have included information in reply to the Committee's comments.

The Committee launches an ***urgent appeal*** to the Government to send its reports without delay, and advises the Government that, even in the absence of these reports, the Committee may fully review the application of these Conventions at its next meeting on the basis of available information.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Madagascar

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Thirty-four reports are now due on fundamental, governance and technical Conventions, including the first reports on Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Labour Relations (Public Service) Convention, 1978 (No. 151), Collective Bargaining Convention, 1981 (No. 154), Private Employment Agencies Convention, 1997 (No. 181), and the Domestic Workers Convention, 2011 (No. 189). In addition, most of these reports should have included information in reply to the Committee's comments.

The Committee launches an ***urgent appeal*** to the Government to send its reports without delay, and advises the Government that, even in the absence of these reports, the Committee may fully review the application of these Conventions at its next meeting on the basis of available information.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Saint Lucia

The Committee notes with ***deep concern*** that, for the eighth year, the reports due on ratified Conventions have not been received. Seventeen reports are now due on fundamental and technical Conventions, including the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006). In addition, most of these reports should have included information in reply to the Committee's comments.

On the basis of the decision of the Committee concerning the treatment of urgent appeals for countries that have not supplied reports due for the past three years or more, the Committee decided to examine at this session the application of Conventions Nos 5, 12, 17, 19, 29, 87, 98, 100, 105, 111, 154 and 182, based on public information at its disposal.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Sao Tome and Principe

The Committee notes with ***deep concern*** that, the first report on the Maternity Protection Convention, 2000 (No. 183), due since 2019 has not been received. The Committee also notes that only five of the ten reports requested this year has been received (five reports are still due this year on fundamental and technical Conventions, most of which should have included information in reply to the Committee's comments).

The Committee launches an ***urgent appeal*** to the Government to send its first report without delay, and advises the Government that, even in the absence of this report, the Committee may fully review the application of this Convention at its next meeting on the basis of available information.

The Committee firmly hopes that the Government will soon submit this first report on the application of Convention No. 183 due since 2019 as well as the other reports due this year in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

South Sudan

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Seven reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments.

The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Syrian Arab Republic

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Seven reports are now due on fundamental and technical Conventions, which should have included information in reply to the Committee's comments.

The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Tunisia

The Committee notes with ***deep concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006) due since 2019 has not been received. The Committee launches an ***urgent appeal*** to the Government to send its first report concerning the MLC, 2006 without delay, and advises the Government that, even in the absence of this report, the Committee may fully review the application of this Convention at its next meeting on the basis of available information.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit its first report in accordance with its constitutional obligation.

Tuvalu

The Committee notes with ***concern*** that, for the second year, the report on the Maritime Labour Convention, 2006, as amended (MLC, 2006) which should have included information in reply to the Committee's comments has not been received. Two reports are now due which include the first report on the Worst Forms of Child Labour Convention, 1999 (No. 182).

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Uganda

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Sixteen reports are now due on fundamental, governance and technical Conventions, most of which should have included information in reply to the Committee's comments.

The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Vanuatu

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Seven reports are now due on fundamental and technical Conventions, including the first report on the application of the Minimum Age Convention, 1973 (No. 138). In addition, some of these reports should have included information in reply to the Committee's comments. The Committee launches an ***urgent appeal*** to the Government to send its reports without delay, and advises the Government that, even in the absence of these reports, the Committee may fully review the application of these Conventions at its next meeting on the basis of available information.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee firmly hopes that the Government will soon submit its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Yemen

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Six reports are now due on fundamental, governance and technical Conventions, some of which should have included information in reply to the Committee's comments.

The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: *Bahamas, Barbados, Belize, Cook Islands, Djibouti, Ethiopia, Gambia, Grenada, Hungary, Iceland, India, Jamaica, Jordan, Kenya, Kiribati, Luxembourg, Malawi, Marshall Islands, Morocco, Netherlands: Sint Maarten, North Macedonia, Palau, Papua New Guinea, Samoa, San Marino, Serbia, Singapore, Slovenia, Solomon Islands, Somalia, Sudan, Suriname, Tajikistan, Timor-Leste, United Kingdom of Great Britain and Northern Ireland: Falkland Islands (Malvinas), United Republic of Tanzania, United Republic of Tanzania: Zanzibar, Viet Nam.*

Freedom of association, collective bargaining, and industrial relations

Albania

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

The Committee takes note of the Government's comments in reply to the observations of the International Trade Union Confederation (ITUC), received in 2020, denouncing the persistence of restrictions on the right of workers to establish trade unions. The Committee observes that these matters are being examined by the Committee on Freedom of Association (Case No. 3388). ***Noting that the Government has not provided its comments on the ITUC's observations received in 2019, which alleged violations of trade union rights in practice, the Committee once again requests it to provide its comments in this respect.***

Article 2 of the Convention. Right to organize of foreign workers. Further to its previous comments on the exercise of trade union rights by all foreign workers irrespective of their residence status, the Committee notes that the Government indicates in its report that the Act on Foreigners (No. 108 of 2013), as amended by Act No. 13 of 2020, does not address whether foreigners who do not have a working permit have the right to organize in unions. The Committee notes that Act No. 13 of 2020 did not amend section 70 of the Act on Foreigners, which provides that foreign workers with a permanent residence permit shall enjoy economic and social rights on the same terms as nationals. The Committee also notes that the Government has not provided any information on foreign workers' exercise of trade union rights in practice. ***The Committee requests the Government to take, without delay, the necessary measures, including consideration of possible legislative amendments, to ensure that all foreign workers, whether or not they have a residence or a working permit, benefit from the trade union rights provided by the Convention, particularly the right to join organizations which defend their interests as workers. The Committee requests the Government to provide information on any progress made in this respect.***

Article 3. Right of organizations to organize their activities and formulate their programmes. In its previous comments the Committee requested the Government to indicate any legal exceptions to the right to strike other than those provided in section 35 of the Act on civil servants (No. 152 of 2013) as well as to take any necessary measures to ensure that the legislation be amended so as not to unduly curtail the right of unions to organize their activities to defend the interest of workers. The Committee notes the Government's indication that the exercise of the right to strike by civil servants must be in full compliance with section 35 of the Act on civil servants, as well as with the regulations set out in the Labour Code concerning the exercise of this right, which include providing for the possibility of requiring minimum services in essential services like water and electricity supply, as well as in other services of fundamental public importance. The Committee takes note that section 35 of the Act on civil servants remains in force and provides that the right to strike shall not be permitted for a list of services that includes both essential services in the strict sense of the term (such as water and electricity), as well as services which may not be considered essential services in the strict sense of the term – namely transport and public television. The Committee recalls in this regard that the right to strike may be restricted for public servants exercising authority in the name of the State, but as to other public servants and for services which are not considered essential in the strict sense of the term, the introduction of a negotiated minimum service, as a possible alternative to the full prohibition of strike action, could be appropriate in circumstances where strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population, or in public services of fundamental importance in which it is important to deliver the basic needs of users (see the

2012 General Survey on the fundamental Conventions, paragraphs 129 and 136). ***The Committee requests the Government to indicate whether civil servants not exercising authority in the name of the state and working in the transport and public television services may exercise the right to strike, subject to the possible establishment of minimum services; and if these civil servants are not able to exercise said right, to take the necessary measures to amend the legislation in light of the above.***

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

The Committee takes note of the Government's comments in reply to the observations of the International Trade Union Confederation (ITUC), received in 2020, denouncing anti-union discrimination acts in the mining sector, in particular against the chairperson of the Trade Union of United Mineworks of Bulquiza (TUUMB), and alleging the lack of adequate protection against anti-union discrimination. The Committee observes that these matters are being examined by the Committee on Freedom of Association (Case No. 3388). ***Noting that the Government has not provided its comments on the ITUC's observations received in 2019, which alleged lack of adequate protection against anti-union discrimination and severe obstacles to collective bargaining, the Committee once again requests it to provide its comments in this respect.***

Article 1 of the Convention. Adequate protection of workers against acts of anti-union discrimination. In its previous comments, the Committee had observed that despite the Labour Code providing for remedies in cases of anti-union discrimination, in the absence of a special jurisdiction, labour disputes were brought before ordinary courts, considerably delaying the procedures. The Committee had therefore requested the Government to provide detailed information on the practical application of the remedies for anti-union discrimination set out in the law, in particular the availability and use of any applicable enforcement mechanisms, such as judicial actions before the courts, and the duration of proceedings. The Committee notes the information provided by the Government according to which: (i) under section 9 of the Labour Code, issues of discrimination in employment and occupation are also regulated by Act on Protection from Discrimination (No. 10221 of 2010), as amended by Act No. 124 of 2020; (ii) this Act establishes the rules of proceeding for complaints against acts of discrimination before the Commissioner for Protection against Discrimination (CPD) (sections 33 and 33/1), which is an independent administrative authority, and before the court (sections 34 to 38); (iii) the amendments introduced by Act No.124 strengthen the effectiveness of the proceedings before the CPD; and (iv) in 2020, the Court System registered the existence of nine cases of discrimination, three of which gave rise to court rulings.

The Committee takes due note of this information. It also notes that the rules of procedure before both the CPD and the Court provide for an adjustment of the burden of proof in cases of alleged discrimination. At the same time, the Committee observes that the information provided by the Government on the cases of discrimination recorded by the judicial system does not indicate the nature of such cases and whether some of them refer or not to allegations of anti-union discrimination. ***The Committee therefore requests the Government to provide detailed information on the cases of anti-union discrimination resolved or pending before the CPD or the Court and to specify the duration of the proceedings and their concrete outcome.***

Article 4. Promotion of collective bargaining. In its previous comments, noting that section 161 of the Labour Code provides that a collective agreement can only be concluded at the enterprise or branch level and that no collective agreements had been concluded at the national level, the Committee had requested the Government to continue providing information on the measures to promote collective bargaining at all levels, including at the national level. In this respect, the Committee notes the Government indications that: (i) no collective agreements have been concluded between the Government and workers and employers' representatives at the national level; (ii) between 2019 and 2020 a final total of 20 collective agreements were concluded in the tourism, food, energy and oil

sectors, covering 15 per cent of workers in the private sector; those agreements still being in force as their term is from 3 to 4 years; and (iii) one collective agreement in the health sector has been registered in 2021. Recalling that *Article 4* of the Convention encourages and promotes the conclusion of bipartite collective agreements on terms and conditions of employment at all levels, the Committee ***regrets*** that no amendments have been made to section 161 of the Labour Code. ***The Committee therefore encourages the Government to take further measures to promote collective bargaining including at the national level when the parties so desire. It further requests the Government to continue providing information on the number of collective agreements that have been concluded and that are in force, the sectors covered, and the percentage of workers covered.***

Algeria

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

The Committee notes the observations, received on 29 March 2021 of the General and Autonomous Confederation of Workers in Algeria (CGATA) on the application of the Convention, as well as the Government's response.

Articles 1 and 2 of the Convention. Adequate protection against acts of anti-union discrimination and interference. The Committee recalls having noted, in its previous comments, the observations regularly provided by the national and international trade union organizations concerning acts of anti-union discrimination and interference against autonomous trade unions and their leaders. This issue is addressed regularly by the Committee on the Application of Standards of the International Labour Conference (hereinafter the Conference Committee) on the occasion of their discussion on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which requested the Government to provide information on the situation of trade union leaders and members whose anti-union dismissal had been reported (the latest discussion being in June 2019). The Committee also recalls that several cases concerning harassment and dismissal of trade union leaders and members have been brought before the Committee on Freedom of Association mentioned in the observations of the trade union organizations. Lastly, the Committee recalled that the situation of the dismissed trade unionists and the cases of interference was the subject of the conclusions and recommendations of a high level mission that visited Algiers in May 2019, within the framework of the recommendations made by the Conference Committee.

In its previous comments, noting the observations provided between 2017 and 2019 by the International Trade Union Confederation (ITUC) and the Trade Union Confederation of Productive Workers (COSYFOP), the Committee noted with concern the allegations of anti-union discrimination and interference against COSYFOP and affiliated trade union organizations. The Committee recalls that the observations of COSYFOP alleged the following discrimination and interference measures: (i) harassment of Mr Raouf Mellal, the president of COSYFOP, who was regularly the subject of intimidation and abusive detention and was subjected to physical violence during his detention; (ii) the dismissal of leaders and members of the National Union of Workers of BATIMETAL-COSYFOP, who were only reinstated by the enterprise after they had left the union and the establishment of a union by anti-union interference; (iii) threats of dismissal and criminal prosecution against members of the Workers' Union of the Commission for Electricity and Gas Regulation (STCREG); (iv) the dismissal of all the leaders of the National Union of the Higher Institute of Management and the refusal of the Labour Inspectorate to enforce the provisions for the protection of trade union representatives under the law; and (v) the circular of the Ministry of Labour inciting all the Social Solidarity Funds to dismiss all the members of the National Federation of Workers of the Social Security Funds, affiliated to COSYFOP, which led to the judicial harassment and dismissal of the president of the Federation, who had resigned from COSYFOP

shortly after being reinstated in January 2020. Given the seriousness of these allegations, the Committee requested that the competent authorities conduct the necessary investigations into the alleged acts.

The Committee notes that, in response, the Government indicates that Mr Mellal and other alleged leaders of COSYFOP fraudulently use this registered trade union organization without having complied with the terms for renewing the board as required by law. The Government states that it asked the leaders in question to rectify the situation and informed the social security funds of this infringement. The Government recalls in general that trade union leaders are provided adequate protection through legal provisions, which are enforced by a labour inspection service. The Committee notes that the Government does not provide information in response to the specific allegations of discrimination and interference recalled above. ***The Committee urges the Government to provide its comments on the allegations of anti-union discrimination and interference against members of BATIMETAL-COSYFOP, STCREG, the National Union of the Higher Institute of Management and the National Federation of Workers of the Social Security Funds. The Committee also expects that, as required by the Convention, the Government ensures that the leaders and members of these trade union organizations are provided adequate protection against any acts of anti-union discrimination and interference by the employers and administrative authorities concerned.***

In its previous comments, the Committee also noted that observations of the Autonomous National Union of Electricity and Gas Workers (SNATEG) denouncing the mass dismissal of its members by an enterprise in the energy sector and interference in the activities of the union. The Government provided information on the situation of the dismissed trade unionists, recently reporting measures for the reinstatement of most of the workers concerned, situations that are in the process of being resolved and dismissals that have been confirmed on the grounds of serious faults in the case of certain workers. The Committee notes that the Committee on Freedom of Association, which has been dealing with the complaint of SNATEG since 2016, once again issued an opinion on the merits of the case in November 2021. The Committee on Freedom of Association indicated in this regard that it had contradictory information on the issue of the dismissal of certain representatives of SNATEG, given reference to the different legal decisions of the complainant organization and the Government. The Committee notes with ***concern*** the conclusion of the Committee on Freedom of Association noting an especially large number of leaders and representatives of SNATEG who have been dismissed, in a context of conflict and harassment against them [see 393rd report, November 2021, case No. 3210]. ***The Committee requests the Government to indicate the measures taken to follow up on the recommendations of the Committee on Freedom of Association and in particular those requesting details on the situation of the leaders of SNATEG who have still not been reinstated.***

Revision of the legislation. With regard to the need to provide adequate protection against acts of anti-union discrimination, the Committee previously noted the concerns expressed by the high level mission concerning delays in complying with court rulings ordering the reinstatement of trade union leaders, which have still not been given effect, and the excessive use of judicial action against trade unions and their members by certain enterprises and authorities. The Committee also noted that the high level mission identified difficulties in the application of *Article 1* of the Convention to the founding members of unions. Under the current legislation and procedures, it would be possible for an employer to dismiss the founding members of a union during the period when it was applying for registration, which in practice can take several years, without the latter benefiting from the protection afforded by the legislation against anti-union discrimination. The Committee therefore requested the Government to take, in consultation with the social partners, the necessary measures to ensure adequate protection to trade union leaders and members during the registration period of the established trade union.

The Committee notes that the Government refers to a bill amending and supplementing Act No. 90-14, which will soon be examined by the National Popular Assembly. According to the Government, the proposed amendments are part of the implementation of the recommendations of the Conference Committee concerning sections 4, 6 and 56 of Act No. 90-14. This bill provides for: (i) the

participation of trade unions in legal action as a civil party; (ii) the possibility for the labour inspector covering the relevant area to draw up a statement on refusal to comply with an order, containing the main points that they have been able to gather and which confirm that the dismissal or removal of a worker is linked to trade union activity; and (iii) the tightening of criminal penalties to ensure they are effective and dissuasive in cases of obstruction to the exercise of trade union rights and a breach of the protection of trade union representatives.

According to the Government, this bill has been the subject of broad consultation with the social partners, as well as with the Office. The Government also indicates that it has availed itself of the technical assistance of the Office to strengthen the capacities of the Labour Inspectorate in methods and techniques for identifying anti-union acts, particularly measures of anti-union discrimination in employment.

Noting this information, which is in keeping with the previous recommendations, the Committee expresses the hope that the Government will continue its efforts, in consultation with the social partners, in the overall examination of the legal framework and practice concerning protection against anti-union discrimination and interference. This examination should include the issue of protection of trade union leaders and members during the period when the union that has been established is applying for registration. The Committee requests the Government to continue reporting progress in this regard and to provide a copy of the amendment to Act No.90-14, once it has been adopted.

Article 4. Appointment to the Joint Council of the Civil Service and the National Arbitration Commission. The Committee notes the observations of the CGATA, contesting the Government's registration of worker representatives of the Joint Council of the Civil Service and the National Arbitration Commission. The CGATA denounces, in particular, the registration of a trade union established by government interference and its probable impact on the work of the bodies in question. In its reply, the Government indicates that the appointments to the Joint Council of the Civil Service and the renewal of the mandate of the National Arbitration Commission were carried out on the basis of the representativity of the two trade unions organizations in question. In this regard, the Committee wishes to recall that the bodies called on to resolve grievances should be independent and should enjoy the confidence of the parties.

Application of the Convention in practice. The Committee notes the statistics provided on the number of collective agreements and accords registered by the labour inspectorate between 2016 and 2020, as well as the number of workers covered. ***The Committee invites the Government to continue providing the statistics available concerning the number of collective agreements and accords registered and, as far as possible, to specify the sectors and number of workers covered.***

Antigua and Barbuda

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 2002)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 4 and 5 of the Convention. In its previous comments, the Committee had requested the Government to take the necessary measures to grant civil servants and their organizations sufficient legal protection against anti-union discrimination and interference, and had requested the Government to provide information on cases concerning anti-union discrimination. The Committee notes the information contained in the Government's report that there are no cases to report with regard to anti-union discrimination and that the Antigua and Barbuda Constitution grants inalienable rights to citizens. ***The Committee once again requests the Government to take the necessary measures to grant civil servants and their organizations sufficient legal protection against anti-union discrimination and interference and***

requests the Government to provide information of any cases concerning anti-union discrimination (especially with respect to the procedures and sanctions imposed).

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

Bahamas

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. Noting that the Industrial Relations Act, 2012 (IRA) does not apply to the prison service (section 3), the Committee had previously requested the Government to specify the manner in which prison staff and the relevant organizations enjoy the rights and guarantees enshrined in the Convention. The Committee notes that the Government reiterates that the Bahamas Prison Staff Association allows for prison staff (denominated correctional officers under the national legislation) to have a public platform to address any concern that its members may have, yet also acknowledges that unfortunately prison and correctional officers do not benefit from all the rights and guarantees enshrined within Convention 87 based on their substantial employment position. The Committee recalls that it had previously expressed its concerns with regard to sections 39 and 40 of the Correctional Officers (Code of Conduct) Rules 2014, which limit the rights of association and representation to approved staff organizations on matters related to the conditions and welfare of the officers as a group. The Committee must emphasize that all workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization, and that these organizations should enjoy all guarantees under the Convention**. *Recalling that the only exceptions from the application of the Convention concern the armed forces and the police, the Committee requests the Government to take the necessary measures – including by revising section 3 of the IRA and the Correctional Officers (Code of Conduct) Rules, 2014 – with a view to ensuring that prison staff enjoy all rights and guarantees under the Convention. The Committee requests the Government to provide information on any developments in this regard.***

Right of workers and employers to establish organizations without previous authorization. In its previous comments the Committee noted that under section 8(1)(e) of the IRA, beyond consideration of the specific requirements for registration, the Registrar shall refuse to register a trade union if she/he considers, after applying the rules for the registration of trade unions, that the trade union should not be registered; and that according to section 1 of the First Schedule of the IRA, in applying the rules for the registration of trade unions, the Registrar shall exercise his/her discretion. Thus, the Committee had requested the Government to take the necessary measures to limit the Registrar's powers in relation to the registration of trade unions and employers' organizations. In this respect, the Committee recalls that conferring upon the competent authority a discretionary power to accept or refuse an application for registration can be tantamount in practice to imposing "previous authorization", which is incompatible with *Article 2* of the Convention. ***Noting with regret that the Government has provided no information in this regard, the Committee once again requests the Government to revise section 8(1)(e) and the First Schedule of the IRA to ensure that, beyond the verification of formalities, the Registrar has no discretionary powers to refuse the registration of trade unions and employers' organizations.***

Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules and to elect their representatives in full freedom. In its previous comments, the Committee had noted that section 20(2) of the IRA – which provides that the secret ballot for election or removal of trade union officers and for amendment of the constitution of trade unions shall be held under the supervision of the Registrar or a designated officer – is contrary to the Convention. The Committee had thus expressed the hope that specific measures would be taken for the amendment of said provision. ***Noting the Government's indication that section 20(2) of the IRA is presently under review by the National Tripartite Council, and recalling that the amendment of the above-mentioned provision is a long-standing issue, the Committee urges the***

Government to take all the necessary measures to amend section 20(2) of the IRA in the near future with a view to ensuring that trade unions can conduct ballots without interference from the authorities, and requests the Government to provide information on any progress achieved in this regard.

Right of organizations to freely organize their activities and to formulate their programmes. The Committee had previously noted that, when a strike is organized or continued in violation of the provisions concerning the trade disputes procedure, the IRA provides for excessive sanctions, including imprisonment for up to two years (sections 74(3), 75(3), 76(2)(b) and 77(2)). On that occasion it recalled that no penal sanctions should be imposed against a worker for having carried out peaceful strikes and that such sanctions could be envisaged only where, during a strike, violence against persons or property or other serious infringements of rights have been committed. ***Noting that the Government did not provide its observations thereon, the Committee urges the Government to amend the above-mentioned sections of the IRA to ensure that no penal sanctions may be imposed for having carried out a peaceful strike.***

Article 5. Right to affiliate to an international federation or confederation. The Committee had previously noted that, under the terms of section 39 of the IRA, it is not lawful for a trade union to be a member of any body constituted or organized outside the Bahamas without a licence from the minister, who has discretionary power in this regard. While having further noted the Government's indication that these approvals are generally granted and do not represent a challenge, the Committee had requested the Government to take measures to align national legislation with such practice and to repeal section 39 of the IRA in order to give full effect to the right of workers' and employers' organizations to affiliate with international organizations of workers and employers. In this respect, the Committee recalls that international solidarity of workers and employers also requires that their national federations and confederations be able to group together and act freely at the international level (see the 2012 General Survey on the fundamental Conventions, paragraph 163). ***Noting the Government's indication that section 39 of the IRA is under review by the National Tripartite Council and recalling that the Committee has been requesting the Government to address this matter since 2006, the Committee firmly expects that the Government will take all the necessary measures to ensure that this section will be repealed in the near future and requests the Government to provide information on any developments in this regard.***

The Committee reminds the Government that it may avail itself of the technical assistance of the Office and hopes that it will be able to observe progress in the near future.

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

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

Barbados

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) received on 10 September 2014, concerning matters examined under this comment, as well as other allegations of violations of the Convention in the law. ***The Committee requests the Government to provide its comments in this respect.*** The Committee also takes note of the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature.

The Committee recalls that it has been requesting the Government since 1998 to provide information on developments in the process of reviewing legislation regarding trade union recognition. The Committee notes that the Government indicates that there are no further developments in the process of reviewing legislation regarding trade union recognition, and that a number of the observations made by the ITUC refer to issues concerning trade union registration. ***Hoping that it will be able to observe progress in the near***

future, the Committee requests the Government to provide information on any development in the legislative review process and it recalls that the Government may avail itself of the technical assistance of the ILO in this regard.

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

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

Belarus

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

The Committee notes the observations of the Belarusian Congress of Democratic Trade Unions (BKDP) received on 30 September 2021, and of the International Trade Union Confederation (ITUC), received on 1 and 29 September 2021, and examined by the Committee below.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (the Conference Committee) in June 2021 concerning the application of the Convention. The Conference Committee expressed its deep concern that, 17 years after the Commission of Inquiry's report, the Government of Belarus had failed to take measures to address most of the Commission's recommendations and recalled the outstanding recommendations of the 2004 Commission of Inquiry and the need for their rapid, full and effective implementation. The Conference Committee urged the Government to: restore without delay full respect for workers' rights and freedom; implement Recommendation 8 of the Commission of Inquiry on guaranteeing adequate protection or even immunity against administrative detention for trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc); take measures for the release of all trade unionists who remain in detention and for the dropping of all charges related to participation in peaceful protest action; refrain from the arrest, detention or engagement in violence, intimidation or harassment, including judicial harassment, of trade union leaders and members conducting lawful trade union activities; and investigate without delay alleged instances of intimidation or physical violence through an independent judicial inquiry. As regards the issue of legal address as an obstacle to trade union registration, the Conference Committee called on the Government to ensure that there were no obstacles to the registration of trade unions, in law and in practice, and requested the Government to keep it informed of further developments on this matter, in particular any discussions held and outcomes of these discussions in the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter, tripartite Council). As regards the demand by the President of Belarus for the setting up of trade unions in all private companies by 2020 on the request of the Federation of Trade Unions of Belarus (FPB), the Conference Committee urged in the strongest terms the Government: to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise; to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and to put an immediate stop to the interference with the establishment of trade unions and refrain from showing favouritism towards any particular trade union in private companies. As regards the restrictions of the organization of mass events by trade unions, the Conference Committee

urged the Government, in consultation with the social partners, including in the framework of the tripartite Council: to amend the Law on Mass Activities and the accompanying Regulation, in particular with a view to: set out clear grounds for the denial of requests to hold trade union mass events, ensuring compliance with freedom of association principles; widen the scope of activities for which foreign financial assistance can be used; lift all obstacles, in law and practice, which prevent workers' and employers' organizations to benefit from assistance from international organizations of workers and employers in line with the Convention; abolish the sanctions imposed on trade unions or trade unionists participating in peaceful protests; repeal Ordinance No. 49 of the Council of Ministers to enable workers' and employers' organizations to exercise their right to organize mass events in practice; and to address and find practical solutions to the concerns raised by the trade unions in respect of organizing and holding mass events in practice. As regards consultations in respect of the adoption of new pieces of legislation affecting the rights and interests of workers, the Conference Committee requested the Government to amend the Regulation of the Council of Ministers No. 193 to ensure that social partners enjoy equal rights in consultations during the preparation of legislation. As regards the functioning of the tripartite Council, the Conference Committee urged the Government to take the necessary measures to strengthen the tripartite Council so that it could play an effective role in the implementation of the recommendations of the Commission of Inquiry and other ILO supervisory bodies towards full compliance with the Convention in law and practice. The Conference Committee expressed its disappointment at the slow process in the implementation of the recommendations of the Commission of Inquiry. Recent developments indicated a step backward and further retreat on the part of the Government from its obligations under the Convention. The Conference Committee therefore urged the Government to take before the next Conference, in close consultation with the social partners, all necessary steps to fully implement all outstanding recommendations of the Commission of Inquiry. The Conference Committee invited the Government to avail itself of ILO technical assistance and decided to include its conclusions in a special paragraph of the report.

The Committee notes the 394th (March 2021) report of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.

Civil liberties and trade union rights. The Committee recalls that in its previous comments it expressed its deep concern over the serious allegations of extreme violence to repress peaceful protests and strikes, detention, imprisonment and torture of workers while in custody, submitted by the ITUC and BKDP, and the continued deterioration of the situation of human rights in the country following the presidential election in August 2020. The Committee urged the Government to take all necessary measures to implement the above-mentioned Recommendation 8 of the Commission of Inquiry; to take measures for the release of all trade unionists who remain in detention and the dropping of all charges related to participation in peaceful protests and industrial actions; to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists and to provide a list of the affected persons; and to investigate without delay any alleged instances of intimidation or physical violence through an independent judicial inquiry.

The Committee notes that in its report, the Government expresses its regret at what, in its opinion, is a significant negative shift in the Committee's assessments of the situation in Belarus in relation to the political events that took place in the country following Presidential election. The Government considers that purely political events, not related to the processes of social dialogue in the world of work, should not be the basis for assessing the situation regarding the country's compliance with the provisions of the Convention. The Government emphasizes that external forces interested in destabilizing the country took an active organizational and financial part in the preparation and conduct of illegal street actions that took place after the election of the President, in furtherance of their own geopolitical interests. The Government points out that the main demands put forward by the protesters included the resignation of the Head of State, the holding of new elections and the exoneration of

citizens who had broken the law. The Government explains that these demands have no connection to trade union or labour, social and economic rights. The Governments further points out that protests were not peaceful, but rather, were carried out in violation of the law and posed a serious threat to public order, safety, and the health and life of citizens. During the protest actions, numerous incidents of active resistance to the legal requests of law enforcement officers were recorded, involving aggression, the use of violence, damage to official vehicles, blocking the movement of vehicles, and causing damage to infrastructure facilities. The Government considers that the BKDP, the ITUC and the IndustriALL Global Union are deliberately attempting to link illegal protest actions of a political nature with an alleged strike movement in the country. The Government indicates that in practice, the discontent affected only a small segment of workers; no demands were presented to employers concerning the regulation of labour and socio-economic matters. The Government indicates that the citizens referred to in the complaints made by trade union organizations as having allegedly suffered for their participation in peaceful protests and strikes, were charged with disciplinary, administrative and, in certain cases, criminal offences for having committed specific illegal actions. In this regard, the Government indicates that it cannot provide the Committee with copies of court decisions as the national legislation does not permit copies of court decisions and other documents to be shared with persons with no connection to the proceedings. The Government emphasizes, however, that the status of a worker or a trade union leader does not confer additional privileges on the holder and does not guarantee the unconditional right to absolute freedom of actions without regard for the existing national legislation and the interests of the public and the State. The Government considers that trade union activists not only have the same rights as other citizens but also, like everyone, are answerable for violations of the law; therefore, Recommendation 8 of the Commission of Inquiry, in line with *Article 8(1)* of the Convention, does not require the release of trade unionists from liability for any illegal acts that they may commit. In light of the above, the Government considers that the Committee's calls for the release of and the dropping of all charges against trade union activists who were charged with specific violations of the law to be unfounded. The Government insists that using events of a purely political nature to measure the country's implementation of the Commission of Inquiry's recommendations is unreasonable, counterproductive and unacceptable, and that this approach may become a serious obstacle to the continuation of the well-established constructive engagement, both within the country and with ILO experts.

As to the Committee's and the Commission of Inquiry's request to ensure impartial and independent judiciary and justice administration in general, the Government points out that the Republic of Belarus is a State governed by the rule of law. People, their rights and freedoms are of the highest value and concern. All are equal before the law and are entitled without discrimination to equal protection of their rights and interests. Under the provisions of article 60 of the Constitution, everyone is guaranteed protection of their rights and freedoms by a competent, independent and impartial judiciary. In dispensing justice, judges are independent and subject only to the law. Interfering with the activities of judges is prohibited.

The Committee ***regrets*** that the Government does not address the issue of the alleged intimidation and physical violence against trade unionists. The Committee notes that in her Oral Update on the Situation of Human Rights in Belarus on 24 September 2021, the High Commissioner for Human Rights stated that the scale and pattern of behaviour by the Belarusian authorities to date strongly suggested that limitations to freedoms of expression and assembly were primarily aimed at suppressing criticism of and dissent from Governmental policies, rather than any aim regarded as legitimate under human rights law, such as the protection of public order. The High Commissioner was also alarmed by persistent allegations of widespread and systematic torture and ill-treatment in the context of arbitrary arrests and detention of protesters. The Committee notes with ***deep concern*** new detailed allegations of criminal prosecution, arrests and imprisonment of trade unionists and the sentencing of three trade unionists to three years of imprisonment. It further notes with ***concern*** the

allegations of searches of trade union premises and houses of trade union leaders by the police, disruption of trade union meetings by law enforcement forces, and acts of retaliation and pressure on workers to leave trade unions submitted by the BKDP and the ITUC. The Committee recalls that the UN High Commissioner for Human Rights reported to the Human Rights Council in December 2020 that the monitoring and analysis of demonstrations since 9 August 2020 indicated that participants were overwhelmingly peaceful. The Committee once again recalls the International Labour Conference 1970 resolution concerning trade union rights and their relation to civil liberties, which emphasizes that the rights conferred upon workers' and employers' organizations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. Among those liberties essential for the normal exercise of trade union rights are freedom of opinion and expression, freedom of assembly, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal. The Committee further considers that strikes and demonstrations relating to the Government's economic and social policies cannot be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use strike or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members. Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities, including in cases when such organizations have recourse to strikes (see the 2012 General Survey on the fundamental Conventions, paragraph 124).

The Committee once again recalls that the Commission of Inquiry on Belarus considered that adequate protection or even immunity against administrative detention should be guaranteed to trade union officials in the performance of their duties or when exercising their civil liberties (freedom of speech, freedom of assembly, etc.). While noting the Government's reference to paragraph 1 of *Article 8* of the Convention, the Committee recalls that it should be read together with paragraph 2 of the same Article, according to which, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention. The Committee points out that for a number of years, the ILO supervisory bodies have been expressing concerns at the numerous violations of the Convention in law and in practice in Belarus. ***The Committee therefore once again urges the Government in the strongest of terms to investigate without delay all alleged instances of intimidation or physical violence through an independent judicial inquiry and to provide detailed information on the outcome. The Committee further urges the Government to take measures for the release of all trade unionists who remain in detention and for dropping of all charges related to participation in peaceful protest action. The Committee expects the Government to provide detailed information on all measures taken in this regard.***

The Committee notes the Government's indication that it cannot provide court judgments as per the Committee's request as the legislation in force does not provide for such a possibility, which implies that court decisions and judgments are not public. The Committee emphasizes that when it requests a government to furnish judgments in judicial proceedings, such a request does not reflect in any way on the integrity or independence of the judiciary. The very essence of judicial procedure is that its results are known, and confidence in its impartiality rests on their being known. In addition, the absence of court judgments prevents the Committee from examining or confirming the Government's conclusion that the arrests in question were unrelated to the exercise of basic trade union rights. The Committee further recalls that the International Covenant on Civil and Political Rights, in Article 14, states that everyone shall be entitled to a fair and public hearing. The Committee emphasizes that the right to a fair and public hearing implies the right for the judgment or decision to be made public and that the

publicizing of decisions is an important safeguard in the interest of the individual and of society at large. The Committee also recalls that the absence of guarantees of due process of law may lead to abuses and may also create a climate of insecurity and fear which may affect the exercise of trade union rights. ***The Committee requests the Government to take all necessary steps, including legislative, if necessary, to ensure the right to a fair trial. Further in this respect, the Committee, with reference to the recommendations of the Commission of Inquiry, stresses the need to ensure impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial. Accordingly, the Committee also renews its request that the Government take steps, including by legislation if necessary, to supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists.***

Article 2 of the Convention. Right to establish workers' organizations. The Committee recalls that in its previous observations, it had urged the Government to consider, within the framework of the tripartite Council, the measures necessary to ensure that the matter of legal address ceases to be an obstacle to the registration of trade unions in practice. In particular, it expected the Government, as a member of the tripartite Council, to submit the Committee's comments on the issue of registration for the Council's consideration at one of its meetings as soon as possible.

The Committee notes the Government's indication that the possibility of implementing the Committee's recommendation may be considered when the tripartite Council resumes its work once the epidemiological situation in the country has improved. To that end, a member of the tripartite Council, submitting this issue for discussion must also establish that the issue is one of concern. In the Government's opinion, in practice, the question of legal address is not an obstacle to registration as trade unions have been offered the possibility to be assigned not only the address where the employer is located, but that of any other location. The Committee notes detailed statistical data on the number of registered trade unions and their organizational structures provided by the Government. It notes, in particular that while in the first six months of 2021, 1,278 organizational structures have been registered, there was only one refusal to register a union; in that particular case because the union's constitution was not in conformity with the legal requirements. The Government considers that the assertions by the BKDP, that the legal requirement for trade unions and their organizational structures to submit a legal address in order to register constitutes an obstacle to trade union activities in Belarus, appear to lack any objective substance.

In this connection, the Committee notes with ***concern*** new allegations submitted by the BKDP and the ITUC regarding several cases of refusals to register primary organizations of the BKDP affiliates. ***The Committee requests the Government to provide its observations thereon. The Committee further once again requests the Government to put the issue of registration of trade union organizations, including the question of legal address requirement, on the agenda of the tripartite Council, as per its previous request and most recent call by the Conference Committee, which considered this issue to be of concern. The Committee expects the Government to provide detailed information on the outcome of the discussion by the tripartite Council.***

As regards the demand by the President of Belarus for the setting up of trade unions in all private companies by 2020 on the request of the FPB, which the Committee considered to be a display of favouritism towards the Federation and interference with the establishment of trade unions in private companies, the Committee notes the Government's indication that the FPB is the country's most representative and active among social partners when it comes to developing, improving and implementing socioeconomic policy. As part of its considerable commitment to protect the labour, social and economic rights of citizens, the FPB constantly brings to the authorities' attention the most current, critical and problematic issues that workers face in exercising their rights. In defending the rights of citizens, the FBP trade unions regularly deal with and actively collaborate with the authorities, including at the highest levels. During a meeting between the Head of State and the chairperson of the FPB as

leader of the country's largest and most representative trade union, the President of Belarus clearly set out the State's position that private companies must not obstruct workers' right to join a trade union, and also expressed his appreciation of the trade unions' work to defend the labour and socioeconomic rights of citizens.

The Committee observes with ***deep regret*** the absence of information on the measures taken by the Government to refrain from interference with the establishment of trade unions in private companies and the lack of any public clarification that the decision to set up a trade union is solely at the discretion of workers themselves. Instead, the Government provides what appears to be a justification for the favouritism of the FPB at the higher levels of the State. The Committee further notes with ***deep concern*** that on 5 August 2021, in his televised meeting with the leader of the FPB, the Head of the State reiterated his previous statement and stressed that "if certain private companies had not understood his message, the Government should immediately discuss these issues and make specific proposals, including on liquidation of private companies that refuse to have trade union organizations". The Committee draws the Government's attention to the fact that all three ILO bodies responsible for the supervision and follow-up of the implementation of the recommendations of the Commission of Inquiry on Belarus in relation to the non-observance of this Convention, i.e. this Committee, the Conference Committee and the Committee on Freedom of Association, concluded, that such demands by the country's President constituted an interference with the establishment of trade union organizations and favouritism towards a particular trade union, and therefore a violation of *Article 2* of the Convention. ***The Committee therefore once again urges the Government to refrain from any interference with the establishment of trade unions in private companies, in particular from demanding the setting up of trade unions under the threat of liquidation of private companies otherwise; to clarify publicly that the decision whether or not to set up a trade union in private companies is solely at the discretion of the workers in these companies; and to refrain from showing favouritism towards any particular trade union in private companies. The Committee expects that all steps in this regard will be taken without delay and detailed in the Government's next report.***

Articles 3, 5 and 6. Right of workers' organizations, including federations and confederations, to organize their activities. Legislation. The Committee recalls that the Commission of Inquiry had requested the Government to amend Presidential Decree No. 24 (2003) on Receiving and Using Foreign Gratuitous Aid. The Committee recalls in this respect that it had considered that the amendments should be directed at abolishing the sanctions imposed on trade unions (liquidation of an organization) for a single violation of the Decree and at widening the scope of activities for which foreign financial assistance can be used so as to include events organized by trade unions. The Committee recalls that Decree No. 24 had been superseded by Presidential Decree No. 5 (2015) and then by Decree No. 3 of 25 May 2020, under which the foreign gratuitous aid could still not be used to organize or hold assemblies, rallies, street marches, demonstrations, pickets or strikes, or to produce or distribute campaign materials, hold seminars or carry out other forms of activities aimed at "political and mass propaganda work among the population", and that a single violation of the Regulation still bore the sanction of possible liquidation of the organization. The Committee observed that the broad expression "political and mass propaganda work among the population" when applied to trade unions may hinder the exercise of their rights as it was inevitable and sometimes normal for trade unions to take a stand on questions having political aspects that affect their socio-economic interests, as well as on purely economic or social questions.

Further in this connection, the Committee recalls that the Commission of Inquiry had requested the Government to amend the Law on Mass Activities, under which, a trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. The Committee further recalls that it had also noted with regret the Regulation on the procedure of payment for services provided by the internal affairs authorities in respect of protection

of public order, expenses related to medical care and cleaning after holding a mass event (Ordinance of the Council of Ministers No. 49). The Regulation outlines the fees in relation to maintenance of public services and provides for the expenses of the specialized bodies (medical and cleaning services) that must be paid by the organizer of the event.

Reading these provisions alongside those forbidding the use of foreign gratuitous aid for the conduct of mass events, the Committee considered that the capacity for carrying out mass actions would appear to be extremely limited if not non-existent in practice. The Committee therefore urged the Government to amend Decree No. 3 of 25 May 2020 on the registration and use of foreign gratuitous aid, the Law on Mass Activities and the accompanying Regulation, and recalled that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used.

The Committee notes that the Government once again reiterates that there is no link between the established procedure for obtaining funding from abroad (foreign gratuitous aid) and *Articles 5* and *6* of the Convention. The Government once again points out that allowing external forces (in this case the trade unions of other countries and international trade union associations) to sponsor the holding of mass events in Belarus can present an opportunity to destabilize the socio-political and socio-economic situation, which in turn has an extremely negative effect on public life and citizens' wellbeing. Thus, the existing ban on receiving and using foreign gratuitous aid for the purposes of conducting political and mass propaganda work among the population is bound up with the interests of national security, and the need to exclude any possible destructive influence and pressure from external forces. The Government further reiterates that the exercise of the right of peaceful assembly is not subject to any restrictions, except those that are imposed in conformity with the law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, the protection of the rights and freedoms of others. In holding mass events, trade unions are obliged to observe public order and must not permit actions which may cause an event to lose its peaceful character and inflict serious harm on citizens, society or State. In the Government's opinion, the legal penalty prescribed for the organizers of mass events which cause substantial damage or harm to the interests of citizens and organizations, and also to the interests of State and society, does not constitute, and should not be interpreted as, a constraining factor on the exercise of their rights to freedom of peaceful assembly by citizens and trade unions. The Government once again points out that the decision to terminate the activities of a trade union for a violation of the legislation on mass events which caused serious damage and significant harm to the rights and interests of citizens, organizations, society and the State, can only be taken in court. No decisions have been taken to disband trade unions for violating the procedure for organizing and holding mass events in Belarus. In light of the above, the Government considers that any relaxation of responsibility for violation of the procedure for holding mass events or any lifting of restrictions on the use of foreign financial aid for the holding of political and mass propaganda work could only lead to circumstances likely to strengthen the external destructive influence on the situation in the country, which does not serve the interests of the country.

The Committee notes with ***deep regret*** that the Government merely reiterates the information it had previously provided and in particular, that it has no intention of amending the legislation as requested by the Commission of Inquiry, whose recommendations the Government accepted as per article 29(2) of the ILO Constitution, with follow-up of the implementation of the recommendations entrusted by the Governing Body to the CFA, this Committee and the Conference Committee. The Committee notes that the Law on Mass Activities was amended on 24 May 2021 and observes with ***regret*** in this respect that according to the BKDP and publicly available information, the amendment aims at further tightening the requirements for holding public events as follows: the organization of

mass events has to be authorized by municipal authorities; funds cannot be raised, money and other assets cannot be received and used, services cannot be rendered in order to compensate for the cost caused by prosecution for violating the established procedure of organization of mass events; public associations will be held responsible if their leaders and members of their governing bodies make public calls for organizing a mass event before the permission to organize the event is granted.

The Committee further notes with ***deep regret*** that on 8 June 2021, the Criminal Code was amended so as to introduce the following restrictions and associated penalties: repeated violations of the procedure for organizing and holding of mass events, including public calls therefor, are punishable by arrest, or restraint of liberty or imprisonment of up to three years (section 342-2); insult of a government official is punishable by a fine and/or restriction of liberty or imprisonment for up to three years (section 369); the penalty for "discrediting the Republic of Belarus" was increased from two to four years imprisonment with a fine (section 369-1); section 369-3 of the Criminal Code has been retitled from "violation of procedure for organizing and holding of mass events" to "public calls for the organization or conduct of an illegal meeting, rally, street procession, demonstration or picketing, or the involvement of persons in such mass events", which became an offence punishable by up to five years of imprisonment. The BKDP points out that criminal liability can now be established simply for organizing peaceful assemblies and that any criticism and slogans are seen by the authorities as insults within the meaning of section 369 of the Criminal Code. The BKDP alleges that there are many precedents of bringing citizens, including members of independent trade unions, to criminal responsibility under section 369 of the Criminal Code. The BKDP also draws attention to the statement of the Minister of Labour and Social Protection to the Conference Committee in June 2021 when she stated that the BKDP spoke out against the Government and took steps against the interest of the State and the Government, calling for a boycott of Belarusian goods and application of sanctions. The BKDP alleges in this respect that its leaders are under the threat of being prosecuted under section 369-1 of the Criminal Code. The Committee recalls that the right to express opinions, including those criticizing the Governments economic and social policy, is one of the essential elements of the rights of occupational organizations. With reference to the considerations above and below, the Committee further once again recalls that the mere fact of participation in peaceful assemblies should not be penalized by detention or imprisonment. The Committee also recalls that simply calling for a demonstration and any other public event, even if declared illegal by the courts, should not result in arrest and that in general, sanctions should be envisaged only where, during such event, violence against persons or property, or other serious infringements of penal law have been committed.

The Committee therefore reiterates its previous request to amend without further delay and in consultation with the social partners, Decree No. 3, the Law on Mass Activities and the accompanying Regulation (Ordinance No. 49 of the Council of Ministers), as per the outstanding recommendations of the Commission of Inquiry, the Conference Committee, the Committee of Freedom of Association and this Committee. The Committee further requests the Government to repeal the above-mentioned amended provisions of the Criminal Code in order to bring them into compliance with the Government's international obligations regarding freedom of association.

Practice. The Committee recalls that it had urged the Government to engage with the social partners, including in the framework of the tripartite Council, with a view to addressing and finding practical solutions to the concerns raised by the unions, in particular, the BKDP, in respect of organizing and holding mass events. The Committee further requested the Government to provide statistical information on the requests submitted and permissions granted and denied, segregated by the trade union centre affiliation.

The Committee notes that the Government indicates that the BKDP and its affiliated unions, like the FPB, have repeatedly exercised their right to freedom of assembly and held mass events. The Government reiterates that all decisions to deny the holding of mass events were taken by local executive and regulatory bodies in accordance with the law and with due regard to the obligation to

uphold citizens' right to freedom of association and the right of trade unions to take collective action to defend their members' interests. The Government once again indicates that the most common reasons for refusal to grant authorization to hold a mass event were: the application did not contain the information required by the law; the event was to take place in a location not allowed for such a purpose; the documents submitted did not indicate the precise location of the event; the event was announced in the mass media prior to receiving authorization; another mass event was being held in the same place at the same time. The Government considers that the denials of permission to hold mass events relate not so much to legal requirements that are excessive or difficult to comply with, but rather to inadequate preparation by the organizers and points out that once the shortcomings have been rectified, the organizers can re-apply for authorization. The Government further indicates that the possibility of discussing the issues of the organization and holding of mass events in the framework of the tripartite Council can be reviewed once the Council resumes its work when the epidemiological situation improves. The Government points out, however, that a necessary condition for the review by the Council is that the initiator should submit information which establishes that the issue is one of concern. ***The Committee considers that the Government, as a member of the tripartite Council and as ultimately responsible for ensuring respect for freedom of association on its territory, should be in the position to place on the agenda of the tripartite Council the concerns expressed by the ILO supervisory bodies with regard to the issues of the exercise of the right to demonstrate and hold public meetings in practice. The Committee expects the Government to provide information on the outcome of such discussions with its next report. The Committee requests the Government to provide statistical information on the requests to demonstrate and to hold public meetings that have been submitted, and the permissions granted and denied, segregated by the trade union centre affiliation.***

The Committee recalls the 2019 BKDP and ITUC allegations regarding the cases of Messrs Fedynich and Komlik, leaders of the REP union, found guilty, in 2018, of tax evasion and use of foreign funds without officially registering them with the authorities as per the legislation in force. They were sentenced to four years of suspended imprisonment, restriction of movement, a ban on holding senior positions for five years and a fine of BYN47,560 (over US$22,500 at that time). In this connection, the Committee also noted the BKDP allegation that the equipment seized during searches in the REP union and BNP premises had not been returned and requested the Government to provide information thereon.

The Committee notes the Government's indication that in view of the application of amnesty legislation to the convicted offenders, the main punishment, in the form of restriction of freedom without being sent to an open-type institution, has been served by Mr Fedynich and Mr Komlik in full. The further fate of the information storage devices seized during the investigation of the criminal case will be decided after completion of a check to establish whether the persons concerned have committed other crimes of a similar nature. The Committee notes that the particulars of these cases are being considered by the Committee on Freedom of Association in the framework of its examination of the measures taken by the Government to implement the recommendations of the Commission of Inquiry.

Right to strike. The Committee recalls that it had been requesting the Government for a number of years to amend sections 388(1), (3) and (4), 390, 392 and 393 of the Labour Code. The Committee ***regrets*** that the Government merely reiterates its previously expressed consideration that the national legislation is in conformity with the international labour instruments, which in any case do not expressly provide for the right to strike; that the legality of the interpretation by the ILO supervisory bodies that Convention No. 87 enshrines the right to strike has repeatedly and rightly been questioned; that only the International Court of Justice has the right to interpret ILO Conventions for subsequent mandatory application of that interpretation by the members States; that in Belarus, according to section 388 of the Labour Code, a strike constitutes a temporary and voluntary refusal by workers to perform their employment duties (fully or in part) for the purpose of settling a collective labour dispute; and that strikes of political nature are forbidden. The Government once again states that unauthorized protest

actions that took place after the presidential election campaign in 2020 and the attempts to organize a strike movement in enterprises without regard for the law have nothing to do with the exercise of trade unions' rights and the work carried by trade unions to protect workers or the social and economic rights of citizens. The Government adds that the broader issues relating to economic and social policy take place in the framework of the social partnership system through negotiations, consultations and the rejection of confrontation. The Government therefore reiterates that amending the legislation regulating strikes would not facilitate the exercise of the right of workers' organizations to act in full freedom, but to the contrary, would create additional opportunities for abuse by every kind of destructive agent and provide an instrument for undermining the country's economic potential.

The Committee deems it important to once again recall that its opinions and recommendations derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority are well recognized, particularly as it has been engaged in its supervisory task for 95 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions. It is within this mandate that it has been dealing with the questions pertaining to the right to strike.

The Committee notes with ***regret*** that the Labour Code was amended on 28 May 2021 to further restrict the right to strike by expressly allowing an employer to dismiss/terminate a labour contract with a worker who is absent from work in connection with serving an administrative penalty in the form of an administrative arrest; who forces other workers to participate in a strike or calls on other workers to stop performing work duties without sound reason; and who participates in an illegal strike or other forms of withholding labour without sound reasons (section 42(7)). Recalling the BKDP allegations that numerous trade unionists who participated in mass events and strikes organized following the August 2020 Presidential election were found guilty of administrative breaches and received corresponding penalty in the form of administrative arrest, the Committee notes that in its latest observations, the BKDP provides a list of workers who in such circumstances were dismissed. The Committee ***regrets*** that the amendment of the Labour Code would appear to facilitate the dismissal and penalization of workers for exercising their civil liberties and trade union rights. ***The Committee is therefore bound to request the Government to take measures, in consultation with the social partners, to revise the above-mentioned legislative provisions, which negatively affect the right of workers' organizations to organize their activities in full freedom, and to provide information on all measures taken or envisaged to that end.***

The Committee recalls that it had previously noted with concern detailed allegations of numerous cases of arrests, detention of and fines imposed on trade unionists for having organized and participated in strikes following the August 2020 events. The Committee notes with ***concern*** new detailed allegations of retaliation (arrests, detention, fines and dismissals) against trade unionists and workers who participated in trade union led strike actions. ***With reference to its considerations regarding the exercise of civil liberties and their importance for exercising trade union rights outlined above, the Committee urges the Government to conduct independent inquiries into the BKDP and the ITUC allegations bearing in mind the above considerations and to provide all relevant particulars on the outcome with its next report.***

Consultations with the organizations of workers and employers. The Committee recalls that in its previous comment it had noted that the BKDP alleged lack of consultations in respect of the adoption of new pieces of legislation affecting the rights and interest of workers. The Committee had further noted Regulation of the Council of Ministers No. 193 of 14 February 2009, pursuant to which, draft legislation affecting labour and socio-economic rights and interests of citizens is submitted to the FPB as the most representative organization of workers for possible comments and/or proposals. The

Committee had requested the Government to amend the Regulation so as to ensure that the BKDP and the FPB, as members of both the National Council on Labour and Social Issues (NCLSI) and the tripartite Council, enjoyed equal rights in consultations during the preparation of legislation. The Committee notes that the Government considers that the Regulation is in conformity with international labour standards and reiterates in this respect that the FPB, as an organization with a higher overall number of members, has preferential rights in the processes of consultation on legislation affecting rights and interest of workers. The Committee is bound to emphasize once again that in determining the representativeness of an organization, both the number of members and independence from the authorities and employers' organizations are essential elements for consideration. In light of the above-noted publicly expressed support by the State authorities at the highest level for the FPB, the Committee is once again bound to reiterate its previous comments made in 2007, which recalled the importance of ensuring an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country before establishing the notion of representativeness. ***The Committee once again requests the Government to amend Regulation No. 193 without further delay and to provide information on all measures taken in this respect.***

With regard to the Committee's request to further strengthen the role of the tripartite Council, which should, as its title indicates, serve as a platform where consultations on the legislation affecting rights and interests of the social partners and workers and employers represented by them can take place, the Committee notes that the Government reiterates that the tripartite Council was set up with the advice of the ILO to consider issues related to the implementation of the recommendations of the Commission of Inquiry as well as other issues that may arise between the Government and its social partners, including the consideration of complaints received from trade unions. The Committee notes that the Government reiterates its willingness to either work to further improve the tripartite Council's function or to create another structure. The Committee also notes that the Government once again expresses its concern over the issue of representation at the Council and the willingness of the parties to accept the decisions that will be made within this tripartite body.

The Committee notes with ***concern*** the BKDP allegation that laws and regulations affecting labour and social interests of people are adopted without due public discussion and coordination with the interested parties. The BKDP alleges that it is also being excluded from the process and that its chairperson was not invited to the meeting of the NCLSI in 2020, nor to the meeting held on 29 April 2021 by videoconference to discuss the preparation of the draft General Agreement for 2022–2024, nor to the meeting held on 28 July 2021, also by videoconference, to discuss the issue of economic sanctions imposed on the country. The BKDP indicates that on 15 July 2021 it sent a letter to the Ministry of Labour and Social Protection suggesting to convene a meeting of the tripartite Council to discuss the possibility of developing an Action Plan for the implementation of the conclusions of the Conference Committee and the recommendations of the Commission of Inquiry, but that it received no reply. ***The Committee requests the Government to provide its comments thereon***.

The Committee notes the Government's indication that various actions it has taken – the steps to develop the social partnership system which involves all interested trade unions and employers' associations in the dialogue, its constructive cooperation with the ILO to implement the Commission of Inquiry's recommendations and its openness to further cooperation – confirm the commitment of Belarus to the underlying principles and rights at work and its readiness to continue to engage on issues of concern raised by the parties. ***The Committee expects that the Government will fully engage with the social partners, the ILO, as well as relevant national institutions and bodies, with a view to improving the functioning, procedures and the work of the tripartite Council aimed at enhancing its impact in addressing the issues stemming from the recommendations of the Commission of Inquiry and other ILO supervisory bodies.***

Labour disputes resolution system. The Committee recalls that it had previously noted the need to continue working together towards building a strong and efficient system of dispute resolution, which

could handle labour disputes involving individual, collective and trade union matters. The Committee notes that the Government emphasizes its commitment to continuing its joint work with the social partners and the ILO to develop such a system. In this connection the Government expresses its appreciation of the assistance received from the ILO to further the work of the tripartite Council, which in the Government's opinion has shown positive and concrete results. ***The Committee requests the Government to actively engage with the social partners with a view to developing a labour dispute resolution system that is robust, efficient and enjoys the confidence of the parties. It requests the Government to indicate all measures and steps taken to that end.***

The Committee recalls that in its 2004 report, the Commission of Inquiry considered that its recommendations should be implemented without further delay and that the majority of its recommendations should be completed at the latest by 1 June 2005. The Committee ***deeply regrets*** that 17 years later, the situation in Belarus remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention and that many of the recommendations of the Commission of Inquiry have not been implemented. The Committee observes that the 2021 Conference Committee urged the Government to take before the 2022 International Labour Conference, in close consultation with the social partners, all necessary steps to fully implement all outstanding recommendations of the Commission of Inquiry. The Committee ***regrets*** to observe that the recent developments, including of legislative nature, as examined above appear to indicate continuing steps backward on some previously achieved progress. ***The Committee therefore urges the Government to pursue its efforts referred to above and expects that the Government, with the assistance of the ILO and in consultation with the social partners, will take the necessary steps to fully implement all outstanding recommendations without further delay.***

In light of the situation described, the Committee is obliged to note that there has been no meaningful progress towards full implementation of the 2004 Commission of Inquiry recommendations, and notes with grave concern that the recent developments referred to in detail above and the apparent lack of action on the part of the Government to follow up on the conclusions of the Conference Committee in consultation with all the social partners in the country would appear to demonstrate a lack of commitment to ensure respect for its obligations under the ILO Constitution.

[The Government is asked to reply in full to the present comments in 2022.]

Belize

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 3 of the Convention. Compulsory arbitration. The Committee recalls that in its previous comments it had requested the Government to amend the Settlement of Disputes in Essential Services Act 1939 (SDESA), as amended on several occasions, which empowers the authorities to refer a collective dispute to compulsory arbitration, to prohibit a strike or to terminate a strike in services that cannot be considered essential in the strict sense of the term, including the banking sector, civil aviation, port authority, postal services, social security scheme and the petroleum sector. The Committee notes with ***regret*** from the information provided by the Government that while the Schedule to the SDESA was amended twice in 2015, the long-standing comments of the Committee were not addressed. Instead, the two amendments expanded the field of application of the SDESA and added to its Schedule the "port services involving the loading or unloading of a ship's cargo", which are also services that do not constitute essential services in the strict sense of the term – that is those the interruption of which would endanger the life, personal safety

or health of the whole of part of the population. ***The Committee requests the Government to amend the Schedule to the SDESA so as to permit compulsory arbitration or a prohibition on strikes only in services that are essential in the strict sense of the term, and to provide information on all progress made in this regard.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee had noted the observations of the International Trade Union Confederation (ITUC) in 2014. The Committee notes with ***regret*** that the Government has not yet replied to these observations and requests it once again to provide its comments in this respect.

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. In its previous comments, following the 2011 ITUC observations regarding those two sectors, the Committee had requested the Government to provide statistics on the number of acts of anti-union discrimination that are reported to the authorities in the banana plantation sector and in export processing zones and on the outcomes of the denunciations in this respect. The Committee notes that the Government indicates that during the reporting period (July 2013 to June 2017) no acts of anti-union discrimination were denounced to the authorities in these sectors. ***Highlighting that the absence of anti-union discrimination complaints may be due to reasons other than an absence of anti-union discrimination acts, and recalling the specific allegations raised by the ITUC, the Committee requests the Government to take the necessary measures to ensure that, on the one hand the competent authorities take fully into account in their control and prevention activities the issue of anti-union discrimination, and that on the other hand, the workers in the country are fully informed of their rights regarding this issue. The Committee requests the Government to provide information on measures taken in this regard, as well as any statistics concerning the anti-union discrimination acts reported to the authorities.***

Article 4. Promotion of collective bargaining. In its previous comments, the Committee had requested the Government to take measures to amend section 27(2) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act (TUEOA), which provides that a trade union may be certified as the bargaining agent if it is supported by at least 51 per cent of employees, as this requirement of an absolute majority may give rise to problems given that, if this percentage is not attained, the majority union would be denied the possibility of bargaining. In its latest comment, the Committee noted the Government's indication that: (i) the Tripartite Body and the Labour Advisory Board had engaged in discussions on a possible amendment to the Act; and (ii) based on these consultations, it had been recommended to reduce to 20 per cent the trade union membership threshold required to trigger a poll, while retaining the requirement of a 51 per cent approval of those employees voting and to require a turnout at the poll of at least 40 per cent of the bargaining unit. The Committee notes that the Government indicates that section 27(2) of the TUEOA has not been amended but that discussion continues among the social partners in this regard. ***The Committee requests the Government to continue promoting social dialogue in order to bring section 27(2) of the TUEOA into conformity with the Convention and to provide information on any developments in this respect. The Committee reminds the Government that it may avail itself of technical assistance from the Office.***

Promotion of collective bargaining in practice. ***The Committee requests the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements.***

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

Cambodia

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021, concerning matters examined in this comment and also denouncing that in August 2021: (i) Rong Chhun, the president of the Cambodian Confederation of Unions (CCU) and ex-president of the Cambodian Independent Teachers' Association (CITA), who was arrested in July 2020 following his advocacy for villagers in a land dispute along the Cambodia–Vietnam border, was sentenced to two years imprisonment; and (ii) Sar Kanika, president of the Cambodian Informal Labourers' Association, who also participated in these trade union activities in defence of the economic interests of farmers, was similarly sentenced to 20 months imprisonment. The Committee welcomes the news on the release of Mr Chhun and Ms Kanika in November 2021.

The Committee notes that the ITUC further denounces that over the past year a number of emergency laws and decrees were passed restricting the exercise of freedom of association. The ITUC alludes in particular to: (i) the Law on the Management of the Nation in Emergencies, alleging that it grants the Government broad powers to ban meetings and gatherings, to survey telecommunications, to ban or restrict news media that may harm "national security" and other measures that are "suitable and necessary", with infractions punishable by heavy imprisonment terms and fines; and (ii) the Law on Measures to Prevent the Spread of COVID-19 and other Serious, Dangerous and Contagious Diseases, which includes bans on gatherings and unspecified "administrative and other measures that are necessary to respond and prevent the spread of COVID-19". The ITUC alleges that such vague provisions allow for abuses by the authorities through arbitrarily targeting people and organizations protesting government policies. The ITUC also alleges that a problematic draft public order law would require approval from authorities for the use of public spaces and would permit authorities to stop an event if authorization has not been sought. The ITUC further alleges that Mrs Soy Sros, president of a local union affiliated to the Collective Union of Movement of Workers, was detained on 3 April 2020 by police in the Kompong Speu Province pursuant to a criminal complaint filed against her by the employer for having posted messages on social media related to a labour dispute concerning the unjust dismissal of a number of union members. The Committee notes that, as to the need to investigate allegations of violent repression of trade union activity, and detention or prosecution of trade union leaders for undertaking legitimate trade union activities, the Government: (i) informs that grievance and complaint procedures are in place at all levels and that any individual, including trade unionists, can use and benefit from them; (ii) notes in general that trade unions and trade unionists must submit their grievances to the responsible authorities, who will take immediate action in accordance with applicable rules and procedures, and provide relevant information so that the Ministry of Labour and Vocational Training (MLVT) can provide legal assistance accordingly; and (iii) states that if trade union leaders commit any criminal offence they shall be liable for it. ***While observing from publicly available information that there has been some evolution concerning the release of Mrs Soy Sros, the Committee regrets that the Government has not provided more information as to other specific allegations submitted to it by workers' organizations and requests it to provide its detailed comments on all these serious allegations.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the discussion which took place in June 2021 in the Conference Committee on the Application of Standards (the Conference Committee) concerning the application of the Convention by Cambodia. The Committee observes that the Conference Committee expressed deep concern at the continuing acts of violence against workers, the arrests of trade unionists in connection

with their activities as well as the lack of effective and timely investigations in relation to these incidents and urged Government to: (i) investigate all allegations of violent repression of trade union activity and detention of trade union leaders; (ii) take all necessary measures to expedite the investigations into the murders of trade union leaders Chea Vichea and Ros Sovannareth (in 2004) and Hy Vuthy (in 2007) and ensure that the perpetrators of the crimes are brought to justice; (iii) undertake all necessary efforts to settle the legal proceedings against trade unionists in connection with the incidents during the January 2014 demonstrations, ensure that no criminal charges or sanctions are imposed in relation to the peaceful exercise of trade union activities and drop all criminal charges for those trade unionists charged in connection with the January 2014 demonstrations; and (iv) take all necessary measures to stop arbitrary arrest, detention and prosecution of trade unionists for undertaking legitimate trade union activity. The Conference Committee also noted that, while some positive steps have been achieved in bringing the law in line with the Convention, serious compliance issues remain unaddressed, and called upon the Government to: (1) provide the reports of the three committees charged with investigations into the murders of, and violence perpetrated against trade union leaders to the Committee of Experts; (2) ensure that acts of anti-union discrimination are swiftly investigated and that, if verified, adequate remedies and dissuasive sanctions are applied; (3) with the help of ILO technical assistance, develop guidelines, a code of practice or a handbook on the policing and handling of industrial and protest actions; (4) amend the Law on Trade Unions, in consultation with the social partners, to ensure compliance with the Convention; (5) ensure that workers are able to register trade unions through a simple, objective and transparent process; (6) continue to identify appropriate legal measures, in consultation with the social partners, to ensure that teachers, domestic workers and civil servants not covered by the Law on Trade Unions (LTU) have the freedom of association rights under the Convention; (7) repeal the literacy requirement in sections 20, 21 and 38 of the LTU; repeal paragraph 2 of section 28 of the LTU on the automatic dissolution of workers' organizations in case of complete closure of an enterprise or establishment and repeal section 29 of the LTU on the dissolution of employers' and workers' organizations initiated by members of those organizations; (8) discuss with the social partners the possibility of allowing the formation of employers' and workers' organizations by sector or profession; and (9) increase its efforts to make the Arbitration Council an effective and sustainable institution in handling labour disputes and ensure that binding Arbitration Council decisions are effectively enforced in law and in practice. Finally, the Conference Committee recommended that the Government accept a direct contacts mission as soon as possible. In this respect, the Committee welcomes that by a communication of 10 August 2021 the Government accepted the direct contacts mission and is in contact with the ILO in order to organize its realization whenever feasible in the context of the COVID-19 pandemic.

Trade union rights and civil liberties

Murders of trade unionists. With regard to its long-standing recommendation to carry out expeditious and independent investigations into the murders of trade union leaders Chea Vichea and Ros Sovannareth (in 2004) and Hy Vuthy (in 2007), the Committee notes that: (i) as to the murder of Chea Vichea the Government indicates that re-investigation is currently under the authority of the Phnom Penh Police, noting that in spite of the challenges the police have been making an effort to end the case, and reiterating that close collaboration of family members and all parties concerned remains indispensable; (ii) with regard to the murder of Ros Sovannareth, the Government recalls that the Court of Appeal reconsidered the case and issued a verdict in July 2019, where the suspect Thach Saveth was sentenced to 15 years of imprisonment for premeditated murder; and (iii) concerning the murder of Hy Vuthy, the Government recalls that Chan Sophon, the suspect who was arrested in September 2013, filed an appeal and was released in February 2014, and notes that the other suspect who was also sentenced in absentia, Phal Vannak, is under arrest warrant. The Committee notes, on the other hand, that the ITUC denounces once again the nonresolution and lingering impunity with regard to these

murders 17 and 14 years after they occurred. The Committee reiterates its ***deep concern*** at the lack of progress concerning the investigations, and refers in this respect to the conclusions and recommendations of the Committee on Freedom of Association in its examination of Case No. 2318 (see 396th Report, November 2021, paragraphs 166 to 172). ***Recalling once again the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes, the Committee firmly urges the competent authorities to take all necessary measures to expedite the process of investigation and report on meaningful progress.***

Incidents during the January 2014 demonstrations. Concerning the trade unionists facing criminal charges in relation to incidents during the January 2014 demonstrations, in its previous comment the Committee had noted with interest that the six trade union leaders that had initially been sentenced to a suspended three years and six months imprisonment were acquitted of all charges on 28 May 2019; had further noted, as to other trade unionists under judicial procedures, that a working group had been established to follow up with the court in order to expedite the settlement; had taken note of detailed statistics concerning the settlement efforts; and had requested the Government to continue providing information on pending procedures. The Committee notes that in its latest report the Government: (i) reiterates that the riot that took place could not be considered as peaceful exercise of trade union activities, and that it was a politically motivated act; (ii) states that the complaints were submitted to the competent courts that ruled at their discretion in accordance with the evidence provided (some suspects were discharged if they were innocent in accordance with procedural rules); (iii) indicates that as of November 2021 there were few criminal cases under the court proceedings and none of these cases were related to the exercise of freedom of association; and (iv) recalls that the MLVT and the Ministry of Justice have been working together to provide legal support to trade unionists whose court cases are still pending. The Committee notes, on the other hand, that the ITUC: (i) recalls that garment workers were protesting for a liveable minimum wage and that, in return, military police opened fire killing and wounding several of them; (ii) laments that after seven years there remain unsolved cases concerning the arbitrary arrests and detention of trade unionists following the 2014 protests; and (iii) denounces that several trade unionists still have criminal or civil charges pending against them for their peaceful participation in the demonstrations. The Committee further notes that, in reply to the request of the Conference Committee to provide the reports of the three committees charged with investigations into the murders of, and violence perpetrated against, trade union leaders, the Government reiterates that it cannot share the detailed reports of the three committees as they pertain to internal affairs of the country, but that, as reported to the direct contacts mission in 2016, the conclusions of the three committees were submitted to the competent courts for further proceedings and the Government will be able to share the outcome of the court proceedings once available. ***The Committee requests the Government to continue providing information on the pending legal procedures against trade unionists, in particular on any verdicts issued, as well as to provide detailed information on any court rulings resulting from the conclusions of the fact-finding committees investigating the allegations of killings, physical violence and arrests of protesting workers, as well as all materials from the fact-finding committees' reports that do not directly implicate internal affairs of the country.***

Training of police forces in relation to industrial and protest action. In its previous comments, recalling that the intervention of the police should be in proportion to the threat to public order and that the competent authorities should receive adequate instructions so as to avoid the danger of excessive force in trying to control demonstrations that might undermine public order, the Committee encouraged the Government to consider availing itself of the technical assistance of the Office in relation to the training of police forces, with a view, for example, to the development of guidelines, a code of practice or a handbook on handling industrial and protest action. The Committee duly notes that the Government informs that: (i) 120 police officers from four different units received the training co-organized by the MLVT and the Office of the High Commissioner for Human Rights, with the support of the ILO; (ii) follow-up trainings took place in 2020, with a total of 550 police officers participating in

trainings on the rights to strike and peaceful demonstration; and (iii) in light of the outcomes of such trainings, the MLVT will continue liaising with relevant institutions to conduct consultations on the development of a guideline on measure on labour disputes and industrial action, and a request for technical support will be submitted to the ILO in due course. ***The Committee requests the Government to continue providing information in this regard, in particular as to the development, with the assistance of the ILO, of guidelines, a code of practice or a handbook on the policing and handling of industrial and protest actions, and as to the number of police officers participating in training sessions, the duration of such training, and the subjects covered, including as to whether the disciplinary consequences of using excessive force are part of the training.***

Legislative issues

The Committee notes that the Government reiterates the information provided on the amendments to the LTU that entered into force in January 2020, stating that they resulted in an increment in the number of professional organizations registered, and indicating that out of the 5,650 professional organizations registered, 5,352 are local worker unions, 247 federations of worker unions, 40 confederations of worker unions and 11 employer associations. The Committee notes the Government's indication that it is unnecessary to further amend the LTU; the Government notes that a key priority is to raise awareness of trade unionists on the provisions of the LTU, it welcomes further consultations to review the content of the LTU and its implementation and it would like to seek ILO support to organize trainings on the LTU to build the capacity of social partners. The Government further encourages workers and trade unionists to bring any complaint to the MLVT in the event of any irregularity with respect to registration, representation and exercise of freedom of association under the LTU. On the other hand, the Committee notes that the ITUC alleges that the amendments to the LTU failed to bring it into conformity with the Convention and that trade unions report that the Government did not meaningfully engage with them and refused to consider the unions' proposed amendments, which would have ensured compliance with the Convention.

Article 2 of the Convention. Rights of workers and employers, without distinction whatsoever, to establish and join organizations. In its previous comments the Committee has been urging the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly. The Committee notes that the Government reiterates that the LTU is applicable to teachers working for private institutions and that civil servants and public school teachers can enjoy freedom of association pursuant to the Law on Associations and Non-Governmental Organizations (LANGO). The Government adds that the Convention does not require that the freedom of association of all individuals be covered by a single legal instrument, and indicates that these different regimes are due to the administrative system and division of authorities of the state institutions in charge of the registration of professional organizations. In this respect, the Committee must recall once again its prior emphasis that some provisions in the LANGO contravene freedom of association rights of civil servants under the Convention, as that law lacks provisions recognizing civil servants' associations' right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, and the right to affiliate to federations or confederations, including at the international level, and subjects the registration of these associations to the authorization of the Ministry of Interior. In addition, the Committee has been noting that workers' organizations and associations express deep concern at the lack of protection of teachers' trade union rights (referring in particular to sanctions and threats to teachers seeking to organize). The Committee notes that the ITUC observations allege again that the regressive framework of the LANGO is not compliant with the Convention. ***Regretting the continuing absence of progress in this respect, the Committee must once again urge the Government to take appropriate measures, in consultation with***

the social partners, to ensure that civil servants – including public sector teachers – who are not covered by the LTU are fully ensured their freedom of association rights under the Convention, and that the legislation applicable to them is amended accordingly.

As to domestic workers, the Committee notes that the Government states that the LTU is applicable to them. Furthermore, concerning the possibility of forming organizations by sector or profession, the Government indicates that there is no prohibition on the formation of organizations by sector or profession as long as the criteria stipulated in the LTU are met, and claims that the Convention does not require national law to expressly stipulate such provision. The Government adds that it would like to seek ILO assistance to organize trainings to promote public awareness of workers and employers in this regard. Having duly noted these indications, the Committee recalls that workers' organizations have been expressing deep concern as to the difficulties faced by domestic workers and also workers in the informal economy in general seeking to create or join unions, since the LTU provides for an enterprise union model, whose requirements are often very difficult to meet by these workers, and that the law in practice does not allow for the creation of unions by sector or profession. The Committee further notes that the ITUC once again highlights in its observations, as one of the most relevant shortcomings of the national legislation, that domestic workers, workers in the informal economy and others not organized on an enterprise model, still cannot in practice form and join unions. ***The Committee encourages the Government to promote the full and effective enjoyment of the rights under the Convention by domestic workers and workers in the informal economy. For these workers and other workers who are not easily organized on an enterprise level model, the Committee requests the Government to take any necessary measures to allow the formation of unions by sector or profession, in consultation with the social partners and with the assistance of the ILO.***

Article 3. Right to elect representatives freely. Requirements for leaders, managers, and those responsible for the administration of unions and of employer associations. In its previous comment the Committee had requested the Government to take the necessary measures to amend sections 20, 21 and 38 of the LTU to remove the requirement to read and to write Khmer from the eligibility criteria of foreigners. The Committee notes that the Government indicates in this respect that the LTU was amended through tripartite consensus and that the requirement is not incompatible with the Convention. On the other hand, the Committee notes that the ITUC observations denounce again the requirement as one of the important pending hurdles to conform the LTU to the Convention. The Committee further recalls that the legal imposition of literacy requirements for the eligibility of representatives is incompatible with the Convention (see 2012 General Survey on the fundamental Conventions, paragraph 104). ***The Committee requests once again that the Government take the necessary measures to remove the requirement to read and to write Khmer from sections 20, 21 and 38 of the LTU. The Committee requests the Government to provide information on any developments in this respect.***

Article 4. Dissolution of representative organizations. In its previous comments the Committee had requested the Government to amend paragraph 2 of section 28 of the LTU, providing that a union is automatically dissolved in the event of a complete closure of the enterprise or establishment. The Committee observed that the 2019 amendments to the LTU retained under paragraph 2 of section 28 the automatic dissolution of a union in the event of a complete closure of its enterprise or establishment, but included an additional condition: complete payment of workers' wages and other benefits. The Committee notes that the Government reiterates that the amendment was made to ensure the interests of workers and trade unions when the enterprise is closed down, that the amendment was thus welcomed by the unions, and that as local unions are legally attached to the existing enterprise where they are formed, when that enterprise no longer legally exists the local union should no longer exist either. In this respect, the Committee must recall that, while the payment of wages and other benefits may be one of the reasons why a union may have a legitimate interest to continue to operate after the dissolution of the enterprise concerned, there may be other legitimate reasons for it to do so (such as

defending other legitimate claims, including against any legal successors of the former company). ***Recalling that the dissolution of a workers' or employers' organization should only be decided under the procedures laid down by their statutes, or by a court ruling, the Committee requests once again that the Government take the necessary measures to amend section 28 of the LTU accordingly by fully removing its paragraph 2.***

Grounds to request dissolution by Court. The Committee has also been requesting the Government to take the necessary measures to amend section 29 of the LTU, which affords any party concerned or 50 per cent of the total of members of the union or the employer association the right to file a complaint to the Labour Court to request a dissolution. Observing that the 2019 amendments to the LTU did not modify the provision in question, and noting that members can always decide to leave the union, the Committee recalled in its previous observation that the manner in which members may request dissolution should be left to the organization's by-laws. ***Noting that the Government does not provide any additional comments in this regard, the Committee once again requests it to take the necessary measures to amend section 29 of the LTU so as to leave to the unions' or employers' associations own rules and by-laws the determination of the procedures for their dissolution by their members.***

Application of the Convention in practice

Independent adjudication mechanisms. In its previous comments the Committee has been recalling the importance of ensuring the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes, as well as to address the serious concerns raised on the independence of the judiciary and its impact on the application of the Convention. The Committee has also welcomed the Government's commitment to strengthen the Arbitration Council (AC) and trusted that the AC would continue to remain easily accessible and to play its important role in the handling of collective disputes, and that any necessary measures would be undertaken to ensure that its awards, when binding, are duly enforced. The Committee notes with ***interest*** the Government's indication that the new amendment to the Labour Law has expanded the jurisdiction of the AC to also cover individual disputes, and that the Government reiterates its firm commitment to supporting the operation of the AC and ensuring the sustainability of this institution. The Committee further notes that the Government indicates, as to the AC decisions, that the disputing parties are required to choose between a binding or a non-binding award from the outset, and that in case of non-compliance with a binding award the party concerned may file a complaint to the competent court to seek enforcement. ***Emphasizing the importance of the independence of adjudication mechanisms, the Committee invites the Government to continue to provide information on the operation of the AC, including on the number and nature of disputes brought before it and as to the extent of compliance with non-binding AC awards, as well as the use of the courts to ensure that the AC awards, when binding, are duly enforced, including the number of court rulings issued to this end.***

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

Cameroon

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

The Committee notes the observations of the General Union of Workers of Cameroon (UGTC), dated 16 September 2021, which relate to issues examined in the present comment.

The Committee notes with ***regret*** that the Government has not provided the requested detailed information in response to the 2016 observations of the International Trade Union Confederation (ITUC)

concerning repeated police violence against strikers (in the construction sector), as well as cases of interference by the authorities in trade union elections (in the agriculture, construction and health sectors), vandalism on the premises of a trade union and trade union harassment (in the banking sector). The Government confined itself to indicating that the acts denounced by the ITUC were unproven. The Committee also ***regrets*** that the Government has not provided comments in reply to the ITUC's observations of 2020 concerning allegations of favouritism by the authorities towards unrepresentative organizations. ***The Committee urges the Government to provide detailed information in response to its requests on all these matters.***

In its previous comments on the failure to register eight unions of public sector education employees following the 2016 observations by Education International (EI), the Committee urged the Government to take the necessary measures to ensure the registration of the public sector education employees' organizations. ***Also regretting the failure to provide comments on this subject, the Committee urges the Government to provide detailed information on the situation of the trade union organizations concerned.***

Article 3 of the Convention. Act on the suppression of terrorism. In its comments relating to the Act on the suppression of terrorism (Act No. 2014/028 of 23 December 2014), the Committee has drawn the Government's attention on several occasions to the wording of section 2(1), under the terms of which "the death penalty shall be imposed on anyone who … commits or threatens to commit any act that may cause death, endanger physical safety, result in bodily injury or damage to property or harm natural resources, the environment or the cultural heritage with the intention of: (a) intimidating the public, causing a situation of terror or forcing a victim, the Government and/or a national or international organization to carry out or refrain from carrying out a given act, adopting or renouncing a particular position or act according to certain principles; (b) disrupting the normal operation of public services or the delivery of essential public services, or creating a public crisis …". The Committee has repeatedly expressed deep concern at the fact that some of the situations envisaged in the Act of 23 December 2014 could apply to acts related to the legitimate exercise of activities by the representatives of trade unions or employers in accordance with the Convention, with particular reference to protest action and strikes that would have direct repercussions for public services. The Committee also recalls that, in light of the penalty that may be imposed, such a provision could be particularly intimidating for the representatives of trade unions or employers who speak out or take action within the context of their duties. In this regard, it notes the observations of the UGTC to the effect that the Act has made trade union action more fragile since its adoption.

The Committee notes that the Government emphasizes that the wording of section 2 of the Act respecting the definition of "terrorist act" is inspired, among other sources, by the Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism and its Protocol (1999). It also notes that, according to the Government, no individuals have been prosecuted in the national territory for acts of terrorism following trade union protests. ***While noting this information, the Committee once again urges the Government to take the necessary measures to amend section 2 of the Act on the suppression of terrorism to ensure that it does not apply to the legitimate activities of workers' and employers' organizations, which are protected under the Convention. In the meantime, the Committee urges the Government to continue providing information on the measures taken to ensure that: (i) the implementation of the Act does not have harmful consequences on officials and members engaged in their functions and performing trade union or employer activities in accordance with Article 3 of the Convention; and (ii) the Act is enforced in such a way that it is not perceived as a threat or intimidation towards trade union members or the trade union movement as a whole.***

Articles 2 and 5. Legislative reform. The Committee has been recalling for many years the need to: (i) amend Act No. 68/LF/19 of 18 November 1968 (under the terms of which the legal existence of a trade union or occupational association of public servants is subject to prior approval by the Minister of Territorial Administration); (ii) amend sections 6(2) and 166 of the Labour Code (which lay down penalties

for persons establishing a trade union which has not yet been registered and acting as if the said union had been registered); and (iii) repeal section 19 of Decree No. 69/DF/7 of 6 January 1969 (under the terms of which trade unions of public servants may not affiliate to an international organization without obtaining prior authorization). The Committee notes the observations of the UGTC denouncing the lack of transparency relating to the process of the revision of the Labour Code. The Government confines itself to indicating that the process is still ongoing. ***Noting with deep regret that the process of the revision of the Labour Code has still not been completed, the Committee is bound once again to urge the Government to take the necessary measures to complete the legislative revision process without further delay so as to give full effect to the provisions of the Convention on the points recalled above. The Committee trusts that the Government will be cooperative in this regard.***

Chad

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, which allege violations of the trade union rights in law and in practice, as well as the Government's response thereto, dated 11 October 2019.

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature. It also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2016, relating to: (i) the legal procedures governing the right to strike; (ii) cases of serious violations of trade union and fundamental rights; and (iii) the determination of essential services. ***The Committee requests the Government to provide its comments in this regard.***

Articles 2 and 3 of the Convention. Labour Code. In its previous comments, the Committee requested the Government to take measures to amend section 294(3) of the Labour Code, under the terms of which minors under 16 years of age may join a union, unless their father, mother or guardian objects, with a view to recognizing the trade union rights of minors who have reached the statutory minimum age to enter the labour market in accordance with the Labour Code (14 years), either as workers or apprentices, without the intervention of their parents or guardians. The Committee also drew the Government's attention to the need to take the necessary measures to amend section 307 of the Labour Code, to ensure that monitoring by the public authorities of trade union finances does not go beyond the obligation of organizations to submit periodic reports. The Committee noted the Government's indication that this provision has never been applied and that it was removed in the draft revision of the Labour Code. The Committee notes the Government's statement that the concerns of the Committee have been taken into account in the revision of the Act issuing the Labour Code, even though the latter has not yet been promulgated. ***The Committee trusts that the Labour Code will be promulgated in the near future and that it will give full effect to the provisions of the Convention on the points recalled above. It requests the Government to provide a copy of the text as adopted.***

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

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

China

Hong Kong Special Administrative Region

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

The Committee takes note of the reply of the Government of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China to the observations made by the International Trade Union Confederation (ITUC) in 2016.

The Committee also notes the ITUC observations received on 1 and 23 September 2021, referring to issues examined by the Committee in the present comment, as well as the Government's replies thereto, some of which (those addressing the 1 September observations) were received while the Committee was already in session.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the discussion which took place in June 2021 in the Conference Committee on the Application of Standards (the Conference Committee) concerning the application of the Convention by China – Hong Kong Special Administrative Region. The Committee observes that the Conference Committee called on the Government to: (i) provide full information regarding the outcomes of procedures to examine the police action and arrests made in connection with protests which fall under the scope of the Convention; (ii) take all necessary measures to further guarantee the right for workers' and employers' organizations to organize their activities in line with the Convention and to ensure that trade union leaders and trade union members conducting lawful trade union activities are not arrested, detained or prosecuted; (iii) keep under review, in consultation with the social partners, the application of the National Security Law so that the rights of workers, employers and their organizations under the Convention are fully protected; and (iv) continue to provide up-to-date information on the impact that the National Security Law has on the application of the Convention.

Trade union rights and civil liberties. In its last comment, having taken note of allegations of police repression and arrests made in connection to public protests, the Committee requested the Government to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation and within the framework of a system that guarantees the effective respect of civil liberties. The Committee notes the Government's indication that: (i) section 27 of the Basic Law and section 18 of the Hong Kong Bill of Rights recognize the right to freedom of association, the right to form and join trade unions and the right to strike; and (ii) the Trade Unions Ordinance seeks to promote sound trade union management and protect the rights of trade union members. The Government highlights that it attaches great importance to ensuring the right of trade unions to organize their activities and formulate their programmes to defend the occupational interests of their members. It points out, however, that in exercising the rights enshrined in the Convention, everyone shall respect the law of the land. The Government indicates that, while the right of peaceful assembly is protected under the Basic Law, such right is not absolute and may be restricted by law in the interest of national security, public safety, and public order and for the protection of the rights and freedoms of others. It further indicates that the duty of the Police is to maintain law and order as well as to prevent and detect crime. The Government further indicates that Hong Kong authorities have been handling and will continue to handle all criminal offences in a fair and impartial manner and in strict accordance with the law, without considering if those concerned are trade unionists. It adds that authorities strive to protect the rights of detainees, including the right to receive legal assistance, communicate with a relative or friend, receive copies of written records under caution, and receive food and drinks and medical attention. The Government points out that developments since the implementation of the

National Security Law (NSL) have been characterized by safety, security and stability and that residents are no longer under the threat of street violence and personal intimidation. It adds that the recent arrest of members of a terrorist group plotting to set bombs in public places illustrates the genuine need for the NSL to prevent and suppress acts and activities endangering national security.

While taking due note of the Government's indications, the Committee notes that the ITUC denounces an acute decline in the respect for civil liberties and freedom of association. The ITUC alleges that trade union rights are seriously under attack and that trade unionists are persecuted for defending the rights of workers and for carrying out legitimate trade union activities. The ITUC refers specifically to the arrest of Mr Lee Cheuk Yan, General Secretary of the Hong Kong Confederation of Trade Unions (HKCTU), noted by the Committee in its last comment, who is facing prosecution for 10 criminal offences in relation to public protests. The ITUC also alleges the arrest of 55 pro-democracy activists and politicians in connection with political party primary polls held in 2020, including three trade union leaders, Ms Carol Ng, Chairperson of the HKCTU, Ms Winnie Yu, Chairperson of the Hospital Authority Employees Alliance (HAEA) and Mr Cyrus Lau, Chairperson of the Nurses Trade Union. The Committee notes that the above-mentioned arrests are the subject of a complaint made by the ITUC and examined by the Committee on Freedom of Association (CFA) (Case No. 3406). The Committee recalls in this regard that the CFA requested the Government to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation and within the framework of a system that guarantees the effective respect of civil liberties. It also urged the Government to take all appropriate measures to ensure that Mr Lee Cheuk Yan is not imprisoned for having participated in a peaceful demonstration defending workers' interests (see 395th report, June 2021, para 173).

The Committee notes that the ITUC also alleges the arrest, on 22 July 2021 of five executives of the General Union of Hong Kong Speech Therapists (GUHKST) in relation to a publication of picture books for children with speech problems published by the union with stories based on the pro-democratic protests of the healthcare workers in 2019 and 2020. The ITUC indicates that all five union executives were put under custody pending the hearing scheduled for 24 October 2021. The Committee notes the Government's indication that GUHKST's chairperson and executive committee members were charged for conspiring to print, publish, distribute, display or reproduce seditious publications, which glorify unlawful acts, bring hatred against the HKSAR Government and the administration of justice, and incite other people to commit violence, which are not lawful trade union activities. The Committee recalls that the resolution adopted by the Conference in 1970 concerning trade union rights and their relation to civil liberties reaffirms the essential link between civil liberties and trade union rights, which was already emphasized in the Declaration of Philadelphia (1944), and enumerates the fundamental rights that are necessary for the exercise of freedom of association, with particular reference to: (i) the right to freedom and security of person and freedom from arbitrary arrest and detention; (ii) freedom of opinion and expression, and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (iii) freedom of assembly; (iv) the right to a fair trial by an independent and impartial tribunal; and (v) the right to protection of the property of trade union organizations (see the 2012 General Survey on the fundamental Conventions, paragraph 59). ***Expressing the firm expectation that the Government will ensure full respect of the above, and noting the ITUC's indication that the hearing was scheduled for 24 October 2021, the Committee requests the Government to provide full and detailed information on the outcome and transmit copies of the relevant court judgments.***

Articles 2, 3, 5 and 8 of the Convention. Application of the National Security Law. In its last comment, having noted the concerns expressed by the ITUC and the HKCTU on the possible negative effects that the application of the NSL could have on the rights enshrined in the Convention, the Committee requested the Government, in consultation with the social partners, to monitor and provide information on the impact that the Law had already had and may continue to have on the application of the Convention. The CFA referred to this matter in case No. 3406 mentioned above, and drew its

legislative aspects to the attention of the Committee (see 395th report, June 2021, paragraph 173). The Committee notes that the Government indicates in this respect that: (i) it appreciates that at the Conference Committee both the worker and employer representatives from the HKSAR shared the view that the NSL is necessary for restoring stability; (ii) the law reverted the chaotic situation enabling the economy and people's livelihood to revive; and (iii) developments since the implementation of the NSL have been characterized by safety, security and stability. The Government indicates that the NSL has not amended any provision of the Basic Law, that all human rights provisions of the Basic Law have remained untouched and that in fact the NSL clearly stipulates that human rights shall be respected and protected in safeguarding national security. The Government also emphasizes that all persons shall observe the requirements under the law and shall not endanger national security or public safety, public order or the rights and freedoms of others in exercising their rights. It indicates in this respect that section 2 of the NSL stipulates that the provisions in sections 1 and 12 of the Basic Law on the legal status of the HKSAR are the fundamental provisions in the Basic Law, and that no institution, organization or individual in the HKSAR shall contravene these provisions in exercising their rights and freedoms. The Government indicates that it has been carrying out relevant work in respect of its constitutional responsibility to enact legislation on section 23 of the Basic Law, including conducting legal research in relation to national security. The Committee also takes note of the Government's indication that it will draw up effective and pragmatic proposals and provisions, conduct public consultation properly, formulate appropriate publicity plans, as well as communicate more with members of the public, with a view to explaining clearly the legislative principles and details and avoiding misunderstandings.

While taking due note of the Government's indications, the Committee notes the ITUC's allegation that since coming into effect on 30 June 2020, the NSL has been used to intimidate and harass trade unions and that its application has resulted in the deregistration or disbanding of trade unions. The ITUC specifically alleges that: (i) in December 2020, 180,000 civil servants were requested to take an oath and sign on a declaration of loyalty, mentioned in section 6 of the NSL, making it impossible to freely express opinions or join an organization or activities deemed by the authority to be inciting discontent, aggravating social instability or undermining the capabilities of the Government. The Union for New Civil Servants protested against the oath requirement and disbanded itself in January 2021. Civil servants refusing to sign the declarations were suspended or dismissed; (ii) after the Hong Kong Education Bureau ceased recognition and working relations with the Hong Kong Professional Teachers' Union (HKPTU), the union withdrew from the pro-democracy movement; disaffiliated from Education International and announced on 10 August 2021 its dissolution and closure of teachers' cooperatives; (iii) the cancellation of the registration of GUHKST was gazetted on 20 August 2021; (iv) on 25 August 2021, the police served notice to Mr Lee Cheuk Yan (currently in prison), as well as 8 other executives of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China to submit under section 43 of the NSL information on activities outside Hong Kong in relation to the Alliance or face a fine and jail term from 6 months to 2 years; (v) the deregistration procedure for the Hospital Authority Employees' Alliance (HAEA) was invoked with a notice served by the Registrar on 3 September 2021, demanding information on events it had held by 17 September 2021; (vi) in a press conference on 19 September 2021, the HKCTU announced that it would invoke the procedure to disband the trade union centre, following persistent stigmatization, vilification and attack on its trade union activities and the use of security and the judiciary to intimidate and harass its members for exercising trade union rights and civil liberties; (vii) trade unions organizing member-exclusive screenings of films were requested by the Office for Films, Newspapers and Articles Administration to provide details and approvals; (viii) the Hong Kong-based labour organization the Asia Monitor Resource Centre has declared that it will disband itself; and (ix) the support provided by the ITUC to the HKCTU is being categorized as criminal collusion under the NSL.

The Committee takes note that, in its reply to the ITUC's allegations, the Government indicates that the allegations are factually incorrect and that trade union officials' freedoms and right to organize activities to promote and defend the occupational interests of trade union members have been and will continue to be fully protected. With respect to the alleged request made to civil servants to take an oath or sign the declaration of loyalty, the Government indicates that this would not affect the civil rights of government employees. In relation to the allegations of the HKPTU, the Government indicates that: (i) the union had engaged in political propaganda under the guise of being a professional education organization, having published teaching resources with contents on civil disobedience; launched territory-wide class and teaching boycotts by teachers, dragging schools into politics, and promoted books that glorify violence; (ii) the Education Bureau ceased recognition and working relations because the union failed to live up to the expectation of a professional education organization; and (iii) the HKPTU initiated voluntary dissolution without any interference from the Registry of Trade Unions. In relation to the allegation concerning Mr Lee Cheuk Yan and the executives of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China, the Government indicates that: (i) in order to effectively prevent and suppress offences endangering national security, law enforcement officers need to obtain relevant information about certain foreign or Taiwan political organizations and foreign or Taiwan agents; (ii) pursuant to section 43 of the NSL, the Police issued written notices to the directors of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (including Mr Lee Cheuk Yan) requesting information; (iii) the notice was not issued to Mr Lee in his capacity as a trade unionist, nor does the issuance of such notice necessarily connote wrongdoing or the commission of any offence; and (iv) it is only when the recipient fails to comply with the notice with no valid explanation provided to the court that legal sanctions are imposed. With respect to the allegations on the HAEA, the Government indicates that the Registry of Trade Unions made an inquiry in relation to its activities, which were suspected of being inconsistent with its objects or rules and that the Registry acted in an objective and prudent manner before taking legitimate action in accordance with the Trade Unions Ordinance. In relation to the ITUC's allegation on the screening of films, the Government indicates that under the Film Censorship Ordinance, any person who intends to exhibit a film (including trade unions, at a place to which members have access) shall submit the film to the Film Censorship Authority for approval. The Government emphasizes that there is absolutely no retrogression or infringement of the right to freedom of association and that the isolated incidents quoted by the ITUC are associated with suspected unlawful activities not related to the exercise of trade union rights or voluntary decisions of the trade unions concerned without any interference from the Government.

While taking due note of the Government's indication that it will continue to attach great importance to fulfilling its obligations under the Convention, the Committee ***regrets*** to note that in spite of its request as well as the request made by the Conference Committee and the CFA, no consultations appear to have taken place with the social partners on the negative effects that the application of the NSL is alleged to have had, and could have, on rights enshrined in the Convention. In addition, while duly noting the statistics supplied by the Government as of 31 October 2021 (1,541 registered trade unions, representing an increase of 66 per cent over end-May 2019), and observing that, according to the Government, such increase of registered trade unions would bear testimony to the free exercise of the rights and freedom of association in the HKSAR, the Committee expresses its ***concern*** at the ITUC allegations and observes that, according to publicly available information, the HKCTU, established more than three decades ago, was disbanded on 3 October 2021.

The Committee recalls that the principal objective of the Convention is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution (see the 2012 General Survey, paragraph 55). It also recalls that employers and workers organizations must be allowed to conduct their activities in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders. ***Further recalling that authorities should refrain from any interference***

which would restrict freedom of association and assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order, the Committee firmly requests the Government to take all necessary measures to ensure in law and in practice the full enjoyment of the rights enshrined in the Convention. It also requests the Government to provide specific information in relation to the application in practice of the NSL. The Committee also requests the Government to provide further details in relation to the public consultations and publications it has indicated it intends to carry out with a view to providing clarity on the applicable legislative principles, and the Committee expects that such activities will provide an opportunity to assess and address any negative effects that the application of the NSL could have on the rights enshrined in the Convention.

Colombia

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

The Committee notes the joint observations of the Single Confederation of Workers of Colombia (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Labour (CGT) received on 1 September 2021. The Committee notes that these observations relate to matters examined by the Committee in its comments, as well as allegations of violations of the Convention in practice. The Committee also notes the allegations of anti-union discrimination contained in the observations of the International Trade Union Confederation relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), received on 1 September 2021, as well as the Government's comments in this regard.

The Committee also notes the observations of the National Employers' Association of Colombia (ANDI), transmitted by the International Organisation of Employers (IOE) on 1 September 2021, which refer to matters raised in the Committee's previous direct request relating to this Convention and, in relation to the matters examined in the present observation, refer to its 2020 observations.

Articles 1 and 2 of the Convention. Adequate protection against anti-union discrimination and interference. In its previous comments, having noted the slowness of the various administrative and judicial mechanisms for protection against anti-union discrimination and the recurrent criticisms by the unions concerning their lack of effectiveness, the Committee requested the Government, in consultation with the social partners, to launch a comprehensive examination of these mechanisms with a view to the adoption of the necessary measures to ensure the rapid imposition of effective sanctions in the event of anti-union acts. The Committee notes the Government's indication that, in the context of the national inspection strategy, the Department of Territorial Inspection, Supervision, Control and Management formulates an annual strategic plan which includes within its priorities enterprises which have registered collective accords and contracts.

The Committee notes that the Government also refers to the administrative investigations undertaken by the Ministry of Labour into anti-union discrimination, in relation to which it provides the following statistics: (i) in 2020, there were 351 administrative labour disputes relating to complaints of acts against freedom of association and collective bargaining, of which 83 gave rise to a decision (of which 51 were given effect); (ii) between 1 January and 15 June 2021, there were 92 administrative labour disputes, of which 13 gave rise to a decision (of which four have already been given effect). The Committee notes that the Government also provides information on the general activities of the labour inspectorate, including detailed descriptions of the measures adopted by the labour inspectorate during the health emergency resulting from the COVID-19 pandemic, on inspection procedures relating to penalties and the collection of fines and on the frequent training courses provided to labour inspectors.

The Committee further notes the information provided by the Government on the investigations undertaken under section 200 of the Penal Code, which criminalizes violations of the rights of association and assembly, subjects that have been examined by the Committee in recent years within the context of Convention No. 87 in relation to acts of anti-union violence. The Committee notes the Government's indication that: (i) the Office of the National Public Prosecutor received a total of 90 complaints during the course of 2020, which was clearly lower than in previous years, probably, as emphasized by the Government, due to suspensions of work as a result of the COVID-19 pandemic; (ii) in one case, the issue was the subject of conciliation; in five cases the case was set aside due to related offences, or in other words the Public Prosecutor decided to continue the investigation under other criminal charges; 29 cases were set aside, either because there was no evidence of a crime or the complainant was not legitimate; of the 90 cases, 53 are still active (48 at the pretrial stage and five under investigation). The Committee notes the Government's further indication that the Ministry of Labour and the Office of the National Public Prosecutor have created an elite group with a view to promoting the investigation of anti-union offences.

The Committee also notes that the trade union confederations reiterate their denunciation of the ineffectiveness of the various administrative and judicial protection mechanisms against anti-union discrimination. With reference to administrative labour disputes, the confederations indicate that: (i) the procedure envisaged in section 354 of the Substantive Labour Code is not expeditious and in practice is excessively slow; (ii) on the basis of the statistics provided by the Government, only 11.5 per cent of the administrative labour disputes registered in 2020 and 2021 have so far resulted in a decision, without taking into account the possibility of appeals in those cases; the preliminary verification stage may last four or five years and many disputes from previous years have still not been resolved. The Committee notes that, in relation to the investigations by the Office of the National Public Prosecutor into complaints of violations of section 200 of the Penal Code, the trade union confederations indicate that: (i) following ten years of the labour action plan, in the context of which section 200 was amended, there have still been no investigations or sanctions imposed by the Office of the National Public Prosecutor; (ii) in addition to the consequences of the COVID-19 pandemic, the reduction in 2020 in the number of complaints of violations of section 200 is due to the loss of credibility of the mechanism, which suffers in particular from very long delays. The Committee finally notes that the trade union confederations once again denounce the absence of an expeditious judicial mechanism for protection against acts of interference and anti-union discrimination (with the exception of the special procedure for lifting trade union protection). Providing information on a series of specific cases, they indicate in this respect that: (i) unions only have access to ordinary labour courts through procedures that often take longer than four or five years, which makes the mechanism inoperative for the restoration of rights; and (ii) in the majority of cases, the courts find that appeals for constitutional protection, which are the most expeditious, are not valid to protect freedom of association, as there are other means of defence, such as the ordinary labour courts and the administrative penalty procedure of the Ministry of Labour.

The Committee notes the various elements provided by the Government and the unions. The Committee observes in this respect that: (i) the available data shows that the examination of administrative labour disputes in relation to freedom of association often takes a very long time; (ii) the Government has not provided information on cases in which criminal penalties have been handed down for violations of section 200 of the Penal Code, despite the high number of criminal complaints lodged since 2011; and (iii) the Government has still not expressed a view on the effectiveness of cases brought before labour tribunals. In this context, the Committee ***regrets*** that the Government has not provided information on the preparation of a comprehensive examination of the existing protection mechanisms against anti-union discrimination in consultation with the social partners, despite the Committee making this request on several occasions since 2016, and the request to the Government made by the Committee on Freedom of Association several times (Case No. 3061, 381st Report, March 2017, and Case No. 3150, 387th Report, October 2018). ***In light of the above, recalling the fundamental***

importance of protection against anti-union discrimination for the effective exercise of freedom of association, the Committee urges the Government, after consulting the social partners, to take the necessary measures, including through laws and regulations, to revise the procedures for the examination of administrative labour disputes in relation to freedom of association, on the one hand, and the judicial procedures concerning acts of anti-union discrimination and interference, on the other, in order to ensure that both are examined promptly and effectively. The Committee requests the Government to provide information on the progress made in this regard and recalls that it may avail itself of the technical assistance of the Office.

Articles 2 and 4. Collective accords with non-unionized workers. The Committee recalls that it has been requesting the Government since 2003 to take the necessary measures to ensure that collective agreements with non-unionized workers (collective accords) can only be concluded in the absence of trade union organizations. The Committee notes that the Government reiterates its position, in line with that of the ANDI, that: (i) collective accords with non-unionized workers are a form of social dialogue and collective bargaining recognized and regulated by the law and the case law of the Constitutional Court; and (ii) within this framework, collective accords can only be concluded when there is no union in the enterprise representing over one third of the workers and the conditions negotiated in collective accords and agreements must be the same to prevent anti-union discrimination and any breach of the principle of equality. The Committee notes that the Government also indicates that the undue use of collective accords is being closely monitored by the competent authorities and penalized where necessary, and that their impact on association in unions is under examination in accordance with the considerations of the Organisation for Economic Co-operation and Development (OECD), the United States and Canada. The Government indicates in this regard that: (i) the labour inspection services carried out 23 planned inspections in 2020 of enterprises focusing on the use of collective accords; (ii) on 15 June 2021, the territorial labour inspection departments were examining 62 cases of the undue use of collective accords; (iii) through the Special Investigation Unit, 11 claims were being examined between January 2020 and 15 June 2021 relating to the undue use of collective accords; and (iv) as a result of the action described above, the number of collective accords concluded has decreased significantly, from 253 deposited in 2016 to 73 in 2020.

The Committee also notes that the national union confederations reiterate their previous allegations in their observations concerning the anti-union impact of collective accords, even in cases where the benefits of collective accords, which apply to non-unionized workers, are not more favourable than those agreed in the corresponding collective agreements. The trade union confederations also denounce: (i) the practice of first concluding a collective accord with non-unionized workers so as to then impose during the negotiation of the collective agreement a ceiling on benefits that cannot be improved upon, which removes any relevance from the negotiations undertaken by the union, thereby acting as a powerful disincentive to trade union membership; (ii) the supervision of the Ministry of Labour in relation to the unlawful nature of collective accords is biased and ineffective, as it focuses solely on verification of whether the content of collective accords is more favourable than that of collective agreements, without examining the common practice described in the previous point nor the other anti-union strategies involved in the conclusion of collective accords; and (iii) the lower numbers of collective accords deposited in 2020 is probably the consequence of the COVID-19 pandemic, which also resulted in fewer collective agreements being concluded that year.

While noting the information provided by the Government on the action taken to control the use of collective accords on the basis of the current legislation, the Committee ***regrets*** to note that there has been no progress in taking into account the comments that it has been making for many years on the need to revise the above-mentioned legislation. The Committee is therefore bound to recall once again that *Article 4* of the Convention recognizes, as the parties to collective bargaining, employers or their organizations, on the one hand, and workers' organizations, on the other, in recognition that the latter offer guarantees of independence that may be absent in other forms of association. The

Committee has therefore always considered that direct bargaining between the enterprise and unorganized groups of workers, in avoidance of workers' organizations, where they exist, is not in accordance with the promotion of collective bargaining, as envisaged in *Article 4* of the Convention. Moreover, the Committee has repeatedly noted that in practice the negotiation of terms and conditions of employment and work by groups that do not offer sufficient guarantees to be considered as workers' organizations can be used to undermine the exercise of freedom of association and weaken the existence of workers' organizations with the capacity to defend the interests of workers independently through collective bargaining. ***In light of the above, the Committee once again urges the Government to take the necessary measures to ensure that the conclusion of collective accords with non-unionized workers (pactos colectivos) is only possible in the absence of trade union organizations. The Committee hopes that the Government will be in a position to report progress in this regard in the near future.***

Article 4. Personal scope of collective bargaining. Apprentices. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that the remuneration of apprentices is not excluded by law from the scope of collective bargaining. The Committee notes the Government's reiterated indication that, in accordance with the national legislation and the case law of the Constitutional Court, the apprenticeship contract is not a contract of employment, but is designed to help young persons who are still at the training stage. ***Recalling once again that the Convention does not exclude apprentices from its scope of application and that the parties to collective bargaining should therefore be able to decide to include the subject of their remuneration in their collective agreements, the Committee urges the Government to take the necessary measures to ensure that the remuneration of apprentices is not excluded by law from the scope of collective bargaining.***

Subjects covered by collective bargaining. Pensions. After noting the Government's indications that Legislative Act No. 1 of 2005 does not prevent the parties to collective bargaining, in both the public and private sectors, from improving on pensions through supplementary benefits based on voluntary savings, the Committee previously requested the Government to provide specific examples of collective agreements which provide for supplementary pension benefits. The Committee notes that the Government once again indicates that: (i) through voluntary savings, those covered by the Colombian pension system can make periodic contributions, or pay in amounts that are higher than the compulsory contributions set out by law, with a view to receiving a higher pension; and (ii) the possibility for a third party to pay contributions on behalf of the beneficiary makes it possible for the employer to act as a sponsor, and the possibility therefore exists for this supplementary benefit to be covered by collective bargaining. The Committee nevertheless observes that the Government has not provided specific examples of collective agreements which contain clauses of this nature. ***The Committee therefore reiterates its request for information on the application of this possibility in practice. It also invites the Government, in its activities to promote collective bargaining, to inform the social partners of the possibility, within the framework of and in accordance with the General Pensions System, to negotiate clauses in collective agreements providing for supplementary pension benefits.***

Promotion of collective bargaining in the public sector. The Committee notes with ***satisfaction*** the Government's indication that a new National State Agreement was concluded on 18 August 2021 with all the confederations in the country which benefits around 1,200,000 public sector workers. The Committee notes in particular the Government's indication that: (i) in accordance with the agreement, Decree No. 961 of 22 August 2021 was adopted setting the remuneration for positions exercised by public employees in the executive branch, autonomous regional and sustainable development corporations, and issuing other provisions; and (ii) the agreement contains a series of clauses intended to reinforce the protection of the exercise of freedom of association in the public sector. The Committee also notes the indications by the CUT, CTC and CGT which: (i) welcome the conclusion of the agreement; (ii) nevertheless regret the high level of non-compliance with previous agreements, as noted by the Commission for the verification of the agreements concluded between the National Government and workers in the State sector, which met in July and August 2021; and (iii) denounce the role played by the

Office of the Comptroller General of the Nation and its departmental offices which, through investigations into potential prejudices to the resources of public bodies, is undermining compliance with the agreements that have been concluded, and is likely to have a dissuasive effect on future negotiations. ***The Committee requests the Government to pay due attention to the observations of the trade union confederations and to indicate the action taken in this regard.***

Promotion of collective bargaining in the private sector. The Committee recalls that in its previous comments it noted with concern the very low level of coverage of collective bargaining in the private sector. The Committee also noted the indication by the trade union confederations that a series of both legal and practical obstacles and inadequacies resulted in the complete absence of collective bargaining above the enterprise level, which in turn contributed to the very low coverage of collective bargaining in the private sector. The Committee requested the Government, in consultation with the social partners, to take all measures in the near future, including legislative measures where appropriate, to promote the use of collective bargaining in the private sector at all appropriate levels.

The Committee notes the Government's indication that: (i) 194 collective agreements were signed in 2020 (in comparison with 572 in 2019, 490 in 2018 and 380 in 2017); (ii) collaboration with the Government of Canada is continuing for the development of a registration system which will make it possible to determine the coverage rate of collective bargaining; (iii) it is still planned to amend Decree No. 089 of 2014 to facilitate bargaining in a context of a multiplicity of unions by providing that, where there are several unions in the same enterprise, they will be required to form a joint bargaining committee and submit unified claims; and (iii) and the Government continues to be willing to support and accompany, without interference, the social partners when they so request. The Committee also notes that the trade union confederations: (i) place emphasis on the reduction in the number of collective agreements concluded in 2020 and point to the possible effects of the COVID-19 pandemic in this regard; (ii) regret the continuing absence of multi-level bargaining; and (iii) consider that the case of professional football is symptomatic in this respect where the clubs, the Colombian Football Federation (FCF) and the Major Division of Professional Football (*Dimayor*), institutions which, according to the trade unions confederations, are competent to determine the working conditions in the sector, refuse to bargain with the Colombian Association of Professional Footballers (ACOLFUTPRO), in relation to which the Ministry of Labour set aside the complaint by ACOLFUTPRO concerning the refusal to negotiate.

While noting the information provided by the Government, reiterating indications provided in previous reports, the Committee ***regrets*** to note that, despite the very low level of coverage of collective bargaining in the private sector, the Government does not refer to any further specific measures or initiatives adopted to resolve this situation. The Committee particularly notes with ***concern*** the absence of action to facilitate bargaining at levels higher than the enterprise level in a context in which: (i) collective bargaining at the sectoral level, in contrast with enterprise bargaining, is not covered by a specific legislative framework (with the exception of the provisions of the Substantive Labour Code relating to the possibility of extending collective agreements) and is almost non-existent in practice (with the exception of the banana sector in Urabá; and (iii) workers in small enterprises may have difficulty in gaining access to enterprise-level collective bargaining as they do not have enterprise unions, for the establishment of which a minimum of 25 members is required.

Recalling once again that, under the terms of Article 4 of the Convention, collective bargaining should be possible at all levels and should be promoted in a manner that is appropriate to national conditions and that, in accordance with Article 5(2)(d) of the Collective Bargaining Convention, 1981 (No. 154), which has been ratified by Colombia, the Government is required to ensure that collective bargaining is not hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules, the Committee requests the Government: (i) following consultations with the social partners, to take measures, including legislative measures, for the effective promotion of collective bargaining in the private sector, especially at levels higher than the

enterprise level; and (ii) to provide detailed information on the coverage rate of collective bargaining in the private sector.

Settlement of disputes. Committee for the Handling of Conflicts referred to the ILO (CETCOIT). The Committee notes the information provided by the Government on the activities of the CETCOIT, a tripartite body for the resolution of disputes relating to freedom of association and collective bargaining. The Committee notes with ***interest*** the Government's indication that: (i) in 2020 and 2021, the CETCOIT held 71 meetings, during which 23 cases were identified for the promotion of conciliation decisions and agreements, with 48 follow-up meetings; (ii) agreements were concluded in 95 per cent of the cases, with the signature of 20 reports; (iii) effect was given to the recommendation made by the Committee on Freedom of Association in relation to Case No. 2657; and (iv) the conclusion was facilitated of two collective agreements in the private sector and one agreement in the public sector. ***The Committee welcomes the results achieved by the CETCOIT and requests the Government to continue providing information in this regard.***

In its previous comments, the Committee noted the Government's indications that the international affairs subcommittee of the Standing Committee for Dialogue on Wage and Labour Policies would follow up the comments made by the Committee of Experts on the application of the Conventions ratified by Colombia and hoped that the work of the subcommittee would facilitate the adoption of the various measures requested by the Committee to give full effect to the Convention. The Committee ***regrets*** to note that it has not received further information on this subject. ***The Committee finally recalls that the Government may request ILO technical assistance in this regard.***

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

Comoros

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Workers' Confederation of Comoros (CTC), received on 1 August 2017, relating to matters examined by the Committee in the present observation, and it requests the Government to provide its comments in this regard. The Committee notes that, in response to the observations of the CTC in 2013, the Government indicates that the trade union leaders who had been dismissed have been reinstated. ***The Committee requests the Government to provide its comments on the other matters raised by the CTC, and particularly the allegations of employer pressure against trade union leaders of the CTC, the Union of Health and Education Workers and a new trade union in a communications enterprise to persuade them to end their trade union activities.***

Articles 4 and 6 of the Convention. Promotion of collective bargaining in the private and public sectors (employees of public enterprises and public servants not engaged in the administration of the State). In its previous comments, the Committee once again regretted the absence of progress in relation to collective bargaining which, according to the CTC, was not structured and had no framework at any level, and particularly that joint bodies in the public service had still not been established. The Committee notes that the CTC in its 2017 observations makes particular reference to decrees and implementing orders covering the Higher Council of the Public Service, the Joint Commission and the Medical Commission established to provide a framework for bargaining, but which have still not been signed following their preparation in 2015, thereby opening the way for regulations and measures which are not in conformity with the law to the prejudice of employees of the public service. ***While taking note of the request made by the Government in its report for technical assistance, the Committee urges the Government to take the necessary measures to promote collective bargaining in both the private and the public sectors (employees of public enterprises and public servants not engaged in the administration of the State). The Committee requests the Government to provide information on this subject.***

The Committee notes the adoption of the Act of 28 June 2012 repealing, amending and supplementing certain provisions of Act No. 84-108/PR issuing the Labour Code.

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

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

Congo

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

The Committee notes with ***deep concern*** that the Government's report, due since 2016, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. The Committee recalls that it has been raising issues concerning the observance of the Convention in an observation and a direct request, including a request to investigate serious allegations of arrests and detentions of trade unionists in the context of a teachers' strike in 2013, as well as longstanding recommendations to bring the Labour Code into conformity with the Convention concerning limitations on strike action (minimum services and sanctions) that unduly restrict the right of workers' organizations to organize their activities in full freedom and to formulate their programmes. ***Not having received any additional observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation and direct request adopted in 2020 and urges the Government to provide a full reply thereto. To this end, the Committee recalls that the Government may avail itself of the ILO's technical assistance.***

[The Government is asked to reply in full to the present comments in 2022.]

Djibouti

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

The Committee notes the observations of the General Union of Djibouti Workers (UGTD) and the Labour Union of Djibouti (UDT), received on 11 May 2021, alleging persistence in the violations of the Convention that the Committee has been examining for many years. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the General Union of Djibouti Workers (UGTD) and the Labour Union of Djibouti (UDT), received on 23 August 2019, and of Education International (EI), received on 20 September 2019, containing grave allegations of anti-union repression. ***The Committee requests the Government to provide its comments in this respect.***

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities in full freedom. In its previous comments, the Committee asked the Government to indicate the reasons for the arrest at Djibouti airport in May 2014 of Mr Adan Mohamed Abdou, Secretary-General of the Labour Union of Djibouti (UDT), who was to attend the 103rd Session of the International Labour Conference (May–June 2014) as an International Trade Union Confederation (ITUC) observer, and whose travel documents and luggage were confiscated. The Government merely indicated that it does not recognize Mr Mohamed

Abdou's status as a worker representative as he is an elected Member of Parliament. In its last report, the Government indicates that it is in the process of gathering the necessary information to explain why Mr Mohamed Abdou was prohibited from leaving the country. The Committee recalls that leaders of organizations of workers and employers should enjoy appropriate facilities for carrying out their functions, including the right to leave the country when their activities on behalf of the persons they represent so require; moreover, the free movement of these representatives should be ensured by the authorities. ***Noting with regret the failure to provide the requested information more than three years after the events, the Committee expects that the Government will indicate without delay the reasons why Mr Mohamed Abdou was prohibited from leaving the country, which prevented him from participating in the International Labour Conference in May and June 2014, and specify whether this prohibition has been lifted.***

Trade union situation in Djibouti. The Committee also notes the conclusions of the Credentials Committee at the 106th Session of the International Labour Conference (June 2017) regarding an objection concerning the nomination of the Workers' delegation of Djibouti. In this respect, the Committee notes with ***concern*** the Credentials Committee's indication that confusion continues to reign over the trade union landscape in Djibouti. The Credentials Committee particularly refers to the information provided by the appealing organizations indicating that the situation of trade unions has deteriorated and that the phenomenon of "clone unions" (trade unions established with the Government's support) now also affects primary unions. In this respect, the Committee recalls that the trade union situation in Djibouti has been the subject of concerns expressed by the supervisory bodies, including the Committee on Freedom of Association, since many years. ***Noting that the Conference Committee calls upon the ILO supervisory bodies to take all necessary measures to provide, with the cooperation of the Government, before the next session of the Conference, a reliable, comprehensive and up-to-date assessment of the situation of trade union movements and freedom of association in Djibouti, the Committee expects that the Government will ensure the development of free and independent trade unions in conformity with the Convention and that it will take all necessary measures to allow for an evaluation of the trade union situation in Djibouti, with the technical assistance of the Office if it so desires.***

Legislative issues. The Committee recalls that its comments have focused, for many years, on the need to take measures to amend the following legislative provisions:

– section 5 of the Act on Associations, which requires organizations to obtain authorization prior to their establishment as trade unions; and

– section 23 of Decree No. 83-099/PR/FP of 10 September 1983, which confers upon the President of the Republic broad powers to requisition public officials.

Noting with regret that the Government confines itself to indicating that it is planning a revision of the Labour Code, the Committee expects that the Government will take the necessary measures to amend the above provisions and that it will indicate in its next report specific progress in this regard.

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

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

Dominica

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report, due since 2013, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. The Committee recalls that it has been raising issues concerning the observance of the Convention in relation to certain sections of the Industrial Relations Act (Act No. 18 of 1986) concerning compulsory arbitration and which unduly restrict the right of workers' organizations to organize their activities in full freedom and to formulate their programmes. The Government has been requested to make the following amendments to the Act: (i) exclude the banana, citrus and

coconut industries as well as the port authority, from the schedule of essential services annexed to the Act, which makes it possible to stop a strike in these sectors by compulsory arbitration, and (ii) amend sections 59(1)(b) and 61(1)(c) of the Act, which empower the Minister to refer disputes to compulsory arbitration if they concerned serious issues in his or her opinion. ***Not having received any additional observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation adopted in 2011 and urges the Government to provide a full reply thereto. To this end, the Committee recalls that the Government may avail itself of the ILO's technical assistance.***

[The Government is asked to reply in full to the present comments in 2022.]

Ecuador

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

The Committee notes the Government's reply to the joint observations of the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC) and the Ecuadorian Confederation of Unitary Class Organizations of Workers (CEDOCUT), received on 1 October 2020, which are concerned with issues that the Committee examines in the present comment. The Committee also notes the observations of Public Services International in Ecuador (PSI-Ecuador), received on 1 September 2021, which are concerned with issues examined in the present comment, as well as the Government's reply in this regard.

Technical assistance. The Committee recalls that in December 2019 the Office, at the request of the Government, carried out a technical assistance mission, which presented the tripartite constituents with a draft road map for initiating a tripartite dialogue with a view to adopting measures to address the comments of the ILO supervisory bodies. The Committee notes the Government's indication that the technical assistance provided in 2019 and the draft road map above-mentioned did not result in any practical action. The Committee also takes note of the Government's indication that for the time being it wishes to receive technical assistance only with regard to tripartite dialogue with the aim of improving and strengthening communication between the Government and the social partners. ***Noting with regret that no action has been taken to follow up the technical assistance provided by the Office in December 2019 concerning the measures to address the comments of the supervisory bodies, the Committee hopes that the technical assistance that the Government wishes to receive will be provided very soon so that the subsequent strengthening of social dialogue enables progress in taking the necessary measures to bring the legislation into line with the Convention with respect to the points set out below.***

Application of the Convention in the private sector

Article 2 of the Convention. Excessive number of workers (30) required for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees. Possibility of creating trade union organizations by branch of activity. For several years the Committee has been asking the Government to take the necessary steps, in consultation with the social partners, to revise sections 443, 449, 452 and 459 of the Labour Code in such a way as to: (i) reduce the minimum number of members required to establish workers' associations and enterprise committees; and (ii) enable the establishment of primary-level unions comprising workers from several enterprises. The Committee notes the Government's indication that: (i) fixing a minimum number of workers and limiting associations to the level of an enterprise for the establishment of a trade union is not intended to restrict or limit the creation of this type of organization, but seeks to ensure the representativeness of the trade union organization in its relations with the employers, demonstrating cohesion and agreement on the part of the majority; and (ii) with regard to establishing labour organizations with workers from different

enterprises, the Labour Code does not provide for a form of association that would allow for such organizations. In this regard, the Committee recalls that: (i) the requirement of a reasonable level of representativeness to conclude collective agreements must not be confused with the conditions required for the establishment of trade union organizations; (ii) the minimum number of members must be kept within reasonable limits so as not to obstruct the free establishment of organizations as guaranteed by the Convention; and (iii) the Committee generally considers that the requirement of a minimum number of 30 members to establish enterprise unions in countries where the economy is characterized by the prevalence of small enterprises hinders the freedom to establish trade unions. With regard to section 449 of the Labour Code, which requires trade unions to consist of workers from the same enterprise, the Committee recalls that, under *Articles 2* and *3* of the Convention, it should be possible to establish primary-level trade unions comprising workers from several enterprises. The Committee recalls that ASTAC, in its observations of 2020, indicated that the Ministry of Labour had refused to register it as a trade union on the grounds that it was not formed of workers from the same enterprise. The Committee notes the Government's indication, in reply to ASTAC's observations, that ASTAC brought an action for constitutional protection and, by a ruling issued on 25 May 2021, the Provincial Court of Justice of Pichincha ordered the Ministry, pursuant to revision and analysis of the documents of ASTAC, to proceed with its registration as a trade union and also to regulate the exercise of the right to freedom of association by branch of activity so as to avoid any recurrence of such situations. The Government indicates that, even though it has filed an extraordinary motion for protection which is before the Constitutional Court of Justice, this action does not suspend the obligation to comply with the ruling, and so the Directorate of Labour Organizations at the Ministry of Labour continues to review the requirements of the present procedure for establishing ASTAC, in accordance with the ruling of 25 May 2021. ***Duly noting the ruling concerning ASTAC, the Committee firmly hopes that steps will be taken to proceed with the registration of ASTAC as a trade union. In particular, the Committee welcomes the fact that the ruling contributes towards enabling the establishment of trade union organizations by branch of activity, and trusts that the Committee's view on this important development in the application of the Convention will be brought to the attention of the Constitutional Court of Justice. In light of the above, the Committee fully expects that the Government will take the necessary steps, in consultation with the social partners, to revise the sections of the laws referred to above in the manner indicated and requests the Government to keep it informed of developments in this respect.***

Article 3. Compulsory time limits for convening trade union elections. The Committee has been asking the Government to amend section 10(c) of Ministerial Decision No. 0130 of 2013 issuing regulations on labour organizations, which provides that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiry of their term of office, as set out in their respective union constitutions; such amendment being necessary to ensure that the consequences of any delay in holding elections shall be determined by the union constitutions themselves, subject to the observance of democratic rules. The Committee notes the Government's reiteration that the regulations in question were approved with the participation of representatives of several labour organizations and trade union confederations, with the intention of resolving the issues faced by workers' organizations when the latter are without leadership and it is impossible to convene new elections – providing a responsive, simplified mechanism in which the principles of participation, transparency and democracy predominate. The Government also indicates that, with the objective of providing legal certainty during the health emergency resulting from the COVID-19 pandemic, the Ministry of Labour exceptionally authorized the extension of the terms of office of executive committees of labour organizations for up to 90 days when their terms had expired after the last state of emergency. ***Recalling that under Article 3 of the Convention, trade union elections are an internal matter for organizations and should primarily be regulated by their constitutions, and observing that the consequences established by the regulations in the event of failure to respect the***

prescribed deadlines – the loss of powers and competencies for trade union committees – involve a serious risk of paralysing the capacity for trade union action, the Committee once again requests the Government to amend section 10(c) of the regulations in the manner indicated and to keep it informed of any developments in this respect.

Article 3. Requirement of Ecuadorian nationality to be eligible for trade union office. The Committee recalls that in 2015 it noted with satisfaction that section 49 of the Labour Justice Act had amended section 459(4) of the Labour Code and removed the requirement of Ecuadorian nationality to be eligible for trade union office. The Committee notes that the Government confirms that, as previously indicated by the social partners, section 49 was declared unconstitutional by ruling No. 002-18-SIN-CC of 2018. ***The Committee requests the Government to send a copy of the aforementioned ruling***. The Government indicates in this regard that it is up to the legislative authorities to analyse and, if they see fit, to amend this prohibition. ***Recalling that under Article 3 of the Convention, workers' and employers' organizations should have the right to elect their representatives in full freedom, the national legislation must allow foreign workers to serve as trade union officials if permitted under their constitutions and rules, at least after a reasonable period of residence in the host country, the Committee accordingly requests the Government to amend section 459(4) of the Labour Code and to keep it informed of any developments in this regard.***

Elections as officers of enterprise committees of workers who are not trade union members. The Committee previously indicated to the Government the need to amend section 459(3) of the Labour Code in such a way that workers who are not enterprise committee members may stand for office only if the enterprise committee's own statute envisages that possibility. The Committee notes the Government's indication that the purpose of the legal provision is to ensure that all members have the right to participate and that in any case it will depend on how the right is formulated in the statute. ***Recalling that the legislative provision enabling workers who are not trade union members to stand for office on an enterprise committee is contrary to trade union independence as recognized by Article 3 of the Convention, the Committee once again requests the Government to take the necessary steps to amend the above-mentioned provision of the Labour Code and to keep it informed of any developments in this respect.***

Application of the Convention in the public sector

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and to join organizations of their own choosing. The Committee previously noted that although section 11 of the Basic Act reforming the legislation governing the public sector (Basic Reform Act), adopted in 2017, establishes the right to organize for public servants, certain categories of public service staff were excluded from that right, especially those under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts. Recalling that under *Articles 2* and *9* of the Convention, with the sole possible exception of the members of the police and of the armed forces, all workers, including permanent or temporary public servants and those under fixed-term or occasional services contracts, have the right to establish and to join organizations of their own choosing, the Committee asked the Government to take the measures required to bring the legislation into line with the Convention. The Committee notes the Government's indication that: (i) the public institutions of the State are working to ensure that public servants have their respective definitive appointments, provided that their activities are not temporary; and (ii) public servants on statutory, fixed-term contracts and those who are subject to free appointment and removal from office are officials who technically could perform roles equivalent to those of employers in the private sector, and so their participation in the exercise of public servants' right and freedom to organize would cause conflicts of interest. In this regard, the Committee is bound to emphasize that even though barring public servants who exercise authority from the right to join trade unions which represent other public sector workers is not necessarily incompatible with the Convention, this depends on two conditions: (i) senior public

officials should be entitled to establish their own organizations to defend their interests; and (ii) the legislation should limit this category to persons exercising senior managerial or policymaking responsibilities (see 2012 General Survey on the fundamental Conventions, paragraph 66). ***In light of the above and once again recalling that under Articles 2 and 9 of the Convention, with the exceptions previously mentioned, all workers have the right to establish and to join organizations of their own choosing, the Committee once again requests the Government to take the necessary measures to bring the legislation into line with the Convention.***

Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. Organizations of public servants other than the committees of public servants. The Committee observed that, according to the provisions of the Basic Reform Act and Ministerial Decision MDT-2018-0010 regulating the right to organize of public servants, the committees of public servants, which must comprise "50 per cent plus one" of the staff of a public institution, have the responsibility for defending the rights of public servants and are the only bodies which can call a strike. Recalling that trade union pluralism must be possible in all cases, the Committee has been asking the Government to indicate what means are available to organizations of public servants, other than the committees of public servants, for defending the occupational interests of their members. The Committee notes the Government's indication that: (i) public servants' right to organize is duly guaranteed by the Basic Public Service Act (LOSEP) (amended by the Basic Reform Act); and (ii) Decision No. SNGP0008-2014 of the National Policy Management Secretariat promotes the functioning of organizations which exercise the constitutional right of association and organization without there being any legal basis for dealing with these organizations in the Basic Reform Act. The Committee observes that the Decision No. SNGP0008-2014 to which the Government refers, establishes the competencies of the institutions of the State for regulating social organizations created under the Civil Code. It also notes the Government's indication, in the reply to the observations of PSI-Ecuador, that the LOSEP recognizes the committees of public servants as the only form of organization. In light of the above, the Committee is bound once again to recall that under *Article 2* of the Convention, trade union pluralism must be possible in all cases, and that no organization of public servants should be deprived of the essential means for defending the occupational interests of its members, organizing its administration and activities, and formulating its programmes. ***Underlining the fact that all organizations of public servants must be able to enjoy the various guarantees established in the Convention, the Committee requests the Government to provide information on organizations of public servants other than the committees of public servants and to indicate in detail what means they have for defending the occupational interest of their members. The Committee also requests the Government to provide a copy of the updated text of the LOSEP and to take the necessary steps to ensure that this law does not restrict recognition of the right to organize to the committees of public servants as the sole form of organization.***

Articles 2, 3 and 4. Registration of associations of public servants and their officers. Prohibition of the administrative dissolution of such associations. The Committee previously asked the Government to take the necessary measures to ensure that the rules of Decree No. 193, which retains engagement in party-political activities as grounds for administrative dissolution, do not apply to associations of public servants whose purpose is to defend the economic and social interests of their members. The Committee notes the Government's indication that party politics are the sum total of activities aimed at governing society from a specific ideological or philosophical standpoint and that these activities are prohibited for trade union organizations since the unions' objectives, regardless of political affinity, must seek and focus on the economic and social improvement of their members. It indicates that the amendment of the Decree is a matter for the President of the Republic in any case. ***Recalling that defending the interests of their members requires associations of public servants to be able to express their views on the Government's economic and social policy and that Article 4 of the Convention prohibits the suspension or administrative dissolution of such associations, the Committee firmly urges the Government to take the necessary steps to ensure that the rules of Decree No. 193 do not apply to***

associations of public servants which have the purpose of defending the economic and social interests of their members.

Article 3. Right of workers' organizations and associations of public servants to organize their activities and to formulate their programmes. The Committee previously asked the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code (COIP), which provides for imprisonment of one to three years for stopping or obstructing the normal provision of a public service, so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike. The Government previously indicated that this matter was going to be referred to the relevant state institutions in order to consider whether the Code should be amended. The Committee notes that the Government focuses its reply on emphasizing that public servants' right to strike is set forth in Chapter III of the LOSEP, and that the criminal penalties are only imposed in cases where strikers act unlawfully, namely, by totally blocking access for the general public to public services, committing acts of violence or causing damage to public property. The Committee recalls in this regard that it has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property) (see 2012 General Survey, paragraph 158). ***In light of the above, the Committee once again urges the Government to take the necessary measures to ensure that section 346 of the Basic Comprehensive Penal Code (COIP) is amended in the manner indicated and to keep it informed of any developments in this regard.***

Administrative dissolution of the National Federation of Education Workers (UNE). In its last comment, having noted the registration of social organizations related to the UNE, (which was dissolved by an administrative act issued by the Under-Secretariat of Education in 2016), the Committee asked the Government to take the necessary steps to ensure the registration of the UNE as a trade union organization with the Ministry of Labour, if the organization so requested. It also asked the Government to ensure the full return of the property seized from the UNE as well as the removal of any other consequences resulting from the administrative dissolution of the UNE. The Committee notes the Government's indication that: (i) the UNE opted to register as a social organization and there are no procedures pending at the Ministry of Labour in which the UNE applied for registration as a trade union organization; (ii) in the 2019–21 period, 38 social organizations were registered under the UNE title; and (iii) by a decision of 7 June 2021, the Under-Secretariat of Education of the Metropolitan District of Quito approved the constitution of the organization called the "National Federation of Education Workers (UNE-E)" and granted it legal personality. While duly noting the detailed information from the Government, the Committee notes that, according to PSI-Ecuador, the registration of the UNE as a trade union organization and not as a social organization is facing obstruction because of legal confusion and the lack of application of the Convention in its sector. ***The Committee requests the Government to indicate whether the registration of the UNE-E with the Under-Secretariat of Education of the Metropolitan District of Quito means that the UNE has been able to resume its activities of defending the occupational interests of its members. The Committee also once again requests the Government to take all necessary measures to ensure the registration of the UNE as a trade union organization with the Ministry of Labour, if the UNE so wishes. The Committee also once again requests the Government to ensure the full return of the property seized as well as the removal of any other consequences resulting from the administrative dissolution of the UNE, and to provide information in this regard.***

The Committee notes with ***regret*** that to date it has been unable to observe progress on the adoption of measures needed to bring the legislation into line with the Convention. The Committee

notes the Government's indication that, because of the upheaval caused by the COVID-19 pandemic, it is currently giving priority to an Opportunities Bill, which incorporates the different views of the stakeholders in the labour and social spheres and through which the Government is endeavouring to stimulate and revitalize the labour market. ***While taking due note of these indications, the Committee recalls the fundamental importance of ensuring the full application of the Convention to tackle the consequences of the pandemic and urges the Government to make the necessary efforts to adopt specific measures in relation to the points highlighted in this comment.*** In this regard, the Committee notes that the Ministry of Labour, through the Directorate of Labour Organizations, expresses the intention of collaborating on any legislative initiative aimed at improving the exercise of workers' rights. ***The Committee hopes that the technical assistance that the Government wishes to receive to strengthen social dialogue will be provided very soon and that its results enable progress with regard to the matters raised in the present comment. In this regard, the Committee hopes that any legislative reforms undertaken, in consultation with the social partners, will contribute towards ensuring observance of the rights established by the Convention.***

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

[The Government is asked to reply in full to the present comments in 2022.]

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

The Committee notes the Government's reply to the joint observations of the Ecuadorian Confederation of Unitary Class Organizations of Workers (CEDOCUT) and the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC), received on 1 October 2020.

The Committee also notes the observations of Public Services International in Ecuador (PSI-Ecuador), received on 1 September 2021, on issues examined by the Committee in the present comment, and also the Government's reply in this regard.

Technical assistance. The Committee recalls that in December 2019 the Office, at the request of the Government, carried out a technical assistance mission which presented the tripartite constituents with a draft road map for initiating a tripartite dialogue with a view to adopting measures to address the comments of the ILO supervisory bodies. The Committee notes the Government's indication that, although the undertaking given previously did not result in practical action, the Government wishes to receive technical assistance, for the time being with regard to tripartite social dialogue. ***Noting with regret that the Government has not taken action to follow up the technical assistance provided by the Office in December 2019 concerning measures to respond to the comments of the ILO supervisory bodies, the Committee firmly hopes that the assistance in which the government has expressed an interest will be given practical effect very soon and that any strengthening of social dialogue that results from it enables progress to be made with regard to adopting the measures needed to bring the legislation into line with the Convention with respect to the points set out below.***

Application of the Convention in the private sector

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. For many years, the Committee has been referring to the need to include provisions in the legislation that guarantee protection against acts of anti-union discrimination at the time of access to employment. The Committee notes that the Government reiterates that the labour regulations in force give an adequate level of protection and that it does not consider it necessary to issue an additional standard in this respect. ***Recalling that Article 1 of the Convention covers the prohibition of anti-union discrimination at the time individual workers are hired, so that access to employment is not made subject to the condition that workers shall not join a union or relinquish union membership, as well as practices such as "blacklisting" members to prevent them being hired, the Committee underlines the need for the***

above-mentioned provisions to be included in the legislation and requests the Government to provide information on any measures adopted in this respect.

Article 4. Promotion of collective bargaining. The Committee recalls that in accordance with section 221 of the Labour Code, collective labour agreements must be concluded with the enterprise committee or, if one does not exist, with the organization with the largest number of worker members, provided that the latter represents over 50 per cent of the workers in the enterprise. The Committee previously urged the Government to adopt the necessary measures, in consultation with the social partners, to amend section 221 so that if there is no organization that represents more than 50 per cent of the workers, minority trade unions can, either separately or jointly, negotiate at least on behalf of their own members. The Committee notes that the Government reiterates that this requirement for the negotiation of a collective agreement is closely connected to the principles of democracy, participation and transparency since the benefits obtained in the collective agreement apply to all workers in the enterprise or institution. The Committee once again points out that while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, the Committee considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members (see 2012 General Survey on the fundamental Conventions, paragraph 226). The Committee recalls that, even though the requirement of representativeness for signing collective agreements is fully compatible with the Convention, the level of representativeness set should not be such as to hinder the promotion and implementation of free and voluntary collective bargaining as referred to by *Article 4* of the Convention. The Committee recalls that in previous comments it noted the low rate of coverage of collective bargaining in the private sector. The Committee observes that, according to the statistics provided by the Government, between 2019 and August 2021 a total of 45 collective agreements were signed in the private sector. ***In light of the above, the Committee urges the Government to take the necessary measures, after consulting the social partners, to amend section 221 of the Labour Code so that if there is no organization comprising more than 50 per cent of the workers, trade unions can, either separately or jointly, negotiate at least on behalf of their own members. The Committee requests the Government to provide information on all the measures taken or envisaged in this respect. The Committee also requests the Government to continue providing information on the number of collective agreements signed and in force in the country, and also the sectors of activity (including agriculture and the banana sector) and the number of workers covered by them.***

Application of the Convention in the public sector

Articles 1, 2 and 6. Protection of public sector workers who are not engaged in the administration of the State against acts of anti-union discrimination and interference. In its previous comments, the Committee noted the protections against anti-union discrimination and interference, including with regard to the "compulsory purchase of redundancy mechanism", set out in the Basic Act reforming the legislation governing the public service (Basic Reform Act). Having observed that the said Act contained provisions which explicitly protected Civil Service Committee officers, the Committee asked the Government to take the necessary measures to ensure that the legislation contained provisions that explicitly protect the leaders of all organizations of public servants against acts of anti-union discrimination and interference. The Committee also asked the Government to indicate the penalties and compensation applicable to acts of anti-union discrimination and interference committed in the public sector and to provide information on the outcome of the legal action brought to have the compulsory redundancy purchase mechanism declared unconstitutional. The Committee notes the Government's indication that protection against acts of discrimination and the right to form trade unions are established through explicit standards, both in the Constitution of the Republic and section 187 of the Labour Code and in the Basic Public Service Act (LOSEP), which prohibits all acts of

discrimination against public servants. The Government considers that the labour regulations in force provide an adequate level of protection for public servants. The Committee observes that the Committee on Freedom of Association recently examined allegations of dismissals of leaders of organizations of public servants, stating that it trusted that the Government would take the necessary measures to ensure that the legal provisions applicable to the public sector, currently focusing on the protection of Civil Service Committee officers, protect all leaders of public servants' organizations against possible acts of anti-union discrimination (see Report No. 393, March 2021, Case No. 3347, paragraph 433). The Committee once again emphasizes that it is important that the legislation should grant the same type of protection against possible acts of anti-union discrimination and interference to all leaders of all organizations of public servants on equal terms. ***The Committee therefore urges the Government to take the necessary steps to ensure that the legislation applicable to the public sector contains provisions that explicitly protect the leaders of all organizations of public servants against acts of anti-union discrimination and interference, and also provisions that establish penalties constituting a deterrent against committing such acts. The Committee requests the Government to provide information on any measures taken or envisaged in this regard.*** Furthermore, with regard to the legal action brought to have the compulsory redundancy purchase mechanism declared unconstitutional, the Committee notes the indication by PSI-Ecuador that the Constitutional Court, by a ruling issued on 28 October 2020, declared the compulsory nature of the purchase of redundancy with compensation to be unconstitutional. The Committee recalls that the compulsory redundancy purchase mechanism allowed the public administration, in exchange for payment of compensation, to unilaterally terminate the employment of public servants without the need to indicate the grounds for such termination. The Committee recalls that it previously underlined the importance of measures being taken to ensure that use of the compulsory redundancy purchase mechanism did not give rise to acts of anti-union discrimination. The Committee duly notes the Constitutional Court ruling and observes that it indicates that the rules governing redundancy purchase with compensation will remain in force but application of that mechanism must not be compulsory. The Committee observes that PSI-Ecuador considers that the ruling represents an important step forward but does not provide the protection against anti-union discrimination provided by the Convention since, although it removes the word "compulsory" and also the obstacle to returning to work in the public sector for persons who have been dismissed, it leaves victims unprotected, with no consideration of restitution or compensation. PSI-Ecuador also alleges that the Government has so far not complied with the ruling as regards removing the obstacle to returning to work in the public sector. ***Recalling that the trade unions previously denounced the use of the compulsory redundancy purchase mechanism to dismiss public servants for their trade union activities, the Committee requests the Government to send its comments in this regard.***

Articles 4 and 6. Collective bargaining for public sector workers who are not engaged in the administration of the State. In its previous comments, the Committee observed that the Basic Reform Act and Ministerial Order No. MDT-2018-0010 did not recognize the right to collective bargaining for public servants and that only public sector workers governed by the Labour Code could engage in collective bargaining. The Committee also noted that the 2015 amendments to the Constitution excluding the entire public sector from the scope of collective bargaining were annulled by the Constitutional Court (ruling No. 018-18-SIN-CC of 1 August 2018) and that on 4 December 2019 the Ministry of Labour issued Ministerial Order No. 373 in order to apply the Constitutional Court ruling. The Committee asked the Government to ensure the full implementation of the above-mentioned Ministerial Order in the various state institutions and urged the Government to intensify its efforts to reopen an in-depth debate with the trade unions concerned with a view to establishing an adequate collective bargaining mechanism for all categories of employees in the public sector covered by the Convention. The Committee notes the Government's indication that although there are no regulations on collective bargaining mechanisms for public servants, since this right is conferred only on other

categories of workers in the sector, the Government reiterates its undertaking to promote tripartite dialogue in this respect. With regard to the application of Ministerial Order No. 373, the Government indicates that: (i) on 6 February 2020, the Directorate for Legal Advice issued a legal opinion on the applicability of the Order; (ii) on 15 May 2020, the Ministry issued a series of circulars asking public sector entities to provide information on compliance with the Order; (iii) a total of 87 public sector institutions provided documentation and 57 of them changed the employment regime for a total of 346 public servants from the Basic Public Service Act (LOSEP) to the Labour Code; and (iv) the Ministry changed the employment regime for 242 workers. The Committee duly notes the foregoing and also observes that, according to the Government, between 2019 and August 2021, a total of 85 collective agreements were signed in the public sector. The Committee also notes that, according to PSI-Ecuador, the Basic Act on humanitarian support to combat the health crisis resulting from COVID-19 (Humanitarian Support Act), published on 22 June 2020, imposes restrictions on collective bargaining for public sector workers governed by the Labour Code. PSI-Ecuador indicates that various legal actions to declare the Act unconstitutional have been brought in this regard and that the Constitutional Court has not yet handed down any rulings. Moreover, observing that the legislation continues not to recognize the right of collective bargaining for public servants, the Committee is bound to recall once again that, under *Articles 4* and *6* of the Convention, persons who are employed in the public sector but by their functions are not directly engaged in the administration of the State (employees in public enterprises, municipal employees and those in decentralized entities, public sector teachers, transport sector personnel, etc.) are covered by the Convention (see 2012 General Survey, paragraph 172) and should therefore be able to negotiate collectively their conditions of employment, including their wage conditions, since mere consultation of the unions concerned is not sufficient to meet the requirements of the Convention in this respect (see 2012 General Survey, paragraph 219). ***The Committee therefore urges the Government to reopen an in-depth debate with the trade union organizations concerned with a view to establishing an adequate collective bargaining mechanism for all categories of public sector employees covered by the Convention. The Committee requests the Government to provide information on the collective agreements signed with public sector workers and also information on the outcome of the legal actions to declare the Humanitarian Support Act unconstitutional.***

The Committee notes with ***regret*** that it has so far been unable to observe progress with regard to the adoption of measures needed to bring the legislation into line with the Convention. The Committee notes the Government's indication that, because of the upheaval caused by the COVID-19 pandemic, it is currently giving priority to an Opportunities Bill, which incorporates the different views of the stakeholders in the labour and social spheres and through which the Government is endeavouring to stimulate and revitalize the labour market. ***While taking due note of these indications, the Committee recalls the fundamental importance of ensuring the full application of the Convention to tackle the consequences of the pandemic and urges the Government to make the necessary efforts to adopt specific measures in relation to the points highlighted in this comment.*** In this regard, the Committee notes that the Ministry of Labour, through the Directorate of Labour Organizations, expresses the intention of collaborating on any legislative initiative aimed at improving the exercise of workers' rights. ***The Committee hopes that the technical assistance referred to by the Government for strengthening social dialogue is put into practice very soon and that its results enable progress with regard to the matters raised in the present comment. In this regard, the Committee hopes that any legislative reforms undertaken, in consultation with the social partners, will contribute towards ensuring observance of the rights established by the Convention.***

[The Government is asked to reply in full to the present comments in 2022.]

Egypt

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

The Committee takes note of the observations made by Public Services International (PSI) on behalf of the Center for Trade Union Workers' Services (CTUWS) received on 1 September 2021 and those of the International Trade Union Confederation (ITUC) received on 6 September 2021 on matters concerning the application of the Convention in law and in practice. The ITUC refers in particular to acts of anti-union discrimination and persecution allegedly suffered by representatives of trade unions established in government departments. ***While noting the receipt on 24 November 2021 of the Government's comments in Arabic in response to these observations, which it will examine in detail with the Government's next report, the Committee trusts that all measures are being taken to ensure that the persons concerned enjoy the guarantees of the Convention.***

Articles 1, 2 and 3 of the Convention. Adequate protection against anti-union discrimination and interference. In its previous comments, the Committee requested the Government to indicate the legislative provisions which ensure full protection in respect of acts of anti-union discrimination and interference and specifically to indicate the sanctions and remedies provided for this purpose.

The Committee takes due note of the Government's indication that the Trade Union Organizations Law No. 213 of 2017 prohibits employers from taking any measure that impedes the exercise of union activity under penalty of a fine of not less than 5,000 Egyptian pounds and not exceeding 10,000 pounds (approximately US$320 to US$640). Further measures of protection are afforded through procedural safeguards for dismissal or transfer of trade union officers or candidates. Additional penalties are provided if the employer refrains from implementing a final court judgment. As for the draft Labour Code, the Government indicates that numerous methods and mechanisms afford protection for workers, including conciliation, mediation and arbitration, and further refers to the provisions on the establishment of labour courts.

Articles 4 and 6. Collective bargaining for public servants not engaged in the administration of the State. The Committee recalls that its previous comments concerned the exclusion from the scope of application of the draft Labour Code of the right to collective bargaining of civil servants of state agencies, including civil servants of units under local governments. The Committee notes that the Government refers once again to the Trade Union Organizations Law under which all civil workers have the right to form and join unions and to enjoy all the rights and privileges afforded to such organizations, including collective bargaining and consultation to defend their rights.

The Committee is however obliged to observe once again that the Trade Union Organizations Law does not establish mechanisms and procedures for the engagement in collective bargaining, while the draft Labour Code has entire chapters devoted to collective bargaining, collective agreements and collective disputes. The Committee also recalls that while Act No. 81 on the civil service and its implementing decree created a Civil Service Council with an advisory role as well as human resources committees in each department: (i) these bodies are mainly composed of representatives of the administration and a trade union representative whose appointment is mainly the responsibility of the Federation of Egyptian Trade Unions; and (ii) the law and its decree make no mention of other forms of representation of public service personnel or of collective bargaining mechanisms open to them.

Moreover, the Committee notes the PSI request that civil workers not be excluded from the Labour Law so that they may be able to engage in collective bargaining as set out therein. ***Recalling that Article 4 of the Convention provides that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreement,***

the Committee requests the Government, in consultation with the social partners, to take the necessary measures, for example, by revising Act No. 81 or by extending the scope of the Labour Code, to ensure that civil servants not engaged in the administration of the State have an effective framework in which they may engage in collective negotiations over their working and employment conditions through the trade union of their choice. The Committee requests the Government to provide information on the steps taken in this regard.

Finally, the Committee recalls that it has been raising comments relating to restrictions on collective bargaining rights in the Labour Code No. 12 of 2003 for several years, many of which would appear to be addressed in the draft Labour Code. ***Noting the Government's indication that it will send a copy of the new Labour Code as soon as it is adopted, the Committee trusts that the Code will be adopted in the very near future so as to ensure greater conformity with the Convention and requests the Government to provide information on the progress made in this regard.***

Equatorial Guinea

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

The Committee notes with ***deep concern*** that the Government's report, due since 2007, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. The Committee recalls that it has been raising issues concerning the observance of the Convention in an observation. It has formulated longstanding recommendations to bring the Labour legislation into conformity with the Convention concerning limitations that unduly restrict the right of workers to organize and to formulate their programmes, including the right to establish enterprise trade unions, the right to strike and the determination of essential services, as well as the refusal to recognize in practice a number of workers' organizations by rejecting their registration requests. ***Not having at its disposal any indication of progress on these pending matters, despite the technical assistance that the Office provided to the country on several occasions, the Committee refers to its previous observation adopted in 2020 and urges the Government to provide a full reply thereto.***

[The Government is asked to reply in full to the present comments in 2022.]

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

The Committee notes with ***deep concern*** that the Government's report, due since 2007, has not been received. In the light of its urgent appeal to the Government in 2020, the Committee is proceeding with the examination of the application of the Convention on the basis of the information at its disposal. The Committee recalls that it previously raised questions about compliance with the Convention in an observation. Having noted the allegations of the International Trade Union Confederation (ITUC) concerning the refusal of the authorities to recognize a number of trade unions, the Committee recalled that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention. The Committee also made recommendations to bring the labour legislation into conformity with the Convention, in particular with regard to the right to organize and to collective bargaining of workers in the public administration, and requested the Government to provide detailed information on the application of the Convention to public servants not engaged in the administration of the State. ***In the absence of any indication of progress on these pending issues, despite the technical assistance the Office has provided to the country on several occasions, the Committee refers to its previous observation adopted in 2020 and urges the Government to reply in full to these comments.***

[The Government is asked to reply in full to the present comments in 2022].

Eritrea

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

Civil liberties. In its previous comments, the Committee repeatedly requested the Government to provide information on how it ensures the right of trade unions to hold public meetings and demonstrations. The Committee notes that the Government affirms in its report that the right of trade unions to hold public meetings and demonstrations is secured both in law and in practice, however, it once again provides no specific information on any measures taken to ensure protection of this right. ***Recalling that the right of trade unions to hold public meetings and demonstrations is an essential aspect of freedom of association, the Committee once again requests the Government to provide specific information regarding how the right is secured both in law and in practice.***

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Compulsory national service. In its previous comment, the Committee had urged the Government to change its law and practice, to ensure that Eritrean nationals are not denied the right to organize beyond the legally restricted period of military service, during which they would perform work of purely military character.

The Committee recalls that the population has been mobilized since the 1998–2000 border war with Ethiopia. It notes that recent reports of several United Nations human rights bodies and procedures, including the Committee on Elimination of Discrimination against Women (CEDAW/C/ERI/CO/6, paragraph 10), and the Special Rapporteur on the situation of human rights in Eritrea (A/HRC/44/23, paragraph 32), indicate that national service continues to be of an indefinite period.

The Committee notes the Government's indication that conscripts may be called to perform non-military activities only in genuine cases of emergency or force majeure and makes a particular reference to the threat of famine. In this regard, while the Committee takes due note of the serious food security challenges faced by the country, it also recalls that under the Convention, workers in agriculture, natural resource and eco-system management and other development activities aiming at ensuring food security have the right to establish and join organizations of their own choosing. It observes in this respect that in Eritrea, National Service Proclamation 82/1995 allows the assignment to development work of servicemen and women, who, as members of the armed forces, are excluded from all labour rights including the right to freedom of association, both during active national service and reserve military service. The Committee considers that depriving workers of their right to freedom of association through assigning men and women to work in development projects in the framework of compulsory national service, which remains of indefinite duration, is contrary to the obligations of Eritrea under the Convention, as such work – even if aimed to ensure food security – may not be excluded from the Convention's scope of application.

The Committee notes that the Government refers to its policy of self-reliance in protecting people from hunger or force majeure, which would entail that as a developing country, it must be given sufficient time to give effect to the Convention. In this regard, the Committee recalls that ensuring respect for fundamental principles and rights at work, such as the freedom of association rights and guarantees set out in the Convention, results in undeniable benefits to the development of human potential and economic growth in general and therefore contributes to economic recovery, social justice and sustainable peace (see the 2012 General Survey on the fundamental Conventions, paragraph 4).

In view of the above considerations, the Committee once again urges the Government to take all the necessary measures so as to ensure that Eritrean nationals are not denied the right to organize beyond the period of military service, during which they would perform work only of a purely military character.

Civil servants. Since its initial comments, the Committee has consistently requested and urged the Government to expedite the process of drafting the Civil Service Code to ensure that the right of civil servants to organize is guaranteed, given that these workers are excluded from the scope of the Labour Proclamation. The Committee notes the Government's indication that certain groups such as teachers, medical doctors, nurses, electrical contractors and engineers, composed mostly of civil servants, have established and registered professional associations under articles 404 and 406 of the transitional civil code of Eritrea. The Government also once again indicates that the Civil Servants' Code of Eritrea is still at the final stage of drafting, the same indication it has given for a number of years. The Committee understands that civil law associations do not have the same rights as labour law associations in terms of representation of the occupational interests of their members in relation to the employer and the authorities. They also are not covered by labour law guarantees such as prohibition of anti-union discrimination and non-interference. Finally, the Committee notes that in its report on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Government indicates that demobilized members of national service are gradually integrated into civil service, which implies that the number of civil servants will grow, while these workers will not enjoy the full rights and guarantees set out in the Convention. ***Regretting the lack of progress in this respect, the Committee once again urges the Government to take all the necessary measures to ensure without further delay that all civil servants are fully guaranteed their freedom of association rights under the Convention.***

Domestic workers. The Committee notes that section 40 of Labour Proclamation provides that the Minister may determine by regulation the provisions of the Proclamation that shall apply to all or to a category of domestic employees and the manner of their application. The Committee considers that this provision casts doubt on the application of all labour law guarantees enshrined in the Proclamation to domestic workers, including the provisions concerning freedom of association. It further notes that the Civil Code published in 2015 contains provisions governing the contract of domestic employment, without however covering freedom of association rights. The Committee recalls that in the framework of its examination of application of Convention No. 98, it has consistently requested the Government to ensure that the rights of domestic workers are explicitly guaranteed. According to the information submitted by the Government, no specific rules other than the civil code provisions govern domestic work. ***Therefore, the Committee requests the Government to take any necessary measures, including through the abrogation of section 40 of the Labour Proclamation or the rapid adoption of a regulation, to ensure that domestic workers enjoy all rights under the Convention.***

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

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

Articles 1, 2 and 4 of the Convention. Legislative issues. The Committee recalls that since its first examination of application of the Convention in Eritrea, it has consistently requested the Government to amend legislation or adopt additional laws and regulations in order to provide adequate protection against anti-union discrimination and acts of interference, and to recognize and guarantee the rights of domestic workers and civil servants under the Convention.

With regard to *protection against anti-union discrimination and acts of interference*, the Committee notes that the Government reiterates that violations of prohibition of anti-union discrimination and acts of interference are punishable as a petty offence under article 691 of the Transitional Penal Code of Eritrea, which concerns infringement of a provision of a regulation, order or decree lawfully issued by a competent authority. The Government further recognizes that with regard to acts of anti-union discrimination during employment, the Labour Proclamation only provides for reinstatement of trade union leaders in cases of unjustified dismissal. Therefore, the Ministry of Labour and Social Welfare will conduct a tripartite workshop with a view to finalizing the drafting of relevant legal provisions. The

Committee is bound to note that the Government's indications do not contain any novelty concerning the legislative shortcomings of the protection against anti-union discrimination and acts of interference. It notes that article 691 of the Transitional Penal Code contains a general definition of petty offences, and does not particularly concern anti-union discrimination or acts of interference, which do not seem to be qualified as petty offences in any specific legal provision. ***Furthermore, in view of the fact that a new Penal Code was adopted and published in 2015, which seems to replace the Transitional Penal Code, the Committee requests the Government to clarify whether the provisions of the previous Transitional Penal Code are still in force in the country.***

With regard to *domestic workers*, the Committee notes that the Government indicates that: (i) since domestic workers are not included in the list of article 3 of Labour Proclamation, which enumerates the groups of workers that fall outside its scope, it is reasonable to construe the text as providing coverage for this group; (ii), under article 40 of the Proclamation, which grants to the Minister the power to determine the provisions of the Proclamation which shall apply to domestic workers, the guarantees enshrined in the Convention can be afforded to domestic workers by directive or regulation; and (iii) the 2015 Civil Code also includes provisions concerning the rights of domestic workers and no domestic workers in Eritrea are prohibited from the rights to organize and collective bargaining. The Committee notes that articles 2274–2278 of the Civil Code concern the contract for domestic employment and the mutual obligations of the parties to it but that these provisions do not contain reference to freedom of association or the right to collective bargaining. Furthermore, while domestic workers are not excluded from the scope of Labour Proclamation under article 3, the Committee understands from the Government's response and the content of article 40 of the Proclamation that the application of all labour law guarantees, including those concerning collective rights, to domestic workers would be entirely dependent on the content of a future ministerial directive. Therefore, the Committee once again notes with ***concern*** that Eritrean law still does not explicitly provide domestic workers with the rights established in the Convention.

With regard to *public sector,* the Committee notes that the Government indicates that the workers of public sector who are excluded from the scope of Labour Proclamation pursuant to its article 3, have the right to organize and bargain collectively, as in the absence of the Civil Service Code the transitional civil code prevails. The Committee notes nevertheless that in 2015 a new Civil Code was published that replaced the Transitional Civil Code of 1991, and that article 2176 of this Code excludes members of the military, police, and security forces, as well as members of the Eritrean civil services, judges and prosecutors from the scope of the chapter on employment. Article 2182 of the Civil Code, which establishes the right to conclude collective agreements, is in this chapter. The Committee is therefore bound to note that the new Civil Code reproduces the exclusions of article 3 of Labour Proclamation concerning public sector employees. The Committee recalls in this regard that the Convention covers all workers and employers, and their respective organizations, in both the private and the public sectors, regardless of whether the service is essential. The only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State. ***In view of the above considerations and noting with concern the absence of progress with respect to the various substantive legislative issues raised in its previous comments, the Committee once again urges the Government to take all the necessary measures to enact new legislation or revise the existing legislation in order to: (i) provide adequate protection against anti-union discrimination and acts of interference, and (ii) ensure that domestic workers and civil servants who are not engaged in the administration of the State enjoy the right to organize and collectively bargain. The Committee requests the Government to provide information of the developments in this regard.***

Articles 4, 5 and 6. Promotion of collective bargaining. Compulsory national service. The Committee recalls that in its previous comment, it had noted with concern that large numbers of Eritrean nationals were denied the right to collective bargaining for indefinite periods of their active lives while they were performing civilian activities that fell under the scope of the Convention as part of

their obligation of compulsory national service. It had therefore urged the Government to take the necessary measures to ensure that Eritrean nationals are not denied the right to bargain collectively beyond the scope of the exceptions set out in *Articles 5 and 6* of the Convention. The Committee notes the Government's indication that conscripts may be called to perform non-military activities in specific circumstances, namely in genuine cases of emergency or force majeure. It further adds that that it has been taking progressive measures to demobilize and rehabilitate conscripts and is gradually integrating national service members into civil servants. The Committee notes the Government's indications concerning the gradual demobilization of members of national service. Nevertheless, in view of the fact that current legislation does not guarantee the right of civil servants to collective bargaining, the Committee notes that where demobilization leads to integration into civil service, the demobilized will continue to be excluded from the right to collective bargaining. ***The Committee therefore once again emphasizes the importance of rapidly adopting a legal framework that would effectively guarantee the right of civil servants not engaged in the administration of the State to collective bargaining and urges the Government to take the necessary measures. The Committee requests the Government to provide information of the developments in this regard.***

[The Government is asked to reply in full to the present comments in 2022.]

Gabon

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In its previous comments, further to the observations of the International Trade Union Confederation (ITUC) relating to restrictions on the right to strike in the public sector on the repeatedly invoked grounds of ensuring public safety, the Committee asked the Government to provide information on the number of strikes called in the public sector as a whole, the individual sectors concerned and the number of strikes prohibited on the grounds of a possible disruption of public order. The Committee notes the Government's indication that trade unions within a number of government departments, including customs, taxation, higher education, national education, health and social affairs, have availed themselves of their right to strike. Moreover, the Government indicates that the National Congress of Education Sector Unions (CONASYSED) held its latest strike at the Martine Oulabou Public School without being removed from the premises and without the right to strike being prohibited. ***While taking note of the information provided by the Government on examples of strikes called in the public sector, the Committee requests once again that the Government provide detailed information on the number of strikes that have been called in the public sector, and the number of strikes prohibited on the grounds of a possible disruption of public order.***

Moreover, further to the observations previously received from Education International (EI), denouncing the adoption of various regulations which are making the exercise of union activities in the education sector increasingly difficult, the Committee asked the Government to indicate the measures taken in the education sector to ensure that trade unions have access to educational establishments so that they can perform their representative functions and defend their members' interests. The Committee notes with ***regret*** that there has been no reply from the Government on this matter. ***The Committee reiterates its request and expects that the Government will take all necessary steps to provide the requested information.***

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

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

Gambia

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

Trade union rights and civil liberties. In its previous comments, the Committee had requested the Government to provide comments on the observations of the International Trade Union Confederation received on 1 September 2017, which contained allegations of arbitrary arrests of several leaders of the Gambian National Transport Control Association (GNTCA), the death of Mr Sheriff Diba, one of the arrested leaders, while in detention, and the ban imposed on the activities of the GNTCA. The Committee had regretted that the Government had not provided any concrete information on these grave allegations and their investigation and only indicated that the case involving the leaders of the said Association had been discontinued before the High Court of The Gambia and that the parties had been discharged. The Committee recalled the need to make every effort to investigate the alleged grave violations of trade union rights, with a view to apportioning responsibility and punishing the perpetrators. The Committee takes note of the Government's indication that an investigation into the facts surrounding the death of Mr Sheriff Diba could be conducted by the Truth, Reconciliation and Reparation Commission (TRRC), an independent institution mandated to conduct research and investigations into human rights violations committed between July 1994 and January 2017 by the former regime. The Government further indicates that the GNTCA's matter was discharged by the High Court and that it is the responsibility of the GNTCA to re-engage the Government to review their case for consideration. ***The Committee expresses its firm hope that the death of Mr Diba as well as the alleged arbitrary arrests of several leaders of the GNTCA will be duly investigated by the TRRC without delay and requests the Government to provide updated information in this respect. It requests the Government to ensure that the GNTCA is informed about the necessary procedures to obtain a review of its case and also requests that the Government provide a copy of the mentioned High Court order.***

Article 2 of the Convention. Right of employers and workers to establish and join organizations of their own choosing without previous authorization. Civil servants, prison officers and domestic workers. In its previous comments, the Committee had noted that the Labour Act of 2007 excludes civil servants, prison officers and domestic workers from its scope (sections 3(2)(a), (c) and (d), respectively). The Committee had also noted the Government's statement that the Labour Act was in the process of being reviewed to allow these categories of workers to enjoy the rights established by the Convention. The Committee takes note of the Government's indication that the review of the Labour Act is still ongoing, and its further indication that separate statutes and regulations cover civil servants and prison officers, and that new regulations could cover domestic workers. ***Recalling the need to take all necessary measures to ensure that civil servants, domestic workers and prison officers enjoy the right to establish and join organizations of their own choosing, the Committee requests the Government to provide detailed information on any developments in this respect, including any revisions in the Labour Bill to extend the right to these three groups, and the specific terms of any other laws or regulations that ensure the right is accorded to each of the three groups.***

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

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

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

Scope of the Convention. Civil servants not engaged in the administration of the State, prison officers and domestic workers. For a number of years, the Committee has been requesting the Government to indicate if the excluded employees under section 3(2) of the Labour Act (prison officers, domestic workers and civil servants not engaged in the administration of the State) were afforded the right to collective bargaining as well as adequate protection against acts of anti-union discrimination and interference. The Committee recalls that the Government had previously indicated that while the excluded employees under section 3(2) of the Labour Act 2007 are not afforded the right to collective bargaining, they are accorded equal rights under the General Order (GO), Public Service Commission Regulations and the Terms and Conditions of Service for Men and Officers in the Military. The Government had also indicated that it aimed to adopt a new Trade Union Bill 2019 in which the exclusion of these categories of workers may be reviewed to take into consideration *Articles 1* and *2* of the Convention. The Committee notes that the Government has not provided information on any developments regarding the adoption of the Trade Union Bill. ***Recalling that, according to Articles 5 and 6, only members of the armed forces and the police, as well as public servants engaged in the administration of the State may be excluded from the guarantees set out in the Convention, the Committee requests the Government to provide information regarding the adoption of the Trade Union Bill and firmly expects that the rights afforded by the Convention will be ensured for prison officers, domestic workers and civil servants not engaged in the administration of the State.***

Article 4. Measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or their organizations and workers' organizations. In its previous comments, the Committee had noted that according to section 130 of the Labour Act, in order to be recognized as a sole bargaining agent, a trade union should represent a certain percentage of employees under a contract of service (30 per cent in the case of a single union and at least 45 per cent if the establishment in question employs at least 100 people; in this case, the bargaining agent could be composed of two or more trade unions). The Committee recalled that if no union in a specific negotiating unit meets the required threshold of representativeness to be able to negotiate on behalf of all workers, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members. Having noted that section 131 of the Act provides that an employer may, if he or she wishes, organize a secret ballot to establish a sole bargaining agent, the Committee recalled that the determination of the representative status of organizations for the purposes of bargaining should be carried out in accordance with a procedure that offers every guarantee of impartiality, by an independent body that enjoys the confidence of the parties (see the 2012 General Survey on the fundamental Conventions, paragraph 228). On this basis, in its previous comments, the Committee underlined that the organization of a ballot for determining representativeness should be carried out by the authorities or an independent party upon a request presented by a union. The Committee therefore requested the Government to provide information on any developments in bringing the legislation into conformity with the Convention. The Committee takes note of the Government's indication that the review of the Labour Act is still ongoing and that this matter would be put before the stakeholders for consideration to be incorporated in the new Bill**. *Welcoming the Government's indication, the Committee requests the Government to provide information on the progress achieved in this respect.***

Promotion of collective bargaining in practice. ***While taking note of the information provided by the Government on two company-level collective agreements concluded in the private sector in 2014 and 2017, the Committee requests the Government to inform on the measures taken to promote collective bargaining in all sectors covered by the Convention and to provide information on the number of collective agreements concluded and in force in the country, the sectors concerned and the number of workers covered by these agreements.***

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

Georgia

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

The Committee takes note of the observations of the Georgian Trade Union Confederation (GTUC) received on 20 September 2021 referring to the certain matters addressed by the Committee below and raising other concerns examined under the observation pertaining to the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Article 2 of the Convention. Minimum membership requirement. In its previous comments, the Committee, while welcoming the amendment of section 2(9) of the Law on Trade Unions, which lowered the minimum membership requirement for establishing a trade union from 100 to 50, expressed the hope that the Government would pursue, in consultation with the social partners, efforts to assess the law's impact and would take the necessary measures to amend the law if it was found that the new minimum number required still hindered the establishment of trade unions in small and medium-sized enterprises. The Committee notes with ***satisfaction*** the Government's indication that section 2(9) of the Law on Trade Unions was amended on 29 September 2020 so as to further lower the minimum membership requirement for establishing a trade union to 25. The Committee notes with ***interest*** the GTUC indication that trade unions participated in the reform.

Article 3. Right of workers' organizations to freely organize their activities and formulate their programmes. The Committee had previously requested the Government to amend section 51(2) of the Labour Code according to which, the right to strike was prohibited in services connected with the safety of human life and health or if the activity "cannot be suspended due to the type of technological process", as well as Order No. 01-43/N of 6 December 2013, which determined the list of services connected with the life, safety and health (pursuant to section 51(2) of the Code) and included services which did not constitute essential services in the strict sense of the term (radio, television, municipal cleaning services, oil and gas extraction, production, oil refining and gas processing). The Committee notes with ***satisfaction*** that following the 2020 amendment of the Labour Code and adoption, on 7 September 2021, of the Order on Approval of the List of Essential Services, which replaced the Order of 2013, employees working for essential service providers may exercise the right to strike if they ensure that a minimum service is provided to meet the users' basic needs and ensure that the service in question operates safely and without interruption (section 66 of the Labour Code, replacing the regulation of essential services formerly contained in section 51(2)). The Committee notes that services listed in the new Order are either essential services in the strict sense of the term or services of fundament importance in relation to which a minimum service may be established. The Committee notes that according to the new Order, the organization of the minimum service and related subjects (including the minimum number of workers providing the service) should be negotiated and agreed between the subjects of collective labour dispute and that any disagreement should be settled by the court. The Committee further notes that pursuant to section 66 of the Labour Code, the limits of a minimum service shall be determined by the Minister after consulting social partners and that in determining the limits of a minimum service, the Minister shall only take into account the work processes that are necessary for the protection of the life, personal safety, or health of society-at-large or a certain part of society.

The Committee had also previously requested the Government to review section 50(1) of the Labour Code according to which courts could postpone or suspend a strike for no more than 30 days if there existed a danger to the life or health of people, environmental safety or a third party's property as well as to activities of vital importance, and to indicate any use of this provision as relates to the suspension of a strike due to a danger to third-party property. The Committee notes with ***satisfaction*** that as a result of the amendments introduced in 2020, the reference to a third party's property has been deleted (section 65 of the Labour Code).

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

The Committee takes note of the observations of the Georgian Trade Union Confederation (GTUC) received on 20 September 2021, which refer to the matters raised by the Committee below.

The Committee notes that the Labour Code has been revised in 2020.

Articles 1 and 3 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee recalls that in its previous comments it had raised questions regarding the protection against anti-union discrimination at the time of hiring, as well as in cases of non-renewal of employment contracts.

The Committee notes the Government's indication that in 2019, changes were made to the Law on Elimination of All Forms of Discrimination. According to the Government, new provisions, pursuant to which, the principle of equal treatment, which expressly applies to members of trade unions and covers trade union activities, shall apply to labour and pre-contractual relations, were added to the Law; similar provisions were included in the Labour Code. The Government further indicates that through the amendments introduced to the Law on the Public Defender in 2020, the mandate of the Ombudsman in cases of discrimination was extended. The Committee notes the detailed information provided by the Government on the extended mandate of the Public Defender in alleged cases of discrimination, including anti-union discrimination. The Committee welcomes the new legislative amendments. In particular, it notes with ***satisfaction*** section 7 of the Labour Code as amended, according to which, where a job candidate or employee alleges facts and/or circumstances which give rise to a reasonable belief that an employer has violated the prohibition against discrimination, the burden of proof shall rest with the employer. The Committee also notes with ***interest*** sections 77 and 78 of the Labour Code, pursuant to which, any violation by an employer of the provisions prohibiting discrimination shall result in either a warning or a fine in a threefold amount provided for the violation of other provisions of the Labour Code; if the same act is committed again within one calendar year, the amount of the fine doubles. The Committee also notes with ***interest*** that by virtue of sections 5 and 47 of the Labour Code, the prohibition of anti-union discriminations also covers termination of employment due to the expiration of an employment contract. While noting with ***interest*** that section 48 of the Labour Code imposes an obligation on an employer, upon request by an employee, to substantiate in writing the grounds for terminating employment, the Committee understands that this obligation does not apply to cases of non-renewal of a contract. The Committee takes note of the information provided by the Government on the number of cases of anti-union discrimination examined. ***The Committee requests the Government to provide information on the application in practice of the amended legislative provisions, including on the number of complaints of anti-union discrimination at the time of hiring and non-renewal of employment contracts and the fine imposed and their amounts.***

Article 2. Interference by employers in internal trade union affairs. In its previous comments, recalling the need for the legislation to make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions for acts of interference against workers' and employers' organizations, the Committee had requested the Government to indicate the provisions providing for the remedies and/or sanctions for violation of (previous) section 40.3 of the Labour Code and section 5 of the Law on Trade Unions, which prohibited all forms of interference and provided for independence of trade union organizations from employers and their organizations. The Committee had requested the Government to provide any administrative or judicial decision in this respect.

The Committee notes the Government's indication that pursuant to section 26 of the Law on Trade Unions, cases of violation of trade union rights shall be considered by courts and that pursuant to section 27(2) of that Law, trade unions and their associations, as well as trade union members have the right to file claims or complaints with a court in cases of violation of the legislation, or fail to fulfil

obligations set out in collective agreements. In addition, section 166 of the Criminal Code provides for liability for unlawful interference with the establishment of public associations or with their activities committed with violence, threat of violence or the use of official position, and punishes such acts by a fine or corrective labour for a term of up to one year or house arrest for a term of six months to two years, or by imprisonment for a term of up to two years. The Committee also notes the fines provided for in above-mentioned section 77 for the violation of the provisions of the Labour Code, including its new section 54, which prohibits interference in the activities of employers' associations and employees' associations in each other's activities. The Committee notes the Government's indication that during the reporting period, the courts of Georgia did not consider any cases of alleged interference. ***The Committee requests the Government to keep providing information in this regard.***

The Committee recalls that it had previously expressed the hope that steps would be taken by the Government to ensure that compliance with the rights enshrined in the Convention was subject to monitoring by the public authorities. The Committee notes with ***interest*** sections 75 and 76 of the Labour Code as amended, which designate the Labour Inspection Service as the body responsible for State supervision over compliance with the labour legislation.

Article 4. Promotion of collective bargaining. The Committee had previously requested the Government to provide information on any progress made towards strengthening the labour administration and institutionalizing social dialogue and in particular on the adoption of the amendment of Decree N301 on Labour Dispute Settlement Procedures, in consultation with the social partners. The Committee notes the information provided by the Government on the number of conciliation procedures during the reporting period and their success rate, as well as on the training of 15 participants on collective bargaining disputes. ***In the absence of information regarding the adoption of the amendment of Decree N301, the Committee requests the Government to provide information on the developments in this regard.***

The Committee had also requested the Government to provide information on all progress made in ensuring that the content of section 48(5) of the Labour Code, which provided that at any stage of a dispute, the Minister can terminate conciliatory procedures, promoted the negotiated resolution of collective labour disputes. The Committee notes that section 63(5) of the amended Labour Code is to the same effect. It further notes the Government's explanation that the right of the Minister to terminate the conciliation procedures is a consequence of his or her right to appoint a dispute mediator and to commence conciliatory procedures. The Committee notes that the GTUC raises several concerns regarding the right of the Minister to terminate conciliatory procedures without regard to the opinion of the parties to the dispute. ***The Committee requests the Government to take the necessary steps, in consultation with the social partners, to review section 63(5) of the Labour Code so as to ensure that it promotes the negotiated resolution of collective labour disputes. It requests the Government to provide information on all developments in this regard.***

The Committee notes the information provided by the Government on the number of collective agreements in force and workers covered. ***It requests the Government to continue providing such information in its reports. The Committee also requests the Government to provide its comments on the alleged by the GTUC violations of collective bargaining rights at a number of enterprises.***

Germany

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

The Committee notes the observations of the Confederation of German Employers' Associations (BDA) and the German Confederation of Trade Unions (DGB), received on 31 August 2021 and referring to the matters addressed below.

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities and to formulate their programmes. The Committee recalls that it has been requesting for a number of years the adoption of measures to recognize the right of public servants who are not exercising authority in the name of the State to have recourse to strike action. The Committee had previously noted with interest a 2014 ruling handed down by the Federal Administrative Court holding that, given that the constitutional strike ban depends on the status group and is valid for all civil servants (Beamte) irrespective of their duties and responsibilities, there is a collision with the European Convention on Human Rights (ECHR) in the case of civil servants (Beamte) who are not active in genuinely sovereign domains (hoheitliche Befugnisse), for instance teachers in public schools, and this collision should be solved by the federal legislator; and that, in the case of civil servants (Beamte) who exercise sovereign authority, there is no collision with the ECHR and thus no need for action. The Committee also noted that in its 2015 ruling, the Federal Administrative Court confirmed that it is the task of the federal legislator to establish a balance between the incompatible requirements of article 33(5) of the Basic Law and Article 11 of the ECHR and that, as long as this has not been done, the public-law strike prohibition continues to apply and is a disciplinary rule.

In its previous comment, having noted that a complaint had been raised before the Federal Constitutional Court in relation to the 2014 Federal Administrative Court judgment, the Committee requested the Government to provide a copy of the decision of the Federal Constitutional Court, as well as any other pending decision issued by it on the subject. In view of the collision ascertained by the Federal Administrative Court between article 33(5) of the Basic Law and Article 11 of the ECHR and in light of the persisting need highlighted by the Committee for many years to bring the legislation into full conformity with the Convention with regard to the same aspect, the Committee once again requested the Government to: (i) refrain, pending the relevant decision of the Federal Constitutional Court, from imposing disciplinary sanctions against civil servants not exercising authority in the name of the State (such as teachers, postal workers and railway employees) who participate in peaceful strikes; and (ii) to engage in a comprehensive national dialogue with representative organizations in the public service with a view to finding possible ways of aligning the legislation with the Convention.

The Committee notes the Government's indication that in its decision of 12 June 2018 (Case No. 2 BvR 1738/12), the Federal Constitutional Court held, contrary to the 2014 judgment of the Federal Administrative Court, that: (i) for civil servants, irrespective of their duties, the strike ban amounts to an independent traditional principle of the career civil service system (*Berufsbeamtentum*) within the meaning of article 33(5) of the Basic Law, which justifies an overriding of freedom of association; (ii) this is closely linked to the civil service principle of alimentation (*Alimentationsprinzip)*, according to which civil servants are paid salary commensurate with the civil service position, and also to the duty of loyalty, the principle of lifetime employment and the principle that the legal relationship under civil service law (including remuneration) must be regulated by the legislature; (iii) there is no need for an express legal provision concerning a strike ban for civil servants; (iv) the strike ban for civil servants in Germany is consistent with the principle of interpreting the Basic Law in a manner compatible with international law, as well as with guarantees of the ECHR, as there is no identifiable conflict between German law and Article 11 of the ECHR; and (v) regardless of the question of whether the strike ban for civil servants actually represents an encroachment on Article 11(1) of the ECHR, it would in any case be justified either under the first or the second sentence of Article 11(2) based on the particularities of the German system of the career civil service. The Committee further observes from the text of the ruling that the Federal Constitutional Court opined that: (i) granting the right to strike, even for certain groups of civil servants only, would trigger a chain reaction with regard to the structuring of the civil service, would fundamentally change the system of German civil service law and would interfere with the core of the structural principles guaranteed under article 33(5) of the Basic Law; (ii) dividing civil servants into groups that have or do not have the right to strike based on their different functions would entail difficulties of distinction that are connected to the concept of public authority and would create a special

category of civil servants with the right to strike or civil servants subject to collective agreements, who would be given the possibility of enforcing demands regarding their working conditions through labour dispute measures where applicable, while keeping their civil servant status – this would raise the question to what extent this category of personnel could still be regarded as having the legal status of civil servants; and (iii) to compensate for the civil servants' lack of possibility to influence their employment conditions by measures of labour dispute, article 33(5) of the Basic Law affords them, among others, the subjective public right to have the constitutionality of their alimentation reviewed in court, which would be almost completely meaningless if civil servants had the right to strike. The Government adds that proceedings against the strike ban for civil servants are currently ongoing before the European Court of Human Rights.

The Committee notes the observations of the BDA in this respect, pointing to the 2018 decision of the Federal Constitutional Court and indicating that although the concept of freedom of association also includes the right to industrial action (strike and lock-out), this Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) do not regulate or expressly provide for a right to strike. According to the BDA, the manner in which industrial action is organized in practice is always regulated in line with the particular Conventions but at the national level. The Committee also notes the observations of the DGB, claiming that there should be no absolute exclusion of civil servants from the right to strike irrespective of their duties and that a strike ban based on status, as established by the Federal Constitutional Court, represents a hindrance to any practical concordance between articles 9(3) and 33 of the Basic Law. The DGB argues that a genuine balancing exercise would mean that the strike ban can only remain in place for those officials who genuinely exercise the sovereignty of the State and that civil servants who do not genuinely exercise the sovereignty of the State must benefit from the right to strike to preserve and promote their employment conditions.

The Committee takes due note of the ruling of the Federal Constitutional Court that for civil servants, irrespective of their duties, the strike ban amounts to an independent traditional principle of the career civil service system within the meaning of section 33(5) of the Basic Law, which justifies an overriding of freedom of association. Moreover, the Committee wishes to make clear that its task is not to judge the validity of the Court decision of 12 June 2018 (Case No. 2 BvR 1738/12), which is based upon issues of German national law and precedents. The Committee's task is to examine the outcome of this decision on the recognition and exercise of the workers' fundamental right to freedom of association. In this regard, the Committee observes with ***regret*** that the result of the Court's decision is not in keeping with the Convention, inasmuch as it amounts to a general ban on the right to strike of civil servants based on their status, irrespective of their duties and responsibilities, and in particular a ban on the right of civil servants who are not exercising authority in the name of the State (such as teachers, postal workers and railway employees) to have recourse to strike action. ***In view of the above, the Committee encourages the Government to continue engaging in a comprehensive national dialogue with representative organizations in the public service with a view to finding possible ways of aligning the legislation more closely with the Convention. Further noting that proceedings against the strike ban for civil servants are currently ongoing before the European Court of Human Rights, the Committee requests the Government to provide information on the resulting decision and on any impact it may have at the national level.***

The Committee previously noted with interest that, in relation to the 2012 DGB observations denouncing the lack of a general prohibition of the use in non-essential services of temporary workers as strike breakers, national legislation had been amended to ensure that the receiver was no longer allowed to hire agency workers as strike breakers (according to section 11(5) of the Manpower Provision Act, in effect from 1 April 2017, the receiver shall not allow agency workers to work if the business is directly involved in a labour dispute). The Committee notes with ***interest*** the Government's indication in this respect that: (i) the deployment of agency workers in industries affected by industrial action is only possible if there is an assurance that they will not take over the jobs of those on strike, either directly or

indirectly; (ii) a constitutional complaint against this provision had been brought before the Federal Constitutional Court, claiming that there was a breach of the employer's freedom of association in that its defences (specifically the use of agency workers during industrial action) were being illegitimately constrained, amounting to undue interference in the ability to carry out a profession; and (iii) in its decision of 19 June 2020 (Case No. 1 BvR 842/17), the Federal Constitutional Court found that the regulation concerned was constitutional and the applicant's rights had not been infringed.

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

The Committee notes the observations of the Confederation of German Employers' Associations (BDA) and the German Confederation of Trade Unions (DGB), received on 31 August 2021, which mainly relate to matters examined by the Committee under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Articles 4 and 6 of the Convention. Right to collective bargaining with respect to conditions of employment of public servants not engaged in the administration of the State. The Committee recalls that it has been requesting, for a number of years, the adoption of measures to ensure that public servants who are not engaged in the administration of the State, enjoy the right to collective bargaining. The Committee had previously noted with interest a 2014 ruling handed down by the Federal Administrative Court holding that, while the prohibition of collective bargaining deriving from article 33(5) of the Basic Law is linked to the civil servant status and applies to all civil servants irrespective of their duties, Article 11(2) of the European Convention on Human Rights (ECHR) provides that restrictions to freedom of association could only be justified by the relevant function of the civil servant; and that, in the case of civil servants not exercising sovereign authority of the State, for instance teachers in public schools, there is a collision, which needs to be solved by the federal legislator. According to the Federal Administrative Court, in view of the collision between article 33(5) of the Basic Law and Article 11 of the ECHR, the federal legislator needed to considerably broaden, in public service domains that were not characterized by the exercise of genuinely sovereign authority, the participation rights of trade unions of civil servants towards a negotiation model.

In its previous comment, having noted that a complaint had been raised before the Federal Constitutional Court in relation to the 2014 Federal Administrative Court judgment, the Committee requested the Government to provide a copy of the decision of the Federal Constitutional Court, as well as any other pending decision issued by it on the subject. It also requested the Government once again to engage in a comprehensive national dialogue with representative organizations in the public service with a view to exploring innovative solutions and possible ways in which the current system could be developed so as to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State, including for instance, as indicated by the BDA, by differentiating between areas of genuinely sovereign domains and areas where the unilateral regulatory power of the employer could be restricted to extend the participation of representative organizations in the public service.

The Committee notes the Government's indication that in its decision of 12 June 2018 (Case No. 2 BvR 1738/12) the Federal Constitutional Court held that: (i) the universal freedom of association derived from article 9(3) of the Basic Law does not contain exclusions for specific professions and therefore applies unconditionally not only to public sector workers but also to civil servants; (ii) this does not mean, however, that any restrictions to freedom of association are automatically excluded, as even fundamental rights may be restricted as a result of conflicting third-party rights and other rights with constitutional status; (iii) the traditional principle of the career civil service system guaranteed by article 33(5) of the Basic Law amounts to one such restriction with constitutional status; (iv) the ban on the involvement of civil servants in collective bargaining is closely linked to the duty of loyalty, the principle of lifetime employment and the civil service principle of alimentation (*Alimentationsprinzip*), which

requires employers to provide civil servants and their families with reasonable lifetime remuneration and a standard of living corresponding to their seniority, the level of responsibility associated with their office and the relevance of the career civil service to the general public, in line with economic and financial growth in general; (v) the entirely objective guarantee of a reasonable standard of living under article 33(5) of the Basic Law establishes an individual right each civil servant holds vis-à-vis the State, equivalent to a fundamental right, to have the constitutionality of their alimentation reviewed in court; and (vi) the ban on civil servants taking part in collective bargaining thus follows from the traditional principle of the career civil service system but the individual right nevertheless enables those affected to uphold their constitutional status (including in court) and to enforce the obligation of the employer to provide reasonable remuneration. The Government adds that proceedings are currently ongoing before the European Court of Human Rights relating to the strike ban for civil servants examined by the Committee under Convention No. 87.

The Committee notes the observations of the DGB in this respect, pointing to the 2018 decision of the Federal Constitutional Court and asserting that the principle of alimentation applicable to the individual civil servant creates a direct right to be paid commensurate with their position and having to enforce this claim in court in case of infringement is not compatible with this principle, especially considering that proceedings before administrative courts are so protracted that it is not reasonable to expect the person affected to take legal action.

The Committee takes due note of the 2018 ruling of the Federal Constitutional Court. The Committee observes that it results in a ban on the involvement of all civil servants in collective bargaining. The Committee ***regrets*** that public servants not engaged in the administration of the State are thus deprived of the right to bargain collectively granted to them by the Convention. The Committee recalls in this regard that it has been highlighting for many years that, pursuant to *Articles 4* and *6* of the Convention, all public service workers, other than those engaged in the administration of the State, should enjoy collective bargaining rights. It also emphasizes that while the determination of wages is an important element of the scope of collective bargaining, other terms and conditions of work and employment also fall within its scope. ***In view of the above, the Committee encourages the Government to continue engaging in a comprehensive national dialogue with representative organizations in the public service with a view to exploring innovative solutions and possible ways in which the current system could be developed so as to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State, including for instance, as previously indicated by the BDA, by differentiating between areas of genuinely sovereign domains and areas where the unilateral regulatory power of the employer could be restricted to extend the participation of representative organizations in the public service. Further noting that proceedings are currently ongoing before the European Court of Human Rights in relation to the ban on the right to strike of civil servants and observing that it may also have repercussions on the right of civil servants to bargain collectively, the Committee requests the Government to provide information on the resulting decision and on any impact it may have at the national level.***

Ghana

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1965)

Articles 2 and 3 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations of their own choosing. Right of workers' organizations to organize their activities in full freedom. The Committee recalls that, for many years, it has been requesting the Government to take the necessary measures to amend the following provisions of the 2003 Labour Act and its 2007 Regulations:

- section 79(2), which excludes persons performing managerial and decision-making functions from the right to establish and join organizations of their own choosing;
- section 1, which excludes prison staff from the scope of application and therefore from the right to establish and join organizations of their own choosing;
- section 80(1), which provides that two or more workers may establish or join a trade union if they are in the same "undertaking", defined in section 175 of the same Act as "the business of any employer";
- section 80(2), which provides that employers must employ not less than 15 workers to establish or join an employers' organization;
- section 81, which does not explicitly authorize trade unions to form or join confederations;
- sections 154–160, which do not set any time limit with regard to mediation;
- section 160(2), under which collective disputes are referred to compulsory arbitration if they are not resolved within seven days; and
- section 20 of the 2007 Regulations which sets out too broad a list of essential services.

The Committee notes that the Government indicates in its report that the social partners have started to review the labour legislation and are submitting their contributions to the text that will subsequently become law. ***The Committee expects that the Government, in consultation with the social partners, will soon complete the review of the labour legislation and ensure that it is brought into full conformity with the Convention, in light of the comments that the Committee has been making for many years. The Committee requests the Government to provide information on any progress and a copy of the legal texts adopted. The Committee reminds the Government that it may request technical assistance from the Office.***

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

Articles 1 and 3 of the Convention. Adequate protection against anti-union discrimination. In its previous observation, the Committee requested the Government to provide detailed information on the nature and outcome of the inquiries carried out into a series of allegations of anti-union discrimination made by the International Trade Union Confederation (ITUC) in 2009 and 2011. The Committee notes that the Government indicates that after an investigation, the allegations were considered to be unfounded. It briefly indicates that the investigation showed that an employer refused to allow its workers to unionise, which created a misunderstanding between the workers and the employer. However, the situation was settled amicably and the workers have been unionised ever since. The Government added that there have been no discrimination problems in the country. The Committee takes due note of the information provided by the Government concerning one specific case of alleged anti-union discrimination. ***Highlighting that the absence of anti-union discrimination complaints may be due to reasons other than an absence of anti-union discrimination acts and recalling the allegations raised by the ITUC concerned a series of different instances, the Committee requests the Government to take the necessary measures to ensure that, on the one hand, the competent authorities take fully into account in their control and prevention activities the issue of anti-union discrimination, and that on the other hand, the workers in the country are fully informed of their rights regarding this issue. The Committee requests the Government to provide information on measures taken in this regard, as well as any statistics concerning the anti-union discrimination acts reported to the authorities and the decisions taken in this respect.***

Article 4. Collective bargaining certification. In its previous comments, the Committee requested the Government to indicate the procedure to be followed in the event that no consensus is reached by all the stakeholders concerning the mode of verification and venue of elections for the determination of the most representative union. The Committee notes that the Government indicates that if consensus

is not reached, the National Labour Commission (NLC) decides on the matter. While noting that section 10(3) of the Labour Regulations, 2007 does not provide the procedure to be followed by the NLC, the Committee recalls that the criteria to be applied to determine the representative status of organizations for the purpose of bargaining must be objective, pre-established and precise so as to avoid any opportunity for partiality or abuse (see the 2012 General Survey on the fundamental Conventions, paragraph 228). ***The Committee therefore requests the Government, after consulting the representative organizations of workers and employers, to take the necessary legislative or regulatory initiatives so as to ensure that the procedure concerning the mode of verification and venue of elections for the determination of the most representative union fully complies with the Convention. The Committee requests the Government to provide information in this respect.***

Article 5. Prison staff. In its previous comments, the Committee requested the Government to take the necessary measures to ensure that prison staff enjoyed the right to organize and bargain collectively whether through an amendment to the Labour Act or other legislative means. The Committee takes due note of the Government's indication that it is examining the revision of the Labour Act in tripartite consultations. The Committee hopes that the Government and the social partners will reach an agreement to amend the legislation along the lines that the Committee has been suggesting for years. ***The Committee requests the Government to provide any information on the results of the consultative process in the near future. The Committee reminds the Government that it may avail itself of the technical assistance from the Office.***

Collective bargaining in practice. The Committee requests the Government to provide information on the number of collective agreements signed and in force in the country and to indicate the sector and the number of workers covered.

Greece

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

The Committee takes note of the detailed observations provided by the Hellenic Federation of Enterprises and Industries (SEV) and by the Greek General Confederation of Labour (GSEE), in communications received respectively on 31 August 2021. ***The Committee requests the Government to reply in detail to both these communications.***

The Committee also takes note of the joint observations of the SEV and the International Organisation of Employers (IOE) received in 2019 and 2020, as well as of the GSEE observations received in 2019. The Committee notes the Government's comments thereon.

Article 4 of the Convention. Promotion of collective bargaining. The Committee recalls that its previous comment followed up on the 2018 conclusions of the Conference Committee on the Application of Standards (the Conference Committee) concerning the compulsory arbitration system. The Committee notes the detailed information provided by the Government concerning the adoption of Act No. 4635/2019, which replaces the previous article concerning arbitration with article 57 permitting recourse to unilateral arbitration as a last resort and a subsidiary means of resolving collective labour disputes only in the following cases: (1) if the collective dispute concerns public interest or public utility enterprises the operation of which is vital for meeting the basic needs of society as a whole; and (2) if the collective dispute concerns collective bargaining between the parties which has definitively failed, the resolution which shall be imposed by reasons of general social or public interest related to the Greek economy. The Committee further notes that the definitive failure of collective bargaining is deemed to exist where the regulatory validity of any existing collective agreement has expired, any other means of conciliation and trade union action have been exhausted and the party seeking unilateral arbitration has participated in the mediation procedure and accepted the mediation

proposal, and where the application for arbitration contains a full reasoning for the existence of conditions justifying the request. The Government reiterates the country's longstanding respect and commitment to its international obligations and notes that it has benefited from the technical assistance of the ILO which further covered individual and collective labour dispute settlement systems.

The Committee further notes that the SEV acknowledges that this change in the application of the Convention was intended to align the current legal framework concerning compulsory arbitration with the decisions of the ILO.

However, according to the SEV, the recent law does not abolish compulsory arbitration, but only restricts its use by laying down procedural requirements. While the law refers to compulsory arbitration "as a last resort and a subsidiary means of dispute resolution", the SEV asserts that this remains to be proved in application. The SEV adds that these changes do not restrict the scope for compulsory arbitration to enterprises "whose operation is vital to serve the basic needs of the community" but covers a wider range of sectors and extends it to a broader set of companies in the private sector. Additionally, the SEV alleges that while the new terms of the law add to previous conditions and obligations of "full and substantiated reasoning" the need for the arbitrator to take into account in particular the economic and financial aspects, the development of competitiveness and the financial situation of the weaker productive enterprises, to which the collective difference relates, the progress in reducing the competitiveness gap and the reduction in unit labour costs, these obligations have not been complied with by the arbitrators in recent years. The SEV considers that it is crucial that the applicable law is strictly observed and suggests that technical assistance and training under the auspices of the ILO may help in that regard. The SEV reiterates its position that the continuous application of unilateral recourse to compulsory arbitration highly undermines collective labour relations, distorts free collective bargaining and impedes the efficient function of the labour market. SEV has long advocated for free collective bargaining, which should be a tool for securing a growth outlook on new production and competitiveness bases. The existing system has highlighted its shortcomings and in its view has contributed decisively to the economic and social crisis. The SEV proposes the creation of an independent collective body, solely supervised and managed by the social partners. In its view, dispute resolution body must be separated from the supervision of the State and the Ministry of Labour. The social partners have kept the social dialogue active despite all the difficulties. As collective dispute resolution mechanisms are an extension of collective bargaining, it is important, in the context of enhancing social dialogue, to remain independent, impartial and objective, with administration and management that will contribute to the proper functioning of the labour market and avoid distortions and mistakes of the past.

The Committee notes the Government's reply that it has fought to strike a balance between longstanding requests of social partners and its international obligations in line with the Committee's previous observations. The Committee recalls once again that compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis (see 2012 General Survey on the fundamental Conventions, paragraph 247). The Committee takes due note of the further steps taken to restrict the use of compulsory arbitration in Act No. 4635/2019 and of the continuing concerns of the SEV both as to the insufficiency of these steps and their inadequate practical application. ***In particular, the Committee observes that the proposal from the SEV for an arbitration system to be managed solely by the social partners highlights its concern that such a system can only be effective if it is independent and impartial and perceived to be so by both parties. The Committee considers that it is essential that all members of bodies entrusted with mediation and arbitration functions should not only be strictly impartial, but if the confidence of both***

sides on which the successful outcome of compulsory arbitration depends is to be gained and maintained, they should also appear to be impartial both to the employers and workers concerned. The Committee therefore invites the Government to continue to engage with the social partners, and to consider all possible options to bring this mechanism into full compliance with the obligation to promote free and voluntary collective bargaining. The Committee requests the Government to provide detailed information on the steps taken in this regard and reminds it that it may avail itself of ILO technical assistance.

Extension of collective agreements. The Committee notes that section 56 of Act No. 4635/2019 sets out the requirements for an application for extension of a collective agreement to include the applications emanating from a party bound to the agreement and documentation regarding the effect of the extension on competitiveness and employment. In making its decision, the Supreme Labour Council must deliver a reasoned opinion taking these elements into account and may exempt enterprises facing serious financial problems or in a process of restructuring.

The Committee further notes the SEV's observations that the revival of the ministerial right to extend the coverage of sectoral agreements during the period 2018–21 has given rise to a number of violations in practice, including: a violation of the existing legal framework concerning the procedure followed by the Government in order to check and certify the actual coverage of the employees concerned by a collective labour agreement and, therefore, its sufficient representativeness for extension; a lack of sufficient transparency on the representativeness check; in most cases none of the employers' associations concerned submitted a request for extension; none of the employers concerned, to whom the agreement was applicable, were given the opportunity to submit their observations; and only recently have the signatories been asked to consult about the extension and provide their views about the possible extension of the collective agreement. The SEV asserts that this new approach should be established and become a standard practice. Lastly, the SEV considers that new legal provision of section 56 of Act No. 4635/2019 backtracks from the previous ministerial circular, that had been based on a mutual agreement of the national social partners with the Ministry of Labour, which restricted the extension to sectoral collective agreements and excluded arbitral awards and redefines the terms and conditions for the extension of collective agreements.

The Committee recalls Paragraph 5(2) of the Collective Agreements Recommendation, 1951 (No. 91), which provides that: national laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions: (a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (b) that, as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; and (c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations. ***The Committee requests the Government to reply to the detailed allegations made by the SEV in respect of the procedure established by Act No. 4635/2019 and its practical application.***

Conflict of collective agreements. The Committee notes the additional information provided by the Government in relation to section 55 of Act No. 4635/2019 concerning the concurrence of collective agreements which provides that enterprise-level collective agreements shall prevail over sectoral agreements exceptionally in the case of enterprises facing serious financial problems or in the process of restructuring. ***The Committee requests the Government to provide information on the manner in which this provision is applied in practice, along with any opinions issued by the Supreme Labour Council in this regard and any statistics as to its use. The Committee further requests the Government to reply to the GSEE allegations that Act No. 4808/2021 sets out a new restriction of the right to free collective bargaining and the conclusion of collective agreements by introducing new criteria of representativeness, competence, existence, legal nature or status of workers' and employers' organizations, and the prohibition of the exercise of collective rights until the issuance of a final court***

ruling and the abolition of the determination of pay terms and conditions by the National General Collective Agreement.

Enterprise-level collective agreements and associations of persons. The Committee recalls its previous comments concerning Act No. 4024/2011 which provided that, where there is no trade union in the company, an association of persons is competent to conclude a company-level collective agreement and its request to the Government to indicate the steps taken to promote collective bargaining with trade unions at all levels. The Committee notes the statistical information provided by the Government which, it states, demonstrates a downward trend in the collective labour agreements concluded with associations of persons (from 137 in 2018 to 25 in 2020 and 20 in the first half of 2021) and an increasing number of agreements with enterprise-level unions (165 concluded in 2018, 134 in 2020 and 74 in the first half of 2021). The Committee observes however that the GSEE continues to raise concerns of the ongoing endorsement of associations of persons and their competence to exercise fundamental collective rights. ***While appreciating the statistical information provided, the Committee is bound once again to recall the importance of promoting collective bargaining with workers' organizations, and requests the Government once again to indicate the steps taken to promote collective bargaining with trade unions at all levels, including by considering, in consultation with the social partners, the possibility of trade union sections being formed in small enterprises.***

Digital platform workers. While duly noting the GSEE's concern that the legislation tends towards a presumption of non-dependent employment relationship for digital platform workers, the Committee notes with ***interest*** that, as regards freedom of association, the law provides trade union rights also for those with independent contractor status, including the right to organize, bargain collectively and strike. ***The Committee requests the Government to provide information on the application in practice of the collective rights granted to digital platform workers.***

Articles 1 and 3. Adequate protection against anti-union dismissal. The Committee notes the statistical information provided by the Government, in reply to its previous request, indicating that there was a total of 187 complaints of anti-union discrimination submitted to the Regional Directorates of the Labour Inspectorate for the period 1 January 2018 to 31 May 2021, 76 of which concerned complaints of impediment to trade union activity and 111 concerned protection of trade unionists (for example, cases of trade unionist dismissal). Sixty-five complaints have been resolved following recommendations from the labour inspectors, criminal complaints were drawn up in 32 cases and no solution was reached for 76 cases which have been referred to the civil courts. The Government adds that ten fines were imposed totalling €66,300. ***The Committee notes the comments of the GSEE that there has been a diminishing level of protection for trade union members and officers, and requests the Government to reply to these allegations and continue to provide information and statistics relating to complaints of anti-union discrimination and any remedial action taken.***

Grenada

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1994)

Article 2 of the Convention. Minimum membership requirements for employers' and workers' organizations. In its previous comments, the Committee had requested the Government to take measures to reduce the number of members (ten) required for the registration of an employers' organization (sections 5(2) and 9(1)(e) of the Labour Relations Act of 1999). The Committee had recalled that the minimum requirement of ten employers to form an employers' organization was excessive and capable of hindering the creation of employers' organizations, particularly given the country's relatively small size. The Committee had noted the Government's indication that the Labour Relations Act was in the process of being revised, including with respect to a reduction of the employer organizations' membership requirement from ten to three. The Committee notes the Government's indication that the

Labour Relations Act is still before the Labour Advisory Board for finalization. As to workers organizations, the Committee had noted the Government's indication that the minimum membership requirement for the registration of a trade union was of seven members, but observed that sections 5(1) and 9(1)(e) of the Labour Relations Act provide for a minimum membership of 25 members for the registration of a trade union. The Committee had requested the Government to indicate whether these provisions had been amended, and noted the Government's reply that the two provisions were being reviewed. The Committee notes the Government's indication that the matter will be discussed in the ongoing consultations on the Labour Relations Act, which is currently under review by the Labour Advisory Board.

Recalling the importance of ensuring that the minimum membership number for employers' and workers' organizations be fixed in a reasonable manner so that the establishment of organizations is not hindered, and that the Government has been referring to related revisions of the Labour Relations Act in its reports dating back to 2015, the Committee urges the Government to provide information as to the result of the legislative revision process in this respect.

Prison officers. The Committee had noted in its previous comments the Government's indication that prison officers were prevented from joining organizations of their own choosing. The Committee had recalled that, in accordance with *Article 2* of the Convention, the right to establish and join occupational organizations should be guaranteed for all public servants and officials, and that, under *Article 9(1)* of the Convention, the only authorized exceptions from the scope of application of the Convention are members of the police and the armed forces. The Committee notes the Government's indication that an organization represents the prison officers and negotiates on their behalf. ***The Committee requests the Government to provide detailed information in this regard, including the applicable legal provisions guaranteeing that prison officers benefit from the rights and guarantees set out in the Convention and the results of any negotiations by the identified organization on behalf of prison officers.***

The Committee trusts that the revision of the Labour Relations Act will soon be completed and will take fully into account the above-mentioned considerations to ensure conformity with the Convention. ***It requests the Government to provide a copy of the revised Act once adopted.***

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

Guatemala

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) and the joint observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, both received on 1 September 2021, relating to matters examined in the present comment. The Committee also notes the Government's replies to these observations. The Committee further notes the Government's comments on the matters raised in 2020 by the national trade union federations on the impact of the COVID-19 pandemic on the application of the Convention.

Follow-up by the Governing Body of the progress achieved in the implementation of the technical cooperation programme "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards"

The Committee recalls that: (i) on the basis of the Governing Body's decision adopted in November 2018 (Decision GB.334/INS/9) to close the procedure of the complaint made under article 26 of the ILO Constitution alleging the violation of the Convention by the State of Guatemala, the Governing Body

requested the Office to draw up a technical cooperation programme to promote progress in the application of the Road Map adopted in 2013 within the framework of the follow-up to the complaint; and (ii) at its 340th Session (October–November 2020), the Government Body welcomed the adoption of the technical cooperation programme, "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" and requested the Office to report annually on its implementation at its October–November sessions for the duration of the three-year programme (Decision GB.340/INS/10).

The Committee notes the discussions at the 343rd Session of the Governing Body (October–November 2021) on the implementation of the technical cooperation programme and the decision of the Governing Body to note the information provided by the Office on this subject (Decision GB.343/INS/7)

Trade union rights and civil liberties. The Committee ***regrets*** to note that it has been examining since 2005 allegations of serious acts of violence against trade union leaders and members, including numerous murders and the related situation of impunity. The Committee also notes that the Committee on Freedom of Association examined at its session in October 2021 Case No. 2609, which brings together denunciations of acts of anti-union violence, including a very high number of murders of members of the trade union movement between 2004 and 2021 (see 396th Report, October 2021, Case No. 2609, paragraphs 307–348).

The Committee notes the information provided by the Government on the situation with regard to the investigations and prosecutions relating to the murders of 96 members of the trade union movement and its indications that: (i) 28 verdicts have so far been handed down, including 22 convictions (in relation to 19 murders, with three cases giving rise to two convictions each), five charges have been set aside and one security and remedial measure has been adopted; (ii) seven arrest warrants are still pending; (iii) three cases are at the stage of public hearings and trials; (iv) the criminal prosecutions lapsed in six cases in which the accused died; and (v) the other cases are still at the investigation stage. The Committee also notes the Government's indication that progress was reported in 2020 in 13 cases that are under investigation. The Committee also notes the information provided by the Government on the security measures taken for members of the trade union movement who are at risk, in the context of which: (i) 55 risk analyses were carried out for members of the trade union movement during the course of 2020, with one personal security measure being provided and 47 perimeter security measures; and (ii) between 1 June and 31 August 2021, 19 risk analyses were carried out for members of the trade union movement, with 15 perimeter security measures being adopted.

The Committee also notes that the Government refers to its replies provided in the context of Case No. 2609. The Committee takes due note in this regard of the detailed information provided by the Government on the active role played by the National Tripartite Committee on Labour Relations and Freedom of Association (hereinafter the National Tripartite Committee) and its Subcommittee on the Implementation of the Road Map in monitoring the response of the criminal justice system to acts of anti-union violence. The Committee takes special note in this respect of the high-level meetings held by the National Tripartite Committee with the Office of the Public Prosecutor and the plenary of the Supreme Court, and that the Subcommittee on the Implementation of the Road Map specifically requested the competent authorities to ensure: (i) the exhaustive investigation of all cases of murders of members of the trade union movement, with emphasis on a series of 36 cases of special relevance; (ii) the reactivation of the Technical Trade Union Forum in the Office of the Public Prosecutor and the Standing Technical Trade Union Forum for Comprehensive Protection in the Ministry of the Interior; (iii) the facilitation by the judicial authorities of current prosecutions for murders of members of the trade union movement; (iv) the assignment of a criminal analysis unit to the Special Prosecutor's Unit for Crimes against Trade Unionists; and (v) the strengthening of collaboration between the Office of the

Public Prosecutor and the Ministry of the Interior in cases of requests for protection measures by members of the trade union movement.

The Committee takes due note of this information. It also observes that, despite the difficulties caused by the COVID-19 pandemic, two new convictions were handed down in 2021 in relation to murders of members of the trade union movement. At the same time, the Committee notes with ***deep concern***: (i) the Government's indications that the Office of the Public Prosecutor recorded six new cases of murders of members of the trade union movement in 2020; and (ii) the observations of the national trade union confederations and the ITUC denouncing the murder on 7 May 2021 of Ms Cinthia del Carmen Pineda Estrada, a trade union leader of the Education Workers' Union of Guatemala (STEG), as well as other serious acts of anti-union violence committed in 2020 and 2021. While noting the Government's replies in relation to the investigations carried out into these crimes, the Committee once again recalls that trade union rights can only be exercised in a climate free from violence, intimidation and threats of any kind against trade unionists and that it is for governments to ensure that this principle is respected.

In light of the above, while taking due note of the action that the Government is continuing to take, the results reported and the difficulties involved in shedding light on the oldest murder cases, the Committee once again expresses ***deep concern*** at the allegations of further murders and other acts of anti-union violence committed in 2021 and the persistence of a high level of impunity, as there have still been no convictions for the great majority of the numerous recorded murders of members of the trade union movement. ***Emphasizing the importance of the initiatives called for by the Subcommittee on the Implementation of the Road Map, the Committee once again urges the Government to continue to take and intensify as a matter of urgency all the necessary measures to: (i) investigate all acts of violence against trade union leaders and members with a view to determining responsibilities and punishing the perpetrators and instigators of these acts, taking the trade union activities of the victims fully into account in the investigations; and (ii) provide prompt and effective protection for all trade union leaders and members who are at risk in order to prevent any further acts of anti-union violence. With reference to the specific action required in this regard, the Committee refers to the recommendations made by the Committee on Freedom of Association in Case No. 2609.***

Legislative issues

Articles 2 and 3 of the Convention. The Committee recalls that for many years it has been requesting the Government to take measures to:

- amend section 215(c) of the Labour Code, which requires a membership of "50 per cent plus one" of the workers in the sector to establish a sectoral trade union;
- amend sections 220 and 223 of the Labour Code, which establish the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity to be eligible for election as a trade union leader;
- amend section 241 of the Labour Code, under the terms of which strikes have to be called by a majority of the workers and not by a majority of those casting votes;
- amend section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996, which provides for the possibility of imposing compulsory arbitration in non-essential services and establishes other obstacles to the right to strike;
- amend sections 390(2) and 430 of the Penal Code and Decree No. 71-86, which establish labour, civil and criminal penalties in the event of a strike by public officials or workers in certain enterprises; and
- ensure that the various categories of public sector workers (hired under item 029 and other items of the budget) enjoy the guarantees afforded by the Convention.

The Committee also recalls that in its comments in 2018, 2019 and 2020 it noted that: (i) the tripartite agreement concluded in February 2018 on the amendments sought in four of the six points indicated above (relating to the requirements to be elected as a trade union leader, compulsory arbitration in non-essential services, penalties applicable in the event of a strike, and the application of the guarantees of the Convention to various categories of public sector workers); (ii) the submission on 7 March 2019 of this tripartite agreement to the Labour Commission of the Congress of the Republic so that the examination of Bill No. 5199 could be set aside, as it did not have the support of the social partners, and instead a legislative reform could be adopted based on tripartite agreement; and (iii) the tripartite agreement concluded in August 2018 on the principles that should guide reforms on two of the other points in the above list relating, on the one hand, to the requirements for the establishment and operation of sectoral unions and, on the other, the conditions for strike ballots.

The Committee notes that in its latest report the Government confines itself to: (i) indicating that the legislative amendments requested by the Committee form part of the work plan of the National Tripartite Committee and its legislative subcommittee; (ii) recalling once again that Bill No. 5199, designed to respond to the Committee's observations, had been submitted to the Congress of the Republic on 27 October 2016, but that the social partners called for it to be set aside and the discussion was to continue with a view to reaching consensus on the reforms to be adopted; (iii) indicating that, at the meeting on 22 April 2021 of the National Tripartite Committee, the Government submitted a draft legislative initiative based on the tripartite agreements on the four points referred to above covered by a full tripartite agreement, which had been submitted to the Congress of the Republic on 7 March 2018, with a full discussion on the reasoning given for the draft legislative initiative.

While noting the information provided by the Government, the Committee observes with ***deep concern*** the lack of specific progress in bringing the legislation into conformity with the Convention, despite the repeated requests by the various ILO supervisory bodies and the Governing Body and the serious impact of the legislative provisions concerned on the effective exercise of freedom of association. In this regard, the Committee recalls that in its previous comments it noted with concern the indications by the trade union organizations that the combination of: (i) the fact that it is impossible to create sectoral unions as a result of the requirements of section 215(c); and (ii) that it is impossible in small enterprises, which account for almost all companies in Guatemala, to assemble the 20 workers required by section 216 of the Labour Code for the establishment of a union, mean that the great majority of workers in the country do not have access to the right to join unions. While emphasizing the importance of reforms of labour legislation being the subject of consultation with the social partners and, in so far as possible, giving rise to tripartite consensus, the Committee emphasizes that, in the last resort, it is the responsibility of the Government to take the necessary decisions to ensure compliance with the international commitments assumed by the State through the ratification of international labour Conventions. ***The Committee therefore urges the Government to take the necessary measures without delay to bring the national legislation into conformity with the Convention. The Committee hopes to receive specific information in the near future on the tangible progress achieved in this regard.***

Application of the Convention in practice

Registration of trade unions. In its previous comments, the Committee once again invited the Government and the trade unions to take major steps forward in their dialogue on facilitating the process of trade union registration. The Committee notes the Government's indication that it is strengthening the public register of trade unions of the General Directorate of Labour through the development of an information technology tool that will facilitate the processes. The Committee also notes from document GB.343/INS/7, submitted to the Governing Body at its session in October–November 2021, that: (i) the Office is providing assistance for the project for the strengthening of the public register of trade unions; (ii) according to the information provided by the Government, of the

52 applications for registration received in 2020 by the Ministry of Labour and Social Welfare, 28 resulted in registrations, 16 were rejected and eight are still being processed; and (iii) of the 39 applications received in 2021 between 1 January and 16 September, 12 resulted in registrations, nine were rejected and 18 are still being processed. ***Noting from the information provided by the Government that more than one third of the applications for registration of trade unions reviewed in the past two years have been rejected and a significant number of applications are still being processed several months after their submission, the Committee once again encourages the Government, with the technical assistance of the Office and in dialogue with the national representative organizations, to make progress in facilitating the process of trade union registration.***

Awareness-raising campaign on freedom of association and collective bargaining. The Committee recalls that this campaign is one of the commitments made by the Government through the Road Map adopted in 2013. In its previous comments, the Committee urged the Government, with the support of the social partners and the technical cooperation programme prepared by the Office, to take all the necessary measures to ensure that the awareness-raising campaign is given real visibility in the national mass media. The Committee notes the Government's indication that it is awaiting the approval of the Multiannual Operations Programme of the European Union programme on support for decent employment in Guatemala, which includes specific action to address the subjects of freedom of association and collective bargaining within the framework of the corresponding ILO Conventions. While noting that the action taken in response to the emergencies resulting from the COVID-19 pandemic may have made it difficult to take action in this regard, the Committee ***regrets*** the lack of specific initiatives for the dissemination of the awareness-raising campaign. ***The Committee therefore once again urges the Government to take measures for the effective dissemination of the awareness-raising campaign on freedom of association and collective bargaining in the national mass media.***

Regretting, despite the existence of the National Tripartite Committee and the technical assistance provided by the Office, the absence of specific progress over the past three years, the Committee urges the Government to take all the necessary measures to resolve, in the near future, the serious violations of the Convention that have been noted for many years.

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1952)

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021, referring to issues examined by the Committee in the present comment. The Committee also notes the joint observations of the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, received on 31 August 2021, containing numerous allegations of anti-union discrimination and obstruction to collective bargaining, in both the private and public sector. ***While noting the Government's replies to these observations, the Committee requests it to provide specific follow-up to each of the cases highlighted by the trade union organizations with a view to ensuring the application of the guarantees established by the Convention.***

The Committee also notes the Government's comments on the issues raised in 2020 by the national trade union organizations concerning the impact of the COVID-19 pandemic on the application of the Convention.

In its previous comments, the Committee noted the closure by the Governing Body of the complaint made in 2012 under article 26 of the ILO Constitution, concerning non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee recalls that in the follow-up to the above-mentioned complaint and in the road map adopted by the Government in 2013 in the context of the complaint, several issues had been raised with regard to the implementation of Convention No. 98. The Committee noted that during the 340th Session of the

Governing Council (October–November 2020), the Governing Body had welcomed the technical cooperation project "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" and had requested the Office to present an annual report on the implementation of the project at its October–November meetings, during the three-year project duration (decision GB/340/INS/10). The Committee notes the discussions held at the 343rd Session of the Governing Council (October–November 2021) regarding the implementation of the above-mentioned project and the decision of the Governing Body to take note of the information provided by the Office in this respect (decision GB.343/INS/7).

Article 1 of the Convention. Protection against anti-union discrimination. Activities of the General Labour Inspectorate. In the context of the implementation of Legislative Decree No. 7/2017, which had restored the power of the General Labour Inspectorate to impose penalties, and after underlining the vital importance of labour inspection in achieving adequate protection against acts of anti-union discrimination, especially in a context of numerous complaints on this matter, the Committee, in its previous comment, noted: (i) the first figures provided by the General Labour Inspectorate concerning anti-union acts and their treatment; and (ii) the forthcoming adoption of the Ministerial Agreement that will render operational the General Labour Inspectorate Tripartite Advisory Council, which is the appropriate forum for the labour inspection services and the social partners to exchange views on improving the implementation of Decree No. 7/2017. The Committee notes that, in its latest report, the Government: (i) provides information, within the framework of the Single Protocol on Procedures of the General Labour Inspectorate, on the existence and application of the special investigation procedure on freedom of association and collective bargaining, the content of which was revised in 2017; (ii) indicates that, according to the Statistics Bureau, the General Labour Inspectorate received, between 2017 and 17 May 2021, 352 complaints relating to the exercise of freedom of association and the right to collective bargaining; (iii) reports that, with the support of the ILO through the project, "Supporting respect for workers' labour conditions in the agricultural export sector in Guatemala", the General Labour Inspectorate is revising its electronic case system; and (iv) between 1 January 2020 and May 2021, the General Labour Inspectorate organized 34 dialogue forums, aimed at settling collective disputes with results achieved in four cases to date. While noting the information provided by the Government, the Committee notes that it has not received information on the inspection activities and decisions taken by the General Labour Inspectorate in relation to the complaints of anti-union acts registered, or on initiatives, including through the functioning of the General Labour Inspectorate's Tripartite Advisory Council, aimed at strengthening the effectiveness of the Inspectorate with regard to protection against anti-union discrimination. ***The Committee therefore once again requests the Government to strengthen the measures taken to ensure that violations of trade union and collective bargaining rights are dealt with by the General Labour Inspectorate as a matter of priority, and that, with the above-mentioned support of the Office, an effective information system is set up shortly to follow up on inspection activities in this area. The Committee trusts that the Government will provide full information in this respect, including the statistics requested in its previous comments.***

Effective judicial proceedings. For many years, the Committee has expressed concern, along with the Committee on Freedom of Association, at the many complaints alleging the persistent slowness of judicial procedures in relation to anti-union discrimination and the high level of non-compliance with reinstatement orders. The Committee notes that the Government refers firstly to general initiatives aimed at expediting all judicial procedures relating to labour, which include: (i) the transformation of the labour and social security courts into jurisdictional bodies with several magistrates; (ii) the restructuring of the units that make up the Auxiliary Services Centre of the Labour Law Administration; (iii) implementation of digitalized measures and tools at various stages of proceedings; and (iv) the continuation of the examination by the Congress of the Republic of the Code of Labour Procedure developed by the Supreme Court of Justice. The Committee notes the information provided by the

Government on the status of the proceedings of the 7,113 legal actions for reinstatement filed between 1 January 2020 and 9 April 2021 (6,980 pertaining to State employees, 133 pertaining to individual workers), which resulted in: (i) 131 withdrawals and dismissals; and (ii) 2,165 final decisions of reinstatement, of which 197 were implemented and 1,795 were subject to appeal. The Committee further notes the Government's indication that the Attorney-General's Office, Ministry of Labour and Social Welfare (MTPS), Office of the Auditor-General, Public Prosecutor's Office, National Civil Service Office and the judiciary participated in working groups to identify mechanisms to improve implementation of reinstatement processes proposed by public sector workers. In light of the above, the Committee notes that: (i) the general statistics provided by the Government on the judicial treatment of reinstatement applications continue to indicate a significant backlog of cases pending before the courts and the persistence of a high number of reinstatement orders handed down by the courts that have not been complied with; and (ii) national and international trade union organizations continue to denounce, in the private and public sectors, numerous cases of anti-union discrimination and non-compliance with reinstatement orders. ***Regretting yet again the absence of specific information, the Committee urges once again the Government to take, as a matter of priority, actions to provide an effective judicial response to the cases of anti-union discrimination. In this regard, the Committee urges once again the Government to: (i) take measures as soon as possible, in coordination with all the competent authorities, to overcome the obstacles to effective compliance with the reinstatement orders handed down by the courts; and (ii) take the necessary steps to ensure that, in consultation with the social partners, new procedural rules are adopted so that all cases of anti-union discrimination are examined by the courts in summary proceedings and the respective court rulings are implemented rapidly. Noting that the draft Code of Labour Procedure is still being examined by the Congress of the Republic, the Committee recalls that the content of this text may benefit from the technical assistance of the Office. The Committee requests the Government to provide information on any progress in this respect.***

Article 4. Promotion of collective bargaining. In its previous comments, the Committee noted with growing concern that the already extremely low number of collective agreements agreed and approved in the country continues to decline. In light of this situation, the Committee requested the Government to make use, with the support of the technical cooperation programme developed by the Office, of the National Tripartite Committee on Labour Relations and Freedom of Association (hereinafter the National Tripartite Committee) to examine with the social partners the obstacles, both legislative and practical, to the effective promotion of collective bargaining so that it is able to take measures to promote collective bargaining at all levels. In this regard, the Committee expressed the firm hope that the agreement of August 2018 concerning the principles on which the reform of the labour legislation should be based will soon be reflected in the adoption of legislation in the very near future.

The Committee notes the Government's information that: (i) the legislative reforms requested by the Committee concerning freedom of association and collective bargaining are part of the work plan of the National Tripartite Committee and its Labour Policy and Legislation Subcommittee, and have resulted in meetings of the National Tripartite Committee with the Subcommittee; (ii) the support of the Office has been requested for a workshop on collective bargaining that will be held by the end of the year; and (iii) with the support of the Office, a campaign on decent work for the agricultural sector is being developed, which includes the themes of freedom of association and collective bargaining. The Committee further notes that, according to data provided by the Government in the information attached to document GB/343/INS/7 submitted to the Governing Body at its October–November 2021 session, 12 collective labour agreements were signed and approved during 2020 and 11 agreements between 1 January and 13 September 2021.

The Committee ***regrets*** to note that the number of signed collective agreements remains very low and that no progress has been made to overcome the legislative and practical obstacles to the effective

realization of the right to collective bargaining in the country. ***While referring to its comments concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Rural Workers' Organisations Convention, 1975 (No. 141) on the need for the Government to effect the legislative reforms that have been requested for many years to bring the legislation into conformity with the ratified Conventions concerning freedom of association and collective bargaining, the Committee once again urges the Government to take tangible measures to effectively promote collective bargaining at all levels. Recalling that the Government has the technical assistance of the Office, the Committee hopes to receive information on progress made in this respect.***

Articles 4 and 6. Promotion of collective bargaining in the public sector. In its previous comment, the Committee requested the Government to facilitate the process of the approval of collective agreements in the public sector. In light of allegations that the Public Prosecutor's Office was legally challenging the benefits granted through a series of collective agreements, the Committee also requested the Government to take all possible steps to promote the negotiated, consensual settlement of any disputes that arise regarding the supposedly excessive nature of certain clauses in collective agreements in the public sector. In its previous comments, the Committee also encouraged the Government's efforts to ensure that collective bargaining in the public sector takes place in a clear and balanced regulatory framework.

The Committee notes the Government's indication that the subjects referred to above have been submitted to the Labour Policy and Legislation Subcommittee of the National Tripartite Committee and that they are part of its work plan. The Committee also notes the indications of the Public Prosecutor's Office, that it takes due account of the fundamental right to collective bargaining while ensuring, through prior monitoring of the content of collective agreements in the public sector, respect for the rule of law. While taking due note of this information, the Committee notes that: (i) it does not have updated information on the various decisions to approve public sector collective agreements and their time lines; (ii) as noted in Case No. 3179 examined by the Committee on Freedom of Association (393rd Report of the Committee, March 2021), legal challenges on the validity of certain clauses of the collective agreement of the health sector are ongoing; (iii) the trade union organizations continue to question the grounds for not approving certain collective agreements, decisions which, according to the Government, are due to the need to remove certain unlawful clauses from the agreements in question; and (iv) no new information has been received from the Government to strengthen the regulatory framework of public sector collective bargaining. ***In light of the above, the Committee requests the Government to provide information on: (i) the time lines for approving public sector collective agreements and the grounds for the decisions not to approve certain agreements; and (ii) the development of cases in which the validity of certain clauses of public sector collective agreements has been legally challenged. The Committee also reminds the Government that it may avail itself of the technical assistance of the Office to strengthen the regulatory framework of public sector collective bargaining.***

Application of the Convention in practice. Maquila sector. In its previous comments, having noted with concern that the unionization rate in the sector was below 1 per cent and that the approval of only one collective agreement covering a *maquila* (export processing) enterprise was known in recent years, the Committee requested the Government to take specific initiatives to promote collective bargaining in the *maquila* sector. The Committee notes the Government's indication that: (i) from 1 January 2020 to 17 May 2021, the MTPS recorded three applications for registration of trade unions of the *maquila* sector, two of which resulted in comments ("previos") of the labour administration and one, received on 6 May, which was waiting to be examined; (ii) a collective agreement of an enterprise in the *maquila* sector was approved in 2020; (iii) the MTPS regularly conducts training on labour rights, including collective rights, particularly aimed at women *maquila* workers; and (iv) the Maquila Coordination Committee, which brings together institutions and organizations that develop actions for women workers in the clothing and textile industry, has been strengthened. While noting this information, the

Committee ***regrets*** to note that collective rights are still barely exercised in the *maquila* sector and that there is an absence of initiatives effectively focused on promoting them. ***The Committee therefore urges the Government to take specific initiatives to promote freedom of association and collective bargaining in the maquila sector and requests it to provide information in this respect.***

Application of the Convention in municipal authorities. In its previous comments, in view of the large number of allegations of violations of the Convention in various municipalities in the country, the Committee expressed its concern at the information that both labour inspections and court decisions are often insufficient to resolve situations involving violations of the Convention, especially in relation to cases of anti-union dismissals of municipal workers. The Committee notes that: (i) the General Labour Inspectorate participated in dialogue forums following the dismissal of municipal union workers; and (ii) the National Association of Municipalities of the Republic of Guatemala affirms its support of fundamental labour rights but states that it must obtain the consensus of the country's 340 municipalities in order to be able to participate in dialogue forums. The Committee also ***regrets*** to note that the 2021 observations of the national trade union organizations once again denounce many cases of violation of the Convention involving the leaders and members of municipal workers' trade unions. ***The Committee therefore once again urges the Government to take all necessary measures, including the adoption of legislation if necessary, to ensure the application of the Convention in the municipalities. The Committee requests the Government to keep it informed of any progress achieved in this respect.***

Tripartite dispute settlement in relation to freedom of association and collective bargaining. In its previous comment, the Committee emphasized the important role that the Subcommittee on Mediation and Dispute Settlement of the National Tripartite Committee can play in a context of numerous allegations of anti-union discrimination and noted that the technical cooperation programme developed by the Office provides for its strengthening. The Committee notes from document GB/343/INS/7 that: (i) in 2020, members of the Subcommittee on Mediation and Dispute Settlement participated, with the support of the Office, in a distance training course of the International Training Centre of the ILO on conciliation and mediation of labour disputes, as well as an international event on social dialogue in 2021; (ii) in 2020, the Subcommittee held six ordinary sessions at which two requests for the examination of cases were received and declared admissible; (iii) from 1 January to 16 September 2021, the Subcommittee held one ordinary session at which one request for the examination of a case was received but it has not yet been declared admissible; and (iv) in the period under review, no mediation or dispute settlement meetings were held. While it considers that the restrictions as a result of the COVID-19 pandemic may have had an impact on the activities of the Subcommittee, the Committee ***regrets*** to note the lack of meetings held by the Subcommittee on Mediation and Dispute Settlement to settle certain disputes. ***The Committee expresses the firm hope that the Government will be able to provide information in the near future on the tangible contribution of this Subcommittee to the resolution of collective conflicts and the strengthening of social dialogue in the country.***

Regretting that, despite the existence of the National Tripartite Committee and the technical assistance provided by the Office, no tangible progress has been made in the last three years, the Committee recalls that it falls to the Government to take decisions necessary for the fulfilment of the State's international commitments made through the ratification of international labour Conventions. The Committee therefore urges the Government to take the necessary measures to remedy as soon as possible the serious violations of the Convention that the Committee has been noting for many years.

[The Government is asked to reply in full to the present comments in 2023.]

Rural Workers' Organisations Convention, 1975 (No. 141) (ratification: 1989)

Article 3 of the Convention. Right of all rural workers to establish organizations of their own choosing without previous authorization. In its previous comment, the Committee requested the Government to provide statistics on the number of rural workers' unions and associations existing in the country, and

the number of their members. The Committee notes with ***concern*** the Government's indication that: (i) of the 725 organizations of rural workers registered by the Ministry of Labour and Social Welfare, nine have legal personalities that are currently valid, while the legal personalities of the other 716 have lapsed; and (ii) only 0.79 per cent of the rural economically active population belongs to any type of union (the Committee observes that it is not specified whether this percentage of unionized rural workers refers specifically to the members of unions with a currently valid legal personality, or whether it also includes workers who are members of organizations for which the legal personality has lapsed).

The Committee emphasizes that compliance with *Article 3* of the Convention presupposes in the first place the elimination of legislative obstacles that may impede the freedom of rural workers to establish trade unions. The Committee recalls in this regard the comments that it has been making for many years in the context of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), concerning the need to amend section 215(c) of the Labour Code, which requires a membership of "50 per cent plus one" of the workers in a sector to establish a sectoral trade union. The Committee also recalls in this context that it noted with concern the indications by the trade union confederations that the combination of: (i) the fact that it is impossible to create sectoral unions as a result of the requirements of section 215(c); and (ii) that it is impossible in small enterprises, which account for almost all companies in Guatemala, to assemble the 20 workers required by section 216 of the Labour Code for the establishment of a union, which means that the great majority of workers in the country do not have access to the right to union membership. The Committee notes in this regard that the rural sector is generally characterized by a high incidence of small enterprises, which makes it particularly important to remove legislative obstacles to the possibility of establishing sectoral unions in agriculture. ***Recalling that Paragraph 8 of the Rural Workers' Organisations Recommendation, 1975 (No. 149), specifically emphasizes that the relevant laws and regulations should be fully adapted to the special needs of rural areas in relation to requirements regarding minimum membership for the establishment of organizations, the Committee urges the Government to take the necessary measures in the near future to amend the requirements relating to the establishment of sectoral unions set out in section 215(c) of the Labour Code in accordance with the Conventions ratified by Guatemala, and to facilitate and extend the possibilities for the establishment of unions that cover workers in several enterprises in the rural sector. The Committee hopes to be able to note tangible progress in this regard in the near future and requests the Government to provide the corresponding information.***

In response to serious allegations of anti-union practices in the agricultural sector, the Committee also previously requested the Government to provide information on the action taken by the labour inspectorate to ensure that rural workers are freely able to exercise their right to organize. The Committee notes the Government's indications in this regard that: (i) as rural workers enjoy the same trade union rights as other workers, the General Labour Inspectorate (IGT) applies the same general measures in the rural sector, and particularly the special procedure for investigations into freedom of association and collective bargaining and the procedure relating to cases of social dialogue in labour matters; (ii) similarly, it is the responsibility of the General Labour Inspectorate, in both the rural and other sectors, to ensure the employment security of the trade union leaders appointed by the members of their organizations; (iii) on this basis, the General Labour Inspectorate systematically includes freedom of association and collective bargaining in its inspection plans for agricultural enterprises and plantations; (iv) between 2016 and 21 May 2021, the General Labour Inspectorate received 246 complaints from trade unions in the rural sector; and (v) during the same period, the General Labour Inspectorate assisted 11 dialogue forums in the rural sector (ten forums in the same enterprise and one forum for several enterprises in the same area) and registered the establishment of 83 ad hoc workers' committees in rural enterprises (temporary committees composed of a maximum of three workers governed by section 374 of the Labour Code, through which workers and employers can resolve differences).

The Committee also notes the Government's indication that the inspection of working conditions in the rural sector gives rise to specific challenges and difficulties, including the seasonality of work and contracts, linguistic barriers with indigenous workers, difficulties of access to certain enterprises or plantations in remote locations and/or guarded by security personnel and the weak trade union organization in the sector. The Committee notes in this regard that, among the good inspection practices emphasized by the Government, it is envisaged that inspectors will coordinate inspections with any unions or ad hoc committees that may exist, based on a prior risk assessment with a view to avoiding any reprisals against workers' representatives. Lastly, the Committee notes that the action of the General Labour Inspectorate in the rural sector is currently supported by the Office through the implementation of the cooperation project on "Supporting respect for the working conditions of workers in the agro-export sector in Guatemala".

The Committee takes due note of this information and observes that it shows that the General Labour Inspectorate has clearly identified the substantial difficulties relating to the protection of the exercise of trade union rights in the rural sector. ***In light of the above, the Committee requests the Government to provide further information on the specific action and interventions of the General Labour Inspectorate in relation to freedom of association in the rural sector (with an indication in particular of the number of complaints lodged concerning the exercise of trade union rights and the related decisions, as well as the number of trade union leaders registered so that they benefit from employment security). Recalling that Guatemala has also ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Plantations Convention, 1958 (No. 110), the Committee also requests the Government to proceed with an assessment of the measures and tools to reinforce the effectiveness of action by the General Labour Inspectorate and other relevant public authorities to prevent and resolve situations of anti-union discrimination in the rural sector. The Committee emphasizes the importance of this assessment involving substantive dialogue with the organizations of workers and employers concerned, and reminds the Government that it may avail itself of ILO technical assistance, particularly through the projects "Supporting respect for the working conditions of workers in the agro-export sector in Guatemala" and "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards". The Committee requests the Government to provide information on the progress made in this regard.***

Articles 4 to 6. Promotion of organizations of rural workers and their role in economic and social development. Recalling that the Convention also provides that the State shall further the development of organizations of rural workers and promote their participation through their organizations in economic and social development, the Committee previously requested the Government to provide information on: (i) the measures taken to facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers and their participation in the economic and social development process of the country; and (ii) the number of collective agreements in force in the rural sector and the number of workers covered. The Committee notes that the Government: (i) indicates that it is developing with the Office a campaign on decent work in the agricultural sector, which includes the subject of freedom of association; the campaign will be disseminated in various national languages, through social networks, broadcasts and information posters during the course of 2021; (ii) provides data on the action to promote economic activity in the rural sector undertaken by the Deputy Minister for the Development of Micro-, Small and Medium-sized Enterprises of the Ministry of the Economy and by the Ministry of Agriculture; and (iii) indicates that the Ministry of Labour does not have information on which collective agreements in force in the country cover workers in the rural sector.

The Committee notes the lack of information on the collective agreements in force in the rural sector, as collective bargaining is a fundamental means of action for associations of rural workers. The

Committee also notes that the initiatives relating to the rural sector referred to by the Government consist essentially of capacity-building, but that information has not been provided on the social dialogue mechanisms through which associations of rural workers can participate in decision-making processes that affect them. ***In light of the above, the Committee requests the Government to: (i) reinforce information activities on and the promotion of freedom of association and collective bargaining through initiatives targeting the rural sector; (ii) compile the information available on the collective agreements in force that cover rural workers; and (iii) promote dialogue with the associations of rural workers, including those of self-employed workers and small producers, in mechanisms for the adoption of public decisions that affect them. Lastly, the Committee requests the Government to supplement the information provided on associations in the rural sector by providing further details on associations of self-employed workers and small producers, including information on solidarist associations (the number of associations and members, type of activities undertaken).***

[The Government is asked to reply in full to the present comments in 2024.]

Guinea

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2017, and of the National Employers' Council of Guinea, transmitted with the Government's report, which cover matters examined by the Committee.

Article 3 of the Convention. Right of organizations to organize their activities and to formulate their programmes. In its previous comments, the Committee requested the Government to provide information on the determination of minimum services in the context of collective disputes through the framework for concerted social dialogue, and particularly to indicate the minimum services determined in the transport and communications services, where difficulties had previously been reported. The Committee notes with ***interest*** the Government's indication that, following the development of the National Social Dialogue Charter, Decree No. 256 of 23 August 2016 establishing a National Social Dialogue Council was adopted. The Committee notes that, in accordance with section 4 of the Decree, the Council is responsible for ensuring permanent dialogue between the State and all the social partners, and that section 5(2) provides that the Council shall be consulted on major disputes. The Committee further notes that section 7 of the Decree provides for the tripartite composition of the Council and the appointment of its members. The Government adds that it will take every measure for its effective implementation, including the appointment of its members. The Committee notes the indication by the National Employers' Council of Guinea, suggesting that the Council could also address, in addition to the transport and telecommunications sectors, services such as banking and insurance, health, education and microfinance. ***The Committee requests the Government to provide information on the work of the National Employers' Council of Guinea in resolving disagreements concerning the determination of minimum wages. The Committee once again requests the Government to indicate the minimum services determined in the transport and communications services, where difficulties had previously been reported, including by the ITUC in its observations referred to above.***

The Committee recalls that in its previous comment it noted that, under the terms of section 431(5) of the Labour Code, employees are entitled to cease working completely, on condition that indispensable security measures and a minimum service are ensured. In this regard, the Committee previously requested the Government to take the necessary measures to amend section 431(5) of the Labour Code in order to limit the possibility to establish a minimum service to the following situations: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (that is, essential services "in the strict sense of the term"); (ii) in services which are not essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population; or (iii) in public services of fundamental importance (see the 2012 General Survey on the fundamental Conventions, paragraph 136). The Committee also noted

that, under the terms of sections 433(1) and 434(4) of the Labour Code, read in conjunction, recourse to arbitration may be compulsory in a dispute of such a nature as to compromise the normal functioning of the national economy. In this regard, the Committee recalled that compulsory recourse to arbitration to bring an end to a collective labour dispute or a strike is only acceptable in cases where strikes may be subject to restrictions, or even prohibited, namely: (i) in the case of disputes concerning public servants exercising authority in the name of the State; (ii) in disputes in essential services in the strict sense of the term; or (iii) in situations of acute national or local crisis, but only for a limited period of time and to the extent necessary to meet the requirements of the situation (see General Survey op. cit., paragraph 153). The Committee also noted the possibility envisaged in section 434(4) of the Labour Code to make executory an arbitration award despite the expressed opposition of one of the parties within the time limits set out in the law, which amounts to empowering the public authorities to bring an end to a strike, instead of the highest judicial authorities. The Committee therefore requested the Government to take the necessary measures to amend section 434(4) of the Labour Code as indicated above. The Committee notes the Government's indication that it has established a commission to review the Labour Code, with a view to its revision, and that sections 431(5) and 434(4) will be analysed and discussed by this commission. ***The Committee welcomes the establishment of the commission to review the Labour Code and hopes that sections 431(5) and 434(4) of the Labour Code will be amended in the near future. The Committee requests the Government to report any progress achieved in this regard.***

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

Guinea-Bissau

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

The Committee notes the Government's indication that the new Labour Code was adopted by the National Assembly in July 2021 and is awaiting promulgation by the President of the Republic. Once promulgated, the Labour Code will repeal the General Labour Act No. 2/86.

Scope of the Convention. Categories of workers. For several years now, the Committee has been asking the Government to communicate information on the status of the draft legislation regarding the guarantee of the rights protected by the Convention to agricultural and dockworkers. The Committee noted the Government's indication that these matters were adequately addressed in the new Labour Code under approval. The Committee notes the Government's indication that agricultural and dockworkers are covered by the new Labour Code, However, it observes, according to section 21 of the new legislation, that the following are subject to a special regime, without prejudice to the application of the general provisions of the Code which are not incompatible with the special regimes: employment contracts issued for (a) domestic work; (b) group employment; (c) apprenticeship or training; (d) work on board commercial and fishing vessels; (e) work on board aircraft; (f) dock work; (g) rural work; and (h) work performed by foreigners. In this regard, the Committee observes that the general provisions of the Labour Code in respect of freedom of association and collective bargaining (sections 395, 396 and 397) cover only the right to establish trade union organizations, their autonomy and independence, and the prohibition of anti-union discrimination. ***Emphasizing all workers, with the sole exception of members of the armed forces and the police, as well as public servants engaged in the administration of the State must have access to all the rights guaranteed by the Convention and, in particular, the right to collective bargaining, the Committee requests the Government to indicate in what manner the special regimes for the different categories of workers mentioned above regulate their collective rights.***

Articles 4 and 6. Collective bargaining rights of public servants not engaged in the administration of the State. In its previous comments, the Committee also requested the Government to provide information on measures taken to adopt special legislation which, under section 2(2) of Act No. 08/91 on freedom of association, was to regulate the right to collective bargaining of public servants who are

not engaged in the administration of the State. The Committee notes the Government's indication that the public servants who do not exercise functions directly connected to the administration of the State are also protected by the provisions of the new Labour Code. The Committee observes, in the regard, that while section 2 of the Labour Code indicates the provisions of the Code applicable to the legal relationship in public employment, without prejudice to the provisions of the special legislation, the right to collective bargaining is not included in these provisions. ***In the absence of other information brought to its attention, the Committee requests the Government to specify the provisions or mechanisms whereby the different categories of public servants not engaged in the administration of the State my negotiate their working conditions and terms of employment and to provide information on the different agreements signed with the public employees' and servants' organizations.***

Article 4. Promotion of collective bargaining. Procedures for extending collective agreements. The Committee observes that section 503 of the new Labour Code provides that the member of the Government responsible for the area of work may, by means of regulations, determine the entire or partial extension of collective labour agreements to employers of the same sector of activity and to workers of the same or a similar occupation. ***Recalling that the request to extend a collective agreement must, as a general rule, be made by one or more employers and workers organizations which are party to the collective agreement, the Committee requests the Government to take the necessary measures to modify the legislation to ensure that the extension of collective agreements are subject to tripartite consultations (even where they provide, as is the case in section 504 of the Labour Code, that the parties affected by the application of an extended collective agreement may submit an objection to the draft extension regulation).***

Promotion of collective bargaining in practice. In its previous comments, the Committee requested the Government to provide information on the number of new collective agreements signed and on the number of workers covered by them. The Committee notes the Government's indication that, to date, it does not have this information at its disposal, but that it will provide it as soon as it is available. ***Emphasizing the importance of having available statistical data in order to be able to evaluate more accurately the need to promote collective bargaining, the Committee hopes that the Government will soon be in a position to indicate the number of collective agreements concluded, the sectors covered and the number of workers concerned.***

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

Guyana

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

In its previous observations, the Committee referred to the recognition of only those unions claiming 40 per cent support of the workers, as set out in the Trade Union Recognition Act, and requested the Government to indicate any measure envisaged to ensure that, when no trade union reaches the 40 per cent threshold, bargaining rights can be granted to all unions in the bargaining unit, at least on behalf of their own members. The Committee takes note of the Government's indication that the Trade Union Recognition Act stipulates that 40 per cent or more of the members of a bargaining unit must belong to a union to be recognized as the union for that entire bargaining unit, meaning that when a bargaining unit is contested by unions, the union with the highest number of votes will be certified and recognized as the union for that entire bargaining unit. While taking due note of the information provided by the Government, the Committee emphasizes that the representativeness requirements set by legislation to be designated as a bargaining agent may bear a substantial influence on the number of collective agreements concluded and that such requirements should be designed in a manner that effectively promotes the development of free and voluntary collective bargaining. ***Noting that the Trade Union Recognition Act does not contain provisions regulating cases in which no union***

reaches the threshold of 40 per cent support of workers to be recognized as a bargaining agent, the Committee requests once again the Government to take the necessary measures, in consultation with the most representative social partners, to ensure that the threshold established by legislation to become a bargaining agent effectively guarantees the promotion of collective bargaining within the meaning of the Convention, taking into consideration that, when the threshold is not reached, the existing unions should be given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members. The Committee reminds the Government that it may avail itself of the technical assistance of the Office.

Collective bargaining in practice. The Committee takes note of the Government's indication that there are 18 unions currently participating in the collective bargaining agreements in the sectors of agriculture, banking, food manufacturing, insurance, retail, gasoline, government services, transportation and mining, and that since 2020, 15 collective bargaining agreements have been concluded, 8 signed in 2020 and 7 in 2021, and all are in force. ***Noting that the Government does not provide information on the number of workers covered by the collective agreements, the Committee requests it to provide information in this regard, and to continue to provide statistical information on the number of collective agreements concluded and in force in the country, indicating the sectors concerned.***

Haiti

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

The Committee notes with ***deep concern*** that the Government's report, due since 2014, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. While being aware of the difficulties affecting the country, the Committee cannot but recall that it has been raising issues concerning the observance of the Convention in an observation and a direct request, including longstanding recommendations to bring the labour legislation into conformity with the Convention regarding provisions that unduly restrict: (i) the right of workers to establish and join organizations of their own choosing (minors, foreign workers, domestic workers); and (ii) the right of workers' organizations to organize their activities in full freedom and to formulate their programmes. ***Not having received any additional observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation and direct request adopted in 2020 and urges the Government to provide a full reply thereto. To this end, the Committee expects that any request for technical assistance that the Government may address to the Office will be acted upon as soon as possible.***

[The Government is asked to reply in full to the present comments in 2022.]

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

The Committee notes with ***deep concern*** that the Government's report, which has been expected since 2014, has not been received. In light of the urgent appeal made to the Government in 2020, the Committee is proceeding with the examination of the application of the Convention on the basis of information at its disposal. While being aware of the difficulties faced by the country, the Committee recalls that it raised questions concerning the application of the Convention in an observation, which particularly concerned the need to strengthen protection against anti-union discrimination as well as the penalties provided in this regard. It recalls also that its comments concern allegations of serious violations of freedom of association in practice, especially in several enterprises in textile export processing zones, and the lack of social bargaining in the country. ***In the absence of additional***

observations from the social partners and having no indication at its disposal of progress made on these pending issues, the Committee refers to its previous observation of 2020 and urges the Government to provide a complete response in 2022 to the questions raised. For that purpose, the Committee expects that any request for technical assistance, in relation with Conventions ratified by the country, that the Government may wish to address to the Office will be taken up as soon as possible.

[The Government is asked to reply in full to the present comments in 2022.]

Honduras

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

The Committee takes note of the observations of the Honduran National Business Council (COHEP), received on 31 August 2021, and of the Government's reply. It also takes note of the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021, relating to matters examined in the present observation.

Trade union rights and civil liberties

The Committee recalls that: (i) the Committee on the Application of Standards examined the application of the Convention in 2018 and 2019 and noted with serious concern the allegations of anti-union violence, in particular physical aggression and murders, as well as the absence of convictions against the perpetrators of the offences, which created a situation of impunity that heightened the climate of violence and insecurity; (ii) in May 2019, a direct contacts mission took place and a tripartite agreement was signed which, inter alia, provided for the creation of a national committee to combat anti-union violence; and (iii) in September 2019, the Office carried out a technical assistance mission to support the implementation of the agreement and on 18 September 2019 the Committee on Anti-Union Violence was established.

In its previous comment, having expressed its deep concern at the low number of trade unionists who have benefited from protection measures in comparison with the very high number of acts of anti-union violence, the ineffectiveness of such protection measures, the persistence of acts of anti-union violence and the lack of progress in their investigation, the Committee once again urged the Government and all the competent authorities to: (i) comply fully with all elements in the tripartite agreement concerning action against anti-union violence; (ii) ensure the active involvement of all the relevant authorities in the Committee on Anti-Union Violence, especially the Ministry of Human Rights, the Office of the Public Prosecutor and the judiciary; (iii) institutionalize and make effective the participation of the representative trade unions in the National Council for the Protection of Human Rights Defenders; (iv) draw up a special investigation protocol to enable the Office of the Public Prosecutor to examine, systematically and effectively, any anti-union motives behind the acts of violence affecting members of the trade union movement; (v) ensure that the criminal courts give priority treatment to cases of anti-union violence; and (vi) ensure adequate and prompt protection for all at-risk members of the trade union movement.

The Committee notes the information provided by the Government in respect of progress in investigations and prosecutions relating to specific cases of murders of members of the trade union movement. The Committee observes that: (i) seven cases remain under investigation (the murders of Sonia Landaverde Miranda, Alfredo Misael Ávila Castellanos, Evelio Posadas Velásquez, Juana Suyapa Posadas Bustillo, Glenda Maribel Sánchez, Fredy Omar Rodríguez and Roger Abraham Vallejo) and (ii) five cases remain before the courts (the arrest warrants for the murders of Alma Yaneth Díaz Ortega, Uva Erlinda Castellanos Vigil, José Ángel Flores and Silmer Dionisio George remain to be issued and the conviction against the perpetrator of the murder of Claudia Larissa Brizuela is under appeal). The

Government also points to the investigations carried out by the Special Prosecutor for Crimes against Life to shed light on the murder, on 17 November 2019, of Jorge Alberto Acosta Barrientos. The Committee notes with ***concern*** the slow progress in the investigations of murders committed almost a decade ago, and the low number of judicial convictions to date. The Committee emphasizes that justice delayed is justice denied.

Furthermore, the Committee notes the Government's reiteration that the investigations and legal proceedings relating to the other cases of alleged anti-union violence have been completed and that it therefore provided no new information in this respect.

The Committee notes that, according to the ITUC, impunity continues to prevail since the Government has not been able to provide prompt and adequate protection to trade unionists who received death threats, nor were proper investigations carried out to find and prosecute the perpetrators of anti-union crimes. The Committee notes with ***deep concern*** the ITUC report of the murder of Oscar Obdulio Turcios Fúnes, an activist member of the Workers' Union of the National Autonomous University of Honduras (SITRAUNAH), who died on 13 July 2020 after demanding payment of delayed salaries and overtime.

The Committee also notes the concern expressed by the COHEP in respect of the scant impact of the Committee on Anti-Union Violence and the lack of proactivity on the part of the State authorities in this regard. The COHEP indicates that the Committee on Anti-Union Violence has held only four meetings: one in 2019, two in 2020 and one in 2021, and that, although some agreed points were achieved (such as the exchange of information on protection measures taken in respect of members of the trade union movement who are at risk, and proposals on how to improve the mechanism), the Committee's rules of procedure and the road map remained to be approved. The COHEP condemns the acts of violence against members of the trade union movement and indicates that it has not received an update on the criminal investigations and proceedings.

The Committee notes the Government's indication that, while it is aware of the commitment made with the Committee on Anti-Union Violence and is confident that it will deliver meaningful results in the near future, the COVID-19 pandemic has delayed activities. It also indicates that on 13 July 2021, a meeting was held to reinvigorate the Committee on Anti-Union Violence, for which purpose a road map was presented in respect of which it was agreed that the worker and employer sectors would make comments and suggestions. The Government also indicates that a meeting was held on 3 August 2021 in order to present an annual report on documented cases of anti-union violence and that at that meeting, it was decided, inter alia, to request technical assistance from the ILO in order to present the experience of Guatemala with regard to anti-union violence. While taking due note of the Government's indication that the pandemic has delayed the activities of the Committee on Anti-Union Violence, the Committee ***regrets*** that, three years since its establishment, the Committee on Anti-Union Violence has been unable to make progress towards practical solutions to the serious violations of the Convention which have been observed for many years. The Committee recalls that on various occasions it has underscored the urgent need for the various State institutions to provide the coordinated and priority response required by the situation of anti-union violence prevailing in the country. The Committee emphasizes the essential role that the Committee on Anti-Union Violence can and must play in order to carry out specific tripartite activities relating to anti-union violence and impunity. The Committee considers that the fact that the Committee on Anti-Union Violence is composed of representatives of the Secretariat-General for Government Coordination, the Ministry of Labour and Social Security, the Ministry for Human Rights and social partners represented on the Economic and Social Council (CES) and that actors in the judicial system are invited to participate should allow the Committee on Anti-Union Violence to foster the necessary synergies among the various institutions and facilitate dialogue with representatives of trade union organizations at risk. ***The Committee takes due note of the Government's indication of its intention to request technical assistance and hopes that this will be provided as soon as possible.***

Furthermore, the Committee ***regrets*** that no information has been received from the Government relating to protection measures taken in respect of members of the trade union movement who are at risk. The Committee notes that, according to the COHEP, on 20 May 2021 the Sectoral Committee for the Handling of Disputes referred to the ILO (MEPCOIT) convened a session to discuss and adopt the work plan and boost the protection mechanism for trade union members and leaders whose physical integrity and life are threatened.

Expressing deep concern at the persistence of acts of anti-union violence and the lack of sufficient progress in taking specific and rapid measures in this regard, the Committee once again urges the Government and all the competent authorities to: (i) take specific and rapid measures, including budgetary measures, to comply fully with all elements in the tripartite agreement concerning action against anti-union violence, giving the Committee on Anti-Union Violence the necessary and vital impetus for it to succeed in the performance of its functions, ensuring the active involvement of all relevant authorities; (ii) institutionalize and make effective the participation of the representative trade unions in the National Council for the Protection of Human Rights Defenders; (iii) draw up a special investigation protocol to enable the Office of the Public Prosecutor to examine, systematically and effectively, any anti-union motives behind the acts of violence affecting members of the trade union movement; (iv) ensure that the criminal courts give priority treatment to cases of anti-union violence; and (v) ensure adequate and prompt protection for all at-risk members of the trade union movement. The Committee also requests the Government to continue providing detailed information on criminal investigations and proceedings relating to acts of violence against members of the trade union movement, including in relation to the murder of Jorge Alberto Acosta Barrientos and of Oscar Obdulio Turcios Fúnes.

Legislative issues

Articles 2 et seq. of the Convention. Establishment, autonomy and activities of trade unions. The Committee recalls that it has been requesting the Government for many years to amend the following provisions of the Labour Code to bring them into conformity with the Convention:

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

In its previous comments, the Committee observed that the establishment of tripartite social dialogue on the reform of the labour legislation, as envisaged in the tripartite agreement of May 2019,

would call for a special effort in terms of building trust between the parties, and noted with regret the absence of tangible progress in this respect. Aware of the obstacles that the COVID-19 pandemic might have raised, the Committee trusted that the Government, with the technical support of the Office, would move forward as soon as possible with holding tripartite discussions and make progress in the preparation of the reforms that have been requested for many years.

The Committee notes the Government's indication that: (i) on 4 February 2020, the Ministry of Labour and Social Security sent a note to the President of the MEPCOIT requesting that the discussions relating to the reform of the Labour Code be resumed as soon as possible; (ii) the coordinator of the MEPCOIT replied on 25 February 2020, stating that a meeting would be convened for that purpose in the coming days; and (iii) although the state of emergency made it impossible to continue with the activities, the Government was mindful of the commitments made and would be taking up the pending issues as soon as possible.

The Committee also notes the observations of the social partners concerning the labour legislation revision process. The Committee observes the insistence of the ITUC on the need for the Government to take immediate steps to amend the provisions of the Labour Code to bring them into line with the Convention. The COHEP, for its part, recalls that the position of the employer sector has already been expressed repeatedly and indicates that on 20 May 2021, the MEPCOIT held a session to discuss and adopt the work plan and, inter alia, to discuss the harmonization of the Labour Code with the Convention. The Committee also notes from the report of the COHEP that on 24 June 2021 the private sector assumed the presidency of the CES for a term of one year, and welcomes its commitment to creating the necessary spaces for dialogue to reach agreements that reflect the Committee's recommendations.

The Committee regrets that there has been no progress in the tripartite discussion process envisaged in the agreement of 2019. The Committee reiterates that, while it is aware of the obstacles that the COVID-19 pandemic may have created in this regard, the Committee firmly hopes that the Government will move forward as rapidly as possible with the tripartite discussions, with the technical support of the Office, and report progress in the preparation of the reforms that have been requested for many years. The Committee encourages the development of agreements in the framework of the CES that reflect the recommendations of the Committee. The Committee requests the Government to provide information in this respect.

New Penal Code. The Committee recalls that on 25 June 2020, a new Penal Code entered into force and that, in view of the broad scope of certain offences, it requested the Government, in consultation with the most representative organizations of employers and workers, to assess the impact of the provisions of the Penal Code on the free exercise of trade union activities. The Committee notes that the Government attached a copy of a note sent by the Secretary of State for Labour and Social Security to workers' federations and the COHEP on 4 May 2021 in order for them to designate a representative to take part in the assessment of the provisions of the Penal Code. It also takes note of the COHEP's indication that it received the aforementioned note and that on 14 May 2021, it indicated that it would send a letter to the employer organizations in order to ascertain positions in this regard and thus consolidate the position of the private sector. For its part, the ITUC emphasizes that the provisions of the new Penal Code considerably limit the right to peaceful assembly and criminalize protests and public assemblies with penalties of up to 30 years' imprisonment. ***The Committee welcomes the fact that the Government has initiated the consultation process on the impact of the provisions of the Penal Code on the free exercise of trade union activities and hopes that these consultations will take place as soon as possible. It requests the Government to provide information in this regard.***

Application of the Convention in practice. In its previous comment, the Committee expressed the hope that once the obstacles created by the COVID-19 pandemic were overcome, the MEPCOIT would

shortly start its industrial relations dispute settlement activities so that it could examine alleged violations of freedom of association in practice, including allegations relating to the agro-export and education sectors. The Committee takes note that, although the health emergency did not allow the MEPCOIT to meet its commitments, it would be resuming them at the earliest opportunity. The Committee further notes that, according to the COHEP, on 20 May 2021 the MEPCOIT held a session to discuss and approve its work plan, and for its reactivation and strengthening of its technical and political powers to intervene in the settlement of disputes. ***While it is aware of the obstacles that the COVID-19 pandemic may have created in relation to the operation of the MEPCOIT, the Committee emphasizes the essential role that the MEPCOIT can and must play in the resolution of industrial disputes and firmly hopes that it will resume its activities at the earliest possible opportunity. The Committee requests the Government to provide information in this respect.***

The Committee requests the Government to take, as soon as possible, the necessary measures to bring its legislation and practice into conformity with the Convention. The Committee recalls that the technical assistance of the Office is at its disposal and expresses the firm hope that the Government will provide information in its next report on any progress made with regard to the issues raised.

[The Government is asked to reply in full to the present comments in 2023.]

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 31 August 2018, and the Government's reply in this respect. It also notes the observations of the Honduran National Business Council (COHEP) and of the ITUC, received on 31 August and 1 September 2021, respectively, on issues being examined by the Committee in this observation. ***The Committee requests the Government to provide its reply in this respect.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comment, the Committee noted with interest the amount of the fines prescribed for anti-union acts in the Labour Inspection Act of 2017 and requested the Government to provide information on their application and impact. The Committee notes the Government's indication that: (i) since the entry into force of the Act, businesses have taken greater care not to commit violations of this type; (ii) the Act has made it possible to provide effective protection against anti-union discrimination since it provides for the immediate reinstatement of members of executive committees who have been dismissed; and (iii) the increase in fines has contributed to a decrease in this type of violation. The Committee notes that, as the COHEP indicates, in addition to the provisions of the Labour Inspection Act, section 295 of Legislative Decree No. 130-2017 published in the Official Gazette of 10 May 2019, containing the new Penal Code, establishes discrimination in employment as an offence punishable by penalties of from one to two years' imprisonment and a daily fine of from 100 to 200 days (each day having a value of not less than 20 lempiras (the equivalent of US$0.83) and not more than 5,000 lempiras (the equivalent of US$209)). The Committee notes with ***interest*** that this provision explicitly refers to discrimination in employment, public or private, against any person for being a workers' legal or trade union representative. The Committee observes, however, that according to the Government, in 2019 and 2020, 222 complaints concerning anti-union acts were filed and are still being processed and that the ITUC also reports anti-union dismissals. ***The Committee expresses the hope that the implementation of the Labour Inspection Act combined with the Penal Code will ensure more effective protection against acts of anti-union discrimination and prevent their recurrence. It requests the Government to provide detailed information on the outcomes of the aforementioned complaints and invites it to compile data on the average duration of legal proceedings (including appeals procedures) relating to discrimination on the grounds of trade union activities.***

In its previous comment, the Committee requested the Government to provide information on the application of Ministerial Agreement No. STSS-196-2015 which protects workers wishing to form

trade unions and to examine, with the social partners, the possibility of incorporating the content thereof in the Labour Code. In this respect, the Government indicates that upon receipt of a request for registration of a collective agreement, the General Labour Directorate (DGT) is immediately informed so that it can verify that the right of workers to form a trade union is not being curtailed. It also indicates that on 27 January 2021, it sent a note to the President of the Sectoral Committee for the Handling of Disputes referred to the ILO (MEPCOIT) of the Economic and Social Council (CES) to assess with the social partners the possibility of incorporating the content of the Agreement in the Labour Code. The Committee notes the COHEP's indication that it agrees with the proposal to incorporate the content of the agreement in the Labour Code through the CES and its further indication that this matter could be included in the discussion on the reform of the Labour Code, taking into consideration that protection for workers wishing to form a trade union should also be offered to those who decide not to join one. The Committee notes that, as indicated in the observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), although the health emergency did not allow the MEPCOIT to meet its commitments, it would be resuming them at the earliest opportunity. ***The Committee encourages the Government and the social partners to consider this matter in the context of the reform of the Labour Code and hopes that MEPCOIT resumes its activities as soon as possible. The Committee requests the Government to provide information in this respect.***

Article 2. Adequate protection against acts of interference. The Committee has been asking the Government, after consultation with the social partners and in the context of the process of reforming the Labour Code, to take the necessary measures to incorporate in the legislation explicit provisions that ensure effective protection against acts of interference by the employer, in accordance with *Article 2* of the Convention. The Committee notes the Government's indication that, when carrying out an inspection, the DGT can identify whether there is any type of interference by the employer and that, if such is the case, corrective measures are applied through the labour inspectors. While it notes the Government's indications, the Committee recalls that in order to ensure that effect is given to *Article 2* of the Convention in practice, the legislation must make express provision for sufficiently dissuasive remedies and sanctions against acts of interference by employers against workers and their organizations, including against measures that are intended to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means with the objective of placing such organizations under the control of employers or employers' organizations. ***The Committee therefore once again requests the Government to take due note of this matter in the process of reforming the Labour Code, and to provide information on the progress achieved in this respect.***

Articles 4 and 6. Promotion of collective bargaining. Right of collective bargaining of public servants not engaged in the administration of the State. In its previous comment, the Committee, having taken note of the Government's indication that various decentralized and centralized institutions were permitted to submit claims and engage in collective bargaining, requested the Government to specify the texts that recognized the right of workers to collective bargaining in these institutions, and how they were related to sections 534 and 536 of the Labour Code, which provide that unions of public employees may not submit lists of claims or conclude collective agreements. The Committee notes the Government's indication that the Constitution of the Republic embraces the principles and practices of international law and establishes equal rights, including the right to collective bargaining. With regard to sections 534 and 536 of the Labour Code, the Government indicates that while it is true that there are limitations on collective bargaining in the public sector, trade unions can submit "respectful statements" containing requests and allowing negotiations aimed at improving administrative organization or working methods. It indicates that there are "respectful statements" in four public institutions. The Committee further notes that the COHEP forwarded information provided by the DGT indicating that in the public sector, 34 collective agreements, two collective accords, nine special accords, 26 memorandums of understanding and four "respectful statements" are in place. The Committee also

notes that the Committee on Freedom of Association (CFA) examined allegations of failure by a public institution to comply with a collective agreement and requested the Government to promote dialogue between the parties so that the collective agreement is fully implemented (see 386th Report, June 2018, Case No. 3268). The Committee observes that while it appears from the foregoing information that collective bargaining is in practice possible in certain public institutions, the fact remains that sections 534 and 536 of the Labour Code do not allow unions of public employees to submit lists of claims or conclude collective agreements. The Committee further recalls that a system in which public employees may only submit to the authorities "respectful statements", a mechanism that does not allow for real negotiations to take place with regard to conditions of employment, is not in accordance with the Convention. It further recalls that although *Article 6* of the Convention excludes public servants engaged in the administration of the State (such as public servants in ministries and other comparable government bodies and their auxiliaries) from its scope of application, other categories of public servants and public employees (for example, employees of public enterprises, municipal services and decentralized entities, public sector teachers and transport sector personnel) should enjoy the guarantees provided for by the Convention and, therefore, be able to undertake collective bargaining with respect to their terms and conditions of employment, in particular their pay. ***The Committee therefore once again requests the Government to take the necessary measures to amend sections 534 and 536 of the Labour Code so that the right to collective bargaining of public servants not engaged in the administration of the State is duly recognized in national law. It encourages the Government to address this issue in the context of the process of reforming the Labour Code and requests it to provide information in this respect.***

Article 4. Collective bargaining on trade union leave. The Committee notes that, in the context of the aforementioned Case No. 3268, the CFA observed that according to section 95(5) of the Labour Code, the employer is not obliged to grant more than two days of paid trade union leave in each calendar month, and in no case more than 15 days in the same year. The CFA referred this legislative aspect of the case to the Committee. In the same way as the CFA, the Committee recalls that the payment of wages to full-time union officials should be up to the parties to determine, and the Government should authorize negotiation on the issue of whether trade union activity by full-time union officials should be treated as unpaid leave. ***The Committee requests the Government, in consultation with the representative workers' and employers' organizations and in the context of the Labour Code reform process, to take the necessary steps to review the legislation so that restrictions on the possibility of collective bargaining on remuneration for trade union leave be removed.***

Application of the Convention in practice. *Export processing zones*. The Committee notes the information provided by the Government in relation to ten inspections carried out in export processing zones following complaints of violations of trade union rights. It notes that half of the complaints were shelved because no evidence of violations of trade union freedom was found, four were referred for resolution and notification and in one case a fine was imposed. ***The Committee requests the Government to continue to provide full information in this respect, including the number of collective agreements concluded in export processing zones and the number of workers covered by them.***

Collective bargaining in practice. The Committee notes the information provided by the Government and by the COHEP on a number of collective agreements concluded and in force in the country, indicating the sectors concerned and the number of workers covered. ***The Committee encourages the Government to continue to provide detailed information in this respect and once again requests the Government to report on the measures taken, in accordance with Article 4 of the Convention, to promote collective bargaining. On the other hand, recalling that a direct contacts mission which took place in Honduras in 2019 at the request of the Conference Committee on the Application of Standards in relation to Convention No. 87 received numerous allegations of violations of freedom of association in practice from trade union federations, especially in the agri-export and***

education sectors, the Committee requests the Government to provide information on collective bargaining in those sectors.

The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.

Hungary

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations received on 1 September 2017 from the International Trade Union Confederation (ITUC), which are reflected in the present observation. It also notes the observations of the workers' group of the National ILO Council at its meeting of 11 September 2017, included in the Government's report, which relate to issues under examination by the Committee and contain allegations that Act XLII of 2015 resulted in trade unions formerly established in the area of civilian national security not being able to operate properly. ***The Committee requests the Government to provide its comments in this respect.***

Freedom of expression. In its previous comments, the Committee had noted with concern that sections 8 and 9 of the 2012 Labour Code prohibit workers from engaging in any conduct, including the exercise of their right to express an opinion – whether during or outside working time – that may jeopardize the employer's reputation or legitimate economic and organizational interests, and explicitly provide for the possibility to restrict workers' personal rights in this regard. The Committee had requested the Government to provide detailed information on the results of the "For Employment" project, under which an assessment of the impact of the Labour Code on employers and workers had been undertaken, as well as on the outcome of the consultations on the modification of the Labour Code within the framework of the Permanent Consultation Forum of the Market Sector and the Government (VKF). The Committee had expressed the hope that the review of the Labour Code would fully take into account its comments with respect to the need to take any necessary measures to ensure respect for freedom of expression. The Committee notes that the Government confines itself to indicating that the negotiations in question have not been closed yet. The Committee ***regrets*** that no information has been provided by the Government on the outcome of the "For Employment" project (completed in August 2015) or on the consultations undertaken since 2015 within the framework of the VKF with a view to elaborating consensus-based proposals for the review of the Labour Code. ***The Committee highlights once again the need to take all necessary, including legislative, measures to guarantee that sections 8 and 9 of the Labour Code do not impede the freedom of expression of workers and the exercise of the mandate of trade unions and their leaders to defend the occupational interests of their members, and expects that its comments will be fully taken into account in the framework of the ongoing review of the Labour Code. It requests the Government to provide information on any progress achieved in this respect.***

Article 2 of the Convention. Registration of trade unions. In its previous comments, the Committee had noted the allegation of the workers' group of the National ILO Council that numerous rules in the new Civil Code concerning the establishment of trade unions (for example, on trade union headquarters and the verification of its legal usage) obstructed their registration in practice. The Committee had requested the Government to: (i) assess without delay, in consultation with the social partners, the need to simplify the registration requirements, including those relating to union headquarters, as well as the ensuing obligation to bring the trade union by-laws into line with the Civil Code on or before 15 March 2016; and (ii) take the necessary steps to effectively address the difficulties signalled with respect to registration in practice, so as not to hinder the right of workers to establish organizations of their own choosing. The Committee had also requested the Government to provide information on the number of registered organizations and the number of organizations denied or delayed registration (including the grounds for refusal or modification) during the reporting period.

The Committee notes the Government's indication that Act CLXXIX of 2016 on the amendment and acceleration of proceedings regarding the registration of civil society organizations and companies, which entered into force on 1 January 2017, amended the 2011 Association Act, the 2013 Civil Code and the 2011 Civil Organization Registration Act. The legislative amendments were adopted to: (i) simplify the contents of association statutes; (ii) rationalize the court registration and change registration procedures of civil society organizations (court examination limited to compliance with essential legal requirements on number of founders, representative bodies, operation, mandatory content of statutes, legal association objectives, etc.; notices to supply missing information no longer issued on account of minor errors); and (iii) accelerate the registration by courts of civil society organizations (termination of the public prosecutor's power to control the legality of civil society organizations; maximum time limit for registration). The Committee notes, however, that the ITUC reiterates that trade union registration regulated by the Civil Organization Registration Act is still being subjected to very strict requirements and numerous rules that operate in practice as a means to obstruct the registration of new trade unions, including the stringent requirements on trade union headquarters (unions need to prove that they have the right to use the property), and alleges that in many cases judges refused to register a union because of minor flaws in the application form and forced unions to include the enterprise name in their official names. The Committee further notes that the workers' group of the National ILO Council states that, when the new Civil Code entered into force, all trade unions had to modify their statutes to be consistent with the law and at the same time report the changes to the courts, and reiterates that these regulations pose a serious administrative burden on trade unions.

The Committee observes the persisting divergence between the statements of the Government and the workers' organizations. The Committee requests the Government to provide its comments on the observations of the ITUC and the workers' group of the National ILO Council concerning in particular the stringent requirements in relation to union headquarters, the alleged refusal of registration due to minor flaws, the alleged imposition of including the company name in the official name of associations, and the alleged difficulties created or encountered by trade unions because of the obligation to bring their by-laws into line with the Civil Code. The Committee recalls that, although the formalities of registration allow for official recognition of workers' or employers' organizations, these formalities should not become an obstacle to the exercise of legitimate trade union activities nor allow for undue discretionary power to deny or delay the establishment of such organizations. Accordingly, the Committee requests the Government to: (i) engage without delay in consultations with the most representative employers' and workers' organizations to assess the need to further simplify the registration requirements, including those relating to union headquarters; and (ii) take the necessary measures to effectively address the alleged obstacles to registration in practice, so as not to impede the right of workers to establish organizations of their own choosing. In the absence of the solicited information, the Committee also requests the Government once again to provide information on the number of registered organizations and the number of organizations denied or delayed registration (including the grounds for refusal or modification) during the reporting period.

Article 3. Right of workers' organizations to organize their administration. The Committee notes that the ITUC alleges that trade union activity is severely restricted by the power of national prosecutors to control trade union activities, for instance by reviewing general and ad hoc decisions of unions, conducting inspections directly or through other state bodies, and enjoying free and unlimited access to trade union offices; and further alleges that, in the exercise of these broad capacities, prosecutors questioned several times the lawfulness of trade union operations, requested numerous documents (registration forms, membership records with original membership application forms, minutes of meetings, resolutions, etc.) and, if not satisfied with the unions' financial reporting, ordered additional reports, thereby overstepping the powers provided by the law. The Committee notes the Government's indication that, while public prosecutors no longer have the right to control the legality of the establishment of the civil society organizations, they retain the power to control the legality of their operation. The Committee generally recalls that acts as described by the ITUC would be incompatible with the right of workers' organizations to organize their administration enshrined in *Article 3* of the Convention. ***The Committee requests the Government to provide its comments with respect to the specific ITUC allegations above.***

Right of workers' organizations to organize their activities. The Committee had previously noted that: (i) the Strike Act, as amended, states that the degree and condition of the minimum level of service may be established by law, and that, in the absence of such regulation, they shall be agreed upon by the parties during the pre-strike negotiations or, failing such agreement, they shall be determined by final decision of

the court; and (ii) excessive minimum levels of service are fixed for passenger transportation public services by Act XLI of 2012 (Passenger Transport Services Act), both at the local and suburban levels (66 per cent) and at national and regional levels (50 per cent); as well as with regard to postal services by Act CLIX of 2012 (Postal Services Act), for the collection and delivery of official documents and other mail. The Committee trusted, in view of the consultations undertaken on the modification of the Strike Act, that due account would be taken of its comments during the legislative review.

The Committee notes that the Government refers again to the relevant provisions of the Strike Act (section 4(2) and (3)) and to the Passenger Transport Services Act and Postal Services Act. In the Government's view, by regulating the extent of sufficient services in respect of two basic services that substantially affect the public and thus creating a pre-clarified situation, the legislature promoted legal certainty in the context of the exercise of the right to strike. The level of sufficient services was determined seeking to resolve the potential tension between the exercisability of the right to strike and the fulfilment of the State's responsibilities to satisfy public needs. The Government further indicates that negotiations on the amendment of the Strike Act took place in the framework of the VKF throughout 2015 and 2016, in the course of which the trade unions considered that the extent of sufficient services in the passenger transport sector was excessive. The employees' and employers' sides managed to agree on a few aspects of the amendment of the Strike Act, but failed to reach an agreement regarding, inter alia, which institution should be authorized to determine the extent of sufficient services in the absence of a legal provision or agreement. Stressing the importance of a compromise of the social partners on the amendment proposals of the Strike Act, the Government adds that, since the trade unions had announced proposals at the end of 2016 but had not submitted them during the first half of the year, no further discussions have taken place in 2017. The Committee further notes that the workers' group of the National ILO Council reiterates that the strike legislation contains an obligation to provide sufficient service during strike action which in some sectors virtually precludes the exercise of the right to strike (for example by requiring 66 per cent of the service to be provided during the strike and ensuring the feasibility of this rate through extremely complicated rules).

The Committee recalls that, since the establishment of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, workers' organizations should be able, if they so wish, to participate in establishing the minimum service, together with employers and public authorities; and emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. Moreover, any disagreement on such services should be resolved by a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service, and empowered to issue enforceable decisions. The Committee further recalls that the minimum service must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and that, in the past, it has considered that a requirement of 50 per cent of the volume of transportation may considerably restrict the right of transport workers to take industrial action. ***The Committee therefore once again highlights the need to amend the relevant laws (including the Strike Act, the Passenger Transport Services Act and the Postal Services Act) in order to ensure that the workers' organizations concerned may participate in the definition of a minimum service and that, where no agreement is possible, the matter is referred to a joint or independent body. The Committee expects that the consultations on the modification of the Strike Act undertaken within the framework of the VKF will continue. It requests the Government to provide up-to-date information on the status or results of the negotiations with particular regard to the manner of determining minimum services and the levels imposed in the postal and passenger transport sectors, and expects that the Committee's comments will be duly taken into consideration during the legislative review.***

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

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

The Committee notes the observations of the Forum for the Co-operation of Trade Unions and its affiliate, the Public Collection and Public Culture Worker's Union, received on 3 May 2021, alleging that

a legislative process concerning the status of cultural workers would not take into consideration the provisions of the Convention. ***The Committee requests the Government to provide its comments in this regard.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations received on 1 September 2015 and 1 September 2017 from the International Trade Union Confederation (ITUC), alleging acts of anti-union dismissals, union busting and intimidation in several enterprises, and criticizing in particular the excessive limitation of the scope of collective bargaining and the employers' power to unilaterally modify the scope and content of collective agreements. The Committee also notes the observations of the workers' group of the National ILO Council at its meeting of 11 September 2017, included in the Government's report, which denounce that: (i) the law does not allow trade unions with less than 10 per cent representation among the workers to negotiate collective agreements, not even with respect to their own members; (ii) the law restricts the 'coalition' freedoms of trade unions for entitlement to collective bargaining so that they cannot seek to collectively attain the 10 per cent threshold; and (iii) in those cases where no trade union represents the required percentage, the workers' council is entitled to enter into a collective bargaining agreement (except on wage issues). ***The Committee requests the Government to provide its comments with respect to the observations of the ITUC and the workers' group of the National ILO Council, including to clarify whether the representativity threshold applies to collective agreements at both enterprise and industry levels.***

The Committee further notes several judgments of the Supreme Court of Hungary (Curia) supplied by the Government, which have a bearing on the Convention, in particular on the promotion of collective bargaining.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee previously noted the Government's indications that: (i) section 82 of the Labour Code provides compensation not exceeding the worker's 12-month absence pay in case of unlawful dismissal of trade union officials or members; (ii) reinstatement is granted in case of dismissals violating the principle of equal treatment (section 83(1)(a)) or dismissals violating the requirement for prior consent of the union's higher body before the termination of a union official (section 83(1)(c)); and (iii) while the Labour Code does not contain penalties for acts of anti-union discrimination against union officials and affiliates, the Equal Treatment Authority (ETA) may, in such cases, levy fines. The Committee notes with ***interest*** the Government's indication that Bill No. T/17998 on the amendment of legislation related to the entry into force of the Act on the General Administrative Order, which will also bring about the harmonization of the Labour Code and relevant ILO Conventions, contains inter alia a provision amending the definition of worker representatives (section 294(1)(e) of the Labour Code), the purpose of which is to ensure that, in the event of unlawful termination of a worker representative, the possibility of requesting reinstatement into the original job will also be awarded to union officers, not only to elected representatives as is currently the case under section 83(1)(d). ***The Committee expects that the Government will take the necessary steps to ensure that union officials, union members and elected representatives enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities, and requests the Government to provide information on developments in relation to the adoption of new legislative provisions in this regard. In the absence of the information solicited from the Government with respect to the working of the ETA, the Committee requests the Government once again: (i) to indicate whether, given that section 16(1)(a) of the Equal Treatment Act stipulates that the ETA may order the elimination of the situation constituting a violation of law, the ETA may order on that basis reinstatement in case of anti-union dismissals of trade union officials and members; (ii) to provide information as to whether the ETA may order compensation on the basis of section 82 of the Labour Code; and (iii) to provide information on the average duration of the proceedings before the ETA related to anti-union discrimination (including of any subsequent appeal procedures before the courts), as well as on the average duration of purely judicial proceedings.***

Article 2. Adequate protection against acts of interference. In its previous comments, the Committee, while noting the Government's indication that the Constitution and the current national legislation were sufficient to prevent acts of interference, had requested the Government to take steps to adopt specific legislative provisions prohibiting acts of interference. Noting that the Government provides no information in this respect, the Committee recalls that it considers that the provisions of the Labour Code and the Equal

Treatment Act do not specifically cover acts of interference designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. ***The Committee requests the Government once again to take all necessary measures to adopt specific legislative provisions prohibiting such acts of interference on the part of the employer and making express provision for rapid appeal procedures, coupled with effective and sufficiently dissuasive sanctions.***

Article 4. Collective bargaining in practice. ***The Committee requests the Government to provide information on the number of collective agreements signed, the sectors concerned and the share of the workforce covered by collective agreements.***

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

Iraq

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

The Committee notes the observations of the General Federation of Iraqi Trade Unions (GFITU), received on 28 August 2019 and 20 October 2020, as well as the joint observations of the GFITU, the Conference of Iraq Federations and Workers Unions (CIFWU), the Federation of Independent Trade and Professional Unions in Iraq (FITPUI), the Federation of Workers' Councils and Unions in Iraq (FWCUI), the General Federation of Trade Unions and Employees of Iraq (GFTUEI), the General Federation of Trade Unions of the Republic of Iraq (GFTURI), the General Federation of Workers Unions in Iraq (GFWUI), the Iraqi Federation of Oil Unions (IFOU), and the Union of Technical Engineering Professionals (UTEP), received on 17 September 2020. The Committee further notes the Government's reply to these observations. The above observations, the content of which concerns mainly the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), are thus treated under Convention No. 87.

Trade union monopoly. The Committee previously recalled the need to remove any obstacles to trade union pluralism and noted with interest the Government's indication that Government Decision No. 8750 of 2005 had been repealed. It requested the Government to take the necessary measures to repeal the Trade Union Organization Act No. 52 of 1987. The Committee is examining the information provided in this respect under its comments concerning Convention No. 87.

Scope of the Convention. The Committee previously requested the Government to ensure that the rights in the Convention were applicable to all public servants not engaged in the administration of the State. It notes that section 3 of the Labour Code stipulates that its provisions do not apply to "public officials appointed in accordance with the Civil Service Law or a special legal text" and "members of the armed forces, the police and the internal security forces". The Committee recalls that the Convention covers all workers and employers, and their respective organizations, in both the private and the public sectors, regardless of whether the service is essential, and that the only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State. It further recalls that a distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. This second category of public employees includes, for instance, employees in public enterprises, municipal employees and those in decentralized entities, public sector teachers, as well as air transport personnel, whether or not they are considered in national law as belonging to the category of public servants (see 2012 General Survey on the fundamental

Conventions, paragraphs 168 and 172). ***The Committee requests the Government to indicate in what manner it ensures that effect is given to the Convention with respect to public officials not engaged in the administration of the State who are excluded from the application of the Labour Code.***

Article 1 of the Convention. Protection against acts of anti-union discrimination. Sufficiently dissuasive sanctions. The Committee notes that section 11(2) of the Labour Code stipulates that whoever violates the sections relating to discrimination shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding one million dinars (approximately US$685) or by any of the two sanctions. While taking due note of the above, the Committee considers that the amount of the fine referred to above may not be adequate to deter and prevent the repetition of acts of anti-union discrimination, in particular in large enterprises. ***The Committee therefore requests the Government to take the necessary measures to ensure that the sanctions actually imposed in cases of anti-union discrimination are sufficiently dissuasive. In this regard, the Committee requests the Government to provide information on the sanctions imposed in practice.***

Anti-union dismissal. The Committee notes that section 145 of the Labour Code provides that when the penalty of dismissal has been imposed on a worker, such decision may be challenged within 30 days before the Labour Court. It notes, however, that the Labour Code does not specify which sanctions are applicable in the event of anti-union dismissal. The Committee recalls in this respect that the reinstatement of a worker dismissed by reason of trade union membership or legitimate trade union activities with retroactive compensation constitutes, in the absence of preventive measures, the most effective remedy for acts of anti-union discrimination. It further recalls that the compensation envisaged for anti-union dismissal should be higher than that prescribed for other kinds of dismissal, with a view to the effective dissuasion of this type of dismissal, and that it should be adapted in accordance with the size of the enterprises concerned (see 2012 General Survey, paragraphs 182 and 185). ***Highlighting the importance that anti-union dismissals give rise to sufficiently dissuasive sanctions, the Committee requests the Government to specify which remedies may be imposed by the Labour Court in such cases, indicating in particular whether the Court is empowered to reinstate the dismissed workers in their positions.***

Rapid appeal procedures. The Committee notes that sections 1(26) and 8 of the Labour Code provide protection against anti-union discrimination and that, according to section 11(1) of the Labour Code, workers may resort to the Labour Court to file a complaint when exposed to any form of discrimination in employment and occupation. The Committee recalls that the existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice (see 2012 General Survey, paragraph 190). ***The Committee requests the Government to provide information regarding the length of the procedure to treat complaints against acts of anti-union discrimination and its application in practice.***

Article 2. Protection against acts of interference. The Committee notes that the Labour Code does not contain any provisions which explicitly prohibit acts of interference. The Committee recalls that under the terms of *Article 2* of the Convention, workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. Acts of interference are deemed to include acts which are designed to promote the establishment of workers' organizations under the domination of an employer or an employers' organization, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations (see 2012 General Survey, paragraph 194). ***The Committee requests the Government to indicate whether other laws or regulations explicitly prohibit acts of interference and provide for rapid procedures and sufficiently decisive sanctions against such acts.***

Article 4. Promotion of collective bargaining in practice. ***The Committee requests the Government to provide information on the measures taken or envisaged to promote collective bargaining, the number of collective agreements concluded and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements.***

Italy

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)

The Committee notes with ***interest*** that the Government informs that the Constitutional Court's ruling no. 120 of 2018 took a historic stance on the subject of professional associations "of a trade union nature" for military personnel. With this judgment, the Constitutional Court declared as partially unconstitutional section 1475 of Legislative Decree No. 66/2010 – which provided that "Military personnel may not form professional associations of a trade union nature or join other trade union associations" – and ruled that military personnel may set up professional associations of a trade union nature under the conditions and within the limits laid down by law, without prejudice to the prohibition on joining other trade union associations.

Jamaica

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2 of the Convention. Right of workers to establish and join organizations. The Committee had previously requested the Government to take the necessary measures to amend section 6(4) of the Trade Union Act (TUA) in order to ensure that penalties were not imposed on workers for their membership and participation in activities of an unregistered trade union. The Committee notes the Government's indication in its report that this issue is being examined and will be discussed with the social partners at the Labour Advisory Council. ***The Committee expresses the firm hope that the law will be amended in the near future and requests the Government to inform of the developments in this regard.***

Article 3. Interference in the financial administration of a trade union. The Committee had previously requested the Government to take the necessary measures to restrict the Registrar's discretionary rights to carry out inspections and request information with regard to trade union finances at any time as provided in section 16(2) of the TUA. ***Noting with regret that the Government has not provided any information in this regard, the Committee reiterates its previous request. It expects that the Government's next report will contain information on the measures taken to amend section 16(2) of the TUA so as to ensure that the control exercised by the public authorities over trade union finances does not exceed the obligation to submit periodic reports.***

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

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

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In its previous comment, the Committee had noted the observations of the International Trade Union Confederation (ITUC) received on 1 September 2015, which denounced fixed and unreasonable procedural

requirements for, and limitations on, collective bargaining. ***The Committee once again requests the Government to provide its comments in this respect.***

Article 4 of the Convention. Promotion of collective bargaining. Recognition of organizations for the purposes of collective bargaining. For many years, the Committee has requested the Government to amend section 5(5) of the Labour Relations and Industrial Disputes Act (LRIDA) of 1975 and section 3(1)(d) of its regulation with a view to bringing them in line with its commitment, pursuant to *Article 4* of the Convention, to promote collective bargaining. The Committee recalls that the legislation allows for the recognition of a trade union as having bargaining rights only when a 50 per cent majority of the workers or a particular category of workers agree for it to have bargaining rights in relation to them. In the event of any doubt or dispute with regard to the representativeness of a union, the regulations allow the Minister to cause a ballot to be taken only if he is satisfied that the applicant union has a membership of not less than 40 per cent of the workers in relation to whom the request has been made. Once this requirement is fulfilled and the ballot taken, the result must show that 50 per cent of the workers eligible to vote have indicated that they wish a particular trade union to have bargaining rights in relation to them. The Committee further notes the ITUC's observation that pursuant to section 5(6) of LRIDA, trade unions may only claim joint bargaining rights if each trade union receives at least 30 per cent of the votes. As noted in its previous comments, the Committee observes that: (i) the legislation fails to provide for the recognition of collective bargaining rights when no union reaches the required thresholds; and (ii) the requirement of 40 per cent membership for the union applying for a ballot restricts considerably the possibility to challenge the continued representativeness of a previously recognized bargaining agent. While noting the Government's indication in its report that these issues are being examined and will be discussed with the Social Partners at the Labour Advisory Council, the Committee recalls that the determination of the threshold of representativeness to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a sector or establishment is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. In this regard, the Committee considers that if no union in a specific negotiating unit meets the required threshold of representativeness to be able to negotiate on behalf of all workers, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members. Furthermore, as the levels of representativeness change with time, any organization which in a previous ballot failed to secure a sufficiently large number of votes should have the right to request a new election after a stipulated period. In the same vein, any new organization other than the one previously certified should have the right to demand a new ballot after a reasonable period has elapsed. ***Regretting the lack of progress, the Committee urges the Government to take the necessary measures in the very near future to amend its legislation in order to: (i) ensure that if no union reaches the required threshold to be recognized as a bargaining agent, unions are given the possibility to negotiate, jointly or separately, at least on behalf of their own members; (ii) recognize the right of any organization which in a previous ballot failed to secure a sufficiently large number of votes to request a new election after a stipulated period; and (iii) recognize the right of any new organization other than the previously certified organization to demand a new ballot after a reasonable period has elapsed. The Committee requests the Government to keep it informed of the developments in this regard and invites it, if it so wishes, to avail itself of the technical assistance of the Office.***

Promotion of collective bargaining in practice. ***The Committee requests the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements.***

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

Japan

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1965)

The Committee notes the following observations concerning matters addressed in this comment, as well as the Government's replies to them: the observations of the Japanese Trade Union Confederation (JTUC–RENGO), transmitted with the Government's report; of the National Confederation

of Trade Unions (ZENROREN), received on 31 August 2021; and of the Rentai Union Suginami, the Rentai Workers' Union, Itabashi-ku Section, the Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union) and the Union Rakuda (Kyoto Municipality Related Workers' Independent Union), received on 1 September 2021. The Committee further notes the observations from Education International (EI), received on 9 September 2021, and the reply of the Government thereto.

Article 2 of the Convention. Right to organize of firefighting personnel. The Committee recalls its long-standing comments concerning the need to recognize the right to organize for firefighting personnel. For the past years, the Government had been referring to the operation of the Fire Defence Personnel Committee (FDPC) system, which was presented as an alternative. The role of the FDPC was to examine proposals on working conditions by the personnel and to submit its conclusions to the chief of the fire department. The Government further indicated that surveys, directed to fire defence headquarters, were regularly conducted to gather information on the deliberations and results of the FDPC. The Government also mentioned a specific survey, conducted in January 2018, aiming at assessing the operation of the FDPC system and eventually seeking improvement. The results of the survey were discussed in the Fire and Disaster Management Agency. While the outcome of this survey was that the FDPC system is operated properly, the workers' representatives in the Fire and Disaster Management Agency called for improvement in the operation of the FDPC, including procedural transparency, and a more conducive environment for personnel to provide their opinions to the FDPC. In its previous report, the Government indicated that a new implementation policy of the FDPC, developed with the social partners, came into force in April 2019. In this regard, the Committee notes the observations from ZENROREN that the Japan Federation of Prefectural and Municipal Workers' Union (JICHIROREN), joined by the Firefighters' Network (FFN), had requested the Ministry for Internal Affairs and Communications and the Fire and Disaster Management Agency to come up with concrete measures to ensure that firefighters' opinions regarding working conditions and workplace safety are heard in the operation of the FDPC. JICHIROREN and FFN conducted a survey among firefighters in June 2021; the result indicated that the FDPC system is still considered to give discretionary power to the head of the fire department. ZENROREN regretted that, despite such result, the Government's response was merely to indicate that the FDPC system runs appropriately.

Furthermore, the Government indicates in its latest report that, since January 2019, the Ministry of Internal Affairs and Communications held six consultations with the workers' representatives where it discussed the Government's opinion that fire defence personnel are considered as police in relation to the implementation of the Convention. In the Government's view, the four consultations held in April, July and December 2019 enabled a substantive exchange on its opinion and on the Firefighting Staff Committee system. The fifth and sixth consultations, held in August 2020 and January 2021 respectively, enabled discussion of the situation of modern fire administration and the issue of harassment. The Government indicates that the employees voiced their appreciation for the regularity of the consultations and were willing to continue to hold regular consultations. The Committee notes, on the other hand, that JTUC–RENGO deplores the Government's continued failure to respond to the Committee's longstanding recommendation to grant the right to organise to firefighting personnel. JTUC–RENGO states that the establishment of reporting systems and consulting services brought up by the Fire and Disaster Management Agency amount to nothing more than makeshift measures and the Government's denial of the right to organize hampers fire and emergency services by lowering morale among the personnel.

The Committee wishes to recall its prior emphasis that the implementation policy for the FDPC remains distinct from the recognition of the right to organize under *Article 2* of the Convention. It notes the divergent views on the meaningfulness of the consultations held since January 2019, and understands that no progress was made towards bringing positions closer together on the right to organise of firefighting personnel. ***The Committee is bound to express again its firm expectation that continuing consultations will contribute to further progress towards ensuring the right of firefighting***

personnel to form and join an organization of their own choosing to defend their occupational interests. The Committee requests the Government to provide detailed information on any developments in this regard.

Article 2. Right to organize of prison staff. The Committee recalls its long-standing comments concerning the need to recognize the right to organize of prison staff. The Committee notes that the Government reiterates its position that prison officers are included in the police, that this view was accepted by the Committee on Freedom of Association in its 12th and 54th Reports, and that granting the right to organize to the personnel of penal institutions would pose difficulty for the appropriate performance of their duties and the proper maintenance of discipline and order in the penal institutions. The Government also reiterates its view that, in cases where any emergency occurs in a penal institution, it is required to promptly and properly bring the situation under control, by force if necessary; thus granting the right to organize to the personnel of penal institutions could pose a problem for the appropriate performance of their duties and the proper maintenance of discipline and order. The Government recalls that it decided to grant expanded opportunities for the personnel of penal institutions to express their opinions in the eight Regional Correctional Headquarters across the country in 2019 and 2021, with the participation of 228 general staff members (from 77 penal institutions) in 2019, and 233 general staff members (from 78 penal institutions) in 2021. The participants exchanged opinions on improving the work environment, on the nature of staff recreation as a way to contribute to a more open workplace and on the promotion of a better work–life balance for staff.

On the other hand, the Committee notes the observations from JTUC–RENGO regretting that the Government did not follow up on the Committee's previous comments to consider the different categories of prison officers in determining, in consultation with the social partners, whether they are part of the police. JTUC–RENGO is of the view that: (i) the different measures described by the Government to provide opportunities to the personnel of penal institutions to express their opinions on their working conditions are irrelevant to union rights, including the right to organize. They merely constitute an exchange of views with individual employees and cannot be considered as negotiation; (ii) these measures described by the Government serve as substitutes for a meaningful discussion on granting the right to organize to the personnel of penal institutions; and (iii) it is unlikely the Government can report any concrete example of measures taken that have improved the work environment based on the exchange of opinions described above.

The Committee considers it useful to recall that, in previous reports, the Government referred to the following distinction among staff in penal institutions: (i) prison officers with a duty of total operations in penal institutions, including conducting security services with the use of physical force, who are allowed to use small arms and light weapons; (ii) penal institution staff other than prison officers who are engaged directly in the management of penal institutions or the treatment of inmates; and (iii) penal institution staff designated, by virtue of the Code of Criminal Procedure, to carry out duties of judicial police officials with regard to crimes which occur in penal institutions and who have the authority to arrest, search and seize. The Committee observes in this regard that the Government has not engaged, despite reiterated calls from this Committee and the Conference Committee, in any consultation with the social partners to consider the different categories of prison officers. Furthermore, the Committee wishes to recall that, in its view, the Government initiatives to give opportunities to the personnel of penal institutions to provide their opinions on various aspects, including on their working conditions, remain distinct from the recognition of the right to organize under *Article 2* of the Convention. ***The Committee is bound to urge once again the Government to take, in consultation with the social partners and other concerned stakeholders, the necessary measures to ensure that prison officers, other than those with the specific duties of the judicial police, may form and join an organization of their own choosing to defend their occupational interests, and to provide detailed information on the steps taken in this regard.***

Article 3. Public service employees. The Committee recalls its long-standing comments on the need to ensure basic labour rights for public service employees, in particular that they enjoy the right to industrial action without risk of sanctions, with the only exception being public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. The Committee notes the general information provided by the Government on its overall approach, which remains to continue to hear opinions from employee organizations. The Committee further notes the information on the reduction of the number of national public service employees, as a result of the creation of Incorporated Administrative Agencies and the privatization of public departments or divisions. According to the Government, the number of employees in Governmental Administrative Agencies has diminished from 807,000 in March 2003 to 302,000 in March 2021. The Government thus considers that presently the restrictions on the basic labour rights for national public service employees, whose number is decreasing, is considerably limited.

The Committee recalls that the Government has been referring over the years to the procedures of the National Personnel Authority (NPA) as a compensatory guarantee for public service employees whose basic labour rights are restricted. Previously, the Committee had noted the persistent divergent views on the adequate nature of the NPA as a compensatory measure, and had requested the Government to consider, in consultation with the social partners, the most appropriate mechanism that would ensure impartial and speedy conciliation and arbitration. In its report, the Government indicates that the NPA held 185 official meetings with employees' organizations in 2020, making recommendations enabling working conditions of public service employees to be brought in line with the general conditions of society. The Government invokes the example of the use of the NPA recommendation system for revision of the remuneration of public service employees, implemented since 1960. Thus, the Government restates that these compensatory measures maintain appropriately the working conditions of public service employees.

The Committee notes, on the other hand, the observations from the JTUC–RENGO regretting that the Government's position on the autonomous labour–employer relations system has not evolved and the Government's failure to take action as requested by the ILO supervisory bodies. JTUC–RENGO, recalling the obligation of the Government under Section 12 of the Basic Act on the National Civil Service Reform (2008), regrets that the Government gives the same response it has been repeating for many years, that "there are wide-ranging issues regarding autonomous labour–employer relations systems, so while exchanging views with employees organizations, it is necessary to continue to consider this carefully". Furthermore, JTUC–RENGO reiterates that the NPA recommendations are left to political decision, making it obvious that such mechanism is defective as a compensatory measure. JTUC–RENGO denounces the statement from the Government that the privatization of national administrative agencies had left fewer public service employees without their basic labour rights as an attempt to seek acceptance of these restrictions. The Committee notes that JTUC–RENGO deplores the evident lack of intention on the part of the Government to reconsider the legal system with regard to the basic labour rights of public service employees, and once again requests that the ILO supervisory bodies call into question the Government's attitude and investigate these matters.

The Committee, noting that the report fails to provide any additional information on the matter, is therefore bound to urge once again that the Government indicate tangible measures taken or envisaged to ensure that public service employees, who are not exercising authority in the name of the State, enjoy fully their basic labour rights, in particular the right to industrial action. In view of persistent divergent views, the Committee also urges the Government to resume consultations with the social partners concerned for the review of the current system with a view to ensuring effective, impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, will be fully and promptly implemented. It requests the Government to provide information on steps taken in this regard. It also

requests the Government to continue providing information on the functioning of the NPA recommendation system.

Local public service employees. The Committee had previously noted the observations of Rentai Union Suginami, Rentai Workers' Union, Union rakuda and Apaken Kobe referring to the adverse impact of the entry into force of the revised Local Public Service Act in April 2020 on their right to organize, and stating that: (i) non-regular local public service employees and their unions are not covered by the general labour law that provides for basic labour rights and their ability to appeal to the labour relations commission in case of alleged unfair labour practice; (ii) the new system, which aimed at limiting the use of part-time staff on permanent duties (through special service positions appointed by fiscal year just as regular service employees), has the effect of increasing the number of workers stripped of their basic labour rights; (iii) the conditional yearly employment system in place has created job anxiety and weakens union action and (iv) these situations further call for the urgent restoration of basic labour rights to all public service employees. The Committee notes the latest observations provided by these trade unions, as well as by JTUC–RENGO and ZENROREN, deploring that the situation described remains unaddressed. Additionally, these observations allege that the increase in consultation on harassment at the workplace and non-renewal of employment, is part of a new framework making it difficult for non-regular employees to join municipal unions, which in turn makes it more urgent to ensure basic labour rights to local public service employees.

The Committee notes the Government's statement that the legal amendments ensure proper appointment of special service personnel and temporary appointment employees, and that the change of basic labour rights conditions is a direct consequence. The Government asserts that, based on the examination of the autonomous labour–employer relations system of national public service employees, it will carry out careful examination of measures for local public service employees, listening to opinions from related organizations. The Committee recalls its view that the legal amendments that entered into force in April 2020 for local public service employees have the effect of broadening the category of public sector workers whose rights under the Convention are not fully ensured. ***The Committee therefore urges the Government to expedite its consideration of the autonomous labour–employer relations system so as to ensure that municipal unions are not deprived of their long-held trade union rights through the introduction of these amendments. It requests the Government to provide detailed information on the measures taken or envisaged in this regard.***

Articles 2 and 3. Consultations on a time-bound action plan of measures for the autonomous labour–employer relations system. In its previous comments, the Committee noted the Government's statement that it was examining carefully how to respond to the conclusions and recommendations formulated by the Committee on the Application of Standards of the International Labour Conference (Conference Committee) in 2018 and the various concerns regarding measures for the autonomous labour–employer relations system, while continuing to hear opinions from the social partners. The Committee observes with ***regret*** that no tangible progress seems to have been made in this respect. In its report, the Government merely indicates that it exchanged opinions with JTUC–RENGO and will provide information on initiatives taken in this regard in good faith. The Committee notes, on the other hand, that JTUC–RENGO denies such exchange of opinions took place and deplores that, despite the time that elapsed since the Conference Committee called on the Government to develop a time-bound action plan together with the social partners in order to implement its recommendations, the Government has taken no step towards its materialization. The Committee also notes ZENROREN's view that, based on how consultations were held with its affiliated organizations on the pending matters, it is clear that the Government has no willingness to draw up the action plan requested by the ILO supervisory bodies. ***Recalling the Conference Committee conclusions, including as to the lack of meaningful progress in taking necessary measures regarding the autonomous labour–employer relations system, the Committee once again strongly encourages the Government to take meaningful***

steps to elaborate, in consultation with the social partners concerned, a time-bound plan of action to implement the recommendations made above and to report on any progress made in this respect.

[The Government is asked to reply in full to the present comments in 2023.]

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

The Committee notes the following observations concerning matters addressed in this comment, as well as the Government's replies to these: the observations of the Japanese Trade Union Confederation (JTUC–RENGO), transmitted with the Government's report; the observations of the National Confederation of Trade Unions (ZENROREN), received on 31 August 2021; and the observations of the Rentai Union Suginami, the Rentai Workers' Union, Itabashi-ku Section, the Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union) and the Union Rakuda (Kyoto Municipality Related Workers' Independent Union), received on 1 September 2021. The Committee further notes the observations from Education International (EI), received on 9 September 2021, and the reply of the Government to those.

Articles 4 and 6 of the Convention. Collective bargaining rights of public service employees not engaged in the administration of the State. The Committee recalls that for many years its comments relate to the need to ensure the promotion of collective bargaining for public employees who are not engaged in the administration of the State. In its previous comments, the Committee requested the Government to provide information on the steps taken to engage in consultation with the social partners, as required by the Civil Service Reform Law, so as to ensure collective bargaining rights for public service employees not engaged in the administration of the State. The Committee notes the Government's indication once again that basic labour rights of public service employees are, to some degree, restricted, due to the distinctive status and the public nature of the functions. It recalls that public service employees benefit from the National Personnel Authority (NPA) recommendation system. It further asserts that exchanges are held annually, at various levels, with employees' organizations on various topics, including the measures for the autonomous labour–employer relations system. Observing that there are still various concerns and opinions concerning these measures, in addition to the changing environment in labour relations, the Government intends to continue to consult with the trade unions on these issues. The Committee notes, on the other hand, the observations of the JTUC–RENGO's, ZENROREN, Rentai Union Suginami, Rentai Workers' Union, Itabashi-ku Section, Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union) and the Union Rakuda (Kyoto Municipality Related Workers' Independent Union) deploring, in their respective communications, that the Government has failed to initiate any meaningful consultation on the autonomous labour–employer relations system despite their demands during the past years and alleging that this illustrates the lack of intention on the part of the Government to reconsider the legal system with regard to the basic labour rights of public service employees.

Furthermore, the Committee notes that the Government reiterates that the NPA remains fully functional as a compensatory measure for the restrictions on basic labour rights of public service employees. The Government reports that the NPA held 208 meetings in 2019 and 185 meetings in 2020 to hear opinions and requests from trade unions. Additionally, the bills on remuneration and other working conditions of public employees prepared by the Government for the deliberation in the Diet are drafted according to the NPA recommendation system. In its view, these compensatory measures maintain appropriately the working conditions of national public service employees. The Committee notes, on the other hand, the opinion of the JTUC–RENGO that recommendations of the NPA are subordinated to the political decision of the Government. In the case of the recommendation on remuneration, the Committee notes that the JTUC–RENGO regretted that the wage revision processes had been conducted in a unilateral way by the Government, illustrating the fact that the NPA recommendation system is defective as a compensatory measure. The Committee recalls that, under

Articles 4 and *6* of the Convention, civil servants not engaged in the administration of the State must be able to collectively negotiate their working and employment conditions, and that mere consultation mechanisms are not sufficient in this respect. ***The Committee, noting that the report fails to provide any additional information on the matter, firmly expects that the Government will make every effort to expedite its consultation with the social partners concerned and that it will adopt measures for the establishment of the autonomous labour–employer relations system that will ensure, in the near future, collective bargaining rights for all public servants not engaged in the administration of the State. In the meantime, the Committee requests the Government to continue to provide information on the functioning of the NPA recommendation system as a compensatory measure to the denial of collective bargaining rights to public service employees.***

Collective bargaining rights of national forestry project staff. The Committee, recalling that national forestry project staff are not among the category of workers that may be excluded from the scope of the Convention, previously requested the Government to indicate the steps taken to ensure that this category of workers is afforded the full guarantees of the Convention, including the right to bargain collectively. The Committee notes the Government's indication that it conducts an annual exchange of opinions with employee organizations regarding working conditions in the national forestry business. Those that the Government considers may be adopted are promptly implemented, such as the reappointment to Government posts for retired staff. The Committee notes the observations of the JTUC–RENGO recalling that the reappointment system is implemented by virtue of pre-existing laws, hence it was not established through labour–employer discussions within the national forestry project and that, as a consequence, the recognition of the right to collective bargaining of national forestry project staff remains unaddressed. ***The Committee, noting that the report fails to provide any meaningful information on the matter, reiterates its firm hope that the Government will provide in its next report information on tangible consultations held and the measures taken to ensure that national forestry project staff is afforded the full guarantees of the Convention, including the right to bargain collectively.***

Full guarantee of the Convention for local public service employees. The Committee notes the observations of Rentai Union Suginami, Rentai Workers' Union, Union Rakuda and Apaken Kobe referring to the adverse impact of the entry into force of the revised Local Public Service Act in April 2020 on their right to organize, and stating that: (i) the new system, which aimed at limiting the use of part-time staff on permanent duties, has the effect of increasing the number of workers stripped of their basic labour rights; and (ii) the new conditional yearly employment system in place has created job anxiety and weakens union action. Additionally, the trade unions allege that this new employment system increases risks of anti-union harassment at the workplace, including threats of non-renewal of employment, which makes it more urgent to ensure basic labour rights to local public service employees. The Committee notes the Government's reply that the change in the conditions relating to basic labour rights for some of these employees is a direct consequence of the legal amendments ensuring proper appointment of special service personnel and temporary appointment employees. The Government asserts that, based on the examination of the autonomous labour–employer relations system pertaining to national public service employees, it will carry out a careful examination of measures for the local public service employees, taking account of opinions from related organizations. The Committee recalls that the Convention covers all workers and employers, and their respective organizations, in both the private and public sectors, regardless of whether the service is essential. The only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State. It also recalls that the rights and safeguards set out in the Convention apply to all workers irrespective of the type of employment contract, regardless of whether or not their employment relationship is based on a written contract, or on a contract for an indefinite term (see 2021 General Survey on the fundamental Conventions, paragraph 168). The Committee observes that the legal amendments that entered into force in April 2020 for local public service employees have the effect

of broadening the category of public sector workers whose rights under the Convention are not fully ensured. ***The Committee therefore urges the Government to expedite its consideration of the autonomous labour–employer relations system so as to guarantee that the rights under the Convention cover local public service employees without distinction and that the right to collective bargaining of municipal unions is not impaired through the introduction of these amendments. It requests the Government to provide detailed information on the measures taken or envisaged in this regard.***

Jordan

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1968)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2021 concerning matters examined in its previous comments and the continuing anti-union measures against the Jordanian Teachers Association (JTA). The Committee recalls that the ITUC provided observations in this regard in 2020. The Committee also notes the Government's response.

The Committee notes that the ITUC reports the following anti-union measures against the JTA: (i) the arrest and detention of JTA members (July–August 2020); (ii) the filing of criminal charges against the organization and its president (July 2020); (iii) the closure by the Government of the JTA offices for two years (July 2020), which effectively deprives teachers and education personnel of any representation; (iv) the prohibition by the authorities of the press from covering JTA press conferences (October 2020); (v) the issuance by the Amman court of first instance of a decision authorizing the dissolution of the JTA executive board and imposing one-year prison sentences on the 13 board members for various offences (December 2020); the union leaders were released on bail and the JTA appealed the decision; and (vi) the arrest by security services of 230 teachers who were peacefully demonstrating during the meeting between the JTA deputy director and members of the Parliamentary Education Commission (January 2021).

The Committee notes that, according to the Government, the JTA is a trade union established under the Jordanian Teachers' Union Act No. 14 of 2011, which deviates from the definition of trade unions contained in section 2 of the Labour Code, and is not therefore subject to the provisions on the functioning of trade unions established in section 98 of the Labour Code. The Government therefore considers that the JTA is not covered by the scope of application of the Convention. The Government further indicates that the suspension of the JTA's activities and the closure of its offices follow a court decision regarding violations of Act No. 11 of 1993 on economic offences. It adds that an interim committee to manage the union's administrative and financial affairs during the suspension of its executive board was established to safeguard teachers' rights, pending a final court decision. The Committee recalls that the rights conferred by the Convention on teaching staff, in particular the right to collective bargaining, require the existence of independent trade union organizations which can freely carry out their activities in defence of the interests of their members without interference by the public authorities. ***The Committee urges the Government to take the necessary measures without delay to guarantee the right to organize and to bargain collectively in the education sector and to ensure full respect of the independence of workers' organizations in the sector. The Committee, trusting that the above principles will be fully taken into account by the competent courts, requests the Government to provide information on the outcome of the current court proceedings involving the JTA and on any collective agreement or accord in the education sector, including with the JTA.***

The Committee also recalls that it previously noted the observations of the Jordanian Federation of Independent Trade Unions (JFITU), received in August 2017, which referred to general legislative

matters and specific cases of anti-union harassment and interference. The Committee notes the information provided by the Government in response to the observations of the ITUC and JFITU.

The Committee also notes that the Committee on Freedom of Association referred to the Committee the follow-up of certain legislative amendments which it recommended the Government to make in Case No. 3337 (see Report No. 393, March 2021, paragraph 571), and which are discussed below.

Articles 1 to 6 of the Convention. Scope of application of the Convention. Foreign workers. In its previous comments, the Committee noted the observations of the JFITU, which were also largely echoed by the ITUC, that although the law was amended in 2010 to allow foreign workers to join unions, it does not permit them to establish unions or to hold union office; and that, in sectors where migrants form the majority of the workforce, the establishment of trade unions and the exercise of the right to collective bargaining is extremely unlikely. The Committee previously asked the Government to indicate how, in practice, foreign workers can enjoy the protection of the Convention, including the right to engage in collective bargaining through organizations of their own choosing. The Committee notes the Government's indication that: (i) foreign workers have the right to join trade unions and enjoy the benefits of collective labour agreements; (ii) while foreign workers cannot establish or lead their own trade unions, there are no obstacles to their participation in collective bargaining; (iii) the internal regulations of the employers' organization and the General Federation of Jordanian Trade Unions (GFJTU) may regulate voting matters in executive boards, membership requirements and procedures, the requirements to be met by candidates for election to their executive bodies and election procedure; (iv) one of the country's largest unions with a large proportion of foreign workers is the General Union of Textile Workers, which has concluded a sectoral collective agreement for the benefit of 75,000 workers; and (v) the General Trade Union of Workers in Public Services and Liberal Professions has concluded collective agreements in the catering and hotel sectors benefiting 104,000 workers, many of them foreign. While noting this information, the Committee observes that the legal incapacity of foreign workers to establish or hold office in trade unions may constitute an obstacle to the autonomous exercise of the rights recognized by the Convention, in particular the right to collective bargaining. ***The Committee therefore requests the Government to take the necessary measures, including legislative measures, to facilitate the full exercise by foreign workers of the rights recognized by the Convention. It requests the Government to provide information on any progress in this regard. The Committee also requests the Government to continue providing information on the trade unions representing foreign workers and the collective agreements applicable to them.***

Domestic and agricultural workers. In its previous observation, the Committee noted with regret that, despite the removal of the explicit exclusion of domestic and agricultural workers from the coverage of the Labour Code, the law and regulations still do not clearly guarantee these workers the rights set out in the Convention, (as section 3(b) of the Labour Code provides that the rules governing the employment conditions of these workers shall be determined by a regulation to be adopted at a later stage) and that this situation is likely to reinforce existing obstacles to the exercise of the right to organize and bargain collectively of foreign workers in those sectors. The Committee notes the Government's indication that: (i) the law establishes a special legal regime for domestic workers who can join the General Trade Union of Workers in Public Services and Liberal Professions and benefit from the collective agreements concluded in their sector; and (ii) with regard to agricultural workers, work is under way to prepare specific regulations which should enable them to establish or join a representative trade union. ***Recalling that all workers other than members of the armed forces and the police and public servants engaged in the administration of the State are covered by the provisions of the Convention, the Committee trusts that the Government will adopt without delay the specific regulations for agricultural workers so that they can benefit from the right to organize and bargain collectively set out in the Convention and requests the Government to provide a copy of these regulations. The Committee also requests the Government to provide a copy of the text regulating the***

rights of domestic workers to which it refers, indicating whether it applies to domestic workers as well as to cooks, gardeners and other similar categories of workers. Lastly, the Committee requests the Government to specify how, under the applicable regulations, the various categories of workers referred to above effectively exercise the rights enshrined in the Convention, by providing, for each category, information on the number of collective agreements concluded and the number of workers covered.

Workers aged between 16 and 18 years. In its previous comments, the Committee requested the Government to amend section 98(f) of the Labour Code to lift the prohibition on minors from joining trade unions, even though they have access to employment from the age of 16, so that they can benefit from the rights set out in the Convention. The Committee notes that in its reply the Government merely reiterates that the legal age for admission to employment is 18 years of age and that minors between 16 and 18 years of age work under special conditions determined by law. However, it specifies that these workers enjoy the same benefits as other workers under collective agreements. ***The Committee urges the Government to take the necessary measures to amend section 98(f) so as to ensure that minors who have reached the legal age for admission to employment, whether as workers or trainees, are fully protected in the exercise of their rights under the Convention. The Committee requests the Government to provide information on the measures taken or envisaged in this respect.***

Workers not included in the 17 sectors recognized by the Government. In its previous comments, the Committee noted the indication that, pursuant to an Order of the Ministry of Labour of 1999, the number of occupations and industries in which workers have the right to establish trade unions is set at 17. In this regard, the Committee noted the ITUC and JFITU's observations indicating that workers who are not in the government-designated sectors are not able to engage in collective bargaining through organizations of their own choosing. The Committee notes the list provided by the Government of the 17 sectors in which it recognizes the right of workers to organize for the purposes of collective bargaining. The Committee also notes the Government's indication that section 98 of the Labour Code has been amended to remove the responsibility for classifying occupations and industries from the Tripartite Labour Committee and assign it to the Minister of Labour, thereby allowing greater flexibility in the reclassification of occupations and industries, and paving the way for the creation of new trade unions. While the Government provides overall figures for the 56 collective agreements concluded in 2019, covering 281,526 workers, the Committee notes that the Government does not specify the occupations included in each of the 17 sectors, the relevant legislation, regulations, or statistical information on the number of workers in each of these sectors, as requested in its previous observation. In view of the above, the Committee is once again bound to express its ***concern*** that the current system has the effect of removing entire categories of workers from the rights guaranteed by the Convention. The Committee recalls that the scope of application of the Convention covers all workers and employers, and their respective organizations, in both the private and the public sectors, irrespective of whether or not they are essential services. The only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State (see 2012 General Survey on the fundamental Conventions, paragraph 168.). ***The Committee therefore urges the Government to take all the necessary measures to ensure that no category or group of workers, with the exception of the armed forces, the police and public servants engaged in the administration of the State, can be excluded from the scope of application of the Convention for the exercise of their right to organize and bargain collectively. The Committee also requests the Government to provide information on the Ministry of Labour's decisions concerning the reclassification of occupations and industries within the meaning of the requirements of the Convention as recalled above. In the meantime, the Committee again requests the Government to provide statistics showing the number of workers in each of the recognized sectors and the total number of workers in the country.***

Article 2. Adequate protection against acts of interference. In its previous comments, the Committee requested the Government to amend the legislation with a view to strengthening the

penalties in cases of interference, as it considered that the fines provided for in section 139 of the Labour Code could not have a sufficiently dissuasive effect. The Committee also noted the ITUC and JFITU's allegations that the Government subsidized the remuneration of GFJTU personnel and some of its activities, and that it continued to influence their policies and activities, as well as those of their affiliates. The Committee notes the Government's response that it refrains from any trade union interference and that the financial resources of the GFJTU and its affiliates come from membership fees, as well as subsidies and donations made in accordance with certified financial rules. With regard to penalties for interference by employers, the Government indicates that it submitted a draft amendment to the Labour Code in 2020, including an amendment to section 139 to increase the penalty from 500 to 1,000 Jordanian dinars (US$1,410). The draft amendment is now reportedly before the House of Representatives. ***Noting the draft provision to strengthen the penalties for interference indicated by the Government, the Committee requests the Government to provide information on any progress in the adoption of the legislative amendment and on the penalties for interference by employers provided for in the Labour Code as amended.***

Articles 4 and 6. Right to collective bargaining. Trade union monopoly. In its previous comments, the Committee noted the observations of the JFITU, which were largely echoed by the ITUC, that it was impossible to establish more than one union in the government-designated sectors and that the unions in question were required to be affiliated to the single officially recognized federation, the GFJTU, and the limitation of one union per sector serves to prevent independent unions from organizing workers in the recognized sectors and representing their interests in collective bargaining. The Committee also noted that section 98(d)(1) of the Labour Code effectively gives the Tripartite Labour Committee (defined in section 43 of the Labour Code) the authority to determine groups of occupations in which only one general trade union may be established, which appears to authorize the establishment of a de facto trade union monopoly at the sectoral level. In its response, the Government indicates that section 98 of the Labour Code has been amended to remove the responsibility for classifying occupations and industries from the Tripartite Labour Committee and assign it to the Minister of Labour, with the intention of providing greater flexibility for the reclassification of occupations and industries. The Committee firmly recalls its view that the imposition of a trade union monopoly is incompatible with the principle of free and voluntary negotiation established in *Article 4* of the Convention. ***Consequently, and noting in this respect the specific recommendations made by the Committee on Freedom of Association (Case No. 3337, 393rd Report, March 2021, paragraph 559), the Committee urges the Government to take the necessary measures to ensure that more than one trade union can be established in a sector and to permit the effective exercise of the free and voluntary negotiation required by the Convention, and to provide information on any progress in this respect.***

Collective bargaining in the public sector. In its previous comments, the Committee requested the Government to provide information on the right to collective bargaining in the public sector, including the relevant constitutional amendments and the draft law on trade unions for public sector employees, and expressed the firm hope that the national legislation would recognize explicitly the right to collective bargaining of workers in the public sector who are not engaged in the administration of the State. The Committee notes the Government's indication that the Public Service Regulations (No. 9 of 2020) have taken into account in a number of provisions the participation and representation of professional unions in the composition and functions of the Public Service Council (section 6 of the Regulations), as well as the composition of the committees established for the purpose of amending the Public Service Regulations. This regulatory amendment is reportedly intended to ensure their effective participation in the adoption of public policies, plans and programmes for human resources management in the public sector, and in the development of public service legislation and any subsequent amendments. The Government also indicates that the Civil Service Diwan is in regular contact with the professional unions in order to inform them of and involve them in changes to the public service legislation. Finally, the Government indicates that it will establish ministerial committees

to examine the professional unions' demands and proposals. ***Taking due note of the information provided by the Government and recalling that public servants who are not engaged in the administration of the State must be able to collectively bargain their working and employment conditions beyond mere consultation mechanisms, the Committee trusts that the various measures described will contribute positively to the adoption of legislation or regulations explicitly recognizing the right to collective bargaining in the public sector, and that the Government will soon indicate tangible progress in this regard.***

[The Government is asked to reply in full to the present comments in 2022.]

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1979)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2 of the Convention. Facilities for workers' representatives. In its previous comments, the Committee had noted that the only facility granted by law to workers' representatives was paid leave of 14 days to attend courses and requested the Government to take the necessary steps to ensure that trade union representatives are granted facilities enabling them to carry out their trade union duties rapidly and efficiently. The Committee recalls that the Workers' Representatives Recommendation, 1971 (No. 143), lists examples of such facilities: time off from work to attend trade union meetings, congresses, etc.; access to all workplaces in the undertaking, where necessary; access to the management of the undertaking, as may be necessary; distribution to workers of publications and other written documents of the union; access to such material facilities and information as may be necessary to carry out their duties, etc.

The Committee welcomes the Government's indication that section 107 of the Interim Labour Code of 2010 provides that the Tripartite Committee for Labour Affairs will set down the necessary conditions to enable trade union representatives to carry out their duties. ***The Committee requests the Government to provide detailed information on the content and outcome of the tripartite consultations held by the Tripartite Committee for Labour Affairs on all matters related to the necessary steps to ensure that trade union representatives are granted facilities enabling them to carry out their trade union duties rapidly and efficiently.***

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

Kazakhstan

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 and 28 September 2021, referring to the issues raised by the Committee below.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (the Conference Committee) in June 2021 concerning the application of the Convention. The Committee observes that the Conference Committee welcomed that further steps towards implementing the 2018 road map were made, in particular amendments to the law. However, it regretted that not all previous recommendations have been fully addressed so far. In this regard, the Conference Committee took note of the continuing restrictions in practice on the right of workers to form organizations of their own choosing, in particular the unduly difficult re-registration and deregistration processes, which undermine the exercise of freedom of association. The Conference Committee also noted with concern the numerous allegations of violations of the basic civil liberties of trade unionists, including violence, intimidation and harassment. The Committee notes that the

Conference Committee requested the Government to: (i) bring all national legislation into line with the Convention to guarantee full enjoyment of freedom of association to workers' and employers' organizations; (ii) ensure that the allegations of violence against trade union members are completely investigated, notably in the case of Mr Senyavsky; (iii) stop judicial harassment practices of trade union leaders and members conducting lawful trade union activities and drop all unjustified charges, including the ban for trade unionists to hold any position in a public or non-governmental organization; (iv) continue to review developments in the cases of Mr Baltabay and Ms Kharkova; (v) resolve the registration of the Congress of Free Trade Unions (KSPRK) and the Industrial Union of Employees of the Fuel and Energy Sector so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay; (vi) review with the social partners the law and practice concerning the registration of trade unions with a view to overcoming existing obstacles; (vii) refrain from showing favouritism towards any given trade union and put an immediate stop to the interference in the establishment and functioning of trade union organizations; (viii) remove any existing obstacles in law and in practice to the operation of free and independent employers' organizations in the country, in particular repeal of provisions in the Law on the National Chamber of Entrepreneurs (NCE) on accreditation of employers' organizations with the NCE; (ix) ensure that workers' and employers' organizations are not prevented from receiving financial or other assistance by international workers' and employers' organizations; and (x) fully implement the previous recommendations of the Committee and the 2018 road map. The Committee also notes that the Conference Committee requested the Government to accept a direct contacts mission of the International Labour Office before the next session of the International Labour Conference with full access to the organizations and individuals mentioned in the observations of the Committee of Experts.

The Committee recalls that in their previous observations, the ITUC and the Federation of Trade Unions of Kazakhstan (FPRK) denounced the sentencing of a trade union leader Mr Baltabay to seven years of imprisonment in July 2019 for the alleged misappropriation of approximately US$28,000 of union dues. Mr Baltabay was released in August 2019 after being pardoned by the President and given a fine of US$4,000 in exchange for his remaining prison sentence. Mr Baltabay insisted on his innocence, refused to pay the fine or recognize the presidential pardon, and argued in court that criminal charges of large-scale misappropriation of funds levied against him were politically motivated and unfounded. The Committee further recalls that on 16 October 2019, Mr Baltabay was given a new prison sentence of five months and eight days of imprisonment for union-related activities and for not paying the fine. While Mr Baltabay was released from jail on 20 March 2020, the Committee notes that according to the ITUC, he is still banned from any public activity, including trade union activities, for seven years, as per the previous sentence.

The Committee notes from the ITUC observations, that Ms Larisa Kharkova, the Chairperson of the now liquidated Confederation of Independent Trade Unions of Kazakhstan (KNPRK), who was sentenced to four years of restriction on her freedom of movement and a five-year ban on holding any position in a public or non-governmental organization, continues to serve her sentence.

The Committee notes that the Government does not dispute the facts as outlined by the ITUC, but indicates that judicial decisions in the cases of Ms Kharkova and Mr Baltabay were made in respect of ordinary crimes, namely the "misappropriation and embezzlement of entrusted property" and the "abuse of office", and were not related to their participation in legal trade union activities. The Government indicates that the period of restricted freedom imposed on Ms Kharkova expires on 9 November 2021.

The Committee takes due note of the information provided and refers to the conclusions and recommendations of the Committee on Freedom of Association (CFA) which continues to examine cases of Mr Baltabay and Ms Kharkova in the framework of Case No. 3283 (see 392nd Report, October 2020).

It requests the Government to indicate whether Ms Kharkova and Mr Baltabay are still prevented from holding a trade union office.

The Committee recalls that it had previously noted with deep concern the ITUC allegation of assault and injuries suffered by Mr Dmitry Senyavsky, the Chairperson of a trade union of workers of the fuel and energy complex in the Karaganda region, and urged the Government to investigate the matter without delay and to bring the perpetrators to justice. The Committee had noted the information provided by the Government confirming the assault by unknown persons on 10 November 2018. According to a forensic medical report, Mr Senyavsky suffered mild damages to his health. The Committee recalls the Government's indication that while pretrial investigations were opened under section 293(2)(1) of the Criminal Code (disorderly conduct), they were later suspended pursuant to section 45(7)(1) of the Criminal Procedure Code (failure to identify the person who committed a crime) until new circumstances (evidence) would come to light.

The Committee notes the ITUC indication that no progress has been made in investigating the attack. The ITUC points out that absence of effective investigations and judgements against guilty parties reinforce the climate of insecurity for victims and impunity for perpetrators, which are extremely damaging to the exercise of freedom of association rights in Kazakhstan. The Committee notes the Government's indication that the work to solve this case continues. ***The Committee requests the Government to provide detailed information on all developments in this respect***.

Article 2 of the Convention. Right to establish organizations without previous authorization. The Committee recalls that following the entry into force of the Law on Trade Unions in 2014, all existent unions had to be re-registered. It recalls in this respect that the KNPRK affiliates were denied registration/re-registration, which ultimately led to the KNPRK's liquidation. The Committee further recalls the ITUC allegation of denials to register organizations, which previously formed the KNPRK, as well as the refusal to register the KSPRK (the name under which the successor of the KNPRK had last tried to re-register) and the Industrial Trade Union of Employees of the Fuel and Energy Sector. In its previous observation, the Committee had noted the Government's explanation that in the event that the registering authority (Ministry of Justice) identifies shortcomings, it issues a reasoned refusal. The Government further indicated that the KSPRK had received a reasoned refusal and that the Ministry of Labour and Social Protection of the Population (MLSPP) had held a series of meetings with the representatives of the Congress regarding the refusal to register it. The Government had pointed out that if the trade union in question rectified the indicated shortcomings, the Ministry of Justice stood ready to re-examine the application for registration. However, according to the Government, the applicant had not yet addressed the relevant registering authority. Having duly noted the information provided by the Government, the Committee requested the Government to continue to provide information on the status of registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector.

The Committee notes the ITUC indication that the KSPRK remains unregistered and that the Industrial Union of Employees in the Fuel and Energy Sector is undergoing a process of dissolution following a court decision dated 5 February 2021 to suspend its activities. The Committee further notes that the Government reiterates the information previously provided regarding the refusal to register the KSPRK and its predecessor and that the irregularities pointed out by the registering authority have not been addressed and no reapplication for registration has been submitted. The Government further indicates that by its decision of 6 May 2021, the civil and administrative appellate court decided not to change the verdict of the Shymkent special inter-district economic court of 5 February 2021 that the activities of the Industrial Union of Employees in the Fuel and Energy Sector should be suspended for six months. In order to resume its activities, the sectoral trade union was required, within six months of the court's February 2021 decision coming into effect, to resolve the irregularities regarding the numerical strength of its affiliates (subdivisions, member organizations) in territory covering more than half of the country's regions. As of August 2021, the union had not applied for registration of its affiliates.

The Government also indicates that on 13 August 2021 Mr Kuspan Kosshygulov was appointed chairperson of the Union.

The Committee notes the Government's indication that there are currently three national trade union associations, 54 sectoral, 34 territorial and 365 local trade unions, which bring together around 3 million workers, or half of all the country's employees. Since the adoption of changes to the legislation in May 2020, one sectoral trade union (the "Byrlyk" union of workers in construction, housing and utilities, and transport, registered on 22 July 2021) and 37 local unions have been formed. The Government further indicates that a permanent working group exists to review areas of concern involving the registration of trade unions. Its members include representatives of the MLSPP, the Ministry of Justice and three national trade union associations (the FPRK, the Kazakhstan Labour Confederation and the "Amanat" Trade Union). While noting that new trade unions have been established and registered since the amendment of the legislation in 2020, the Committee observes that its longstanding concern regarding the registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector is yet to be resolved. ***The Committee requests the Government to take the necessary steps for the resolution of the issue of registration of the KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay***. ***The Committee further requests the Government to continue engaging with the social partners to review the difficulties identified by trade unions seeking registration with a view to finding appropriate measures, including legislative, to fully give effect to Article 2 of the Convention and to ensure the right of workers to establish organizations without previous authorization. It requests the Government to provide information on all progress made in this respect.***

With reference to the conclusions of the Conference Committee, the Committee encourages the Government to continue reviewing the application of the Law on the National Chamber of Entrepreneurs (NCE) in practice with the social partners to ensure that its provisions on accreditation of employers' organizations with the NCE do not hinder the right of employers' organizations to organise their administration and activities and to formulate their programmes.

Article 3. Right of organizations to organize their activities and to formulate their programmes. The Committee recalls that it had previously requested the Government to amend section 402 of the Criminal Code (2016), according to which an incitement to continue a strike declared illegal by the court was punishable by arrest for the duration of up to 50 days and in certain cases (substantial damage to rights and interest of citizens, mass riots, etc.) up to two years of imprisonment.

The Committee notes the Government's indication that on 9 June 2021, the President of the Republic signed a decree on further human rights measures to be taken in Kazakhstan following which, the Government approved a plan of urgent human rights-related measures, including in respect of the right to freedom of association. The Government points out, in particular, that with a view to implementing the ILO recommendations, the intention under the Plan is to work towards further changes to national legislation, including with a view to further reviewing section 402 of the Criminal Code. ***The Committee requests the Government to provide information on all steps taken thus far, and planned for the future, to review section 402 of the Criminal Code so as to ensure that simply calling for a strike action, even one declared illegal by the courts, does not result in detention or imprisonment.***

Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers. The Committee had previously noted the Government's reference to its Ordinance No. 177 of 9 April 2018 "On the adoption of a list of international and state organizations, foreign and Kazakhstani non-governmental organizations and funds which can provide grants", which determined 98 international organizations allowed to provide grants to physical and legal persons in

Kazakhstan. In this connection, the Committee welcomed the Government's indication that the MLSPP was ready to examine the possibility of including in that list the ITUC and the International Organisation of Employers if a request to that effect is made. The Committee notes that the Government reiterates its previous statement and indicates that any such request should outline the reasons and specific objectives and state the areas in respect of which the grants are provided. ***The Committee trusts that the list contained in the Ordinance will be amended, if need be upon the Government's initiative, to include international workers' and employers' organizations and requests the Government to provide information on the measures taken to that end.***

The Committee trusts that a direct contacts mission of the International Labour Office requested by the Conference Committee will take place as soon as the situation so permits.

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

Scope of the Convention. The Committee had previously requested the Government to provide clarification on the trade union rights and rights to collective bargaining of prison staff and firefighters who have no military or police rank and to inform about any collective agreement covering them. The Committee takes due note of the Government's indication that all civilian staff engaged in the above-mentioned services enjoy the rights set out in the Convention.

Article 2 of the Convention. Adequate protection against acts of interference. In its previous direct request, the Committee had requested the Government to provide information on the application in practice of sections 145 and 154 of the Criminal Code (2014), pursuant to which cases of interference in the functioning of social organizations and/or trade unions are punishable by a fine or imprisonment. ***In the absence of the Government's reply, the Committee once again requests the Government to provide information on the application of the above-mentioned legislative provisions in practice.***

Article 4. Right to collective bargaining. In its previous comments, the Committee had recalled that, under the terms of the Convention, the right of collective bargaining lies with workers' organizations of whatever level, and with employers and their organizations. The Committee had therefore requested the Government to clarify whether under the model of collective bargaining provided for by the Labour Code other representatives can bargain collectively alongside an existing trade union. The Committee notes that sections 1(44) and 20(1) of the Labour Code were amended in 2020 to provide that workers are represented by trade unions or, in absence thereof, by other elected representatives. The Committee further notes that according to paragraph 3 of section 20(1) of the Labour Code, however, should workers' membership in trade unions constitute less than half of an organization's staff, the workers' interests can be represented by trade unions and by elected representatives. The Committee notes that pursuant to section 20 of the Labour Code, as amended, if a trade union exists at the organization/enterprise, no collective bargaining can take place without the participation of that union. According to the Government, the amendments have made it possible to maintain a balance between the interests of workers who are union members and those who have not joined a union, and to take into account the opinions of the entire workforce without infringing the rights of union members. While taking due note of the amendments, the Committee recalls that in the collective bargaining process the position of a representative union, even if it does not represent 50 per cent of the workforce, should not be undermined by elected representatives. ***The Committee therefore requests the Government to further amend section 20 of the Labour Code in consultation with the social partners in order to bring it into conformity with the Convention and so as to eliminate the contradiction within the above-mentioned provisions of the Labour Code. The Committee requests the Government to indicate all steps taken to that end.***

The Committee had previously noted that pursuant to section 97(2) of the Code on Administrative Breaches (2014), an unfounded refusal to conclude a collective agreement is punishable by a fine. The Committee had recalled that legislation which imposes an obligation to achieve a result, particularly

when sanctions are used in order to ensure that an agreement is concluded, is contrary to the principle of free and voluntary negotiation. The Committee had thus requested the Government to repeal the mentioned provision. The Committee notes in this respect the Government's indication that under article 158(5) of the Labour Code, any unjustified refusal to conclude a collective agreement by those authorized to conclude it renders them liable, under article 97(2) of the Code on Administrative Breaches, to a fine of 400 monthly calculation index (MCI). The Government provides detailed information on the procedure to follow prior to the conclusion of a collective agreement as set out in article 156 of the Labour Code. The Government points out that once all the procedures have been followed, any unjustified refusal to conclude the collective agreement is deemed unlawful. The Government further explains that the sanctions provided for in article 97(2) of the Code on Administrative Breaches are designed to protect the right to conclude a collective agreement and to avoid any forced conclusion thereof. ***While taking notes of this explanation, the Committee requests the Government to take the necessary measures in order to ensure the full conformity of the legislation with the principle of free and voluntary negotiation. The Committee also requests the Government to provide information on the application of the above-mentioned provisions in practice, in particular on the offences committed and the sanctions applied.***

Kuwait

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)

Article 2 of the Convention. Migrant workers. In its previous comments, the Committee had requested the Government to recognize the right of migrant workers to establish and join organizations of their own choosing. The Committee notes that the Government indicates that the Labour Law No. 6 of 2010 does not prohibit migrant workers from establishing or joining organizations, and that the conditions set for admission of migrant members to trade unions in Ministerial Order No. 1 of 1964, namely holding a work permit and having resided in the country for at least five years, are not discriminatory but merely organizational. The Government further indicates that the work permit shows that the worker is lawfully residing in the country and specifies the type of occupation on the basis of which a request to join the union is made. The Committee recalls in this regard that it had already noted that section 99 of the Labour Law of 2010 limits to Kuwaiti workers the right to establish a trade union organization. It further recalls once again that the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing implies that anyone residing in the territory of a State, whether or not they have a residence permit, benefits from the trade union rights provided for by the Convention, without any distinction based on nationality or the absence thereof. ***Therefore, the Committee urges the Government to: (i) amend section 99 of Labour Law of 2010 by removing the condition of Kuwaiti nationality for establishing a trade union organization; (ii) repeal the provisions of Ministerial Order No. 1 of 1964 requiring migrant workers to have a work permit and to have resided in the country for five years in order to join a trade union organization, and; (iii) remove any other legal or practical impediment to the free exercise of the right of migrant workers to establish or join organizations. The Committee further requests the Government to keep it informed of the measures taken in this regard.***

Domestic workers. The Committee recalls that the rights of domestic workers under the Convention are not recognized in Kuwait, as on the one hand, pursuant to section 5 they are excluded from the scope of the Labour Law, including its provisions on freedom of association; and on the other hand Law No. 68 of 2015 on Employment of Domestic Workers does not contain any provisions recognizing the right of domestic workers to organize. The Committee notes with ***regret*** that despite its repeated requests in this regard, the Government has not taken any measure to recognize the rights of domestic workers under the Convention***. It therefore once again urges the Government to take all the***

necessary measures, including through revising the legislation, to ensure the full recognition in law and in practice of the right of domestic workers to establish and join organizations. It requests the Government to indicate the measures taken or envisaged in this regard.

Article 3. Financial administration of organizations. In its previous comments, the Committee had requested the Government to amend section 104(2) of the Labour Law that prohibits trade unions from using their funds in financial, real estate and other forms of speculations. The Committee notes that the Government once again indicates that this provision regulates the activity of trade unions with the aim of protecting them from possible negative consequences of the indicated investments. In this regard, the Committee once again recalls that legislative provisions that restrict the freedom of trade unions to administer, utilize and invest their funds as they wish for normal and lawful trade union purposes, including through financial and real estate investments, are incompatible with *Article 3* of the Convention, and that the control exercised by public authorities over trade union finances should not go beyond the requirement for the organization to submit periodic reports. ***It therefore once again urges the Government to review section 104(2) of the Labour Law in order to allow trade unions to freely administer and invest their funds in accordance with Article 3 of the Convention.***

Overall prohibition on trade union political activities. Since 2006, when it first made comments on the drafts of what later became the 2010 Labour Law, the Committee has requested the Government to eliminate the total ban on political activities of trade unions that is enshrined in section 104(1) of this law. It notes with ***regret*** that the Government has not taken any measures in this regard and merely repeats its previous indications. The Committee recalls that the right of trade unions to organise their activities includes the rights to organize protest action, as well as certain political activities, such as expressing support for a political party considered more able to defend the interests of members (see 2012 General Survey on the fundamental Conventions, paragraph 115) Sweeping bans on trade union political activities give rise to serious difficulties with regard to the exercise of these rights and are therefore incompatible with the Convention. ***On these grounds, the Committee urges the Government to revise section 104(1) of the Labour Law to allow for legitimate political activities of trade unions and to keep it informed of the measures taken in this regard.***

Compulsory arbitration. In its previous comments, the Committee had requested the Government to amend sections 131 and 132 of the Labour Law. Section 131 gives the Ministry of Labour the power to intervene in a labour dispute without the request of any of the parties and eventually to submit the dispute to conciliation or arbitration. Section 132 prohibits strikes during conciliation or arbitration proceedings initiated because of the intervention of the Ministry. The Committee had recalled that compulsory arbitration to end a collective labour dispute and a strike is only acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in disputes concerning public servants exercising authority in the name of the State, or in essential services in the strict sense of the term – that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee notes the Government's indication that in practice it has never intervened in any dispute out of respect for the principles enshrined in the Convention, and that it will continue to follow this approach of refraining from intervention unless the parties to the dispute request its intervention. ***While duly noting this information, the Committee recalls the need to ensure the conformity of legislative provisions with the Convention, even when they are not applied in practice, and once again requests the Government to take the necessary measures to amend sections 131 and 132 of the Labour Law in light of the above and to keep it informed of the measures taken in this regard.***

Dissolution of executive boards. In its previous comments, the Committee had requested the Government to amend section 108 of the Labour Law, which provides that an organization's board of directors can be dissolved by judicial order, in case the board engages in an activity that violates the provisions of the Labour Law or "laws relevant to the preservation of public order and morals". The Committee recalls that it had pointed out in this regard that the reference to the "laws relevant to the

preservation of public order and morals" is too broad and vague and could lead to an application that hinders the exercise of the rights enshrined in the Convention. The Government indicates that the application of section 108 is not broad or vague and that any Ministry lawsuit seeking the dissolution of a board pursuant to section 108 should refer to the instances and aspects of the alleged violation whereupon the matter will be submitted to judicial examination. The Committee notes this information and recalls that while the organizations and their members are bound to respect the law of the land, the law of the land shall not be such as to impair the guarantees provided in the Convention. The dissolution of the executive board involves a serious risk of interference by the authorities, in particular as to the right of organizations to elect their representatives in full freedom. Furthermore, it may paralyse the activities of a trade union for some time. The Committee considers that authorizing dissolution of executive boards based on indeterminate references such as to "laws relevant to the preservation of public order and morals" provide an exceedingly broad basis for such intrusive measures. ***In light of the foregoing, the Committee once again requests the Government to take the necessary measures to revise section 108 of the Labour Law, in order to make it compatible with the guarantees provided in the Convention. In the meantime, it requests the Government to provide information on any cases of application of section 108 in practice, and communicate the judicial decisions issued on its basis.***

Articles 2 and 5. Limitation to a single confederation. In its previous comments, the Committee had requested the Government to amend section 106 of the Labour Law which provides that "there should not be more than one general union for each of the workers and employers". The Government indicates in this regard that the Labour Law of 2010 resulted from consultation and agreement between the Government and the social partners and that section 106 aims at protecting the unity of the labour movement in Kuwait. The Committee recalls in this respect that although the Convention does not make trade union diversity an obligation, it does require this diversity to remain possible in all cases and at all levels. Although it is generally to the advantage of workers and employers to avoid proliferation of competing organizations, trade union unity directly or indirectly imposed by law is contrary to the Convention (see 2012 General Survey on the fundamental Conventions, paragraph 92). ***Therefore the Committee once again requests the Government to take the necessary measures to amend section 106 of the Labour Law so as to ensure the right of workers and employers to establish organizations of their own choosing at all levels, in particular the possibility of forming more than one confederation (general union). It further requests the Government to provide information on any developments in this respect.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2007)

Scope of application of the Convention. Migrant and domestic workers. In its observations concerning the application of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) in Kuwait, the Committee has noted that pursuant to section 99 of the Labour Law, the right to establish trade unions is restricted to Kuwaiti workers. Furthermore, Order No. 1 of 1964 subordinates the exercise of the right of migrant workers to join workers' organizations to the possession of a valid work permit and a minimum of five years' residence in the country. The Committee notes that these legal restrictions on the right to organize seriously impede the exercise by migrant workers of all rights enshrined in the Convention. Furthermore, the Committee has noted that domestic workers are excluded from the scope of the Labour Law and Law No. 68 of 2015 on Employment of Domestic Workers does not contain any provisions concerning the right to organize and collective bargaining. In its previous observation, the Committee had requested the Government to take all necessary measures to ensure the recognition of these rights for all migrant and domestic workers. It notes with ***regret*** that the Government does not indicate any measures taken in this regard, neither has

it provided information on the way migrant and domestic workers exercise these rights in practice. ***In view of the foregoing, the Committee urges the Government to take all necessary measures, including legislative reform, to ensure the full recognition, in law and in practice, of the rights enshrined in the Convention for all migrant workers as well as for domestic workers. It also requests the Government to provide information on the way in which these workers exercise in practice the rights set out in the Convention, including information on trade union organizations established and collective agreements in force.***

Articles 1 and 2 of the Convention. Adequate protection against acts of anti-union discrimination and interference. In its previous observations, the Committee had noted that beyond the general prohibition of anti-union dismissals, national legislation does not provide for effective procedures and dissuasive sanctions against acts of anti-union discrimination and interference. It had therefore urged the Government to take all the necessary measures to bring national legislation into conformity with the Convention. The Committee notes with ***regret*** that the Government does not indicate any measures taken in this regard. ***Therefore, it once again urges the Government to take all necessary measures to ensure that the legislation provides for the prohibition of all acts of anti-union discrimination and interference forbidden by the Convention, and to ensure that there are redress mechanisms that provide adequate protection, including effective procedures and dissuasive sanctions.***

Article 4. Promotion of collective bargaining. Compulsory arbitration. In its previous observations, the Committee had noted that section 131 of the Labour Law gives the Ministry the power to intervene in a collective labour dispute without the request of any of the parties, and eventually refer the dispute to conciliation or arbitration while section 132 bans strikes during conciliation or arbitration proceedings initiated by the Ministry. The Committee had requested the Government to amend these provisions. The Committee notes that the Government indicates that in practice, it has never intervened in any dispute out of respect for the provisions of the Convention and it shall continue to do so in the future, except if the parties to a dispute request its intervention. The Committee once again recalls in this regard that compulsory arbitration in the framework of collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term (services whose interruption would endanger the life, personal safety or health of the whole or part of the population), and acute national crises. While noting the Government's indication that the above-cited provisions are never applied in practice, the Committee recalls that State parties are required to ensure the conformity of their laws with the Convention. ***Therefore, it once again urges the Government to take all the necessary measures to amend sections 131 and 132 of the Labour Law, as well as other provisions on compulsory arbitration, to ensure their full conformity with the above-mentioned principles and to provide information on any developments in this respect.***

Promotion of collective bargaining. Application of the Convention in practice. In its previous observation, the Committee had requested the Government to provide information on its concrete measures to promote collective bargaining and to indicate the collective agreements concluded. The Government reports that it always encourages collective bargaining and provides the list of 11 collective agreements concluded during the 2014–20 period. The Committee notes that all these agreements concern the petroleum sector. ***Recalling that Article 4 of the Convention requires Governments to take measures to encourage and promote the full development and utilization of machinery for collective bargaining, the Committee requests the Government to indicate the concrete measures it has taken to promote and encourage collective bargaining in all economic sectors. It also requests the Government to continue providing information concerning the number of collective agreements concluded, specifying the sectors and the number of workers covered.***

Kyrgyzstan

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1992)

The Committee recalls that it had previously noted with concern that the provisions of the draft Law on Trade Unions, developed upon the initiative of several members of Parliament, regulated in detail the internal functioning of unions by imposing excessive mandatory requirements for trade union by-laws and elections, and imposed a trade union monopoly. The Committee had noted in this respect the concerns expressed by the International Trade Union Confederation (ITUC) and the Federation of Trade Unions of Kyrgyzstan (FPK). The Committee notes the Government's indication that in its observations on the draft, based on the comments provided by the International Labour Office, the Government concluded that the draft was not in conformity with the national Constitution, nor with international labour standards. Taking into account the position of the Government, the President of the Republic vetoed the draft law on two occasions. The Committee on Freedom of Association (CFA) examined the allegations of noncompliance of the vetoed draft Law on Trade Unions with freedom of association in Case No. 3386 (Report No. 396, November 2021) and drew the legislative aspects of this case to the attention of the Committee. The Committee notes that in December 2021, the President of the Republic vetoed the draft law for a third time. The Committee notes with ***interest*** the information, outlined by the Government in its report on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), regarding the process of the labour legislation inventory undertaken by the Ministry of Labour and Social Development, as per Presidential Order No. 26 of 8 February 2021, with a view to bringing the legislation into conformity with ratified Conventions. ***The Committee requests the Government to take the necessary measures to ensure that the FPK is included in the above-mentioned inventory process with a view to ensuring that any amendments to the Law on Trade Unions in force or any new proposed draft Law on Trade Unions are subject to full and meaningful consultations with the social partners and that any new legislative provisions affecting trade union rights are in full conformity with the Convention. The Committee requests the Government to provide information on all developments in this regard and reminds it of the possibility to continue to avail itself of ILO technical assistance.***

The Committee recalls that in their September 2020 communications, the ITUC and the FPK alleged reprisals against FPK leaders and interference in FPK financial activities thereby paralyzing its work. The Committee ***regrets*** that the Government provides no information in this regard. The Committee further notes that in the above-mentioned case, the CFA examined similar allegations in the absence of the Government's reply and urged the Government to conclude without delay any pending investigation involving the FPK and its affiliates, to return all documents concerning their internal administration and to ensure that its bank accounts can be used to conduct their legitimate trade union activities. ***The Committee requests the Government to provide detailed information on all allegations of interference into the FPK activities and reprisals against its leaders and activists, including actions taken by the Government in response to any such interference and reprisals.***

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

Lebanon

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the General Confederation of Lebanese Workers (CGTL), communicated with the Government's report. The Committee observes that the Government has not replied

to the observations made by the International Trade Union Confederation (ITUC) in 2010, alleging that the law imposes a high threshold on representative organizations for engaging in collective bargaining, as well as imposing the requirement of obtaining the agreement of two-thirds of the union membership at a general meeting to validate a collective agreement. ***The Committee once again requests the Government to send its comments concerning the observations made in 2010 by the ITUC.***

With regard to the observations submitted by Education International (EI) in 2015 and 2016 concerning the situation of public and private educational staff and the wage freeze since 1996, the Committee notes that: (i) through the adoption of Decree No. 63 in 2008, teachers in the public and private sectors have had a wage increase; (ii) in 2013, following a wage increase in the private sector, public sector employees, including teachers, were granted an advance on their salary; and (iii) Act No. 26, published in the *Official Gazette* of 21 August 2017, also provides for a wage increase for teachers in the public and private sectors. ***The Committee requests the Government to indicate whether these wage increases are the result of collective bargaining.***

Scope of application of the Convention. Domestic workers. In its previous comments, the Committee observed that the Government had not replied to the observations made by the ITUC concerning the exclusion of domestic workers from the Labour Code. The Committee observes that "domestic workers who work for private households" are excluded from the scope of application of the Labour Code of 1946 (section 7(1)), and that the contractual relationships between domestic workers and the individuals who employ them to perform domestic work in their households are governed by the Act on obligations and contracts. Moreover, the Committee notes that, in its concluding observations of 2018, the United Nations Human Rights Committee expressed concern that migrant domestic workers are excluded from protection under domestic labour law and are subjected to abuse and exploitation under the sponsorship *(kafala)* system. It also expressed concern about the lack of effective remedies against such abuses and the existence of anti-union reprisals (CCPR/C/LBN/CO/3). ***The Committee requests the Government to provide clarification in this respect, by indicating the manner in which domestic workers and migrant domestic workers can enjoy the protection of the Convention, including the right to engage in collective bargaining through the organization of their own choosing, and to indicate whether consideration is being given to amending the above-mentioned provision of the Labour Code. The Committee also requests the Government to indicate how these rights are exercised in practice, by indicating the names of any organizations that represent domestic workers and migrant domestic workers and the number of collective agreements covering them.***

Legislative amendments. Articles 4 and 6 of the Convention. Promotion of collective bargaining. The Committee recalls that, in the comments that it has been repeating for many years, it has been emphasizing the need to revise a number of provisions of the Labour Code in force and to reword certain provisions on collective bargaining in the draft Labour Code communicated by the Government in 2004.

Excessive restrictions on the right to collective bargaining. In its previous comments, the Committee noted that section 3 of Decree No. 17386/64 required trade unions to obtain the support of at least 60 per cent of the Lebanese employees concerned in order for a collective agreement negotiation to be considered valid, and considered this threshold to be excessive. The Committee also noted that section 180 of the draft Labour Code provided for the reduction of the threshold to 50 per cent and reminded the Government that such a solution could nevertheless pose problems of compatibility with the Convention, as it would prevent a representative union without an absolute majority from being able to engage in bargaining. It therefore asked the Government to ensure that if no union represents the required percentage of workers to be declared the exclusive bargaining agent, collective bargaining rights are granted to all the unions in the unit, at least on behalf of their own members.

Right to collective bargaining in the public sector and the public service. In its previous comments, the Committee asked the Government to amend its legislation so that public sector workers not engaged in the administration of the State, governed by Decree No. 5883 of 1994, are able to enjoy the right to collective bargaining. In this regard, the Committee noted that section 131 of the draft Labour Code established that workers in the public administration, municipalities and public enterprises responsible for administering public services on behalf of the State or on their own account would have to right to engage in collective bargaining.

Compulsory arbitration. For many years, the Committee has been asking the Government to take measures so that recourse to arbitration in the three public sector enterprises governed by Decree No. 2952 of 20 October 1965 is only at the request of both parties. The Committee also requested the amendment of

section 224 of the draft Labour Code, which provides that, should mediation fail, any dispute in the case of the three public sector enterprises governed by Decree No. 2952 will be settled by an arbitration board. The Committee notes with ***regret*** the Government's indication that Decree No. 2952 has been replaced by Decree No. 13896 of 3 January 2005, and that now all investment enterprises in the private and public sectors which are responsible for managing public services on behalf of the State or on their own account must resort to compulsory arbitration should negotiations fail. The Committee recalls that compulsory arbitration is generally not compatible with the promotion of free and voluntary collective bargaining required by *Article 4* of the Convention and therefore that compulsory arbitration in the context of collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and in the event of an acute national crisis. ***Noting with regret that the Government has been merely indicating, for over a decade, that the draft Labour Code is under examination and that due account will be taken of the Committee's comments, and that the Labour Code in force continues to contain provisions that are not compatible with the Convention, the Committee urges the Government to take the necessary legislative measures to amend the Labour Code in force so as to guarantee the collective bargaining rights of workers, including domestic workers. The Committee reminds the Government that it may avail itself of technical assistance from the Office in this regard.***

Collective bargaining in practice. ***The Committee requests the Government to provide statistics on the number of collective agreements concluded and in force and to indicate the sectors and number of workers covered.***

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

Lesotho

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1966)

Article 3 of the Convention. Right of workers' and employers' organizations to organize their activities and formulate their programmes. In its previous observations, the Committee had noted that section 198F of the Labour Code grants specific advantages (access to premises to meet representatives of the employer, to recruit members, to hold a meeting of members and to perform any trade union functions in terms of a collective agreement) to trade unions representing more than 35 per cent of employees, and that section 198G(1) of the Labour Code provides that only members of registered trade unions representing more than 35 per cent of the employees in enterprises employing 10 or more employees were entitled to elect workplace union representatives. The Committee requested the Government to take measures, including in the context of the ongoing labour law reform, to ensure that the distinction between most representative and minority unions does not result, in law or in practice, in granting privileges that would unduly influence workers' free choice of organization. The Committee notes that the Government indicates that in the draft revised Labour Code, which has not been tabled before the Parliament, the distinction between the most representative and the minority unions will not unduly influence the workers' choice of organization, as bargaining rights are granted to both majority and minority trade unions. The Committee once again recalls that the distinction between most representative and minority unions should be limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations). ***The Committee encourages the Government to also include in the revision of the Labour Code the consideration of measures to amend sections 198F and 198G(1) to ensure that workers' free choice of organization is not unduly influenced by the privileges granted by these provisions, and to send a copy of the revised Labour Code once adopted.***

Articles 2, 3 and 5. Public officers' associations. The Committee had previously noted that section 14(1)(b), (c) and (d) of the Societies Act required registered societies to supply to the Registrar-General, upon his or her order at any time, a list of office bearers and members of the society, the number and place of meetings held within the preceding six months, and such accounts, returns and other information as he or she thinks fit. It requested the Government to pursue its efforts to amend the Public Service Act to ensure that organizations of public officers were not subject to the obligations outlined in section 14(1)(b), (c) and (d) of the Societies Act, and that their supervision was limited to the obligation of submitting periodic financial reports or where there were serious grounds for believing that the actions of an organization were contrary to its rules or the law. The Committee further expressed its firm hope that the Government would take the necessary measures to ensure that public officers were able to establish and join federations and confederations, and affiliate with international organizations. The Committee notes that the Government indicates that: (i) the Ministry of Public Service is still awaiting Cabinet approval for the review of the Public Service Act; (ii) the draft revised Labour Code has abolished the divided system of labour law and will apply to all sectors of the economy, including the public service; (iii) a Labour Policy which underlines the application of international labour standards to all workers across sectors, including public servants, has been approved; and (iv) the Ministry had requested technical assistance from the ILO but the workshops that were scheduled were suspended because of the COVID-19 pandemic and the nationwide lockdowns. ***The Committee expects that the review of the Public Service Act will be conducted in the near future and will ensure that organizations of public officers are exempted from the application of section 14(1)(b), (c) and (d) of the Societies Act and that their supervision is limited to the obligation of submitting periodic financial reports or where there are serious grounds for believing that the actions of an organization were contrary to its rules or the law. The Committee also requests the Government to provide information on the specific measures taken, within the framework of the labour law reform, to ensure that public officers are allowed to establish and join federations and confederations, and affiliate with international organizations, in accordance with Article 5 of the Convention.***

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

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

Article 4 of the Convention. Promotion of collective bargaining. Recognition of the most representative union. In its previous comments, the Committee noted that section 198A(1)(b) of the Labour Code defined a representative trade union as a "registered trade union that represents the majority of the employees in the employ of an employer", and that section 198A(1)(c) specified that "a majority of employees in the employ of an employer means over 50 per cent of those employees". It requested the Government to take the necessary measures in the context of the labour law reform to ensure that if no union reached the required majority to be designated as the collective bargaining agent, minority unions would be given the possibility to bargain collectively, jointly or separately, at least on behalf of their own members. The Committee notes that the Government indicates that in the labour law reform, all recognised unions are given bargaining rights and therefore minority unions should also enjoy the right to bargain collectively. ***While taking due note of these elements, the Committee requests the Government to provide information on the specific measures taken within the framework of the labour law reform to ensure that the rules determining the access of trade unions to collective bargaining comply with the Convention, and to provide copies of any laws or regulations adopted in this regard.***

Representativeness requirements for certification of a union as the exclusive bargaining agent. The Committee previously noted that section 198B(2) of the Labour Code provides that the arbitrator may conduct a ballot "if appropriate" in the determination of disputes concerning trade union representativity. It also noted that the drafting instructions for the 2016 consolidation and revision of

the Labour Code referred to the introduction of a formal requirement for ballots to be held in determining trade union representativeness, removing the arbitrator's discretion as to whether a ballot is appropriate. The Committee takes note of the Government's indication that it has undertaken to put in place regulations upon the enactment of the revised Labour Code to ensure that disputes which require the holding of secret vote to determine which trade union is most representative are in fact disposed of by means of a ballot. It further notes that the Government indicates that a copy of the envisaged regulations will be provided once adopted. ***The Committee expects that the ongoing labour law reform will be completed shortly and that the revised Labour Code and its accompanying regulations will ensure that a vote by secret ballot is held for the determination of disputes regarding trade union representativity. It requests the Government to provide a copy of the above-mentioned texts once adopted. Moreover, the Committee once again requests the Government to take the necessary measures to ensure that the revised Labour Code allows new organizations, or organizations failing to secure a sufficiently large number of votes, to ask for a new election after a reasonable period has elapsed since the previous election.***

Collective bargaining in the education sector. The Committee previously noted the Government's indication that the drafting instructions for the 2016 consolidation and revision of the Labour Code identified that the Education Act should be clarified to state that teachers enjoy collective bargaining rights. It noted that section 64 of the Education Act of 2010 provided that a teacher had a right to form or become a member of any teacher formation, and that a teachers' formation representing more than 40 per cent of practising teachers could apply for recognition to the Minister. The Committee requested the Government to provide information on the amendment to the Education Act and to ensure that if there is no union that reaches the required threshold to be designated as the collective bargaining agent, minority unions should be given the possibility to bargain collectively, jointly or separately, at least on behalf of their own members. It also requested the Government, in the meantime, to provide information on the application of section 64 of the Education Act in practice. The Committee notes the Government's indication that there is no amendment of the Education Act of 2010 to date. It further notes that the Government informs that the Progressive Association of Lesotho Teachers has been recognized by the Ministry of Education and Training as the largest trade union in Lesotho, as per section 64 of the Education Act of 2010. The Government indicates, however, that when giving effect to this provision in practice, the minority unions are always included in the negotiations on issues relating to their members. ***While taking due note of this information, the Committee requests the Government to take, within the context of the labour law reform, the necessary measures to ensure that the right of teachers to bargain collectively is explicitly recognized in the legislation in a manner that, as mentioned in its previous comments, gives full effect to the Convention. The Committee also reiterates its previous requests to the Government to provide information on any collective bargaining agreements reached with teachers in the public and private sectors.***

Collective bargaining in practice. ***The Committee requests the Government to provide information on the number of collective agreements signed and in force in the country and to indicate the sectors concerned as well as the number of workers covered.***

Liberia

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

The Committee notes the observations made by the African Regional Organisation of the International Trade Union Confederation (ITUC–Africa), received on 31 August 2021, denouncing the dissolution of a trade union by a state-owned company; the use of police force to break up peaceful strikes; and the arrest of union leaders and wrongful dismissal of workers for their participation in strike actions. ***The Committee requests the Government to provide its comments in this regard.***

The Committee had previously noted the observations made by the National Health Workers' Union of Liberia (NAHWUL), received on 1 October 2020, alleging the Government's failure to grant it legal recognition, which it considered even more detrimental in the context of the COVID-19 pandemic, as well as infringements of the right to strike. The Committee notes the Government's reply that, since 2018, the Ministry of Health has given functional acceptance of NAHWUL as a body representing its members, pending the revision of appropriate national laws. The Government states that this has entailed the reinstatement to employment of the NAHWUL leadership, their integration into decision making and privileges such as study opportunities, and their involvement in the monitoring of the conditions of health workers around the country, with provision of logistical and other support. ***The Committee requests the Government to provide additional information as to other pending allegations raised in NAHWUL's observations and, recalling the recommendations of the Committee on Freedom of Association concerning case No. 3202 [see Report No 384, paragraph 387], to inform on the specific steps taken to ensure that this organization can be granted full legal recognition without further delay.***

Scope of application. In its previous comments, the Committee had noted that section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 (the Act) excluded from its scope of application work falling within the scope of the Civil Service Agency Act. The Committee had previously noted the Government's indication in 2012 that the legislation guaranteeing the right of public employees to establish trade unions (the Public Service Ordinance) was being revised with the technical assistance of the Office and had requested it to report on any developments in this regard. The Committee notes the Government's indication that the employees of state enterprise are already being represented by unions of their choosing, and that other public servants, including public defenders and prosecutors, have their collective bodies that seek their wellbeing and articulate their interests without seeking to be described as unions. The Committee further notes the Government's acknowledgement that the Act does not cover workers in the mainstream public sector and indicates that a national labour conference was convened in 2018 to create a framework for the harmonization of the Act and the Civil Service Standing orders. ***Recalling that all workers, with the sole possible exception of the police and the armed forces, are covered by the Convention, the Committee requests the Government to provide specific information on developments in this regard and to detail what legal provisions ensure that public sector workers enjoy the rights and guarantees set out in the Convention, including provisions drafted or envisaged for enactment and the time frame expected for such enactment.***

The Committee had noted that section 1.5(c)(i) and (ii) of the Act also exclude from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. The Committee had therefore requested the Government to indicate how the rights enshrined in the Convention are ensured to maritime workers, including trainees, and to indicate any laws or regulations adopted or envisaged covering this category of workers**.** The Committee notes the Government's indication that Liberia's Maritime Regulations 10-318.3, addressed to accommodation and recreational facilities, incorporate by reference the terms of the Maritime Labour Convention (MLC) as inherent parts of the conditions of work on flagged vessels and that a further review of how these provisions are applied in practice is planned in line with the report on the MLC, which is due in 2022. ***Noting that the Government has not provided the specific information requested regarding how the particular rights enshrined in the Convention are ensured to maritime workers, the Committee once again requests that the Government provide detailed information as to how, both in law and in practice, these particular rights are ensured to maritime workers, including trainees.***

Article 1 of the Convention. Right of workers, without distinction whatsoever, to establish organizations. The Committee had noted that section 2.6 of the Act provided that all employers and workers, without distinction whatsoever, may establish and join organizations of their own choosing without prior authorization, and subject only to the rules of the organization concerned, and that section 45.6 of the Act recognized the right of foreign workers to join organizations. The Committee had requested the Government to indicate whether, in addition to the right to join organizations, foreign

workers are entitled to establish organizations of their own choosing. The Committee notes the Government's indication that the right to establish organizations exists for foreign workers, that there is no prohibition to the establishment of bodies solely composed of foreign workers or foreign employers and it refers in this respect to existing bodies like the World Lebanese Cultural Union and the Indian Community, although adding that these consist of both employers and employees and give attention to issues affecting the wellbeing of people of their nationality in general. ***Having duly noted this information, the Committee requests the Government to take any necessary measures, including through the amendment of section 45.6 of the Act, to ensure that the right to establish organizations to defend their occupational interests is fully recognized to foreign workers both in law and in practice, as well as to provide information on any developments in this regard.***

Article 3. Determination of essential services. The Committee had noted that the National Tripartite Council (established under section 4.1 of the Act) has the function to identify and recommend to the Minister services that are to be considered essential, which are those that in the opinion of the National Tripartite Council, if interrupted, would endanger the life, personal safety or health of the whole or any part of the population (section 41.4(a) of the Act). The Committee had further noted that upon considering the recommendations of the National Tripartite Council, the President decides whether or not to designate any part of a service as an essential service and publishes a notice of the designation of that essential service in the *Official Gazette* (section 41.4(c) of the Act), and in making this decision, the President is neither bound by nor obliged to follow the recommendations of the National Tripartite Council (section 41.4(d) of the Act). The Committee had therefore requested the Government to indicate whether, in determining which services are considered essential, the President is bound by the definition of the notion of essential services set out in section 41.4(a) of the Act, and had also requested the Government to provide information on how the designation of essential services (section 41.4 of Act) has operated in practice. The Committee notes the Government's indication that since the Act took full effect in 2018, the nation has been gradually setting up its required structures and instituting its full provisions, and that the formal designation of essential services is one of those tasks that is subject to the recommendation of the National Tripartite Council, which is yet to occur. The Committee notes that the Government emphasizes that placement of industries or workers in different categories as a method of epidemic response or control should not be perceived as a designation of essential services within the context of section 41.1 of the Act. ***The Committee requests the Government to continue to provide information on any developments with regard to the designation of essential services by the National Tripartite Council and how such designation operates in practice, as well as to clarify whether the President is also bound by the definition of the notion of essential services set out in section 41.4(a) of the Act (services the interruption of which would endanger the life, personal safety or health of the whole or any part of the population of Liberia), and to provide information on any presidential decisions concerning the designation of essential services and how such designation operates in practice.***

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

The Committee notes the observations made by the African Regional Organisation of the International Trade Union Confederation (ITUC–Africa), received on 31 August 2021, alleging acts of anti-union discrimination and interference in trade union internal affairs by a state-owned company and its refusal to bargain collectively. ***The Committee requests the Government to provide its comments in this regard.***

Scope of the Convention. In its previous comments, the Committee had noted that section 1.5(c)(i) and (ii) of the Decent Work Act of 2015 (the Act) excluded from its scope of application work covered by the Civil Service Agency Act. Furthermore, the Committee had noted the Government's indication in 2012 that the legislation guaranteeing the right of collective bargaining of public servants and

employees in state enterprises (Ordinance on the public service) was under revision with the technical assistance of the Office, and had requested it to provide information on any developments in this regard. The Committee notes that the Government acknowledges that the Act does not cover workers in the mainstream public sector and indicates that a national labour conference was convened in 2018 to create a framework for the harmonization of the Act and the Civil Service Standing Orders. ***Recalling that all workers, except the armed forces and the police, as well as public servants engaged in the administration of the State, are covered by the Convention, the Committee expresses the firm hope that the legislation will soon be brought into conformity with the Convention and requests the Government to provide information on developments in this regard.***

The Committee had also noted that section 1.5(c)(i) and (ii) of the Act also excludes from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. The Committee had therefore requested the Government to indicate how the rights enshrined in the Convention apply to these workers, including any laws or regulations, adopted or envisaged, covering them. The Committee notes the Government's indication that Liberia's Maritime Regulations 10-318.3 incorporate by reference the terms of the Maritime Labour Convention (MLC) as inherent parts of the conditions of work on flagged vessels and that a further review of how these provisions are applied in practice is planned in line with the report on the MLC, which is due in 2022. ***Noting that Liberia's Maritime Regulations 10-318.3 refers to shipboard living conditions and recreational facilities, the Committee requests the Government again to detail how, both in law and in practice, the rights enshrined in the Convention are ensured to maritime workers.***

Article 1 of the Convention. Adequate protection against anti-union discrimination. In its previous comment, the Committee had noted the various provisions of the Act that guarantee the protection against acts of anti-union discrimination. The Committee had requested the Government further information on the sanctions applied in cases of acts of anti-union discrimination and to provide statistics on the number of cases of discrimination examined, the duration of the procedures and the type of penalties and compensations ordered. The Committee notes the Government's indication that the Ministry ruled in favour of the workers in the three cases of anti-union discrimination brought up during the period under review and ordered the reinstatement of the workers. While noting that section 14.10 of the Act provides for dissuasive sanctions in the event of termination of employment due to violations of the worker's or the employer's rights under the Act, including the possibility for Ministry or court to order the reinstatement of the worker, the Committee recalls that adequate protection against acts of anti-union discrimination should not be confined to penalizing dismissal on anti-union grounds, but should cover all acts of anti-union discrimination (demotions, transfers and other prejudicial acts) at all stages of the employment relationship, regardless of the employment period, including at the recruitment stage. ***The Committee requests the Government to take, after consultation with the representative organizations of workers and employers, necessary legislative and regulatory measures to guarantee the application of sufficiently dissuasive penalties against all acts of anti-union discrimination. It also requests the Government to continue to provide detailed statistics on the number of complaints of anti-union discrimination received by the relevant authorities, the average duration of the proceedings and their outcome, and the types of remedies and sanctions imposed in those cases.***

Article 2. Adequate protection against acts of interference. The Committee recalls that for many years it has been requesting the Government to take measures to introduce in the legislation provisions guaranteeing adequate protection for workers' organizations against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions. The Committee notes the Government's indication that the Ministry of Labour has issued directives against interference with the activities of workers' organizations and that it desires to ensure that the workers and employers' interests coexist harmoniously. ***The Committee requests the Government to provide a copy of the Ministry of Labour's directives against interference in trade union's activities. Furthermore, noting the***

observations made by the ITUC alleging acts of interference, and recalling the importance of the effective prohibition by the national legislation of all of the acts of interference covered by Article 2, the Committee once again requests the Government to take the necessary measures to include in the relevant legislation provisions explicitly prohibiting acts of interference and providing for sufficiently dissuasive sanctions and rapid and effective procedures against such acts.

Article 4. Promotion of collective bargaining. The Committee had noted that, under the Act, trade unions that represent the majority of the employees in an appropriate bargaining unit are able to seek recognition as exclusive bargaining agents for that bargaining unit (section 37.1(a)), and that if the trade union no longer represents this majority, it must acquire a majority within three months, otherwise, the employer shall withdraw recognition from this trade union (section 37.1(k)). The Committee recalled that while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, it considers that, if no union reaches the required majority to be designated as a bargaining unit, minority unions should be given the possibility to bargain collectively, jointly or separately, at least on behalf of their own members. The Committee therefore requested the Government to indicate whether, if no union represents this majority the minority unions in the same unit enjoy collective bargaining rights, at least on behalf of their members. ***In the absence of information from the Government in this respect, the Committee reiterates its request.***

Settlement of disputes affecting national interest. The Committee had noted that section 42.1 of the Act underlined prerogatives of the President, Minister and National Tripartite Council with regard to disputes affecting the national interest. The Committee had requested the Government to provide additional information regarding those prerogatives, and to indicate the extent to which section 42.1 of the Act provides the parties with complete freedom of collective bargaining and does not alter the principle of voluntary arbitration. The Committee notes the Government's information that while the Ministry has not formally classified any dispute addressed since the advent of the Act as a dispute affecting the national interest, the process of voluntary arbitration is being protected in all disputes. ***In the absence of a response with regard to the exercise of the prerogatives granted to the public authorities by section 42.1 of the Act, the Committee reiterates its request.***

Collective bargaining in practice. ***The Committee requests the Government to provide information on the number of collective agreements signed and in force in the country and to indicate the sectors and levels concerned as well as the number of workers covered.***

Madagascar

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

The Committee notes the observations made by the Autonomous Trade Union of Labour Inspectors (SAIT), received on 15 March 2021, alleging the infringement of the right of trade unions to organize their activities under *Article 3 of the Convention*. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Trade Union Confederation (ITUC) and of the Confederation of Malagasy Workers (CTM), received on 25 September and 26 October 2017, respectively, on the application of the Convention in practice, and notes the Government's comments in this regard. The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received on 20 September 2017, containing allegations of restrictions on the right to organize, and especially the right of trade unions to organize their management and training activities, and also on the difficulties

encountered in establishing trade unions. ***The Committee requests the Government to provide its comments on the observations of SEKRIMA.***

Restrictions on trade union activities in the maritime sector. In its previous comments, the Committee urged the Government to ensure that the independent inquiry conducted into anti-union acts in the maritime sector is concluded as soon as possible. The Committee notes that no information has been provided by the Government in this regard. ***The Committee therefore reiterates its previous request and once again urges the Government to ensure that the independent inquiry is concluded as soon as possible and to communicate the findings thereof.***

Legislative matters

Article 2 of the Convention. Workers governed by the Maritime Code. In its previous comments, the Committee noted that a new Maritime Code was to be adopted and hoped that the right of seafarers to establish and join trade unions would be recognized. The Committee notes the Government's indication that a roadmap on the adoption of the Maritime Code has been established and received the approval of the tripartite partners. The Committee also notes that a plan of action has been adopted to put into practice the efforts of the Malagasy Government to comply with the provisions of the Convention, and that the Maritime Code that will soon be adopted will take this plan into account. ***The Committee requests the Government to provide information on any progress achieved in this regard and to provide a copy of the Maritime Code as proposed or adopted, and to ensure that the Code establishes the right of seafarers to establish and join trade unions.***

Article 3. Representativeness of workers' and employers' organizations. In its previous comments, the Committee noted the adoption of Decree No. 2011-490 on employers' and workers' organizations and representativeness and asked the Government to provide information on its application and its impact on the determination of the employers' and workers' organizations that participate in social dialogue at the national level. The Committee notes the Government's indication that the Decree is to be implemented in several phases, the first of which is the holding of elections for staff delegates at the enterprise level. The Committee notes that, according to the Government, the election process began in 2014, but was slowed down by the adoption of Order No. 34-2015 on the determination of trade union representativeness, as an appeal was lodged to set aside the result of the elections. The Committee notes the Government's indication that, in early 2017, the Council of State (CE) issued a decision rejecting the appeal, and that the process to determine representativeness was relaunched. Moreover, the Committee notes the Government's indications that a tripartite meeting on the issues of representativeness and the composition of the National Labour Council (CNT) was held on 10 November 2017. Lastly, the Committee notes that a new ministerial order (Decree No. 2017-843), which envisages the optimization of the CNT and tripartite labour councils with a view to facilitating the determination of employers' and workers' representativeness, has been adopted. ***The Committee requests the Government to provide information on any progress made in the election of staff delegates at the enterprise level and on the application and impact from such election in the determination of the employers' and workers' organizations that participate in dialogue at the national level.***

Right of workers' organizations to organize their activities and formulate their programmes. Compulsory arbitration. In its previous comments, the Committee requested the Government to take all necessary measures to amend sections 220 and 225 of the Labour Code, which provide that if mediation fails, the collective dispute is referred by the Minister of Labour and Social Legislation to a process of arbitration and that the arbitral award ends the dispute and the strike. The Committee recalled that, in a collective dispute, a compulsory arbitration order is acceptable only where strikes may be prohibited, namely in the case of public servants exercising authority in the name of the State, in essential services in the strict sense of the term and in the event of an acute national crisis. The Committee also asked the Government to take the necessary measures to amend section 228 of the Labour Code on the requisitioning of striking employees, so as to replace the concept of the disruption of public order by the concept of acute national crisis. The Committee notes the Government's indication that a compilation of the Committee's observations, in relation to the requested legislative amendments, has been made so that it can be transmitted to the CNT for examination and adoption. ***The Committee encourages the Government to take all the necessary measures to amend sections 220 and 225 of the Labour Code on arbitration, as well as section 228 of the Labour Code on requisitioning, in order to bring them into conformity with the above principles, and to provide information on any progress made in this regard.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)

The Committee notes the observations from the Autonomous Trade Union of Labour Inspectors (SAIT), received on 15 March 2021, alleging anti-union discrimination measures against its members. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations made by the International Trade Union Confederation (ITUC) and the Christian Confederation of Malagasy Trade Unions (SEKRIMA) in communications received on 1 and 4 September 2017, respectively, concerning points being examined by the Committee and, according to SEKRIMA, new acts of anti-union discrimination in various sectors (telecommunications, banking, textiles, the salt industry and fishing). The Committee also notes the Government's comments in reply to the observations made by SEKRIMA in 2015 and by the ITUC in 2015 and 2017. With regard to allegations of anti-union dismissals in the mining sector, the Government indicates that the Council of State of the Supreme Court, in a judgment dated 9 December 2015, ruled in favour of the trade union leader Barson Rakotomanga, suspending implementation of the decision by the Minister for the Public Service, Labour and Social Legislation opposing his reinstatement in the enterprise; and that in other cases the Antananarivo Labour Court ruled that the dismissals of trade union activists were procedurally flawed and therefore gave entitlement to the payment of damages. With regard to another case concerning the situation of two workers at a Malagasy mattress manufacturing company, the Government refers to intervention by the competent services of the labour administration and inspectorate, which resulted in amicable termination of the employment contract in one case and reinstatement in the company in the other case. ***Emphasizing the persistence of allegations of anti-union discrimination in numerous sectors, the Committee requests the Government to continue sending information on this matter. The Committee also requests the Government to ensure that all the events reported are the subject of investigation by the public authorities and, if acts of anti-union discrimination are proven, that these will give rise to full compensation for the damage suffered, in both occupational and financial terms, and to the imposition of penalties that constitute an effective deterrent.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comments, the Committee asked the Government to provide information on the number of cases of anti-union discrimination examined by the labour inspection services and labour courts, and on the corresponding penalties actually applied by these institutions. The Committee notes the Government's indications that the Ministry of Labour has taken steps to direct the activities of the Regional Labour Services (SRT) to enable the collection of the required data. In this regard, it notes that a suitable report template taking account of data on cases of anti-union discrimination is being prepared by the Inspection Support Service at the Directorate for Labour and Social Legislation and that the reports drawn up in relation to this template will be compiled centrally every six months from 2018 onwards, with a view to analysing them and setting up a database containing reliable information. ***The Committee hopes that the Government will soon be a position, as a result of these new tools, to provide information on the number of cases of anti-union discrimination examined by the labour inspectorate and the labour courts, and also on the corresponding penalties actually applied by the aforementioned bodies.***

Articles 1, 2, 4 and 6. Public servants not engaged in the administration of the State. The Committee recalls that its previous comments were concerned with the need to adopt formal provisions clearly recognizing the protection of all public servants and public sector employees not engaged in the administration of the State against acts of anti-union discrimination and interference and their right to bargain collectively their conditions of employment. The Committee noted the Government's indication that contractual public employees, governed by Act No. 94-025 of 17 November 1994, are not covered by specific provisions relating to acts of anti-union discrimination or interference or the right to bargain collectively. The Committee notes that, according to the Government, the recommended measures will be taken into account in the context of the future National Public Service Policy (PNFOP) and the revision of the legal framework

governing the public service, including texts concerning civil servants and contractual public employees (Act No. 2003-011 of 3 September 2003 issuing the general conditions of service of public servants and Act No. 94-025 of 17 November 1994 issuing the general conditions of service of contractual public employees). ***While noting this information, the Committee expects that the Government will be in a position in the near future to provide information on the measures taken to clearly recognize the protection of all public servants and public sector employees not engaged in the administration of the State against acts of anti-union discrimination and interference and their right to bargain collectively their conditions of employment. The Committee reminds the Government that it may avail itself of technical assistance from the Office in this regard.***

Article 4. Promotion of collective bargaining. Representativeness criteria. With regard to the implementation of the representativeness criteria determined by Decree No. 2011-490 on trade unions and representativeness, the Committee notes the Government's indication that an appeal was lodged seeking the cancellation of Order No. 34/2015 determining trade union representativeness for 2014–15. In this regard, the Committee refers to its observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Collective bargaining in sectors subject to privatization. The Committee notes the information provided by the Government on the situation of collective agreements in the energy sector, particularly that of the Malagasy Electricity and Water Company (JIRAMA), the revision of which is reportedly in progress. It notes that information on the Télécom Malagasy (TELMA) company will be provided in due course. The Committee further notes that, according to SEKRIMA, collective bargaining in privatized sectors continues to pose problems, in that the privatization operations have resulted in the collective agreements in force being discarded. ***Recalling that the restructuring or privatization of an enterprise should not in itself result automatically in the extinction of the obligations resulting from the collective agreement in force and that the parties should be able to take a decision on this subject and to participate in such processes through collective bargaining, the Committee requests the Government to take all necessary steps to promote the full use by the parties concerned of collective bargaining mechanisms in privatized sectors. The Committee hopes that the Government will be in a position in the very near future to report tangible progress in this regard.***

Collective bargaining for seafarers. In its previous comments, the Committee noted that the Labour Code excluded maritime workers from its scope of application and requested the Government to take the necessary measures to ensure the adoption of specific provisions guaranteeing the collective bargaining rights of seafarers governed by the Maritime Code. The Committee notes the Government's reference to a roadmap relating to the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), and to the adoption of the Maritime Code due in May 2018. ***The Committee expects that the Government will be able to report, in the near future, the adoption of the new Maritime Code and that this Code will make provision for maritime workers to enjoy the rights guaranteed by the Convention.***

Promotion of collective bargaining in practice. ***Further to its previous requests, the Committee requests the Government to provide information on the number of collective agreements concluded in the country, including in enterprises employing fewer than 50 workers, the sectors concerned and the number of workers covered by these agreements.***

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

Malaysia

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1961)

The Committee notes the observations of the Malaysian Trades Union Congress (MTUC), received on 30 August 2019, denouncing violations of the Convention in practice, including numerous instances of anti-union discrimination, employer interference and violations of the right to collective bargaining in a number of enterprises. The Committee further notes that specific violations of the Convention in practice were also previously denounced in the 2016, 2017 and 2018 observations of the International

Trade Union Confederation (ITUC) and the 2015 MTUC observations and ***regrets*** that the Government has not yet provided its reply to these concerns. ***The Committee requests the Government to take the necessary measures to address all of the above allegations, in particular to ensure that allegations of anti-union discrimination and interference are rapidly investigated, that effective remedies are ordered and that sufficiently dissuasive sanctions are imposed on the perpetrators. The Committee trusts that the Government will be in a position to provide detailed information in this regard.***

Ongoing legislative reform. The Committee previously noted that a holistic review of the main labour laws (including the Employment Act, 1955, the Trade Union Act, 1959 and the Industrial Relations Act, 1967 (IRA)) was ongoing in the country. The Committee welcomes the Government's indication that it has been working closely with the Office in the labour law review and that the IRA has been amended through the Industrial Relations (Amendment) Act, 2020, with effect from January 2021. The Committee will address the amendments to the IRA in more detail below. It further notes the Government's statement that the Employment Act and the Trade Union Act are currently undergoing the due processes to be amended and tabled at the Parliament. ***The Committee trusts that the Government's continued cooperation with the Office will facilitate the review of the Employment Act and the Trade Union Act and contribute to achieving full conformity of these laws with the Convention. The Committee requests the Government to provide information on any developments in this regard.***

Article 1 of the Convention. Adequate protection against anti-union discrimination. Effective remedies and sufficiently dissuasive sanctions. In its previous comment, the Committee requested the Government to provide detailed information on the general remedies effectively imposed for acts of anti-union discrimination dealt with through sections 5 and 8 of the IRA (referral of a complaint to the Director-General or to the Industrial Court and used in the vast majority of reported anti-union discrimination cases), as well as the sanctions and measures of compensation in relation to anti-union discrimination acts under section 59 of the IRA (a process before a criminal court with a higher standard of proof (beyond reasonable doubt), explicitly providing for penal sanctions and the possibility of reinstatement, but only used in less than 6 per cent of reported cases). In light of that information, the Committee requested the Government to take any necessary measures to ensure that the rules and procedures relating to anti-union discrimination afford adequate protection, without placing on victims a burden of proof that constitutes a major obstacle to establishing liability and ensuring an appropriate remedy.

The Committee notes that, with a view to expediting the procedure with respect to anti-union discrimination, the Government indicates that under section 8 as amended, the Director-General of Industrial Relations may take any steps or make enquires to resolve the matter and if not solved, may, if he/she thinks fit, refer the matter directly to the Industrial Court without having to first refer the matter to the Minister. The Committee observes however that the Director-General would appear to retain certain discretion in this regard and it is not evident on what basis the decision not to refer a case would be made. As regards effective remedies for anti-union discrimination, the Committee notes the Government's indication that the amendments to section 30(6A) of the IRA allow the Industrial Court to have at its disposal a full range of remedies to be awarded to a worker dismissed for anti-union reasons. In this respect, the Committee further observes with ***interest*** that: (i) section 33B of the IRA, as amended, stipulates that an award of the Industrial Court for reinstatement or reemployment of a worker may not be subject to a stay of proceedings by any court; and (ii) pursuant to new section 33C, a worker dissatisfied with an award of the Industrial Court may appeal to the High Court within 14 days of receiving the award, suggesting that the Industrial Court's decision will be subject to appeal on facts and law. While welcoming these amendments, the Committee observes that the Government does not provide information on the remedies imposed in practice for acts of anti-union discrimination dealt with through section 8 of the IRA, nor on the sanctions and measures of compensation awarded in practice for anti-union discrimination acts under section 59 of the IRA. ***The Committee therefore requests the Government once again to: (i) provide detailed information on the general remedies imposed in***

practice for acts of anti-union discrimination dealt with through sections 5, 8 and 20 of the IRA, whether by the Director-General or the Industrial Court, especially in view of the above amendments to the relevant provisions, as well as on the sanctions and measures of compensation awarded in practice in relation to anti-union discrimination acts under section 59 of the IRA; (ii) in light of this information, to take any necessary measures to ensure that workers who are victims of anti-union discrimination can lodge a complaint directly before the courts in order to access expeditiously adequate compensation and the imposition of sufficiently dissuasive sanctions and recalls its recommendation to consider reversal of the burden of proof once a prima facie case is made; and (iii) to provide information on the average duration of the proceedings under section 8 of the IRA, in view of the amendments to expedite the process, as well as on the number of cases in which the complaint was resolved by the Director-General, as opposed to instances referred to the Industrial Court.

Articles 2 and 4. Trade union recognition for purposes of collective bargaining. Criteria and procedure for recognition. Exclusive bargaining agent. The Committee recalls that under section 9 of the IRA, when an employer rejects a union's claim for voluntary recognition for the purpose of collective bargaining, the union has to inform the Director-General who should take appropriate action, including a competency check through a secret ballot, to ascertain whether the union has secured the required ballot (50 per cent plus one) of the workers or class of workers, in respect of whom recognition is being sought. Having observed the concerns raised by the MTUC and the ITUC in this regard (the use of the total number of workers on the date of the request and not at the time of the ballot, leading to large discrepancies, as well as the lack of protection against employer interference in the secret ballot procedure), the Committee requested the Government to take the necessary steps to ensure that the recognition process provides safeguards to prevent acts of interference and that if no union reaches the required majority to be declared the exclusive bargaining agent, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members.

The Committee notes the Government's indication that: (i) the recognition process was reviewed, in consultation with the social partners, and is, in the Government's view, adequate; (ii) concerns pertaining to the formula currently used for the secret ballot have been acknowledged and will be reviewed subject to consultations and views from stakeholders through the National Labour Advisory Council; (iii) a simple majority is a minimum requirement which will be maintained in order for a trade union to become exclusive bargaining agent and the social partners agree with it; and (iv) the Government continuously takes the necessary steps to ensure that the recognition process provides safeguards to prevent acts of interference and the parties may lodge a complaint in case of interference under section 8 and 18 of the IRA. The Committee observes in this regard that the main amendments to section 9 relate to expediting the process, addressed in more detail below, and to clarifying that, in case of refusal to grant recognition by the employer: (i) the Director-General shall ascertain the scope of membership of the trade union on the date of the claim, whether it is in accordance with the union's constitution (instead of ascertaining the competence of the trade union to represent the workers concerned, as previously stipulated by the IRA); and (ii) by way of secret ballot, the Director-General, shall ascertain the percentage of workers, in respect of whom recognition is being sought, who indicate support for the trade union making the claim (instead of ascertaining the percentage of workers who are members of the trade union making the claim, as previously stipulated). While taking due note of the above, the Committee observes that the Government does not provide details as to the steps it indicates it is taking to ensure safeguards against employer interference during the recognition process and understands from the Government's report that the formula used in the secret ballot by the Director-General to ascertain the percentage of workers who support the union, in case of employer's refusal to grant recognition (denounced by the MTUC and the ITUC), needs to be further reviewed. It observes that the Committee on Freedom of Association also examined allegations of employers' refusal to recognize trade unions as collective bargaining agents and the weaknesses of the existing secret ballot process and referred the legislative aspect of the case to this Committee (see Case No. 3334,

391st Report, October 2019, paragraphs 374 and 382 and 393rd Report, March 2021, paragraphs 28 and 31). The Committee wishes to recall in this regard that the recognition procedure should seek to assess the representativeness existing at the time the ballot vote takes place to take into consideration the actual size of the workforce in the bargaining unit and that the process should provide safeguards to prevent acts of employer interference. ***In line with the above, the Committee trusts that any further necessary amendments will be made to the secret ballot process, in consultation with the social partners, so as to effectively address the concerns raised by the trade unions in this respect, and to ensure that the recognition process as a whole, regarding both the initial employer response and the verification procedure with the Director-General, provides safeguards to prevent acts of employer interference. The Committee trusts that the amendments already made to the recognition process will contribute to these efforts and requests the Government to indicate their effect in practice. The Committee further requests the Government to provide additional details on the steps the Government indicates it is taking to ensure sufficient safeguards against employer interference in the recognition process.***

The Committee further observes, in relation to the recognition procedure and the right to collective bargaining, that additional amendments were made to the IRA, but are not yet in force, adding new section 12A relating to exclusive bargaining rights. The Committee understands that this provision was introduced to govern situations where more than one trade union obtains recognition for the purpose of collective bargaining and provides for a procedure to determine which trade union will benefit from the exclusive bargaining rights to represent the workers (agreement among the unions or determination by the Director-General, including through a secret ballot based on the highest number of votes). ***Noting in this regard the Government's general indication that simple majority is a requirement for a trade union to become an exclusive bargaining agent but observing that the law does not make reference to this threshold, the Committee requests the Government to specify the manner in which collective bargaining rights are granted and exercised when no trade union has reached the 50 per cent requirement once section 12A comes into force and to provide information on its application in practice. In this regard, the Committee also requests the Government to indicate whether in situations where no union is declared the exclusive bargaining agent, collective bargaining can be exercised, jointly or separately, by all unions in the unit, at least on behalf of their own members.***

Duration of recognition proceedings. In its previous comment, the Committee requested the Government to provide additional information on the administrative and legal actions undertaken by the Department of Industrial Relations to expedite the recognition process and to take any necessary measures to further reduce the length of proceedings. The Committee notes the Government's indication that the amendments to the IRA confer the powers to determine the matters related to the recognition of trade unions previously vested in the Minister of Human Resources to the Director-General of Industrial Relations, thus expediting the dispute resolution processes relating to claims for recognition by trade unions. ***Welcoming these amendments, the Committee requests the Government to indicate the effect they have on the recognition procedure, in particular to indicate the average duration of the process, both for voluntary recognition and for instances where recognition is determined by the Director-General. Further observing that section 9(6) of the IRA providing for the final nature of the decision on recognition by the Director-General has been deleted, the Committee requests the Government to indicate whether such decision may now be appealed by the concerned union or the employer.***

Migrant workers. In its previous comment, the Committee welcomed the Government's statement that current laws do not prohibit foreign workers from becoming trade union members but observed that the Government did not provide any information on the announced legislative amendment to enable non-citizens to run for election for union office if they have been legally residing in the country for at least three years or in response to a series of concerns that had been previously

noted by the Committee. The Committee ***regrets*** that the Government's report is limited to reiterating that foreign workers are eligible to becoming members of a trade union and to hold trade union office upon approval of the Minister, if it is in the interest of such union (a condition which, in the Committee's views, hinders the right of trade union organizations to freely choose their representatives for collective bargaining purposes) and does not elaborate on any of the concerns previously raised on limitations on collective bargaining of migrant workers in practice. The amendments to the IRA also do not seem to address these issues. ***The Committee therefore reiterates its request to the Government to take the necessary measures to ensure the full utilization of collective bargaining by migrant workers, including as to enabling foreign workers to run for trade union office, and to provide information on any developments in this regard, whether legislative or other.***

Scope of collective bargaining. In its previous comment, the Committee expressed firm hope that section 13(3) of the IRA would be amended in the near future to remove its broad restrictions on the scope of collective bargaining (restrictions with regard to transfer, dismissal and reinstatement, some of the matters known as "internal management prerogatives"). The Committee notes the Government's indication that while section 13(3) was retained during the labour law reform, so as to maintain industrial harmony and speed up the collective bargaining process, the provision is not obligatory in that, if both parties agree, they may negotiate the subject matters stipulated therein. The Government adds that additional amendments were introduced to section 13(3) of the IRA, allowing trade unions to raise questions of a general character relating to transfers, termination of services due to redundancy, dismissal, reinstatement and assignment or allocation of work. While welcoming these amendments, the Committee considers that it remains unclear how the possibility to raise questions of a general character on matters that are within the scope of legislative restrictions on collective bargaining would be articulated in practice. ***The Committee therefore requests the Government to indicate the practical implications of the amendment of section 13(3) of the IRA on the scope of collective bargaining, in particular to clarify the meaning of the new wording – questions of a general character. While further noting the Government's indication that the parties may, if they agree, negotiate the matters prohibited by section 13(3) of the IRA, the Committee invites the Government to consider lifting the broad legislative restrictions on the scope of collective bargaining, so as to promote the right to bargain freely between the parties, without any intervention by the Government.***

Compulsory arbitration. In its previous comment, the Committee noted that section 26(2) of the IRA allows compulsory arbitration by the Minister of Labour of his own motion in case of failure of collective bargaining and expressed hope that the Government would take any necessary measures to ensure that the legislation only authorizes compulsory arbitration in essential services in the strict sense of the term, for public servants engaged in the administration of the State or in cases of acute national crisis. The Committee notes the Government's statement that amendments have been made to section 26(2) of the IRA, enabling trade unions to engage freely and voluntarily in collective bargaining, except in certain situations, but that this provision is not yet enforced. The Committee observes, in particular, that pursuant to the new wording of section 26(2) of the IRA, the Minister may of his/her own motion refer any trade dispute to the court if satisfied that it is expedient to do so provided that where the trade dispute relates to a refusal to commence collective bargaining or a deadlock in collective bargaining, reference to the court shall not be made without the consent in writing of the parties, unless: (a) the trade dispute relates to the first collective agreement; (b) the trade dispute refers to any essential services specified in the First Schedule; (c) the trade dispute would result in acute crisis if not resolved expeditiously; or (d) the parties to the trade dispute are not acting in good faith to resolve the trade dispute expeditiously. The Committee notes with ***interest*** that the amendments made restrict compulsory arbitration to instances generally compatible with the Convention, except to the extent that the reference in section 26(2) to "any Government service" and "the service of any statutory authority", as well as the reference to a number of Government services in point 8 of the First Schedule, may go beyond what can be considered as public servants engaged in the administration of the State, and point

10 of the First Schedule, which considers as essential services businesses and industries connected with the defence and security of the country (while the armed forces may be exempt from the provisions of the Convention, businesses and industries connected with them should be afforded the full guarantees of the Convention). ***In line with the above, the Committee trusts that these amendments will enter into force without delay and invites the Government to continue to engage with the social partners with a view to: (i) further delimiting the categories of Government services in section 26(2) and point 8 of the First Schedule, so as to ensure that compulsory arbitration may only be imposed on those public servants engaged in the administration of the State; and (ii) removing businesses and industries mentioned in point 10 of the First Schedule from its the scope of application.***

Restrictions on collective bargaining in the public sector. The Committee has for many years requested the Government to take the necessary measures to ensure for public servants not engaged in the administration of the State the right to bargain collectively over wages and remuneration and other working conditions and emphasized that simple consultations with unions of public servants not engaged in the administration of the State did not meet the requirements of *Article 4* of the Convention. The Committee notes that the Government, on the one hand, asserts that it has taken the necessary measures to ensure that public officers are given fair opportunities to collectively bargain over wages and remuneration and other working conditions, in conformity with *Article 4* of the Convention, subject to the applicable laws and regulations governing the employment of civil servants, and on the other hand, reiterates that collective bargaining is done through the National Joint Council and the Departmental Joint Council, as stipulated in Service Circular No. 6/2020 and Service Circular No. 7/2020, or through direct engagement with the Government. While taking due note of the above, the Committee observes that the Government does not provide any details as to the content of the Circulars or the measures it indicates it has taken to ensure that public officers are given fair opportunities to collectively bargain, that section 52 of the IRA explicitly excludes workers employed by the Government or any statutory authority from the collective bargaining machinery of the Act and that it, therefore, remains unclear what precise substantial changes were made to the existing regime of collective bargaining in the public sector. ***In line with the above, the Committee requests the Government to provide further information in this respect, in particular to: (i) indicate the concrete changes made to the existing regime of collective bargaining in the public sector; (ii) to specify the content of Service Circular No. 6/2020 and Service Circular No. 7/2020 or any other applicable legal provisions, which, according to the Government, ensure that public servants can bargain collectively in conformity with Article 4 of the Convention; and (iii) provide information on collective bargaining undertaken in the public sector and any agreements concluded.***

Collective bargaining in practice. In its previous comment, the Committee requested the Government to provide statistical information in relation to collective bargaining in the country. The Committee notes that the Government refers to statistical information by the Industrial Court but observes that no such information has been provided. It further notes that the Government points to additional measures taken to promote the full development and utilization of collective bargaining under the Convention, including engagement sessions with the social partners during the process of legislative amendments and industrial visits conducted to workplaces to promote industrial harmony. The Committee notes, however, the concerns expressed by the MTUC as to the low percentage of workers covered by collective agreements (1 to 2 per cent) and the declining level of trade union density (6 per cent). ***The Committee encourages the Government to continue to provide statistical information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements, as well as on any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention.***

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

Maldives

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2013)

The Committee notes the observations of the Maldivian Trade Union Congress (MTUC), received on 26 September 2021, denouncing the absence of a legal framework to enforce the rights guaranteed by the Convention, resulting in the impossibility to freely join trade unions and exercise union activities. The MTUC also alleges threats and interference in union affairs by state authorities. ***The Committee requests the Government to provide its comments on the MTUC observations.***

Legislative framework. In its previous comment, the Committee requested the Government to take the necessary measures to achieve the adoption of the draft Industrial Relations Act and ensure its full conformity with the Convention. The Committee notes the Government's indication that the adoption of the Industrial Relations Bill has been included in the Government's Strategic Action Plan 2019–2023 as a priority, that it continues to be reviewed for alignment with international obligations and that it is expected to be sent to the Parliament for final decision and adoption in the near future. The Government states that the Bill provides for registration of workers' and employers' organizations, effective mechanisms for resolving industrial disputes and the establishment of a Tripartite Labour Dialogue Forum to foster cooperation on labour issues. The Government further informs that the Associations Bill, which was drafted through a consultative process with the relevant stakeholders and which seeks to align the protection of the right to freedom of association with the principles of the Convention (right to participate in associations, registration, dissolution, etc.) was submitted to the Parliament in October 2019. The Committee notes however the concerns raised by the MTUC in relation to the legislative reform that: (i) despite ILO technical assistance since 2013, the Industrial Relations Bill has not yet been adopted and workers' associations were not consulted in its elaboration; and (ii) the Associations Bill does not cover trade union formation and trade union rights should be protected in the Industrial Relations Bill. The Committee further notes that the Committee on Freedom of Association (CFA), when examining Case No. 3076 concerning the Maldives: (i) observed with deep concern allegations that the Government's systematic failure to ensure effective protection of trade union rights both in law and in practice led to a denial of the right to freedom of association to workers in the country, including denial of freedom of assembly, enforced by the police; and (ii) requested the Government to take the necessary legislative and enforcement measures, in consultation with the social partners concerned, to address those allegations and to ensure that protection for trade union rights, in particular the right to freedom of assembly, is fully guaranteed both in law and in practice and referred the legislative aspects of the case to this Committee (see Case No. 3076, 391st Report, October 2019, paragraphs 410 and 412(h); 395th Report, June 2021, paragraphs 282 and 283). ***In view of the above and recalling that the Industrial Relations Bill and the Associations Bill have been pending adoption for several years, the Committee expects that they will be adopted without delay, following meaningful consultation with workers' and employers' organizations, and will address all of the Committee's observations below so as to ensure their full conformity with the Convention and contribute to the promotion of freedom of association in the country. The Committee invites the Government to continue to avail itself of the technical assistance of the Office, should it so desire, and requests it to provide a copy of the amended laws once adopted.***

Pending the adoption of the above Bills and emphasizing the desirability of establishing a comprehensive legislative framework regulating collective labour relations, the Committee has been examining the legislation currently in force, taking into account the legislative proposals indicated by the Government.

Associations Act, 2003

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations. The Committee previously requested the Government to take the necessary measures to amend section 6(b) of the Associations Act, so as to allow minors who have reached the minimum legal age for admission to employment (16 years) to be able to exercise their trade union rights. The Committee notes the Government's indication that deliberations are ongoing at the Committee stage of the Parliament to allow minors who have attained the legal age of employment under the Child Rights Protection Act, 2019 to be able to exercise trade union rights under the new Associations Bill. ***The Committee expects the proposed legislative amendments to ensure that minors who have attained the legal age of employment will be able to exercise their trade union rights.***

Right to establish organizations without previous authorization. In its previous comment, the Committee requested the Government to take the necessary measures to amend section 9(a) of the Associations Act to limit the discretionary power of the Registrar to refuse the establishment of an organization. The Committee notes the Government's statement that section 34(a) of the new Associations Bill obliges the Registrar to accept any names that do not fall within the situations listed in the section and that administrative decisions are subject to judicial review. ***Observing that the Government does not provide any details as to the permitted grounds for rejecting a proposed name under section 34(a) of the Associations Bill, the Committee expects these to be sufficiently restrictive so as to limit the Registrar's discretionary power, ensuring that registration is a mere formality and does not amount to a previous authorization contrary to Article 2 of the Convention.***

The Committee further requested the Government to take the necessary measures to amend section 37(b) of the Associations Act to ensure that the exercise of legitimate trade union activities is not dependent upon registration and is not subject to penalties. The Committee welcomes the Government's indication that section 37(b) will be repealed in the new Bill, which does not prohibit the operation of unregistered associations.

The Committee also requested the Government to provide statistics on the number of workers' and employers' organizations registered, the sectors and the number of workers covered. The Committee notes that the Government provides a list of registered associations in the social, recreational and sports domains, without however specifying whether some of them are associations of workers and employers, and further indicates that an NGO portal is being developed to enhance data collection and extraction. The Committee observes that the MTUC contends that the Government does not have a mechanism to collect data on workers' organizations and that the NGO portal will not solve this issue. ***The Committee encourages the Government to take the necessary measures to enable collection of data on the number of workers' and employers' organizations registered in the country, the sectors in which they are active and the number of workers covered, and requests it to provide statistics in this regard.***

Right of workers and employers to establish organizations of their own choosing. In its previous comment, the Committee requested the Government to provide information on whether workers and employers, engaged in more than one occupation or sector, could join more than one organization. The Committee welcomes the Government's clarification that they can and that there are no legislatives bars to such activities.

Article 3. Freedom to elect representatives. The Committee previously requested the Government to take the necessary measures to amend section 24 of the Associations Act so as to ensure that minors who are eligible for employment are also eligible for trade union office. The Committee notes the Government's indication that deliberations are ongoing to allow minors eligible for employment to exercise trade union rights under the new Associations Bill. ***The Committee expects the proposed legislative amendments to ensure that minors who have attained the legal age of employment will be able to exercise their trade union rights, including the right to be eligible for trade union office.***

The Committee further notes that the Government informs that under the new Associations Bill, a person cannot become a member of the executive committee of an association if they are already an executive committee member of another association. ***Recalling that such restrictions can unduly infringe the right of organizations to elect representatives in full freedom by preventing qualified persons from holding trade union office if they are already engaged in a similar position in another association, the Committee requests the Government to take the necessary measures to review the relevant provisions of the Associations Bill so as to allow persons to hold trade union office in more than one association, subject only to the statutes of the organizations concerned.***

Right to organize administration and activities and to formulate programmes. In its previous comment, having noted that the Associations Act contained a number of provisions which regulate in detail the internal functioning of associations (sections 5(f), 10, 11, 14(b), 18, 23 and 31), the Committee requested the Government to take the necessary measures to amend these provisions. The Committee welcomes the Government's indication on the proposed amendments to sections 10 and 11 (changes to the association's name), 18 (changes to an association's governing regulations) and 31 (voluntary winding-up of associations), which remove detailed regulation and limit the discretionary powers of the Registrar in relation to some aspects of the internal functioning of associations. ***Observing, however, the Government's statement that sections 5(f) (stipulating that any money or property of the association after its dissolution will be given away to another non-profit association or to a government-approved charity) and 23 (providing detailed instructions on how to address debts of an association) have not been substantively changed, the Committee reiterates its request in this regard.***

The Committee further requested the Government to indicate the necessary prerequisites for a workers' or employers' association to be able to receive foreign assistance in line with section 22 of the Associations Act. The Committee notes the Government's clarification that it is section 34 of the Associations Regulation, 2015 that stipulates the prerequisites to receive foreign assistance by associations (approval from the Registrar before seeking and accepting assistance from foreign parties and submission of documents with details on the party seeking foreign assistance, the party providing assistance, as well as on the amount and purpose for which it is being sought). The Government adds that these prerequisites are being amended through the new Associations Bill but does not specify in what manner. ***Recalling that provisions requiring approval by the authorities of financial assistance from abroad can result in control over the financial management of organizations and restrictions on their right to organize their administration and activities, which control and restrictions are incompatible with Article 3 of the Convention, the Committee expects the Government to ensure that the amendments proposed by the Associations Bill will be fully in line with the Convention.***

Article 4. Administrative and judicial dissolution. In its previous comment, having observed that under sections 32(a) and 33 of the Associations Act, an association could be dissolved by the Registrar or the courts for overly broad reasons, the Committee requested the Government to take the necessary measures to amend these provisions. The Committee notes the Government's indication that under Chapter 10 of the Associations Bill the Registrar will be required to follow the procedure stipulated in the relevant sections and will have to apply to court to obtain an order to dissolve an association, but observes that the Government does not provide any details on the actual procedure or on the grounds on which such a dissolution may be requested. ***Recalling once again that dissolution of a workers' or employers' organization is an extreme measure with serious consequences upon the right to organize which should only be used in limited circumstances, the Committee requests the Government to ensure that the proposed amendments will only allow dissolution of an association following a judicial decision on the basis of precise and predetermined criteria.***

Article 5. The right to form federations and confederations. The Committee previously requested the Government to take the necessary measures, including through the adoption of specific legislative provisions, to ensure that workers' and employers' organizations can form federations and confederations, and affiliate with international organizations. The Committee notes that according to

the Government, while there are no specific legislative provisions governing the issue, there are no legal barriers to forming federations or confederations or to affiliate with international organizations. ***Observing, however, the MTUC concerns that neither the Government nor the judicial system recognize federations and confederations of unions or international affiliation and further observing the Government's indication that the issue could be considered for inclusion in the draft Industrial Relations Bill, the Committee requests the Government to include in the ongoing reform process the consideration and adoption of any necessary legislative provisions and other measures to ensure that workers' and employers' organizations can, both in law and in practice, form federations and confederations, and affiliate with international organizations.***

Associations Regulation, 2015

The Committee notes that the Government provides a copy of the Associations Regulation, which currently implements the Associations Act, and observes that it contains a number of provisions which are not in line with the Convention and need amending: sections 4(a) (obligatory registration), 4(c) and 24(ii) (founding members and members of the executive committee must be 18 years old); 4(d) (prohibition to have any criminal record for the person registering the association); 13(a) (detailed regulation of the name of the association); 15(d) (penalty for use of a seal, flag, colour or motto without registration); 17(b)(vi) (detailed regulation of the financial assets); 19(a) (restrictions as to the objectives of the association); 23(a) (only nationals can be elected as President, Secretary and Treasurer); 24(i) (members of the executive committee must be members of the association); 30(a) (detailed regulation of annual reports and accounts); 36(a) (audit by government-accredited audit firm for certain associations); 38 (police inspection with court order if activities undermine societal harmony); 40(ii), 42 and 43 (dissolution of an association by the Registrar or the courts for overly broad reasons); 41 (requirement of a special resolution for voluntary dissolution); 44(a)(iii) and 45(a) (detailed regulation on the use of assets after dissolution), as well as sections 12(a)–(b), 14(a), 16(b), 20, 26(c), 29, 34(a), 35(b), 37(a) and 39(a) providing for excessive discretionary power of the Registrar in relation to associations' establishment, administration, activities and suspension. ***In line with the Committee's requests and expectations above, and considering that the Associations Act is being amended, the Committee fully expects the Government to ensure that, in the framework of the current legislative reform, the Associations Regulation will also be amended to ensure its full conformity with the Convention.***

Freedom of Peaceful Public Assembly Act, 2013, and Regulation governing dispute resolution between the employer and the employee, 2011

In its previous comment, the Committee requested the Government to repeal section 24(b)(7) of the Freedom of Peaceful Public Assembly Act and amend sections 5, 7, 8 and 11 of the Regulation on dispute resolution, so as to remove undue restrictions on the right to strike and ensure that all workers covered by the Convention, including those in island resorts, can in practice exercise their right to strike. The Committee notes that, according to the Government, restrictions to assemble in tourist resorts, imposed by section 24(b)(7) are in place considering the "one island one resort" situation and the strategic importance of the tourism industry to the Maldives. The Government asserts that the provision does not completely prohibit the right to assemble in island resorts, as it allows for the right to be exercised with permission from the police. The Committee observes in this regard the concerns raised by the MTUC that since workers in tourist resorts live in remote islands, the restriction to assemble imposed by section 24(b)(7) completely denies any form of assembly or gathering without approval of the resort's owners and that the police have never allowed workers to perform any such activities. In view of the above and observing that the Government does not provide any information on the measures taken to address the restrictions placed on strikes by sections 5, 7, 8 and 11 of the Regulation on dispute resolution, the Committee recalls once again that these restrictions on the right to assemble and strike, together with the limitation in section 24(b)(7) of the Freedom of Peaceful Assembly Act, are

so broad that they could seriously impede the right of workers' organizations to organize their activities, including through strike action, especially considering that any stoppage of work could be considered to harm the employer or the workplace or obstruct customer services, in particular in tourist resorts. As to the geographical particularities of island resorts, the Committee also recalls that in situations in which a substantial restriction or prohibition of strike action would not appear to be justified but where, without calling into question the right to strike of the large majority of workers, there is a need to ensure that users' basic needs are met or that facilities operate safely or without interruption, such as in public services of fundamental importance, consideration might be given to introducing negotiated minimum service (defined through participation of workers' organizations concerned along with the employer). ***The Committee therefore requests the Government once again to take the necessary measures to repeal section 24(b)(7) of the Freedom of Peaceful Public Assembly Act and amend sections 5, 7, 8 and 11 of the Regulation on dispute resolution, so as to remove undue restrictions on the right of workers' organizations to organize their activities and ensure that all workers covered by the Convention not performing essential services in the strict sense of the term, including those in island resorts, can in practice exercise their right to strike.***

Finally, having observed that section 6 of the Regulation on dispute resolution did not set any time limit for the exhaustion of the obligatory grievance redress mechanism at the employer level before a strike could take place, the Committee requested the Government to provide information on the application in practice of section 6 of the Regulation. The Committee notes that the Government informs that the Industrial Relations Bill intends to amend the procedures stipulated in the Regulation without however indicating what concrete amendments will be made to section 6 of the Regulation. ***Recalling once again that obligatory grievance redress mechanisms at the employer level should not be so complex, or without time limits, or so slow in implementation, that a lawful strike becomes impossible in practice or loses its effectiveness, the Committee expects that the grievance redress mechanism, as amended by the Industrial Relations Bill, will be in full conformity with the above.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2013)

The Committee notes the observations of the Maldivian Trade Union Congress (MTUC), received on 26 September 2021, denouncing the absence of a legal framework for industrial relations and collective bargaining and alleging that the Government's 2017 report has not yet been shared with workers' organizations. ***The Committee requests the Government to provide its comments on the MTUC observations and requests it once again to share its reports on the Convention with the representative organizations of workers and employers for their observations.***

Legislative framework. The draft Industrial Relations Act. In its previous comment, the Committee requested the Government to take the necessary measures to achieve the adoption of the draft Industrial Relations Act, developed to create an integrated and comprehensive legislation dealing with all aspects of collective labour relations. The Committee also notes in this respect that the Committee on Freedom of Association (CFA), when examining Case No. 3076 concerning the Maldives: (i) observed with deep concern allegations that the Government's systematic failure to ensure effective protection of trade union rights both in law and in practice led to a denial of the right to freedom of association to workers in the country; (ii) requested the Government to take the necessary legislative and enforcement measures, in consultation with the social partners concerned, to address those allegations and to ensure that protection for trade union rights, in particular protection against anti-union discrimination, is fully guaranteed both in law and in practice; and (iii) referred the legislative aspects of the case to this Committee (see Case No. 3076, 391st Report of the Committee on Freedom of Association, October 2019, paragraphs 410 and 412(h) and 395th Report of the CFA, June 2021, paragraphs 282 and 283).

The Committee notes the Government's indication that the adoption of the Industrial Relations Bill has been included in the Government's Strategic Action Plan 2019–2023 as a priority, that it

continues to be reviewed for alignment with Government policies and international obligations and that it is expected to be sent to the Parliament for final decision and adoption in the near future. The Government states that the Bill provides for a system to facilitate collective bargaining, effective mechanisms for resolving industrial disputes and the establishment of a Tripartite Labour Dialogue Forum to foster cooperation on labour issues. The Committee also notes the concerns raised by the MTUC that, despite ILO technical assistance since 2013, the Bill has not yet been adopted, that workers' associations were not consulted in its elaboration and that the Governments lacks commitment in this regard, resulting in a lack of protection of the right to collective bargaining. ***Recalling that the Industrial Relations Bill has been pending adoption for several years and regretting the absence of tangible progress in this regard, the Committee expects that it will be adopted without delay following meaningful consultations with workers' and employers' organizations and will address all of the Committee's observations below so as to ensure its full conformity with the Convention. The Committee invites the Government to continue to avail itself of the technical assistance of the Office, should it so desire, and requests it to provide a copy of the law once adopted.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Persons protected. Having previously noted that section 34(a) of the Employment Act, 2008 exempted several categories of persons (persons working in emergency situations, crew of sea going vessels or aircraft, imams and other employees at mosques, persons on on-call duty during the hours of duty and persons in senior management posts) from the provisions of Chapter 4 (prohibition of anti-union dismissal, access to court, measures of redress) and that section 34(b) provided for the possibility to enact regulations to further exempt employees in certain situations from the provisions of Chapter 4, the Committee requested the Government to take the necessary measures to ensure that all workers covered by the Convention can benefit from the rights enshrined in it and are adequately protected against acts of anti-union discrimination. The Committee notes the Government's indication that following the September 2020 amendment to the Employment Act, section 34 exempts the mentioned categories of workers only from sections 32 (working hours), 37 (overtime) and 38 (working on public holidays). The Committee notes with ***interest*** that the referred categories would thus be eligible for the rights and protections under the remaining provisions of Chapter 4 of the Employment Act.

Acts covered. In its previous comment, the Committee requested the Government to take the necessary measures to amend section 4(a) of the Employment Act so as to include trade union membership and legitimate trade union activities as one of the grounds of prohibited discrimination at all stages of employment. The Committee notes the Government's statement that while trade union affiliation and participation in legitimate trade union activities are not included as one of the grounds of prohibited discrimination at all stages of employment in section 4(a) of the Employment Act, it is covered in the draft Industrial Relations Bill. The Committee observes however that the Government does not provide details as to the protection against anti-union discrimination foreseen in the Industrial Relations Bill and also notes the concerns raised by the MTUC that the 2020 amendments to the Employment Act do not prevent anti-union dismissals but rather make it easier for employers to declare redundancies following a change in management or financial downturn, which can be used to dismiss targeted persons, including trade union leadership. ***The Committee expects the Government to take the necessary measures to ensure that, in the framework of the current reform of labour laws, trade union affiliation and participation in legitimate trade union activities will be included as one of the grounds of prohibited discrimination at all stages of employment in the relevant legislation, so as to provide effective protection against acts of anti-union discrimination, in line with the Convention. The Committee requests the Government to indicate the exact provisions of amended legislation that provide such protection.***

Rapid appeal procedures. The Committee previously requested the Government to take the necessary measures to ensure that all workers who allege anti-union dismissal, including those on probation or in retirement age (section 28(b) of the Employment Act), have access to rapid appeal

procedures. It also requested the Government to take the necessary measures to delete the exemption in section 27 of the Employment Act to ensure that the rules on the reversal of the burden of proof are applicable to all proceedings related to anti-union dismissal. The Committee notes with ***interest*** the Government's indication that section 27 of the Employment Act was amended whereby the exemption mentioned in the section has been removed. ***Observing, however, that no new measures have been adopted to amend section 28(b) of the Employment Act, the Committee once again requests the Government to take the necessary measures to ensure that all workers who allege anti-union dismissal, including those on probation or in retirement age, have access, both in law and in practice, to rapid appeal procedures.***

Sufficiently dissuasive sanctions. The Committee previously requested the Government to provide information on the application of sections 5(c) and 29 of the Employment Act (remedies for dismissals without reasonable cause) by the tribunals when dealing with anti-union dismissals. The Committee notes that the Government informs that there have been no anti-union dismissal cases to report but that in cases of dismissals without reasonable cause, the Employment Tribunal, the High Court and the Supreme Court ordered a number of different remedies, including reinstatement to the original position, back wages and compensation. ***The Committee requests the Government to continue to provide information on the application in practice of sections 5(c) and 29 of the Employment Act in case of anti-union dismissals, specifying the remedies ordered, as well as the type and the amount of sanctions imposable on an employer for acts of anti-union discrimination.***

Protection against acts of anti-union discrimination in practice. The Committee notes that the MTUC denounces discriminatory practices in the country, submitting in particular that peaceful union meetings are reprimanded by disciplinary actions, lack of promotion, negative appraisals and redundancies. ***The Committee requests the Government to provide its comments thereon and trusts that the ongoing legislative reform will contribute to achieving adequate protection against acts of anti-union discrimination both in law and in practice, in full compliance with the Convention.***

In its previous comment, the Committee requested the Government to provide statistics on the number of anti-union discrimination complaints filed before the courts, the average duration of the proceedings and their outcome. The Committee also requested the Government to indicate the measures taken or envisaged to facilitate access of workers to the Employment Tribunal from areas other than the capital Male, where the Tribunal is located. The Committee notes the Government's statement that at the time of the report, no cases of anti-union discrimination have been filed before the courts and that the October 2021 Regulation on audio/video conference participation in the Employment Tribunal hearings establishes avenues for audio/video conference participation in hearings and submission of cases for those located outside the capital. The MTUC alleges however that workers' associations cannot represent their members in tribunals and that it takes years for tribunals to reach decisions in employment cases. ***The Committee requests the Government to continue to collect and provide statistics on the number of anti-union discrimination complaints filed before the courts, the average duration of the proceedings and their outcome, as well as on the use of the audio/video conference participation in court proceedings relating to anti-union discrimination complaints.***

Article 2. Adequate protection against acts of interference. The Committee previously requested the Government to take the necessary measures, including legislative, to ensure that acts of interference of workers' and employers' organizations in each other's affairs are explicitly prohibited and are accompanied by access to rapid and effective appeal procedures and sufficiently dissuasive sanctions. The Committee notes the information provided by the Government that no explicit prohibitions in this regard are provided in the current draft Industrial Relations Bill but that it could be included in the Bill upon receipt of the necessary policy decisions. ***Given the Government's openness to including provisions on protection against acts of interference of workers' and employers' organizations in each other's affairs in the Industrial Relations Bill, the Committee requests the Government to take the necessary measures to this effect, in consultation with the social partners.***

Articles 4 and 6. Promotion of voluntary negotiations and collective bargaining in the private and public sectors. The Committee previously requested the Government to take the necessary measures, including legislative, if necessary, to ensure that all workers, with the only possible exception of the police, the armed forces and public servants engaged in the administration of the State can, in law and in practice, negotiate collectively through their trade unions and conclude collective bargaining agreements regulating terms and conditions of their employment. It also requested the Government to provide statistics on the number of collective agreements concluded and the sectors and number of workers covered. The Committee welcomes the Government's indication that the right to collective bargaining and its governance are extensively covered in the Industrial Relations Bill and that, while awaiting its enactment, the right to collective bargaining can be carried out in practice as there are no legislative prohibitions to this effect. The Committee notes, however, the Government's indication that at the time of reporting, the Labour Relations Authority has not reported the existence of any collective bargaining agreements and observes that the MTUC denounces the absence of social dialogue and collective bargaining, depriving workers of means of defending their interests and challenging the numerous redundancies that occurred during the COVID-19 pandemic, especially in the tourism sector. ***Observing that the Government does not provide any details as to the regulation of collective bargaining in the Industrial Relations Bill, the Committee expects the Bill to ensure that all workers, with the only possible exception of the police, the armed forces and public servants engaged in the administration of the State will be able, in law and in practice, to negotiate collectively through their trade unions and conclude collective bargaining agreements regulating terms and conditions of their employment. Noting with regret that the Labour Relations Authority is not aware of the existence of any collective agreement in force in the country and in light of the concerns expressed by the MTUC, the Committee requests the Government to take proactive measures to promote the full development and utilization of collective bargaining both in the private and public sectors. In this respect, the Committee requests the Government to collect and provide information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements.***

Mali

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

The Committee notes the Government's detailed replies to the 2017 observations of the International Trade Union Confederation (ITUC) concerning the situation of trade union leaders in the health sector and belonging to a particular national police union. The Committee also observes that the Government states that, in the mining sector, numerous cases relating to the dismissal of workers have been pending before the competent judicial authorities for nearly ten years. ***Recalling that it is important to ensure, in cases of anti-union discrimination, that judicial decisions are handed down as quickly as possible, the Committee requests the Government to take appropriate measures to ensure that disputes concerning anti-union discrimination are addressed in a far more rapid manner and to continue providing information in this regard.***

Article 4 of the Convention. Promotion of collective bargaining. Determination of the representativeness of trade union organizations. Referring to its previous comments, particularly the results of the high-level mission which visited Bamako in 2015 to address the issue of the representativeness of trade union organizations, the Committee recalled the urgent need to determine the procedures for occupational elections, after consultation of the organizations concerned, in order to give full effect to the provisions of the Labour Code relating to collective bargaining. The Committee notes the Government's indication that the social partners have still not reached an agreement on determining the threshold of representativeness for occupational elections; that it reiterates its

commitment to holding occupational elections with maximum transparency and objectivity in collaboration with the trade unions; and that it intends to continue consultation meetings with a view to determining and adopting the representativeness threshold. The Committee notes the Government's explanation that the action launched to this end could not be pursued because of the social and political instability in the country in 2020 but that it plans to hold occupational elections to determine representativeness by the end of 2021, after the labour conference planned for November. ***The Committee reiterates the firm hope that the Government will soon be able to report on the holding of these elections and that the results will make it possible to determine clearly the representative organizations for the purpose of collective bargaining at all levels. The Committee reminds the Government that it may request technical assistance from the Office in this regard.***

Right to collective bargaining in practice. The Committee notes the Government's indication that at present there are 21 collective agreements and 125 collective accords concluded in different sectors of activity but that it does not have statistical data on the number of workers covered. It also notes the indication that the process of reviewing obsolete collective agreements is under way at the National Directorate of Labour; that a new collective agreement for the hotel industry was signed in 2020; that discussions are in progress with the social partners with a view to the adoption of the collective agreement for private transport drivers in Mali and in other sectors such as telecommunications, secular private teaching and the pharmaceutical industry; and, lastly, that an inter-occupational agreement is being examined by the National Union of Workers of Mali (UNTM). ***The Committee requests the Government to continue providing full information on the number of collective agreements and accords concluded in the country, including the sectors concerned and the number of workers covered.***

Malta

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1965)

The Committee takes note of the observations of the General Workers' Unions (GWU) received on 31 August 2019, which denounce violations of the right to organize in practice. The GWU alleges that various employers and contractors circumvent the legislative provisions on freedom of association by depriving their workers of their right to join trade unions. ***The Committee requests the Government to provide its comments in this regard.***

Article 2 of the Convention. Right to establish organizations without previous authorization. The Committee previously observed that section 51 of the Employment and Industrial Relations Act, 2002 (EIRA) provides that a trade union or an employers' association and any member, officer or other official thereof, may not perform any act in furtherance of any of the purposes for which it is formed unless such union or association has first been registered, and that the penalty for contravention of this provision is a fine not exceeding €1,165. It requested the Government to take the necessary measures to repeal section 51 of the EIRA. The Committee notes that the Government indicates that: (i) registration is important so that trade unions, employers' associations and their members can be officially recognized and able to effectively engage in collective bargaining; (ii) registration is free; and (iii) the annual reporting system provides data on the above-mentioned organizations, which helps determine their activity level. The Committee recalls once again that the official recognition of an organization through its registration constitutes a relevant aspect of the right to organize, as it is the first measure to be taken so that organizations can fulfil their role effectively. At the same time, the Committee also recalls that the exercise of legitimate trade union activities should not be dependent upon registration, nor should the exercise of such legitimate activities be subject to penalties. ***The Committee reiterates its request for the Government to take the necessary measures to repeal section 51 of the EIRA.***

Article 3. Right of organizations to freely organize their activities and to formulate their programmes. In its previous observations, the Committee requested the Government to amend section 74(1) and (3)

of the EIRA – according to which, if an amicable settlement of a trade dispute and conciliation has not resulted in a settlement, one of the parties may notify the Minister, who shall refer the dispute to the Industrial Tribunal for settlement – so as to ensure that compulsory arbitration to end a collective labour dispute is only possible in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term. The Committee notes the Government's indication that: (i) the mechanism provided by the above-mentioned section is to be used in case of failure of conciliation as facilitated under section 69 of the EIRA; (ii) the purpose of the Industrial Tribunal would be gravely undermined if a party could not challenge another party unless the latter agrees; and (iii) since the Industrial Tribunal has exclusive jurisdiction on trade disputes, the parties cannot resort to other means such as the civil courts. The Committee once again recalls that recourse to compulsory arbitration to bring an end to a collective labour dispute is only acceptable when the two parties to the dispute so agree, or when a strike may be restricted or prohibited – that is, in the case of disputes concerning public servants exercising authority in the name of the State, essential services in the strict sense of the term or situations of acute national crisis. It further recalls that accordingly, the failure of conciliation and the existence of protracted disputes are not per se elements which justify the imposition of compulsory arbitration. ***The Committee urges the Government to take the necessary measures to modify section 74(1) and (3) of the EIRA to ensure that compulsory arbitration may only take place with the approval of both parties or in circumstances in which a strike can be restricted or prohibited. The Committee requests the Government to inform on any developments in this respect.***

Article 9. Armed forces and the police. The Committee previously noted with interest the adoption of the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 which amended the EIRA by adding a new section 67A, which gave members of the disciplined forces the right to become members of a registered trade union of their choice. It invited the Government to provide information on the application in practice of section 67A of the EIRA, in particular whether any trade unions have been formed and registered under this provision and the number of their members, and also whether any requests for such trade union registration are under consideration or have been rejected. The Committee notes the Government's indication that 1,189 members have registered with the Malta Police Association, 1,356 members have registered with the Police Officers Union and 165 members have registered with the Union of Civil Protection. It also notes that the Government points out that there have been no further requests for such unions to be registered, and no requests have been rejected. ***The Committee invites the Government to continue providing information on the practical application of section 67A of the EIRA.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)

The Committee takes note of the observations of the General Workers' Union received on 31 August 2019 referring to matters examined in this comment.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous observations, the Committee had requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals submitted by public officers, port workers and public transport workers given that, pursuant to the Employment and Industrial Relations Act, 2002 (EIRA) those categories are excluded from the jurisdiction of the industrial tribunal.

Concerning the public officers, the Committee had noted that they could appeal to the Public Service Commission (PSC), an independent body, and requested the Government to indicate whether the PSC was empowered to grant such compensatory relief as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee notes that the Government informs that: (i) according to the provisions of the PSC Disciplinary Regulations, public officers may only be dismissed upon recommendation of the PSC; (ii) the PSC recommends the dismissal of a public officer

after the finding of guilt for having committed an offence listed in the Schedule of offences and penalties appended to the PSC Disciplinary Regulations; (iii) union activity is not considered a disciplinary offence and therefore is not listed in the Schedule; (iv) as there are a number of safeguards which need to be observed prior to the dismissal of a public officer, it is highly unlikely that a public officer could be dismissed from the public service for anti-union reasons, and (v) information about compensatory relief in case of anti-union dismissal of public officers is not currently being sought from the PSC. Regarding the port workers, the Committee notes that the Government indicates that: (i) they are licensed and registered under the terms of the relevant regulations; (ii) all licensed port workers are represented by the Malta Dockers Union; and (iii) the Port Workers Board, which is partly composed by representatives of the Malta Dockers Union, acts as a disciplinary board. The Committee takes due note of the elements provided by the Government concerning the procedures that precede the dismissal of public officers, on the one hand, and port workers, on the other hand, and that contribute to prevent the occurrence of anti-union dismissals. ***The Committee requests however the Government to indicate before which body the public officers and the port workers may appeal against decisions taken by the PSC and the Port Workers Board, respectively, in case they consider they were subject to anti-union dismissals.***

Concerning the public transport workers, the Committee notes that the Government informs that: (i) scheduled public transport workers are employed by a private company and the Union UMH is recognized as their trade union; and (ii) collective grievances are raised through this union to the company's management. ***The Committee reiterates its request for the Government to indicate the specific procedures applicable for the examination of allegations of anti-union dismissals concerning scheduled public transport workers.***

The Committee also previously observed that the general sanctions set by section 45(1) of the EIRA might not be sufficiently dissuasive, particularly for large enterprises, and requested the Government to take the necessary measures, after consultation with the social partners, to provide for sufficiently dissuasive sanctions for acts of anti-union discrimination. The Committee notes that the Government indicates that it is currently conducting an exercise with the social partners to review and update the EIRA but does not foresee any changes to section 45(1) at this stage. ***The Committee requests the Government to take the necessary measures within the framework of the revision of the EIRA to bring the legislation into conformity with the Convention by ensuring that sufficiently dissuasive sanctions are provided for acts of anti-union discrimination.***

Articles 2 and 3. Adequate protection against acts of interference. The Committee previously requested the Government to indicate the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts. The Committee notes with ***regret*** that the Government, in its report, merely reiterates its position that parties who feel wronged by another party's acts of interference can institute a civil action for damages before the courts of civil jurisdiction. The Committee recalls that *Article 2* of the Convention requires the prohibition of acts of interference by organizations of workers and employers (or their agents) in each other's affairs, designed in particular to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. ***The Committee once again requests the Government to take the necessary measures to adopt specific provisions prohibiting acts of anti-union interference, coupled with rapid appeal procedures and sufficiently dissuasive sanctions.***

Article 4. Promotion of collective bargaining. The Committee had previously requested the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act, so as to ensure that this provision: (i) does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday; and (ii) does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public

holidays which fall on a Saturday or Sunday on the basis of a collective agreement. The Committee notes with ***interest*** the Government's indication that the above-mentioned provision has been amended and now stipulates that when a national holiday or a public holiday listed in the Schedule falls on a Saturday or on a Sunday, it shall be deemed to be a public holiday for the purposes of entitling any person to a day of vacation leave in addition to the leave entitlement for that particular year.

Article 5. Armed forces and the police. In its previous observation, the Committee noted with interest the adoption of the Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 which amended the EIRA by adding a new section 67A, which gave members of the disciplined forces the right to become members of a registered trade union of their choice and stipulated that their organizations were entitled to negotiate the conditions of employment of their members. The Committee had requested the Government to provide information on the practical application of article 67A. The Committee examines the information provided by the Government in this respect under its comments concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Mauritania

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)

Civil liberties. In its previous comments, the Committee noted with concern the 2017 observations of the International Trade Union Confederation (ITUC) and of the General Confederation of Workers of Mauritania (CGTM), denouncing violent repression resulting in deaths during trade union demonstrations and the systematic arrest of trade unionists during trade union demonstrations. It requested the Government to provide its comments in this respect. ***Regretting the absence of information in this regard in the Government's report, the Committee urges the Government to provide its comments in response to the serious allegations above.***

Article 3 of the Convention. Trade union elections. The Committee previously noted the Government's indication that three orders relating to staff delegates and the procedures for their election, the consolidation of election results and practical procedures for the organization and operation of the National Social Dialogue Council had been adopted since 2014. The Committee requested the Government to provide copies of these orders and continue providing information on the progress achieved and on the legislative reform process that has been initiated with a view to the holding of elections. The Committee notes that the Government, in its report, reiterates that it will continue to provide information on the progress made towards the organization of workers' representatives to determine union representativity in the public and private sectors, and will include all the organizations concerned in its consultations on the legislative reform process, but the Government does not provide a copy of the orders requested nor any specific information on the development of the situation. ***The Committee once again requests the Government to provide a copy of the above-mentioned orders and to provide specific information on any developments relating to the legislative reform process with a view to holding the elections of workers' representatives.***

Articles 2 and 3. Legislative amendments. In its previous comments, the Committee reiterated its expression of firm hope that in the near future the Government would report tangible progress in the revision of the Labour Code with a view to bringing it fully into conformity with the Convention. In this regard, the Committee expressed hope that the Government would take due account of all the points recalled below:

– *Right of workers to establish and join organizations of their own choosing without prior authorization.* ***The Committee requests the Government to take measures to amend section 269 of the Labour Code so as to remove any obstacles that prevent the exercise of the right***

to organize by minors who have access to the labour market (14 years of age, in accordance with section 153 of the Labour Code), whether as workers or apprentices, without the permission of their parents or guardian being necessary.

– *Right to organize of magistrates.* The Committee recalls that for many years it has been requesting the Government to take measures to ensure that magistrates enjoy the right to establish and to join organizations of their own choosing, in accordance with *Article 2* of the Convention. ***Noting the Government's indication that magistrates now have their own organization in which they exercise their trade union rights to the full, the Committee requests the Government to indicate the legal basis that has enabled this progress.***

– *Right of workers' organizations to freely elect their representatives and to organize their administration and activities in full freedom, without interference from the public authorities.* The Committee recalls that the combined implementation of sections 268 and 273 of the Labour Code is liable to be an obstacle to the right of organizations to elect their representatives in full freedom, by preventing them from electing qualified persons or depriving them of the experience of certain leaders when they do not have among their own ranks sufficient numbers of competent persons. ***The Committee therefore requests the Government to make the conditions less rigid for eligibility as trade union leaders or officers, for example by removing the requirement to belong to the occupation for a reasonable proportion of leaders. The Committee also requests the Government to amend section 278 of the Labour Code with a view to ensuring that any change in the administration or leadership of a trade union can take effect as soon as it has been notified to the competent authorities, and without the latter's approval being necessary.***

– *Compulsory arbitration.* ***The Committee requests the Government to take measures to amend section 350 of the Labour Code to ensure that the possibility for the Minister of Labour to have recourse to compulsory arbitration in the event of a collective dispute is limited to cases involving an essential service in the strict sense of the term, that is a service the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and situations of acute national crisis.***

– *Duration of mediation.* ***Recalling that the maximum duration (120 days) of a mediation procedure before a strike may be called, as set out in section 346 of the Labour Code, is excessive, the Committee requests the Government to take measures to amend this provision in order to reduce the maximum duration.***

– *Strike pickets.* The Committee recalls that the restrictions imposed on strike pickets and the occupation of premises should be limited to cases in which the action ceases to be peaceful or in which the observance of the right to work of non-strikers or the right of the management to enter the premises of the enterprise is impaired. ***The Committee therefore requests the Government to take measures to amend section 359 of the Labour Code in order to abolish the prohibition of the peaceful occupation of workplaces or their immediate surroundings, and to ensure that no penal sanctions are imposed against a worker for having carried out a peaceful strike, and that in no case prison sentences are imposed, except in cases of violence against persons or property or other serious breaches of the law, in accordance with the provisions punishing such offences.***

The Committee notes the Government's indication that it will report tangible progress in the revision of the Labour Code, taking account of the comments formulated by the Committee and that two experts will review the provisions of the Code and propose implementing texts. ***Observing once again that it has been commenting for many years on the above-mentioned issues, the Committee urges the Government to complete its revision of the Labour Code in the very near future and, recalling***

that it may avail itself of the technical assistance of the ILO, requests the Government to continue to report on all developments in this regard.

Mauritius

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2005)

The Committee notes the observations made by the Confederation of Free Trade Unions and the State and Other Employees Federation, dated 26 August 2021, concerning matters examined by the Committee in the framework of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Legislative developments. In its last comment, the Committee noted the Government's indication that a revision of the Employment Rights Act (2008) and the Employment Relations Act 2008 (ERA 2008) was under way. The Committee takes note of the Government's indication that: (i) the Employment Rights Act (2008) was replaced by the Worker's Rights Act 2019 (Act N° 20) with effect as of 24 October 2019; and (ii) the ERA 2008 was amended by the Employment Relations (Amendment) Act 2019 (Act No. 21) with effect as of 23 August 2019.

The Committee further notes that section 28(j) of the ERA 2008, as amended in 2019, provides for the establishment of the National Tripartite Council, which aims at promoting social dialogue and consensus building on labour, industrial relations or socio-economic issues of national importance and other related labour and industrial relations issues. ***Observing that the Council shall make recommendations to the Government on issues relating, inter alia, to the review of the operation and enforcement of the labour legislation, the Committee requests the Government to provide information on the recommendations made by the Council in relation to matters covered by the Convention, including any discussion and recommendations related to giving effect to the Committee's comments.***

Article 2 of the Convention. Right of workers to establish and join organizations without distinction whatsoever. Migrant workers. In its previous comment, the Committee observed that under section 13 of the ERA 2008 non-citizens needed to hold a work permit in order to be members of a trade union. Having noted the Government's indication that a revision of the ERA 2008 was under way, the Committee requested the Government to take the necessary measures to ensure that all migrant workers, whether in a regular or irregular situation, enjoy, in law and in practice, the right to establish as well as join organizations without distinction whatsoever. The Committee notes that the Government reiterates that non-citizens in irregular situations are allowed to join a trade union once they are in possession of a valid work permit. The Committee observes that section 13 of the ERA 2008, on eligibility to trade union membership, was not amended in 2019 by Act No. 21 and that consequently the requirement of holding a work permit in order to be a member of a trade union remains in place. The Committee recalls in this regard that the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing implies that any worker residing in the territory of a State, whether they have a work permit or not, benefits from the trade union rights provided for by the Convention. ***Regretting that the work permit requirement provided for under the ERA 2008 was not repealed by Act No. 21, the Committee reiterates its request to the Government to take all measures in the near future to ensure the recognition of the right of all migrant workers to establish and join organizations of their own choosing. The Committee requests the Government to provide information on any developments in this respect.***

Self-employed workers. Having observed that there was no legal provision in the labour legislation granting trade union rights to self-employed workers, the Committee requested the Government to hold consultations with social partners and other interested parties with the aim of ensuring, within the framework of the revision of the Employment Rights Act and the ERA 2008, that all

workers, including self-employed workers, enjoy the right to establish and join organizations without distinction whatsoever. The Committee takes note of the Government's indication that workers have the right to join trade unions under section 13 of the ERA 2008 and that individuals other than these workers, such as the self-employed, may form associations under the Registration of Association Act. The Committee recalls that the guarantees of the Convention apply to all workers without distinction whatsoever, including self-employed workers; in this regard, the Committee ***regrets*** to note that no modification was undertaken in the latest labour review. ***The Committee therefore requests again the Government to hold consultations with social partners, including organizations representing self-employed workers if they exist, with the aim of ensuring that all workers, including self-employed workers, enjoy the right to establish and join organizations without distinction whatsoever. The Committee requests the Government to provide information on the progress achieved in this respect.***

The Committee reminds the Government that it may avail itself of the technical assistance of the Office with respect to all issues raised in its present comments.

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

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

The Committee notes the observations made by the Confederation of Free Trade Unions and the State and Other Employees Federation, dated 26 August 2021, concerning matters examined in the present comment.

Legislative developments. In its last comment, the Committee noted the Government's indication that a revision of the Employment Rights Act (2008) and the Employment Relations Act 2008 (ERA 2008) was under way. The Committee takes note of the Government's indication that: (i) the Employment Rights Act (2008) was replaced by the Worker's Rights Act 2019 (WRA) (Act No. 20) and (ii) the ERA 2008 was amended by the Employment Relations (Amendment) Act 2019 (Act No. 21).

In addition, the Committee welcomes the establishment of the National Tripartite Council provided for under section 28(j) of the ERA 2008, as amended in 2019, which aims at promoting social dialogue and consensus building on labour, industrial relations or socio-economic issues of national importance and other related labour and industrial relations issues. ***Observing that the Council shall make recommendations to the Government on issues relating, inter alia, to the review of the operation and enforcement of the labour legislation, the Committee requests the Government to provide information on the recommendations made by the Council in relation to matters covered by the Convention, including as to giving effect to the Committee's comments.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its last comment, the Committee requested the Government to continue to provide statistical data on the number of complaints of anti-union discrimination, their outcome and the number and nature of sanctions imposed or remedies awarded. It also requested it to pursue its efforts, in particular in the export processing zones (EPZs), to ensure that all allegations of anti-union discrimination give rise to expeditious investigations The Committee takes note of the Government's indication that Act No. 21 introduced the following amendments to the ERA to enhance protection of workers against acts of anti-union discrimination:

- new subsection 31(1)(b)(iii) provides that no person shall discriminate against, victimize or otherwise prejudice a worker or an accredited workplace representative on any employment issue on the ground of his trade union activities;
- new subsection (1A) provides for stringent conditions to curb any decision to terminate workers' employment in relation to trade union membership or activities; and

– in section 2 of the ERA, the definition of labour dispute has been broadened to include reinstatement of a worker where the employment is terminated on the grounds specified in section 64(1A) (above-mentioned).

The Committee takes note with ***interest*** of the above-mentioned measures introduced by Act No. 21 to the ERA which complement the protection against acts of anti-union discrimination already provided for in the legislation. ***The Committee requests the Government to indicate the impact in practice of the legislative amendments and to provide statistical data in that regard, including on the number of complaints of anti-union discrimination, including anti-union dismissals, brought before the competent authorities (labour inspectorate and judicial bodies), their outcome and the number and nature of sanctions imposed or remedies awarded.***

In its last comment, the Committee invited the Government to engage in a dialogue with the national social partners with a view to identifying possible adjustments to improve the rapidity and efficiency of the conciliation proceedings. The Committee takes note that the Government indicates that section 69 of the ERA, as amended in 2019, provides for a timeframe for the expeditious resolution of disputes involving anti-union discrimination: 45 days at the Commission for Conciliation and Mediation (CCM) and, if no agreement is reached, the Employment Relations Tribunal (ERT) (an arbitration tribunal) must make an award within 90 days. ***The Committee also observes that section 87(2) of the ERA, as amended in 2019, has doubled the number of the CCM members and expresses the firm hope that this will contribute to improving the rapidity and efficiency of the conciliation procedures.***

Having taken note of allegations made by social partners concerning the excessive length of judicial proceedings in rights disputes (six to seven years), the Committee had requested the Government to take measures with a view to accelerating relevant judicial proceedings and to provide statistical data on their average duration. ***Regretting that no information was provided in this regard, the Committee requests the Government once again to take measures with a view to accelerating relevant judicial proceedings and to provide statistical data on their average duration, including with respect to cases that may arise in EPZs.***

Article 4. Promotion of collective bargaining. The Committee takes note of the Government's indication that Act No. 21 introduced the following amendments to the ERA concerning collective bargaining:

– Section 51(1)–(4) of the ERA was amended to facilitate the process of collective bargaining by drawing up a procedure agreement in view of signing a collective agreement. According to the Government, this will further encourage the union and management to proceed with the negotiations keeping abreast good faith at all times with a view to reaching a collective agreement.

– Section 88(4)(e) of the ERA was amended to widen the scope of the CCM with the aim at reinforcing the mutual trust between employer and employees.

– Section 69 of the ERA was amended to promote the settlement of labour disputes. Section 69(3) has been specifically introduced to make the recommendation of the President of the CCM binding should both parties to a labour dispute agree to confer upon the President such power. The Government indicates that this provision was added to provide a speedy solution to break the deadlock between the parties instead of having recourse to the Tribunal, thus saving time, which is crucial in industrial matter.

– Section 69(9)(b) was amended to enable both the union or the employer to request the CCM to refer a labour dispute to the ERT (arbitration tribunal) once the conciliation attempt has failed. The Government indicates that prior to the amendment; the CCM could only refer to the ERT cases brought by an individual worker. The Committee observes that, while section 63 of the ERA provides that the parties may jointly refer a dispute for voluntary arbitration, section 69(9)(b), as amended, concerns the referral of a dispute to an arbitration tribunal at

the request of one of the parties. ***Recalling that compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining, the Committee requests the Government to clarify whether the revised section 69(9)(b) does allow for compulsory arbitration at the request of one party.***

– Section 87(2) was amended to reinforce the human resource of the CCM. The Committee recalls that in its previous comments it had noted allegations in relation to the lack of human resources at the CCM. As mentioned in the present comment under *Article 1* of the Convention, it appreciates that the revised section 87(2) has doubled the number of its members. The Committee ***regrets*** to note, however, that the revised section 87(2) has removed the requirement for the Minister to hold consultations with the most representative organizations of workers and employers in relation to the appointment of conciliators or mediators. ***The Committee requests the Government to clarify the rationale behind the removal of consultations to social partners under this section.***

The Committee takes due note of the above-mentioned amendments and expresses the hope that, as indicated by the Government, they will contribute to facilitating collective bargaining. The Committee requests the Government to indicate the impact of the legislative amendments in practice.

In its previous comment, the Committee expressed its expectation that the Government would continue to carry out and strengthen inspections and sensitization activities with respect to collective bargaining. The Committee notes the Government's indication that: (i) 132 sensitization activities carried out between 2017 and 2021 benefited 2,660 workers in the EPZ/textile sector; and (ii) 161 inspection visits carried out in the EPZ sector covered 21,273 local workers and 1,284 inspection visits in undertakings in the manufacturing sector covered 231,793 migrant workers. The Committee notes that 64 collective agreements have been registered with the Ministry of Labour from 2017 to 2020 and that neither of them pertains to the EPZ sector. The Committee also notes the Government's indication that the COVID-19 pandemic has somehow affected the activities of the Ministry. ***The Committee takes note of the information provided and requests the Government, in consultation with the social partners, to strengthen these activities, in particular in the EPZs, textile sector, sugar industry, manufacturing sector and other sectors employing migrant workers. It also requests the Government to continue to supply statistics on the functioning of collective bargaining in practice (number of collective agreements concluded in the private sector, especially in EPZs; branches and number of workers covered).***

Interference in collective bargaining. In its previous comment the Committee expressed the hope that the Government would continue to refrain from unduly interfering in and give priority to collective bargaining of a voluntary nature as the means of determining terms and conditions of employment in the sugar sector in particular and in the private sector in general. The Committee also requested the Government to provide its comments on observations made by Business Mauritius that the Remuneration Orders of the National Remuneration Board (NRB) were so elaborated and prescriptive that they acted as a disincentive to collective bargaining. The Committee notes that the Government states that: (i) as from 24 October 2019, the core conditions of employment of workers under Remuneration Orders (ROs) have been harmonized with the adoption of the WRA; (ii) the ROs have been repealed and replaced by 32 Remuneration Regulations, which provide for conditions of employment specific to the sector; (iii) a National Minimum Wage (NMW) was introduced as from January 2018 and was last reviewed in January 2020 and (iv) payments of additional remuneration continue to be made following recommendations by a national tripartite forum, chaired by the Prime Minister. ***The Committee expresses the firm hope that these developments will contribute to prioritizing bipartite collective bargaining of a voluntary nature as the means of determining terms and conditions of employment in the private sector in general.***

Article 6. Collective bargaining in the public sector. In its previous comments, the Committee invited the Government, together with the professional organizations concerned, to study ways in which the current system could be developed to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State. The Committee notes that the Government states that: (i) salary determination in the private sector is completely different than in the public sector; (ii) in the private sector, the wage fixing institution establishes a floor wage and this eventually gives room to collective bargaining; and (iii) this system cannot be imported to the public sector as the Pay Research Bureau (PRB) establishes a ceiling wage for public sector employees. The Committee notes that the Confederation of Free Trade Unions and the State and Other Employees Federation precisely highlight that collective bargaining does not exist in the public service since the setting up of the PRB. The Committee takes note that the Government states that with a view to promoting social dialogue in the public service, an Employment Relations Committee (ERC) is being set up by the Ministry of Public Service, Administrative and Institutional Reforms comprising representatives from Management and the four most representative federations of the Civil Service. Such Committee would, inter alia, consider any matter relating to or arising out of the course of employment of public officers and would make recommendation to appropriate instances. The draft regulation has been finalized after consultations with different stakeholders and is presently at the level of the Attorney-General's Office for vetting. ***The Committee welcomes these developments, which aim at promoting social dialogue in the public service. It requests the Government to transmit a copy of the ERC once it has been adopted.*** The Committee must recall, however, that, pursuant to *Article 6* of the Convention, all public servants, other than those engaged in the administration of the State, should enjoy collective bargaining rights, and that, under the Convention, the establishment of simple consultation procedures for public servants who are not engaged in the administration of the State (such as employees in public enterprises, employees in municipal services, public sector teachers, etc.), instead of real collective bargaining procedures, is not sufficient. ***The Committee therefore invites once again the Government, together with the professional organizations concerned, to take the necessary measures to effectively recognize the right to collective bargaining of public servants who are not engaged in the administration of the State.***

The Committee reminds the Government that it may avail itself of technical assistance from the Office with respect to all issues raised in its present comments.

Mexico

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1950)

The Committee notes the observations of the Authentic Workers' Confederation of the Republic of Mexico (CAT), the International Confederation of Workers (CIT), the Regional Confederation of Mexican Workers (CROM), the Confederation of Workers of Mexico (CTM), the National Union of Workers (UNT) and the Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN) provided with the Government's report relating to matters examined in this comment.

The Committee also notes the observations of the UNT, received on 24 July 2021, and of IndustriALL Global Union (IndustriALL) on 1 September 2021, relating to matters examined in this comment and allegations that are the subject of case No. 2694 currently before the Committee on Freedom of Association, as well as the Government's response to those.

Trade union rights and civil liberties. In its previous comment, the Committee noted that in their 2018 observations, the International Trade Union Confederation (ITUC) and the UNT alleged further acts of anti-union violence, including the murder on 18 November 2017 of two miners who were participating in a strike in the state of Guerrero, attacks on over 130 unionized university workers in San Cristobal de las Casas on 9 February 2017, as well as the death of a trade union activist in January 2018 after receiving

threats relating to the promotion of a new union. The Committee notes that the Government indicates its willingness to provide its comments on the observations of the social partners, expressing its readiness to take the appropriate measures and thanking the organizations that provide additional information. The Committee also notes that the observations of IndustriALL highlight the need to make progress in eliminating impunity and punishing those responsible for anti-union violence. ***The Committee once again invites the organizations concerned to provide the Government with any additional information that they have and requests the Government to take the necessary measures to investigate the allegations and to punish and eradicate all acts of anti-union violence.***

Article 2 of the Convention. Conciliation and arbitration boards. Constitutional reform of the labour justice system. In its previous comment, having noted the concerns expressed by the social partners and the information provided by the Government, the Committee encouraged the submission of the legislative texts relating to the constitutional reform of the labour justice system to a broad process of tripartite consultation. The Committee notes the Government's indication that the implementation of the new Mexican labour model is progressing successfully in accordance with the Convention and the comments of the ILO supervisory bodies. The Government has provided detailed information on its process of implementation, referring to the work of the Coordination Council for the Implementation of the Reform of the Labour Justice System (which approved a three-stage strategy to be completed in three years, which is one year earlier than scheduled in the reform); recognizing the complex cultural change this implies, which requires time and resources; and emphasizing its priority nature and the full commitment of the authorities in this respect. With regard to tripartite consultation, the Government highlights that: (i) the reform is the result of an ongoing social dialogue between the national authorities and specialists, academics, trade unionists, entrepreneurs and civil society actors; (ii) with the purpose of enriching the discussion and exchanging views with the sectors involved, from 25 February to 6 March 2019, the Chamber of Deputies of the Congress of the Union convened representatives of the executive and judicial branches, labour courts, bar schools and associations, academics, civil society bodies and associations, trade union organizations and the general public to participate in six public meetings on the labour justice reform, organized in thematic roundtables with 62 speakers; (iii) working groups Nos 2 (on collective law) and 4 (on labour conciliation and registration centres) were composed of trade union and employer representatives from various organizations; (iv) during this open parliamentary work, a transparent and pluralistic dialogue was maintained with the most representative workers' and employers' organizations in the country, as well as with academics, experts and civil society organizations – including the complainant organizations in Case No. 2694 before the Committee on Freedom of Association; (v) the Senate of the Republic carried out a similar open parliamentary exercise, convening all sectors involved in the reform. Regarding certain concerns raised in the previous observation, the Government indicates that, while there was a proposal for a regulatory Act in 2017 on a tripartite composition of the fundamental body responsible for upholding union democracy (the Federal Labour Conciliation and Registration Centre (CFCRL)), it was not adopted, and therefore recalls that this is a decentralized body, under the Secretariat for Labour and Social Welfare (STPS), which has a Government Board composed of the heads of the Ministry of Finance, the National Institute for Transparency, Access to Information and the Protection of Personal Data, the National Electoral Institute and the National Institute of Statistics and Geography. Lastly, the Government denies the allegations that this dialogue was confined to certain organizations, recalls the diversity of partners and affirms that social dialogue has been strengthened in recent years.

The Committee also notes the following observations of the social partners in this regard: (i) the CONCAMIN emphasizes the need to ensure that when the new labour courts become operational, they genuinely address the aspects of the activities of the boards that were criticized; (ii) the CAT considers that in the application of the reforms the authorities have taken on greater powers, thereby undermining trade union autonomy; (iii) the CIT highlights the difficulties of implementing the reforms in a context in which independent trade unionism is a minority, most collective agreements have not

been legally validated and it will take a long time to replace the boards, which continue to be an obstacle to the exercise of freedom of association; (iv) the CROM considers that the CFCRL registration system involves government interference; (v) the UNT indicates that the reforms have been carried out without real or genuine ongoing institutional and social dialogue with the representative organizations, but through a pretence of open parliamentary processes based on direct invitations, without the participation of the social partners; and (vi) IndustriALL, while recognizing the significant progress made in implementing a real labour reform that could transform the existing model, emphasizes that practices that limit freedom of association persist, particularly in states outside the federal capital, reports that enterprises and corporate unions continue to control the boards, and that it is necessary to establish genuine social dialogue with independent and democratic trade unionism. ***In light of the above, and while welcoming the efforts made, the Committee encourages the Government to continue to ensure that the following stages of the implementation of the labour reform are submitted to broad and effective tripartite consultation, in order to take note of the concerns raised by the social partners and consider the measures necessary to ensure full respect of the Convention in law and practice. Reiterating that the technical assistance of the Office remains available to it, the Committee requests the Government to keep it informed of any developments in this respect.***

Trade union representativity. Trade unions and protection contracts. In its previous observations, the Committee reiterated its request to the Government, in consultation with the social partners, to continue taking the necessary measures to resolve the problems raised by the phenomenon of protection unions and contracts. In this regard, the Government indicates that the necessary legislative and regulatory adjustments have been made to implement a new industrial relations model that guarantees the full exercise of freedom of association and workers' representation in collective bargaining. Among the main amendments made to Mexican labour law, the Government emphasizes the processes to: (i) legally validate collective labour agreements signed before the entry into force of the reform, through majority approval by the workers, expressed through personal, free, secret and direct ballot. To this end, on 31 July 2019, a Protocol for the legal validation of existing collective agreements was published and, on 1 May 2021, the verification function was transferred to the CFCRL (while the CFCRL was still not operational, the STPS had been empowered to verify the legal validation procedures). The Government indicates that, during the reporting period, 2,231 consultations regarding legal validation were held, in which more than 348,000 workers cast personal, free, direct and secret ballots to determine whether they agreed to maintain 1,297 collective labour agreements; (ii) demonstrate that, prior to the negotiation of an agreement, the union is representative of at least 30 per cent of the workers, through an attestation issued by the CFCRL, and that ballot processes are personal, free, secret and direct, and are also applicable to the election of union officers; and (iii) approve the content of the collective labour agreements negotiated by the union, following the completion of negotiations with the employer, through majority approval expressed through the personal, free, secret and direct ballots of the workers. This requirement for consultation also applies to the general revision of the agreements (which must be carried out every two years), as well as to disputes between unions over their status to negotiate agreements (which are heard by impartial and independent courts). In its report, the Government provides details of the implementation of these processes and considers that, through these processes and the establishment of the CFCRL, the problem of agreements signed without the knowledge or consent of the workers has been addressed.

With regard to the observations of the social partners, the CIT warns of the persistence of the problems related to protection unions and contracts despite the reforms, and refers to an estimate that protection contracts account for 80 per cent of collective labour agreements. IndustriALL, while recognizing the Government's ongoing efforts to advance with the reform that may eradicate the system of protection unions and contracts: (i) denounces the proliferation and the signing of protection contracts by the public authorities; (ii) refers to specific cases that illustrate how the system operates (for example in a transnational car company and the petrol supply sector); (iii) denounces the repression

of trade union industrial action (for example, in sectors such as the electronics industry in the state of Jalisco); (iv) highlights the significant challenges in practice in guaranteeing that the legal validation processes are compliant with freedom of association (citing examples such as failing to implement results that did not favour the protection union and obstacles to the registration of independent organizations); and (v) refers to the report of the Board of Independent Labour Experts of Mexico of 7 July 2021, which lists the strategies used to intimidate workers and prevent them from voting. Further, IndustriALL refers, as an example of an ultimately satisfactory resolution, to the case of a union in an automobile company in Silao, in which the workers reported intimidation and serious irregularities in the process for the legal validation of the collective labour agreements and had recourse to the Canada, United States and Mexico Rapid Response Labour Mechanism (T-MEC), through which a new vote was called in August 2021; the validation process was monitored and supervised by the National Electoral Institute together with a mission of ILO observers, as a result of which the protection contract was rejected.

The Committee notes that in response to IndustriALL, the Government: (i) provides updated information on the application of the procedures referred to above (as of 12 October 2021, the number of legal validation processes had risen to 1,890 collective agreements covering some one million workers); (ii) denies that practices of complicity persist between employers and workers with the endorsement of the labour authority and rejects any criticism of the impartiality or integrity of the officials or operators of the labour justice system, as well as of their selection process; (iii) highlights that the reports of the Board of Independent Labour Experts have also recognized the progress made by the Government, especially considering that it has been made in the context of the pandemic, and have recognized that some of the changes of the reform have yet to be implemented, and thus it is therefore necessary to wait before a full evaluation can be conducted; (iv) refers to the lessons that have been drawn from the legal validation processes carried out, thereby improving the verification functions and reforming the Protocol referred to above; and (v) refers to the validation process in Silao as a positive example that illustrates the Government's commitment to implement the reform and establish a new industrial relations model based on greater transparency and union democracy. ***In light of the above, the Committee encourages the Government to take the necessary additional measures to ensure that the legal validation processes of collective agreements, both in their rules and their application in practice, guarantee full and timely respect for freedom of association. While welcoming the progress made in implementing the reform, the Committee notes with concern the continuing allegations of violations of the Convention and invites the Government, in consultation with the social partners, to continue taking any further measures that may be necessary to find effective solutions to the problems raised by the phenomenon of protection unions and contracts for workers in relation to their rights to establish and join organizations of their choosing.***

Publication of the registration of trade unions. In its previous observation, the Committee requested the Government to provide information on the legal requirement for conciliation and arbitration boards to publish the registration and statutes of trade unions, and any impact that the implementation of the new constitutional reform and its secondary legislation has had on the procedure for trade union registration, including the publication of the registration and statutes of trade unions. In this regard, the Government indicates that: (i) the reform of 1 May 2019, in accordance with the 2017 constitutional reform, transferred the registration functions for trade unions and collective agreements to the CFCRL, which includes the obligation to publish the corresponding registrations; (ii) in accordance with the implementation plan for the new labour model, the CFCRL will take up its registration functions fully on 11 October 2021, from which date there will be a single register of unions and contracts at the national level, under the responsibility of the CFCRL (up to now, these functions have been exercised only in the bodies covered by the first stage of the implementation of the new labour model); (iii) the CFCRL, the STPS and the conciliation and arbitration boards have worked in coordination to digitalize all the registry files and transfer them within the legal deadlines to the CFCRL, so that it can meet the

obligation to publish them once this work is completed; (iv) notwithstanding the above, new registrations of unions and collective labour agreements by the CFCRL are already available on its website, which will gradually include the files of the unions and agreements currently registered by conciliation and arbitration boards; this is to be completed between the second half of 2021 and the first half of 2022; and (v) as of 17 September 2021, 95.5 per cent of unions registered at the federal level and 38 per cent of unions registered at the local level have adapted their statutes to the applicable rules of the new labour register.

The Committee also notes that in their observations: (i) the UNT states that in July 2021, the status of publication was still not clear, and the collective labour agreements registered on a daily basis were still not available; and (ii) IndustriALL expresses concern that as of 2021 the legal obligation to publish the registration and statutes of unions, and the existing collective agreements, has still not been fully complied with, and indicates that in practice many workers covered by collective labour agreements are still unaware that these contracts exist and cannot obtain a copy of them.

Taking due note of the recent progress in implementing a single register of trade unions and agreements at the national level under the responsibility of the CFCRL, as well as the persistence of allegations of difficulties in accessing information on existing trade unions and collective agreements in practice, the Committee requests the Government to follow up on these allegations and to continue providing information on developments in this respect.

Articles 2 and 3. Public sector workers. The Committee recalls that for many years it has been asking the Government to take measures to amend the following provisions that limit trade union pluralism in state agencies and the possibility of the re-election of union officials: sections 68, 69, 71, 72, 73, 75, 79 and 84 of the Federal Act on State Employees (LFTSE), and the legislative declaration establishing the trade union monopoly of the National Federation of Banking Unions (FENASIB). The Committee has repeatedly noted the Government's statements that, in accordance with the case law of the Supreme Court of Justice, these legislative restrictions on the freedom of association of public servants are not applied, emphasizing that the re-election of trade union officers is possible and that multiple unions can be registered, and the fact that the applicant unions are in the same body is not an obstacle to their registration. The Committee notes that, in addition to reiterating these explanations, the Government refers to the Decree reforming, adding and repealing various provisions of the LFTSE, giving effect to article 123(b) of the Constitution.

The Committee notes with ***satisfaction*** that this Decree introduces the following amendments to the LFTSE: (i) it repeals section 68 (which established that there would be only one union in each agency); and (ii) it amends section 69 (removing the ban on trade unionists leaving the union of which they have become members and introducing the right of workers to join and establish unions without prior authorization), section 71 (removing from the requirements for establishing a union the fact that "there is no other union group with a greater number of members within the same state agency"), section 73 (removing the reference to "when a different union group that is in the majority is registered" as grounds for the dissolution of the union), section 79 (removing the prohibition on unions of public servants joining trade union organizations of workers or rural workers) and section 84 (removing the reference to the Federation of Unions of State Employees as the single central trade union recognized by the State).

However, the Committee notes that no amendments have been made in the LFTSE to section 72 (in which the problematic clause remains that "the Federal Conciliation and Arbitration Court, upon receiving the application for registration, shall verify by the means it deems most practical and effective, that there is no other trade union within the state agency concerned and that the applicant has a majority of workers in that agency before proceeding with registration, where applicable") and section 75 (maintaining the prohibition on re-election within trade unions). The legislative declaration

establishing the trade union monopoly of the FENASIB (section 23 of the Act issued under article 123B(XIIIbis) of the Constitution) has also been maintained.

The Committee also notes the observations of IndustriALL which: (i) denounces the persistence in the centralized public sector of the model of union control through union organizations whose leadership is close to those in political power, and that, although the unions of decentralized organizations have used case law to escape this control system, their freedom of association amounts to nothing because of the impossibility of exercising their collective bargaining rights and the right to strike; and (ii) alleges that rank-and-file workers have been illegally categorized as "personnel in positions of trust", who would be systematically excluded from the right to freedom of association; and that the Federal Conciliation and Arbitration Board has adopted a criterion that denies these workers the possibility of having their own union and imposes the control union on them.

The Committee requests the Government to provide its comments in this respect, specifying whether workers in positions of trust covered by the LFTSE have the right to join a trade union or establish their own trade unions, and to provide information on the exercise of this right. It also requests the Government to continue taking the necessary measures to ensure that all public sector workers, with the only possible exception of the police and the armed forces, enjoy the guarantees set out in the Convention in both law (pending the amendment of the above provisions) and practice.

Article 3. Right to elect trade union representatives in full freedom. Prohibition on foreign nationals becoming members of trade union executive bodies (section 372 of the Federal Labour Act). In its previous comments, the Committee has noted the Government's indications that: (i) section 372 of the Federal Labour Act, which prohibits foreign nationals from becoming members of trade union executive bodies, was tacitly repealed by the amendment to section 2 of the Act, which prohibits any discrimination based on ethnic or national origin; and (ii) the registration authorities do not require trade union leaders to have Mexican nationality, and this prohibition is not applied in practice. The Committee notes that in its latest report the Government reiterates that the legislative restriction is not applied in practice, specifying that the registration authorities are not in a position to verify this. The Committee also notes that the UNT emphasizes in its observations the need to remove this prohibition and discrimination on grounds of nationality in order to bring the law into line with the Convention. ***Recalling once again the need to ensure the conformity of the legislative provisions with the Convention, even if they are in abeyance or are not applied in practice, the Committee requests the Government to take the necessary measures to amend section 372 of the Federal Labour Act with a view to making explicit the tacit repeal of this restriction.***

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

Montenegro

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2006)

The Committee notes the observations of the Union of Free Trade Unions of Montenegro (UFTUM) received on 31 August 2021, referring to the matters addressed below.

The Committee takes note of the adoption of the Law on Civil Servants and State Employees (2018), the Labour Law (2019), a revised Rulebook on the Registration of Trade Unions (2019) and a Rulebook on the Registration of Representative Trade Union Organizations (2019), as well as the Government's indication that there have been no legislative changes or other measures that significantly affect the application of the Convention.

Article 3 of the Convention. Right to organize activities in full freedom. In its previous comment, the Committee noted that under section 18 of the Law on Strikes, 2015, the police, employees of state bodies and the public service could organize a strike in a way that would not endanger national security,

safety of persons and property, the general interest of citizens or the functioning of government authorities and that in such occupations, minimum services must be ensured. Having noted that it was the prerogative of the state authority responsible for national security to determine whether the organization of a strike endangered the general interest of citizens and functioning of government authorities, the Committee requested the Government to take the necessary measures to amend the Law on Strikes in consultation with the social partners so as to ensure that responsibility for declaring a strike illegal rests with an independent body that has the confidence of the parties involved. The Committee notes the Government's indication that: (i) in line with section 7, work disruption not organized in accordance with the provisions of the Law on Strikes shall be considered an illegal strike; (ii) section 31 of the Law provides that the employer, the representative association of employers, the representative trade union or the strike committee can initiate a procedure for determining the illegality of a strike or unlawful dismissal, which will be decided upon by the competent court within five days of such a request (this provision applies to any organized strike regardless of the area of activity in which it is organized); and (iii) the assessment under section 18 of whether the organization of a strike for the above employees endangers the general interest of citizens and functioning of government authorities is done by the public authority responsible for national security. While taking due note of this indication, the Committee understands that even if section 18 does not, in its wording, refer to the determination of the legality of a strike (which is regulated by section 31, providing for a judicial determination irrespective of the area of activity in which the strike is organized), section 18 provides for an assessment by a public authority of whether a strike endangers the general interest of citizens and functioning of government authorities and thus, whether it can lawfully take place under section 18 or not. The Committee notes in this regard the observations made by the UFTUM that: (i) at the drafting stage, a representative from the UFTUM warned that section 18 was not sustainable as the National Security Agency was a security intelligence service whose work implied the secrecy of information; (ii) the National Security Agency may declare that a strike endangers the public interest, and is therefore illegal, without prescribed clear criteria, acting in its own discretion and without the possibility of objections from the initiators of the strike; and (iii) the UFTUM submitted an initiative to review the constitutionality of section 18 of the Law on Strikes after its entry into force but has not yet received a response from the Constitutional Court. While noting the Government's submission that *Article 9* of the Convention leaves it to Members States to determine the extent to which the guarantees of the Convention apply to members of the armed forces and the police, the Committee observes that section 18 of the Law on Strikes also regulates the right to strike of employees of state bodies and the public service who are not excluded from the scope of the Convention under *Article 9* and who, unless they are engaged in essential services in the strict sense of the term or exercising authority in the name of the State, should benefit from the right to strike. ***In view of the above, the Committee once again requests the Government to take the necessary measures to amend the Law on Strikes in consultation with the social partners so as to ensure that any determination of whether a strike organized under section 18 endangers the general interest of citizens and functioning of government authorities, and is therefore illegal, is the prerogative of an independent body that has the confidence of the parties involved. The Committee also requests the Government to provide information on the current status of the initiative to review the constitutionality of section 18 filed to the Constitutional Court by the UFTUM.***

Article 4. Dissolution and suspension by administrative decision. The Committee previously requested the Government to indicate whether suspensive effect was granted to an appeal, made pursuant to the Law on General Administrative Procedure, of a decision to delete a trade union organization from the register pursuant to section 10(3) of the former Rulebook on the Registration of Trade Union Organizations – deletion if the registration was based on inaccurate data from the applicant or on the application of an unauthorized person (possibility currently also provided under section 12(3) of the revised Rulebook and section 13(3) of the Rulebook on the Registration of Representative Trade Union Organizations). The Committee notes the Government's indication that an appeal filed against a

decision of the Ministry of Labour to delete a union from the register does not have suspensive effect in that it does not delay the execution of the decision. ***Recalling that the dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should only take place following a normal judicial procedure which should have the effect of a stay of execution, the Committee requests the Government to take the necessary measures, including any necessary legislative amendments, to ensure that the procedure to delete a trade union organization from the register (pursuant to section 12(3) of the revised Rulebook on the Registration of Trade Unions and section 13(3) of the Rulebook on the Registration of Representative Trade Union Organizations) provides such safeguards.***

The Committee further notes that the Government indicates that while the revised Rulebook on the Registration of Trade Unions did not modify the reasons for deletion of a trade union from the register, it introduced a new sub-paragraph stipulating that the procedure for deleting a trade union under section 12(3) (previously section 10(3)) – if the registration was based on inaccurate data from the applicant or on the application of an unauthorized person – can be initiated by a registered trade union (section 13 of the Rulebook on the Registration of Representative Trade Union Organizations provides for the same possibility). ***The Committee requests the Government to clarify whether the effect of the new sub-paragraph is simply to allow the concerned union to initiate the procedure for deleting it from the register in the previously described circumstances, or whether it enables any registered trade union to request deletion of another union from the register under section 12(3) of the Rulebook and section 13(3) of the Rulebook on the Registration of Representative Trade Union Organizations, and if so, to indicate the grounds for having introduced this possibility.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2006)

The Committee notes the observations of the Union of Free Trade Unions of Montenegro (UFTUM) received on 31 August 2021, alleging lack of adequate protection against acts of anti-union discrimination in practice. ***The Committee requests the Government to provide its comments thereon.***

The Committee notes the adoption of the Law on the Representativeness of Trade Unions (2018), the Labour Law (2019), the Rulebook on the Registration of Representative Trade Union Organizations (2019) and the General Collective Agreement (2019), as well as the Government's indication that there have been no changes in legislative or other measures that significantly affect the application of the Convention. The Government adds that the Committee's previous comments were presented to the tripartite working group which drafted the Labour Law and were largely respected and that further amendments to the Labour Law are foreseen for which the technical assistance of the Office would be useful.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comment, the Committee requested the Government to pursue its efforts to amend the legislation so as to ensure the provision of sufficiently dissuasive sanctions for acts of anti-union discrimination against union members and officials. The Committee notes the Government's indication that: (i) section 189 of the new Labour Law prescribes voluntary membership in a trade union or employers' association and stipulates that no one can be placed in a less favourable position due to membership in such organizations and participation or failure to participate in their activities; (ii) section 7 prohibits direct and indirect discrimination against persons seeking employment, as well as employees, on the ground of, among others, trade union membership; (iii) section 8 details what constitutes direct and indirect discrimination; (iv) section 13 prohibits discrimination on the basis of membership and participation in organizations of employees and employers; and (v) section 209(1)(1) stipulates fines for violations of sections 7, 8 and 13 by a legal entity in the amount of €1,000 to 10,000. The Committee also observes that a fine ranging from €100 to 1,000 shall be imposed on the responsible person in the legal entity for violations of sections 7, 8 and 13 (section 209(2)). It further notes that

section 173(5) stipulates that acting as a representative of employees in line with the law does not constitute a justified reason for termination of employment, that section 196 provides protection against anti-union discrimination against trade union representatives during their mandate, as well as six months after its termination, and that section 180(5) stipulates the possibility of reinstatement and compensation in case of illegal dismissal. The Committee notes with ***satisfaction*** the adoption of the above provisions. The Committee observes, however, the concerns raised by the UFTUM in this respect, alleging lack of adequate protection against acts of anti-union discrimination in practice, in particular numerous cases of discrimination against trade union representatives and the absence of prosecution of employers. ***In view of the above, the Committee requests the Government to provide information on the practical application of section 209(1)(1) of the Labour Law concerning anti-union discrimination cases, in particular the type of violations identified, the nature of the remedies and the amount of the fines imposed.***

Article 2. Adequate protection against acts of interference. In its previous comment, the Committee requested the Government to take measures to adopt specific legislative provisions prohibiting acts of interference by the employer or employers' organizations and making express provision for rapid appeal procedures, accompanied with effective and sufficiently dissuasive sanctions. The Committee notes the Government's statement in this regard that, under section 197(1) of the Labour Law, the employer is obliged to provide employees with the free exercise of trade union rights and that freedom of trade union organization creates positive and negative obligations for the employer towards the trade union: the positive obligation is to provide conditions for trade union work and to sanction all persons who prevent or hinder trade union activities, whereas the negative obligation implies the absence of any administrative or other barriers by the employer that could prevent or hinder the exercise of trade union rights. The Government adds that the Law on the Representativeness of Trade Unions prescribes general conditions for determining the representativeness of trade unions, which include independence from public authorities, employers and political parties, and it clarifies that in order to establish a quality social dialogue, it is essential to ensure the independence of trade unions from public authorities, employers and political parties. While taking due note of the general obligations of the employer vis-à-vis trade unions and the importance of trade union independence invoked by the Government, the Committee observes that the Government does not point to provisions which provide specific protection against acts of interference by employers or employers' organizations in the establishment, functioning and administration of trade unions, and vice versa, as established in *Article 2(2)* of the Convention, in particular acts designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means. ***The Committee therefore reiterates its request to the Government to take measures to adopt specific legislative provisions prohibiting acts of interference by the employer or employers' organizations as established in Article 2(2) of the Convention and making express provision for rapid appeal procedures, accompanied with effective and sufficiently dissuasive sanctions.***

Article 4. Promotion of collective bargaining. General Collective Agreement. The Committee previously requested the Government to take measures to amend sections 149 and 150 of the Labour Law so as to ensure that the Government may only participate in the negotiation of a general collective agreement on issues linked to the minimum wage and that matters relating to other terms of employment are subject only to bipartite collective bargaining between employers and their organizations and workers' organizations. The Committee notes the Government's indication that many issues previously regulated by the General Collective Agreement (certain rights concerning the employment relationship, salaries, disciplinary responsibilities, termination of the employment contract and conditions for trade union activities) are now governed by the Labour Law and that the General Collective Agreement will thus mainly contain provisions relating to the determination of wages and the calculation of salaries. The Committee observes however the Government's statement that the General

Collective Agreement will also regulate other issues (such as the limitation of overtime work, and increases in annual leave and unpaid leave) in some sectors where branch collective agreements have not been concluded so as to protect the rights of employees (the banking and trade sectors). The Committee further notes that, under section 183 of the revised Labour Law, a general collective agreement defines, in addition to elements for the determination of wages, also the scope of the rights and obligations arising out of employment and that section 184(1) provides for the Government's participation in the conclusion of a general collective agreement. While emphasizing the importance and relevance of concertation between the Government and the social partners on matters of common interest, the Committee recalls that the Convention tends essentially to promote bipartite negotiation and to limit the participation of public authorities to issues which are broad in scope, such as the formulation of legislation and economic or social policy, or the fixing of the minimum wage rate. ***The Committee therefore once again requests the Government to take, in consultation with the social partners, the necessary measures to amend the relevant provisions of the Labour Law to ensure that the general collective agreements are concluded in full compliance with the Convention.***

Representativeness of employers' federations. In its previous comments, the Committee requested the Government to take measures to either substantially reduce or repeal the minimum requirements for an employers' federation to be considered as representative (under the current legislation, it must employ a minimum of 25 per cent of employees in the economy of Montenegro and participate in the gross domestic product of Montenegro with a minimum of 25 per cent). While taking due note of the Government's indication that the tripartite working group that drafted the Labour Law agreed to retain the current legal provision and that, as a result, the conditions for determining the representativeness of employers' associations have not been changed (section 198 of the revised Labour Law), the Committee wishes to recall that the requirement of too high a percentage for representativeness to be authorized to engage in collective bargaining may hamper the promotion and development of free and voluntary collective bargaining within the meaning of the Convention. ***The Committee therefore invites the Government to continue to assess, together with the social partners, whether the current minimum requirements for representativeness of employers' associations continue to be adapted to the specific characteristics of the country's industrial relations system, with a view to ensuring the promotion and development of free and voluntary collective bargaining.***

The Committee also previously noted that the affiliation of employers' associations to international or regional employers' confederations was a prerequisite for them to be considered as being representative at the national level and requested the Government to pursue consultations with the social partners concerned to ensure that the prerequisites for employers' organizations to bargain at the national level are in line with the Convention. The Committee notes the Government's indication that, while the Rulebook on the manner and procedure of registration of employers' associations and detailed criteria for determining the representativeness of authorized employers' associations (2005) is still in force, further amendments to the Labour Law and the Rulebook should be made in 2022, in particular to create a complete legal basis for the procedure of establishing the representativeness, the manner and the procedure for registration of employers' associations, as well as detailed criteria for determining their representativeness. Welcoming this information, as well as the Government's indication that the Committee's comments will be presented to the tripartite working group so as to achieve full compliance with the Convention, the Committee recalls once again that, for an employers' association to be able to negotiate a collective agreement, it should be sufficient to establish that it is sufficiently representative at the appropriate level, regardless of its international or regional affiliation or non-affiliation. ***In line with the above, the Committee requests the Government to take the necessary measures, including in the context of the upcoming Labour Law reform and in consultation with the social partners, to ensure that the prerequisites for employers' organizations to bargain at the national level are in line with the Convention, in particular with regard to their freedom to affiliate or not to affiliate with international or regional organizations.***

The Committee reminds the Government that the technical assistance of the Office remains at its disposal, if it so wishes, as regards the legal issues raised in this observation.

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

Mozambique

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)

In its previous observation, the Committee noted with regret the lack of action taken by the Government to investigate alleged acts of violence against striking workers in the sugar-cane plantation sector and emphasized that where such cases are brought to the Government's attention, the competent authorities should begin an inquiry immediately and take appropriate measures to bring the perpetrators to justice. The Committee notes that the Government emphasizes that, through the Labour Mediation and Arbitration Commission (COMAL) and the General Inspection of Labour, it is committed to rigorously investigate the events to ascertain the facts and apply the appropriate sanctions to bring about justice. It further notes the Government's indication that it will provide information on the matter in its next reports. ***Recalling that the above-mentioned allegations were brought to the Government's attention in 2008, the Committee expects that the events will be investigated shortly, and urges the Government to provide detailed information on the results of the inquiry and, in case of conviction, on the sanctions imposed.***

The Committee also takes note of the observations of Public Services International (PSI) received on 1 October 2020, which refer to the conclusions of the Committee on Freedom of Association in Case No. 3296 and denounce the failure by the Government to amend the legislation to facilitate the registration of a public sector union. ***The Committee requests the Government to provide its comments thereon.***

Article 2 of the Convention. Registration of workers' and employers' organizations. In its last observation, the Committee expected that the Government would take the necessary legislative measures, in full consultation with the social partners, to bring into conformity with the Convention section 150 of the Labour Act, which allows the central authority of the labour administration an unduly restrictive period of 45 days to register a trade union or an employers' organization. It also requested the Government to provide information on the current application in practice of section 150 in the meantime (number of trade unions registered in a year and the time taken by the requesting authorities to register a union). The Committee notes the Government's indication that: (i) the revision process of the Labour Act is not yet completed; (ii) the information on the number of trade unions registered in a year will be provided as soon as available; and (iii) the information on the time taken by the requesting authorities to register a union will be provided as soon as the new Labour Act is approved. ***The Committee expects that the revision process of the Labour Act will be completed in the near future and that, in full consultation with the social partners, the Government will take the necessary measures to ensure that section 150 is brought into line with the Convention. It requests the Government to inform of any evolution in this respect and to provide a copy of the new Labour Act once adopted. The Committee also reiterates its request for the Government to provide information on the practical application of the existing provision, specifically for the years 2019, 2020, and 2021 (number of trade unions registered in a year and the time taken by the requesting authorities to register a union).***

Article 3. Penal responsibility of striking workers. The Committee previously expressed its expectation that the Government would take the necessary measures to amend section 268(3) of the Labour Act, under the terms of which any violation of sections 199 (freedom to work of non-strikers), 202(1) and 209(1) (minimum services) constitutes a breach of discipline for which workers who are on strike are liable under both civil and penal law. The Committee notes that the Government states that

the Labour Act is still under revision and that it will inform of the new measures once the revision is completed. The Committee recalls that it considers that adequate safeguards and immunities from civil liability are necessary to ensure respect for the right of workers to exercise legitimate industrial action. It further recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and on no account should measures of imprisonment be imposed except in cases of violence against persons or property or other serious infringements of rights and only pursuant to legislation punishing such acts. ***The Committee trusts that the Government will take all necessary measures to ensure that amendments to the above-mentioned provisions are included in its revision of the Labour Act so as to bring these provisions into conformity with the Convention. The Committee requests the Government to provide information on any evolution in this regard and reminds it that it may avail itself of the technical assistance of the Office.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)

The Committee previously requested the Government to provide its comments on the 2010 observations made by the International Trade Union Confederation (ITUC) regarding acts of anti-union discrimination in export processing zones. The Committee notes with ***regret*** that the Government once again has not provided any information in this respect.

Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference. In its previous comments, the Committee requested the Government to take all the necessary measures to be able to provide specific statistics on the number of complaints, including judicial complaints, related to acts of anti-union discrimination and interference, and the number of fines imposed. The Committee notes the Government's indication that four complaints related to acts of anti-union discrimination and interference were registered in 2019 and 2020. It notes however that no information was provided on how these complaints were addressed by the public authorities or on the outcomes of the related procedures. ***Highlighting that the small number of anti-union discrimination and interference complaints may be due to reasons other than an absence of acts of anti-union discrimination and interference, the Committee requests the Government to take the necessary measures to ensure that, on the one hand, the competent authorities take fully into account the issues of anti-union discrimination and interference in their control and prevention activities and that, on the other hand, the workers and employers in the country are fully informed of their rights regarding these issues. The Committee requests the Government to provide information on the measures taken in this regard, as well as specific statistics on the number of complaints, including judicial complaints, related to acts of anti-union discrimination and interference, and the number of fines imposed.***

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

Myanmar

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)

The Committee notes with the ***deepest concern*** the observations made by the International Trade Union Confederation (ITUC) in a communication received on 1 September 2021 referring to the systemic violence against workers and harsh suppression of civil liberties carried out by the military junta after it seized power on 1 February, relentlessly cracking down on the crowds of protesters calling for the return of democracy. While the reply provided on 19 November 2021 contends that the peaceful protests had evolved into riots and ultimately reached a stage of insurrection and terrorism, retaliating against members of security forces with all available weapons and forcing them to respond, the Committee cannot but ***deplore*** the allegations that ever since the junta's seizure of power, daily demonstrations

have been met with increasing brutality with hundreds killed, many more wounded and over 2,700 arrested and charged, with some already sentenced.

Civil liberties. The Committee ***deeply regrets*** to note the information provided by the ITUC that trade unionists have been specifically targeted with numerous cases of arrests and killings of trade union leaders and unionists and the wholesale violation of their civil liberties. The ITUC refers in particular to: the shooting of Chan Myae Kyaw, a truck driver at a copper mine and a member of IndustriALL's affiliate Mining Workers' Federation of Myanmar (MWFM), who was killed by soldiers on 27 March 2021 during a demonstration in Monywa; a military ambush of protesters on March 28 and 29 in South Dagon Industrial Zone, killing Nay Lin Zaw, a union leader in the wood processing sector and a member of Myanmar Industry Craft Service-Trade Unions Federation (MICS-TUF); and the shooting in the head of 21 year old Zaw Htwe, a garment worker and a member of Solidarity Trade Union of Myanmar (STUM).

The Committee notes the reply to the ITUC comments that any deaths due to security forces acts were in limited response to terrorist acts, the relevant police have these death cases on files in accord with the legal procedures and systematically registered the case records of all deaths as well as assisted their funeral affairs. According to the lists of Myanmar Police Force, 361 civilians were killed during the reporting period, of which only 193 were due to members of the security forces with Riot Control Agents (RCA) while clearing barricades and defending themselves from the terrorist acts. The remaining 168 were dead by other causes e.g., assassinated by others with arms, fell from buildings and disease, not relevant to the members of security forces. It is added that exaggerated and falser reports in this regard are aimed at discrediting the Government and the military. As to the specific deaths raised by the ITUC, it is indicated that no casualties were found after the protest at the copper mine where Chan Myae Kyaw is said to have been shot, there were no events of a crackdown by security guards in Dagon township where Nay Lin Zaw is said to have died, and an inquest has been filed at Shwepyithar Township Police Station concerning the death of Zaw Htwe.

The Committee is bound to recall that the mobilization of the Civil Disobedience Movement was due in the first instance to the military seizure of power and destitution of the civilian government. In these circumstances, it must refer to the examination by the Committee on Freedom of Association of the grave allegations of numerous attacks by the military authorities following the coup d'état on 1 February 2021 in Case No. 3405 (see 395th Report, June 2021, paragraphs 284–358). The Committee further observes that the ILO Governing Body had on its agenda an update on the situation in Myanmar and on additional measures to promote the restoration of workers' rights at its 341st, 342nd and 343rd Sessions (March, June and November 2021), at which it, inter alia: expressed profound concern about developments since 1 February and called on the military authorities to respect the will of the people, respect democratic institutions and processes and restore the democratically elected Government (GB.341/INS/17(Add.1) (March)); expressed profound concern that the situation had deteriorated and that no progress had been made in this regard (GB.342/INS/5 (June)); and expressed profound concern that the military authorities have continued with the large-scale use of lethal violence and with the harassment, ongoing intimidation, arrests and detentions of trade unionists (GB.343/INS/8 (November)). Finally, the Committee takes note of the Resolution for a return to democracy and respect for fundamental rights in Myanmar adopted by the International Labour Conference at its 109th Session (2021) which calls upon Myanmar to cease all attacks, threats and intimidation by the military against workers, employers and their respective organizations, and the general population, including in relation to their peaceful participation in protest activities (ILC.109/Resolution II).

The Committee recalls that freedom of association can only be exercised in conditions in which fundamental human rights are fully respected and guaranteed, and in particular those rights relating to human life and personal safety, due process and the protection of premises and property belonging to workers' and employers' organizations. The killing, disappearance or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full

light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. ***While noting the cursory information provided in respect of the deaths noted above, the Committee calls for a full and independent investigation into the circumstances of the killings of Chan Myae Kyaw, Nay Lin Zaw and Zaw Htwe and requests to receive a full report of the outcome and the measures taken to prosecute and punish the guilty parties.***

The ITUC further refers to the arrest on 18 February 2021 of a union leader from the MICS-TUF who has been sent to Insein Prison and the arrest on 15 April 2021 of the director of STUM, who was charged under section 505-A of the Penal Code, which means she is not eligible for bail and faces up to 3 years in prison. Also in May, forces were deployed to arrest another 22 unionists, including seven members of Myanmar Transport Federation with another 11 warrants pending against national leaders of the Confederation of Trade Unions of Myanmar (CTUM) and other trade unions. On 4 June 2021, the passports of 28 CTUM members were cancelled. Finally, the ITUC recalls a number of arrests, detentions and attacks against trade unionists exercising their right to peaceful industrial action in 2019 and 2020.

In reply it is stated that tens of thousands of prisoners were pardoned on 12 February and 17 April respectively, while pending cases for 4,320 defendants were closed on 18 October with amnesty granted to 1,316 prisoners. As for the cancellation of the passports of 28 CTUM members, it is stated that false news had been perpetrated by the leaders of the organization to discredit the State Administration Council and the military giving rise to charges against the CTUM Chairperson for violation of section 505 of the Penal Code, while he and 28 CTUM members were also charged under section 124-A. The Government cancelled their passports as they were fleeing the arrest warrants due to be issued. ***As regards the serious allegations of a number of arrests, detention and attacks against trade unionists for exercising their right to peaceful industrial action and participating in the civil disobedience movement for the restoration of democracy, as well as the cancellation of their passports, the Committee calls for all measures to be taken to ensure full respect for the basic civil liberties necessary for the exercise of freedom of association, including freedom of opinion and expression, freedom of assembly, freedom of movement, freedom from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal, so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.***

In this regard, the Committee further notes the ITUC's indication that some of the arrested trade unionists were charged under section 505-A of the Penal Code which sets forth a broad and vague definition of the term "treason" to include attempts "to hinder, disturb, damage the motivation, discipline, health and conduct of the military personnel and government employees and cause hatred, disobedience, or disloyalty toward the military and the government." The Committee further notes that section 124 A of the Penal Code was amended by the military authorities in February using similarly broad wording to make it a criminal act "to sabotage or hinder the success of performance of the Defence Services and law enforcement organizations" under a penalty of up to 20 years' imprisonment. While having been informed that the director of STUM has been released, the Committee observes that the far-reaching nature of the drafting of this section can favour the categorization as treason of any exercise of dissent in a manner so as to compromise the exercise of basic civil liberties necessary to the full exercise of trade union rights. ***The Committee therefore calls specifically for the immediate release of the leader of MICS-TUF and any other trade unionists still being detained or imprisoned for having exercised their trade union rights protected under the Convention, including their engagement in the civil disobedience movement. Just as the Committee on Freedom of Association, the Committee further calls for the repeal of section 505-A of the Penal Code and also calls for the amendment of section 124 A in light of its similar nature.***

As regards the ITUC comments concerning the announcement of a new cyber security law which criminalizes any statement against any law with sanctions of imprisonment and heavy fines, the

Committee notes the reply that the Cyber Law has not yet been promulgated but observes that elements of this draft law were introduced into the Electronic Transaction Act (ETA), adopted on 15 February 2021, which provides in section 38(c) that any person that is convicted of making fake news or false news (not defined) in a cyberspace with the aim of alarming the public, making someone lose his or her faith, disrespecting someone or dividing unity, shall be imprisoned for a minimum of one year to a maximum of three years or fined not more than 5 million in kyat or both. The Committee observes with ***deep concern*** that this provision is vaguely worded and likely to undermine freedom of expression and other basic civil liberties under the threat of heavy penalties, including imprisonment. ***The Committee therefore urges that section 38(c) be revised with a view to ensuring full respect for the basic civil liberties necessary for the exercise of freedom of association so that workers' and employers' organizations can carry out their activities and functions without threat of intimidation or harm and in a climate of complete security.***

Additionally, the Committee recalls that, in its previous comments, it had taken note of the new Law on the Right to Peaceful Assembly and Peaceful Procession, adopted on 4 October 2016, and observed that the Chapter on Rules and the corresponding Chapter on Offences and Penalties could give rise to serious restrictions of the right of organizations to carry out their activities without interference. The Committee requested the Government to ensure that workers and employers are able to carry out and support their activities without threat of imprisonment, violence or other violations of their civil liberties by police or private security and to inform of any sanctions imposed on workers' or employers' organizations under the Law. The Committee observes in this regard that the ITUC refers to a number of incidents in 2019 and 2020 where workers and union leaders engaged in peaceful protests had been prosecuted and convicted under this Law, but who have since been released. The Committee ***deeply regrets*** that Myanmar's report this year simply states that the Law on the Right to Peaceful Assembly and Peaceful Procession, 2016, was enacted to ensure every citizen has the right to carry out activities in line with the law, without providing any information in reply to the detailed examples of prosecution and conviction provided by the ITUC. ***The Committee must therefore urge that all steps be taken to ensure that workers and employers are able to carry out and support their activities without threat of imprisonment, violence or other violations of their civil liberties by police or private security and that the Law on the Right to Peaceful Assembly and Peaceful Procession not be used in any way to restrict these rights.***

Labour law reform process. Despite the deeply concerning deterioration of the situation in the country and the Committee's strong conviction that priority must be given to the restoration of democratic and civilian rule, it wishes to recall its previous comments concerning the labour law reform process in the country for further action once the democratic institutions and processes and democratically elected government are restored.

Article 2 of the Convention. As regards the membership requirements and pyramidal structure set out in the Labour Organization Law (LOL), the Committee recalls that it had encouraged the Government to pursue consultations within the framework of the National Tripartite Dialogue Forum (NTDF) so as to ensure that all workers and employers, without distinction whatsoever, are able, not only in law but also in practice, to fully exercise their rights under the Convention, bearing in mind key difficulties faced by parts of the population, such as those in remote areas.

The Committee notes from this year's report the information that, since the law's entry into force, 2,887 basic labour organizations, 161 township labour organizations, 25 region or state labour organizations, nine labour federations, one labour confederation and 27 basic employer organizations, one township employer organization and one employer federation have been registered under the law.

As regards the possible denial of registration, the Committee once again requests information on any denials of registration, including reasons for such decisions and procedures for review and appeal of such denials.

Article 3. The Committee further noted the restrictions for eligibility to trade union office set out in the Rules to the LOL, including the obligation to have been working in the same trade or activity for at least six months (no initial time period should be required) and the obligation for foreign workers to have met a residency requirement of five years (this period should be reduced to a reasonable level such as three years), as well as the requirement to obtain permission from the relevant labour federation under section 40(b) of the LOL in order to go on strike.

The Committee once again expresses its expectation that, as soon as conditions permit, all of the above matters will be reviewed within the framework of the legislative reform process in consultation with the social partners so as to ensure fully the rights of workers and employers under the Convention.

The Committee further notes from the report that the Settlement of Labour Disputes Law was amended in 2019 and requests the final adopted text, as well as the Settlement of Labour Disputes Rules to implement the law, to be transmitted for its consideration.

Special economic zones (SEZs). The Committee notes the information provided in relation to the settlement of labour disputes in SEZs and the setting up of Workplace Coordinating Committees (WCCs) both inside and outside of the zones. It notes further that labour disputes occurring in SEZs have been settled by the Special Economic Zone Management Committee and all disputes have been settled by agreement up to now. If no agreement is reached, such disputes shall be dealt with under the Settlement of Labour Disputes Law. ***The Committee expects that all necessary measures will be taken to guarantee fully the rights under the Convention to workers in SEZs, including by ensuring that the SEZ Law does not contradict the application of the LOL and the Settlement of Labour Disputes Law in the SEZs, and suggests that this matter be followed up within the framework of the NTDF as soon as conditions permit.***

The allegations and issues raised in this comment relating to numerous deaths, massive detentions and arrest of trade unionists and a momentous attack on basic civil liberties have given rise to the Committee's deepest concern. The Committee deeply regrets that despite several decisions by the ILO Governing Body in March, June and November of this year and the Committee on Freedom of Association's recommendations and the International Labour Conference's Resolution in June, no steps have been taken to address these grave concerns or to rectify the serious infringements on fundamental rights introduced this year in the Penal Code and the Electronic Transaction Act and the ongoing concerns with respect to the Law on the Right to Peaceful Assembly and Peaceful Procession of 2016.

In these circumstances, and given the urgency of addressing these matters affecting the fundamental rights of workers and employers, their physical integrity and freedom, and the likelihood of irreversible harm, the Committee considers that this case meets the criteria it has developed to be asked to come before the Conference.

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Netherlands

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

The Committee takes note of the observations received on 31 August 2021 from the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV), which refer to matters examined by the Committee. It further notes the Government's reply to the 2017 observations from the FNV, CNV and the Trade Union Federation for Professionals (VCP).

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination other than dismissal. In its previous comments, the Committee requested the Government to provide detailed

information on the complaints and procedures on anti-union discrimination in recruitment. The Committee has previously also repeatedly invited the Government to initiate discussions with the most representative employers' and workers' organizations with a view to broadening the protection of both trade union members and representatives in order to cover all acts of anti-union discrimination, including during employment.

The Committee notes the Government's reference to the Equal Treatment Act, which regulates the prohibition of discrimination based on different grounds, including with respect to union members, since it prohibits direct and indirect discrimination based on political opinion or belief or any other ground. Concerning access to remedies, the Government recalls in general terms that there are different possibilities for citizens to file complaints based on the Equal Treatment Act. Although it indicates that is not aware of any recent decision concerning anti-union discrimination, the Government mentions the possibility of seizing: (i) the Institute for Human Rights, which is an independent national supervisory body (although its decisions are not legally binding, the Government points out that they are applied in most cases); and (ii) the Recruitment Code Complaints Committee of the Dutch Association for Personnel Management and Organization Development (NVP). The Committee also takes note of the action plan launched by the Government against labour market discrimination 2018–21, which consists of three pillars (supervision and enforcement, research and instruments, and knowledge and awareness), including the recruitment processes and covering all grounds of discrimination. The Committee finally notes that the Government states that it is open to starting a dialogue with the social partners as part of its regular consultations with the Labour Foundation to gain more insight into anti-union discrimination against union members and representatives. While taking note of the information provided by the Government, the Committee ***regrets*** that it has not received information on the concrete use of the mechanisms described by the Government. ***In order to enable it to assess whether adequate protection against acts of anti-union discrimination other than dismissal is provided in practice, the Committee requests the Government to provide detailed and updated information on any complaint of anti-union discrimination brought to the Institute for Human Rights, the NVP, the courts or other competent authorities. Noting the availability expressed by the Government in this respect, the Committee once again requests the Government to take the necessary action to initiate national dialogue with the most representative employers' and workers' organizations with a view to ensuring comprehensive protection of both trade union members and representatives against all acts of anti-union discrimination, including during employment (for example, in relation to transfer, relocation, demotion or deprivation or restriction of remuneration, social benefits or vocational training). The Committee requests the Government to provide information on any steps taken in this respect.***

Article 4. Promotion of collective bargaining. Self-employed workers. In its previous comments, the Committee invited the Government to hold consultations with all the parties concerned with the aim of ensuring that all workers, including self-employed workers, may engage in free and voluntary collective bargaining. The Committee recalls that the opinion published by the Netherlands Competition Authority (NMA) discouraging collective bargaining on the terms and conditions of contract labour (that is, work performed by individuals who do not necessarily work under the strict authority of the employer and who may have more than one workplace) gave rise to judicial action: (i) the European Court of Justice (ECJ), at the request of the Court of Appeal of The Hague, issued a preliminary ruling on 4 December 2014 in the proceedings *FNV Kunsten Informatie en Media (KIEM) v. the State of the Netherlands*. The ECJ ruled that, under European Union law, it is only when self-employed service providers are "false self-employed" (in other words, service providers in a situation comparable to that of the respective employed workers), that a provision of a collective labour agreement, which sets minimum fees for those self-employed service providers, does not fall within the scope of Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) (prohibition of agreements restricting competition); and (ii) the Court of Appeal of The Hague subsequently issued a decision on 1 September 2015, pursuant to which competition law does not preclude a collective agreement from requiring an employer to apply

the provisions of the collective agreement to self-employed substitutes (that is musicians substituting for members of an orchestra). The Committee also recalls that the Government pointed out that, according to the ECJ ruling, collective agreements for this group of "self-employed" persons (e.g. service providers in similar positions to employees) could be made on their behalf, but that this case had not yet led to amendments to the legislation or regulations. In addition, the Committee noted in its previous comments that, according to the FNV, the Netherlands Authority for Consumers and Markets (ACM) (the former NMA) still refused to more broadly acknowledge the collective bargaining rights of self-employed workers who work side-by-side with regular employees, denying both those workers and the employees a fair income and allowing or even promoting underbidding, and that the Ministry of Social Affairs followed the ACM without giving consideration to the effects of the ruling on collective bargaining rights.

The Committee notes the Government's indication that after the KIEM case, the ACM published guidelines on price arrangements between self-employed workers in 2017 and a new version in November 2019. The latter provide further clarification on the scope offered by competition law to self-employed workers who work side-by-side with employees to agree on tariffs and other conditions. The Government also points out that the ACM will not impose any fines on arrangements between and with self-employed workers that aim at guaranteeing their subsistence level. The Government finally refers to the research carried out by the European Commission concerning the possibilities of collective bargaining for vulnerable self-employed and platform workers under EU competition law. ***While taking due note of the information provided by the Government, the Committee wishes to recall that the Convention only provides for exceptions to its personal scope of application in respect of the armed forces and the police (Article 5) and public servants engaged in the administration of the State (Article 6), and that it therefore applies to all other workers, including self-employed workers. The Committee also stresses that a limitation of the material scope of collective bargaining in respect of remuneration to the mere guarantee of subsistence conditions would be contrary to the principle of free and voluntary collective bargaining recognized by Article 4 of the Convention. In view of the above, the Committee once again invites the Government to hold consultations with the parties concerned to ensure that all workers covered by the Convention, irrespective of their contractual status, are authorized to participate in free and voluntary collective bargaining. Considering that such consultations are intended to enable the Government and the social partners concerned to identify the appropriate adjustments to be made to the collective bargaining mechanisms in order to facilitate their application to the various categories of self-employed workers, the Committee requests the Government to provide information on any progress achieved in this regard and on any legislative measures adopted or contemplated.***

Articles 2 and 4. Protection against interference in the context of collective bargaining mechanisms. The Committee notes that in their observations the FNV and CNV allege that the collective bargaining model is undermined by allowing collective agreements signed by small unions or unions that do not offer sufficient guarantees of independence to be declared applicable to all workers. It also takes note of the Government's reply to the 2017 observations of the FNV, CNV and VCP on the same issue. The Committee notes that, in their 2021 observations, the FNV and CNV reiterate that in the Netherlands employers and employers' organizations can decide to conclude a collective labour agreement (CLA) with a small union that does not present sufficient guarantees of independence. They allege specifically that: (i) such CLAs apply to all (sometimes many thousands of) workers, including the members of more representative independent organizations objecting to such agreements; (ii) they are registered without any test and are declared generally binding by the Government; and (iii) if independent trade unions raise objections to such a declaration of binding effect, there are no valid criteria for carrying out an independence test.

The Committee notes in this respect the indications of the Government that: (i) collective bargaining parties are free to decide themselves with whom they negotiate and conclude a CLA, and

hence, a collective labour agreement can also be concluded with a smaller union; (ii) according to section 2 of the Dutch Collective Labour Agreement Act, a party that wishes to conclude a CLA must be authorized to do so by its statutes. This is a formal requirement that is checked by the Government; (iii) CLAs must be registered with the Government and if the parties want a CLA to be generally binding, a request must be filed with the Government (according to the rules and conditions deriving from the Dutch Binding and Non-Binding Status of Provisions of Collective Labour Agreements Act, the Assessment framework for declaring collective labour agreement provisions generally binding, and the Decree on registration of collective labour agreements). The Government indicates that the assessment framework specifically refers to *Article 2* of the Convention and that one of the conditions for declaring CLA provisions generally binding is that they must already apply to a significant majority of the persons working in the sector. Other parties may request dispensation from the process of declaring a CLA generally binding.

The Committee wishes to recall that, by virtue of *Article 4* of the Convention, the right to collective bargaining rests with workers' organizations and employers and their organizations and that the determination of the criteria for the designation of bargaining agents is a central issue. The Committee recalls in this respect that, even if different collective bargaining systems are compatible with the Convention, in particular those which grant the monopoly of collective bargaining to the most representative trade union organization, as well as those which recognize the right of individual trade unions in a bargaining unit to bargain on behalf of their own members, it has stressed the importance of the criteria of representativeness and independence in the event of a controversy concerning the determination of the bargaining agents. In this respect, the Committee has consistently stressed that unjustified refusal to recognize the most representative organizations may impair the promotion and development of free and voluntary collective bargaining within the meaning of the Convention. In this context, the Committee considers that a system that would allow a collective agreement to be applied to all workers in a bargaining unit despite of being opposed by the most representative trade unions concerned, would raise problems of compatibility with the principle of free and voluntary collective bargaining. The Committee also wishes to recall that the criterion of independence of workers' organizations from the employer, or of a grouping of employers, is of key importance. The reality of independence is inseparable from the very existence of a trade union movement that must effectively represent the interests of the workers and is therefore essential to ensure the authenticity of the entire collective bargaining process. ***In view of the above, and since in the Dutch collective bargaining system collective agreements, unless otherwise stipulated, have an effect on the employment contracts of all employees in the companies concerned and not only of members of the signatory unions, the Committee requests the Government to provide detailed updated information on: (i) the mechanisms available to guarantee that the will of the most representative workers' organizations is taken into account in the negotiation, conclusion and extension of collective agreements; (ii) the criteria applied in order to assess the independence of a union and any existing case law on the subject; and (iii) the number of collective agreements concluded and the number of those extended, where the signatory workers' organization is not the most representative in the bargaining unit concerned.***

Sint Maarten

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Committee notes the joint observations of the Sint Maarten Hospitality and Trade Association (SHTA) and the International Organisation of Employers (IOE) received on 1 September 2021 and referring to the matters addressed below.

Article 3 of the Convention. Right of organizations to elect their representatives in full freedom. The Committee previously noted the observations of the SHTA received on 30 September 2020, which alleged that the Chamber of Commerce and Industry (COCI), a governmental agency, had established

the Soualiga Employer Association (SEA), an umbrella organization to represent employers, including at the tripartite Social Economic Council (SER). The SHTA alleged that through the COCI and the SEA, the Government was attempting to establish an employer representative organization that is more in line with its position and does not reflect actual diligent representation and that this appeared to be an attempt to marginalize the existing employer representative groups. The Committee requested the Government to provide its comments on these serious allegations.

The Committee notes the Government's reply to these observations, received on 19 July 2021. It takes note of the Government's indication that: (i) the SER is an independent advisory organization where representatives from employers' and workers' organizations and independent experts discuss draft legislation and conduct social research into the effects of governmental decisions; (ii) the Government decided to restructure the board of the SER to resolve the unbalanced representation of employers' organizations; (iii) it mandated the COCI to facilitate the establishment of an umbrella employer organization from which the various employers' organizations would obtain membership, which led to the establishment of the SEA on 4 September 2020; (iv) while the COCI was executing its mandated instruction, the SHTA, together with three other employers' organizations, established the Sint Maarten Employers Council (ECSM), as an umbrella employers' organization incorporated under the laws of Sint Maarten; and (v) both the SEA and the ECSM are currently represented on the board of the SER.

On the other hand, the Committee notes with ***concern*** that the SHTA and the IOE allege that: (i) the establishment of the SEA did not comply with the Ministerial Decree "Instructions for regulations", which required consultations with relevant stakeholders, such as employers' organizations; (ii) the COCI, as a government agency, could not set up an umbrella employers' association, especially when recognized employers' associations were not consulted; (iii) the SEA undermines the employers' right to freely choose their representation under article 12 of the Constitution of Sint Maarten; (iv) the COCI and SEA intend to provide room for government-owned companies as employers' representatives and attempt to marginalize existing employer representative groups; and (v) the ECSM has filed an appeal against the appointments to the SER made by the SEA.

In light of these observations denouncing that the SEA was created through government action with the aim of marginalizing the hitherto most representative employers' organizations in the country, the Committee must emphasize that, under the Convention, it is the prerogative of employers and their organizations to determine the conditions for electing their representatives and to establish higher level organizations, and the authorities should refrain from any undue interference in the exercise of these rights, including interference through the promotion or favouring of organizations that are not freely established or chosen by employers and their organizations.

The Committee requests the Government to take the necessary measures to review, in consultation with the employers' organizations concerned, the above-mentioned developments, in particular as to the establishment and operation of the SEA and its participation in the SER, in order to ensure complete respect for the rights of employers and their organizations to establish and join organizations of their own choosing and to elect their representatives in full freedom, and redress any interference from the public authorities in this regard. The Committee further requests the Government to provide information on the result of the appeal challenging the appointments to the SER made by the SEA and recalls that it may avail itself of the technical assistance of the Office.

The Committee also reiterates its request that the Government reply in full to its other pending comments under the Convention, adopted in 2017.

[The Government is asked to send a detailed report in 2022.]

New Zealand

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 2003)

The Committee notes the observations of Business New Zealand (BusinessNZ) and the International Organisation of Employers (IOE) received on 1 September 2021 and the Government's reply thereto. The Committee further notes the observations of the New Zealand Educational Institute (NZEI) received on 6 September 2021 and the Government's reply, as well as the observations of the New Zealand Council of Trade Unions (NZCTU) communicated with the Government's report.

Scope of the Convention. In its previous comments, the Committee had noted that pursuant to an amendment from 2010 to the Employment Relations Act (ERA), workers engaged in film production work are considered to be independent contractors rather than employees, unless they have a written employment agreement that provides that they are employees and were thus not covered by the provisions of the ERA. The Committee requested the Government to take any necessary measures, in consultation with the social partners, to ensure that all film and television workers, including those engaged as self-employed workers, can fully enjoy the rights and guarantees set out in the Convention. The Committee notes with ***interest*** the Government's indication that it established the Film Industry Working Group in 2017 consisting of industry, business and worker representatives to find a way to restore workers' rights in the industry. The Working Group made recommendations in October 2018 suggesting a bespoke workplace relations regime for contractors in the screen industry which were accepted by the Government in June 2019 and given form in the Screen Industry Workers Bill, which is currently awaiting its second reading. The Bill will provide clarity about the employment status of people doing screen production work, introduce a duty of good faith and mandatory terms for contracting relationships in the industry, allow collective bargaining at the occupation and enterprise levels, and allow access to employment institutions to resolve disputes arising from contracting relations collective bargaining in the industry. ***The Committee trusts that the measures proposed will ensure that all film and television workers can fully enjoy the rights and guarantees set out in the Convention and requests the Government to transmit a copy of the final version of the Bill as soon as it has been approved and to provide information on its application in practice.***

Article 4. Promotion of collective bargaining. In its previous comments, the Committee requested the Government to, in consultation with the social partners, review and assess the application of section 50(K) of the Employments Relations Act (ERA), which permits any party to apply to the Employment Relations Authority for a determination as to whether bargaining has concluded, with a focus on the restriction this provision may have on further initiation of bargaining, and its impact on the conclusion of collective bargaining agreements. The Committee further requested the Government to provide information on the impact of section 44A, B and C of the ERA which provided an opt-out possibility for employers presented with a notice initiating collective bargaining including them and other employers. The Committee notes with ***satisfaction*** the information provided by the Government that both these sections were repealed on 12 December 2018 through the Employment Relations Amendment Act and further notes a number of other amendments aimed at strengthening collective bargaining and union rights in the workplace.

Voluntary nature of collective bargaining. The Committee notes the detailed observations made by BusinessNZ and the IOE in which they assert that sections 31 and 33, as amended by the Employment Relations Amendment Act 2018, and 50J of the ERA, are inconsistent with the principle of free and voluntary collective bargaining enshrined in *Article 4* of the Convention. In particular, the organizations refer to the obligation in sections 31 and 33 to conclude a collective agreement unless there is a "genuine reason", based on reasonable grounds, not to, regardless of the fact that negotiations may be initiated by a union on behalf of as few as two unionised employees. Prior to the changes to these sections, employers and unions were required to bargain in good faith but bargaining could be

terminated without agreement as long as it was clear that all matters had been considered and responded to in good faith. According to BusinessNZ and IOE, now, once bargaining is initiated, the process mandated by the good faith obligations must be followed to its logical conclusion no matter how many or how few employees are affected by the outcome.

The Committee notes the Government's indication that the amendments to sections 31 and 33 ensure that parties genuinely attempt to reach an agreement but they will not have to settle a multi-employer collective agreement if their reason not to do so is based on reasonable grounds. According to the Government, these provisions seek to encourage the full utilization of the process for good faith collective bargaining by putting in place mechanisms that require parties to make every effort to conclude an agreement, consistent with the duty of good faith. The underlying assumption is that if employers and unions are bargaining in good faith, they intend to reach a collective settlement and that this should result in an agreement unless they are genuinely unable to conclude. The Government indicates that the provisions originally resulted from a review of the principal Act giving rise to amendments in 2004 which identified the need to address the issue of "surface bargaining" where engagement was on matters of form rather than substance, or where deadlocks on some individual issues led to deadlock on the entire negotiation. These provisions were removed in 2015 but restored in 2018 returning the situation to that which existed from 2004 to 2015. The Government adds that the provisions do not make settlement mandatory as good faith bargaining may not always result in a collective agreement in all cases and hence the recognition of "genuine reason" and considers that if the parties are negotiating in good faith they should be able to provide genuine reasons for not being able to conclude. The Government therefore states that it does not agree with the views of BusinessNZ that the provisions impose an absolute duty to conclude contrary to *Article 4*. Finally, the Government considers that the number of employees affected by the outcome is irrelevant.

The Committee further notes that BusinessNZ and the IOE also refer to section 50J which permits the courts to compulsorily fix the terms of a collective agreement where the bargaining parties have not been able to conclude. In their view, this constitutes arbitrary imposition of compulsory arbitration contrary to the principle of free, voluntary negotiation. They note that while this provision was introduced on 1 December 2004, it was not an issue in practical terms until it was first invoked in February 2019 in a case in which bargaining had been protracted and acrimonious and had come to a standstill.

The Committee notes that the Government for its part rejects the interpretation that this amounts to arbitrary imposition of collective agreement terms and states that section 50J does not apply simply because the parties cannot reach agreement over a particular matter or more generally. The Government emphasizes that the section provides a specific remedy of last resort for a serious and sustained breach of the duty of good faith. In such cases, the Employment Relations Authority may make a determination fixing the provisions of the collective agreement following the application of a party only if all of the following conditions are met: the breach of duty relates to bargaining; it was sufficiently serious and sustained as to significantly undermine bargaining; all other reasonable alternatives for reaching agreement have been exhausted; fixing the provisions of the agreement is the only effective remedy for the party affected; and the authority considers it is appropriate in the circumstances so to do. The Government adds that the Committee in its 2012 General Survey (paragraph 247) has already referred to the need for measures to address improper practices in collective bargaining such as proven bad faith and unwanted delays and that compulsory arbitration may be acceptable when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities. The Government emphasizes that the sole case of the use of this remedy in this 15-year period involved protracted bargaining over several years and the prior use of mediation and facilitation and the matter was brought before the Employment Court which held that the employer had breached the duty of good faith in 2015 and continued to do so by delaying and attempting to frustrate bargaining. The Government asserts that there was thus neither an arbitrary

process nor outcome but rather a prolonged process involving careful consideration by independent bodies and the need to provide a remedy to the affected party only when specific conditions are met and after all other avenues have been exhausted.

Finally, the Committee notes the observations of the NZCTU which support the 2018 amendments to the Act, which it considers have advanced the extent to which New Zealand law gives effect to its obligations under the Convention to develop mechanisms for the promotion of collective bargaining, support the rights of workers and their unions to freely organize, and protect union members from discrimination.

The Committee observes that the amendment to section 31 of the Act specifically provides that the object of Chapter 5 on collective bargaining includes the duty of good faith that requires parties bargaining for collective agreements to conclude a collective agreement unless there is a genuine reason, based on reasonable grounds, not to, while section 33 which previously provided that the duty of good faith did not include a duty to conclude an agreement has been replaced by a section defining the elements for determining what may or may not constitute "genuine reason". In this respect, section 33 subsection 2 specifies that "a genuine reason not to conclude an agreement does not include opposition or objection in principle to bargaining for, or being a party to, a collective agreement or to including rates of wages or salary in a collective agreement or disagreement about including a bargaining fee clause" and adds the situation of unsettled pay equity claims. Subsection 3 provides that opposition to concluding a multi-employer collective agreement is a genuine reason if that opposition is based on reasonable grounds. The Committee notes that these provisions, which had been effective in the country for over a decade in the past and have been reintroduced, do provide a certain flexibility to employers in the collective bargaining process not to conclude an agreement based on notions of good faith and genuine reason and that the amended section 33 appears to principally aim at deterring situations where a party is simply in principle opposed to bargaining or including wage rates or where there is disagreement about a bargaining fee clause. The Committee further observes, however, that section 50J providing for the possibility of the Employment Relations Authority to fix provisions of a collective agreement where there has been a serious and sustained breach of the duty to bargain collectively in good faith is connected with the re-introduction of the amendments to sections 31 and 33 and may therefore also be invoked where a breach of the duty to bargain collectively in good faith concerns the non-conclusion of a collective agreement without genuine reason. The Committee considers that, under the Convention, ensuring the voluntary nature of collective negotiations is inseparable from the principle of negotiation in good faith if the machinery to be promoted under *Article 4* of the Convention is to have any meaning. The Committee recalls in this respect that the overall aim of this *Article* is the promotion of good faith collective bargaining with a view to reaching an agreement on terms and conditions of employment. The Committee observes that sections 31, 33 and 50J as currently drafted had not given rise to any comments by the social partners for the decade in which they were jointly in force until the application of section 50J in 2019 imposing a collective agreement for a period of 14 months on an employer found to have been in serious and sustained breach of the duty of good faith. The Committee observes that the Act provides for significant consideration before section 50J can be applied, including the right of appeal to the Employment Court for a determination of the existence of a serious and sustained breach. The Committee notes that more information would be required in order to determine whether the good faith obligation in section 33 may hinder the voluntary nature of collective bargaining. ***Recalling the limited circumstances in which compulsory arbitration may be imposed as referred to by the Government and BusinessNZ and IOE, the Committee requests the Government to provide detailed information on the use and practical implementation of sections 31, 33 and 50J and in particular on any specific cases where genuine reason not to conclude a collective agreement was either found to be present or not and the resulting consequences.***

Fair pay agreements. The Committee notes the concerns raised by BusinessNZ and the IOE in relation to the Government's announced intention to introduce Fair Pay Agreements (FPAs) covering all employees in an industry or occupation. Only unions would be allowed to initiate bargaining for an FPA and they will specify whether it will be industry based or occupationally based, as well as the scope and coverage. There is no ability for employers to opt out and any disputes will go to compulsory arbitration with no right of appeal against the terms that are fixed. According to BusinessNZ and the IOE, many of the proposed provisions of the FPA process are also physically cumbersome, unworkable and ultimately ineffective. On the initiation of the process, BusinessNZ and the IOE indicate that the union must show that it represents at least 1000 workers or 10 per cent of the workforce or it is in the public interest to have an FPA for that industry or occupation. It is then for the Government to administer the public interest test, thus inserting itself into the FPA bargaining process. Secondly, they note that union density is very low particularly in the private sector where it is around 9 per cent which means that almost any industry or occupation can be forced into bargaining for an FPA by a union that represents a tiny fraction of the workforce to be covered. In their view, this would be contrary to the principle whereby the most representative organizations have primacy of rights to collective bargaining. They further raise concerns about the mode for ratification of an FPA through a simple majority vote of employers and employees, with smaller employers' votes to be weighted according to the number of employees. Two failed ratification votes however will result in an arbitrated outcome being imposed, without a right of appeal. They consider this contrary to the principle of free and voluntary collective bargaining as well as of the good faith obligations in the domestic law governing collective bargaining generally, while further observing that extensive good faith obligations in the Act will be difficult to meet with respect to ratification. Finally, they refer to a number of statements of the Government which they consider demonstrate the Government's cognizance that its proposals would not be in compliance with the Convention and maintain that the nature of all of the alleged breaches is so significant that failure to address them risks weakening the ILO core values and integrity of the standards supervisory system.

The Committee notes the Government's indication that FPAs are the result of a long, considered and inclusive policy process undertaken over several years. The Government indicates that the FPA Bill is expected to be introduced later in 2021, however at this point the legislation is yet to be drafted, tabled in Parliament, and heard by the Select Committee (including the hearing of public submissions), let alone be voted into law and take effect. The Government nevertheless provides context to the FPA system including entrenched weaknesses in the labour market with wages lagging behind increases in labour productivity and low-quality jobs having grown significantly in prevalence. A decentralised and uncoordinated system of collective bargaining has been operating in the country since the 1990s with the result that most employees are not covered in a union or by a collective agreement, with collective bargaining coverage at around 17 per cent for the last two decades, down from around 70 per cent 30 years ago. Most collective bargaining is confined to the enterprise level and most bargaining per se happens between individual employers and individual employees. The Government also indicates that there is increasing evidence of a race to the bottom in some sectors and believes that the current employment regulatory landscape does not promote effective multi-employer or occupational or cross-industry bargaining at levels that might reduce the negative factors of low wages and wage growth, the decoupling of wages from productivity growth, poor labour practices vulnerability, and an over-reliance on statutory minimum conditions as the norm rather than a floor for bargained terms and conditions. The Fair Pay Agreement Working Group recommended an approach to developing an FPA system to create a new bargaining mechanism to set binding minimum terms at the industry or occupation level. According to the Government, these will build on national minimum standards and provide a new floor for enterprise level collective agreements where an FPA has been concluded, thus improving outcomes for employees with low bargaining power. Firms will benefit from better sector-wide coordination and dialogue, which should reduce transaction costs and allow parties to capitalize on the potential to address industry or occupation-wide issues and opportunities. The level playing field provided by FPAs

will support firms to improve wages and conditions without fear of being undercut on labour costs by competitors and create incentives to increase profitability or market share through increased investment in training, capital and innovation. The Government adds that it is therefore important to note that the policy elements that have been developed to date reflect New Zealand's particular situation and the factors that have led to it (as noted above) and that the key aim of an FPA system is to drive enduring, transformational system-wide change benefiting workers – in particular those in low paid jobs, or in sectors where there is low or no effective collective representation or bargaining. To embed and support this change requires specific measures to incentivise use of the system and generate effective and wide-reaching outcomes that demonstrate its benefits. In light of the rationale and objectives for FPAs, the Government considers that it is appropriate that only workers, through unions, be able to initiate bargaining for an FPA. As regards the threshold for triggering negotiation, the issues raised by BusinessNZ regarding the generally low level of unionisation in New Zealand actually highlight why this level of threshold is necessary. Employees will be represented in bargaining by registered unions. Unions other than the one that applies to initiate FPA bargaining, will be able to decide whether they want to be a bargaining party to that FPA. Union bargaining parties will also have an obligation to represent non-union members within coverage. The Government further contends that it is not 'inserting itself into the bargaining process' as alleged by BusinessNZ – the administration of legislative frameworks for collective bargaining by the competent authority is a common and necessary feature of bargaining systems generally. Nor is the extension of bargaining outcomes to employers and workers not directly involved in the original bargaining a unique feature of FPAs, which will apply to whole sectors or occupations once settled. The Collective Agreements Recommendation, 1951 (No. 91) of the ILO makes explicit provision in its guidance for this. The use of arbitration also needs to be seen against the objective of FPAs of promoting sectoral collective bargaining as a means of addressing the situation of low paid, vulnerable workers and the fact that industrial action by either side will be prohibited within the FPA system. Only if all other reasonable alternatives for settling the dispute have been exhausted or a reasonable time period has elapsed within which the bargaining sides have used their best endeavours to identify and use reasonable alternatives to negotiate and conclude a FPA, and bearing in mind that industrial action is not permitted within the FPA system, will the Authority then be able to proceed to determine the matter. The Government reiterates that, although compulsory arbitration is generally seen as inconsistent with Convention No. 98, it is permissible in specific circumstances as highlighted in the 2012 Committee's General Survey (paras 247 and 250), including when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities or in its use in first agreements.

The Committee notes the observations of the NZCTU supporting the development of legislation to allow bargaining of industry standard agreements, to be known as Fair Pay Agreements. In its view, the direction indicated by the Government for the development of this legislation gives effect to *Article 4* of the Convention by implementing mechanisms appropriate to the country's national conditions for the negotiation and regulation of terms and conditions at an industry sector level. The Government's development of the Fair Pay Agreement mechanism has proceeded on the basis of recommendations from a tripartite working group, with the participation of the NZCTU and BusinessNZ and which were developed in the context of New Zealand's specific national conditions, including the absence of existing effective mechanisms to facilitate industry-level sector bargaining. The Committee further notes the NZEI's view that there is an urgent need for this system to be developed to address previous lacunae and for education to take place to ensure that both employers and employees understand the potential benefits the system can afford them and are able to engage effectively in the system.

The Committee observes that the FPA system is aimed at promoting collective bargaining, especially for low-paid workers and those in vulnerable situations, where trade union representation has been particularly low and, according to the Government, is based on recommendations emanating from a tripartite working group including the main social partners in the country. While no legislation

has apparently yet been drafted, the Committee takes note of a number of concerns that have been raised by BusinessNZ and the IOE and the explanations provided by the Government. As regards the initiation of negotiations, while the Committee observes that it has found over the years a variety of industrial relations systems to be in conformity with the Convention including those that are not based on a system of most representative organizations, the Committee does consider that nothing should impede the possibility of representative employers' organizations or multiple employers in the industry or occupation to initiate negotiations should they so wish. As regards the concern that any disputes will go to compulsory arbitration with no right of appeal against the terms that are fixed while employers are not able to opt out, the Committee first wishes to recall that compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. In the Committee's opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis. As regards the possibility of employers to opt out, while duly noting the Government's distinction between an agreement which covers the industry or sector fully at the outset and a collective bargaining agreement between some parties in a given industry or sector and extended through government action to cover the entire sector, the Committee considers that a number of the principles set out in Recommendation No. 91, namely, that the collective agreement covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative bearing in mind the specific conditions, and that the employers and workers to whom the agreement would be made applicable should be given an opportunity to submit their observations, are a sound basis for development of industry-wide agreements. ***In light of the above, the Committee requests the Government to take the above considerations into account in its drafting of the FPA Bill and requests it to transmit a copy of the proposed provisions as soon as they are drafted.***

COVID-19. Finally, the Committee notes the comments of the NZEI concerning the challenges of the COVID-19 pandemic and that, throughout the pandemic response, the Government has consulted with education unions ahead of all advice going out to schools; been responsive to feedback; continued to pay the salaries and wages of school employees and provided additional funding in specific circumstances, such as supporting vaccinations. The Committee further notes the NZEI concerns however that in the early childhood sector, which is largely privately operated, the impact has been much more severe. There is very limited collective agreement coverage in the sector and few other industrial mechanisms for setting out employment terms and conditions for employees, while employers exercise considerable power over decision making with little or no union engagement. The NZEI emphasizes that the COVID-19 response requires a carefully nuanced conversation and unions should be involved. As regards vaccinations, the NZEI indicates that the Ministry of Education has also consulted with education unions on recent advice about vaccination and generally been responsive to feedback. The Government in its reply adds that it is conscious of the need to achieve an appropriate balance of individual rights, workplace health and safety duties and public health objectives and has been consulting with affected sectors and unions – directly and via the peak union body, the NZCTU, throughout the process of policy development.

Nicaragua

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

The Committee notes the observations of the International Organization of Employers (IOE), received on 1 September and 25 October 2021, denouncing acts of persecution, intimidation and repression against leaders of the Superior Council for Private Enterprise (COSEP) and against the business sector affiliated with COSEP, as well as the arbitrary detention of employer leaders without warrant and legal due process. The IOE specifically denounces the arbitrary detention on 8 June 2021 of the former president of COSEP, José Adán Aguerri Chamorro, accused of the crime of conspiracy for undermining national integrity. The IOE also denounces the detention on 21 October 2021, without warrant, of Michael Healy, President of COSEP, as well as its Vice-President, Álvaro Vargas Duarte.

The Committee takes note of the Government's general reply, which indicates that the detention of Mrs. Aguerri Chamorro, Healy and Vargas Duarte is not related to their activities as employers, but that they are being investigated and prosecuted for various criminal acts. The Government also indicates that their detention was carried out in observance of all rights and guarantees, respecting physical and legal security and integrity. The Committee ***regrets*** to note that in its reply the Government merely states that the employer leaders were detained for common law crimes, without providing any information or documentation regarding the charges brought against them, the legal or judicial proceedings instituted and the outcome of such proceedings. The Committee observes that the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have condemned the detention of the employer leaders and have urged the Government to proceed with their immediate release. The Committee recalls that the rights conferred upon the workers' and employers' organizations protected by the Convention are void of meaning if there is no respect for fundamental freedoms, such as the safety and physical integrity of persons, the right to protection against arbitrary arrest and detention, and the right to a fair trial by independent and impartial tribunal. It also recalls that the arrest of employer officials for reasons linked to actions relating to legitimate demands is a serious restriction of their rights and a violation of freedom of association.

Expressing its deep concern at the seriousness of these allegations, the Committee requests the Government to provide precise information on the detentions and, in particular, on the judicial proceedings instituted and their outcome. In the absence of any specific indication of the charges giving rise to the detention of the employer leaders, the Committee urges the Government to take the necessary measures to ensure the safety of Mr Aguerri Chamorro, Healy and Vargas Duarte and ensure their immediate release if their detention is related in any way to the exercise of their functions as employer leaders. It also requests the Government to provide its comments relating to all other issues raised by the IOE, including those regarding the Act regulating foreign agents No. 1040, adopted on 15 October 2020, and the allegation that several sections therein place unacceptable restrictions on freedom of association.

Article 3 of the Convention. Right of workers' organizations to organize their activities in full freedom and to formulate their programmes. The Committee recalls that for several years it has been referring to the need to take steps to amend sections 389 and 390 of the Labour Code, which provide that collective disputes shall be referred to compulsory arbitration when 30 days have elapsed since the calling of the strike. In this regard, the Committee notes the Government's indication that: (i) since 2007 to date, the provisions of these articles have not been applied and there has been no need to establish an Arbitration Tribunal; and (ii) the Government has prioritized dialogue to resolve labour disputes in both the public and private sectors by setting up roundtables for dialogue in which the Ministry of Labour participated as facilitator. The Government adds that thus far, the results have been successful and it is therefore not currently necessary to amend sections 389 and 390 of the Labour Code. While taking due note of the Government's indications regarding the emphasis placed on dialogue as a

solution to labour disputes, the Committee can only insist once again on the need to amend the above-mentioned provisions of the Labour Code, as the imposition of compulsory arbitration to end a strike, beyond the cases in which a strike may be limited or even prohibited, is contrary to the right of workers' organizations to freely organize their activities and formulate their programmes. ***Regretting the lack of progress in this respect, the Committee urges the Government to take the necessary measures to amend sections 389 and 390 of the Labour Code in order to ensure that compulsory arbitration is only possible in cases where strikes may be limited or even prohibited, namely in cases of conflict within the civil service relating to officials exercising authority on behalf of the State, in essential services in the strict sense of the term or in the event of an acute national crisis. The Committee requests the Government to provide information on any developments in this regard.***

Article 11. Protection of the right to organize. In its previous comment, the Committee noted the Government's various initiatives aimed at promoting the right to organize and requested it to provide information concerning their implementation. The Committee notes the information provided by the Government in this respect and notes that the Government's initiatives have been focused, inter alia, on building trust among the members of trade union organizations in terms of guaranteeing their right to freedom of association, removing red tape in the registration procedures of trade union organizations, promoting the organization of own-account workers, and providing ongoing training for trade union leaders. The Committee notes that, according to the Government, as a result of the above-mentioned policies to promote and encourage unionization between 2018 and 2021, 111 new trade union organizations were formed, affiliating 3,902 workers, and 2,884 trade union organizations were updated that grouped together 222,370 workers. ***The Committee takes due note of this information and requests the Government to continue providing information regarding the initiatives aimed at promoting the right to organize and the results of said initiatives.***

[The Government is asked to reply in full to the present comments in 2022.]

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

Article 4 of the Convention. Promotion of collective bargaining. In its previous comments, the Committee requested the Government to continue taking initiatives to promote collective bargaining in all areas, including export processing zones, and to provide information on this matter. In this regard, the Committee notes the Government's indication that: (i) since 2018 until the first quarter of 2021, a total of 24 collective agreements were signed in the country's export processing zones, covering and benefiting 79,254 workers, 43,374 of whom are women; and (ii) it will continue to promote collective bargaining and dialogue as an instrument to strengthen labour relations in all the economic sectors of the country.

The Committee takes due note of the statistical information provided relating to collective bargaining in export processing zones, as well as the Government's intention to continue promoting collective bargaining in general. ***The Committee hopes that the Government will continue taking measures to strengthen the promotion of collective bargaining in all sectors, including export processing zones, and will provide information on the specific action taken in this regard. The Committee also requests the Government to provide fuller information on the collective agreements signed and in force for all private sector and public sector activities, indicating the number of workers they cover.***

Niger

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1961)

Article 2 of the Convention. Scope of application. In its previous comments, the Committee requested the Government to take the necessary steps to amend section 191 of the Labour Code, which provides that workers over 16 years of age but under the age of majority may join trade unions, to ensure that the minimum age for membership to a trade union is the same as that fixed by the Labour Code for admission to employment (14 years, according to section 106 of the Code). In this regard, the Committee noted the Government's indication of its commitment to take this request into consideration when amending the Labour Code, and requested it to provide information on any progress made in this regard. ***Noting that the Government has provided no new information on the amendment of Act No. 2012-45 issuing the Labour Code, the Committee once again requests the Government to provide information on any progress made in this regard.***

Articles 3 and 10. Provisions on requisitioning. In its previous comments, the Committee recalled that it had been asking the Government for many years to amend section 9 of Ordinance No. 96-009 of 21 March 1996 regulating the exercise of the right to strike of state employees and local authority employees so as to limit the restrictions on the right to strike to public servants exercising authority in the name of the State, to essential services in the strict sense of the term, or to cases in which work stoppages may provoke an acute national crisis. The Committee noted that, according to the Government, the occupational elections process, the purpose of which was to revive the ordinance review mechanism, was proceeding normally and that it remained open to negotiations with the social partners. The Committee therefore invited the Government to take all necessary measures to accelerate this process and requested it to provide information on any developments in this regard. The Committee welcomes the information provided by the Government, according to which, following negotiations with the social partners, it accepted a complete revision of the texts regulating the right to strike requested by the Confederation of Workers of Niger (ITN), and the two parties agreed to create a framework involving all stakeholders to steer the discussions, the results of which were to be made available and transmitted to the National Assembly, for adoption in March 2019. ***The Committee trusts that, in this context, the Government will not fail to take, without delay, all the necessary measures to amend section 9 of Order No. 96-009 of 21 March 1996 in light of the Committee's long-standing comments. It requests the Government to provide information on any developments in this regard. It also reminds the Government that it can avail itself of the technical assistance of the Office in relation to the revision of the laws regulating the right to strike.***

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

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

Articles 1, 2, 3 and 6 of the Convention. Adequate protection against acts of anti-union discrimination and interference. Public servants not engaged in the administration of the State. In its previous comments, the Committee requested the Government to take the necessary measures for the adoption of specific legislative measures providing adequate protection for public servants not engaged in the administration of the State against acts of anti-union discrimination and interference and, for that purpose, establishing expeditious and effective penalties and procedures. The Committee notes that the Government once again indicates that freedom of association and the right to collective bargaining are recognized by article 9 of the Constitution of 10 November 2010 and that personnel who are not governed by either the provisions of the Labour Code or of the General Public Service Regulations have established trade unions. However, the Committee notes that Government still does not refer to any specific measures that would protect the above category of personnel against acts of anti-trade union

discrimination, and that it does not indicate whether it has taken steps to adopt such provisions. ***The Committee therefore once again requests the Government to take the necessary measures without delay to include in the legislation provisions protecting public servants not engaged in the administration of the State against acts of anti-union discrimination and interference, and to establish, for that purpose, expeditious and effective penalties and procedures. The Committee requests the Government to provide information on any developments in this regard.***

Article 4. Promotion of collective bargaining. Criteria for determining the representativeness of employers' and workers' organizations. In its previous comments, the Committee requested the Government to provide information on the holding of occupational elections and their outcome in order to determine the representativeness of workers' and employers' organizations. The Committee notes with ***interest*** the Government's information concerning the holding and results of the occupational elections that took place in 2019 and Order No. 0072/MET/PS/DGT/DT/PDS of the Ministry of Employment, Labour and Social Protection of 19 September 2019 declaring the final results of the occupational elections of 31 July 2019. The Committee trusts that the holding of these elections and the resulting determination of the representativeness of professional organizations will contribute to the increased use of collective bargaining mechanisms in the country. ***In this regard, the Committee requests the Government to provide information on the number of collective agreements signed and in force in the country, the sectors concerned and the workers covered. It also requests the Government to provide information on any other measures adopted or envisaged to promote collective bargaining.***

Articles 4 and 6. Right to collective bargaining of public servants not engaged in the administration of the State. In its previous comments, the Committee, after having noted with satisfaction the conclusion, between 2012 and 2014, of four major collective agreements concerning both the public and private sectors, invited the Government to ensure that the legislation in force is aligned with the practice concerning the recognition and exercise of the right to collective bargaining in the public sector, and to continue providing information on the number of collective agreements concluded in the public sector. The Committee notes that the Government confines itself to indicating that freedom of association is a constitutional right in Niger, the exercise of which is not subject to any restrictions, but does not provide any new information in response to the Committee's specific requests. ***The Committee therefore once again requests the Government to take all the necessary measures to ensure that the legislation in force is aligned with the practice and guarantees the right to collective bargaining of public servants not engaged in the administration of the State who are governed by a specific legislative or regulatory status, and accordingly excluded from the application of section 252 of the Labour Code.***

Nigeria

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

In its previous observation, the Committee requested the Government to provide a detailed reply on allegations of denial of the right to join trade unions, massive dismissals for trying to join trade unions, mass persecution and arrests of union members and other violations made by the International Trade Union Confederation (ITUC) in 2015 and 2016, as well as allegations of arrests, reprisals and dismissals against union leaders and members made by the ITUC and the Nigeria Labour Congress (NLC) in 2017. The Committee notes the Government's indication that there will be further consultations with the affected social partners, after which a response will be forwarded to the ILO. ***Regretting the lack of concrete information received in spite of the time elapsed since these serious allegations were brought to its attention, the Committee expects that the consultations referred to above will be held shortly, and urges the Government to provide its detailed comments on each specific allegation made by the ITUC and the NLC in its next report.***

The Committee also takes note of the observations of the ITUC received on 1 September 2021, which allege massive dismissals for trying to join trade unions, acts of anti-union violence during strike actions, arrests of union members, suspensions of union leaders, and a general anti-union climate in the country. ***The Committee requests the Government to provide its comments on these new serious allegations.***

Civil liberties. The Committee recalls that it had previously requested the Government to provide detailed information on the results of the judicial proceedings regarding the prosecution of the eight suspects arrested in connection with the assassination of Mr Alhaji Saula Saka, the Lagos Zonal Chairman of the National Union of Road Transport Workers. While having noted the Government's indication that the Federal Ministry of Labour and Employment had requested the Inspector General of Police for an update and was awaiting the reply, the Committee deeply regretted that no resolution had been reached regarding the events occurred in 2010. The Committee notes with ***regret*** that the Government does not provide any update on this matter in its report. ***The Committee firmly urges the Government to provide detailed information on the results of the judicial proceedings, and, in the case of conviction, on the nature and implementation of the sentence.***

Article 3 of the Convention. Right of workers to join organizations of their own choosing. The Committee previously took note of the National Industrial Court of Nigeria (NICN) judgment of 2016 with regard to the allegation that teachers in federal educational institutions have been coerced to join the Association of Senior Civil Servants of Nigeria (ASCSN) and denied the right to belong to the professional union of their own choice. The NICN judgment concluded that teachers at the 104 Unity Colleges of Nigeria are employed by the Federal Civil Service Commission and, as civil servants, they are automatically members of the ASCSN, but specified that any worker who wishes to disassociate from the ASCSN could do so by writing to the employer. The Government had further indicated that according to section 12(4) of the Trade Unions Act and sections 9(6) and 5(3) of the Labour Act: (i) membership of a trade union by employees shall be voluntary; (ii) no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member; (iii) no contract shall make it a condition of employment that a worker shall or shall not join a trade union; and (iv) the workers have the right to opt out of a trade union in writing. The Committee had requested the Government to continue to provide information on the practical application of the above-mentioned provisions, indicating in particular whether teachers of the federal educational institutions continue to be automatically affiliated to the ASCSN. The Committee notes that the Government, in its report, limits itself to stating that the purpose of the provisions of the said laws is to bring order and good administrative structure to trade unionism in Nigeria. The Committee recalls that it is important for workers to be able to change trade union or to establish a new union for reasons of independence, effectiveness or ideological choice and that trade union unity imposed directly or indirectly by law is contrary to the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 92). ***The Committee once again requests the Government to specify whether teachers of the federal educational institutions continue to be automatically affiliated to the ASCSN, and if so to indicate on what legal grounds such automatic affiliation comports with the principle of voluntary affiliation set out in the Trade Unions Act and Labour Code.***

Freedom of association in export processing zones (EPZs). The Committee recalls that its previous comments referred to issues of unionization and entry for inspection in the EPZs, as well as to the fact that certain provisions of the EPZ Authority Decree, 1992, make it difficult for workers to join trade unions as it is almost impossible for worker representatives to gain access to the EPZs. It had noted the establishment of a tripartite committee to review and update the Federal Ministry of Labour and Productivity Guidelines on Labour Administration and Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector and to incorporate emerging trends in the world of work. The Committee requested the Government to provide, without delay, information on the review and update of the ministerial guidelines, and to provide statistics on the number of trade unions operating in EPZs and the

membership thereof. The Committee notes the Government's indication that it is currently working towards adopting sectorial guidelines and that EPZs would be included in one of them. It further notes that the Government reports that there are six trade unions already operating in the EPZs. ***Expecting that significant progress will be made in the very near future to bring the legislation into conformity with the Convention, the Committee requests the Government to continue to inform on any developments regarding the review and update of the ministerial guidelines. The Committee also requests the Government to continue providing information and statistics on the particular trade unions operating in the EPZs.***

Articles 2, 3, 4, 5 and 6. In its previous comments, the Committee had requested the Government to amend the following provisions:

- section 3(1) of the Trade Unions Act, which requires a minimum of 50 workers to establish a trade union, so as to explicitly indicate that the minimum membership requirement of 50 workers does not apply to the establishment of trade unions at the enterprise level (while this minimum membership would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprise organizations, particularly in small enterprises);
- section 7(9) of the Trade Unions Act, which provides that the Minister may revoke the certificate of registration of any trade union, by repealing the broad authority of the Minister to cancel the registration;
- sections 30 and 42 of the Trade Unions Act, which impose compulsory arbitration, require a majority of all registered union members for calling a strike, define "essential services" in an overly broad manner, contain restrictions relating to the objectives of strike action, impose penal sanctions including imprisonment for illegal strikes and outlaw gatherings or strikes that prevent aircraft from flying or obstruct public highways, institutions or other premises, so as to lift these restrictions on the exercise of the right to strike; and
- sections 39 and 40 of the Trade Unions Act, which grant broad powers to the registrar to supervise the union accounts at any time, so as to limit this power to the obligation of submitting periodic financial reports, or in order to investigate a complaint.

The Committee welcomed the Government's indication that it had established a Tripartite Technical Committee (TTC) for the purpose of bringing into conformity the relevant sections of the Labour Standards Bill (LSB), Collective Labour Relations Bill (CLRB), Labour Institutions Bill (LIB) and Occupational Safety and Health Bill (OSH Bill) with international labour standards. It noted the Government's indication that the proposed review of the LSB would give the opportunity to the social partners to consider the amendments to the aforementioned provisions of the Trade Unions Act. The Committee notes that the Government states that the Labour Bills will be provided when enacted. ***The Committee expects that the above-mentioned laws will be enacted shortly and that sections 3(1), 7(9), 30, 39, 40 and 42 of the Trade Unions Act will be brought into line with the Convention as part of the ongoing legislative review. The Committee requests the Government to provide information on any progress achieved in this regard.***

The Committee previously noted that there were no proposals to amend the following legislative provisions, which it also requested the Government to modify:

- section 3(2) of the Trade Unions Act, which restricts the possibility of other trade unions from being registered where a trade union already exists (workers should be able to change trade union or to establish a new union; trade union unity imposed directly or indirectly by law is contrary to the Convention);
- section 11 of the Trade Unions Act, which denies the right to organize to employees in the Customs and Excise Department, the Immigration Department, the prison services, the

Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and Nigeria Telecommunications (all workers, without distinction whatsoever, should have the right to establish and join organizations of their own choosing; the only authorized exception are the members of the police and the armed forces); and

– section 34(1)(b) and (g) of the Trade Unions Act (as amended by section 8(a) of the Trade Unions (Amendment) Act 2005), which requires federations to consist of 12 or more trade unions in order to be registered (the number of affiliated trade unions necessary should be lowered) and section 1 of the 1996 Trade Unions (International Affiliation) Act, which provides that the application of a trade union for international affiliation shall be submitted to the Minister for approval (the international affiliation of trade unions should not require the Government's permission).

The Committee notes that the Government states that the social partners are comfortable with the number of trade unions affiliated to federations and reiterates previous observations indicating that the purpose of section 3(2) of the Trade Unions Act is to bring order and good administrative structure to trade unionism in Nigeria and that for security reasons, section 11 of the Trade Unions Act has not been modified but a subsection has been added to create Joint Consultative Committees in the establishments concerned. The Committee refers to its preceding comments in this regard, recalling in particular that the establishment of joint consultative committees cannot be considered as a substitute for the right to organize under the Convention. ***Noting that the above provisions have been the subject of its comments for many years, the Committee urges the Government to take all necessary measures to make the appropriate amendments without delay in order to ensure their conformity with the Convention. The Committee requests the Government to provide information on any developments in this respect.***

The Committee reminds the Government that it may seek the technical assistance of the Office in connection with the revision of the laws and regulations referred above and relating to the application of the Convention.

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

In its previous observation, the Committee requested the Government to provide information on any investigations, and the results thereof, into allegations of anti-union discrimination and interference in the banking, education, electricity, petroleum, gas and telecommunications sectors, as referred to in successive communications from the International Trade Union Confederation (ITUC). The Committee notes that the Government reports that it is working on sectorial guidelines to address anti-union discrimination and interference. ***Observing that in its 2021 observations under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the ITUC denounces massive dismissals for trying to join trade unions, the Committee requests the Government to take the necessary actions to ensure that the allegations of anti-union discrimination referred to by the ITUC in its previous observations give rise to specific investigations. The Committee requests the Government to provide information on the results thereof as well as on the progress made towards the adoption of the above-mentioned sectorial guidelines.***

The Committee also requested the Government to send its comments on allegations of Education International (EI) and the Nigeria Union of Teachers (NUT) denouncing the promotion of a non-registered union in the education sector by various state governments, which would appear to constitute attempted interference. The Committee notes that the Government limits itself to indicating that the Academic Staff Union of Secondary School has not been registered at the federal level. The Committee recalls that the intervention by an employer – either public or private – to promote the establishment of a parallel trade union constitutes an act of interference by the employer in the functioning of a workers' association, which is prohibited under *Article 2* of the Convention. ***The***

Committee therefore requests the Government to take the necessary measures to ensure that Article 2 of the Convention is complied with in the education sector, both at the State and federal levels.

Scope of application of the Convention. In its previous comments, the Committee noted that under the provisions of the legislation certain categories of workers (such as employees of the Customs and Excise Department, the Immigration Department, the prison services and the Central Bank of Nigeria) were denied the right to organize and were deprived of the right to collective bargaining. It noted that some of these categories involve public sector workers not engaged in the administration of the State and requested the Government to provide information on the results of its consultations within the National Labour Advisory Council (NLAC) and any follow-up action taken, particularly with regard to recognition of the right to collective bargaining. The Committee notes that the Government reiterates its previous explanation that these exclusions are made on the grounds of the national interest and national security. The Committee further notes the Government's indication that the NLAC has been inaugurated and that the issue raised will be discussed at subsequent meetings. The Committee recalls that, according to *Articles 5* and *6* of the Convention, only members of the armed forces and the police, as well as public servants engaged in the administration of the State may be excluded from the guarantees set out in the Convention. ***Regretting the lack of progress regarding this issue, the Committee requests the Government to take the necessary measures to ensure the full recognition of the right to collective bargaining of all public sector workers not engaged in the administration of the State, and to provide information on its consultations within the NLAC and on the practical results achieved in this regard.***

Article 4. Free and voluntary negotiation. The Committee previously requested the Government to provide explanations regarding the legal obligation to submit any collective agreements on wages to government approval, and noted the Government's indication that in practice there is no restriction with regard to wage increases adopted by an employer but that this obligation, which appears in section 19 of the Trade Disputes Act, would be brought to the attention of the tripartite technical committee which was reviewing the labour legislation. The Committee notes with ***regret*** that the Government does not provide any information on this matter in its report. ***The Committee once again requests the Government to take concrete steps to amend section 19 of the Trade Disputes Act in order to ensure full observance of the principle of voluntary collective negotiations in accordance with the provisions of the Convention. The Committee requests the Government to provide information in this respect.***

In its previous observation, the Committee noted the Government's intention to ensure that the reform of the labour legislation undertaken in consultation with the social partners was in conformity with international labour standards and trusted that the new Collective Labour Relations Act and any other texts adopted in the context of the reform of the Labour Law would be in full conformity with the requirements of the Convention. It notes the Government's indication that the social partners will soon hold a meeting to validate the Labour Bills before forwarding them to the National Assembly for legislative action. ***The Committee requests the Government to continue to provide information on any developments in relation to the reform of the labour legislation and recalls that it can avail itself of the technical assistance of the Office.***

North Macedonia

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

The Committee notes the observations of the Confederation of Free Trade Unions of Macedonia (KSS), received on 1 September 2021, which allege restrictions on the right to strike in the education sector, the failure to transfer to trade unions the dues withheld by the employers, as well as pressure on workers to leave their trade unions. ***The Committee requests the Government to provide its comments thereon.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 2 and 9 of the Convention. Scope of application. In its previous comments, the Committee had noted that, pursuant to article 37 of the Constitution, the conditions for exercising the right to union organization in "administrative bodies" (in addition to the police and the armed forces) can be limited by law and requested the Government to indicate what are the "administrative bodies" referred to in the Constitution and whether, and the extent to which, the law limits the right to organize of their workers. The Committee notes the Government's indication that "administrative bodies" referred to in article 37 of the Constitution includes ministries, other state administration bodies (as independent state administration bodies or within ministries), and administrative organizations (set up for the performance of particular professional and other works requiring the application of scientific and expert methods). The Committee further notes that the Government emphasizes that freedom of association, apart from the general framework in the Constitution, is regulated by the Labour Law, which does not stipulate any limitation thereof. ***Recalling that under the Convention only the armed forces and the police may be subject to limitations concerning the enjoyment of the guarantees provided by the Convention, as well as the need to ensure conformity of national constitutional provisions with the Convention, the Committee requests the Government to take the necessary measures to amend article 37 of the Constitution to eliminate the possibility for the law to restrict the conditions for the exercise of the right to trade union organization in administrative bodies.***

Article 3. Right of organizations to freely organize their activities and to formulate their programmes. In its previous comments the Committee had noted that, under the Law on Public Enterprises and the Law on Employees in the Public Sector: (i) employees in the public sector are entitled to strike; (ii) employees in the public sector are obliged to provide minimum services taking into account the rights and interests of citizens and legal entities; and (iii) in accordance with the applicable laws and collective agreements, the head of the respective institution determines the performance of the institutional activities of public interest that are to be maintained during a strike, the manner in which the minimum service will be carried out and the number of employees that will provide services during the strike. In this respect, the Committee recalled that the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (ii) other services in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population; (iii) in public services of fundamental importance; and (iv) to ensure the security of facilities and the maintenance of equipment. The Committee further recalled that minimum services imposed should meet at least two requirements: (i) must genuinely and exclusively be minimum services, that is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The Committee welcomes the Government's indication that it will take appropriate measures to ensure compliance with the Convention of the provisions in the Law on Public Enterprises and in the Law on Public Sector Employees. ***The Committee requests the Government to take, in consultation with representative public employee and public employer organizations, any necessary measures to ensure the determination of minimum services in public enterprises conforms with the situations described above, and to provide further information concerning such determination in practice (in particular as to the types of activities, and percentage of employees in those activities, that have been affected by a determination of minimum services, as well as the possibility for employee organizations to participate in the definition of minimum services).***

In its preceding comment the Committee had requested the Government to amend section 38(7) of the Law on Primary Education and section 25(2) of the Law on Secondary Education, which oblige the school directors to provide for the realization of educational activities by replacing the striking employees when the educational activity is interrupted due to a strike. The Committee notes the Government's indication that it started amending the articles concerned to align them with the Convention but observes that, subsequently, a new Law on Primary Education was published on 5 August 2019, including a similar provision to require the replacement of striking workers. Pursuant to section 50(7), of the new Law on Primary Education, in case

of a suspension of the educational and pedagogical work due to strike action, the principal of the primary school, upon receiving a previous consent by the Mayor, and by the Minister in the case of state primary schools, shall be obliged to ensure the performance of the educational and pedagogical work by substituting the striking workers for the duration of the strike action. In this regard, the Committee must recall that teachers and the public education services may not be considered an essential service in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and that provisions allowing for the replacement of striking workers are a serious impediment to the legitimate exercise of the right to strike. ***Regretting the lack of progress in this respect, the Committee once again requests the Government to amend the Law on Primary Education and the Law on Secondary Education, so as to remove the possibility of replacing striking workers and to enable workers in the primary and secondary education sectors to effectively exercise their right to strike, as well to provide a copy of the amended legal texts once adopted.***

Legislative review. With regard to the review process of the Law on Labour Relations, the Committee notes that the Government indicates that social partners were included from the very beginning and that in the course of drafting the new law attention shall be paid to its compliance with ILO Conventions. ***The Committee expects that, in the context of the review of the Law on Labour Relations, the Government will take the necessary measures to bring its legislation into conformity with the Convention in line with the preceding comments and requests it to provide information on any developments, including a copy of the revised Law on Labour Relations once adopted.***

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

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

The Committee notes the observations of the Confederation of Free Trade Unions of Macedonia (KSS), received on 1 September 2021, which denounce (i) acts of anti-union discrimination, including dismissal, against trade union representatives; (ii) the non-application of collective agreements by the Ministry of Education; and (iii) the inability of the Commission for representativeness to decide on the representativeness of the KSS in the public sector. ***The Committee requests the Government to provide its comments thereon.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 4 of the Convention. Promotion of collective bargaining. The Committee notes the information provided by the Government concerning the outcome of the "Promoting Social Dialogue" project implemented from October 2014 until April 2017. It notes that the Government indicates that: (i) training for collective bargaining skills was realized in the framework of this project in six sectors (transport, trade, tourism, agriculture, construction, and textile); (ii) 80 per cent of the planned measures from the Tripartite Action Plan for the promotion of collective bargaining were realized; and (iii) the new Labour Law and the special Law on Worker and Employer Organizations and Collective Bargaining are currently under preparation. ***Noting that the mentioned draft laws gave rise to technical comments from the Office, the Committee requests the Government to inform on the adoption process of the new Labour Law and the special Law on Worker and Employer Organizations and Collective Bargaining.***

Collective bargaining in practice. The Committee notes the statistical data provided by the Government concerning the number of collective agreements concluded in both the public and private sectors and the number of workers covered (respectively: 102,506 workers from six concluded collective agreements and 51,388 workers from ten concluded collective agreements). The Committee notes with ***interest*** that since 2014 and the beginning of the "Promoting Social Dialogue" project, the rate of workers covered by collective agreements moved from 21.8 per cent to 24.6 per cent and that the number of collective agreements signed at the enterprise level increased by 29 per cent. ***The Committee invites the Government to keep promoting collective bargaining at all levels and to keep providing information on the number of collective agreements signed and the percentage of the workforce covered.***

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

Pakistan

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1952)

In its previous comment, the Committee requested the Government to provide its reply to the 2020 observations of the International Transport Workers' Federation (ITF), denouncing serious allegations of anti-union discrimination by the national airline company, including the unilateral derecognition of the Pakistan Airline Pilots' Association (PALPA) and other employees' associations in the company, as well as the termination of all working agreements with immediate effect. The Committee notes the Government's comments that: (i) the PALPA is neither a registered trade union nor a recognized collective bargaining agent under the Industrial Relations Act, 2012 (IRA) but an association of persons registered under the Societies Registration Act, 1860 and even this status is jeopardized in a lawsuit before the Sind High Court; (ii) only the IRA and its provincial variants recognize the forum of collective bargaining agent, which can engage in collective bargaining and, under the IRA, only an agreement with the collective bargaining agent is binding on workers and employers; (iii) any agreement that the PALPA had reached was therefore a civil contract which could be terminated by any party with notice to the other party and not a settlement with legal force under the IRA; and (iv) the airline company does not intend to stop trade union and collective bargaining activities in the establishment, which continue to take place, and it recognizes all its duly registered trade unions and collective bargaining agents. While taking due note of the above, the Committee observes that, according to the ITF observations: (i) the PALPA would be the sole representative organization for pilots in the country; (ii) its derecognition would therefore deprive this category of workers of effective means of negotiating the terms and conditions of employment and defending their interests; and (iii) the annulment of all concluded working agreements would have a serious impact on the working conditions of the pilots of the referred airline. The Committee further observes that the restriction of the PALPA's bargaining rights would appear to be linked to the fact that the workers concerned are organized through an association of persons and not a trade union under the IRA, a matter which was already raised under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee also observes in this regard that the Committee on Freedom of Association previously noted that trade union rights had been restored to workers at the company (see 353rd Report, March 2009, Case No. 2242, paragraph 177) and while recalling that, since then, a new IRA was adopted in 2012, it notes with ***regret*** that, according to the information provided, there appears to be a step backwards in terms of trade union rights and the right to collective bargaining at the company. The Committee recalls in this respect that the Convention guarantees collective bargaining rights to all workers except the armed forces, the police and public servants engaged in the administration of the State (*Articles 5* and *6*). ***In view of the above and given the serious nature of the allegations made, the Committee requests the Government to take all necessary measures to ensure that pilots from both private and public companies can, in law and in practice, negotiate the terms and conditions of their employment through organizations that genuinely represent their interests and to ensure the principle that freely concluded collective agreements should be binding on the parties. Further emphasizing the importance of social dialogue in crisis situations, including during the COVID-19 pandemic, the Committee trusts that the Government will take all necessary measures to promote cooperation and dialogue among all the social partners in the aviation industry, as an effective means to resolving any outstanding issues and maintaining harmonious labour relations in the sector. The Committee requests the Government to provide information on the steps taken in this respect.***

The Committee had also previously requested the Government to provide its comments on the 2012 and 2015 observations of the International Trade Union Confederation (ITUC), alleging anti-union dismissals and acts of interference in trade union internal affairs by employers. The Committee notes the Government's indication that the Ministry of Overseas Pakistani and Human Resource Development (OPHRD) is in close contact with the respective provincial departments and that a detailed response will be provided in its next regular report. ***Regretting the delay in the Government's response to allegations that date back to 2012 and 2015, the Committee expects the Government to provide its comments in this regard without further delay.***

Scope of application of the Convention. In its previous comments, the Committee noted that the IRA, the Balochistan IRA (BIRA), the Khyber Pakhtunkhwa IRA (KPIRA), the Punjab IRA (PIRA) and the Sindh IRA (SIRA) excluded numerous categories of workers (enumerated by the Committee in its 2018 comments on the application of Convention No. 87) from their scopes of application. It therefore urged the Government to ensure that the federal, as well as provincial governments, take the necessary measures in order to amend the legislation so as to ensure that all workers, with the only possible exception of the armed forces, the police and public servants engaged in the administration of the State, fully enjoy the rights enshrined in the Convention. The Committee ***regrets*** that the Government does not provide any details as to the measures taken or envisaged in this respect and that its response is limited to reiterating the general protection provided to workers by the federal and regional legislative and institutional frameworks. ***Regretting the lack of any tangible progress in this regard and emphasizing that the only categories of workers which can be excluded from the application of the Convention are the armed forces, the police and public servants engaged in the administration of the State (Articles 5 and 6 of the Convention), the Committee urges the Government once again to ensure that the federal, as well as provincial governments, take the necessary measures, in consultation with the social partners, to amend the legislation to this effect. The Committee requests the Government to provide detailed information on any legislative measures taken or envisaged to bring the legislation into full conformity with the Convention.***

Export processing zones (EPZs). In its previous comment, the Committee noted with deep regret the lack of progress in the drawing up of rules that would grant the right to organize to EPZ workers and urged the Government to take the necessary steps to ensure that the new Export Processing Zones (Employment and Service Conditions) Rules, 2009 would guarantee the right to organize to EPZ workers and to accelerate the process of their drafting and approval. The Committee notes that the Government does not provide any information about the status of the EPZ Rules, 2009 but informs that the application of labour laws was extended to EPZs and that the provision on the prohibition of strike was deleted from the EPZ Rules, 1982, allowing workers to invoke the right to strike in relation to their demands concerning employment issues. While welcoming this information, the Committee notes that the Government does not provide further details as to the overall impact of these changes on freedom of association of EPZ workers and observes from the text of the Ministerial notification (No. 7(11)/2008-FAC from 5 August 2021) that the EPZs remain exempted from the application of the IRA, which regulates the formation of trade unions, the determination of collective bargaining agents and the relations between workers and employers. ***In these circumstances, the Committee requests the Government to clarify the extent to which the rights provided by the Convention are guaranteed to workers in EPZs following the mentioned legislative changes. The Committee also requests the Government to consider extending the application of the industrial relations laws, as amended in line with the Committee's comments, to EPZs, or to take any other necessary measures to ensure that EPZ workers can fully benefit from all the rights provided by the Convention.***

Article 1 of the Convention. Protection against acts of anti-union discrimination. Banking sector. The Committee had previously requested the Government to repeal the penal sanctions for the exercise of trade union activities during office hours (imprisonment and/or fines) provided under section 27-B of the Banking Companies Ordinance, 1962. In its previous comment, the Committee noted the

Government's indication that it was agreed in a tripartite meeting to permit only those union activities during office hours that relate to redress of grievances and it therefore reiterated its request. The Committee notes the Government's statement that: (i) the Ministry of OPHRD makes persistent efforts to amend section 27-B and is engaged with other ministries and relevant stakeholders, including social partners, to reach consensus on the subject; and (ii) to accelerate these efforts, a meeting of the concerned stakeholders was organized by the Ministry of Finance and the dialogue on the subject continues. Recalling that for the past 19 years it has been requesting the Government to repeal the penal sanctions provided for in section 27-B, the Committee notes with ***deep concern*** the lack of any substantial progress in this regard. ***The Committee therefore urges the Government once again to take all the necessary measures to repeal section 27-B so as to enable workers in the banking sector to exercise trade union activities, with the consent of the employer, within working hours.***

Article 4. Collective bargaining. The Committee previously noted that, according to section 19(1) of the IRA and section 24(1) of the BIRA, KPIRA, PIRA and SIRA, if a trade union is the only one in the establishment or group of establishments (or industry in the BIRA, KPIRA, PIRA and SIRA) but it does not have at least one third of the employees as its members, no collective bargaining is possible at the given establishment or industry. The Committee recalled that the determination of the threshold of representativeness to designate an exclusive agent for the purpose of negotiating collective agreements which are destined to be applied to all workers in a sector or establishment is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. The Committee therefore urged the Government to take the necessary measures to ensure that if there is no union representing the required percentage to be designated as the collective bargaining agent, collective bargaining rights are granted to the existing unions, jointly or separately, at least on behalf of their own members.

The Committee also noted that the provisions on the determination of collective bargaining units gave competence in this regard to the National and Provincial Industrial Relations Commission (sections 62 of the IRA and 30 of the BIRA), the Labour Appellate Tribunal (section 25 of the KPIRA and PIRA) or the Registrar (section 25 of the SIRA) and that previously certified unions could lose the status of collective bargaining agents as a result of a decision in which the parties played no role. The Committee requested the Government to ensure that the necessary measures are taken by the federal and provincial governments to amend the legislation, so that the determination or modification of the collective bargaining unit is made by the social partners, since they are in the best position to decide the most appropriate bargaining level.

The Committee further noted with interest that, in the absence of a collective bargaining agent, worker members of work councils were chosen through an election but considered that even if a union could persuade workers to vote for its members to be represented in several entities (shop stewards, work councils and joint management boards), there was a risk of the union being undermined by workers' representatives. Having noted that a reform of the Provincial Tripartite Consultation Committees was being considered, the Committee requested the Government to ensure that both the federal and provincial governments guarantee that the existence of elected workers' representatives is not used to undermine the position of the trade unions concerned or their representatives and to submit a copy of the Rules providing the notice and procedure for the election of workers' representatives to work councils.

Regretting that the Government does not provide any updated information in relation to the above matters concerning collective bargaining, the Committee reiterates its requests in this regard and expects the Government to make every effort to advance on the outstanding issues, both by the federal and the provincial governments, so as to achieve compliance with the Convention, and to provide detailed information on the progress made.

Collective bargaining in practice. In its previous comment, the Committee requested the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements, as well as on any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention. The Committee notes that the Government simply states that the Ministry of OPHRD is in close contact with the respective provincial departments authorized to collect and compile the required information about collective bargaining under their jurisdiction, which will be provided in its next regular report. ***The Committee trusts that the Government will be in a position to provide detailed information in this respect in its next report.***

The Committee expects that all necessary measures will be taken to bring the national and provincial legislation into full conformity with the Convention and requests the Government to provide detailed information on all steps taken or envisaged in this respect. The Committee recalls that the ILO project financed by the Directorate-General for Trade of the European Commission to support GSP+ beneficiary countries to effectively implement international labour standards is being implemented in Pakistan and trusts that the project will assist the Government in addressing the issues raised in this observation.

Papua New Guinea

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Legislative matters. In its previous comments, the Committee had noted the Government's indication that the new Industrial Relations Bill (IRB 2014) was undergoing a vetting process at the Government Executive Committee and the Central Agency and Consultative Council to harmonize it with other relevant legislation and that the revised Bill should be presented to Cabinet before November 2016 or early 2017 and consultations on the matter should be held in the national Tripartite Consultative Council. ***Noting that the last information sent by the Government through an anticipated report dates back to 5 January 2017 and that its 2018 report was not received, the Committee hopes that the Government will provide in its next report information on the outcome of these consultations and whether the IRB 2014 has been enacted.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee had previously requested the Government to provide information on the measures taken to ensure effective implementation of the prohibition of anti-union discrimination in practice and to provide statistics on the number of anti-union discrimination complaints brought before the competent authorities, their follow-up, sanctions and remedies imposed. ***Noting that the Government did not provide specific information in this regard, the Committee reiterates its previous request.***

Article 4. Promotion of collective bargaining. Power of the Minister to assess collective agreements on the grounds of public interest. The Committee had previously requested the Government to take the necessary measures to bring section 50 of the Industrial Relations Bill (2011) into conformity with the principle that the approval of a collective agreement may only be refused if it has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. While observing once again that the Government does not provide a copy of the Bill, the Committee takes note of the Government's indication that section 50 of the IRB 2014 has been amended and that under the revised version the Attorney-General is not entitled to appeal against the making of an award on the grounds of public interest.

Compulsory arbitration in cases where conciliation between the parties has failed. While recalling that it had noted the conformity of section 78 of the IRB 2014, as described by the Government, with the

Convention, the Committee notes that the Government has still not clarified the content of section 79 of the IRB 2014.

The Committee trusts once again that the Government, taking into account the Committee's comments, will ensure the full conformity of any revised legislation with the Convention. In this regard, the Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes and requests it to provide detailed information on the process of revision of the Industrial Relations Bill.

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

Philippines

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 20 and 29 September 2021, referring to matters addressed below, denouncing a deteriorating situation in the country and requesting the Committee to consider an out-of-cycle review of the application of the Convention by the Philippines. ***The Committee requests the Government to provide its reply thereto.***

Given the urgency of the matters and the questions of life, personal safety and fundamental human rights raised therein, as well as updated information on the Committee's previous observations submitted by the Government in June 2021, the Committee decided to proceed to an examination of the application of the Convention by the Philippines outside of the regular reporting cycle.

Action plan to implement the 2019 Conference Committee conclusions and achieve full compliance with the Convention. High-level tripartite mission. In its previous comment, the Committee noted the discussion that took place in the Conference Committee on the Application of Standards (Conference Committee) in June 2019 concerning the application of the Convention and observed that the Conference Committee called upon the Government to: (i) take effective measures to prevent violence in relation to the exercise of workers' and employers' organizations' legitimate activities; (ii) immediately and effectively undertake investigations into the allegations of violence in relation to members of workers' organizations with a view to establishing the facts, determining culpability and punishing the perpetrators; (iii) operationalize the monitoring bodies, including by providing adequate resources, and provide regular information on these mechanisms and on progress on the cases assigned to them; and (iv) ensure that all workers without distinction are able to form and join organizations of their choosing in accordance with Article 2 of the Convention. The Committee further noted the Government's request for guidance on giving effect to these conclusions, expressed trust that, as soon as the situation so permitted, the Government would receive a high-level tripartite mission, as requested by the Conference Committee, and reminded the Government that, in the meantime, it could avail itself of the technical assistance of the Office, including in order to elaborate a plan of action, detailing progressive steps to be taken to achieve full compliance with the Convention.

The Committee notes the Government's indication that in an April 2021 communication to the ILO the Government expressed its intention to accept a high-level mission as a sincere gesture of its continuing commitment under international instruments and of its enduring partnership with the ILO in upholding the fundamental rights of workers. However, due to the ongoing global health crisis, the Government was not yet inclined to accept an in-person mission and considered conducting a virtual one. The Committee observes that due to the COVID-19 pandemic, the high-level tripartite mission has not yet taken place but that, in view of the Government's request for guidance in respect of the application of the 2019 Conference Committee's conclusions, a virtual exchange was organized by the Office in September 2021 between the Government, national social partners and designated representatives from the workers' and the employers' groups of the Conference Committee, in order to

clarify any outstanding confusion in respect of the Conference Committee's conclusions and to assist the Government and the social partners to take effective action for their implementation. The Committee notes that the report of the virtual exchange was circulated to all the parties that met and was submitted to the Committee by the ITUC, as additional observations to its earlier submission requesting an out-of-cycle examination of the application of the Convention, and was also transmitted to the Government. The Committee observes that the report of the virtual exchange concluded that despite measures undertaken and further commitments by the Government, as well as the existence of a number of institutions and strong support from the ILO and other partners, the discussion failed to bring forward evidence of tangible progress on the four areas of concern highlighted by the Conference Committee and that the Government should therefore adopt a time-bound plan of action in consultation with the social partners and with support from the ITUC and the International Organisation of Employers (IOE) to address each of the four areas of concern. The report also emphasized that the virtual exchange was not a replacement for a mission, that there continued to be a pressing need for a high-level tripartite mission to travel to the Philippines and that it would be critical for the mission to take place before the 2022 International Labour Conference, taking into account the sanitary conditions prevailing in the country. ***In these circumstances and given the continuing urgency of the matters raised, as denounced by the trade unions below, the Committee calls on the Government to elaborate a plan of action, in consultation with the social partners, detailing progressive steps to be taken to implement the conclusions of the 2019 Conference Committee and to achieve full compliance with the Convention. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard. The Committee also expects that the high-level tripartite mission will be able to visit the country before the next International Labour Conference, taking into account the sanitary conditions in the country.***

Civil liberties and trade union rights

2019 and 2020 ITUC observations and 2019 Education International (EI) observations. In its previous comment, the Committee noted with deep concern the grave allegations of violence and intimidation of trade unionists communicated by the ITUC in 2019 and 2020 and EI in 2019, as well as the Government's detailed reply thereto, and expressed trust that all of these allegations would be duly investigated and perpetrators punished to effectively prevent and combat impunity. The Committee notes that the Government reiterates previously provided information on the measures taken to address the above allegations and on the domestic remedies available to victims of human rights violations and adds minor updates on the status of the investigations in some of the cases. With regard to the allegations of red-tagging, it indicates that Senate Bill No. 2121 (seeking to fix legal gaps and institutionalize a system of accountability by criminalizing red-tagging and providing penalties as deterrence thereto) was filed in March 2021. ***The Committee welcomes this initiative and requests the Government to provide information on the progress made in the adoption of Senate Bill No. 2121. It expects that the grave allegations of violence and intimidation referred to above will be duly investigated and perpetrators punished to effectively prevent and combat impunity and requests the Government to provide updated information in this respect.***

2020 joint observations of EI, the Alliance of Concerned Teachers (ACT) and the National Alliance of Teachers and Office Workers (SMP-NATOW). In its previous comment, the Committee requested the Government to provide its reply to the 2020 joint EI, ACT and NATOW observations, denouncing extrajudicial killings of eight trade unionists in the education sector and other serious violations of civil liberties, as well as challenges in the application and implementation of the right to freedom of association. The Committee takes due note of the Government's reply in this regard and ***regrets*** to observe that, while quite extensive, it is limited to general statements on the domestic remedies available against violations of human and trade union rights, to refuting the allegations that unionism is equated to communism and to indicating in general that the cases were subjected to monitoring by

the Regional Tripartite Monitoring Bodies (RTMBs) and proceed under the regular process of criminal investigation, prosecution and litigation. ***In view of the lack of details on the progress made in investigating the concrete and serious allegations of violence set out in detail in the 2020 joint EI, ACT and NATOW observations, the Committee expects the Government to ensure that all measures are being taken to address these specific incidents, in particular that they are properly investigated, so as to establish the facts, determine culpability and punish the perpetrators. The Committee requests the Government to provide information on the measures taken in this respect and on the progress in investigations.***

New allegations of violence and intimidation. 2021 ITUC observations. The Committee notes that, in its latest communication, the ITUC denounces a severely deteriorating situation in the country since 2019, characterized by increased repression against the independent trade union movement and extreme violence against and persecution of unionists, including extrajudicial killings, physical attacks, red-tagging, threats, intimidation, harassment, stigmatization, illegal arrests, arbitrary detention and raiding of homes and union offices, as well as the Government's institutional failure to address these issues, exacerbating the culture of impunity. The ITUC also alludes to the adoption of additional measures, allegedly worsening the situation of trade unions in the country, including: the establishment of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC); the creation of the Joint Industrial Peace and Concern Office (now referred to as the Alliance for Industrial Peace and Program Office (AIPPO)) in export-processing zones; the adoption of the Anti-Terrorism Act, 2020; and abuse in the use of judicial search warrants. According to the ITUC, the above situation leads to a climate of pressure and fear, exposing workers engaged in trade union activities to imminent danger and undermining the ability of workers to exercise the rights guaranteed by the Convention.

The Committee notes with ***deep concern*** these grave allegations, as well as the following concrete incidents denounced and described in great detail by the ITUC: (i) the extrajudicial killing of ten trade unionists (some of whom were mentioned in previous observations of the trade unions); (ii) at least 17 cases of arrests and detention, in particular following police dispersal of a protest and police raids on union offices and unionists' homes (November–December 2020 and March 2021), as well as additional incidents of arrests and detention since 2019; (iii) 17 cases of red-tagging, intimidation and harassment, including against leaders and members of the ACT, the Kilusang Mayo Uno (KMU), the Philippines National Police Non-Uniformed Personnel Association Inc. (PNP-NUPAI) and other workers' organizations; and (iv) 12 cases of forced disaffiliation campaigns and seminars, including for public school teachers, workers at a beverage producing company and palm oil plantation workers. The Committee observes in this regard that, when examining Case No. 3185 concerning the Philippines, the Committee on Freedom of Association also expressed deep concern at the gravity of similar allegations, as well as their repeated and prolonged nature, resulting in a climate of violence and impunity with an extremely damaging effect on the legitimate exercise of trade union rights in the country, and expressed trust that the Government would prioritize investigation into these serious incidents (see 396th Report, November 2021, Case No. 3185, paragraphs 524–525 and 528(b)). ***In these circumstances, given the extreme seriousness of the allegations and their repeated nature, the Committee urges the Government to take all necessary measures to address the issues of violence and intimidation raised and, in particular, to conduct prompt and effective investigations into all allegations of extrajudicial killings of and assaults against trade unionists, so as to determine the circumstances of the incidents, including any links to trade union activities, determine culpability and punish the perpetrators. The Committee requests the Government to provide detailed information in this respect.***

Pending cases of alleged killings of trade union leaders. For several years, the Committee has been requesting the Government to ensure that the investigations into the killings of trade unionists Rolando Pango, Florencio "Bong" Romano and Victoriano Embang are completed to shed full light on the facts and the circumstances in which such actions occurred and, to the extent possible, determine responsibilities, punish the perpetrators and prevent the repetition of similar events. ***Observing with***

regret that the Government simply reiterates that the cases are being handled through the regular course of criminal investigation and prosecution, without providing details as to any progress made, the Committee reiterates its previous request and expects the Government to be in a position to report substantial progress in this regard.

Monitoring mechanisms. In its previous comment, the Committee requested the Government to take the necessary measures to ensure that all of the existing monitoring mechanisms can function properly and efficiently, so as to contribute to effective and timely monitoring and investigation of allegations of extrajudicial killings and other forms of violence against trade union leaders and members. The Committee notes the Government's indication that: (i) to help ensure that the RTMBs are able to carry out their mandate, mediator-arbiters from the Department of Labour and Employment (DOLE) regional offices were designated to act as focal persons in their respective RTMBs and are tasked to assist in the processing of cases so as to provide more responsive and inclusive reports; (ii) as for the Tripartite Validating Teams, their establishment is case-based when there is a need for further validation or review, but in addition to the previously mentioned challenges concerning security of its members, it is currently not advisable to create such teams given the health risks relating to the COVID-19 pandemic; (iii) the operationalization of the Administrative Order No. 35 Inter-Agency Committee (AO35 IAC) was affected by leadership and administrative changes within the Department of Justice and the secretariat has also undergone leadership changes, as a result of which it is now more active in engaging with tripartite monitoring bodies and the concerned groups and organizations in the deliberation of cases; (iv) the Secretary of Labour and Employment is an observer in AO35 IAC meetings, as well as its technical working group (TWG) meetings; (v) the AO35 secretariat welcomes ILO training programmes which aim at incorporating a labour perspective into the work of the AO35 secretariat and the TWG and at showing the relevance of the principles of freedom of association and collective bargaining for their work; (vi) one of the trainings resulted in the identification of strategies for better handling of cases involving workers and trade unions, which may be considered as policy recommendations in the ongoing review of the AO35 operational guidelines; and (vii) the investigation into the case of Dennis Sequeña, previously referred to by the Government and the social partners, was closed due to difficulties in convincing the family of the victims to cooperate but the AO35 task force will look into other avenues to continue its investigation. While taking due note of the Government's information, the Committee ***regrets*** that despite a number of initiatives undertaken, trade unions continue to raise concerns as to numerous allegations of violence perpetrated against trade union members for which the presumed perpetrators have not yet been identified and the guilty parties punished. ***In view of the above, the Committee trusts that the review of the operational guidelines of the monitoring mechanisms will be completed without delay and, together with the above adjustments, will contribute to ensuring the full operationalization of all existing monitoring mechanisms so that they can function properly and efficiently. Further noting the call of the trade unions for full operationalization and strengthening of the existing monitoring and investigative mechanisms, the Committee requests the Government to continue to take all necessary measures to this effect, including allocating sufficient resources and staff and providing all necessary security to these personnel, in order to ensure effective and timely monitoring and investigation of all pending labour-related cases of extrajudicial killings and other violations against trade union leaders and members. The Committee also requests the Government to continue to provide detailed information on the progress made by the existing monitoring mechanisms in ensuring the collection of the necessary information to bring the pending cases of violence to the courts.***

Measures to combat impunity. Training. The Committee previously encouraged the Government to continue to provide regular and comprehensive training to all concerned State actors in relation to human and trade union rights, as well as on the collection of evidence and the conduct of forensic investigation. The Committee notes the Government's indication that several ongoing projects, including the EU-GSP Trade for Decent Work Project, allow for participation of various government

offices, aim at strengthening social dialogue and better application of international labour standards and focus on the principles of freedom of association and the right to collective bargaining, as well as occupational safety and health in the context of the COVID-19 pandemic. According to the Government, these projects involve activities that will help improve the monitoring and investigative mechanisms for resolution of labour-related cases and improve national laws and policies on freedom of association and collective bargaining based on ILO Conventions. ***Welcoming the above information, the Committee encourages the Government to continue to pursue its efforts in terms of training and capacity-building of State actors, with the aim of increasing the investigative capacity of the concerned officials and providing sufficient witness protection, and ultimately contributing to combating impunity.***

Measures to combat impunity. Pending legislative matters. The Committee previously noted that the Committee on Freedom of Association referred a number of legislative aspects to this Committee and requested the Government to provide information on the progress made in: (i) the adoption of the Bill concerning enforced and involuntary disappearances; and (ii) the previously announced review by the Supreme Court and the Commission on Human Rights of the witness protection programme on the writ of *amparo* adopted in 2007, as well as of the application of the Anti-Torture Act No. 9745 and of Act No. 9851 on crimes against international humanitarian law, genocide and other crimes against humanity. The Committee notes the Government's indication that to date, House Resolution No. 392 (calling for justice for the victims and to urge the House Committee on Human Rights to investigate, in aid of legislation, the spate of enforced disappearances in the country) was filed in October 2019 and is currently pending with the Committee on Rules. The Government adds that in March 2021, the Supreme Court announced a five-week information gathering on the extent of threats against lawyers, after which it will decide on the next course of action. ***Taking due note of the above, the Committee requests the Government to continue to provide information on any developments with respect to all pending legislative matters referenced above.***

Anti-Terrorism Act. In its previous comment, having noted the concerns expressed by the ITUC over the adoption of the Anti-Terrorism Act, 2020, which it alleged aimed at silencing dissenting voices and further entrenched State repression and hostility against workers and trade unionists, the Committee requested the Government to provide information on any aspects of implementation of the Act that affect trade unionists or trade union activities. ***Observing with concern that, according to the information contained in the ITUC communication, the law has been used to label trade unions, such as COURAGE and ACT, as terrorist organizations, the Committee reiterates its previous request in this regard and requests the Government to take any necessary measures to ensure that the Act does not have the effect of restricting legitimate trade union activities.***

Legislative issues

Labour Code. In its previous comments, the Committee had been noting the numerous amendment bills pending before Congress over many years and in various forms with a view to bringing the national legislation into conformity with the Convention. ***Considering that the Government does not provide any updated information and fails to show any substantial progress in the adoption of the numerous amendment bills, the Committee reiterates all of its previous comments and requests in this respect and expects the Government to be in a position to report progress on this matter.***

The Committee further reiterates its comments contained in the 2020 request addressed directly to the Government.

Republic of Korea

Workers' Representatives Convention, 1971 (No. 135) (ratification: 2001)

The Committee notes the observations from the Federation of Korean Trade Unions (FKTU), the Korean Confederation of Trade unions (KCTU) and the Korea Enterprises Federation (KEF), which were received with the Government's report on 8 September 2021, as well as the Government's reply to them. The Committee recalls that it previously noted the observations received on 1 September 2014 from the International Trade Union Confederation (ITUC) alleging violations of trade union rights in practice, including anti-union dismissals affecting the Korean Government Employees Union and the Korean Railway Workers' Union. The Committee takes note of the Government's reply thereto, in particular the information on the process of resolution of the conflicts in both cases and the reinstatement of dismissed union members.

Article 2 of the Convention. Facilities granted to workers' representatives. In its previous comments, the Committee had questioned a number of provisions of the Trade Union and Labour Relations Adjustment Act (TULRAA) prohibiting as an unfair labour practice the payment of wages by an employer to full-time trade union officials, and had requested the Government to take measures to amend them in a way which allowed the parties to determine through free and voluntary negotiation the issue of the payment of wages to full-time trade union officials. The Committee notes with ***interest*** that the TULRAA was amended on 5 January 2021 with the deletion of such provisions. Additionally, the Time-off System Deliberation Committee was transferred to the Economic, Social and Labour Council (ESLC), where members representing public interest are not recommended by the Government, thus strengthening the representation of the labour and management in the determination of the time-off system. The Time-off System Deliberation Committee decided that the time-off limit would vary according to the size and geographical distribution of a trade union. Each workplace would ultimately fix the wage within the set time-off limit. The Committee notes the observations of the KEF indicating that, with the revised TULRAA, the union activities subject to the paid time-off are now determined by collective bargaining agreements. Those activities include consultation and negotiation with employers, grievance settlement, and industrial safety activities prescribed by the TULRAA and other labour laws, as well as affairs of maintaining and managing a trade union to develop healthy labour management relations.

The Committee further notes the observations from the FKTU and the KCTU raising some concerns in relation to the operation of the time-off system despite the recent amendment of the TULRAA enabling trade union officers to perform trade union duties during a pre-determined maximum working hours without loss of wage. The trade unions regret in particular the imposition of a maximum time-off limit, and the fact that paying wages exceeding this maximum time-off limit may be punished as an unfair labour practice according to the law. In the trade unions' view, as such, the system still goes against the principle of autonomous decision and self-regulation by labour and management. In addition, the KCTU points out that recent changes on legislation, notably on safety in the workplace or on the prohibition against harassment at the workplace, has widened the scope of activities of workers' representatives. Consequently, the time-off system should be redesigned to take into account activities that should be performed during working hours by workers' representatives. In conclusion, in the trade unions' view, the system needs to be improved to let labour and management freely and voluntarily determine the maximum time-off limit.

While noting the positive developments in this regard, the Committee invites the Government to continue to consult with the most representative workers' and employers' organizations on ways to improve the time-off limit system, including on the concerns raised by the FKTU and the KCTU, so that: (i) the facilities afforded to workers' representatives enable them to carry out their functions promptly and efficiently; and (ii) the capacity of the social partners to freely determine through collective bargaining the facilities granted to workers' representatives is fully recognized. The Committee requests the Government to provide information on any developments in this respect. In the meantime,

the Committee requests the Government to provide practical information on the manner in which the maximum time-off limits are applied under the new system, on the number of complaints of unfair labour practices for payment of wage exceeding the maximum time-off limit, and the sanctions imposed.

Furthermore, the Committee notes that, according to the FKTU, the workers' representative system is characterized by the absence of regulations and sanctions concerning the method and procedure for the election of workers' representatives, the legal status and authority of workers' representatives, or concerning employers' interference in elections and activities of workers' representatives. The FKTU indicates that the Government and the social partners have agreed to improve the related laws and institutions under the Committee for the Improvement of Laws, Measures, and Practices for Labour Relations Development under the Economy, Society, and Labour Council. The Committee notes, from the Government's report, that it is committed to sustain its efforts to strengthen the protection of the rights and protection of workers' representatives, including through the Tripartite Agreement on Improving the Workers' Representative System (19 February 2021). The Government asserts in particular that a bill reflecting the results of discussion has been submitted and that the new legislation will include matters regarding the election of workers' representatives via direct, secret, and unsigned voting, the recognition of hours dedicated to union activity as working hours, and establishing a three-year term for workers' representatives. ***Welcoming the indication that a new legislation will specify the facilities and protection afforded to workers' representatives and hoping that such legislation will enable them to carry out their functions promptly and efficiently, the Committee requests the Government to continue providing information on any developments in this regard.***

Lastly, the Committee notes with ***interest*** the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), registered in April 2021. The Committee is hopeful that the ratification of these fundamental Conventions will contribute positively to the implementation of the present Convention.

Republic of Moldova

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)

The Committee notes the observations of the National Trade Union Confederation of Moldova (CNSM) received on 21 December 2017 referring to the issues dealt with by the Committee below.

Articles 1 and 2 of the Convention. Sanctions against acts of anti-union discrimination and interference. For a number of years, the Committee had been requesting the Government to take measures aimed at strengthening the existing sanctions so as to ensure effective protection against acts of anti-union discrimination and interference. In its previous comment, the Committee noted the Government's indication that the Contravention Code was amended in 2016 so as to increase the value of the conventional unit used to calculate the amount of fines from 20 to 50 Moldovan Leu (MDL) (section 34(1) of the Code). The Committee further noted that: section 54(2) of the Code, dealing with various forms of discrimination in employment and occupation, provides for fines ranging from 60 to 240 conventional units (US$170–685); section 55(1) dealing with violation of labour legislation, provided for fines ranging between 60 and 270 conventional units (up to US$770); and section 61 dealing with obstruction of workers' right to establish and join trade unions, provided for fines ranging from 24 to 42 conventional units (up to US$120). While welcoming the increase of the value of the conventional unit, the Committee noted that the CNSM considered that the fines provided for obstruction of workers' right to establish and join trade unions were not sufficiently deterrent. The Committee therefore requested the Government to review the above fines and other types of sanctions in consultation with the social partners, in order to ensure effective protection against acts of anti-union discrimination and

interference. ***Regretting that the Government's report does not address this issue, the Committee reiterates its previous request and asks the Government to indicate all progress made in this regard.***

Article 4. Compulsory arbitration. The Committee had previously requested the Government to take the necessary measures to amend section 360(1) of the Labour Code so as to ensure that referral of a collective bargaining dispute to the courts is possible only upon request by both parties to the dispute, or in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term and acute national crisis. The Committee recalls in this respect that it had noted the Government's indication that a tripartite working group was working on a draft law for amicable settlement of collective labour disputes, which would address this issue. While noting the CNSM indication that the tripartite working group has not yet achieved any results and that the draft has not been finalized, the Committee noted the Government's indication that the process of adoption of the draft law was stopped altogether with the adoption, in July 2015, of the Law on Mediation. The Committee noted, however, that the Law on Mediation did not deal with the issue at hand. ***In the absence of any new information, the Committee reiterates its previous request to amend section 360(1) of the Labour Code, in consultation with the social partners, so as to bring it into conformity with the Convention and promote free and voluntary collective bargaining. The Committee requests the Government to provide information on the progress made in this regard.***

Collective bargaining in practice. ***The Committee requests the Government to provide information on the number of collective agreements signed and in force in the country and to indicate the sectors and levels concerned, as well as the number of workers covered.***

Romania

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1958)

The Committee notes the observations of the European Transport Workers' Federation and the International Transport Workers' Federation received on 29 July 2021 alleging violations of a collective labour agreement. ***The Committee requests the Government to provide its comments thereon.***

The Committee also notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2021 concerning matters examined by the Committee in the present comment. It further notes the observations of the International Organisation of Employers (IOE) received on 8 September 2021 concerning the discussions that took place at the Conference Committee on the Application of Standards with respect to the application of the Convention.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the discussion which took place in June 2021 in the Conference Committee on the Application of Standards (the Conference Committee) concerning the application of the Convention by Romania. The Committee observes that the Conference Committee, after noting that there were significant compliance issues regarding the Convention in law and practice with respect to the protection against anti-union discrimination and the promotion of collective bargaining, requested the Government to: (i) ensure adequate protection against acts of anti-union discrimination in law and practice in compliance with the Convention; (ii) collect detailed information on the number of cases of anti-union discrimination and employer interference brought to the various competent authorities; the average duration of the relevant proceedings and their outcome; how the burden of proof is applied in such cases affecting trade union officers as well as the sanctions and remedies applied in such cases; (iii) ensure, in law and practice, that collective bargaining with the representatives of non-unionized workers only takes place where there are no trade unions in place at the respective level; and (iv) amend

the law so as to enable collective bargaining for public servants not engaged in the administration of the State in line with the Convention. The Conference Committee also requested the Government to: (i) provide information on all of the above points to the Committee of Experts before its next session in 2021; and (ii) accept an ILO technical advisory mission before the next International Labour Conference.

The Committee observes that in its report the Government essentially reiterates the information already provided to the Conference Committee.

Articles 1, 2 and 3 of the Convention. Effective protection against acts of anti-union discrimination and interference. In its previous comments, the Committee requested the Government to: (i) take measures to amend the legislation in order to guarantee that acts of anti-union discrimination are subject to specific and dissuasive sanctions; (ii) indicate how the burden of proof is placed in cases of allegations of anti-union discrimination affecting trade union officers; (iii) provide detailed statistical information on the number of cases of anti-union discrimination and employer interference brought to the various competent authorities, the average duration of the relevant proceedings and their outcome, as well as the sanctions and remedies applied in such cases; and (iv) ensure that anti-union practices, and in particular preventive measures, would be subject to tripartite discussions. The Committee notes that the Government indicates that, following consultations with the social partners, the Labour Code was amended in 2020 by Law 151/2020 to ensure a proper recognition of harassment, intimidation and victimization of employees and their representatives, including in the exercise of legitimate trade union rights and activities, with dissuasive sanctions applied effectively. It indicates that: (i) section 5, paragraph 2 of the Labour Code, as amended, explicitly prohibits direct or indirect discrimination based on membership or trade union activity; (ii) section 59(a) of the Labour Code was amended to explicitly prohibit dismissal based on trade union affiliation or activity; and (iii) section 260(1)(r) of the Labour Code, as amended, provides that non-compliance with the provisions of section 5, paragraphs (2)–(9), and of section 59(a) is sanctioned with fines between 1000 LEI and 20,000 LEI (equivalent to US$229 and 4,575 respectively). Regarding the burden of proof in cases of union discrimination against union leaders, the Government indicates that, as provided for in section 272 of the Labour Code, the burden of proof with regard to labour disputes rests with the employer. The Committee notes that in the ITUC's view, section 260 of the Labour Code does not permit verification of the extent to which the legislation is effective and sufficiently dissuasive. The Committee also takes note of the Government's indication that no fines were applied for violations of the law related to union membership or activity between January 2020 and April 2021. The Committee finally notes that, at the discussion held at the Conference Committee, the Government indicated that the Ministry of Justice manages the courts databases and that data is collected with a particular nomenclature that did not allow the Government to identify the type of statistical information requested by the Committee.

The Committee takes note of the information provided by the Government. As regards sanctions, the Committee recalls the importance of legislation prohibiting acts of anti-union discrimination to be accompanied by dissuasive sanctions and rapid and effective procedures. In this respect, the Committee considers that the amount of the fines established in the Labour Code might not be sufficiently dissuasive, particularly for large enterprises. The Committee also recalls that, with respect to anti-union dismissals the reinstatement with retroactive compensation constitutes, in the absence of preventive measures, the most effective remedy. The Committee finally recalls the importance of statistical information for the Government to fulfil its obligation to prevent, monitor and sanction acts of anti-union discrimination. ***Based on the above**, **the Committee requests the Government to: (i) take measures, after consultation with the representative social partners, to strengthen the existing sanctions in cases of anti-union discrimination in order to ensure their effectiveness and dissuasiveness, particularly for large enterprises; (ii) indicate whether reinstatement is an available remedy in cases of dismissal based on trade union affiliation or activity; and (iii) gather and communicate information on the number of cases of anti-union discrimination and employer interference brought to the various competent authorities, the average duration of the relevant***

proceedings and their outcome, as well as the sanctions and remedies applied in such cases. As mentioned in its previous comments, the Committee further requests the Government to ensure that anti-union practices, and in particular preventive measures in this respect, will be subject to tripartite discussions.

Article 4. Promotion of collective bargaining. The Committee notes that Case No. 3323 concerning, inter alia, allegations of shortcomings and gaps in the national legislation with respect to collective bargaining was examined by the Committee on Freedom of Association (CFA) (see 393rd Report, March 2021). The Committee notes that the CFA referred to it the legislative aspects of the case, related to issues that have been the subject of comments by this Committee since the adoption of the Social Dialogue Act (SDA) in 2011.

Collective bargaining at the company level. In its previous comments, against the background of a sharp decline in collective bargaining coverage in the country following the adoption of the SDA, the Committee noted that a number of aspects of the SDA and its implementation raised issues of compatibility with the Convention. The Committee noted in particular the high representativeness threshold required to negotiate at company level (50 per cent plus one of the workers of the company) and the fact that the SDA allowed elected workers' representatives to bargain collectively for the totality of workers of the company. In its last comment, while noting the Government's indication that, following a 2016 amendment to section 134.2 of the law, negotiation with elected workers' representatives was now only possible in the absence of a trade union, the Committee had noted with concern the statistical data provided by the ITUC according to which 86 per cent of all collective agreements signed were by elected workers' representatives and only 14 per cent by trade unions. On that basis, the Committee had requested the Government to amend the threshold applicable to negotiations at the company level so as to effectively promote collective bargaining, to clarify whether the negotiating powers granted to the elected workers' representatives existed only when there is no trade union and to provide its comments on the statistics provided by the ITUC.

As regards the representativeness thresholds established by the legislation with respect to collective bargaining at the company level, the Committee notes that, in its replies to the CFA, the Government clarified that voluntary bargaining is not conditioned by the representativity of the organizations since minority unions have the right to bargain collectively based on mutual recognition and can conclude collective agreements applicable to members of the signatory parties. The Committee notes the ITUC observations in this respect, according to which, while the Government states that nothing prevents trade unions from negotiating for their members at the company level, given their lack of representativeness, the agreements reached have no erga omnes effect. With regard to the impact of negotiations conducted by elected workers' representatives on the right to collective bargaining recognized by the Convention to trade unions, the Committee notes that the Government refers to a draft revision of the SDA currently being adopted but does not comment on the ITUC's observations that the vast majority of company collective agreements were still signed by elected workers' representatives to the detriment of trade unions. The Committee notes in this respect that, in its 2021 observations, the ITUC adds that: (i) while the Government states that collective bargaining through elected representatives is only possible in companies that do not have a representative union, the fact that the required representativeness threshold is 50 per cent plus one means in practice that in the majority of companies it is the elected representatives who negotiate instead of the unions who do not reach that threshold; (ii) elected representatives have concluded over 92 per cent of collective agreements in the private sector; and (iii) the procedure for electing representatives does not allow trade unions to present lists when they are affiliated to a federation at the branch level.

The Committee recalls that, under the terms of the Convention, collective bargaining with non-union actors should only be possible when there are no trade unions at the respective level. The Committee also recalls that, by virtue of *Article 4* of the Convention, the Government has the obligation to effectively promote free and voluntary collective bargaining in a manner appropriate to national

conditions. ***Expressing its concern at the persistent indications of a very low level of bargaining coverage and noting the recommendations of the Committee on Freedom of Association in Case No. 3323, the Committee requests the Government to take the necessary measures to promote collective bargaining between workers' and employers' organizations and to ensure that the existence of elected workers' representatives is not used to undermine the position of the workers' organizations concerned. In this regard, the Committee specifically requests the Government to: (i) specify how the mutual recognition between an employer and a minority trade union mentioned by the Government takes place in practice; (ii) provide information on the number of collective agreements concluded at the enterprise level, indicating those concluded by minority trade unions on behalf of their own members; (iii) clarify whether, under section 134(2) of the SDA, the negotiating powers granted to the elected workers' representatives exist only when there is no trade union at the respective level; and (iv) take the necessary measures to ensure that agreements concluded with elected representatives prior to the 2016 amendment to the SDA do not have the effect of continuing to undermine the position of trade unions.***

Collective bargaining at the sectoral and national levels. The Committee recalls that in its previous comments, it had taken note of the information from both the Government and the trade unions concerning the drastic decrease in the number of sectoral collective agreements following the changes introduced by the SDA. The Committee had therefore requested the Government to take the necessary measures to amend the representativeness thresholds so as to effectively promote collective bargaining at all levels. The Committee notes the absence of specific information from the Government in this respect. Taking due note of the conclusions and recommendations of the CFA in Case No. 3323, the Committee recalls once again that collective bargaining should be possible at all levels and that the Government has an obligation to ensure effective promotion of collective bargaining in a manner appropriate to national conditions. ***The Committee therefore reiterates its request to the Government to revise, in consultation with the representative social partners, the relevant thresholds and conditions in order to ensure that collective bargaining is effectively possible at all levels, including the sectoral and national levels. The Committee further requests the Government to provide information on the evolution of the number of collective agreements signed at the different levels above the enterprise level, as well as on the overall coverage of collective bargaining in the country.***

The Committee notes that the Government indicates that the Parliament is in the process of adopting a draft law revising the SDA with proposals and amendments made by trade unions and employers in relation to representativeness and collective bargaining and recalls in that regard that the ITUC had previously indicated that trade unions had not been consulted on the proposed amendments. ***The Committee requests the Government to ensure that the mentioned reform has been duly consulted with the representative social partners and that its content will take on board the present comments in order to give full effect to the Convention. The Committee further trusts that the ILO technical advisory mission requested by the Conference Committee will take place before the next International Labour Conference and that it will be able to take note of the progress achieved in this respect.***

Saint Lucia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1980)

The Committee notes with ***deep concern*** that the Government's report, due since 2015, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. The Committee recalls that it has been raising issues concerning the observance of the Convention in an observation and a direct request, with longstanding requests for information on the application of the rights guaranteed by the Convention with respect to fire service

personnel, prison staff and public servants. ***Not having received any additional observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation and direct request adopted in 2020 and urges the Government to provide a full reply thereto. To this end, the Committee recalls that the Government may avail itself of the ILO's technical assistance.***

[The Government is asked to reply in full to the present comments in 2022.]

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1980)

The Committee notes with ***deep concern*** that the Government's report, due since 2015, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal. The Committee recalls that it has been raising questions concerning compliance with the Convention in an observation, including a longstanding request for the Government to ensure that national legislation expressly recognizes the right to collective bargaining of prison staff and fire service personnel. ***Not having received any observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation adopted in 2020, and urges the Government to provide a full reply thereto. To this end, the Committee recalls that the Government can avail itself of the technical assistance of the ILO.***

Sao Tome and Principe

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1992)

Articles 1 and 2 of the Convention. Adequate protection against anti-union discrimination and interference. In its previous comments, the Committee requested the Government to take the necessary measures so as to ensure that its legislation imposes sufficiently effective and dissuasive sanctions against acts of anti-union discrimination and interference. The Committee notes the Government's indication that the new Labour Code adopted in 2019 has not introduced any changes in this respect but that it continues to contain a number of specific provisions that give application to *Articles 1* and *2* of the Convention. The Committee notes in this respect that the legislation in force: (i) comprehensively prohibits acts of anti-union discrimination and interference; (ii) contains rules for adjusting the burden of proof to facilitate the determination of the existence of anti-union discrimination; (iii) establishes enhanced protection for trade union representatives and candidates for the post of representatives against acts of anti-union discrimination; (iv) provides for the reinstatement of workers in the event of unlawful dismissal; and (v) establishes fines and a sanction of imprisonment in the event of acts of anti-union interference.

The Committee takes due note of these elements. It continues however to observe that the provisions of the Labour Code do not provide for specific sanctions for acts of anti-union discrimination affecting workers who are not trade union representatives or candidates for the post of representatives. ***The Committee therefore requests the Government to take the necessary measures to ensure that the legislation provides for effective and dissuasive sanctions against acts of anti-union discrimination that apply to all workers covered by the Convention. The Committee requests the Government to provide information on any progress made in this regard in its next report.***

Article 4. Promotion of collective bargaining. Absence of a legal framework for the exercise of the right to collective bargaining and absence of collective bargaining in practice. The Committee previously expressed concern at the absence of collective agreements in the country, highlighting that the absence of a legal framework could hamper the exercise of the right to collective bargaining. The Committee notes that while the Government states that its legislation still does not provide a legal framework for

collective bargaining, it acknowledges the need to facilitate the collective bargaining process in the country in order to reverse the current situation and indicates that meetings of the National Council of Social Concertation have taken place. ***The Committee once again requests the Government to take all the necessary measures, both in law and practice, to encourage and promote the development and utilization of collective bargaining, and requests it to provide information on the concrete steps taken in this regard.***

The Committee reiterates that the technical assistance of the Office is available to the Government in relation to the various matters raised in this observation.

Sri Lanka

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

The Committee had noted the observations of the ITUC received on 1 September 2019 alleging anti-union dismissals in a company and denouncing that anti-union discrimination and union-busting remain a major problem in the country, and had requested the Government to send its reply thereon. ***In the absence of information from the Government in this regard, the Committee reiterates its request.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. Effective and expeditious procedures. For many years, the Committee has referred to the fact that, in practice, only the Department of Labour can bring cases concerning anti-union discrimination before the Magistrate's Court and that there are no mandatory time limits for bringing cases before the Court. Recalling the importance of efficient and rapid proceedings to redress anti-union discrimination acts, the Committee had urged the Government to take the necessary measures to ensure that workers who are victims of anti-union discrimination can lodge a complaint before the judicial courts and had expressed the hope that the Industrial Disputes Act would be amended accordingly. The Committee notes that the Government once again indicates that the possibility for workers and trade unions to lodge complaints before the courts have been discussed for years at the National Labour Advisory Council (NLAC). Nevertheless, no consensus has been reached on this matter. The Government adds, on the other hand, that during the NLAC meeting held on 24 August 2021, the trade unions were requested by the Government to submit an alternate proposal in this regard and that once they submit a proposal, the Government will initiate a discussion on how to build consensus among stakeholders. The Committee takes due note of these elements. However, while highlighting that legislative reforms on labour issues should be done in consultation with the social partners and, as far as possible, be based on a tripartite consensus, the Committee underlines that it is ultimately the Government's responsibility to take the decisions necessary for the fulfilment of the State's international commitments undertaken through the ratification of international labour Conventions. ***The Committee therefore urges the Government to take the necessary measures to amend the Industrial Disputes Act to grant trade unions the right to bring anti-union discrimination cases directly before the courts. The Committee additionally requests the Government to provide information on the number of cases of anti-union discrimination examined by the courts as well as to indicate the duration of proceedings and the sanctions or remedies imposed.***

Article 4. Promotion of collective bargaining. Export processing zones (EPZs). The Committee had previously requested the Government to indicate the respective number of trade unions and employees' councils established in the EPZs and to continue informing on the number of collective agreements concluded by trade unions in the EPZs and on the number of workers covered by them in comparison with the total number of workers employed in the sectors covered. Recalling previous ITUC observations regarding the refusal to recognise the right of unions to bargain collectively in the EPZs, the Committee had also encouraged the Government to continue to take measures to promote collective bargaining in

the EPZs and requested it to provide information in this regard. The Committee notes the Government's indication that with the start of the COVID-19 pandemic, the Government established a tripartite Task Force to find amicable solutions to the issues faced by workers and employers. The Government states that major trade unions representing workers in the EPZs were included in the Task Force that contributed to sort out many labour issues. The Committee had also noted the Government's indication that the fact that only trade unions can engage in collective bargaining discourages the establishment of employee councils in the EPZs. In this regard, the Committee notes the Government's indication that there are 35 trade unions and 123 employees' councils in the EPZs. The Committee notes that the Government also indicates that since 2019 five collective agreements were concluded in the EPZs in the sectors of printing, rubber tires and tubes, personal care products and toiletries, and glassware products. These collective agreements cover respectively, 646 workers out of 2,577 workers employed in the sector of printing (25 per cent), 100 workers out of 1,663 workers in the sector of rubber tires and tubes (6 per cent), 515 out of 983 workers in the sector of personal care products and toiletries (52.3 per cent), and 480 out of 842 workers in the sector of glassware products (57 per cent). While taking due note of this information, the Committee observes that the number of employees' councils is significantly higher than that of trade unions and that there is a limited number of collective agreements in force in EPZs. ***The Committee therefore requests the Government to intensify the measures taken to promote collective bargaining in the EPZs and to inform about the measures taken to ensure that employees' councils do not undermine the position of trade unions. The Committee additionally requests the Government to continue to inform on the number of collective agreements concluded by trade unions in the EPZs, particularly in the clothing and textile sectors, and the number of workers covered by them in comparison with the total number of workers employed in this sector.***

Representativeness requirements for collective bargaining. In its previous comments, the Committee had requested the Government to review section 32(A)(g) of the Industrial Disputes Act, according to which no employer shall refuse to bargain with a trade union that has in its membership not less than 40 per cent of the workers on whose behalf the trade union seeks to bargain. The Committee notes that the Government reiterates that this matter was discussed within the NLAC and that both the employers and major trade unions do not agree to reduce the threshold, as it would create more divisions in the workplace and dilute the trade union representation and bargaining power. The Government also reiterates that the 40 per cent threshold does not prohibit any unions from participating in collective bargaining as it is possible for trade unions to enter into collective agreements by federating with other minority trade unions. On the other hand, the Committee notes the Government's indication that it is willing to consider the matter, but it cannot proceed due to the lack of consensus among stakeholders. Recalling that the ITUC had previously referred to cases where companies had refused to bargain collectively with unions that did not reach the 40 per cent threshold, the Committee emphasizes that the representativeness requirements set by legislation to be designated as a bargaining agent may bear a substantial influence on the number of collective agreements concluded and that the mentioned requirements should be designed in such a manner that they effectively promote the development of free and voluntary collective bargaining. ***Highlighting again that it is ultimately the Government's responsibility to take the decisions necessary for the fulfilment of the State's international commitments undertaken through the ratification of international labour Conventions, the Committee reiterates that it expects that the Government will take the necessary measures to review section 32(A)(g) of the Industrial Disputes Act in accordance with Article 4 of the Convention, in order to ensure that, if there is no union representing the required percentage to be designated as the collective bargaining agent, the existing unions are given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members. The Committee requests the Government to provide information in this respect and reminds the Government that it may avail itself of the technical assistance of the Office.***

Article 6. Right to collective bargaining for public service workers other than those engaged in the administration of the State. For many years, the Committee has referred to the fact that the procedures regarding the right to collective bargaining of public sector workers do not provide for genuine collective bargaining but rather establish a consultative mechanism. In this respect, the Committee notes that the Government reiterates that: (i) existing government structures do not require a collective bargaining system for public sector unions as trade unions have many venues to get their request fulfilled; (ii) there have been no requests from public sector trade unions to bargain collectively; and (iii) public sector workers are covered by a different set of laws which are more protective and they enjoy more benefits when compared to workers in the private sector. In this regard, the Committee recalls that to give effect to *Article 6* of the Convention a distinction should be drawn between, on the one hand, public servants engaged in the administration of the State, who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or autonomous public institutions, who should benefit from the guarantees provided for in the Convention (see the 2012 General Survey on the fundamental Conventions, paragraph 172). The Committee notes the Government's indication that it welcomes any ILO technical study on this matter as proposed by the Office to determine the necessity of such a proposal. ***Given the above and considering that section 49 of the Industrial Disputes Act excludes state and government employees from the Act's scope of application, the Committee reiterates its previous request to the Government to take the necessary measures to guarantee the right to collective bargaining of the public servants not engaged in the administration of the State so they can negotiate their conditions of work and employment. The Committee also trusts that the Government will avail itself of the technical assistance of the Office for this purpose.***

Turkey

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1952)

The Committee notes the observations of the Confederation of Public Employees Trade Unions (KESK), received on 1 September 2021 and the Government's reply thereon. The Committee further notes the observations of the Confederation of Turkish Trade Unions (TÜRK-IS), communicated with the Government's report. The Committee finally notes the observations of the Turkish Confederation of Employer Associations (TİSK), received on 7 September 2021, referring to the issues raised by the Committee below.

Scope of the Convention. In its previous comments, the Committee had noted that while the prison staff, like all other public servants were covered by the collective agreements concluded in the public service, this category of workers did not enjoy the right to organize (section 15 of the Act on Public Servants' Trade Unions and Collective Agreement (Act No. 4688)). Recalling that all public servants not engaged in the administration of the State or those who are not members of the armed forces or the police, defined in a restrictive manner, must enjoy the rights afforded by the Convention, the Committee requested the Government to take the necessary measures, including legislative review of section 15 of Act No. 4688, with a view to guaranteeing that the prison staff could be effectively represented by the organizations of their own choosing in negotiations which affect them. The Committee notes the Government's indication section 15 of the Act was drafted taking into account the provisions of Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Labour Relations (Public Service) Convention, 1978 (No. 151). While reminding its comments under Convention No. 87 concerning the right of prison staff to organize, the Committee recalls once again that under the terms of Convention No. 98, the right of collective bargaining can be denied only to members of the armed forces, the police and to public servants directly engaged in the administration of the State; the simple fact of being employed by the Government does not automatically exclude such workers from the rights

enshrined in the Convention. ***The Committee therefore once again requests the Government to take the necessary measures, including legislative review of section 15 of Act No. 4688, with a view to guaranteeing that the prison staff can be effectively represented by the organizations of their own choosing in negotiations which affect their rights and interests. The Committee requests the Government to indicate all progress made in this regard.***

The Committee had previously requested the Government to provide its comments with regard to the observation made by the Confederation of Public Servants Trade Unions (MEMUR-SEN) on the need to ensure freedom of association and collective bargaining rights to locum workers (teachers, nurses, midwives, etc.) as well as public servants who work without a written contract of employment. The Committee notes the Government's indication that Act No. 4688 applies to public servants, whereas locum workers do not fall with the scope of that law as they are not considered to be public servants. ***Recalling that locum workers as well as those employed in the public service without a written contract of employment should enjoy the rights enshrined in the Convention, the Committee requests the Government to provide detailed information on freedom of association and collective bargaining rights afforded to these categories of workers.***

Articles 1, 2 and 3 of the Convention. Massive dismissals in the public sector under the state of emergency decrees. The Committee recalls that in its previous comments, it had noted the information on the high number of suspensions and dismissals of trade union members and officials under the state of emergency and reiterated its firm hope that the Inquiry Commission and the administrative courts that review its decisions would carefully examine the grounds for the dismissal of trade union members and officials in the public sector and order reinstatement of the trade unionists dismissed for anti-union grounds. The Committee requested the Government to provide specific information on the number of applications received from trade union members and officials, the outcome of their examination by the Inquiry Commission and on the number and outcome of appeals against the negative decisions of the Commission concerning trade union members and officials. The Committee notes that according to the information provided by the Government, as of 28 May 2021, there were 126,674 applications submitted to the Inquiry Commission. Since 22 December 2017, the Commission delivered its decisions in respect of 115,130 applications, out of which, 14,072 were accepted for reinstatement and 101,058 were rejected while 11,544 applications are still pending. While taking note of the general statistics provided by the Government, the Committee ***regrets*** once again the absence of specific information on the number of trade union members and officials involved. The Committee notes with ***concern*** the high number of rejection cases (currently almost 88 per cent) and further ***regrets*** the absence of information regarding the number and outcome of appeals against the negative decisions of the Inquiry Commission concerning trade union members and officials. ***Reiterating that in line with Article 1 of the Convention, the Inquiry Commission and the administrative courts that review its decisions shall carefully examine the grounds for the dismissal of trade union members and officials in the public sector and order reinstatement of the trade unionists dismissed for anti-union grounds, the Committee once again urges the Government to provide detailed and specific information regarding the number and outcome of appeals against the negative decisions of the Inquiry Commission concerning trade union members and officials.*** Further in this respect, the Committee recalls that it had expressed its concern at the allegation of Education International (EI) that close to 75 per cent of the members of the Education and Science Workers Union of Turkey (EĞİTİM SEN) dismissed from the public service were still without employment. ***The Committee regrets that no information has been provided by the Government on this serious allegation and once again requests the Government to provide its comments thereon.***

Article 1. Anti-union discrimination in practice. The Committee recalls that in its previous comments it had noted numerous allegations of anti-union discrimination in practice despite the existence of a legislative framework aimed at protecting against anti-union discrimination. The Committee requested the Government to continue engaging with the social partners regarding

complaints of anti-union discrimination practices in both the private and public sectors. The Committee ***regrets*** that no new information has been provided by the Government in this respect and that, rather, the Government once again refers to the existing legislative framework, which, in its opinion, adequately protects against anti-union discrimination. The Committee notes that in its observations, the KESK alleges new cases of transfers and relocations of its members. The Committee notes the Government's indication that all transfers referred to by the KESK were necessitated by the requirements of the service and that any anti-union discrimination would be in breach of the national legislation. The Government points out that judicial remedies are available to all those concerned. ***Emphasizing that the guarantees enunciated in the Convention would remain a dead letter if the national legislation is not complied with in practice, the Committee therefore reiterates its previous request and asks the Government to provide information on the concrete steps taken to engage with the social partners on the issue of anti-union discrimination in practice.***

In addition, the Committee recalls that following up on the recommendations of the June 2013 Committee on the Application of Standards of the International Labour Conference, which requested the Government to establish a system for collecting data on anti-union discrimination in both private and public sectors, it has been requesting the Government to provide information on the measures taken to that end. The Committee notes that the Government reiterates that it is currently not possible to obtain reliable data on the cases of anti-union discrimination and points out the difficulties with carrying out data collection, which include the length of judicial processes and the need to make considerable arrangements in the records and databases of various institutions. While being fully cognisant of the difficulties referred to above, the Committee once again underlines the importance of statistical information for the Government to fulfil its obligation to prevent, monitor and sanction acts of anti-union discrimination. ***The Committee stresses the need to take concrete steps towards establishing the system for collecting such information and expects the Government to provide in its next report information on all measures taken to that end.***

Article 4. Promotion of collective bargaining. Cross-sector bargaining. In its previous comments, the Committee had noted that while cross-sector bargaining resulting in "public collective labour agreement framework protocols" was possible in the public sector, this was not the case in the private sector. It noted in this respect that pursuant to section 34 of Act No. 6356, collective work agreement may cover one or more than one workplace in the same branch of activity, thereby making cross-sector bargaining in the private sector impossible. The Committee had requested the Government to consider, in consultation with the social partners, the amendment of section 34 of Act No. 6356 to ensure that it did not restrict the possibility of the parties in the private sector to engage in cross-sector regional or national agreements should they so desire. The Committee notes that the Government reiterates that Act No. 6356 was drafted taking into account the views of the social partners and that it does not restrict collective bargaining to the level of workplace or one employer. The Government indicates in this respect that any change to the current arrangements can only result from the joint will of and demands from the social partners. The Committee notes the TİSK indication that collective agreements can cover a large number of work places at local, regional and national levels at the same branches and that in the TİSK opinion, the current regulation is appropriate and strengthens the industrial peace.

While taking note of these explanations, the Committee once again recalls that in accordance with *Article 4* of the Convention, collective bargaining should remain possible at all levels and that the legislation should not impose restrictions in this regard. The Committee recognizes that while the search for a consensus with regard to collective bargaining is important, it cannot constitute an obstacle to the Government's obligation to bring the law and practice into conformity with the Convention. ***The Committee therefore once again requests the Government to consider, in consultation with the social partners, the amendment of section 34 of Act No. 6356 to ensure that the parties in the private sector wishing to engage in cross-sector regional or national agreements can do so without impairment. It requests the Government to provide information on the steps taken in this regard.***

Requirements for becoming a bargaining agent. The Committee recalls that in its previous comments, it had noted that section 41(1) of Act No. 6356 set out the following requirement for becoming a collective bargaining agent: the union should represent at least 1 per cent of the workers engaged in a given branch of activities and more than 50 per cent of workers employed in the workplace and 40 per cent of workers of the enterprise to be covered by the collective agreement. Furthermore, the Committee recalls that legal exemptions from the branch threshold requirement were granted until 12 June 2020 to the previously authorized trade unions to prevent the loss of their authorization for collective bargaining purposes. Noting that the provisional exemption has expired on 12 June 2020, the Committee had requested the Government to indicate if further extension had been decided and if not, to provide information on the impact of the non-extension on the capacity of previously authorized organizations to bargain collectively and to indicate the status of the collective agreements concluded by them. It also requested the Government to continue monitoring the impact of the perpetuation of the branch 1 per cent threshold requirement on the trade union movement and the national collective bargaining machinery as a whole in full consultation with the social partners and to provide information in this regard.

The Committee notes the Government's indication that among the unions benefiting from the exemption until mid-2020, only one union exceeded the threshold. The Government points out, however, that workers were not left without a union when the exemption was not extended as there is more than one union in every branch of activity with a membership that exceeds the thresholds and that it is possible for workers to become members of these trade unions in the branch they work in. The Committee notes the statistical information on the number of collective agreements to which unions which were under the exemption are parties. The Committee notes that the TİSK considers that granting unauthorized unions the right to collective bargaining will impair Turkish industrial relations system and will disrupt the competitiveness and existing industrial peace. ***Recalling the concerns that had been expressed by several workers' organizations in relation to the perpetuation of the double threshold, the Government requests the Government to continue monitoring the impact of the branch 1 per cent threshold requirement on the trade union movement and the national collective bargaining machinery as a whole in full consultation with the social partners and to provide information in this regard.***

With regard to the workplace and enterprise representativeness thresholds, the Committee had noted section 42(3) of Act No. 6356, which provided that if it was determined that there exists no trade union which meets the conditions for authorization to bargain collectively, such information was notified to the party which made the application for the determination of competence. It had further noted section 45(1), which stipulated that an agreement concluded without an authorization document was null and void. While noting the "one agreement for one workplace or business" principle adopted by the Turkish legislation, the Committee had recalled that under a system of designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, all unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. The Committee highlighted that by allowing for the joint bargaining of minority unions, the law could adopt an approach more favourable to the development of collective bargaining without compromising the "one agreement for one workplace or business" principle. The Committee had requested the Government to take the necessary measures to amend the legislation, in consultation with the social partners, so as to ensure that if no union represented the required percentage of workers to be declared the exclusive bargaining agent, all unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. The Committee notes that the Government reiterates that it would consider the proposal for the amendment to the legislation if put forward by the social partners and if such a proposal represented a broad agreement. ***Recalling once again that while the search for a consensus with regard to collective bargaining is important, it cannot constitute an obstacle to the Government's obligation to bring the law and practice into conformity with the Convention, the***

Committee once again requests the Government to amend the legislation and to provide information on all measures taken or envisaged in this regard.

Articles 4 and 6. Collective bargaining rights of public servants not engaged in the administration of the State. Material scope of collective bargaining. The Committee had previously noted that section 28 of Act No. 4688, as amended in 2012, restricted the scope of collective agreements to "social and financial rights" only, thereby excluding issues such as working time, promotion and career as well as disciplinary sanctions. The Committee notes that the Government's indication that issues that concern public servants in general, but which are not covered by the collective agreements, are placed on the agenda of the Public Personnel Advisory Board. The Committee is therefore bound to once again recall that while the Convention is compatible with systems requiring competent authorities' approval of certain labour conditions or financial clauses of collective agreements concerning the public sector, public servants who are not engaged in the administration of the State should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment and that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention. ***Bearing in mind the compatibility with the Convention of the special bargaining modalities in the public sector as mentioned above, the Committee again requests the Government to take the necessary measures to ensure the removal of restrictions on matters subject to collective bargaining so that the material scope of collective bargaining rights of public servants not engaged in the administration of the State is in full conformity with the Convention.***

Collective bargaining in the public sector. *Participation of most representative branch unions.* In its previous comment, the Committee had noted that pursuant to section 29 of Act No. 4688, the Public Employers' Delegation (PED) and Public Servants' Unions Delegation (PSUD) are parties to the collective agreements concluded in the public service. In this respect, the proposals for the general section of the collective agreement were prepared by the confederation members of PSUD and the proposals for collective agreements in each service branch were made by the relevant branch trade union representative member of PSUD. The Committee had also noted the observation of the Turkish Confederation of Public Workers Associations (Türkiye KAMU-SEN) indicating that many of the proposals of authorized unions in the branch were accepted as proposals relating to the general section of the agreement meaning that they should be presented by a confederation pursuant to the provisions of section 29 and that this mechanism deprived the branch unions of the capacity to directly exercise their right to make proposals. Having noted that although the most representative unions in the branch were represented in PSUD and took part in bargaining within branch-specific technical committees, their role within PSUD was restricted in that they were not entitled to make proposals for collective agreements, in particular where their demands were qualified as general or related to more than one service branch, the Committee had requested the Government to ensure that these unions can make general proposals. ***While noting the Government's detailed explanation regarding the PSUD membership, the Committee again requests the Government to ensure that Act No. 4688 and its application in practice enable the most representative unions in each branch to make proposals for collective agreements including on issues that may concern more than one service branch, as regards public servants not engaged in the administration of the State. The Committee requests the Government to indicate all developments in in this respect.***

Public Employee Arbitration Board. In its previous comment, the Committee had noted that pursuant to sections 29, 33 and 34 of Act No. 4688, in case of failure of negotiations in the public sector, the chair of PED (the Minister of Labour) on behalf of public administration and the chair of PSUD on behalf of public employees, can apply to the Public Employee Arbitration Board. The Board decisions were final and had the same effect and force as the collective agreement. The Committee had noted that 7 of the 11 members of the Board including the chair were designated by the President of the Republic and considered that this selection process could create doubts as to the independence and impartiality of the Board. The Committee had therefore requested the Government to take the

necessary measures for restructuring the membership of the Public Employee Arbitration Board or the method of appointment of its members so as to more clearly show its independence and impartiality and to win the confidence of the parties. The Committee notes that the Government limits itself to referring to section 34 of Act No. 4688, which determines the composition and working procedures of the Board. ***The Committee therefore once again requests the Government to consider reviewing, in consultation with the social partners, the method of appointment of the Board members so as to more clearly show its independence and impartiality and to win the confidence of the parties.***

The Committee recalls that the Government can avail itself of the technical assistance of the ILO with regard to the issues raised above.

Bolivarian Republic of Venezuela

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1982)

The Committee notes the observations, relating to the application of the Convention in law and practice, made by the following organizations: the Federation of University Teachers' Associations of Venezuela (FAPUV), dated 12 March and 3 June 2021; MOV7 The Voice of Alcasa, dated 6 April 2021; the Confederation of Workers of Venezuela (CTV), the Independent Trade Union Alliance Confederation of Workers (ASI) and FAPUV, dated 22 July and 30 August 2021; ASI, dated 31 August 2021; and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), supported by the International Organisation of Employers (IOE), dated 1 September 2021; and also the Bolivarian Socialist Confederation of Urban, Rural and Fishery Workers of Venezuela (CBST-CCP), dated 8 September 2021. ***The Committee requests the Government to send its comments in this regard.***

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

In its previous observation, the Committee noted the conclusions and recommendations of the report of the Commission of Inquiry regarding the application of the Convention. The Committee notes the discussion which took place during the 343rd Session (November 2021) of the Governing Body on the consideration of all possible measures, including those provided in the ILO Constitution, required to ensure the Bolivarian Republic of Venezuela's compliance with the recommendations of the Commission of Inquiry, and also the decision adopted in this respect. The Committee observes that the Governing Body, at its 344th Session (March 2022), will once again assess progress made by the Government to ensure compliance with the recommendations of the Commission of Inquiry and will pursue its consideration of possible measures to achieve this objective.

Civil liberties and trade union rights. Climate free from violence, threats, persecution, stigmatization, intimidation or any other form of aggression, in which the social partners are able to exercise their legitimate activities, including participation in social dialogue with full guarantees. The Committee recalls that the Commission of Inquiry recommended: (i) the immediate cessation of all acts of violence, threats, persecution, stigmatization, intimidation or other forms of aggression against persons or organizations in relation to the exercise of legitimate employers' or trade union activities, and the adoption of measures to ensure that such acts do not recur in future; (ii) cessation of the use of judicial proceedings and preventive and non-custodial measures, including the subjection of civilians to military jurisdiction, for the purpose of undermining freedom of association; (iii) the immediate release of any employer or trade unionist who is imprisoned in relation to the exercise of the legitimate activities of their organizations, as is the case for Rodney Álvarez; (iv) the independent investigation without delay of all allegations of violence, threats, persecution, stigmatization, intimidation and any other forms of aggression that have not been duly elucidated, with a view to clarifying responsibilities and identifying the perpetrators and instigators, while ensuring the adoption of appropriate protection, penalization

and compensation measures; (v) the adoption of the necessary measures to ensure the rule of law, and particularly the independence from the executive authorities of the other branches of State authority; and (vi) the organization of training programmes with the ILO to promote freedom of association, tripartite consultation and social dialogue in general, including on full respect for its essential conditions and basic rules, in accordance with international labour standards. In light of the information provided by the Government and the social partners in the Committee's previous observation, and expressing deep concern at the almost total absence of progress, the Committee firmly urged the Government to take the necessary measures to investigate and take action promptly with regard to all the pending allegations of violation of the Convention relating to civil liberties and trade union rights.

With regard to the situation of the trade unionist Rodney Álvarez, the Committee notes the Government's indication that on 11 June 2011 he was sentenced to 15 years' imprisonment for the common crime of homicide and not for the exercise of trade union activities. The Government explains that the convicted person enjoys guarantees to submit the corresponding appeals to the higher courts and that once the sentence is executed the guarantee applies whereby the time spent by the person in custody during the trial will be deducted from the sentence to be served. The Government also once again denies in general terms the alleged use of judicial proceedings as an anti-union practice. The Committee also notes the observations of various social partners (the CTV, ASI and FAPUV) condemning the fact, as was ascertained by the Commission of Inquiry, that the proceedings brought against Mr Álvarez reflect the lack of separation of powers in the country and implied a clear denial of justice, with eight interruptions and up to 25 preliminary hearings, and with Mr Álvarez having been the victim of three serious knife and gun attacks perpetrated with total impunity during the more than ten years in which he was held in pretrial custody. As regards the trial, these organizations condemn the fact that nothing in the judicial file confirms that Mr Álvarez was armed, let alone that he fired the shots; that the judge dismissed all the defence witnesses who were present at the scene and who saw that another person perpetrated the killing; and that the statement by the National Guard officer on security duty at the enterprise at the time, who declared that he had detained that other person for firing shots, was disregarded. ***Noting with deep concern the serious additional allegations of violation of due process in this case, the Committee urges the Government to implement immediately the recommendations of the Commission of Inquiry in this regard.***

With regard to the other pending issues, the Committee notes that the Government denies the suggestion of alleged deficiencies in the rule of law or the separation of powers in the country and asserts that the allegations and observations made by the social partners have been addressed, evaluated and referred to the corresponding public authorities. The Government also asserts that it has made progress in improving observance of the Convention, as shown by the broad and inclusive social dialogue, with full guarantees and without exclusion, maintained with the workers' and employers' organizations who voluntarily requested it. In this regard, the Government reiterates the information given to the Governing Body, indicating that: (i) since February 2020, bipartite dialogue round tables have been set up to discuss matters related to the Convention and other subjects of national interest raised by the social partners. The invitation to participate was accepted by FEDECAMARAS, the Federation of Craft, Micro, Small and Medium-Sized Industries and Enterprises of Venezuela (FEDEINDUSTRIA), the CBST-CCP, ASI, the General Confederation of Labour (CGT), the National Union of Workers of Venezuela (UNETE), the Confederation of Autonomous Trade Unions (CODESA), (which deposited a document and then withdrew), as well as the CTV (which sent a communication indicating that it would not attend the dialogue proposed as a dispute settlement mechanism); (ii) meetings continued to be held subsequently according to the requests made by the social partners, with progress made on some matters referred to in this Committee's observations; (iii) from 21 May to 23 June 2021, the "Great National Dialogue on the world of work" (*Gran encuentro de diálogo nacional del mundo del trabajo*) was held as a virtual forum, with six work sessions, one of which with part of another were devoted to the review of legislative and practical matters related to observance of the Convention; (iv) at

these sessions the participants were able to express their views and make lengthy presentations on subjects related to the application of the Convention, in an atmosphere of respect and good will, with extensive participation from the social partners – FEDECAMARAS, FEDEINDUSTRIA, the CBST-CCP, ASI, UNETE, the CTV (all of which participated in the first two sessions), CODESA (which only attended the first session), and the CGT (which expressed interest but had connection problems); (v) with regard to the employers' sector, a public statement was forwarded, issued by the National Authority for the Defence of Socio-Economic Rights (SUNDDE), making a general appeal to any parties who had a pending measure of temporary control imposed under the Act on fair prices to reach out to the SUNDDE ; (vi) at this dialogue meeting, the Government gave an undertaking to set up a face-to-face technical working group on the Convention, including with regard to particular cases on the subject of land. This working group started its work on 30 July 2021, which was continued on 17 August 2021 with the drawing up of its agenda; and (vii) other dialogue forums have been opened at the highest level between the executive authorities and the social partners, for example the appeal to FEDECAMARAS by the Executive Vice-President of the Republic to attend the Higher Council on the Productive Economy. The Government concludes by stating that, contrary to the alleged policy of violence, threats, persecution or other forms of aggression directed at the social partners, efforts have been made to continue reinforcing dialogue forums. As regards the allegations concerning land, the Committee duly notes the information forwarded by the Government to the Governing Body on measures to address the requests made by FEDECAMARAS, in particular: the establishment of round tables for meetings at the National Land Institute (INTI) to seek solutions to the cases raised by the National Federation of Stockbreeders of Venezuela (FEDENAGA), with the list presented by FEDECAMARAS being included on the agenda; and the setting up of a technical committee to discuss matters of interest to FEDENAGA and INTI, including the list of cases of estates involved in disputes (the Government stated that so far FEDENAGA had prioritized 12 cases, and the administrative procedures implemented were being reviewed to determine possible solutions to the cases raised, as well as stating that progress had been made in the certification of estates that could be improved or are productive).

The Committee also notes the CBST-CCP's assertion that the State has been promoting correct observance of the Convention and emphasizes that this year invitations were issued to take part in a social dialogue which was guaranteed to be wide-ranging and to include the workers' and employers' organizations, with the voluntary presence of the latter. The CBST-CCP categorically rejects the observations of the social partners who allege that the State is fomenting a policy of violence, persecution and aggression, and asserts that in reality it has been the guarantor of free trade union activity for all organizations without distinction.

The Committee also notes that the observations received from the other social partners allege a lack of progress in implementing this group of recommendations, as well as further violations of the Convention, which are listed below.

FEDECAMARAS: (a) refers to hostile or intimidatory messages against the organization and its president – in particular, derogatory statements against the latter by the President of the Republic in a broadcast by the state television channel, as well as disparaging messages in a programme directed by a member of parliament on the same TV channel; (b) denounces the fact that measures restricting freedom of association for leaders of FEDECAMARAS remain in place, consisting of a court summons and a ban on disposing of or levying charges on its property (the Government was consequently presented with a list of cases evaluated by the Commission of Inquiry and a list of illegally invaded or seized land); (c) indicates that the recommendation to organize training programmes to promote freedom of association has not been implemented; and (d) while FEDECAMARAS recognizes the initiative launched by the Government to hold several cycles of meetings with it and with other employers' and workers' organizations, and the fact that government representatives have undertaken some bridge-building with FEDECAMARAS, the federation points out that to date the recommendations of the Commission of Inquiry have not been accepted by the Government and the meetings have been held

without the conditions recommended by the Commission being met (despite multiple requests being made by FEDECAMARAS to implement them with the necessary guarantees so that the talks can have a real impact) and without any concrete solutions being reached; for this reason, FEDECAMARAS considers that these are exploratory, bridge-building meetings but they do not constitute the structured dialogue round tables recommended by the Commission of Inquiry, and it asks that the ILO establish the mechanisms that it considers the most appropriate for formalizing the Office's participation or presence in the dialogue process.

The CTV, ASI and FAPUV: (a) report numerous cases of arbitrary detention of trade unionists and trade union leaders, as well as members of non-governmental organizations which defend human rights, in connection with the exercise of the right to peaceful protest and freedom of expression. In this regard, they denounce the fact that action in defence of labour rights, and of human rights, is being criminalized and liable to prosecution. These organizations claim that prosecution charges are accepted almost automatically by the courts – with the detained person being deprived of freedom and subjected to preventive measures that carry restrictions, some of them verbal so as not to leave any trace – with the detainees often being obliged to accept a public defender who assists the Public Prosecutor's Office with the prosecution, with evident bias on the part of judges operating on behalf of the executive authorities, as a result of which the trade union movement is left completely defenceless; and (b) in particular they condemn the detention and imprisonment of the following trade union leaders: (i) Mr Guillermo Zárraga, secretary of the Union of Petroleum, Gas and Energy Workers of the State of Falcón (SUTPGEF), arrested on 11 November 2020 by the Bolivarian National Intelligence Service (SEBIN), remaining in detention at the headquarters of the Directorate-General for Military Counterintelligence (DGCIM), and subjected to criminal proceedings tainted with irregularities, on charges of terrorism, criminal conspiracy and treason; (ii) Mr Eudis Girot, a trade union leader in the petroleum industry, arrested by the DGCIM on 18 November 2020 in Puerto La Cruz, also accused of terrorism, among other charges, and remaining in custody in Rodeo III prison; (iii) and Mr Mario Bellorín and Mr Robert Franco, president and general secretary, respectively, of the Union of Education Professionals–Association of Teachers of Venezuela (SINPRODO–CPV), Carúpano, State of Sucre, arrested on 26 December 2020 while on a visit to a private residence there which was raided. Mr Bellorín was released a few hours after his arrest, but this was not the case for Mr Franco, who was transferred to SEBIN headquarters in Caracas (Helicoide), where he remains in custody. In addition, MOV7 The Voice of Alcasa denounces harassment and assaults of workers who participated in trade union activities or protests.

While welcoming the efforts at bridge-building and the meetings held, open to all social partners, and the commitments made by the Government to continue the dialogue on observance of the Convention through technical round tables, the Committee notes with ***regret*** the lack of specific results highlighted by most of the social partners, and also the absence of concrete replies and information on the occurrences reported by the social partners in previous observations (even though the Government asserts that the allegations and observations made by the social partners have been addressed, evaluated and referred to the relevant authorities, it does not provide any specific information in this regard). The Committee also notes with ***deep concern*** that various employers' and workers' organizations make new, serious additional allegations of violations of civil liberties and trade union rights. These organizations claim that at the dialogue round tables – at which the Government indicates that the pending issues are being addressed – general statements have been made but concrete solutions have still not been reached, and the procedures for dialogue recommended by the Commission of Inquiry have not been respected (no minutes were produced, no consensus was reached regarding agendas and timelines, no independent chairperson or secretariat were appointed, nor were the meetings held with the presence of the ILO despite requests to this effect).

In light of the above, the Committee reiterates the recommendations of the Commission of Inquiry and firmly urges the Government, in dialogue with the organizations concerned through the relevant bipartite or tripartite round tables, to take the necessary measures quickly to ensure

implementation of the above-mentioned recommendations. In this regard, the Committee firmly urges the Government to investigate and take appropriate action with respect to the pending allegations of violations of the Convention regarding civil liberties and trade union rights – contained in the Commission of Inquiry's report or subsequently brought before this Committee – in order to ensure a climate free of violence, threats, persecution, stigmatization, intimidation or any other form of aggression in which the social partners can exercise their legitimate activities, including participation in social dialogue with full guarantees. The Committee requests the Government to provide detailed information on the follow-up action taken.

Articles 2 and 3 of the Convention. Respect for the autonomy of employers' and workers' organizations, particularly in relation to the Government or political parties, and suppression of all interference and favouritism by the state authorities. The Committee recalls that the Commission of Inquiry recommended: (1) the adoption of the necessary measures to ensure in law and practice that registration is a mere administrative formality and that in no event can it imply previous authorization; (2) the elimination of "electoral abeyance" and the reform of the rules and procedures governing trade union elections, so that the intervention of the National Electoral Council (CNE) is really optional and does not constitute a mechanism for interference in the life of organizations, and that the pre-eminence of trade union independence is guaranteed in election processes and delays are avoided in the exercise of the rights and activities of employers' and workers' organizations; (3) the elimination of any other use of institutional machinery or types of action that interferes in the independence of employers' and workers' organizations and their mutual relations. In particular, the Commission recommended the adoption of any necessary measures to eliminate the imposition of control institutions or mechanisms, such as Workers' Production Boards (WPBs), which may in law or in practice restrict the exercise of freedom of association; (4) the establishment, with ILO assistance, of criteria that are objective, verifiable and fully in accordance with freedom of association to determine the representativeness of both employers' and workers' organizations; and (5) in general, the elimination in law and practice of any provisions or institutions that are incompatible with freedom of association, including the requirement to provide detailed information on members, taking into account the conclusions of the Commission and the comments of the ILO supervisory bodies.

The Committee notes that the Government denies the allegations of interference and failure to respect the independence of employers' and workers' organizations, as well as favouritism on the part of the authorities towards organizations supposedly linked to them, indicating that it has demonstrated its strict observance of freedom of association and its policy to take account of all representative organizations.

With regard to the issues concerning trade union registration, the Committee notes that, in the information provided to the Governing Body, the Government indicates that the technical working group on the Convention discussed whether to establish an agenda item dealing with the National Trade Union Registry (RNOS). ***The Committee requests the Government to keep it informed of any developments in this respect.***

With regard to the creation of the WPBs, the Committee notes that the Government reiterates what it indicated previously to the supervisory bodies, including the Commission of Inquiry, emphasizing that far from excluding or affecting freedom of association, the WPBs promote the organization of the working class and foster its participation in the management of productive activity, and in no case do they replace the trade unions or are contrary to them, as established by section 17 of the WPB Constitutional Act. The Government adds that the Ministry of People's Power for the Social Process of Labour has not received any formal complaints of specific cases in which the organization of WPBs in workplaces had interfered with the smooth functioning of the latter. The Committee notes the observations of the CBST-CCP, reiterating that WPBs are not trade unions by nature and do not have competencies that prevent the exercise of freedom of association, and emphasizing that work is being done within the CBST-CCP on activating the organization of the working class as a source of leadership

and change through the WPBs, aimed at efficient production. The Committee also notes, however, the observations of the other social partners (FEDECAMARAS, ASI, CTV and FAPUV) warning that instead of implementing the recommendations of the Commission of Inquiry – such as that of subjecting the WPB Act to tripartite consultation – the Government continues to promote the formation and action of the WPBs. The social partners denounce the fact that, in practice and together with the workers' militias, the WPBs are being used to attack or replace the independent trade union movement.

With regard to trade union elections, the Government indicates that, in the context of the "Great National Dialogue on the World of Work", the subject of the election of trade union committees was discussed and explanations were provided on this matter. The Government reiterated what it had indicated previously: that the National Electoral Council (CNE) carries out support activities only where requested by the trade union organizations and that organizations can conduct their elections with or without CNE assistance, according to the terms of the union constitutions and any future amendments, and in line with the free wishes of each organization. In this regard, the Committee notes that although the Government reiterates that intervention by the CNE is optional, the Commission of Inquiry had already established that this affirmation or clarification had not been sufficient to resolve the problems identified and to address the numerous allegations of interference in electoral procedures. In this regard, the Committee notes that: although, on the one hand, the observations of the CBST-CCP indicate that various organizations affiliated to the confederation reportedly started or completed processes of reform to their constitutions to permit the holding of fully independent elections and affirm that the organizations affiliated to the Bolivarian confederation have made free use of the right to hold trade union elections without any kind of interference from the electoral authorities; on the other hand, the observations of the other workers' organizations (in particular ASI, CTV and FAPUV) emphasize that no changes have been made in either law or practice regarding government policy on the registration of trade union organizations and "electoral abeyance". These organizations assert that the problems identified by the Commission of Inquiry are still restricting the possibility of trade union organizations being authorized by the executive authorities to perform essential functions such as collective bargaining. In this regard, these workers' organizations emphasize that there is no progress as regards intervention by the CNE in trade union elections, and claim that this will continue to delay the holding of elections and the renewal of their executive committees. For example: (i) they denounce the persistence of interference and obstacles in the electoral process by the CNE in the case of organizations such as the National Union of Men and Women Public Officials in the Legislative Career Stream, and Men and Women Workers at the National Assembly (SINFUCAN) and the Union of Petroleum, Gas and Energy Workers of the State of Falcón (SUTPGEF); (ii) they warn of long delays that can be ascribed to the authorities regarding the approval of reforms to union constitutions (for example, 28 months to approve the reform of the constitution of the National Union of Workers of the National Institute for Socialist Training and Education (SINTRAINCES)); and (iii) they claim that the Ministry for University Education, apart from obstructing the participation of organizations affiliated to FAPUV in collective bargaining (alleging that these organizations are in "electoral abeyance", which they assert is the result of interference by the CNE), treats the organizations unequally since it is negotiating with a minority organization that has never held elections.

In light of the above, with regard to these two headings of the recommendations relating to the independence of employers' and workers' organizations, the Committee ***deplores*** the fact that the Government does not provide information on specific progress made with respect to the specific allegations made in the previous observations of multiple social partners and only reiterates statements already made to the Commission of Inquiry. The Committee also notes with ***concern*** that the social partners' denunciations continue in the most recent observations of FEDECAMARAS, ASI, CTV and FAPUV, with regard to the action of the WPBs and interference and obstacles regarding electoral procedures and the registration of trade unions.

In view of these circumstances, the Committee once again refers to the conclusions of the Commission of Inquiry and reiterates the specific recommendations set forth above on the need to ensure respect for the independence of employers' and workers' organizations, and also to eliminate all interference and favouritism on the part of the government authorities. Also in this respect, the Committee urges the Government to refer all the pending allegations to the respective dialogue round tables with the organizations concerned – including the allegations of interference and obstacles regarding electoral procedures and also the use of WPBs as mechanisms that restrict the exercise of freedom of association – in order to make tangible progress as quickly as possible.

Articles 2 and 3. Legislative issues. The Committee recalls that it has been asking the Government for several years to take the necessary steps, in consultation with the most representative workers' and employers' organizations, to revise various provisions of the Basic Labour Act (LOTTT), in particular sections 367, 368, 387, 388, 395, 402, 403, 410, 484 and 494. The Committee also recalls that the Commission of Inquiry recommended in general the submission to tripartite consultation of the revision of laws and standards, such as the LOTTT, which revisions raise problems of compatibility with the Convention in light of the conclusions of the Commission of Inquiry and the comments of the ILO supervisory bodies.

The Committee notes the Government's indication that: (i) in the context of the dialogue round tables held in February and March 2021 the Committee's comments on the revision of laws and standards that give effect to ILO Conventions were referred to the National Assembly; and that (ii) in the context of the "Great National Dialogue on the World of Work", stakeholders in the world of work were invited to make contributions towards the updating of the LOTTT regulations. Furthermore, the Committee welcomes the undertaking given by the Government to the Governing Body to hold consultations with the social partners on draft laws or their respective amendments, instigated by the National Assembly, which are connected with international labour standards.

However, the Committee notes with ***concern*** the observations of the CTV, ASI and FAPUV, warning of the use of the Constitutional Act against hatred and promoting peaceful coexistence and tolerance, and also of accusations of terrorism, as a pretext for criminalizing trade union activity, carrying out arbitrary detentions of trade union leaders and sentencing them to imprisonment for exercising their freedom of expression.

The Committee reiterates the above-mentioned recommendations relating to legislative issues and urges the Government, in the context of the dialogue round tables, to submit to tripartite consultation without further delay the revision of the laws and standards, such as the LOTTT, which raise problems of compatibility with the Convention in light of the conclusions of the Commission of Inquiry (such as those regarding trade union registration, "electoral abeyance" or the WPBs) and the comments of the other ILO supervisory bodies. The Committee also requests the Government, in view of the social partners' allegations, to include in the above-mentioned tripartite dialogue the discussion of the impact on the exercise of freedom of association of the Constitutional Act against hatred and promoting peaceful coexistence and tolerance, and also of any measures needed to ensure that the application of this Act cannot restrict or suppress the exercise of freedom of association.

The Committee welcomes the gatherings, meetings and dialogue forums, open to all the social partners, which have been held, as well as the setting up of a face-to-face technical round table for addressing issues regarding the application of the Convention, and duly notes that the Government reiterates its willingness to strengthen these dialogue forums to improve the observance of the Convention. However, the Committee notes with ***deep concern*** that: (i) the Government does not provide specific replies to the multiple serious allegations made in the Committee's previous comment; (ii) as highlighted by the observations of a number of social partners, the dialogue held so far still does not meet the necessary conditions to be effective, nor has it yielded concrete solutions to the pending issues, and so, regrettably, no significant further progress can be observed in the application of the

recommendations of the Commission of Inquiry; and (iii) allegations of serious violations of the Convention continue to be made, referring to the persistence of systemic patterns or problems to which attention was drawn by the Commission of Inquiry.

The Committee notes that the Government once again refers to its request for ILO assistance in order to determine the representativeness of employers' and workers' organizations, considering that this will be fundamental for determining representativeness according to objective verifiable criteria which fully respect freedom of association. The Government points out that pending this important technical assistance it continues to follow the policy of taking account of all representative organizations without giving privileges to one or the other. Moreover, the Committee notes the assertion by FEDECAMARAS that assistance should not be limited to the subject of representativeness, but should also fully encompass the recommendations and the dialogue process in themselves, emphasizing that ILO backing for social dialogue will constitute valuable support. In this regard, the Committee reiterates that, since the recommendations are interrelated and need to be considered together, they should be implemented in a holistic manner and in a climate in which the social partners can exercise their legitimate activities, including participation in social dialogue with full guarantees, and with full respect for the independence of employers' and workers' organizations. ***The Committee once again recommends that technical assistance should be defined on a tripartite basis in the context of dialogue round tables and in light of these considerations.***

The Committee firmly urges the Government to, with ILO technical assistance, take the necessary steps, through the above-mentioned dialogue round tables and in the manner indicated in the Commission of Inquiry's report, to ensure that the recommendations are fully implemented, so that tangible progress can be noted in the near future. The Committee also reiterates that it is vital that the issues raised above receive the full and ongoing attention of the ILO and its supervisory system so that firm and effective measures are adopted to ensure full observance of the Convention in law and practice.

Zimbabwe

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2003)

Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

The Committee notes the observations submitted by the International Trade Union Confederation (ITUC), received on 1 September 2021, which refer to the issues addressed by the Committee below.

Civil liberties and trade union rights. The Committee recalls that in its previous comments it expressed concern at the allegations submitted by the ITUC and the Zimbabwe Congress of Trade Unions (ZCTU) that, since the January 2019 crackdown on the ZCTU-organized general strike, the ZCTU President and General Secretary remained charged with subversion and were under strict release conditions, banned from traveling and forced to check in regularly at the police station. Both organizations further alleged retaliatory acts and violence against leaders of the Amalgamated Rural Teachers Union (ARTUZ) following protests organized by the ZCTU in 2020, and repression against workers' protests in the health sector and several other instances of violation of civil liberties in the country that took place in 2020.

The Committee notes the Government's indication that the case of the ZCTU President and General Secretary is still pending before the High Court. The matter was however removed from the court roll to enable the State to finalize its investigations, after which it will proceed by way of summons. The Government indicates that the social partners discussed this case in the tripartite meeting held on

5 and 6 October 2021 and agreed that the Government will engage the Prosecutor General's Office to find a way forward with a view to bringing the matter to finality. The Government further indicates that the social partners discussed the case of the ARTUZ, which has been reported to the police. However, more information is needed about the ARTUZ Secretary for Gender who is said to have been arrested and tortured to enable Government to investigate the matter further, to engage with Zimbabwe Republic Police and to provide updates accordingly. At the meeting, the members of the ZCTU agreed to submit more information and details to enable the Ministry of Public Service, Labour and Social Welfare to pursue the matter. With regard to the ITUC and the ZCTU 2020 allegations, the Government indicates that it has requested specific details on some of the cases to enable proper follow up and responses on issues raised. ***The Committee requests the Government to provide information on all progress made on the above-mentioned cases. It further requests the Government to provide its comments on the conviction and sentencing of a primary school teacher for public violence after being arrested while protesting against poor salaries, as alleged by the ITUC in its latest communication.***

The Committee recalls that it had previously noted that a commission of inquiry established to investigate the disturbances of 31 August 2018 found that six people were killed and 35 injured as a result of the military and police action, and recommended a payment of compensation for losses and damages caused. Noting with concern that the ZCTU personnel suffered injuries during these events, the Committee requested the Government to provide information on all progress made in giving effect to the commission's recommendations. The Committee notes the Government's indication that the consultations on compensation modalities are still ongoing. The Committee ***regrets*** that more than three years after the events, the issue of compensation has not been resolved. ***The Committee urges the Government to take the necessary steps to ensure that the compensation for damages suffered is paid without further delay and requests the Government to inform it of all progress made in this regard.***

The Committee recalls that it had previously noted the Government's indication that the training curriculum on freedom of association has been mainstreamed in the Police training manuals, that the Training Centres have been conducting the trainings and that the issue of alleged clashes between police and trade unions and alleged harassment by the police at roadblocks/checkpoints was an ongoing subject of discussion under the auspices of the Tripartite Negotiating Forum (TNF). The Committee further recalls that according to the Government, the TNF Social Cluster was tasked to engage the Police and develop a standard checklist for use by security forces at checkpoints. The Committee requested the Government to provide detailed information on the work carried out by the TNF Social Cluster and on the progress in its engagement with the police forces.

The Committee notes the Government's indication that it prioritizes and will keep prioritizing continuous training and engagement of law enforcement agencies on fundamental principles and rights at work. The Government informs that a tripartite meeting to strengthen the observance of international labour standards and social dialogue in Zimbabwe was held on 30 July and 26 August 2021. The objective of the meeting was to discuss joint priorities as well as to come up with a road map to that end. The Government points out that one of the priorities is to improve engagement between trade unions and law enforcement agents. The Government indicates that to that end, consensus engagement workshops will be held between trade unions and law enforcement bodies in 2022 to review the implementation of the two instruments developed for use by the law enforcement bodies (the handbook on international labour standards and the code of conduct), to unpack the Maintenance of Peace and Order Act (MOPA) and to address the concerns of all parties.

The Committee notes a copy of the road map provided by the Government and the detailed information on the work of the TNF Social Cluster, in particular as regards various measures to contain the spread of COVID-19, including the issue of the need to have a standardized checklist to be used by security agents at roadblocks/checkpoints during lockdowns, so as to facilitate ease of passage of essential workers. The Committee further notes the Government's indication that the guidelines and

checklist for checkpoints were agreed to but are yet to be considered by the main TNF. ***The Committee requests the Government to provide information on the outcome of engagement between trade unions and the law enforcement bodies, which it expects will include a thorough examination of the allegations by the ZCTU and the ITUC of cases of violation of civil liberties. The Committee urges the Government to take the necessary measures for the adoption without further delay of the above-mentioned guidelines and checklists by the main TNF.***

Maintenance of Peace and Order Act (MOPA). The Committee had noted the enactment of the MOPA in November 2019 and observed in this respect that it did not apply to public gatherings held by a registered trade union for bona fide trade union purposes for the conduct of business in accordance with the Labour Act. In this respect, noting its similarity to the repealed Public Order and Security Act (POSA), the Committee recalled the concerns previously raised by the ILO supervisory bodies regarding POSA's de facto application to trade union activities and expected that the consultative meeting with the social partners to unpack the new legislation, which had been suspended due to the COVID-19 pandemic, would be held as soon as possible.

The Committee notes the Government's indication that one of the activities agreed to at the tripartite meeting mentioned above is a tripartite consultative workshop to unpack the MOPA and that this unpacking and the general interface between the trade unions and the police should be with the view to addressing the concerns of all parties and in the main strengthening observance of international labour standards in Zimbabwe. ***The Committee expects that such a workshop will take place as soon as possible and requests the Government to provide information on all developments in this regard.***

Labour law reform and harmonization. The Committee recalls that for a number of years it has been requesting the Government to bring the Labour Act, Public Service Act and Health Services Act into conformity with the Convention in full consultation with the social partners. The Committee expected that the operationalization of the TNF would allow for labour law reform and public service legislation harmonization to be concluded without further delay.

The Committee notes the Government's indication that the Labour Amendment Bill is a product of extensive consultations with social partners and relevant stakeholders to bring the Labour Act into conformity with the comments made by the ILO supervisory bodies. The Government informs that, together with the Attorney General's Office, it convened a peer review on the Labour Amendment Bill in April 2021 to ensure that all principles of the Convention and issues raised by social partners are incorporated into the Bill. The Bill was submitted to the Cabinet Committee on Legislation in May 2021, approved by Cabinet on 28 September 2021 and is now pending in Parliament. The Government explains that it was the agreement of the social partners that any outstanding issues regarding the international labour standards will be dealt with through the public consultations of the Parliament, which is open to all, including the social partners. To enable the social partners to do extensive consultations before the public hearings of the Parliamentary Portfolio Committee on Labour, they were provided with a copy of the Bill during the tripartite Consensus Building meeting held from 5 to 6 October 2021. The Government expects that the Parliamentary Legal Committee and the Parliamentary Portfolio Committee will be sensitized through a workshop to be arranged in conjunction with the Office on the comments made by the supervisory bodies with a view to ensuring that the Parliamentary Committees are empowered to play an oversight role on the development of a labour legislation responsive to deficiencies noted by the supervisory bodies. The Government indicates that it will provide the Committee with the new legislation once it is enacted into law.

The Government further informs that once the Constitutional Amendment Bill passed Parliament in April 2021, the Attorney General's Office began working on the Public Service Amendment Bill. The Public Service Commission (PSC) has since received the third draft from the Attorney General's Office for consideration. After consideration by the PSC, a stakeholder consultation will be held with all public service stakeholders. The Bill will be tabled before the TNF prior to its submission to Cabinet.

The Government further indicates that bilateral consultations within the Health Services Board are still ongoing on the principles of amending the Health Services Act. The parties are desirous of embarking on a holistic revamping of the Health Services in view of the shortcomings identified during the COVID-19 response period. It is envisaged that once these are finalized, they will be submitted to the TNF for consideration.

The Committee notes the detailed information provided by the Government on the work carried out by the TNF and its various clusters. The Government considers that the operationalization of the TNF will indeed expedite legislative reform in the world of work. The Government further considers that to this end, the enactment of the Standard Operating Procedures of the TNF, the appointment of its Executive Director, and the establishment of an independent secretariat are matters of priority and are currently under way within the Labour Cluster of the TNF.

The Committee welcomes the information provided by the Government on the legislative developments and the involvement of the social partners in the process in and outside the TNF. The Committee requests the Government to provide information on all further progress made in in this regard.

The Committee notes the Government's request for technical assistance of the Office with regard to the issues raised above and trusts that all necessary assistance will continue to be provided to the Government and its social partners.

The Committee welcomes the Government's indication that it will be engaging with the Office for mutually suitable dates in 2022 to receive the direct contacts mission requested by the Conference Committee.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 87** *(Antigua and Barbuda, Bahamas, Barbados, Belgium, Cambodia, Chad, Comoros, Djibouti, Ecuador, Eritrea, Gabon, Gambia, Greece, Grenada, Guatemala, Guyana, Iraq, Jamaica, Kiribati, Kuwait, Kyrgyzstan, Latvia, Lesotho, Libya, Lithuania, Luxembourg, Malawi, Mali, Mauritius, Mexico, Mongolia, Mozambique, Netherlands, Netherlands: Caribbean Part of the Netherlands, Niger, Republic of Moldova, Sao Tome and Principe, Tajikistan)*; **Convention No. 98** *(Brazil, Colombia, Comoros, Congo, Djibouti, Eritrea, France, Gabon, Guinea, Guinea-Bissau, Ireland, Kenya, Kiribati, Kyrgyzstan, Latvia, Libya, Lithuania, Malawi, Malaysia, Mauritania, Mexico, Mongolia, Montenegro, Morocco, Mozambique, South Sudan, Tajikistan, Viet Nam)*; **Convention No. 135** *(Antigua and Barbuda, Dominica, Germany, Iraq)*; **Convention No. 141** *(Afghanistan, India)*; **Convention No. 151** *(Belize, Gabon, Italy, Montenegro)*; **Convention No. 154** *(Belize, Guatemala, Hungary, Rwanda, Saint Lucia)*.

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 87** *(Israel, Netherlands: Aruba).*

Forced labour

Algeria

Forced Labour Convention, 1930 (No. 29) (ratification: 1962)

Article 2(1) of the Convention. Civic service. For several years, the Committee has been noting the incompatibility with the Convention of sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 concerning civic service, as amended in 1986 and 2006. Under the aforementioned provisions, it is possible to require persons who have completed a course of higher education or training in branches or specializations considered a priority for the economic and social development of the country to perform a period of civic service ranging from one to four years before being able to exercise an occupation or obtain employment. The Committee noted that currently the only category concerned is that of doctors specializing in public health. Civic service may also be performed in private sector health establishments (section 2 of Ordinance No. 06-06 of 15 July 2006).

The Committee noted the Government's indication that civic service is a national and moral duty of specialized doctors vis-à-vis the population groups living in the regions of the far south, the south and the High Plateau. The Government also stated that the medical specialists concerned enjoyed an attractive system of compensation ranging from 100 to 150 per cent of their principal remuneration along with other advantages. Under Act No. 84-10 of 11 February 1984, any refusal to perform civic service and the resignation of the person concerned without a valid reason results in that person being banned from self-employment, from setting up business as a trader, artisan or promoter of private economic investment, any offence being punishable under section 243 of the Criminal Code (imprisonment of between three months and two years and/or a fine). In addition, private employers are required to ensure, prior to engaging any workers, that applicants are not subject to civic service or that they can produce documentation proving that they have completed it, and are liable to imprisonment and a fine if they knowingly employ a citizen who has evaded civic service. The Committee therefore urged the Government to take the necessary steps to repeal or amend Act No. 84-10 of 11 February 1984 in order to bring it into conformity with the Convention.

The Committee notes with ***regret*** that, once again, the Government has not provided any information on this matter in its report. The Committee recalls that *Article 2(1)* of the Convention defines "forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Referring to the 2007 General Survey concerning the elimination of forced labour, the Committee specifies that the penalty in question might take the form of a loss of a right, such as access to new employment (paragraph 37). The Committee notes that the provisions contained in Act No. 84-10 of 11 February 1984 concerning civic service, require specialized doctors to perform their activity within a period of one to four years in remote regions, and punish any refusal with a penalty consisting of a ban against self-employment and private sector employment. Furthermore, as regards obligations of service in relation to training received, which sometimes apply to a narrow range of professions, in particular young doctors, dentists and pharmacists, who may be required to exercise their profession for a certain period in a post assigned to them by the authorities, the Committee has pointed out in this connection that, where such service obligations are enforced by the menace of any penalty, they may have a bearing on the observance of the forced labour Conventions (paragraphs 94 and 95). ***The Committee therefore urges the Government to take the necessary steps without delay to bring the legislation into conformity with the Convention by repealing or amending sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 concerning civic service in order to remove the requirement of civic service and the penalties that correspond with a refusal to perform this service.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)

Article 1(a) of the Convention. Imprisonment involving compulsory labour as a penalty for expressing political views or opposition to the established political, social or economic system. Associations Act. In its previous comments, the Committee noted that under the legislation in force prison labour may be imposed as part of a prison sentence (section 2 of the Inter-Ministerial Order of 26 June 1983 establishing arrangements for the use of prison labour by the National Office of Educational Works and section 96 of Act No. 05-04 of 6 February 2005 issuing the Prison Code and regulations on the social reintegration of prisoners). The Committee noted that section 39 of the Associations Act (No. 12-06 of 12 January 2012) provides that an association may be suspended or dissolved "in the event of interference in the internal affairs of the country or an attack on national sovereignty" and that section 46 provides that "any member or leader who continues to act on behalf of an association which is neither registered nor approved, or is suspended or dissolved" shall be liable to a fine and imprisonment of three to six months. The Committee also noted the indications of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in 2017 that civil society organizations faced severe restrictions following the adoption of the Associations Act (Act No. 12-06). The Committee asked the Government to take steps to ensure that Act No. 12-06 cannot be used to impose prison sentences (including compulsory labour) on persons who, through exercising their right of association, express political views or opposition to the established political, social or economic system.

The Government indicates in its report that section 39 of the Associations Act (Act No. 12-06) provides for a non-penal administrative penalty in the event of interference in the internal affairs of the country and that punishable acts have no connection with political orientation or views. Similarly, the penalties set forth in section 46 are imposed when the persons concerned continue to be active in an association that has not been registered or has been dissolved or suspended, and this also has no connection with the expression of political views or political orientation. Moreover, the Government emphasizes that what is imposed on offenders is imprisonment (in addition to a fine) and not compulsory or forced labour. It adds that forced or compulsory labour is not on the list of penalties provided for by Algerian legislation as a penalty for offences in general. The Government also indicates that work done by prisoners is subject to their prior consent and that any prisoner wishing to work must submit a request to the judge responsible for the enforcement of sentences.

The Committee notes this information. However, it notes that under the provisions of section 2 of the Inter-Ministerial Order of 26 June 1983, in the context of the rehabilitation, training and social promotion of prisoners, "prisoners *are required* to do useful work", compatible with their health, order, discipline and security. Furthermore, section 96 of Act No. 05-04 of 6 February 2005 issuing the Prison Code and regulations on the social reintegration of prisoners, provides that "prisoners *may be assigned* useful work by the prison director". As it indicated previously, the Committee considers that the voluntary nature of prison work is not apparent in the wording of these provisions, which, on the contrary, allow work to be imposed on persons who have been sentenced to imprisonment. The Committee also considers that even if prison work is voluntary in practice, amendments should be made accordingly in the legislation in order to avoid any legal ambiguity.

The Committee further notes that the United Nations Human Rights Committee, in its concluding observations of 2018, expresses concern at numerous reports of the Government rejecting the by-laws of existing organizations that had been brought into line with the legislation, as that practice limits the freedoms of associations and exposes their members to heavy penalties for unauthorized activity (CCPR/C/DZA/CO/4, paragraph 47). The Committee points out that section 46 of Act No. 12-06 of 12 January 2012 provides that if a member of an organization which has not yet been registered or approved or has been suspended or dissolved (for example, under section 39 of the Act) continues to be active, that person shall be liable to imprisonment of three to six months. The Committee recalls that, under *Article 1(a)* of the Convention, the range of activities which must be protected from punishment

involving compulsory labour includes those performed as part of the freedom to express political or ideological views, as well as various other generally recognized rights. These include the rights of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views (see 2012 General Survey on the fundamental Conventions, paragraph 302).

The Committee therefore once again requests the Government to take the necessary steps to ensure that persons who, through exercising their right of association, express political views or peaceful opposition to the established political, social or economic system cannot be subjected to imprisonment on the basis of section 46 of the Associations Act (No. 12-06). The Committee requests the Government to provide information on the application in practice of section 46 of Act No. 12-06, indicating the number of prosecutions initiated under this provision, the nature of the offences recorded and the type of penalties imposed.

Article 1(d). Penalties for participating in strikes. In its previous comments, the Committee referred to Act No. 90-02 of 6 February 1990, as amended and supplemented, concerning the prevention and settlement of collective labour disputes and the exercise of the right to strike, which imposes restrictions on the exercise of the right to strike. It noted that sections 37 and 38 of this Act establish the list of essential services in which a compulsory minimum service must be maintained, and that section 55(1) of this Act provides that anyone who causes or seeks to cause, or maintains or seeks to maintain, a strike contrary to the provisions of the Act, even without violence or assault against persons or property, shall be liable to imprisonment (involving the possibility of compulsory labour) ranging from eight days to two months and/or a fine. The Committee asked the Government to take the necessary steps to ensure that no worker may be sentenced to imprisonment for participating peacefully in a strike, and also to supply information on the application in practice of section 55(1) of Act No. 90-02.

The Government indicates that workers who participate peacefully in a strike while observing legal procedures are not the target of section 55(1) of Act No. 90-02. It explains that the aim of section 55(1) is to ensure collective consultation between the employer and the workers' representatives. Consultation is compulsory when a collective labour dispute arises between the employer and the workers' representatives. The Committee notes this information. In this regard, the Committee emphasizes that, regardless of the legal status of the strike, any penalty imposed should be proportionate to the seriousness of the offence committed, and the authorities should avoid recourse to imprisonment involving compulsory labour for those who organize a strike or participate in it peacefully. ***The Committee therefore urges the Government to take the necessary measures in law and in practice to ensure that no worker who participates peacefully in a strike can be sentenced to imprisonment involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect.***

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

Angola

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)

Article 1(a) of the Convention. Imposition of penal sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted that the draft Penal Code under discussion still provided for prison sentences for the offences of slander and defamation. It drew the Government's attention to the fact that the Convention prohibits the imposition of forced labour, including compulsory prison labour, for the expression of political views or opposition to the established political, social or economic system. It emphasized that the imposition of prison sentences that involve compulsory labour, which is the case in Angola by virtue of sections 13 and 50(c) of the Regulations of the progressive regime of 9 July 1981, can have an impact on compliance with *Article 1(a)* of the Convention

when they punish the expression of political views or opposition to the established system. The Committee requested the Government to take these considerations into account and to ensure the conformity of the provisions of the future Penal Code with the Convention, particularly with regard to the penalties applicable in the event of defamation.

In its report, the Government indicates that the national legal system does not contain any provision envisaging compulsory prison labour as a sanction or punishment for the expression of political views. The obligation to perform work in prison is an indirect result of conviction by the courts as it is only from the moment of conviction that the convict becomes a detainee and is accordingly subject to the requirement to work. Such work is intended to facilitate the reintegration of the detainee into society and applies to all detainees irrespective of the nature of the crime or offence. The Government considers that there is no lack of conformity between the Convention and the provisions establishing penalties for the offences of defamation and other offences arising out of violations of the limits on the exercise of freedom of expression, also considering that the prison labour performed by convicted persons must not be considered forced labour, in accordance with *Article 2(2)(c)* of the Forced Labour Convention, 1930 (No. 29).

The Committee notes the Government's position. It recalls that, although Convention No. 29 and Convention No. 105 are complementary, the exceptions envisaged in *Article 2(2)* of Convention No. 29 do not automatically apply to Convention No. 105. With regard to the exemption of prison labour or other forms of compulsory labour exacted as a consequence of a conviction in a court of law, in the majority of cases, such compulsory labour will have no relevance to the application of Convention No. 105, such as in the case of the exaction of compulsory labour from common offenders. However, in the case of persons required to work in prison following a conviction to a prison sentence for participation in political activities or expressing certain views, breaches of labour discipline or participation in a strike, this situation is covered by Convention No. 105. The Committee stresses that the purpose of the Convention is to ensure that no form of compulsory labour, including compulsory prison labour exacted from convicted persons, is imposed in the circumstances specified in the Convention, which are closely interlinked with the exercise of civil liberties (see also 2012 General Survey on the fundamental Conventions, paragraph 300).

In this regard, the Committee notes with ***regret*** that the new Penal Code maintains penal sanctions in the form of prison sentences for the offences of defamation (section 313) and slander (section 312). It also notes that section 333 provides that any person who publicly and with the intention of causing offence and insults through the use of words, images, writings, drawings or sounds against the Republic, the President of the Republic or any other sovereign body shall be liable to a sentence of imprisonment of between 6 months and three years and a fine. The Committee recalls in this regard that persons convicted to sentences of imprisonment are required to work (sections 13 and 50(c) of the Regulations of the progressive regime of 9 July 1981 and 60 of the Prisons Act No. 8/08 of 29 August 2008).

The Committee requests the Government to take the necessary measures to review the above provisions of the Penal Code and to ensure that, in accordance with the Convention, no one is compelled to perform labour, particularly compulsory prison labour, as a result of a conviction for having expressed certain political views or views opposed to the established political, social or economic system. It once again requests the Government to provide information on any prosecutions or court decisions under the provisions of the Penal Code establishing the offences of slander, defamation and insults against the Republic or the President of the Republic (sections 312, 313 and 333), with an indication of the facts leading to the prosecutions and the penalties imposed.

Article 1(d). Imposition of prison sentences involving an obligation to work as a punishment for having participated in strikes. The Committee previously drew the Government's attention to the need to amend the provisions of section 27(1) of the Act on Strikes (Act No. 23/91 of 15 June 1991), under which

the organizers of a strike that is prohibited or illegal or has been suspended by law were liable to prison sentences or fines. Accordingly, the organizer of a prohibited, illegal or suspended strike who has been convicted to a sentence of imprisonment could be compelled to perform compulsory prison labour. The Committee notes with ***satisfaction*** that section 27 of Act No. 23/91 on Strikes has been repealed following the adoption of the new Penal Code (section 6(2)(g) of Act No. 38/20 of 11 November 2020).

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

Austria

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Articles 1(1), 2(1) and 2(2)(c) of the Convention. Work of prisoners for private companies. For a number of years, the Committee has been examining the situation of prisoners who are obliged to work, without their formal consent, in workshops run by private enterprises within state prisons, pursuant to section 46(3) of the Law on the execution of sentences. The Committee noted the indication of the Government that the prisoners working in privately-run workshops are supervised only by prison staff and paid by the prison. The Committee repeatedly pointed out that the practice followed in this regard corresponds in all aspects to what is expressly prohibited by *Article 2(2)(c),* namely, that a person is "hired to" private contractors. It noted, in particular, that the term hired to covers not only situations where prisoners are "employed" by the private company, but also situations where prisoners are hired to private enterprises but remain under the authority and control of the prison administration.

The Committee further noted the Government's repeated indication that prisoners working for private contractors benefit from rights and conditions of work that are similar to those guaranteed in a free labour relationship. Although the Government indicated that it has stipulated that inmates working in privately run workplaces inside the prison must also provide freely given and informed consent, the Committee noted that section 46(3) of the Law on the execution of sentences was not amended to this effect. Moreover, it noted that according to a document named "Correctional services in Austria" issued by the Ministry of Justice in August 2016, convicts and prisoners subject to precautionary measures of placement, who are fit to work, are obligated by law to take over work. Prisoners who are required to work have to do the work that has been allocated to them, except for work which might endanger their life or subject them to serious health hazards. Moreover, 75 per cent of work remuneration is withheld as contribution to prison costs indicating that on average, prisoners receive €5 per day, after deduction of their contribution to prison costs and of their contribution towards unemployment insurance. The Committee requested the Government to take the necessary measures to ensure that section 46(3) of the Law on the execution of sentences is revised, in order to bring it into conformity with the requirements of the Convention as well as the indicated practice by the Government.

The Committee notes the Government's information in its report that there have not been any legislative amendments regarding the implementation of the Convention. However, there has been an increase in the rate of pay for those serving custodial sentences in line with the 61.31 per cent increase in the negotiated standard wage index. The Committee also notes the Government's reference to section 49(3) of the Law on the execution of sentences which guarantees the protection of life, health and safety of the workers as well as other social security benefits, rights and employment conditions that are applicable to prisoners working for private enterprises. Moreover, the Government states that although, the institutions involved in the implementation of custodial sentences may enter into agreements with commercial enterprises on the employment of prisoners, such enterprises have no disciplinary authority over the prisoners and are not permitted to exercise any kind of direct or indirect coercion or issue any orders to the prisoners. The Government further provides examples of private enterprises that offer special professional training and excellent working conditions with additional payments which is on high demand among inmates.

The Government considers that the work prisoners do for private enterprises is given legal status with rights and employment conditions attached which are similar to those of employment outside prisons. It reiterates that, *in practice*, the free and well-informed consent is obtained from the inmates to work in privately run workshops within the prison premises. It therefore considers that no revision of section 46(3) of the Law on the execution of sentences is required.

The Committee notes ***with regret*** that the Government does not envisage taking any measures to *legislate* and give legal recognition to this point nor has it taken any measures to revise section 46(3) of the the Law on the execution of sentences according to which prisoners are *obliged* to work, in workshops run by private enterprises without any reference to their consent. The Committee recalls that, by virtue of *Article 2(2)* of the Convention, the compulsory labour of convicted persons is excluded from the scope of the Convention, provided that it is "carried out under the supervision and control of a public authority" and that such persons are not "hired to or placed at the disposal of private individuals, companies or associations". These two conditions are equally important and apply cumulatively: the fact that the prisoner remains at all times under the supervision and control of a public authority does not itself dispense the Government from fulfilling the second condition, namely that the person is not hired to or placed at the disposal of private undertakings. If either of the two conditions is not observed, compulsory labour exacted from convicted persons under these circumstances is prohibited by virtue of *Article 1(1)* of the Convention. The Committee has nevertheless considered that work by prisoners for private enterprises can be held compatible with the requirement of the Convention, if such work is performed by prisoners under a "free employment relationship", as referred to by the Government. In such circumstances, the prisoners concerned must offer themselves *voluntarily,* without being subjected to pressure or the menace of any penalty, by giving their free, formal and informed consent to work for private enterprises in law and in practice. ***The Committee therefore once again requests the Government to take the necessary measures to ensure that section 46(3) of the Law on the execution of sentences is revised, in order to bring it into conformity with the requirements of the Convention and the indicated practice. The Committee also requests the Government to provide information on the number of prisoners working in privately run workplaces inside prison premises. Noting that institutions involved in the implementation of custodial sentences may enter into agreements with commercial enterprises on the employment of prisoners and that such enterprises have no disciplinary authority over the prisoners, the Committee requests the Government to provide information on the manner in which the prison authorities exercise control and, if appropriate, discipline on prisoners engaged in work benefiting commercial enterprises. The Committee further requests the Government to indicate the circumstances in practice of what is characterized as free and well-informed consent of the prisoners and to indicate whether their refusal to carry out such work is subject to disciplinary sanctions.***

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

Azerbaijan

Forced Labour Convention, 1930 (No. 29) (ratification: 1992)

Articles 1(1), 2(1) and 25 of the Convention. 1. *Trafficking in persons*. *(a) Plan of action.* Further to its previous request on the implementation and renewal of the National Plan of Action (NAP) against Trafficking 2014–18, the Committee notes the Government's information in its report on the adoption of the NAP 2020–2024 by the Presidential Decree No. 2173 of 22 July 2020. The Committee observes that the NAP 2020–2024 aims, among others, at: (i) improving the legislative and institutional framework; (ii) ensuring effective prosecution of the offence of trafficking in persons; (iii) strengthening the protection of victims; (iv) strengthening international cooperation; and (v) raising awareness on trafficking in persons. The Committee further observes that, pursuant to section 7 of the Act on trafficking in persons of 2005, the National coordinator on Combating Trafficking in Human Beings is in

charge of the implementation of the national action plans. ***The Committee requests the Government to provide information on the concrete measures taken to implement the various components of the NAP 2020–2024, as well as information on the activities of the National coordinator on Combating Trafficking in Human Beings and on any assessment of the results achieved or difficulties encountered in combatting trafficking in persons.***

(b) Penalties and law enforcement. The Committee previously requested the Government to provide information on the application in practice of section 144-1 of the Criminal Code which punishes trafficking in persons with imprisonment of from five to 15 years. In its reply, the Government indicates that, under section 144-1 of the Criminal Code, in 2018, the police investigated 144 cases of trafficking in persons, 26 of which were referred to public prosecution, which resulted in 21 convictions; in 2019, the police investigated 146 cases of trafficking in persons, 23 of which were referred to public prosecution, which resulted in 41 convictions; in 2020, the police investigated 155 cases of trafficking in persons, 16 of which were referred to public prosecution, which resulted in 11 convictions. The Committee observes that, in its 2018 report, the Group of Experts on Action Against Trafficking in Human Beings (GRETA) on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan noted that a large proportion of the prison sentences had been suspended (paragraph 174). ***The Committee requests the Government to continue to take measures to ensure that sufficiently effective and dissuasive penalties of imprisonment are imposed and enforced against perpetrators, in conformity with Article 25 of the Convention. Please continue to provide information on the number of prosecutions, convictions as well as on the specific penalties applied, pursuant to section 144-1 of the Criminal Code.***

(c) Identification and protection of victims. The Committee previously noted that the Centre of assistance to victims of trafficking (Centre) provides social, legal, medical, psychological and other assistance. The Committee requested the Government to provide information on the number of victims of trafficking identified, as well as the number of those who received the services provided by the Centre.

The Committee notes the Government's indication that, in 2020, the Centre provided assistance to 90 victims of trafficking. In particular, 5 victims received legal assistance; 5 victims were provided with psychological support; two received medical care, and three received assistance in employment. The Committee observes that the NAP 2020–2024, in its section 4.4, provides for a number of measures aimed at social rehabilitation and protection of victims of trafficking. ***The Committee encourages the Government to continue its efforts with a view to ensure that appropriate protection and assistance is provided to victims of trafficking for both sexual and labour exploitation. The Committee requests the Government to provide information on the measures taken in this regard, particularly within the framework of the NAP 2020–2024. It further requests the Government to continue to provide information on the number of victims who have been identified and who have received the services provided by the Centre.***

2. *Vulnerable situation of migrant workers.* The Committee previously noted the vulnerable situation of migrant workers, particularly in the construction sector, agriculture and domestic work, to abusive employment practices. The Committee requested the Government to provide information on the measures taken to ensure that migrant workers are fully protected from abusive practices and conditions that could amount to forced labour.

The Committee notes the Government's indication that, during the reporting period, there were no registered cases of forced labour exacted from migrant workers. The Committee further notes that the European Court of Human Rights, in its judgement of 7 October 2021, has held that Azerbaijan failed to institute and conduct an effective investigation of the migrant workers' allegations of forced labour and trafficking in persons (*Zoletic and others v. Azerbaijan*). The Committee also observes that the United Nations Committee on Economic, Social and Cultural Rights, in its 2021 concluding observations, expressed concern about the pervasive labour rights violations, especially of migrant workers, including

the non-payment or underpayment of salaries, salary discrimination, and workplace deaths and injuries (E/C.12/AZE/CO/4, paragraph 28). The Committee underlines that the system governing the employment of migrant workers should be designed to prevent such workers from being placed in a situation of increased vulnerability, particularly where they are subjected to abusive practices by employers, such as retention of passports or non-payment or underpayment of wages. ***The Committee requests the Government to strengthen its efforts to prevent migrant workers from falling victims of abusive practices and conditions of work that would amount to forced labour and to ensure that they can assert their rights and have access to justice and remedies regardless of their status. It further requests the Government to provide information on the number of inspections and investigations carried out in economic sectors in which migrant workers are mostly occupied, including in the construction sector, agriculture and domestic work, and the results of such inspections.***

Article 2(2)(a). Work exacted under compulsory military service laws for non-military purposes. In its previous comments, the Committee noted that, according to section 3.2 of the Act on Military Duty and Military Service of 2011, the military service is compulsory for all male citizens who have reached 18 years of age. The Committee further noted that, under section 9(1) of the Act on the Status of Military Personnel of 1991, military servicemen, during the period of their service, may be made to perform work or other tasks not related to military service, in accordance with the procedure laid down by the President of the Republic of Azerbaijan. The Government however indicated that the above-mentioned provision had not been applied in practice. The Committee recalled that *Article 2(2)(a)* of the Convention excludes work or service exacted by virtue of compulsory military service laws from the prohibition of forced labour only if such work or service is of a purely military character. It also recalled that the provisions of the Convention relating to compulsory military service do not apply to career military personnel, and the Convention consequently is not opposed to the performance of non-military work by military personnel serving in the armed forces on a voluntary basis. ***Noting with regret the absence of information from the Government on this point, the Committee reiterates its request and urges the Government to take the necessary measures to amend section 9(1) of the Act on the Status of Military Personnel in order to ensure that any work or task exacted by virtue of compulsory military service laws are limited to work of a purely military nature. It once again requests the Government to provide information on the cases in which persons performing compulsory military service can be requested to perform duties which are not specific to military service, including the number of persons concerned and the types of work carried out.***

Article 2(2)(c). (a) Work of prisoners for private enterprises. The Committee previously noted that, according to section 95.1 of the Code on the Execution of Penal Sentences, every convicted person is under an obligation to work, such work being exacted from convicts either at enterprises and workshops of the penitentiary institutions or at other enterprises, outside the penitentiary institution, including private enterprises. While noting that, under the Code on the Execution of Penal Sentences, prisoners' conditions of work may be considered as approximating those of a free labour relationship, the Committee observed that, under the legislation in force, the formal consent of prisoners to work for private enterprises is not required. The Committee recalled that work by prisoners for private entities can be held compatible with the Convention only where the necessary safeguards exist to ensure that the prisoners concerned accept such work voluntarily, without being subjected to pressure or the menace of any penalty, and that the conditions of such work approximate those of a free labour relationship. The Committee notes with ***regret*** the absence of information from the Government on this point. ***It once again requests the Government to take the necessary measures to ensure, both in legislation and in practice, that work may only be performed by prisoners in private enterprises with their free, formal and informed consent. The Committee also requests the Government to supply sample copies of contracts concluded between a private enterprise and a penitentiary institution, as well as any contracts between prisoners and a private company.***

(b) Sentences of public work. The Committee observes that sections 42(0)(4) and 47 of the Criminal Code provide, among the penal sanctions that can be imposed by courts, the penalty of public work, which consists of an obligation to perform socially useful work during a period from 240 to 480 hours. ***The Committee requests the Government to indicate the nature of institutions for which offenders may perform socially useful work, and to provide examples of the types of work that may be required under this penalty. Please also indicate if the courts have handed down such penalty.***

(c) Sentences of correctional work. The Committee observes that, pursuant to sections 42(0)(6) and 49(1) of the Criminal Code, courts can impose on offenders a penal sanction of correctional work for the period from two months to two years. According to section 40 of the Code on the Execution of Penal Sentences and section 49(2) of the Criminal Code, correctional work is performed at the offender's main place of work and up to 20 per cent of his/her earnings is collected for the State. In case an offender does not have a job, he/she shall register within the employment agency and cannot refuse a job offered to him/her (section 43 of the Code on the Execution of Penal Sentences). ***The Committee requests the Government to provide the examples of work that may be offered by the employment agency and to indicate the nature of institutions for which offenders may perform correctional work. Please also indicate if the courts have handed down such penalty.***

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2000)

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee noted that several provisions of the Criminal Code, which provide for sanctions of correctional work or imprisonment (involving compulsory labour), are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views opposed to the established political, social or economic system. These provisions include:

- section 147 regarding defamation, defined as "dissemination, in a public statement … or through the mass media, or a publicly displayed Internet information resource of false information discrediting the honour and dignity of a person";
- sections 169.1 and 233, read together with sections 7 and 8 of the Act on freedom of assembly, regarding "organization or participation in a prohibited public assembly" and "organization of group actions violating public order"; and
- section 283.1 regarding "inflaming the national, racial or religious enmity".

The Committee further noted the indication by an important number of United Nations and European institutions and bodies of a growing tendency to apply various provisions of the Criminal Code as a basis for the prosecution of journalists, bloggers, human rights defenders and other persons who expressed critical opinions. In particular, the following provisions of the Criminal Code were often used for that purpose: insult (section 148); embezzlement (section 179.3.2); illegal business (section 192); tax evasion (section 213); hooliganism (section 221); state treason (section 274); and abuse of office (section 308). The Committee also observed the introduction in the Criminal Code of section 148(1) on the offence of posting slander or insult on an Internet information resource by using fake user names, profiles or accounts, punishable by imprisonment for up to one year, and the extension of section 323(1) (smearing or humiliating the honour and dignity of the President in public statements, publicly shown products or the mass media) to online activities through the use of fake user names, profiles or accounts, punishable by up to three years' imprisonment. In addition, according to the UN Human Rights Committee, the maximum term of imprisonment under the Code of Administrative Offences for misdemeanours, with which human rights defenders were often charged (for example, hooliganism, resisting police and traffic violations), had been increased from 15 to 90 days.

The Committee notes with ***regret*** the absence of information on this point in the Government's report. The Committee observes from the report of the Commissioner for Human Rights of the Council

of Europe following her visit to Azerbaijan in July 2019 that no progress has been made with regard to protecting freedom of expression in Azerbaijan and that journalists and social media activists, who expressed dissent or criticism of the authorities, are continuously detained or imprisoned on a variety of charges, such as disobeying the police, hooliganism, extortion, tax evasion, incitement to ethnic and religious hatred or treason, as well as drug possession or illegal possession of weapons. The Committee also notes that, in its Opinion No. 12/2018, the UN Working Group on Arbitrary Detention concluded that deprivation of liberty of the journalist, who had been accused of drug crimes under section 234.4.3 of the Criminal Code and sentenced to nine years in prison, was as a result of his exercise of the right to freedom of expression (A/HRC/WGAD/2018/12, paragraph 59). The Committee further observes that the European Court of Human Rights (ECHR) has continued to hear a number of cases from Azerbaijan concerning the detentions and convictions of opposition political activists, particularly in the following cases: *Hasanov and Majidli v. Azerbaijan,* applications Nos 9626/14 and 9717/14, judgement of 7 October 2021; *Azizov and Novruzlu v. Azerbaijan*, applications Nos 65583/13 and 70106/13, judgement of 18 February 2021; *Khadija Ismayilova v. Azerbaijan,* application No. 30778/15, judgment of 27 February 2020, among others.

The Committee once again ***deplores*** the continued use of the provisions of the Criminal Code to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of correctional work or imprisonment, both involving compulsory labour. ***The Committee therefore once again strongly urges the Government to take immediate and effective measures to ensure that, both in law and practice, no one who, in a peaceful manner, expresses political views or opposes the established political, social or economic system can be sentenced to sanctions under which compulsory labour is imposed. The Committee once again requests the Government to review the above-mentioned sections of the Criminal Code by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour.***

In light of the situation described above, the Committee is bound to observe that there has been no progress with regard to protecting freedom of expression in Azerbaijan and that journalists, social media activists and opposition political activists who express dissent or criticism of the authorities are convicted and imprisoned under various provisions of the Criminal Code. The Committee once again deplores the continued use of the provisions of the Criminal Code to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of correctional work or imprisonment, both involving compulsory labour. The Committee considers that this case meets the criteria set out in paragraph 96 of its General Report to be asked to come before the Conference.

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

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Bahrain

Forced Labour Convention, 1930 (No. 29) (ratification: 1981)

The Committee notes the observations of the General Federation of Bahrain Trade Unions (GFBTU) received on 31 August 2021.

Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers to conditions of forced labour. 1. *Migrant workers.* In its previous comments, the Committee noted the observations made by the International Trade Union Confederation (ITUC) that the migrant workers' right to change their employment continued to depend on the approval of the Labour Market Regulatory Authority (LMRA), and that pursuant to the Ministerial Order No. 79 of 16 April 2009 employers shall include in the

employment contract a requirement limiting the approval of a transfer to another employer for a specified period. The Committee also noted the Government's information regarding the introduction of the FLEXI working permit in 2017, which is a renewable two-year permit that allows migrant workers, with either a terminated or expired work permit and who possess a valid passport, to live and work in the country without an employer (sponsor) where he or she can work in any job with any number of employers on a full or part-time basis. It noted that, as a pilot scheme, the FLEXI working permit was a first step that could facilitate the transfer of migrant workers' services to a new employer, thereby enabling them to freely terminate their employment. The Committee urged the Government to pursue its efforts to ensure that, in practice, migrant workers are not exposed to practices that might increase their vulnerability, in particular, in matters related to passport confiscation as well as to provide information on the application in practice of the FLEXI Working Permit.

The Committee notes the Government's information in its report that since 2017, more than 27,000 migrant workers have benefited from the FLEXI Work Permit System and are working in authorized occupations under fixed-term employment contracts. It also takes due note that a Wage Protection System to protect all workers in the private sector, including migrant workers, was introduced through Decree Law No. 59 of 2018 which obligates employers to transfer wages to authenticated bank accounts of the employees on the dates prescribed by law. This system allows the Government's regulatory and supervisory bodies to monitor remittances via banks and financial establishments. The Government indicates that between 2018 and 2020, the Ministry of Labour and Social Development (MLSD) settled a number of cases and complaints concerning the non-payment of wages to employees. The cases of about 3,000 workers in a major construction company in the country were settled by overseeing the workers' receipt of wages and dues; by facilitating the return of more than 2,400 workers to their countries; and by transferring the others to jobs in other enterprises. Furthermore, in the context of addressing the adverse effects of the spread of the COVID-19 pandemic of 2020, several significant decisions on the protection of migrant workers were issued, namely: (i) the suspension of monthly employment dues and fees for issuing and renewing work permits; (ii) the extension of the period for irregular migrant labour to regularize their status until the end of 2020; and (iii) the provision of health care services and vaccines free of cost to migrant workers. The Committee also notes that according to the data from the LMRA, around 551,000 work permits were issued for migrant workers between 2018 and 2020, while 407,000 work permits were cancelled as a result of expiration or cancellation by the employer, in addition to procedures for renewing more than one million work permits during the same period. Furthermore, the LMRA carried out more than 199,000 job transfers of migrant workers from one employer to another. Concerning the confiscation of passports by the employer, the Government states that the legislation regulating the employment relationship has no reference to this matter. However, the possession of a passport by any person other than its owner is prohibited under the Criminal Code. Any individual – be that a national or a migrant worker – whose passport is confiscated by any party for whatever reason, has the right to file a complaint at the police station and the courts. In this regard, the relevant courts receive about 150 complaints every year which are settled through enforcement orders requiring the person who has confiscated the passport to return it to its owner. Moreover, the Government indicates that it has made several arrangements with the embassies of labour-sending countries to remove any obstacles in issuing a new passport to the migrant worker and enabling them to benefit from the Flexi Work Permit system. ***While taking due note of this information, the Committee encourages the Government to continue its efforts to ensure that, in practice, migrant workers are not exposed to practices that might increase their vulnerability, in particular, in matters related to passport confiscation and the non-payment of wages. It further requests the Government to provide statistical information on the number of violations of the working conditions of migrant workers that have been detected and registered by the competent authority, and to indicate the penalties applied for such violations, including those applied for confiscation of***

passports. Lastly, the Committee requests the Government to continue to provide data on the number of employment transfers that have taken place within the framework of the FLEXI Work Permit System.

2. *Migrant domestic workers.* The Committee previously noted the statement by the ITUC that there were more than 105,200 domestic workers in Bahrain who were subjected to exclusion from the coverage of a number of labour law provisions, including from weekly rest days or from a limit on working hours. Many of them worked up to 19 hours per day with minimal breaks, and no days off with very little pay and food. Many had reported that they were prevented from leaving their employers' homes and that the physical abuse and sexual assault of female domestic workers were significant problems in Bahrain. There was also an absence of labour inspection into the working conditions of domestic workers. According to the ITUC, domestic workers were also explicitly excluded from the FLEXI scheme. The Committee also noted an absence of information concerning the cases reported of forced labour of domestic workers.

The Committee notes the Government's information that the provisions under the Labour Law for the Private Sector No. 36 of 2012, including those concerning the application of the principles of the labour contract, protection of wages, annual leave, working hours, rest periods, end-of-service indemnity and exemption from litigation fees for labour cases, apply to domestic workers. Likewise, Order No. 4 of 2014 on Regulating work permits for domestic workers, stipulates that prior to the granting of a work permit for employing a domestic worker, the employer has to prove that there has not been any record of mistreatment of a domestic worker or failure to fulfil the rights of a domestic worker; or that they have not been found guilty of committing any offence against a domestic worker. In addition, the LMRA has adopted the Tripartite Domestic Contract, a document regulating the relationship between the head of the household, the recruitment office and the domestic worker that stipulates the parties' obligations and the rights established for the domestic worker in the Labour Law for the Private Sector and which is also available in the languages spoken by the migrant domestic workers. Furthermore, according to the Law for Regulating the Labour Market No. 19 of 2006, the migrant worker shall not be charged with any fees by the LMRA or by the recruiting agencies for the issuance of a work permit. Such fees are levied on the employer. In this regard, the Government indicates that no complaints have been received by the LMRA concerning the exaction of recruitment fees from migrant domestic workers. The Committee, however, notes that the United Nations Human Rights Committee, in its concluding observations of November 2018, expressed concern about reports that migrant domestic workers are subjected to abuse and exploitation, including excessive working hours and delayed or non-payment of wages and about the lack of effective remedies for such abuses (CCPR/C/BHR/CO/1, paragraph 47). ***The Committee requests the Government to continue to take the necessary measures to ensure, in law and in practice, that migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. In this regard, the Committee requests the Government to take measures to ensure the full and effective application of the Labour law for the Private Sector so that migrant domestic workers fully enjoy their labour rights. The Committee requests the Government to provide information on the number and nature of complaints filed by migrant domestic workers and the outcome of such complaints, including the penalties applied. The Committee also requests the Government to take the necessary measures to enable migrant domestic workers to approach the competent authorities and seek redress in the event of a violation of their rights, without fear of retaliation.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1998)

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee noted that penalties of imprisonment (involving compulsory prison labour pursuant to section 55 of the Penal Code) may be imposed under

the following provisions of national legislation in circumstances falling within the scope of the Convention:

- Legislative Decree No. 47 of 2002: section 22 – governing the press, printing and publishing: publishing or circulating publications which have not been authorized for circulation; section 68 – harming or criticizing the official religion of the State, its foundations and principles; and criticizing the King or blaming him for any act of the Government.
- Act No. 26 of 23 July 2005 on political associations: section 25 – violating any provision of the Act for which no specific penalty is provided for.
- Legislative Decree No. 18 of 5 September 1973 governing public assemblies, meetings and processions as amended by Act No. 32 of 2006: section 13 – organization of, or participation in, public meetings, processions, demonstrations and gatherings without notification, or in violation of an order issued against their convening; violating any other provision of the Act.
- The Penal Code: section 168 – the dissemination of false reports and statements, as well as the production of publicity seeking to damage public security or cause damage to the public interest; and section 169 – the publication of false reports or forged documents that could undermine the public peace or cause damage to the country's supreme interest.

The Committee noted with regret that despite the amendments made to the Penal Code in 2015, sections 168 and 169 remained the same. The Government indicated that the above-mentioned provisions aim to protect the public order as well as the sovereignty of the State.

The Committee notes the Government's information in its report that all the above-mentioned provisions provide for imprisonment as one of the penalties for their violation, however there is no reference to the performance of compulsory labour. The provisions under section 168 of the Penal Code refer to damaging the national security and threatening public peace as a criterion for punishment which is excluded from the principles of the Convention. The Government states that according to section 55 of the Penal Code "Every person sentenced to a punishment involving deprivation of liberty, shall perform the labour to which he/she is *assigned* in prison, in accordance with the Law and with due regard to his/her circumstances, and with the intent of reforming and qualifying him/her for integration into the community." The Government stresses that the work assigned to prisoners is preliminary to post-prison rehabilitation and training programmes and that it has never been a form of hard labour, revenge, or a means for gain or economic benefit. The Government further refers to the Reform and Rehabilitation Institution Law No. 18 of 2014 which regulates the employment of inmates. The Government therefore considers that the provisions under the above-mentioned legislation do not fall within the scope of the Convention. It further states that the court rulings regarding the above-mentioned laws do not include references to forcing the convict to perform a particular job, instead they refer to the type and duration of the penalty and the amount of the fine.

The Committee points out that even though the penalties prescribed for the violation of the above-mentioned provisions do not specifically refer to compulsory labour, they include the sanction of imprisonment which, if imposed, involve an obligation for the prisoner to perform work as per section 55 of the Penal Code. The Committee recalls that the Convention protects persons who hold or express political views or views ideologically opposed to the established political, social or economic system by prohibiting the imposition on them of sanctions of imprisonment, which may involve compulsory labour. The Committee stresses that the purpose of the Convention is to ensure that no form of compulsory labour, including compulsory prison labour exacted from convicted persons, is imposed in the circumstances specified in the Convention, which are closely interlinked with the exercise of civil liberties. The Committee has already stressed that the range of activities which must be protected from punishment involving compulsory labour comprises the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through

which citizens seek to secure the dissemination and acceptance of their views. While recognizing that certain limitations may be imposed on these rights and freedoms as normal safeguards for public order to protect society, such limitations must be strictly within the framework of the law (paragraph 302 and 303 of the 2012 General Survey on the fundamental Conventions). The Committee considers that it is not necessary to use prison sentences involving compulsory labour to maintain public order. Nevertheless, the protection provided for by the Convention does not extend to persons who use violence, incite to violence or engage in preparatory acts aimed at violence. In this regard, the Committee notes that the UN Human Rights Committee in its concluding observations of 2018, expressed concern about the serious restrictions imposed on freedom of expression and the large number of arrests and prosecutions of individuals criticizing State authorities or political figures, including through social media (CCPR/C/BHR/CO/1, paragraph 53). ***The Committee therefore strongly urges the Government to take the necessary measures to amend the above-mentioned provisions, by limiting their scope to acts of violence or incitement to violence, or by replacing sanctions of imprisonment involving compulsory labour with other kinds of sanctions (e.g. fines), in order to ensure that no form of compulsory labour (including compulsory work assigned to a prisoner pursuant to section 55 of the Penal Code, be it for reforming or rehabilitative purposes) may be imposed on persons who, without using or advocating violence, express certain political views or oppositions to the established political, social or economic system. Pending the adoption of such measures, the Committee requests the Government to provide information on the application in practice of the above-mentioned provisions, including copies of the court decisions, and indicating the prosecutions carried out, the penalties imposed and the grounds for such decision.***

Article 1(c) and (d). Punishment for breaches of labour discipline and participation in strikes in the public services. The Committee previously noted that section 293(1) of the Penal Code provides for penalties of imprisonment (which involve compulsory prison labour pursuant to section 55 of the Penal Code) in a situation "when three or more civil servants abandon their work, even in the form of resignation, if they do so by common accord with a view to achieving a common objective". This provision is also applicable to persons who are not civil servants, but who perform work related to the public service (section 297). According to section 294(1), a punishment of imprisonment may be also inflicted upon a civil servant who relinquishes his office or refuses to discharge any of his official duties with the intent of obstructing the pursuit of business or causes any disruption to the pursuit thereof. The Committee requested the Government to take the necessary measures to bring sections 293(1), 294(1) and 297 of the Penal Code into conformity with the Convention.

The Committee notes the Government's indication that the penalties under sections 293(1), 294(1) and 297 of the Penal Code were intended to ensure the compliance and smooth functioning of government institutions. The work relationship between the public servant and the government entity is regulated by the Civil Service Law No. 48 of 2010. Any matter concerning the employee's resignation and the determination of whether such resignation has caused any harm to the institution shall be referred to the judiciary for adjudication. An employee who leaves or is absent from their workplace shall be punished in accordance with the aforementioned rules in the Civil Service Law and its Implementing Regulation, neither of which state that the employee is liable to imprisonment for leaving his/her workplace. The Government further states that no judicial rulings have been issued in accordance with the above-mentioned provisions against a group of public servants for agreeing together to abandon their workplace or refusing to perform their duties, whether by resigning or abstaining from performing their duties.

The Committee recalls that the imposition of sanctions involving compulsory labour as a punishment for breaches of labour discipline or for having peacefully participated in strikes is incompatible with the Convention. It also points out that, sanctions involving compulsory labour for breaches of labour discipline may only be applied if such breaches impair or are likely to endanger the operation of essential services, or in cases of wilful acts which would endanger the safety, health or life

of individuals. The Committee observes in this connection that the above-mentioned sections of the Penal Code are worded in terms broad enough to lead to the imposition of sanctions of imprisonment, which involve an obligation to perform labour, in situations covered by *Article 1(c)* and *(d)* of the Convention. ***The Committee therefore once again requests the Government to take the necessary measures to bring sections 293(1), 294(1) and 297 of the Penal Code into conformity with the Convention by ensuring that no sanctions involving compulsory labour may be imposed as a punishment for breaches of labour discipline or for peaceful participation in strikes. The Committee requests the Government to provide information on the progress made in this regard.***

Bangladesh

Forced Labour Convention, 1930 (No. 29) (ratification: 1972)

Articles 1(1), 2(1) and 25 of the Convention. 1. *Trafficking in persons.* (i) *Legal framework and law enforcement.* The Committee previously noted the adoption of the three implementing rules to the Prevention and Suppression of Human Trafficking Act, 2012, as well as the adoption and implementation of the National Plan of Action for Combating Human Trafficking (NPA). The Committee, however, referring to the statistical information contained in the Government's replies to the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), observed that while there was an increase in the number of trafficking investigations and prosecutions and the measures undertaken for the protection of victims, the number of convictions were low.

The Committee notes the Government's information in its report that from January to December 2020, 7,248 cases of trafficking in persons were filed. Out of the cases filed, 527 cases are under investigation with 411 persons being charged for the offences of trafficking and a conviction with a sanction of life imprisonment was secured in one case. In this regard, the Committee notes that according to the information from a news release of 2019 by the International Organization for Migration (IOM) entitled *"Human trafficking in the coastal belt",* human trafficking is a major challenge in Bangladesh, with the coastal belt and the borders along India being some of the most vulnerable locations. Furthermore, the same report indicates that 50,000 women and children are trafficked to India each year. The Committee also notes from a report of March 2020 from the United Nations Office on Drugs and Crime that Cox's Bazar (refugee settlement) is considered as one of the hotspots for human trafficking in Bangladesh, and the Bay of Bengal is a major trafficking route by sea. The Committee notes that, in its concluding observation of August 2019, the UN Committee against Torture (CAT), expressed concern that a vast majority of trafficking victims choose not to pursue cases against their traffickers, often because of fear of retaliation and intimidation, as many do not believe that they will receive effective protection from the police. The CAT also expressed concern at the reported cases in which Bangladeshi border guards and military and police officials have been involved in facilitating the trafficking of Rohingya women and children. Moreover, to date the Bangladesh High Court has refused to entertain anti-trafficking cases filed by Rohingya and the authorities have failed to open investigations (CAT/C/BGD/CO/1, paragraph 40). ***Noting with concern the low number of investigations and convictions for cases of trafficking in persons, the Committee urges the Government to take the necessary measures to ensure that all persons who engage in trafficking and related offences, including complicit officials, are subject to thorough investigations and prosecutions, and that sufficiently effective and dissuasive penalties are imposed in practice. In this regard, it requests the Government to take the necessary measures to strengthen the capacities of the law enforcement officials, including labour inspectors, prosecutors and judges, particularly by providing appropriate training. The Committee also requests the Government to continue to provide information on the application in practice of the Prevention and Suppression of Human Trafficking Act, supplying information on the number of investigations carried out, and convictions and penalties imposed.***

(ii) *National plan of action and awareness-raising measures.* The Committee notes the Government's information that two National Plan of Actions for Combating Human Trafficking from 2012 to 2014 and 2015 to 2017 have been successfully implemented and a new National Plan of Action (NPA) for Suppression and Prevention of Human Trafficking 2018–2022 has been adopted. According to the Government's report, the NPA 2018–22, has integrated the strategies and actions provided for in the 7th Five-Year Plan, which is aligned with the implementation of the sustainable development goals. This NPA focuses on five areas of action, namely (1) prevention of human trafficking; (2) holistic protection of trafficking victims; (3) prosecution of traffickers; (4) partnership and cross-country legal assistance and (5) monitoring and evaluation. The National Committee against Human Trafficking under the Ministry of Home Affairs is the authority responsible for coordinating, monitoring and evaluating the implementation of the NPA, and several Counter Trafficking Committees are established at the district and subdistricts for its implementation.

The Committee also notes the Government's indication that in 2020, the Bangladesh Police conducted 235 training programmes on trafficking in persons which were attended by a total of 38,793 officials and conducted awareness-raising programmes for 892,051 persons. Moreover, the Border Guards of Bangladesh (BGB) conducted 46,872 awareness-raising programmes in the border areas in 2020. ***The Committee requests the Government to continue providing information on the activities undertaken by the Police and the Border Guards in combating trafficking in persons, including the training and awareness-raising activities relating to trafficking. It further requests the Government to provide information on the concrete measures taken within the framework of the NPA 2018–22 to prevent trafficking in persons and the results achieved.***

(iii) *Identification and protection of victims.* The Committee notes the Government's information that the Bangladesh Police has set up a two-tier monitoring cell, one at the Police headquarters in each district which closely monitors all cases related to trafficking in persons; and one headed by the Additional Superintendent of Police which oversees the functions of the 64 district monitoring cells. It also notes the Government's information that the Rescue, Recovery, Repatriation and Integration (RRRI) Task Force coordinates the initiatives to stop the cross-border trafficking of persons and a Standard Operating Procedure (SOP) was developed in this regard. The Committee further notes that in 2020, the Border Guards rescued 452 women, 191 children and 1045 men who were being trafficked abroad through different borders and the Coast Guard Force rescued 10 women, 10 men and 9 children from traffickers who were illegally travelling to Malaysia by sea route on 8 December 2020. The Government further indicates that victims rescued from trafficking are taken to shelter homes and are provided with medical assistance and psychosocial counselling. ***The Committee requests the Government to continue providing information on the measures taken by the RRRI, the Bangladesh Police, the Border and the Coast Guards of Bangladesh for the identification and protection of victims of trafficking, as well as the number of victims identified and rehabilitated.***

2. *Forced labour practices*. The Committee previously noted that pursuant to section 9 of the Prevention and Suppression of Human Trafficking Act, 2012, the act of unlawfully forcing an individual to work against their will, or compelling them to provide labour or services, or holding a person in debt bondage by threat or use of force in order to perform any work or service is punishable with 5 to 12 years' imprisonment. It noted that the CMW, in its concluding observations of 2017, expressed concern at undocumented nationals of Myanmar working in Bangladesh, including children, who are frequently subject to sexual and labour exploitation, including forced labour, and Indian migrant workers who are subject to debt bondage in the brick kiln sector (CMW/C/BGD/CO/1, paragraph 31). In this regard, noting the Government's information that no cases of forced or compulsory labour had been detected, the Committee requested the Government to take the necessary measures to strengthen the capacity of law enforcement agencies to detect and investigate forced labour cases, and to provide information on any results achieved or progress made in this regard.

The Committee notes with ***regret*** that the Government has not provided any relevant information in this regard. It notes, however, that the CAT, in its concluding observations of 2019, expressed concern at the reports of more than 100 cases in which the Rohingya have been subjected to forced labour within Bangladesh (CAT/C/BGD/CO/1, paragraph 40). Moreover, the UN Committee on Economic, Social and Cultural Rights, in its concluding observations of 2018, expressed concern at the repeated reports of continuing abuse and exploitation, and poor conditions, in workplaces, particularly in the garment industry (E/C.12/BGD/CO/1, paragraph 33(c)). ***The Committee urges the Government to take the necessary measures to ensure that all workers, including refugees, are fully protected from abusive practices and working conditions that amount to forced labour. It requests the Government to strengthen the capacity of law enforcement agencies to detect and investigate forced labour cases, and to provide information on any results achieved or progress made in this regard. The Committee also requests the Government to provide information on the application in practice of section 9 of the Prevention and Suppression of Human Trafficking Act, 2012, including the number of investigations and prosecutions carried out, convictions handed down and the specific penalties applied for the offences related to forced labour and debt bondage.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1972)

Article 1(a) of the Convention. Sanctions involving an obligation to work as a punishment for the expression of political views or views ideologically opposed to the established political, social or economic system. Penal Code. The Committee previously noted section 124A of the Penal Code, which provides that whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law shall be punished with imprisonment for life or any shorter term, to which a fine may be added, or with imprisonment which may extend to three years, to which a fine may be added, or with a fine. The Committee observed that according to section 53 of the Penal Code, rigorous imprisonment and imprisonment for life involve compulsory hard labour, while simple imprisonment does not involve an obligation to work. Observing that section 124A provides for sanctions involving compulsory labour, the Committee requested the Government to take the necessary measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views, or views opposed to the established system.

The Committee notes that the Government, in its report, reiterates its statement that the Penal Code does not interfere in the employer–worker relations and is applied to impose penalties on acts of violence or incitement to violence or engagement in acts aimed at violence which goes beyond the scope of application of the Convention. It also states that there are no cases where penalties involving compulsory labour are imposed for the peaceful expression of political views, or views opposed to the established political system.

The Committee recalls that the Convention protects persons who hold or express political views or views ideologically opposed to the established political, social or economic system by prohibiting the imposition of penalties which may involve compulsory labour. The Committee stresses that the purpose of the Convention is to ensure that no form of compulsory labour, including compulsory prison labour exacted from convicted persons, is imposed in the circumstances specified in the Convention, which are closely interlinked with civil liberties, and not limited to employer–worker relations. The range of activities which must be protected from punishment involving compulsory labour thus comprises the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views. However, the protection provided for by the Convention does not extend to persons who use violence, incite to violence or engage in preparatory acts aimed at violence

(paragraphs 302 and 303 of the 2012 General Survey on the fundamental Conventions). In this connection, the Committee observes that, by referring to "incitement to contempt or disaffection towards the Government", section 124A of the Penal Code is worded in terms broad enough to lend itself to application as a means of punishment for the expression of views, and in so far as it is enforceable with sanctions involving compulsory labour, it falls within the scope of the Convention. ***The Committee therefore once again requests the Government to take the necessary measures to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views, or views opposed to the established system, by clearly restricting the scope of section 124A of the Penal Code to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on the application of this section in practice, including on prosecutions conducted, court decisions handed down, penalties imposed and the facts that led to convictions.***

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

Belize

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1983)

Article 1(c) of the Convention. Disciplinary measures applicable to seafarers. In its previous comments, the Committee noted that section 60(1) and (3) of the Harbours and Merchant Shipping Act, Chapter 234 (revised edition, 2000) provided for penalties of imprisonment for breaches of discipline such as desertion or absence without leave and disobedience, and that deserted seafarers may be forcibly returned on board ship. The Committee noted that by virtue of section 66 of the Prison Rules, Chapter 110, every convicted prisoner has the obligation to perform labour. The Committee recalled that the imposition of sanctions involving compulsory labour in relation to disciplinary offences should be limited to acts tending to endanger the ship or the life or health of persons. The Committee also pointed out that provisions under which seafarers may be forcibly returned on board ship to perform their duties are incompatible with this Convention. Therefore, it requested the Government to take measures to bring the Harbours and Merchant Shipping Act, into conformity with the Convention. The Committee notes with ***satisfaction*** that section 60 of the Harbours and Merchant Shipping Act (Chapter 234) was repealed by the Act No. 11 of 2007.

Article 1(c) and (d). Penalties involving compulsory labour as a punishment for having participated in strikes. For a number of years, the Committee has referred to section 35(2) of the Trade Unions Act, Chapter 300, according to which a person employed for the provision of a public service (electricity, water, railway, health, sanitary or medical service, communication or any other services declared by the Minister to be a public service), who wilfully or maliciously breaks his/her contractual obligations knowing or having reasonable cause to believe that the probable consequences of his/her so doing, either alone or in combination with others, will be to cause injury or danger or grave inconvenience to the community, commits an offence and is liable to imprisonment.

The Committee observed that section 35(2) of the Trade Unions Act provides for prison sanctions involving compulsory labour in relation to acts that will not only cause injury or danger to the community but, alternatively, will cause grave inconvenience to the community, and applies to a large range of public services that are not limited to services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee recalled in this respect that the imposition of sanctions involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes is incompatible with the Convention.

The Committee notes the Government's indication in its report that the Labour Advisory Board was reactivated to revise national legislation in order to bring it into conformity with international labour Conventions. ***Thus, the Committee once again requests the Government to take the necessary measures to review section 35(2) of the Trade Unions Act in order to bring the legislation into***

conformity with the Convention and ensure that no sanctions involving compulsory labour could be imposed as a punishment for breaches of labour discipline that do not endanger the life, personal safety or health of the whole or part of the population, or for peaceful participation in strikes. The Committee requests the Government to provide information on any progress made in this respect and encourages the Government to avail itself of ILO technical assistance in this regard.

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

Plurinational State of Bolivia

Forced Labour Convention, 1930 (No. 29) (ratification: 2005)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. The Committee previously noted the adoption of the Organic Law against trafficking and smuggling of persons (Act No. 263 of 31 July 2012) and the implementing regulations (Decree No. 1486 of 6 February 2013) which define the fundamental components of trafficking in persons and provide for penalties.

The Committee notes the adoption of the Plurinational Policy against trafficking and smuggling of persons for 2013–17 and the National Action Plan for 2015–19. The Committee also notes the Government's general indication, in its report, that, in the framework of the Multisectoral Plan for the integral development of the fight against trafficking and smuggling of persons for 2016–20, several actions are being implemented to prevent, control and sanction trafficking in persons, while providing support and promoting the reintegration of victims. The Committee notes that, as highlighted in the National Action Plan, Bolivia is principally a source country for trafficking for purposes of both sexual and labour exploitation within the country, mainly in the sugar cane and nut harvesting industries, domestic work, mining and begging. A significant number of Bolivians are also subjected to trafficking for labour exploitation abroad, mainly in Argentina, Brazil and Chile, in sweatshops, agriculture, textile factories and domestic work. The Committee refers, in this regard, to its last observation on the application of the Domestic Workers Convention, 2011 (No. 189), where it noted that, according to studies published by the Organization of American States (OAS), many victims of trafficking are Bolivian women who are taken to other countries as domestic workers and sometimes become victims of labour exploitation. It notes that, in September 2018, the La Paz Departmental Human Rights Ombudsperson *(Defensoría del Pueblo)* indicated that during the last few years the number of trafficking victims increased by 92.2 per cent, with 70 per cent of the victims being girls and young women aged from 12 to 22 years. According to its 2016 Global Report on Trafficking in Persons, the United Nations Office on Drugs and Crime (UNODC) indicated that between 2012 and 2015, 1,038 persons were prosecuted for trafficking but only 15 of them were convicted. The Committee notes that, in its last annual reports, the Public Prosecutor indicated that 701 cases of trafficking were registered in 2016 and 563 cases in 2017, but that no information is available on the number of persons convicted or judicial decisions handed down in that respect. The Committee further notes that, in its last concluding observations, the Committee on the Elimination of Discrimination Against Women (CEDAW) of the United Nations was concerned about the high and growing number of cases of trafficking in human beings, in particular women and children in border areas, as well as of cases of internal trafficking of indigenous women for purposes of forced prostitution, in particular in areas in which major development projects are being implemented. The CEDAW recommended to undertake an assessment of the situation of trafficking in Bolivia as a baseline for measures to address trafficking and to improve the collection of data on trafficking disaggregated by sex, age and ethnicity (CEDAW/C/BOL/5-6, 28 July 2015, paragraphs 20 and 21). The Committee notes with ***concern*** the low number of convictions regarding trafficking in persons, despite the significant number of cases brought to justice. ***It accordingly urges the Government to strengthen its efforts to ensure that all persons who engage in trafficking are subject to prosecutions and that in practice, sufficiently effective and dissuasive penalties are imposed. In this regard, it requests the Government to provide information on the number of criminal proceedings initiated, persons convicted and penalties imposed on the basis of Act No. 263 against trafficking and smuggling of persons. The Committee also requests the Government to provide information on the concrete measures taken to effectively combat trafficking in persons, including through awareness-raising activities and enhanced access to justice, in the framework of the National Action Plan for 2015–20***

and the Multisectoral Plan for 2016–20. Lastly, noting the Government's statement that several actions are being implemented to support victims of trafficking, the Committee requests the Government to provide information on the concrete measures taken to protect victims of trafficking and to facilitate their access to immediate assistance and remedies, as well as the number of victims who have been identified and have benefited from such assistance.

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

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

Botswana

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) of the Convention. Sanctions involving the obligation to work as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted that sentences of imprisonment, involving compulsory prison labour pursuant to section 92 of the Prisons Act, Cap 21:03 of 1979, may be imposed under sections 47 and 48 of the Penal Code on any person who prints, makes, imports, publishes, sells, distributes or reproduces any publication prohibited by the President "in his absolute discretion" as being "contrary to the public interest". Similar sentences may be imposed under section 51(1)(c), (d) and (2) concerning seditious publications. Sentences of imprisonment may also be imposed under sections 66–68 of the Penal Code on any person who manages, or is a member, or in any way takes part in the activity of an unlawful society, particularly of a society declared unlawful as being "dangerous to peace and order". In this connection, the Committee observed that the above provisions are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views and, in so far as they are enforceable with sanctions involving compulsory labour, they are incompatible with the Convention. The Committee therefore requested the Government to take appropriate measures, on the occasion of the revision of the Penal Code, to bring the above provisions into conformity with the Convention.

The Committee notes with ***regret*** the Government's statement, in its report, that no amendment to the Penal Code is planned. It wishes to recall once again that *Article 1(a)* of the Convention prohibits punishment by penalties involving compulsory labour, including compulsory prison labour, of persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. ***The Committee expresses the firm hope that appropriate measures will be taken without delay, in both law and practice, to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views opposed to the established system, either by restricting the scope of application of these provisions to situations of violence, or by repealing sanctions involving compulsory prison labour. The Committee requests the Government to provide information on the developments made in this regard.***

Article 1(c). Punishment for breaches of labour discipline. The Committee previously noted that section 43(1)(a) of the Trade Disputes Act (No. 15 of 2004) punishes with imprisonment involving compulsory prison labour any wilful breach of a contract of employment by an employee who is acting either alone or in combination with others, if such breach affects the operation of essential services. The Committee observed that the list of essential services specified in the Schedule to the Trade Disputes Act includes services such as the Bank of Botswana, railway services, and transport and telecommunications services necessary to the operation of all these services, which did not seem to meet the criteria of essential services in the strict sense of the term.

The Committee notes the Government's indication that the list of essential services is going to be reviewed by a task force which has been established for this purpose, within the framework of the ongoing labour law review process. The Committee also notes, referring to its comments made in 2017 under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that the Trade Disputes Act has been amended in 2016, in response to new developments and the specific circumstances in the country. It notes that the list of essential services was thus expanded to include teaching services,

veterinary services and diamond sorting, cutting and selling services. Referring to its General Survey of 2012 on the fundamental Conventions (paragraph 311), the Committee points out that essential services should be understood in the strict sense of the term, that is services, the interruption of which may endanger the life, personal safety and health of the whole or part of the population, and observes that the aforementioned essential services do not seem to meet the criteria of essential services in the strict sense of the term. ***The Committee therefore expresses the firm hope that the Government will take the necessary measures, in the framework of the current labour law review process, to ensure that no prison sentences involving compulsory labour are imposed as a punishment for breaches of labour discipline affecting the operation of essential services that do not meet the criteria of essential services in the strict sense of the term. It requests the Government to provide information on the progress made in this regard.***

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

Burkina Faso

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Articles 1(1) and 2(1) of the Convention. Punishment of vagrancy. Legislative developments. For a number of years, the Committee has been requesting the Government to provide information on the progress achieved in the revision of section 246 of the Penal Code, which may act as indirect compulsion to work, through the punishment of vagrancy with a sentence of imprisonment. The Committee notes with ***satisfaction*** that the new Penal Code does not contain provisions criminalizing vagrancy.

Articles 1(1), 2(1) and 25. Trafficking in persons. In its previous comments, the Committee noted that Act No. 029-2008/AN of 15 May 2008 on combating trafficking in persons and similar practices (Anti-Trafficking Act) defined and criminalized trafficking in persons with penalties of imprisonment ranging from five to ten years, and up to 21 years in case of aggravating circumstances. It requested the Government to take the necessary measures to combat trafficking in persons, in particular through the adoption of an appropriate national action plan that would enable the application in practice of the Anti-Trafficking Act.

The Committee notes the Government's statement, in its report, that the Anti-Trafficking Act was abrogated and that its provisions have been incorporated in the new Penal Code, adopted by Act No. 025-2018/AN of 31 May 2018 (sections 511-1 to 511-28). The Government indicates that, pursuant to section 511-28 of the new Penal Code, an Anti-Trafficking Committee composed of representatives from ministerial departments, civil society actors and non-governmental organizations was established, as well as Regional Committees in order to bring together, at local level, all the actors involved in the fight against trafficking in persons, such as law enforcement officials, customary and religious authorities and civil society organizations. The Government adds that these committees have been very active and have already carried out 6,411 awareness-raising and capacity building activities benefiting 69,889 persons in 2019. Furthermore, in August 2021, a practical guide on the National Referral System was published, in collaboration with the International Organization for Migration (IOM), in order to raise awareness of the relevant stakeholders. The Government also indicates that the elaboration of a national action plan to combat trafficking in persons will be examined in due time. According to the statistical information provided by the Government, in 2019, five prosecutions were initiated for trafficking in persons and three convictions handed down. The Committee takes notes of this information and observes that the Government has not informed on the measures taken to identify potential victims of trafficking and provide them with adequate protection. ***While welcoming the efforts made by the Government to raise awareness of trafficking in persons both at the national and local levels, the Committee urges the Government to step up its efforts to combat trafficking in persons. It hopes that the establishment of the National Anti-trafficking Committee will contribute to the effective implementation of sections 511-1 to 511-28 of the Penal Code, and to the elaboration and adoption of a national action plan. The Committee further requests the Government to provide***

information on the measures taken to: (i) prevent the trafficking of persons for sexual and labour exploitation; (ii) strengthen the capacities of law enforcement bodies (police, labour inspectorate, Public Prosecutor's Office) and the judiciary; and (iii) identify victims and provide them with adequate protection. The Committee requests the Government to continue to provide information on the number of prosecutions initiated, convictions handed down and specific penalties applied under the Penal Code.

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

Burundi

Forced Labour Convention, 1930 (No. 29) (ratification: 1963)

The Committee takes note of the observation of the Trade Union Confederation of Burundi (COSYBU), received on 28 August 2021.

Article 1(1) and Article 2(1) of the Convention. *Compulsory community development work.* For more than ten years, the Committee has referred to the question of community work in which the population participates under Act No. 1/016 of 20 April 2005 organizing municipal administration. With the objective of promoting the economic and social development of municipalities at both the individual level and on a collective and unified basis, municipalities may cooperate through a system of inter-municipality, and it is up to the municipal council to establish the community development programme, monitor its implementation and carry out the evaluation thereof. While noting the Government's indication that the law does not provide for penalties against persons who do not engage in community work, the Committee observes that this work is undertaken by the population without a text regulating the nature of the work, the terms under which the work may be required of the population, nor the manner in which the work is organized. The Committee also noted that the COSYBU referred to the fact that the population is not consulted on the nature of the work, which is decided upon unilaterally, and that the police prevent the population from moving during such work, by closing the streets. The Committee drew the Government's attention to the need to adopt regulations to Act No. 1/016 of 20 April 2005 organizing municipal administration, to provide a framework for participation in community work and its organization, and enshrine the voluntary nature of the work.

In its report, the Government reiterates that participation in community work is voluntary, and that it takes due note of the need to regulate Act No. 1/016. The Committee notes however that Basic Act No. 1/04 of 19 February 2020 amending certain provisions of Act No. 1/33 of 28 November 2014 organizing municipal administration, does not enshrine the voluntary character of the work. This Act reprises certain provisions of Act No. 1/016 of 20 April 2005, and specifies that municipalities must promote their economic and social development at both the individual level and on a collective and unified basis, and that it is up to the municipal council to monitor the implementation and carry out the evaluation of the municipal development programme. The Committee notes the new observations from the COSYBU according to which during the performance of community works circulation in the streets is free, although no information regarding the lifting of the street closures has been provided.

The Committee observes, from the information available on the Government's website, that certain community work consists of renewing bridges and roads. Furthermore, according to information available on the National Assembly website, community work that helps install municipal, regional and national infrastructure, boosts the national budget allocated to the country's socio-economic policies by the equivalent of more than 10 per cent each year, and appears to implicate the entire population. The Committee also notes that, in its annual report for 2020, the Independent National Human Rights Commission (CNIDH) refers to labour supplied by the population, which had been used for the construction of new classrooms. ***In light of the nature of the work undertaken, its scale and the importance that it holds for the country, the Committee again requests the Government to take the appropriate measures to regulate the ways in which the population participates in community work,***

and to enshrine the voluntary nature of this participation. It requests the Government to provide information on progress made in this regard.

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), received on 28 August 2021.

Article 1(a) of the Convention. Imprisonment involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously expressed its concern at the continued existence of the provisions of the laws (the Penal Code and the Press Act) which can be used to restrict the exercise of the freedom to express political or ideological views (orally, through the press or via other communication media) and which result in the imposition of penalties involving compulsory prison labour, inasmuch as section 25 of Act No. 1/026 of 22 September 2003 issuing the prison regulations provides that work remains compulsory for all prisoners. The Committee referred to sections 600 (distribution, circulation or display of documents that are damaging to the national interest, for propaganda purposes) and 601 of the Penal Code (receipt of advantages from abroad intended to conduct an activity or propaganda such as to undermine the loyalty of citizens towards the State). The Committee urged the Government to ensure that no penalty involving compulsory labour may be imposed for the peaceful expression of political views or views ideologically opposed to the established system.

The Committee notes the Government's indication in its report that the Penal Code was revised following the adoption of Act No. 1/27 of 29 December 2017, revising the Penal Code. The Government indicates that freedom of expression is guaranteed by the Constitution and also refers to provisions guaranteeing respect for the right to a fair trial which protect journalists and human rights defenders. The Committee notes that, in its observations, COSYBU states that the organization of public demonstrations and opposition movements is viewed negatively by the public authorities and that some labour movements exerting pressure with regard to legitimate demands have been stopped by the police and certain union leaders punished.

The Committee notes that section 25 of Act No. 1/24 of 14 December 2017 on the revision of the prison system reproduces the same provisions as in section 25 of Act No. 1/026 of 22 September 2003 on the prison system. Work therefore remains compulsory for all prisoners with a prison sentence. It further notes that the revised Penal Code of 2017 provides for imprisonment (consequently involving prison labour) for certain activities that may fall within the scope of *Article 1(a)* of the Convention, namely activities through which persons express ideas or views opposed to the established political, economic or social system:

- injurious allegations, likely to be prejudicial to the honour or reputation of a person or expose him or her to public scorn (section 264);
- insults (sections 265 and 268);
- acts against the decency of the head of State or an agent exercising public authority (sections 394 and 396);
- withdrawal, destruction, damage, replacement or insult of the flag or official insignia (section 398);
- distribution, circulation or public display of pamphlets, bulletins or flyers from abroad or inspired by foreign sources intended to harm the national interest, for propaganda purposes, as well as the possession of such documents with a view to such acts (section 623);
- the receipt, by a foreign person or organization, of donations, presents, loans or other advantages, intended or used to conduct or remunerate in Burundi an activity or propaganda

such as to undermine the loyalty that the citizens owe to the State and institutions of Burundi (section 624);

– the contribution to the publication, dissemination or reproduction of fake news with a view to causing a breach of the peace, as well as the exhibition in public places or places open to the public of any objects or images likely to breach the peace (section 625).

Furthermore, the Committee notes that Act No. 1/19 of 14 September 2018, amending Act No. 1/15 of 9 May 2015, governing the press in Burundi, provides that failure to comply with its provisions is subject to criminal penalties. The Committee notes in this regard that, under section 52 of the Act, journalists must only publish information considered "balanced". Section 62 provides that the press shall treat information in a "balanced" manner and shall refrain from broadcasting or publishing content that is harmful to good moral standards and public order.

The Committee notes that, in its report of 13 August 2020, the United Nations Commission of Inquiry on Burundi indicates that political opponents were victims of serious human rights violations, in the context of the 2020 electoral process, which included arbitrary detentions, convictions with sentences of several years in prison and murders in reprisal for their political activities (A/HRC/45/32, paras 31, 32, 34, 35 and 58). The press is also monitored, and journalists and human rights defenders have been sentenced to imprisonment because of their work (paras 41 to 43). At its oral presentation on 11 March 2021 to the 46th session of the Human Rights Council, the Commission of Inquiry on Burundi noted that several human rights defenders, political opponents and journalists were sentenced to imprisonment for endangering the internal security of the State, rebellion and false accusations owing to their activities and criticism.

The Committee notes with ***regret*** that the 2017 Penal Code still contains provisions permitting punishment by imprisonment involving compulsory prison labour for activities associated with the expression of political views or views opposed to the established system. It also notes with ***deep concern*** the information relating to the judicial punishment of journalists and political opponents. The Committee once again recalls that under *Article 1(a)* of the Convention, persons, without recourse to violence, holding or expressing political views or views ideologically opposed to the established political, social or economic system must not be subject to punishments that would require them to work, including compulsory prison labour. ***The Committee therefore urges the Government to take the necessary measures to ensure that, in law and practice, no person expressing political views or views ideologically opposed to the established political, social or economic system, including journalists, human rights defenders and political opponents, may not be liable or sentenced to imprisonment, which, under national legislation, involves compulsory labour. The Committee requests the Government to indicate the measures taken to revise the above legislation to this end. It meanwhile requests the Government to provide information on the application in practice of the above sections of the Penal Code, particularly the number of prosecutions brought and penalties imposed, as well as any court decisions recognizing criminal responsibility and criminally sanctioning non-compliance with the provisions of Act No. 1/19 governing the press in Burundi.***

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

Cameroon

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(a) of the Convention. Imposition of penalties of imprisonment involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been drawing the Government's attention to certain provisions of the national legislation, under which criminal penalties involving compulsory prison labour (pursuant to section 24 of the Penal Code and section 49 of Decree

No. 92-052, of 27 March 1992, issuing the prison regulations) may be imposed in situations covered by *Article 1(a)* of the Convention. The Committee emphasized that where an individual is, in any manner whatsoever, compelled to perform prison labour as punishment for expressing certain political views or opposing the established political, social or economic system, this is not in conformity with the Convention. More particularly, the Committee referred to the following legal provisions:

- section 113 of the Penal Code, under which any person issuing or propagating false information that may be detrimental to the public authorities or national unity shall be liable to imprisonment of three months to three years;
- section 153 of the Penal Code, under which any person who insults the President or a foreign head of State shall be liable to imprisonment of six months to five years;
- section 154(2) of the Penal Code, under which any person guilty of incitement, whether in speech or in writings intended for the public, to revolt against the Government and the institutions of the Republic shall be liable to imprisonment of three months to three years;
- section 157(1)(a) of the Penal Code, under which any person guilty of incitement to obstruct the enforcement of any law, regulation or lawfully issued order of the public authority shall be liable to imprisonment of three months to four years;
- section 33(1) and (3) of Law No. 90-53, of 19 December 1990, concerning freedom of association, under which board members or founders of an association which continues operations or which is re-established unlawfully after a judgment or decision has been issued for its dissolution, and persons who have encouraged the assembly of members of the dissolved association by allowing continued use of the association's premises, shall be liable to imprisonment of three months to one year. Section 4 of the Law provides that associations founded in support of a cause or for a purpose contrary to the Constitution, or associations whose purpose is to undermine, inter alia, security, territorial integrity, national unity, national integration or the republican nature of the State, shall be null and void. Furthermore, section 14 provides that the dissolution of an association does not prevent any legal proceedings from being instituted against the officials of such an association.

The Committee notes the Government's indication that, in practice, prison labour is subject to the consent of the prisoners and focuses on the preparation of their social reintegration. The Committee observes in this regard that section 24 of the Penal Code specifically provides that persons serving a prison sentence are obliged to work. It notes with ***deep concern*** that, despite the adoption of Law No. 2019/20, of 24 December 2019, to amend and supplement certain provisions of the Penal Code, and Law No. 2020/9 of 20 July 2020, to amend and supplement Law No. 90-53, the Government did not make use of this opportunity to review the above-mentioned legislative provisions, taking into account the explanations provided regarding the scope of the protection afforded by the Convention.

The Committee observes that in its 2020 observation under the Freedom of Association and Protection of the Rights to Organize Convention, 1948 (No. 87), it noted with deep concern that some of the situations covered under the definition of terrorism, as provided for in section 2 of the Law on the suppression of terrorism (Law No. 2014/028 of 23 December 2014), could apply to acts related to the legitimate exercise of activities by trade unions or employers' representatives. The Committee recalls that section 2 of the Law refers to acts committed with the intention of "disrupting the normal operation of public services or the delivery of essential public services, or creating a public crisis" and provides for penalties of imprisonment from 15 to 20 years. The Committee also notes that, in its 2019 concluding observations, the UN Committee on Economic, Social and Cultural Rights expressed specific concern about reports that human rights defenders, including those working to defend economic, social and cultural rights, operate under restrictive conditions and are often subjected to various forms of harassment or reprisal (E/C.12/CMR/CO/4, 25 March 2019, paragraphs 10 and 38).

The Committee wishes once again to draw the Government's attention to *Article 1(a)* of the Convention which prohibits the use of compulsory labour, including compulsory prison labour, as a punishment for persons who hold or express political views or views ideologically opposed to the established political, social or economic system. The Committee emphasizes that the range of activities which must be protected, under this provision, from punishment involving compulsory labour includes the freedom to express political or ideological views, which may be exercised orally or through the press or other communications media, as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views (see General Survey of 2012 on the fundamental Conventions, paragraph 302). ***The Committee therefore strongly urges the Government to take the necessary steps to review the above mentioned provisions of the Penal Code, the Law No. 90-53 concerning freedom of association, and the Law No. 2014/028 on the suppression of terrorism, in such a way that, both in law and practice, no penalty of imprisonment (which entails compulsory labour) can be imposed on persons who peacefully express political views or views ideologically opposed to the established political, social or economic system. The Committee requests the Government to provide information on the practical application of the provisions in question, including the number of convictions for violations thereof, and the facts that led to the convictions***.

Central African Republic

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Article 1(1) and Article 2(1) of the Convention. Violations committed in the context of hostilities between armed groups. In its previous comments, the Committee expressed its deep concern at the persistent recourse to forced labour and sexual slavery by armed groups in the context of the conflict between the Government and these groups. The Committee noted the measures aimed at restoring peace and security in the country and the establishment of a truth and reconciliation commission and a special criminal court. It urged the Government to take the necessary measures to end the violence committed against civilians with the aim of subjecting them to forced labour, including sexual slavery, and to combat impunity of the perpetrators of these violations.

The Government indicates in its report that it is continuing its efforts to combat all forms of violence committed against civilians, including practices amounting to forced labour. It states that it has taken a number of security and legislative measures to address violence committed against civilians by armed groups, including the redeployment of the Central African armed forces to towns formerly occupied by armed groups to ensure adequate protection for civilians. The Government also indicates that hearings in the Criminal Court dedicated to rape cases (a punishable offence under section 87 of the Criminal Code) make it possible to criminally sanction, inter alia, perpetrators of rape who belong to armed groups.

The Committee notes this information. It also notes the signing on 6 February 2019 of the Political Agreement for Peace and Reconciliation in the Central African Republic (APPR-RCA) by the Government and 14 armed groups, with a view to a cessation of hostilities between the armed groups, and all abuse and violence against civilians. It also notes that, according to his report of 24 August 2020, covering the period from July 2019 to June 2020, the United Nations Independent Expert on the situation of human rights in the Central African Republic states that the deadline for concluding the disarmament and demobilization process set in this Agreement by the national authorities at the end of January 2020 was not met. The Independent Expert emphasizes that the parties to the conflict, in particular the armed groups, have reportedly been responsible for many cases of conflict-related sexual violence, including rape and sexual slavery. He states that victims are often reluctant to file a complaint for fear of reprisals and stigmatization. In addition, medical, judicial and psychosocial services have very limited capacity. While the Special Criminal Court has concluded investigations into some ten cases, the insecurity

prevents access to the entire territory to conduct investigations, and the fact that hinterland courts are only partially operational remains a concern. In addition, the Independent Expert indicates that the Truth, Justice, Reparation and Reconciliation Commission (CVJRR), whose mandate is to work to promote truth, justice, reparation and guarantees of non-recurrence, in partnership with the Special Criminal Court is not yet fully operational (A/HRC/45/55, paragraphs 24, 47, 77, 78, 81). The Committee also notes that, in its concluding observations of 2020, the UN Human Rights Committee emphasizes that despite the introduction of a victim and witness protection scheme within the Special Criminal Court, the use of which is left to the discretion of judges, no measures have been taken to implement it (CCPR/C/CAF/CO/3, paragraph 9).

The Committee notes the joint public report of the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA) on violations of human rights and international humanitarian law in the Central African Republic during the electoral period, from July 2020 to June 2021, according to which the security situation in the country continues to deteriorate. This report also refers to abductions, rapes and sexual slavery on the part of the armed forces and armed groups (paragraphs 55, 80, 88). On 4 May 2021, a decree was issued establishing a Special Commission of Inquiry with a mandate to investigate allegations of serious violations of human rights and international humanitarian law committed by the national armed forces, internal security forces and other security personnel between December 2020 and April 2021 (paragraph 152). ***While recognizing the complexity of the situation in the country, including the political-security context that remains unstable and the presence of armed groups in the territory, the Committee urges the Government to continue its efforts to ensure that no one is subjected to any form of forced labour, including sexual slavery. In addition, the Committee firmly hopes that the Government will continue to take measures to increase the effectiveness of the remedies available to victims, including by operationalizing the above-mentioned mechanisms and bringing the perpetrators of these crimes to justice. It requests the Government to provide information on any progress made in this regard.***

Article 25. Application of adequate criminal penalties. The Committee previously noted that while the Labour Code prohibits the use of forced labour in all its forms, neither this Code nor the criminal legislation provide for criminal penalties for the exaction of forced labour (except for trafficking in persons). It requested the Government to take the necessary steps to ensure that the legislation contains provisions that enable the competent authorities to prosecute, judge and punish the perpetrators of all forms of forced labour, not only trafficking in persons.

The Government indicates that sections 8 and 9 of the draft revised Labour Code provide for the prohibition of forced or compulsory labour. The Committee notes this information and recalls that, under *Article 25* of the Convention, really adequate and strictly enforced penalties must be imposed for the illegal exaction of forced labour. ***The Committee therefore hopes that the Government will take the Committee's comments into account to ensure that the legislation provides for sufficiently effective and dissuasive criminal penalties against those responsible for all forms of forced labour, whether within the framework of the draft revised Labour Code or the criminal legislation.***

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

Chad

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(2)(a) of the Convention. Work in the general interest imposed in the context of compulsory military service. In its previous comments, the Committee noted that, according to section 14 of Ordinance No. 001/PCE/CEDNACVG/91 of 1991 reorganizing the armed forces within the framework of compulsory

military service, conscripts who are fit for service are classified into two categories, one of which remains at the disposal of the military authorities for two years and may be called upon to perform work in the general interest by order of the Government. The Committee recalled that, to be excluded from the scope of application of the Convention and not considered to be forced labour, any work or service exacted under compulsory military service laws must be of a purely military character. The Committee therefore requested the Government to take measures to amend the provisions of section 14 and noted the Government's indication that those provisions would be brought into conformity with the Convention.

The Government once again indicates in its report that it will take the necessary measures to bring the provisions of section 14 of Ordinance No. 001/PCE/CEDNACVG/91 into conformity with the Convention. The Committee notes that section 14 of the Ordinance of 1991 reorganizing the armed forces was reproduced in section 32 of Act No. 012/PR/2006 of 10 March 2006 reorganizing the armed and security forces.

The Committee notes with ***regret*** the continued absence of measures bringing the provisions of the legislation on compulsory military service into conformity with the Convention, despite the Committee's requests in this regard over several years. ***The Committee urges the Government to amend the legislation setting out the rules applicable to compulsory military service in order to limit the work or services exacted as part of compulsory military service to that of a purely military character, without including work in the general interest, in conformity with Article 2(2)(a) of the Convention. The Committee also requests the Government to provide a copy of the legislation currently in force governing compulsory military service. Lastly, it requests the Government to provide information on the number of persons performing work in the general interest by order of the Government and on the nature of such work.***

Article 2(2)(c). Work imposed by an administrative authority. For many years, the Committee has been drawing the Government's attention to the need to amend or repeal section 2 of Act No. 14 of 13 November 1959 authorizing the Government to take administrative measures for the relocation, internment or expulsion of persons whose activities constitute a danger for public order and security, under which the administrative authorities may impose work on persons subject to a prohibition of residence once they have completed their sentence. This section provides that a person with a criminal conviction involving the prohibition of residence may be used for work in the public interest for a period the duration of which is determined by order of the Prime Minister.

The Committee notes with ***regret*** that the Government reiterates in its report that it will take the necessary measures to amend or repeal section 2 of Act No. 14 of 1959, without reporting any progress in this regard. The Commission recalls that, under *Article 2(2)(c)* of the Convention, mandatory work exacted from convicts is not considered forced labour only when it is exacted as a consequence of a conviction in a court of law and subject to certain conditions. ***Consequently, the Committee strongly urges the Government to take the necessary measures to amend or repeal section 2 of Act No. 14 of 13 November 1959 so that persons subjected to a prohibition of residence who have completed their sentence are not sentenced to work in the public interest by administrative authorities. In the meantime, the Committee requests the Government to provide information on the application in practice of section 2 of Act No. 14 of 1959, particularly on the number of sentences imposed under this section.***

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

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

China

Hong Kong Special Administrative Region

Abolition of Forced Labour Convention, 1957 (No. 105) (notification: 1997)

Article 1(a) of the Convention. Imposition of prison sentences involving the obligation to work as a punishment for expressing certain political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted the following legislative provisions, under which penalties of imprisonment (involving compulsory prison labour, pursuant to section 38 of the Prison Rules) may be imposed in situations covered by *Article 1(a)* of the Convention:

- printing, publishing, selling, distributing, importing, etc., of seditious publications or uttering seditious words (section 10 of the Crimes Ordinance, Cap. 200);
- various violations of the prohibition on printing and publication (sections 18(i) and 20 of the Registration of Local Newspapers Ordinance, Cap. 268; regulations 9 and 15 of the News Agencies Registration Regulations, Cap. 268A; regulations 8 and 19 of the Newspaper Registration and Distribution Regulations, Cap. 268B; regulations 7 and 13 of the Printed Documents (Control) Regulations, Cap. 268C);
- various contraventions of regulations of public meetings, processions and gatherings (sections 17A, 17B, 17E and 18 of the Public Order Ordinance, Cap. 245).

The Committee noted that the UN Human Rights Committee expressed concern about the application in practice of certain terms contained in the Public Order Ordinance, such as "disorder in public places" (as provided for by section 17B) and "unlawful assembly" (as provided for by section 18), which may facilitate excessive restriction on civil and political rights. It also expressed concern about the increasing number of arrests of, and prosecutions against, demonstrators. The Committee also noted the Government's indication that in August 2017 the Court of Appeal sentenced three persons to six–eight months' imprisonment in relation to the mass demonstration in 2014 for inciting others to take part in an unlawful assembly, or for taking part in an unlawful assembly under section 18 of the Public Order Ordinance. While noting that the Government reiterated that freedom of the press, as well as freedom of opinion and expression are protected under the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383), the Committee urged the Government to take the necessary measures to ensure that, both in law and in practice, no sanctions involving compulsory labour can be imposed as a punishment for holding or expressing political views.

In its report, the Government indicates that the application of the Convention remains unchanged and that no modification in law and practice has been made. It also states that from 2017 to 2020, except under the Public Order Ordinance, no convictions were recorded under any other provisions mentioned above. According to the Government's report, four defendants were convicted under section 17A of the Public Order Ordinance for organizing, participating and inciting others to take part in an unauthorized assembly and sentenced to immediate imprisonment from seven months to one year. In this case, the magistrate pointed out that, over 9,000 protestors besieged the Police Headquarters for more than 15 hours in an unauthorized assembly, posing a threat to the personal safety of those at the scene and at the same time causing serious disruption to the traffic for which penalties with deterrence were necessary. The Government also refers to the statement made by the Chief Justice of the Hong Kong Court of Final Appeal during the Ceremonial Opening of the Legal Year 2020, that "we see clear limits in the law to the exercise of rights. The enjoyment or insistence on one's rights does not, for example, provide any excuse to harm other people or their property, or to display acts of violence".

The Committee further notes that on 7 January 2021 the United Nations Office of the High Commissioner for Human Rights (OHCHR) voiced deep concerns over the arrests of over 50 individuals under the new National Security Law of 2020. These latest arrests indicate that the offence of subversion under the National Security Law is indeed being used to detain individuals for exercising legitimate rights to participate in political and public life. The OHCHR and the UN independent human rights experts have repeatedly warned that offences such as subversion under the National Security Law, are vague and overly broad, facilitating abusive or arbitrary implementation (UNOHCHR, communication of 7 January 2021). The Committee also refers to its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it raises concerns in relation to the application of the National Security Law.

Referring to its General Survey of 2012 on the fundamental Conventions, the Committee once again recalls that *Article 1(a)* of the Convention prohibits the use of "any form" of forced or compulsory labour, including compulsory prison labour, as a punishment for holding or expressing political views

or views ideologically opposed to the established political, social or economic system. The range of activities which must be protected from sanctions involving compulsory labour comprises the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views. However, certain limitations may be imposed by law on these rights and freedoms, which must be accepted as normal safeguards against their abuse (paragraphs 302 and 303). The Committee considers that it is not necessary to use prison sentences involving compulsory labour to maintain public order. Nevertheless, the protection provided for by the Convention does not extend to persons who use violence, incite to violence or engage in preparatory acts aimed at violence.

The Committee therefore urges the Government to take the necessary measures to ensure that, both in law and in practice, no sanctions involving compulsory labour can be imposed or are imposed as a punishment for peacefully holding or expressing political views, by clearly restricting the scope of the provisions under the Public Order Ordinance, the relevant provisions of the National Security Law as well as the provisions under the Crime Ordinance and other regulations mentioned above, to situations connected with the use of violence, or by repealing penal sanctions involving compulsory labour. The Committee requests the Government to continue to provide information on decisions issued under these provisions in order to assess their application in practice, indicating in particular the facts that gave rise to the conviction, and the penalties applied.

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

Colombia

Forced Labour Convention, 1930 (No. 29) (ratification: 1969)

The Committee notes the observations of the National Employers Association of Colombia (ANDI), received on 31 August 2021. It also notes the joint observations of the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT) and the General Confederation of Labour (CGT), received on 1 September 2021. The Committee notes that the observations received refer to matters raised previously.

Article 2(2)(a) of the Convention. Purely military character of work exacted in the context of compulsory military service. The Committee has previously emphasized that the conception of compulsory military service in Colombia (Act No. 1861 of 2017 regulating the recruitment service and the monitoring and mobilizing of the reserve), which may be exacted in various forms, is broader than the exception allowed by the Convention. Thus, the various activities that the conscripts may undertake as part of the military service are not of a purely military character and are therefore not in conformity with the exception allowed in *Article 2(2)(a)* of the Convention, which excludes from its scope of application only work or service exacted in virtue of compulsory military service laws for work of a purely military character. The Committee highlighted in particular the situation of persons who have completed secondary education who carry out their military service in the National Penitentiary and Prison Institute (INPEC), and conscripts who carry out activities relating to the conservation of the environment and of natural resources in the "environmental" service.

The Committee recalls that compulsory military service in Colombia is of 18 months' duration or 12 months for graduates of secondary education and comprises four stages: basic military training, training in productive work, application in practice of the basic military training and a period of rest. Under section 16 of Act No. 1861 of 2017, at least 10 per cent of personnel in each intake shall complete "environmental" service, that is, support activities aimed at protecting the environment and natural resources.

With regard to compulsory military service in the INPEC, the Government indicates in its report that within the framework of the agreements concluded between the Ministries of National Defence and of Justice and the INPEC a certain number of secondary education graduates are divided into four auxiliary contingents in the INPEC prison guard service. After three months' prison-specific training, the auxiliaries assist in the basic penitentiary centre activities of security, custody, surveillance and treatment of prisoners.

With regard to environmental service, the Government refers to Decree No. 977 of 7 June 2018, under which the Ministry of National Defence, in coordination with the Ministry of the Environment and Sustainable Development, sets out guidelines for basic support activities aimed at protecting the environment and renewable natural resources, as an extension of the constitutional mission of the Military Forces and the National Police. The Government indicates that within the framework of its mandate, the National Police has a specialized branch of Environmental and Natural Resource Police, responsible for assisting the competent authorities in the defence and protection of the environment. In accordance with Act 1861 of 2017, the National Police included the protection of the environment and natural resources among the activities to be carried out by the police auxiliaries during their military service in the Institution.

With respect to the training in productive work, the Government indicates that the Ministry of National Defence and the National Apprenticeship Service establish the types of training for productive work available to military service conscripts, giving priority to training that is in line with each institution's mission. The aim is to contribute to the promotion and strengthening of human talent, training, updating, certifying and increasing levels of qualification and developing technical and technological occupational skills.

The Government considers, as a social duty of young people towards the country, that both the services provided by the secondary education graduates in the INPEC, and the experience of the police auxiliaries within the environmental services, offer a useful opportunity to develop skills that will allow them to enter the world of work. The Government adds that with the de-escalation of the armed conflict, military service has evolved from military to social service in urban areas. Nevertheless, it retains its particular character due to the presence of armed groups, which puts the physical integrity of all members of the security forces at constant risk. For this reason, the Government considers that Act 1861 of 2017 has provided benefits and safeguards to the conscripts, it being necessary for military service in its various forms to be maintained, as an effective tool for achieving the goals of the State.

The Committee notes the explanations provided by the Government and recognizes that Governments may have a legitimate need to establish a compulsory military service. The Committee recalls in this regard that military service is outside the scope of the Convention, but conditions have been placed on this exception to prevent it from being diverted from its fundamental purpose and used to mobilize conscripts for public works or other tasks that are not of a purely military character. While recognizing and valuing the social and environmental considerations underlying the diversification of the tasks undertaken as part of compulsory military service, the Committee recalls that these tasks are nonetheless undertaken within a framework of legal obligation of service deriving from compulsory military service.

Therefore, the Committee trusts that the Government will take the necessary measures to review the legislation regulating obligatory military service in the light of the provisions of Article 2(2)(a) of the Convention, under which any work or service extracted in virtue of compulsory military service laws must be of a purely military character. The Committee requests the Government to provide information on the total number of conscripts who are enlisted in compulsory military service, the number of conscripts who perform their service in the National Penitentiary and Prison Institute (INPEC), the number of conscripts who perform it in the "environmental" service and the number of conscripts who undertake occupational training, together with the duration of the training.

The Committee recalls that the Government may avail itself, should it so wish, of the technical assistance of the ILO, with a view to resolving the difficulties raised concerning the application of the Convention.

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

Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with ***deep concern*** that the Government's report, due since 2014, has not been received. In view of its urgent appeal to the Government in 2019, the Committee proceeded with the examination of the application of the Convention on the basis of the information at its disposal.

Article 2(2)(a) of the Convention. 1. *Work exacted under compulsory military service laws.* For many years, the Committee has been drawing the Government's attention to the need to amend or repeal Act No. 16 of 27 August 1981 establishing compulsory military service, in order to ensure conformity with the Convention. Under section 1 of this Act, national service, instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation, has two components: military service and civic service. The Committee recalled that the work exacted as part of compulsory national service for the purpose of the construction or development of the nation was not purely military in nature and was therefore contrary to *Article 2(2)(a)* of the Convention, according to which work exacted in virtue of compulsory military service laws is excluded from the scope of the Convention only when imposed for work of a purely military character. ***Noting that the Government has in the past stated its intention to repeal Act No. 16 of 27 August 1981 establishing compulsory military service, the Committee firmly hopes that it will be able to report on the measures taken with a view to repealing or amending the Act in such a manner as to limit the obligation to perform national service to military service only and, thus, to work of a purely military nature.***

2. *Work exacted under laws on guidance for youth*. In its previous comments, the Committee noted that Act No. 31-80 of 16 December 1980 on guidance for youth had fallen into disuse and requested the Government to formally repeal it. Under this Act, the party and mass organizations were supposed to create, over time, all the conditions for establishing youth brigades and organizing youth workshops (determining the types of tasks performed, the number of persons involved, the duration and conditions of their participation etc.).

The Committee notes that Act No. 31-80 of 16 December 1980 on guidance for youth was replaced by Act No. 9-2000 of 31 July 2000 on guidance for youth. The latter Act contains no provisions relating to the training of youth brigades and the organization of youth workshops. The Committee notes, however, with ***regret*** that according to section 14, the State shall create the conditions for the participation and integration of young people in the socio-economic development of the country, including by the organization of compulsory national civic service. The Committee further notes that section 16 of the Act provides that every young person has an obligation to accomplish their national duty in an exemplary manner and be available for all calls of the Republic.

The Committee recalls that the exceptions to forced labour provided for under *Article 2(2)* of the Convention do not include compulsory national civic service. Furthermore, as indicated above, compulsory military service is excluded from the definition of forced labour only if the work exacted in this context is of a purely military nature. However, as Act No. 9-2000 highlights, national civic service forms part of young people's participation in the socio-economic development of the country. ***The Committee therefore requests the Government to indicate whether compulsory national civic service has been introduced and to take the necessary measures to amend Act No. 9-2000 of 31 July 2000 on guidance for youth, in such a manner as to abolish the compulsory character of civic service. The***

Committee also requests the Government to indicate the specific nature of the "calls of the Republic" mentioned in section 16 of the aforementioned Act.

Article 2(2)(d). Requisitioning of persons to perform community work in instances other than emergencies. In its previous comments, the Committee highlighted that Act No. 24-60 of 11 May 1960 is not in conformity with the Convention, in that it allows the requisitioning of persons to perform community work in instances other than the emergencies provided for under *Article 2(2)(d)* of the Convention and that persons requisitioned who refuse to work are liable to imprisonment ranging from one month to one year. It noted the Government's indications that: (i) Act No. 24-60 of 11 May 1960 has fallen into disuse and could be considered as repealed; (ii) community work, including tasks such as weeding and clean-up work, are carried out on a voluntary basis; and (iii) the voluntary nature of such work would be established in a forthcoming revision of the Labour Code. ***The Committee once again requests the Government to take the necessary measures to formally repeal Act No. 24-60 and to ensure that collective community work is carried out on a voluntary basis both in law and in practice.***

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

Democratic Republic of the Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1(1), 2(1) and 25 of the Convention. Forced labour and sexual slavery in the context of the armed conflict. In its previous comments, the Committee noted several reports from, inter alia, the Secretary-General of the United Nations (UN), the UN Security Council and the UN High Commissioner for Human Rights on the situation in the Democratic Republic of the Congo (documents A/HRC/27/42, S/2014/697, S/2014/698 and S/2014/222). The Committee noted that while these reports recognized the efforts made by the Government to prosecute the perpetrators of human rights violations, including public officials, they nevertheless expressed concern at the human rights situation and reports of violence, including sexual violence, committed by armed groups and the national armed forces. The Committee also noted the efforts made by the Government to combat the massive human rights violations.

The Committee notes the Government's indication in its report that it has taken the following measures to protect victims of sexual violence and facilitate their reintegration. The laws on sexual violence now supplement the Penal Code, which did not contain all the offences criminalized under international law. The Government also indicates that it has set up three local police units to ensure the protection of civilians in the zones of armed conflict.

The Committee notes that, in his April 2017 report on conflict-related sexual violence, the UN Secretary-General stated that in 2016, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) verified 514 cases of conflict-related sexual violence committed against 340 women, 170 girls and one boy. MONUSCO rescued 40 girls, some of whom reported being subjected to sexual slavery. Verdicts were also handed down in cases involving four combatants affiliated with the then *Mouvement du 23 Mars* for rape and three Nyatura combatants for sexual slavery (S/2017/249, paragraphs 32, 33 and 35).

While noting the difficult situation in the country, the Committee is bound to express ***concern*** at the sexual violence committed against civilians, particularly women who are subjected to sexual exploitation. ***The Committee urges the Government to step up its efforts to put an end to such acts of violence against civilians, which constitute a grave violation of the Convention, and to take immediate and effective measures so that appropriate criminal penalties are imposed on the perpetrators of these acts and the practice of sexual slavery and forced labour does not remain unpunished. It also urges the Government to intensify its efforts to ensure that the victims of such violence are fully protected. Lastly, the Committee requests the Government to provide information on the results achieved in this regard.***

Article 25. Criminal penalties. For several years, the Committee has been drawing the Government's attention to the lack of adequate criminal penalties in its legislation for the imposition of forced labour. With

the exception of section 174(c) and (e) regarding forced prostitution and sexual slavery, the Penal Code does not establish appropriate criminal penalties to punish the imposition of other forms of forced labour. Moreover, the penalties established by the Labour Code in this respect are not of the dissuasive nature required by *Article 25* of the Convention (section 323 of the Labour Code establishes a principal penalty of imprisonment of a maximum of six months and/or a fine).

The Committee notes the absence of information from the Government on this matter. The Committee once again expresses the firm hope that the Government will take the necessary measures to ensure the adoption in the very near future of adequate legislative provisions, which allow that, in accordance with *Article 25* of the Convention, effective and dissuasive criminal penalties can be imposed in practice on persons exacting forced labour.

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

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) of the Convention. Prison sentences involving an obligation to work imposed as a penalty for the expression of political views. Since 2005, the Committee has been drawing the Government's attention to certain provisions of the Penal Code and other legal provisions regulating freedom of expression under which criminal penalties (penal servitude) entailing compulsory labour (section 8 of the Penal Code) may be imposed in the situations covered by Article 1(a) of the Convention, namely:

- Penal Code, sections 74–76: injurious allegations and insults; sections 136–137: contempt towards members of the National Assembly, the Government and depositaries of the public authority or law enforcement officers; section 199bis and ter: dissemination of false rumours liable to alarm the population; section 209: dissemination of tracts, bulletins or leaflets of foreign origin or inspiration liable to harm national interests; section 211(3): display in public places of drawings, posters, engravings, paintings, photographs and all objects or images liable to cause a breach of the peace.
- Sections 73–76 of Act No. 96-002 of 22 June 1996 establishing arrangements for the exercise of freedom of the press, which refer to the Penal Code for the definition and punishment of press-related offences.
- Legislative Ordinance No. 25-557 of 6 November 1959 on penalties to be applied for infringements of general measures.
- Legislative Ordinances Nos 300 and 301 of 16 December 1963 on the punishment of offences against the head of State and foreign heads of State.

The Committee asked the Government to provide information on the application in practice of the abovementioned provisions so that it could examine their scope.

The Committee notes the Government's indication in its report that section 5 of the Penal Code provides for compulsory labour among applicable penalties and section 5bis provides that the period of compulsory labour may range from one to 20 years. The Government also indicates that the penalty of penal servitude cannot be deemed equivalent to the penalty of forced labour. However, the Committee notes that, under section 8 of the Penal Code, any person sentenced to penal servitude shall be employed either inside the prison or outside the prison in one of the types of work authorized by the prison regulations or determined by the President of the Republic. It stresses once again that the Convention protects persons against the imposition of any kind of compulsory labour, including the compulsory labour imposed within the sanction of penal servitude and not only against the imposition of forced labour, in the five instances covered by *Article 1*.

Moreover, the Committee notes that the United Nations (UN) Human Rights Council, at its 35th session (June 2017), expressed deep concern at reports of: restrictions on the freedoms of peaceful assembly, opinion and expression; violations of the right to liberty and security of person; threats against and intimidation of members of political parties, civil society representatives and journalists; and arbitrary detention (A/HRC/35/L.37).

The Committee also notes UN Security Council resolution 2360 (2017), in which the Security Council called for the immediate implementation of the measures specified in the 31 December 2016 agreement to support the legitimacy of the transitional institutions, including by putting an end to restrictions of the political space in the country, in particular arbitrary arrests and detention of members of the political opposition and of civil society, as well as restrictions of fundamental freedoms such as the freedom of opinion and expression, including freedom of the press (S/RES/2360 (2017)).

The Committee expresses its ***concern*** at the current human rights situation in the country and recalls that restrictions on fundamental rights and freedoms, including the freedom of expression, may affect the application of the Convention if such restrictions can result in the imposition of penalties that involve compulsory labour. In this regard, the Committee recalls that the Convention prohibits the use of compulsory prison labour as a punishment for the expression of certain political views or for opposition to the established political, social or economic system. ***The Committee urges the Government to take the necessary measures to bring the abovementioned provisions of the Penal Code, of Act No. 96-002 of 22 June 1996, of Legislative Ordinance No. 25-557 of 6 November 1959, and of Legislative Ordinances Nos 300 and 301 of 16 December 1963 into conformity with the Convention in order to ensure that no penalty entailing compulsory labour (including compulsory prison labour) can be imposed for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee requests the Government to provide information on progress made in this respect.***

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

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

Dominica

Forced Labour Convention, 1930 (No. 29) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report, due since 2014, has not been received. In light of its urgent appeal launched to the Government in 2019, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 1(1) and 2(1), (2)(a) and (d) of the Convention. National service obligations. The Committee had previously noted that under the National Service Act, 1977 persons between the ages of 18 and 21 are required to perform service with the National Service and that such service includes performing such duties as may be prescribed and, where possible, be engaged in development and self-help projects concerning housing, school, construction, agriculture and road building. Section 35(2) of the Act prescribes a penalty of a fine and imprisonment for failing to comply with this obligation. While noting the Government's indication that section 35(2) had not been applied in practice, the Committee observed that this provision was not in conformity with the Convention and for a number of years, has been requesting the Government to formally repeal or amend it.

The Committee notes from the 2020 reply of the Government to the list of issues raised by the United Nations Human Rights Committee that the repeal of section 35(2) of the National Service Act has been included in the legislative agenda of the country (CCPR/C/DMA/RQAR/1 paragraph 59). The Committee recalls that the Convention explicitly provides for a limited number of cases in which ratifying States may exact compulsory labour from the population, particularly in the context of compulsory military service or normal civic obligations. However, the conditions under which compulsory work is exacted are strictly defined and the work or service involved must respond to specific requirements. The Committee observes that the work that could be exacted under the National Service Act does not correspond to any of the exceptions provided for under *Article 2(2)* of the Convention. In particular, it goes beyond the exception authorized under *Article 2(2)(a)* for work imposed under compulsory military service, which should be limited to work of a purely military character. ***Therefore, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that the***

National Service Act is formally repealed or amended so as to bring the national legislation into conformity with the Convention, and it requests the Government to provide information in this respect. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

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

Egypt

Forced Labour Convention, 1930 (No. 29) (ratification: 1955)

Articles 1(1) and 2(1) of the Convention. Use of conscripts for non-military purposes. For a number of years, the Committee has been referring to section 1 of Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service, according to which young persons (male and female) who have completed their studies, and who are surplus to the requirements of the armed forces, may be directed to work in the development of rural and urban societies, agricultural and consumers' cooperative associations, and work in production units of factories. The Committee considered that these provisions were incompatible both with the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), which provide for the abolition of any form of compulsory labour as a means of mobilizing and using labour for purposes of economic development. In this regard, the Government indicated that the draft amendments to Act No. 76 of 1973 were under examination by the legislative committee within the Ministry of Labour in order to be submitted without delay to the Parliament.

The Committee notes the Government's information in its report that the draft amendments, which are in line with both the Conventions on forced labour are in the process of being finalized. The Government indicates that the amendments ensure that the participation of young persons in the civic service are done on a voluntary basis and that their rights are fully protected. In this regard, the Committee notes the Government's information that according to the draft amendments, section 1 of the General (Civic) service states that the performance of civic service, which extends to one year, is a transitional stage between graduation and commencing employment. Male and female recruits are commissioned to perform civic service, specifying the priority areas of work, while the local committees identify the appropriate areas of work for their recruits according to each governorate's needs. The recruits are liable to undergo training in specific programmes. In assigning civic service to young people, their preferences, proximity of the service unit, their specialization and qualifications are taken into consideration so that they perform their service in decent jobs. These recruits enjoy the same rights as government employees in respect of leave, work-related injuries and health care. After completion, the recruits are issued a certificate of performance which shall be added to their period of civil service. The Committee also notes the Government's indication that no sanctions are imposed on recruits who have not performed their civic service. It further notes the Government's information concerning the grounds for granting exemptions from civic services.

The Committee observes that the draft amendments to Act No. 76 of 1973, appear to establish the compulsory call-up to perform work of a non-military character, which falls within the scope of this Convention and hence should be prohibited. The Committee once again recalls that, as regards national service obligations imposed outside emergency situations, only compulsory military service is excluded from the scope of the Convention, subject to the condition that it is used "for work of a purely military character" *(Article 2(2)(a)*), this condition being aimed specifically at preventing the call-up of conscripts for public works or development purposes. In order to avoid any ambiguity in the interpretation and to bring the legislation into line with the Convention, the principle that such non-military tasks are restricted to emergencies or performed exclusively by volunteers should be clearly reflected in the legislation (see General Survey on the fundamental Conventions, 2012, paragraph 288). ***The Committee therefore urges the Government to take the necessary measures to ensure that Act No. 76 of 1973 is***

amended in such a way as to ensure that no young persons are obliged to perform civic service, except on a voluntary basis, in accordance with both Convention Nos 29 and 105. Noting the absence of information, the Committee once again requests the Government to provide information on the application of the above legislation in practice, including information on the number of persons who have performed such service on an annual basis, the number of persons who have applied for exemption from such service, the number of those whose applications have been refused and the reasons for such refusal.

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system. Since 1964, the Committee has been drawing the Government's attention to certain provisions under which penal sanctions involving compulsory prison labour (pursuant to sections 16 and 20 of the Penal Code) may be imposed in situations covered by Article 1(a), namely:

- sections 98(a)bis and 98(d) of the Penal Code, as amended by Act No. 34 of 24 May 1970, which prohibit the following: advocacy, by any means of opposition to the fundamental principles of the socialist system of the State; encouraging aversion or contempt for these principles; constituting or participating in any association or group pursuing any of the foregoing aims, or receiving any material assistance for the pursuit of such aims;
- sections 98(b) and (b)bis, and 174 of the Penal Code concerning advocacy of certain doctrines;
- section 102bis of the Penal Code, as amended by Act No. 34 of 24 May 1970, regarding the dissemination or possession of means for the dissemination of news or information, false or tendentious rumours, or revolutionary propaganda which may harm public security, spread panic among the people or prejudice the public interest;
- section 188 of the Penal Code concerning the dissemination of false news which may harm the public interest.

It noted that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report of June 2017, reiterated his utmost concern at the serious escalation of the crackdown on independent civil society, including on human rights defenders, lawyers, trade unionists, journalists, political opponents and protestors in Egypt (A/HRC/35/28/Add.3, paragraph 548).

The Committee notes the Government's information in its report that offences under sections 98(b), 98(b)bis and 174 of the Penal Code shall be punished with imprisonment only if it involves the use of force or violence or terrorism. The Committee, however, observes that the provisions under sections 98 (b)bis and 174 of the Penal Code do not refer to the use of force or violence for prescribing the penalties of imprisonment. ***The Committee therefore urges the Government to ensure that sections 98(b), 98(b)bis and section 174 of the Penal Code are amended, without delay, by clearly restricting the application of these provisions to situations connected to the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. It requests the Government to provide information on any measures taken in this regard.***

With regard to sections 98(a)bis and 98(d) of the Penal Code, the Committee notes that penalties of imprisonment shall be imposed for their violation. The Committee notes that pursuant to section 16 of the Penal Code all those convicted and sentenced to a penalty of imprisonment are obliged to perform labour within or outside the jail. However, according to section 24 of Law No. 396 of 1956 on Prison Regulations, persons sentenced to simple imprisonment may not work, unless they so wish. Furthermore, section 2 of Decision No. 79 of 1961 on Prison Regulations require persons sentenced to simple imprisonment to submit a written request if they wish to work. ***Noting that section 16 of the Penal Code provides for the obligation to perform compulsory labour by persons sentenced to***

imprisonment, the Committee requests the Government to ensure that no form of compulsory labour is imposed in circumstances covered under sections 98(a)bis and 98(d) of the Penal Code.

The Committee further notes that the penalties prescribed for the violation of the provisions of sections 80(d), 98(b), 98(b)bis, 102bis and 188 of the Penal Code, shall be detention. The Committee observes that the Penal Code does not indicate whether persons convicted to detention are under an obligation to work either within or outside the prison. ***The Committee therefore requests the Government to clarify whether persons convicted to detention as per sections 80(d), 98(b), 98(b)bis, 102bis and 188 of the Penal Code are obliged to perform compulsory labour and to provide a copy of the provisions that substantiate otherwise.***

Furthermore, the Committee, in its previous comments, noted the following provisions that are enforceable with sanctions of imprisonment which may involve an obligation to perform labour in prison:

- section 11 of Act No. 84/2002 on non-governmental organizations prohibits associations from performing activities threatening national unity, violating public order or calling for discrimination between citizens on the grounds of race, origin, colour, language, religion or creed;
- sections 20 and 21 of Act No. 96/1996 on the reorganization of the press prohibit the following acts: attacking the religious faith of third parties; inciting prejudice and contempt for any religious group in society; and attacking the work of public officials.

The Committee notes the Government's information that Law No 84 of 2002 has been repealed by Act No. 70 of 2017 on Associations and other Foundations in the field of Civil Work. However, the Committee notes that the activities under section 14 of Act No. 70 of 2017, correspond to those set forth under section 11 of the former Act for which penalties of imprisonment for one year or more shall be prescribed. In this regard, the Committee notes that according to section 20 of the Penal Code, the judge shall hand down a sentence of hard labour (penal servitude) whenever the period of punishment exceeds one year. In all other cases, a light confinement sentence or hard labour may be handed down. ***The Committee urges the Government to take the necessary measures to amend the above-mentioned provisions, either by repealing them, by limiting their scope to acts of violence or incitement to violence, or by replacing sanctions involving compulsory labour with other kinds of sanctions (e.g. fines), in order to ensure that no form of compulsory labour (including compulsory prison labour) may be imposed on persons who, without using or advocating violence, express certain political views or oppositions to the established political, social or economic system. It also requests the Government to provide information on any progress made in this regard.***

As regards Act No. 96 of 1996, the Government indicates that it has been repealed by Act No. 180 of 2018 Regulating the Press, Media, and the Supreme Council for Media Regulation which decriminalizes press offences. The Committee notes with ***interest*** that the list of sanctions for violations of Act No.180 of 2018, published in the Official Gazette on March 18, 2019, does not include imprisonment (which could involve an obligation to perform work).

Application in practice. ***The Committee requests the Government to provide information on the application in practice of the above-mentioned provisions, including copies of the court decisions, and indicating the prosecutions carried out, the penalties imposed and the grounds for such decision.***

Eritrea

Forced Labour Convention, 1930 (No. 29) (ratification: 2000)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)

The Committee notes the detailed discussion which took place in the Conference Committee on the Application of Standards in May–June 2018, concerning the application by Eritrea of the Convention. It also notes the observations of the International Organisation of Employers (IOE), received on 1 September 2018. The Committee further notes the report of the Technical Advisory Mission of the ILO to Eritrea that took place from 23 to 27 July 2018.

Articles 1(1) and 2(1) of the Convention. Compulsory national service. In the context of their previous examinations of the application of the Convention, both the Conference Committee and the Committee of Experts urged the Government to amend or repeal the Proclamation on National Service (No. 82 of 1995) and the 2002 statement concerning the Warsai Yakaalo Development Campaign in order to bring an end to the generalized and systematic practice of the exaction of compulsory labour from the population in the context of programmes related to the obligation of national service.

The Committee noted that, at the legislative level, the Constitution establishes the obligation for citizens to perform their duty of national service (article 25(3)) and that the Proclamation on National Service specifies that this obligation concerns all citizens aged between 18 and 50 years (article 6). This obligation includes active national service and service in the reserve army. Active national service, which concerns all citizens aged between 18 and 40 years, is divided into two periods: six months of active national service in the National Service Training Centre; and 12 months of active military service and development tasks in the military forces (article 8). The objectives of national service include the establishment of a strong defence force based on the people to ensure a free and sovereign Eritrea. The Committee also noted that, in practice, the conscription of all citizens between the ages of 18 and 40 years for an indeterminate period had been institutionalized through the Warsai Yakaalo Development Campaign, approved by the National Assembly in 2002. In this respect, the Government confirmed that, in the context of their national service, conscripts could be called upon to perform other types of work and that in practice they participated in many programmes, including the construction of roads and bridges, reforestation, soil and water preservation, reconstruction and activities intended to improve food security.

The Committee recalled that, although the Convention explicitly provides for a limited number of cases in which ratifying States may exact compulsory labour from the population, particularly in the context of normal civic obligations, compulsory military service and situations of emergency, the conditions under which compulsory labour is exacted are strictly defined and the work involved must respond to precise requirements to be excluded from the definition of forced labour. The Committee reaffirmed that, in view of its duration, scope, objectives of the national service (reconstruction, action to combat poverty and strengthening of the national economy), and the broad range of work performed, labour exacted from the population in the framework of compulsory national service goes beyond the exceptions authorized by the Convention and constitutes forced labour.

The Committee notes that, in its conclusions adopted in June 2018, the Conference Committee noted the Government's statement that the Warsai Yakaalo Development Campaign is no longer in force, and that a number of conscripts have been demobilized and are now under the civil service with an adequate salary. It urged the Government to amend or revoke the Proclamation on National Service, bring an end to forced labour, ensure the cessation of the use of conscripts for the exaction of forced labour in line with the Convention, and avail itself without delay of ILO technical assistance.

The Committee notes that, in its observations, the IOE emphasizes the urgency of bringing an end to compulsory national service for the purpose of development in Eritrea. The IOE also urges the Government to cooperate with the ILO and encourages it to avail itself of ILO technical assistance.

The Committee notes from the report of the ILO Technical Advisory Mission that various stakeholders pointed out that the duration of national service had been prolonged due to unrelenting threats and the state of belligerency of Ethiopia. Despite the threat of war, the Government had taken several measures to demobilize conscripts and to rehabilitate them within the civil service. However, while the demobilization process was initially implemented successfully, the subsequent phases were terminated with the state of belligerency of Ethiopia. The Government reiterates that the power to mobilize labour was related to a genuine situation of force majeure, and that it had no option but to take the necessary measures of self-defence that were proportionate to the threat faced by Eritrea.

The Committee also notes from the mission report a consensus prevailing among the various interlocutors the mission met with that it was important to understand the context of the national service with respect to any engagement with Eritrea. This context included the fact that the obligation of every citizen to undertake national service had to be seen in the light of the situation of "no war, no peace" which had been devastating for the country, and that national service had been part of the Eritrean national struggle for liberation even though national service of an indefinite duration had never been on the Government's agenda. While recognizing that many Eritreans were willing to be part of the national service which was not intended to be "indefinite", and that national service was essential not only to ensuring the development of the country but also to ensuring its very existence, the Committee notes that the mission was of view that national service could not be considered as a case of "force majeure", and that the exceptions set out by the Convention could not apply to forced labour exacted for economic development purposes for an indefinite period of time.

The Committee further notes that a range of stakeholders indicated to the mission that, in light of the recent peace treaty between Eritrea and Ethiopia, the compulsory nature of the national service would no longer be justified and demobilization was expected to happen, even though no precise date has been specified. In this context, the mission report highlights that ILO technical assistance could be useful on employment-related issues, to the extent that these could be linked to the demobilization project. Future collaboration could include training on labour market reform pursuant to demobilization of the population, employment creation, income-generating activities and skills training especially for the younger population, as well as capacity building of labour administration and labour inspection. Lastly, the Committee notes that the Government and social partners indicated to the mission that they were keen to receive technical assistance with a view to ratifying the Worst Forms of Child Labour Convention, 1999 (No. 182).

The Committee notes the Government's reference in its report to the joint declaration of Eritrea and Ethiopia on peace and friendship made on 9 July 2018, which indicates the intention of the two parties to end the state of war, open a new era of peace and friendship, implement the decision of the boundary commission and advance the vital interest of their people. The Government indicates that the peace accord has cleared the root cause and the existential threats that had been raised by the delegation of Eritrea to the Conference Committee. In this context, the Government remains engaged to work jointly on all outstanding issues and welcomes ILO technical assistance in order to enhance the whole labour administration to promote and protect the rights of employers and workers through integrated measures, as well as through comprehensive policies and programme, so as to fully comply with ILO standards. Additionally, the Committee notes that the Security Council of the United Nations welcomes the Agreement on Peace, Friendship and Comprehensive Cooperation signed by the President of Eritrea and the Prime Minister of Ethiopia on 16 September 2018.

In light of the above information, the Committee welcomes the recent peace agreement concluded between Eritrea and Ethiopia, as well as the fact that demobilization from the national service is expected to take place soon. It also takes due note of the political will demonstrated by the Government to address the issues raised by the Committee and the Conference Committee, including through its acceptance to receive an ILO technical advisory mission to examine the issues raised. ***In this respect, noting the Government's indication to the members of the Technical Advisory Mission of its willingness to avail itself of ILO technical assistance, the Committee urges the Government to continue to collaborate with the ILO by seeking ILO technical assistance with a view to amending or repealing Proclamation No. 82 of 1995 on National Service, so as to: (a) limit the work exacted from the population within the framework of compulsory national service to military training and work of a purely military character; and (b) limit the exaction of compulsory work or services from the population to genuine cases of emergency, by ensuring that the duration and extent of such compulsory work or services are limited to what is strictly required by the exigencies of the situation. It also encourages the Government to collaborate with the ILO on a broader basis on issues linked to the demobilization from the national service as highlighted in the mission report. In addition, noting the Government's intention to ratify Convention No. 182, the Committee requests the Government to further engage in ILO technical assistance in this regard.***

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

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2000)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee noted that several provisions of Press Proclamation No. 90/1996 establish restrictions on printing and publishing (concerning the printing or reprinting of an Eritrean newspaper or publication without a permit; printing or disseminating a foreign newspaper or publication prohibited from entering Eritrea; publishing inaccurate news or information disturbing public order (section 15(3), (4) and (10))), which are punishable with penalties of imprisonment. Under the terms of section 110 of the Transitional Penal Code of 1991, persons convicted to imprisonment are subject to the obligation to work in prison. The Government indicated that expressing a political opinion or belief did not constitute a crime in Eritrea and that since independence, no citizen had been detained for expressing his or her opinion or for criticizing the Government. With regard to religious freedom, the Government referred to Proclamation No. 73/1995 respecting religious institutions and activities and indicated that no interference was allowed in the exercise of the rights of any religion or creed on condition that they are not used for political purposes and are not prejudicial to public order or morality. In this regard, the Committee noted that the United Nations Human Rights Council, in its resolution on the situation of human rights in Eritrea of June 2017, expressed its "deep concern at the severe restrictions on the right to freedom to hold opinions without interference, freedom of expression, including the freedom to seek, receive and impart information, liberty of movement, freedom of thought, conscience and religion, and freedom of peaceful assembly and association, and at the detention of journalists, human rights defenders, political actors, religious leaders and practitioners in Eritrea" (A/HRC/RES/35/35). It also noted that in the context of the Working Group on the Universal Periodic Review, the Government accepted the recommendations of certain countries encouraging it to "reform legislation in the area of the right to freedom of conscience and religion"; ensure that "the rights of all its people to freedom of expression, religion, and peaceful assembly are respected"; and take the "necessary measures to ensure respect for human rights, including the rights of women, political rights, the rights of persons in detention and the right of freedom of expression as it pertains to the press and other media" (A/HRC/26/13/Add.1). The Committee hoped that the Government would take all the necessary measures to ensure that the legislation currently in force, as well as any legislation concerning the exercise of the rights and freedoms under preparation, did not contain any provision which could be used to punish the expression of political opinions or views ideologically opposed to the established political, social or economic system, or the practice of a religion, through the imposition of a sentence of imprisonment under which labour could be imposed.

The Committee notes that the Government, in its report, reiterates its statement that no citizens were arbitrarily arrested for expressing their political opinion or belief nor did any courts impose prison sentences for expressing one's views or for criticizing the Government. In this regard, the Committee notes that the Human Rights Committee, in its concluding observations under the International Covenant on Civil and Political Rights of May 2019, expressed its concern about reports of ongoing arrest and detention of persons for merely expressing their opinion, including political figures, journalists and religious and community leaders (CCPR/C/ERI/CO/1, para, 39). Moreover, the United Nations Special Rapporteur, in her statement of October 2020 on the situation of human rights in Eritrea, referred to numerous cases of arrests and prolonged imprisonment of journalists and writers for being critical of the Government, as well as individuals and religious communities because of their faith and belief. She stated that Eritrea continues to severely restrict civil liberties and that independent human rights defenders, journalists and political opposition groups cannot work freely in the country. The Committee further notes the Government's indication that a new civil and penal code and other related codes with their procedural laws have been concluded and will be enacted shortly.

The Committee recalls that the Convention protects persons who hold or express political views or views ideologically opposed to the established political, social or economic system by prohibiting the imposition of penalties which may involve compulsory labour, including sentences of imprisonment including compulsory labour. Freedom of opinion, belief and expression are exercised through various rights, such as the right of assembly and association and freedom of the press. The exercise of these rights enables citizens to secure the dissemination and acceptance of their views, or to practice their religion. While

recognizing that certain limitations may be imposed on these rights as a safeguard for public order to protect society, such limitations must be strictly within the framework of the law. ***In light of these considerations, the Committee urges the Government to take the necessary measures, both in law and in practice, to ensure that no penalties involving compulsory labour are imposed for the peaceful expression of views ideologically opposed to the established political, social or economic system or the practice of a religion, for example by clearly restricting the scope of the provisions under Press Proclamation No. 90/1996 and Proclamation No. 73/1995 to situations connected with the use of violence, or by repealing penalties involving compulsory prison labour. The Committee requests the Government to provide information on any progress made in this regard, as well as information on the application in practice of the provisions of the above Proclamations, with an indication of the acts which gave rise to conviction and the type of penalties imposed.***

Article 1(b). Compulsory national service for purposes of economic development. In its previous comments, the Committee referred to its observation concerning the Forced Labour Convention, 1930 (No. 29), in relation to the broad range of types of work exacted from the population as a whole in the context of compulsory national service, as set out in the Proclamation on National Service No. 82 of 1995 and the 2002 Declaration on the "Warsai Yakaalo" Development Campaign. The Committee recalled that this national service obligation, to which all citizens between the ages of 18 and 40 years are subject for an indeterminate period of time, has the objectives of the reconstruction of the country, action to combat poverty and the reinforcement of the national economy and, consequently, is clearly in contradiction with the objective of this Convention which, in *Article 1(b*), prohibits recourse to compulsory labour "as a method of mobilizing and using labour for purposes of economic development". It therefore strongly urged the Government to take the necessary measures without delay for the elimination in law and practice of any possibility of using compulsory labour in the context of national service as a method of mobilizing labour for the purposes of economic development.

The Committee notes that the Conference Committee for the Application of Standards concerning the application of the Forced Labour Convention, 1930 (No. 29), in its conclusions adopted in June 2018, noted the Government's statement that the "Warsai Yakaalo" Development Campaign was no longer in force, and that a number of conscripts had been demobilized and were under the civil service with an adequate salary. The Committee also notes that the Conference Committee urged the Government to amend or revoke the Proclamation on National Service, bring an end to forced labour, ensure the cessation of the use of conscripts for the exaction of forced labour in line with the Convention, and avail itself without delay of ILO technical assistance.

Referring to the ILO Technical Advisory mission report of July 2018, the Committee notes a consensus prevailing among the various interlocutors the mission met with that it was important to understand the context of the national service with respect to any engagement with Eritrea. This context included the fact that the obligation of every citizen to undertake national service had to be seen in the light of the situation of "no war, no peace" which had been devastating for the country, and that national service had been part of the Eritrean national struggle for liberation even though national service of an indefinite duration had never been on the Government's agenda. While recognizing that many Eritreans were willing to be part of the national service, which was not intended to be "indefinite", and that national service was essential not only to ensuring the development of the country but also to ensuring its very existence, the Committee notes that the mission was of the view that national service could not be considered as a case of "force majeure", and that the exceptions set out by the Convention No. 29 could not apply to forced labour exacted for economic development purposes for an indefinite period of time. Moreover, a range of stakeholders indicated to the mission that in light of the recent peace treaty between Eritrea and Ethiopia, the compulsory nature of the national service would no longer be justified and demobilization was expected to happen, even though no precise date has been specified.

The Committee notes the Government's statement in its report that Eritrea is in the process of implementing fundamental nation-building principles, and attaches great importance to such principles, which entail creating and expanding national wealth through knowledge-based well-organized productive work, and ensuring equitable distribution of resources and opportunities. If some major tasks such as water supply for all, revival of transport and communication infrastructure, green power generation and electricity supply, housing projects, modern health and education infrastructure are properly implemented, this could lead to wider chances of job creation and employment opportunities for people. It recognizes that the proven

commitment, full participation of the people and their relentless toil and resilience is necessary to transform the old traditional subsistence economy to a developed industrial economy and to bring sustainable change to the quality of life of the people. In this respect, people are called upon to carry out economic reconstruction activities, such as reforestation, soil and water conservation and food securing programmes. The Government reiterates that no forced or compulsory labour is used and that the practice of exaction of various kinds of labour from the population is only limited in scope so as to be compatible with the Convention.

In addition, the Committee notes that, in its concluding observations of May 2019, the Human Rights Committee expressed concern about allegations that national service conscripts are deployed for labour in various posts including mining and construction plants owned by private companies, while receiving very little or no salary (CCPR/C/ERI/CO/1, paragraph 37).

The Committee recalls that the prohibition laid down in *Article 1(b)* of this Convention applies even where recourse to forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development is of temporary or exceptional nature. The Committee further emphasizes that no exceptions to universally recognized human rights should be sought in the name of development (paragraph 308 of the 2012 General Survey on the fundamental Conventions). ***The Committee therefore urges the Government to take the necessary measures, without delay, to eliminate both in law and practice, the use of compulsory labour in the context of national service as a method of mobilizing labour for the purposes of economic development. In this respect, noting the Government's indication to the members of the technical advisory mission of its willingness to avail itself of ILO technical assistance, the Committee strongly encourages the Government to collaborate with the ILO by continuing to avail itself of ILO technical assistance in its efforts to bring its law and practice into compliance with the provisions of the Convention. The Committee requests the Government to provide information on the measures taken as well as on any progress made in this regard.***

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

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

Ethiopia

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for the expression of political or ideological views. For a number of years, the Committee has been referring to the following sections of the Criminal Code, under which penal sanctions involving compulsory prison labour may be imposed by virtue of section 111(1) of the Code, in circumstances covered by *Article 1(a)* of the Convention:

- sections 482(2) and 484(2): punishment of ringleaders, organizers or commanders of forbidden societies, meetings and assemblies;
- section 486(a): inciting the public through false rumours; and
- section 487(a): making, uttering, distributing or crying out seditious or threatening remarks or displaying images of a seditious or threatening nature in any public place or meeting (seditious demonstrations).

The Committee also referred to the definition of terrorism under the Anti-Terrorism Proclamation No. 652/2009, under section 6 of which any person who "publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement, or other inducement to them, to the commission or preparation or instigation of an act of terrorism is punishable with rigorous imprisonment from ten to 20 years". In this regard, the Committee noted that in 2010 the United Nations Universal Periodic Review (UPR) Working Group expressed concern at the Anti-Terrorism Proclamation which, due to its broad definition of terrorism, had led to abusive restrictions on the press. The Committee further noted that journalists and opposition politicians had been

given sentences ranging from 11 years to life imprisonment under the Proclamation, and that numerous defendants were scheduled to appear before the courts on similar charges. The Committee therefore urged the Government to take measures to limit the scope of application of the Anti-Terrorism Proclamation and the above provisions of the Criminal Code in order to ensure that no sanctions involving compulsory labour could be imposed on those holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee notes the Government's reiterated indication in its report that, the peaceful expression of views or of opposition to the established political, social or economic system is a constitutionally respected right and nobody is forced to be subjected to forced or compulsory labour as a result of this. The Committee also notes that an ILO mission took place in Ethiopia in September 2016, as a follow-up to the March 2015 mission on implementation gaps in the application of the forced labour Conventions. According to the mission report, discussions were held with the relevant stakeholders regarding certain provisions of the Criminal Code that involve compulsory prison labour with a view to ensuring their conformity with the Convention.

Moreover, the Committee notes that, in a press release of 2016, the African Commission on Human and Peoples' Rights (the African Commission) observed with deep concern the deterioration of the human rights situation in Ethiopia, particularly the recent unrest and violence in the Oromia Region. Moreover, the Committee observes that the African Commission adopted a resolution in which it expressed concern about the use of excessive and disproportionate force to disperse protests, resulting in the deaths and injuries of several protestors, as well as the arbitrary arrest and detention of many others. Following the protests which began in November 2015, the African Commission also expressed its concern about allegations relating to the arbitrary arrest and detention of members of opposition parties and human rights defenders (ACHPR/Res.356(LIX) 2016). Moreover, the Committee observes that the African Commission is concerned by restrictions on movement, assembly, media access, internet services as well as the arbitrary arrest and detention of many people following the state of emergency declaration.

The Committee is bound to express its ***deep concern*** over the detentions of, and prosecutions against, members of the opposition parties and human rights defenders, and recalls that restriction on fundamental rights and liberties, including freedom of expression may have a bearing on the application of the Convention if such restrictions are enforced by sanctions involving compulsory labour. In this respect, referring to its 2012 General Survey on the fundamental Conventions, the Committee points out that the range of activities which must be protected from punishment involving compulsory labour under *Article 1(a)* of the Convention include the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views, and which may also be affected by measures of political coercion (paragraph 302). ***The Committee therefore once again urges the Government to take the necessary measures to ensure that no penalties involving compulsory labour are imposed for the peaceful expression of political views opposed to the established political, social or economic system, for example by clearly restricting the application of the Anti-Terrorism Proclamation, as well as the following provisions of the Criminal Code: sections 482(2), 484(2), 486(a) and 487(a), to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. Finally, the Committee requests the Government to provide information in this connection, as well as information on the application in practice of the abovementioned sections of the Criminal Code and the Anti-Terrorism Proclamation, including copies of any court decisions specifying the penalties imposed.***

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

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

Fiji

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1974)

Article 1(a) of the Convention. Sanctions of imprisonment involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political,

social or economic system. The Committee previously noted the following legislative provisions, which are worded in such general terms that may lead to the imposition of penalties involving compulsory labour (by virtue of section 43(1) of the Prisons and Corrections Act 2006) for activities that could be linked to the expression of political views or views ideologically opposed to the established political, social and economic order:

Public Order Act (POA), as amended by the Public Order (Amendment) Decree 2012:

- Section 14, which provides for sanctions of imprisonment for up to three years for using threatening, abusive or insulting words in any public place or any meeting, or behaves with the intent to provoke a breach of peace or whereby such a breach is likely to be occasioned; and having been given by any police officer any directions to disperse or to prevent obstruction or for the purpose of keeping order in any public place, without lawful excuse, contravenes or fails to obey such direction.
- Section 17, which provides for sanctions of imprisonment for up to 10 years for spreading any report or making any statement, which is likely to undermine or sabotage, or attempt to undermine or sabotage the economy or financial integrity of Fiji.

Crimes Decree 1999:

- Section 67(b), (c) and (d), which provides for sanctions of imprisonment for seven years for uttering any seditious words; printing, publishing, selling, offering for sale, distributing or reproducing any seditious publication; or importing any seditious publication.

The Committee notes that the Government indicates in its report that the Public Order Act is in place to ensure the safety of people from acts of terrorism, racial riots, religious and ethnic vilification, hate speech and economic sabotage.

The Committee recalls that the Convention protects persons who express political views or views ideologically opposed to the established political, social or economic system by establishing that in the context of these activities they cannot be punished by sanctions involving an obligation to work. The range of activities protected include the right to freedom of expression exercised orally or through the press and other communications media, as well as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views. While recognizing that certain limitations may be imposed on these rights as normal safeguards for public order to protect society, such limitations must be strictly within the framework of the law. In this respect, the protection provided for by the Convention does not extend to persons who use violence, incite to violence or engage in preparatory acts aimed at violence.

In this respect, the Committee observes that in its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it noted the allegations of the International Trade Union Confederation (ITUC) and the Fiji Trades Union Congress (FTUC) denouncing that permissions for union meetings and public gatherings continued to be arbitrarily refused, and that section 8 of the POA (as amended by the 2012 Decree) has been increasingly used to interfere in, prevent and frustrate trade union meetings and assemblies. The Committee notes in this regard that according to section 10 of the POA, a person who takes part in a meeting or procession for which no permit has been issued or in contravention of the provisions of the POA is liable to a prison sentence (involving compulsory prison labour).

Therefore, the Committee requests the Government to review sections 10, 14 and 17 of the POA and section 67 (b), (c) and (d) of the Crimes Decree to ensure that, both in law and practice, persons who express political views or views opposed to the established political, social and economic system, including through the exercise of their right to freedom of expression or assembly, are not liable to penal sanctions involving compulsory labour, including compulsory prison labour. The Committee further requests the Government to provide information on the manner in which the above-mentioned

legislative provisions are applied in practice, including information on the number of prosecutions initiated, convictions handed down, specific penalties applied and on the facts that led to the convictions, as well as information on the grounds on which permits for public meetings and gatherings are granted or refused.

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

Lebanon

Forced Labour Convention, 1930 (No. 29) (ratification: 1977)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2018 and requests the Government to provide its comments in this respect.

Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant domestic workers to conditions of forced labour. In its earlier comments, the Committee noted the observation of 2013 from the International Trade Union Confederation (ITUC), indicating that there are an estimated 200,000 migrant domestic workers employed in Lebanon. These workers are excluded from the protection of the Labour Law, have a legal status tied to a particular employer under the *kafala* (sponsorship) system, and legal redress is inaccessible to them. Moreover, they are subjected to various situations of exploitation, including delayed payment of wages, verbal, and sexual abuse. The Committee also requested the Government to take the necessary measures to ensure that the Bill regulating the working conditions of domestic workers, as well as the Standard Unified Contract (SUC) regulating their work are adopted in the very near future.

The Committee notes the Government's indication in its report that, the Bill regulating the working conditions of domestic workers was drafted in conformity with Domestic Workers Convention, 2011 (No. 189), and the Bill has been submitted to the Council of Ministers for discussion. The Bill will provide a certain number of safeguards, including social security coverage; decent accommodation; the timely payment of wages through bank transfer; hours of work (eight hours per day); sick leave; and a day of rest. The Government also indicates that a Steering Committee has been established under the Ministry of Labour in order to deal with issues related to migrant domestic workers and is composed of relevant Ministerial Departments, representatives of the private recruitment agencies, NGOs, certain international organizations, as well as representatives of certain embassies. A representative from the ILO Decent Work Technical Support Team in Beirut is also participating in the Steering Committee.

Moreover, the Government indicates that the Ministry of Interior and the Ministry of Labour have taken a series of preventive measures, including awareness raising campaigns through the media; the establishment of a shelter "Beit al Aman" for migrant domestic workers who are facing difficulties in collaboration with Caritas; the appointment of social assistants who look into the working conditions of migrant domestic workers in their workplaces; the training of labour inspectors on decent working conditions; and the conclusion of a series of Memoranda of Understanding (MOUs) with sending countries, such as the Philippines, Ethiopia and Sri Lanka. The Government further states that the Ministry of Labour has set up a specialized office for complaints and a hotline to provide legal assistance to migrant domestic workers. Moreover, under the Recruitment Agencies of Migrant Domestic Workers Decree No. 1/168 of 2015, it is prohibited to impose recruitment fees on all workers.

The Committee further notes that in its 2015 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) welcomed the various measures adopted by the State party to protect the rights of women migrant domestic workers, including issuing unified contracts, requiring employers to sign up to an insurance policy, regulating employment agencies, adopting a law criminalizing trafficking in persons and integrating such workers into the social charter and the national strategy for social development. The CEDAW, however, expressed concern that the measures have proved insufficient to ensure respect for the human rights of those workers. The CEDAW is equally concerned about the rejection

by the Ministry of Labour of the application by the National Federation of Labour Unions to establish a domestic workers' union, the absence of an enforcement mechanism for the work contracts of women migrant domestic workers, limited access for those workers to health care and social protection and the non-ratification of the Domestic Workers Convention, 2011 (No. 189). The CEDAW was further concerned about the high incidence of abuse against women migrant domestic workers and the persistence of practices, such as the confiscation of passports by employers and the maintenance of the *kafala* system, which place workers at risk of exploitation and make it difficult for them to leave abusive employers. The CEDAW was deeply concerned about the disturbing documented reports of migrant domestic workers dying from unnatural causes, including suicides and falls from tall buildings, and about the failure of the State party to conduct investigations into those deaths (CEDAW/C/LBN/CO/4-5, paragraph 37).

While taking note of the measures taken by the Government, the Committee notes with ***concern*** that migrant domestic workers are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical abuse. Such practices might cause their employment to be transformed into situations that amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to provide migrant domestic workers with an adequate legal protection, by ensuring that the Bill regulating the working conditions of domestic workers will be adopted in the very near future and to provide a copy of the legislation, once adopted. The Committee also urges the Government to take the necessary measures to ensure that migrant domestic workers are fully protected from abusive practices and working conditions that amount to forced labour.***

Article 25. Penal sanctions for the exaction of forced labour. In its earlier comments, the Committee noted that according to the ITUC's information, it was found that a lack of accessible complaint mechanisms, lengthy judicial procedures, and restrictive visa policies dissuade many workers from filing or pursuing complaints against their employers. Even when workers file complaints, the police and judicial authorities regularly fail to treat certain abuses against domestic workers as crimes. The Committee also noted the Government's indication that section 569 of the Penal Code, which establishes penal sanctions against any individual who deprives another of their personal freedom, applies to the exaction of forced labour. It requested the Government to provide information on any legal proceedings which had been instituted on the basis of section 569 as applied to forced labour and on the penalties imposed.

The Committee further notes that in its 2015 concluding observations, the CEDAW observed that migrant domestic workers face obstacles with regard to their access to justice, including fear of expulsion and insecurity of residence.

The Committee notes the Government's indication that the work of migrant domestic workers is regulated by the SUC and that the application of section 569 of the Penal Code is of the competency of the judiciary when a violation is detected. The Committee also notes copies of court decisions provided by the Government. It observes that the cases are related to non-payment of wages, harassment and working conditions of migrant domestic workers. In all cases employers have been sentenced to pay a monetary penalty to compensate the workers.

While noting this information, the Committee recalls that *Article 25* of the Convention provides that the exaction of forced labour shall be punishable as a penal offence. ***The Committee therefore urges the Government to take the necessary measures to ensure that employers who engage migrant domestic workers in situations amounting to forced labour are subject to really adequate and strictly enforced penalties. It requests the Government to provide information on measures taken in this regard.***

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

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

Madagascar

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2007)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the

examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1(b) of the Convention. Imposition of forced labour as a method of mobilizing and using labour for the purposes of economic development. In its previous comments, the Committee emphasized that national service, as established in Ordinance No. 78-002 of 16 February 1978 setting forth the general principles of national service, is incompatible with *Article 1(b)* of the Convention. Under the terms of section 2 of the Ordinance, all Malagasies are bound by the duty of national service defined as compulsory participation in national defence and in the economic and social development of the country. This compulsory service, which requires citizens to be engaged in defence or development work, involves citizens of both sexes for a maximum period of two years and may be carried out up to the age of 35. The Committee requested the Government to take the necessary measures to bring its legislation into conformity with the Convention.

The Committee notes the Government's indication that, after the processes of registration and review, young national service conscripts have to carry out their service by choosing between two options: (i) being excused for family reasons, in which case conscription is cancelled or deferred for one year, depending on the circumstances; or (ii) continuing vocational training through Action for Development Military Service (SMAD). The objective of the SMAD is therefore to facilitate the integration into active life of young Malagasies who volunteer for national service. The SMAD is established on a voluntary basis for young persons, and the duration of the training is set at 24 months, following which the volunteers are released from their statutory service obligations. These young persons choose between training for rural or urban trades.

The Committee once again recalls that programmes involving the compulsory participation of young persons in the context of military service or, instead of such service, in work for the development of their country, are incompatible with *Article 1(b)* of the Convention, which prohibits the use of compulsory national service as a method of mobilizing labour for the purposes of economic development. It observes that the Ordinance of 1978 provides that all Malagasies are covered by the duty of national service, defined as compulsory participation in national defence and in the economic and social development of the country. ***The Committee firmly requests the Government to take the necessary measures to bring Ordinance No. 78-002 of 16 February 1978 into conformity with the Convention by guaranteeing that compulsory national service is not used as a method of mobilizing labour for the purposes of economic development. In the meantime, the Committee requests the Government to specify the relationship between the service obligations envisaged in the framework of compulsory national service, as set out in the Ordinance of 1978, and participation in SMAD. The Committee further requests the Government to indicate the practical modalities for the implementation of the SMAD and whether young persons who have chosen the SMAD can cancel the training on their own initiative. Finally, the Committee requests the Government to indicate the number of cancellations registered and their consequences.***

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

Sierra Leone

Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

Articles 1(1) and 2(1) of the Convention. Compulsory agricultural work. For many years, the Committee has been referring to section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on "natives". On numerous occasions, the Government indicated that this legislation would be amended. The Government also indicated that section 8(h) of the Act was not applied in practice and, as it was not in conformity with article 9 of the Constitution, it was unenforceable. While noting this information, the Committee urged the Government to take the necessary measures to formally repeal section 8(h) of the Chiefdom Councils Act.

The Committee takes due note of the Government's information in its report that the draft Employment Bill provides for the repeal of section 8(h) of the Chiefdom Councils Act, Cap 61. The Government also indicates that though there is no express repeal of section 8(h) of the Chiefdom Councils Act (Cap 61), the issue of communal farming for community purpose is rare due to legislation and rights based campaigns. ***The Committee expresses the firm hope that the Employment Bill which***

provides for the repeal of section 8(h) of the Chiefdom Council Act will be adopted in the near future. It requests the Government to provide information on any progress made in this regard and to transmit a copy of the repealing legislation, once adopted.

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

Syrian Arab Republic

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1(1), 2(1) and 25 of the Convention. Situations of forced labour arising from the armed conflict. Trafficking and sexual slavery. Following its previous comments, the Committee notes that according to the 2016 Report of the UN Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic to the Human Rights Council, credible information indicates that women and girls trapped in conflict areas under the control of the Islamic State in Iraq and the Levant (ISIL) face trafficking and sexual slavery. Some specific ethnic groups are particularly vulnerable, such as Yazidis and those from ethnic and religious communities targeted by the ISIL (A/HRC/32/35/Add.2, paragraph 65). The Committee also notes that, according to the 2017 Report of the UN Secretary-General on conflict-related sexual violence, thousands of Yazidi women and girls who were captured in Iraq in August 2014 and trafficked to the Syrian Arab Republic continue to be held in sexual slavery, while new reports have surfaced of additional women and children being forcibly transferred from Iraq to the Syrian Arab Republic since the start of military operations in Mosul (S/2017/249, paragraph 69).

The Committee notes the Government's indication in its report that, pursuant to the Prevention of Human Trafficking Act of 2010, a Department to Combat Trafficking in Persons was established. However, since the conflict has erupted, trafficking of persons and sexual slavery have increased because of the presence of terrorist groups in the country. The Committee must express its ***deep concern*** that, after almost six years of conflict, trafficking in persons and sexual slavery are practices that are still occurring on a large scale on the ground. ***While acknowledging the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Committee once again urges the Government to take the necessary measures to put an immediate stop to these practices which constitute a serious violation of the Convention and to guarantee that the victims are fully protected from such abusive practices. The Committee recalls that it is crucial that appropriate criminal penalties are imposed on perpetrators so that recourse to trafficking or sexual slavery does not go unpunished. The Committee urges the Government to take immediate and effective measures in this respect, and to provide information on the results achieved.***

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

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been drawing the Government's attention to certain provisions under which penal sanctions involving compulsory prison labour, pursuant to sections 46 and 51 of the Penal Code (Act No. 148 of 1949), may be imposed in situations covered by the Convention, namely:

– Penal Code: section 282 (insult of a foreign State); 287 (exaggerated news tending to harm the prestige of the State); 288 (participation in a political or social association of an international character without permission); and sections 335 and 336 (seditious assembly, and meetings liable to disturb public tranquility); and

– the Press Act No. 156 of 1960: sections 15, 16 and 55 (publishing a newspaper for which an authorization has not been granted by the Council of Ministers).

The Committee also previously noted that the abovementioned provisions are enforceable with sanctions of imprisonment for a term of up to one year which involves an obligation to perform labour in prison.

The Committee notes the Government's indication in its report that the Press Act of 1960 had been repealed and replaced by the Media Act No. 108 of 2011, under which the penalty of imprisonment has been replaced by a fine. The Government also indicates that a draft Penal Code has been prepared and is in the process of being adopted. ***The Committee expresses the firm hope that, during the process of the adoption of the new Penal Code, the Government will take all the necessary measures to ensure that persons who express political views or views opposed to the established political, social or economic system benefit from the protection afforded by the Convention and that, in any event, penal sanctions involving compulsory prison labour cannot be imposed on them.***

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

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

Turkmenistan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021, which refer to issues examined by the Committee in the present comment. ***It requests the Government to provide a reply to the ITUC observations.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the detailed discussion, which took place at the 109th Session of the Conference Committee on the Application of Standards in June 2021.

Article 1(b) of the Convention. Imposition of forced labour as a method of mobilizing and using labour for purposes of economic development. Cotton production. The Committee notes that, in its conclusions adopted in June 2021, the Conference Committee urged the Government to take effective and time-bound measures to: (i) ensure, in law and in practice that no one, including farmers, public and private sector workers and students, is forced to work for the state-sponsored cotton harvest, or threatened with punishment for the lack of fulfilment of production quotas; (ii) report on the status of section 7 on the recruitment of citizens to work in enterprises, institutions and organizations in cases of emergencies of the Act on the legal regime governing emergencies of 1990; (iii) eliminate the compulsory quota system for production and harvesting of cotton; (iv) prosecute and sanction appropriately any public official who participates in the forced mobilization of workers for the cultivation or harvest of cotton; (v) develop, in consultation with the social partners and with ILO technical assistance, an action plan aimed at eliminating, in law and practice, forced labour in connection with state-sponsored cotton harvesting, and improving recruitment and working conditions in the cotton sector in line with International Labour Standards; and (vi) allow independent social partners, press and civil society organizations, to monitor and document any incidences of forced labour in the cotton harvest without fear of reprisals.

In its previous comments, the Committee noted with deep concern the continued practice of forced labour in the cotton sector. It also observed that there had been no meaningful progress to address the issue of mobilization of persons for forced labour in the cotton harvest since the discussion of the case by the Conference Committee in June 2016 and the following visit of an ILO technical advisory mission to the country.

The Committee also noted that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations of 2018, expressed concern at the reported continued widespread use of forced labour among workers and students under threat of penalties during the cotton harvest (E/C.12/TKM/CO/2, paragraph 23). It also noted from the Summary of Stakeholders' submissions of 2018 to the United Nations Human Rights Council that people forced to pick cotton had been compelled to sign declarations on "voluntary" participation in the harvest (A/HRC/WG.6/30/TKM/3, paragraph 49).

The Committee noted the ITUC's observations of 2020 alleging the widespread use by the State of forced labour in cotton harvesting. The ITUC indicated in particular that, during the 2019 cotton harvest, public sector employees, including teachers, doctors, municipal service and utility companies' employees, continued to be mobilized for cotton picking or forced to pay for replacements pickers. For the second time in 15 years, teachers were forced to spend their nine-day autumn break picking cotton. Those unable or unwilling to pick cotton had to pay a substantial part of their income. As of October 2019, teaching staff had each paid 285 Turkmenistan manats (US$16) while their average monthly income is around US$90.

In this respect, the Committee notes the Government's statement in the written information provided to the Conference Committee that, for the period 2015–20, the percentage of manually harvested cotton dropped from 71 per cent to 28 per cent due to the mechanization of cotton harvesting. The Government points out that the prevalent use of harvesting machines in the process of picking cotton demonstrates the absence of the need to massively involve human resources in this process.

The Committee further notes the Government's statement, in its communication dated 25 October 2021, that it has accepted a high-level mission of the ILO, as requested by the Conference Committee.

The Committee also notes the indication by the Government, in its report, that the policy of the Government is aimed at the maximum automation of manual labour in the agricultural sector and that the use of public sector employees' labour in picking cotton is not economically viable. The Government further indicates an absence of a system of mandatory quotas for the production of cotton in Turkmenistan and that the conditions of cotton production, including its volume and the purchase price, are regulated by a contract concluded between the State and a tenant. The Government also indicates that no cases of forcing citizens to pick cotton or the coercion of payments by citizens of funds intended for cotton harvesting have been registered by the law enforcement bodies.

The Committee takes note of the indication by the Government that the Act on the legal regime governing emergencies of 1990 was repealed by the State of Emergency Act of 2013 (section 31(2)) and that a state of emergency has never been introduced in Turkmenistan. The Committee also takes note of the National Human Rights Action Plan (NAP) 2021–2025 elaborated with the participation of a wide range of stakeholders. The Government indicates that the NAP 2021–2025 has a section on freedom of labour which foresees various measures particularly aimed at preventing the use of forced labour by ensuring compliance with legislation and strengthening control over its observance. In this respect, the Government points out that the NAP 2021–2025 can serve as a basis for addressing the issues raised by the Conference Committee.

The Committee however notes that, in its 2021 observations, the ITUC reiterates once again the systemic recourse to the use by the State of forced labour in picking cotton. In particular, during the 2020 cotton harvest, public sector employees and students continued to be mobilized to work in cotton fields. The ITUC indicates that mobilized persons are forced to work excessively long hours in poor sanitary conditions without protective equipment. As previously highlighted by the ITUC, in order not to participate in the cotton harvesting, persons had to pay the amounts representing a substantial part of their income for replacement pickers. The ITUC points out that the mechanization of the cotton

harvesting process does not seem to offer the necessary guarantees in order to put a lasting end to the systematic practice of forced labour in Turkmenistan.

The Committee further notes that the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences, in the communication dated 30 August 2021 to the Government of Turkmenistan, expressed his deep concern about the working and living conditions of cotton workers. The Special Rapporteur indicates that, according to the information received, tens of thousands of citizens, public sector workers and workers of private companies are subjected to forced labour, as they are coerced to work in the cotton fields under the threat of dismissal from their own jobs. Cotton workers reportedly have to pay for their own transport, accommodation and food and they do not receive their wages or have very low salaries. Furthermore, workers do not have access to medical assistance when needed and they cannot afford medical care themselves due to their low incomes. If the cotton production quotas imposed by the State are not met, agricultural associations, enterprises and organizations, schools, construction organizations, public utilities services and hospitals of the respective region can be obliged to supply cotton, by purchasing cotton elsewhere.

While noting certain measures taken by the Government to address the issue of forced labour in cotton harvesting, including measures aimed at the reduction of manual harvesting, the Committee once again expresses its ***deep concern*** at the continued practice of forced labour in the cotton sector. ***Taking due note of the Government's stated commitment to collaborate with the ILO and implement this Convention, the Committee strongly urges the Government to pursue its efforts to ensure the complete elimination of the use of compulsory labour of public and private sector workers as well as students in cotton production. The Committee strongly encourages the Government to continue to engage in cooperation with the ILO and the social partners to ensure the full application of the Convention in practice. In this regard, it encourages the Government to consider developing a National Action Plan, in close collaboration with the social partners and the ILO, to improve recruitment and working conditions in the cotton sector. It requests the Government to provide information on the measures taken to this end and the concrete results achieved. The Committee welcomes the Government's acceptance of the high-level mission requested by the Conference Committee, which will visit the country in 2022, and trusts that the high-level mission will be able to note significant progress in this respect.***

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

[The Government is requested to reply in full to the present comments in 2022.]

Uganda

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been referring to the following provisions of the national legislation, under which penal sanctions involving compulsory prison labour, by virtue of section 62 of the Prisons Regulations, may be imposed:

– the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour; and

– sections 54(2)(c), 55, 56 and 56(a) of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus render any speech, publication or activity on behalf of, or in support of, such a combination, illegal and punishable with imprisonment (involving an obligation to perform labour).

The Committee requested the Government to take the necessary measures to ensure that the above provisions are amended or repealed so as to ensure the compatibility of the legislation with the Convention.

The Committee notes the Government's indication in its report that both the Public Order and Security Act and the Penal Code are in conformity with the Convention.

However, the Committee notes the statements made by a certain number of governments in the 2016 report of the Working Group on the Universal Periodic Review (report to the UN Human Rights Council (HRC)), recommending the amendment of the Public Order Management Act of 2013, in order to ensure full respect of freedom of association and peaceful demonstration (A/HRC/34/10, paragraphs 115.101, 117.8, 117.18 and 117.52). Moreover, the Committee notes that, according to the Report of the HRC of 2017, a certain number of stakeholders regretted that Uganda failed to fully implement its commitments from the first Universal Periodic Review regarding freedom of expression, peaceful assembly and association. They also expressed concern over physical assaults on journalists and the harassment of political activists as well as human rights defenders, and urged for reforms to the Penal Code, the Press and Journalists Act and the Public Order Management Act of 2013 (A/HRC/34/2, paragraphs 688, 692, 693 and 694).

The Committee further notes with ***concern*** that penalties of imprisonment (involving compulsory prison labour) may be imposed under the following provisions of the Public Order Management Act, 2013: section 5(8) (disobedience of statutory duty in case of organizing a public meeting without any reasonable excuse); and section 8(4) (disobedience of lawful orders during public meetings).

In this regard, the Committee is bound to recall that *Article 1(a)* of the Convention prohibits all recourse to sanctions involving an obligation to perform labour, as a means of political coercion or as a punishment for holding or expressing political views, or views ideologically opposed to the established political, social or economic system. It also points out that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles; even if certain activities aim to bring about fundamental changes in state institutions, such activities are covered by the Convention, as long as they do not resort to, or call for, violent means to these ends. ***In light of the above considerations, the Committee urges the Government to take the necessary measures to ensure that the abovementioned provisions of the Public Order and Security Act, No. 20 of 1967, the Penal Code, and the Public Order Management Act of 2013 are amended or repealed so as to ensure that no prison sentence entailing compulsory labour can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system. It requests the Government to provide information on measures taken in this regard.***

Article 1(d). Penal sanctions involving compulsory labour as a punishment for having participated in strikes. The Committee previously noted that the Labour Disputes (Arbitration and Settlement) Act, 2006, contains provisions concerning the resolution and settlement of labour disputes which could lead to the imposition of compulsory arbitration procedures, thus making strikes or other industrial action unlawful. Strikes may be declared unlawful, for example, where the minister or the labour officer refers a dispute to the Industrial Court (section 28(4)) or where the Industrial Court makes an award which has come into force (section 29(1)). The organization of strikes in these circumstances is punishable with imprisonment (involving compulsory prison labour) pursuant to sections 28(6), 29(2) and (3) of the Act, and the Committee accordingly reminded the Government that such penalties were not in conformity with the Convention. In addition, the Committee noted that, under section 34(5) of the Labour Disputes (Arbitration and Settlement) Act, 2006, the minister may refer disputes in essential services to the Industrial Court, thus making illegal any collective withdrawal of labour in such services, with violation of this prohibition being punishable with imprisonment (involving an obligation to perform labour) (section 33(1) and (2) of the Act). The Committee requested the Government to take the necessary measures to bring the abovementioned provisions of the Labour Disputes (Arbitration and Settlement) Act, 2006 into conformity with the Convention.

The Committee notes the absence of information on this point in the Government's report. ***The Committee therefore once again requests the Government to take the necessary measures to bring the abovementioned provisions of the Labour Disputes (Arbitration and Settlement) Act, 2006, into conformity***

with the Convention, either by removing the penalties of imprisonment involving compulsory labour, or restricting their scope to essential services in the strict sense of the term (namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population), or to situations of acute national crisis. The Committee requests the Government to provide information on measures taken in this regard.

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

Zimbabwe

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1998)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2021.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the detailed discussion, which took place at the 109th Session of the Conference Committee on the Application of Standards in June 2021, concerning the application by Zimbabwe of the Convention.

The Conference Committee deplored the continued use of penal sanctions involving compulsory labour as a punishment for the expression of views opposed to the established political or social system. It urged the Government to ensure that no penalties involving forced labour may be imposed so as to be in compliance with *Articles 1(a) and 1(d)* of the Convention; and to repeal or amend sections 31, 33, 37 and 41 of the Criminal Law (Codification and Reform) Act No 23/2004 (Cap. 9:23) (Criminal Law Code), sections 7(5) and 8(11) of the Maintenance of Peace and Order Act No. 9 of 2019 (MOPA), and sections 102(b), 104(2)–(3), 109(1)–(2), and 112(1) of the Labour Act in order to bring them into conformity with the Convention in consultation with the social partners without delay. The Committee urged the Government to avail itself of technical assistance and to report to the Committee of Experts, prior to its 2021 session.

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for the expression of views opposed to the established political, social or economic system. In its earlier comments, the Committee noted that penalties of imprisonment (involving compulsory prison labour by virtue of section 76(1) of the Prisons Act (Cap. 7:11) and section 66(1) of the Prisons (General) Regulations 1996) may be imposed under various provisions of national legislation in circumstances falling within *Article 1(a)* of the Convention, namely:

- sections 31 and 33 of the Criminal Law (Codification and Reform) Act (Cap. 9:23) (Criminal Law Code) concerning publishing or communicating false statements prejudicial to the State; undermining authority of or insulting the President etc.; and
- sections 37 and 41 of the Criminal Law Code under which sanctions of imprisonment may be imposed, inter alia, for participating in meetings or gatherings with the intention of disturbing the peace, security or order of the public, uttering any words or distributing or displaying any writing, sign or other visible representation that is threatening, abusive or insulting, intending thereby to provoke a breach of peace; and engaging in disorderly conduct in public places with similar intention;
- sections 7(5) and 8(11) of the MOPA, which provide for sanctions of imprisonment for failure to give notice of processions, public demonstrations and public meetings; and failure to comply with a prohibition notice or any directions or conditions under which a procession, public demonstration or public meeting is authorized.

The Committee noted the ZCTU's observation that the MOPA, which repealed the Public Order Security Act (POSA), was more draconian than the POSA. It also noted the statement made by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, in 2019 that the MOPA has worrying similarities to the POSA and that it does not fully guarantee the exercise of the right to peaceful assembly. It continues to give law enforcement agencies broad regulatory discretion and powers.

The Committee notes the Government's statement in its written information provided to the Conference Committee that the 20 ZCTU members who were arrested under section 37 of the Criminal Law for having participated in a ZCTU organized protest action in October 2018, which the Committee noted in its previous comments, were acquitted by the court on 12 November 2020. It also notes the reference made by the Government representative, during the Conference Committee discussion, to section 9 of the MOPA which explicitly exempts certain gatherings and meetings from the requirements stipulated under sections 7 and 8, including meetings convened by registered unions for bona fide trade union purposes for the conduct of business, in accordance with the Labour Act [Chapter 28:01]; and public gatherings for bona fide religious or educational purposes, or those held by members of professional, vocational or occupational bodies for non-political purposes.

The Committee, however, notes that, in its observations, the ITUC reiterates that workers in Zimbabwe still face penal sanctions involving compulsory labour as a punishment for expressing views opposed to the established political, social or economic system. It states that the criminal provisions, together with their prison terms and compulsory prison labour, are used to drag trade union leaders and workers seeking to exercise their civil liberties and fundamental rights through the criminal justice system. The ITUC points out that while the failure to notify the authorities of the intention of holding a public gathering and violations of the prohibition of public gatherings or public demonstration are punishable with imprisonment of up to six months under the POSA, similar offences under sections 7(5) and 8(11) of the MOPA are punishable with one year imprisonment. The ITUC recalls that compulsory labour is by virtue of the Prisons Act and that section 76(1) of the Prisons Act and section 66(1) of the Prisons Regulations make compulsory prison labour, in practice, the norm for all prisoners. In this regard, the ITUC refers to the arrests of two ZCTU leaders in 2019 following a protest action, who were convicted and sentenced to imprisonment for a period of twenty years, as well as the arrest in December 2020 of an officer of the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) who was convicted, under section 37 of the Criminal Code, after a trade union protest action against the erosion of teachers' salaries by the Government. She was jailed for 16 months and underwent compulsory prison labour.

The Committee notes the Government's information in its report that the prison system in Zimbabwe went through a transformation focusing on rehabilitation of offenders for integration into society and that the use of labour in prisons has been outlawed. In order to give effect to this transformation and to bring it into conformity with the Convention, the Prisons Act is currently being amended. The Government also states that pending the promulgation of this amendment, Prison Officers have been given policy directives to discontinue administering labour in prisons. Hence, the provisions of the MOPA and the Criminal Law Code, in question, are no longer applied in practice. The Committee further notes a copy of the ILO Roadmap on Strengthening International Labour Standards observance and Social Dialogue in Zimbabwe provided by the Government, which indicates the Government's readiness to engage in tripartite dialogue to address some of the existing challenges, including to unpack the MOPA and to facilitate a direct contacts mission to discuss issues of forced labour raised by the Conference Committee.

In addition, the Committee notes that the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, in his report of May 2020, on his visit to Zimbabwe, acknowledged restrictions against those representing dissenting voices and expressed concern about the application of section 22 (subverting constitutional Government) of the Criminal Law Code to prosecute human rights defenders, and civil society and opposition leaders suspected of having played

important roles in protests, which could lead to imprisonment for up to 20 years (A/HRC/44/50/Add.2, paragraphs 63 and 64).

While taking due note of certain measures taken by the Government to address the issues related to compulsory prison labour, the Committee expresses its ***concern*** that the practice of arrests, prosecutions and convictions involving the imprisonment of persons exercising their right to peaceful assembly still continues and that the legal basis for imposing labour on a person sentenced to imprisonment still exists. In this respect the Committee recalls that *Article 1(a)* of the Convention prohibits the imposition of any form of compulsory labour, including compulsory prison labour, as a punishment for expressing political views or views opposed to the established political, social or economic system. ***Accordingly, in light of the proposed amendments to the Prisons Act prohibiting compulsory prison labour, the Committee strongly urges the Government to take the necessary measures to review sections 31, 33, 37 and 41 of the Criminal Law Code and sections 7(5) and 8(11) of the MOPA, so as to ensure that, both in law and in practice, no penalties involving compulsory labour shall be imposed on any person in relation to their holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee requests the Government to provide information on any progress made in this regard as well as with regard to the amendments made to the Prisons Act. Pending the adoption of such measures, the Committee requests the Government to provide information on the application of the above-mentioned provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.***

Article 1(d). Penal sanctions involving compulsory labour as a punishment for having participated in strikes. In its earlier comments, the Committee noted certain provisions of the Labour Act (sections 102(b), 104(2)–(3), 109(1)–(2), and 122(1)) that establish sanctions of imprisonment, which involves compulsory prison labour, for persons engaged in an unlawful collective action. The Committee noted the Government's indication that these sections of the Labour Act were included in the draft Principles for the Harmonization and Review of Labour Laws in Zimbabwe. Noting an absence of information in the Government's report and the lack of progress in the labour law reform, the Committee strongly urged the Government to ensure that the above-mentioned sections of the Labour Act are amended in conformity with *Article 1(d)* of the Convention so that no sanctions of imprisonment may be imposed for organizing or peacefully participating in strikes.

The Committee notes from the Government's written information to the Conference Committee that the Labour Amendment Bill which repeals sections 102(b), 104(2)–(3), 109(1)–(2) and 122 of the Labour Act, is in the process of being adopted. According to the Government's report the Bill has been approved by the Cabinet Committee on 28 September, 2021 and is now pending in Parliament. The Government indicates that the Labour Amendment Bill is a product of extensive consultations with social partners and relevant stakeholders to bring the Labour Act into conformity with the comments made by the ILO supervisory bodies. ***The Committee expresses the firm hope that the Labour Amendment Bill, which repeals sections 102(b), 104(2)–(3), 109(1)–(2) and 122 of the Labour Act, will be adopted in the near future. It requests the Government to provide information on the progress made in this regard as well as to provide a copy, once it has been adopted.***

The Committee encourages the Government to continue to avail itself of ILO technical assistance in its efforts to bring its law and practice into compliance with the provisions of the Convention.

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 29** *(Albania, Algeria, Angola, Armenia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Côte d'Ivoire,*

Cyprus, Democratic Republic of the Congo, Djibouti, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Finland, Ghana, Haiti, Lebanon, Madagascar, Netherlands: Aruba, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Syrian Arab Republic, Uganda); **Convention No. 105** *(Afghanistan, Albania, Algeria, Angola, Azerbaijan, Bahamas, Bangladesh, Barbados, Belize, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Burundi, Central African Republic, Chad, Chile, China: Hong Kong Special Administrative Region, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Grenada, Lebanon, Netherlands: Aruba, Saint Vincent and the Grenadines, Sierra Leone, Solomon Islands, South Sudan, Syrian Arab Republic, Tajikistan, Turkmenistan, Zimbabwe).*

Elimination of child labour and protection of children and young persons

Afghanistan

Minimum Age Convention, 1973 (No. 138) (ratification: 2010)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously noted the implementation of the various measures taken by the Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD) to prevent child labour, including: the National Child Labour Strategy, 2012, followed by a National Action Plan to prevent child labour in brick kilns; a National Strategy for the Protection of Children at Risk; and a National Strategy for Working Street Children, 2011. However, the Committee noted, that children in Afghanistan are engaged in child labour and often in hazardous conditions, including in agriculture, carpet weaving, domestic work, street work, and brick making. Moreover, 27 per cent of children between the ages of 5 and 17 years (2.7 million children) are engaged in child labour with a higher proportion of boys (65 per cent). Of this, 46 per cent are children between 5 and 11 years of age. At least half of all child labourers are exposed to hazardous working conditions such as dust, gas, fumes, extreme cold, heat or humidity. Moreover, 56 per cent of brick makers in Afghan kilns are children and the majority of these are 14 years of age and below.

The Committee notes that the Government's report contains no new information in this regard. The Committee once again notes with ***concern*** that a significant number of children under the age of 14 years are engaged in child labour, of which at least half are working in hazardous conditions. ***The Committee therefore urges the Government to strengthen its efforts to ensure the progressive elimination of child labour in all economic activities, both in the formal and informal sectors, and requests that the Government provide information on the measures taken in this regard, as well as the results achieved.***

Article 2(1). Scope of application. The Committee noted that according to sections 5 and 13 of the Labour Law, read in conjunction with the definition of a "worker", the Law applies only to labour relations on a contractual basis and, therefore, that the provisions of the Labour Law did not appear to cover the employment of children outside a formal employment relationship, such as children working on their own account or in the informal economy.

Noting the absence of information provided in this regard in the Government's report, the Committee recalls that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship. ***The Committee therefore requests, once again, that the Government take the necessary measures to ensure that all children, including children working outside a formal employment relationship such as children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. In this regard, the Committee encourages, once more, the Government to review the relevant provisions of the Labour Law in order to address these gaps as well as to take measures to strengthen the capacity and expand the reach of the labour inspectorate to the informal economy with a view to ensuring such protection in this sector.***

Article 7(1) and (3). Minimum age for admission to light work and determination of light work. The Committee previously noted that section 13(2) of the Labour Law sets 15 years as the minimum age for employment in light work in industries and section 31 prescribes a weekly working period of 35 hours for young persons between 15 and 18 years of age. It observed that the minimum age for light work of 15 years is higher than the minimum age for admission to employment or work of 14 years, specified by Afghanistan.

Noting the absence of information provided in this regard by the Government, the Committee once again draws the Government's attention to the fact that *Article 7(1)* of the Convention is a flexibility clause which provides that national laws or regulations may permit the employment or work of persons aged 13–15 years in light work activities which are not likely to be harmful to their health or development and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received.

The Committee notes the lack of information contained in the Government's report and recalls once again that *Article 7(4)* permits member States who have specified a general minimum age for admission to employment or work of 14 years to substitute a minimum age for admission to light work of 12–14 years to that of the usual 13–15 years of age (see General Survey on the fundamental Conventions, 2012, paragraphs 389 and 391). ***In view of the fact that a high number of children under 14 years of age are engaged in child labour in the country, the Committee once again requests that the Government regulate light work activities for children between 12 and 14 years of age to ensure that children who, in practice, work under the minimum age are better protected. The Committee also requests that the Government take the necessary measures to determine light work activities that children of 12–14 years of age are permitted to undertake and to prescribe the number of hours and conditions of such work, pursuant to Article 7(3) of the Convention.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2010)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Organisation of Employers (IOE) received on 30 August 2017, and the in-depth discussion on the application of the Convention by Afghanistan in the Committee on the Application of Standards at the 106th Session of the International Labour Conference in June 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery or practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for use in armed conflict and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. In its previous comments, the Committee noted that the Law on prohibiting the recruitment of child soldiers criminalizes the recruitment of children under the age of 18 years into the Afghan Security Forces. The Committee also noted that a total of 116 cases of recruitment and use of children, including one girl, were documented in 2015. Out of these: 13 cases were attributed to the Afghan National Defence and Security forces; five to the Afghan National Police; five to the Afghan Local Police; and three to the Afghan National Army; while the majority of verified cases were attributed to the Taliban and other armed groups who used children for combat and suicide attacks. The United Nations verified 1,306 incidents resulting in 2,829 child casualties (733 killed and 2,096 injured), an average of 53 children were killed or injured every week. A total of 92 children were abducted in 2015 in 23 incidents.

In this regard, the Committee noted the following measures taken by the Government:

- The Government of Afghanistan signed an Action Plan with the United Nations on 30 January 2011 to end and prevent the recruitment and use of children by the Afghan National Security Forces, including the Afghan National Police, Afghan Local Police and Afghan National Army.
- A road map to accelerate the implementation of the Action Plan was endorsed by the Government on 1 August 2014.
- The Government endorsed age-assessment guidelines to prevent the recruitment of minors.
- In 2015 and early 2016, three additional child protection units were established in Mazar e Sharif, Jalalabad and Kabul, bringing the total to seven. These units are embedded in Afghan National Police recruitment centres and are credited with preventing the recruitment of hundreds of children.

The Committee notes that the Conference Committee recommended that the Government take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children into armed forces and groups. It further recommended the Government to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in law and practice. Finally,

the Conference Committee recommended the Government to take effective and time-bound measures to provide for the rehabilitation and social integration of children who are forced to join armed groups.

The Committee notes the IOE's indication that children are engaged in armed conflict in Afghanistan. The Committee notes the Government representative's indication to the Conference Committee that the Law on the Prohibition of Children's Recruitment in the Armed Forces (2014), along with other associated instruments, has helped prevent the recruitment of 496 children into national and local police ranks in 2017. Moreover, the Ministry of Interior, in cooperation with relevant government agencies, was effectively implementing Presidential Decree No. 129 which prohibits, among others, the use or recruitment of children in police ranks. Inter-ministerial commissions tasked with the prevention of child recruitment in national and local police have been established in Kabul and the provinces, and child support centres have been set up in 20 provinces, with efforts under way to establish similar centres in the remaining provinces. Finally, the Committee notes the Government's indication that the National Directorate of Security has recently issued Order No. 0555, prohibiting the recruitment of underage persons and that the Order is being implemented in all security institutions and monitored by national and international human rights organizations. ***While acknowledging the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Committee requests the Government to continue its efforts in taking immediate and effective measures to put a stop, in practice, to the recruitment of children under 18 years by armed groups, the national armed forces and police authorities, as well as measures to ensure the demobilization of children involved in armed conflict. It once again urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, it requests the Government to take effective and time-bound measures to remove children from armed groups and armed forces and ensure their rehabilitation and social integration, and to provide information on the measures taken in this regard and on the results achieved.***

Articles 3(b) and 7(2)(b). Use, procuring or offering of children for prostitution and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee previously noted that concerns remained regarding the cultural practice of *bacha-bazi* (dancing boys), which involves the sexual exploitation of boys by men in power, including the Afghan National Defence and Security Forces' commanders. It also noted that there are many child victims of bacha-bazi, particularly boys between 10 and 18 years of age who have been sexually exploited for long periods of time. The Committee further noted that some families knowingly sell their children into forced prostitution, including for *bacha-bazi*.

The Committee notes that the Conference Committee recommended the Government to take immediate and effective measures to eliminate the practice of *bacha-bazi*. It also recommended the Government to take effective and time-bound measures to provide for the rehabilitation and social integration of children who are sexually exploited.

The Committee notes the Government representative's indication to the Conference Committee that the Child Protection Law has been submitted to Parliament for adoption and makes the practice of *bacha-bazi* a criminal offence. The Committee also notes the new Law on Combating Human Trafficking in Persons and Smuggling of Migrants of 2017 (Law on Human Trafficking of 2017). It notes that section 10(2) of this Law punishes the perpetrator of trafficking to eight years' imprisonment when the victim is a child or when the victim is exploited for the purpose of dancing. ***The Committee urges the Government to take the necessary measures to ensure the effective implementation of the prohibition contained in section 10(2) of the Law on Human Trafficking of 2017. It requests the Government to provide information on the results achieved to effectively eliminate the practice of bacha-bazi, to remove children from this worst forms of child labour and to provide assistance for their rehabilitation and social integration. It also requests the Government to provide information on the adoption of the Child Protection Law, and its effective implementation.***

Article 7(2). Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour and taking into account the special situation of girls. Access to free basic education. The Committee previously noted the Government's statement that as a result of the past three decades of conflict, insecurity and drought, children and youth are the most affected victims, a majority of whom are deprived of proper education and training. The Committee noted that Afghanistan is among the poorest performers in

providing sufficient education to its population. A large number of boys and girls in 16 out of 34 provinces had no access to schools by 2013 due to insurgents' attacks and threats that lead to the closure of schools. In addition to barriers arising from insecurity throughout 2015, anti-government elements deliberately restricted the access of girls to education, including closure of girls' schools and a ban on girls' education. More than 369 schools were closed partially or completely, affecting at least 139,048 students, and more than 35 schools were used for military purposes in 2015. Finally, the Committee noted the low enrolment rate of girls, in particular at the secondary school level, high dropout rates especially in rural areas owing to a lack of security in the journey to and from school, and the increased number of attacks on girls' schools and written threats warning girls to stop going to school by non-state armed groups.

The Committee notes the Government representative's statement at the Conference Committee that many households respond to poverty by taking their children out of school and forcing them into labour. The Government indicates that child labour is not only a law enforcement matter but a fundamental problem which requires a comprehensive understanding and a robust response mechanism. With a view to providing preschool support to children under the age of six, the Ministry of Labour, Social Affairs, Martyrs and Disabled has established over 366 local kindergartens which house over 27,000 children. The Government also indicates it is taking strong action against the exploiters as well as the families who knowingly force their children into prostitution and expects a sharp decline in the practice in the coming years. Finally, the Committee notes the Government's indication that school burnings and the imposition of bans in Taliban-controlled areas prevented girls and children from attending school. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take the necessary measures to raise awareness among households that education is key in preventing the engagement of children in the worst forms of child labour. Additionally, it once again urges the Government to take the necessary measures to improve the functioning of the education system and to ensure access to free basic education, including by taking measures to increase the school enrolment and completion rates, both at the primary and secondary levels, particularly of girls.***

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

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

Albania

Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted the adoption of the Law No. 18/2017 on the right and protection of children which provides, among others, for the right of every child to free and quality education and the right to protection from economic exploitation. The Committee also noted the various measures in the field of social protection and inclusion; protection from all forms of violence, abuse and economic exploitation; and the right to quality and comprehensive education implemented under the Action Plan for Children 2012–15.

The Committee notes the information provided by the Government in its report that the Decision of the Council of Ministers No. 129 of 13 March 2019 (Decision No. 129) establishes the procedures for the identification, immediate assistance, and referral of economically exploited children. Following Decision No. 129, in 2019, the field teams on the identification of economically exploited children were set up in 22 municipalities. Some 272 working children were identified in 2019 by the field teams and 150 in 2020. The Government indicates that the identified children received the necessary services, including medical care and placement in social care institutions and day care centres. The Committee also notes the adoption of the National Action Plan for the Protection of Children from Economic Exploitation, including Children in Street Situations for 2019–2021 (National Action Plan for 2019–2021) by the Decision of the Council of Ministers No. 704 of 21 October 2019. According to the 2019 periodic report of Albania to the Committee on the Rights of the Child, the main objectives of the National Action Plan for 2019–2021 are the prevention of children's economic exploitation; protection based on the

identified needs of the child; breaking the social and cultural barriers that provoke economic exploitation; and prosecution of the criminal cases related to the economic exploitation of children (CRC/C/ALB/5-6, paragraph 241). ***The Committee requests the Government to continue to pursue its efforts to combat child labour and to provide information on the specific measures taken, particularly under the framework of the National Action Plan for 2019–2021, and the results achieved in this regard. The Committee further requests the Government to provide information on the application of the Convention in practice, including statistical data on the employment of children and young persons by age group and gender.***

Article 2(1). Scope of application and labour inspection. Self-employed children or children working in the informal sector. The Committee previously noted that section 3(1) of the Labour Code and the Regulation "On the Protection of Children at Work Decision No 108/2017" exclude, from their applicability, children engaged in work outside of an employment agreement, such as self-employed children or those working in the informal sector. The Committee further noted the measures taken by the Government to strengthen the labour inspection system to effectively monitor and enforce labour legislation, including in cases of finding informal employment.

The Committee notes the indication by the Government that in 2019, the State Labour Inspectorate and Social Services (SLISS) identified 255 working children under 18 years of age (88 girls and 167 boys), most of whom were working in manufacturing and trade. In January–March 2021, the SLISS identified 17 working children under 18 years of age. The Committee also notes the elaboration of a guide for labour inspectors on the identification of child labour for its effective monitoring. The Government further indicates that in 2019, 118 labour inspectors received training on the application of Decision No. 129, according to which labour inspectors shall immediately report on identified cases of child labour to the child protection officer. The Government also indicates that, due to the new structure of the SLISS established by virtue of the Prime Minister's Order No. 156 of 24 November 2020, the total number of employees of the SLISS has increased from 154 to 165. The Committee, however, notes its comments on the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129) indicating the need to take measures to ensure the provision of suitably equipped offices and necessary transport facilities to labour inspectors and the low percentage of the inspection visits carried out in agriculture. ***The Committee requests the Government to continue to strengthen the functioning of the labour inspectorate to enable it to effectively monitor and detect cases of child labour, and prevent and remedy conditions that inspectors have reasonable cause to believe constitute a threat to the health or safety of children, including children working on their own account as well as in agriculture and the informal economy. It also requests the Government to provide statistical information on the number and nature of violations detected by the SLISS related to children engaged in child labour.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the observations of the Education International (EI), the Trade Union Federation of Education and Science of Albania (FSASH), and the Independent Trade Union of Education of Albania (SPASH) received on 3 September 2021.

Article 3(a) of the Convention. Sale and trafficking of children for commercial sexual exploitation. The Committee previously noted that, in its conclusions adopted in June 2015, the Conference Committee on the Application of Standards urged the Government to effectively enforce anti-trafficking legislation and to take measures for its effective implementation in practice. The Committee further noted that in 2016, 16 girls were identified as subject to sex trafficking.

The Committee notes the information provided by the Government in its report indicating a number of training activities on trafficking in persons conducted for police officers as well as their collaboration with the relevant child protection bodies. The Government also indicates that child-friendly facilities have been installed in several police stations to ensure qualitative interviewing of

children, including victims of trafficking, adapted to their age. The Committee further takes note of the regulations issued for police officers on the treatment of child victims during the investigation.

The Committee notes the Government's information that in 2019, 67 potential child victims of trafficking were identified. The Government indicates that according to the data of the State Police, in 2019, 7 cases, involving 17 offenders, were identified under section 128(b) (trafficking of minors) of the Criminal Code. The Government further indicates that in 2019, there were 6 cases, involving 2 defendants, investigated by the General Prosecutor's Office and 2 persons convicted with 15 years of imprisonment by the Special Court of First Instance for Corruption and Organized Crime under section 128(b) of the Criminal Code. The Committee, however, notes that in its 2020 report concerning the implementation by Albania of the Council of Europe Convention on Action against Trafficking in Human Beings, the Group of Experts on Action against Trafficking in Human Beings (GRETA) expressed concern at the low number of convictions for trafficking in persons, including trafficking of children, and urged the Albanian authorities to take additional measures to ensure that cases of trafficking in persons are investigated proactively, prosecuted effectively, and lead to effective, proportionate and dissuasive sanctions (paragraphs 88, 89). The Committee further notes that the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), in its concluding observations, expressed deep concern that Albania is a source, transit and destination country for victims of trafficking, including for women and children subjected to sex trafficking and forced labour (CMW/C/ALB/CO/2, paragraph 69). ***The Committee urges the Government to continue to take the necessary measures to ensure that thorough investigations and prosecutions are carried out in respect of persons who engage in the trafficking of children, and that sufficiently effective and dissuasive penalties are imposed in practice. It further requests the Government to provide information on the application of section 128(b) of the Criminal Code in practice, including statistics on the number of investigations, prosecutions, convictions and penalties imposed.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (c). Preventing the engagement of children in the worst forms of child labour and ensuring their access to free basic education. Children from Roma and Egyptian communities. In its previous comments, the Committee noted that the Conference Committee had urged the Government to continue to remove barriers to greater participation of Roma and Egyptian children in the education system, including access to free basic education and access to education in their own language as well as to continue to take measures to stop trafficking and the practice of forced begging on the streets. The Committee further noted the various measures taken by the Government to improve the educational situation of Roma and Egyptian communities, including through facilitating enrolment in schools and the provision of free textbooks and scholarships for children of unemployed parents. The Committee, however, noted that many Roma and Egyptian children had never been enrolled, and the dropout rates were still high.

The Committee notes the Government's indication regarding the measures taken to reduce the school dropout rate among Roma and Egyptian children, such as providing scholarships to children who dropped out of school or who are at risk of dropping out, providing free school transport and after school classes for children with learning difficulties. The Committee also observes the adoption of the Instruction of the Ministry of Education, Sports and Youth No. 17 of 9 May 2018 which establishes the procedures for returning children to compulsory school. The Committee further observes the elaboration in 2019 of the Guideline "For monitoring children that are out of the education system and children that are at risk of dropping out" under the framework of the initiative "Every Child in school" supported by UNICEF. In particular, the Guideline provides for indications to educational institutions and other relevant actors on identifying children not attending compulsory school and preventing children from dropping out of school. The Government indicates the increase in the number of Roma and Egyptian children enrolled in school from 14,515 students in the 2019–20 school year to 14,875 students in the 2020–21 school year. In this respect, the Committee observes that the European Commission against Racism and Intolerance (ECRI) of the Council of Europe, in its 2020 Report on

Albania, indicated that in comparison with 2011, the total number of Roma and Egyptian children enrolled in compulsory education increased from 48 per cent to 66 in 2018. The ECRI, however, noted the extremely low rate of compulsory education completion rates (43 per cent) by Roma and Egyptian children (paragraphs 43, 44). The Committee further notes the observations of the EI, the FSASH and the SPASH indicating that additional measures are needed to reduce school dropout rates, such as providing free meals to students from families with financial difficulties, including those from Roma and Egyptian communities. Moreover, teachers should be provided with additional remuneration for the work performed outside of school hours with students who have dropped out of school, their parents, and local government bodies. ***The Committee strongly encourages the Government to continue its efforts to facilitate access to free basic education of children in the Roma and Egyptian communities so as to prevent them from engaging in the worst forms of child labour. It also requests the Government to provide information on the measures taken in this regard and the results achieved, particularly with respect to increasing the school enrolment and completion rates and reducing school dropout rates of children from Roma and Egyptian communities. To the extent possible, this information should be disaggregated by age and gender.***

Clause (d). Identifying and reaching out to children at special risk. Street children. The Committee previously noted the various services provided to families of street children, including registration of each child in the National register of Civil Registry; enrolment in schools; employment of parents; placement in the social care institutions; and referral for attendance at day-care centres for children. The Committee also noted the awareness-raising programme on the protection of street children and the establishment of a Task Force in Tirana to identify and protect street children.

The Committee notes that the National Action Plan for the Protection of Children from Economic Exploitation for 2019–2021 (National Action Plan for 2019–2021) specifically covers children working on the streets. The Committee further observes from the 2019 periodic report of Albania to the Committee on the Rights of the Child that the on-site teams responsible for the identification process of street children, provision of first aid, and immediate referrals to the responsible case management structures were established in each municipality. The Government specifies in the 2019 periodic report that services provided by the on-site teams cover, among others, counselling, enrolment of children in school, financial assistance, and medical care. It further indicates several measures undertaken by the state police bodies against the economic exploitation of children, including child begging, as part of the efforts to protect street children. It points out that the number of cases of child exploitation for begging referred to the prosecution office has increased from 4 in 2012 to 15 in 2017 (paragraphs 247, 251). The Committee further notes from the information provided by the Government that, in 2020, 125 children in street situations were identified and provided with the necessary social protection services, such as psychological support, medical examination, and civil registration. The Government also indicates the establishment by the Tirana Municipal Council's Decision No. 66 of 12 June 2020 of the Community Field Centre, which coordinates the provision of social protection services to children in street situations. ***The Committee requests the Government to continue to take measures to protect children in street situations from the worst forms of child labour and to provide for their rehabilitation and social integration. It further requests the Government to provide information on the effective and time-bound measures taken in this regard, in particular under the framework of the National Action Plan for 2019–2021, and on the results achieved.***

Algeria

Night Work of Young Persons (Industry) Convention, 1919 (No. 6) (ratification: 1962)

Article 3(1) of the Convention. Period during which night work is prohibited. In its previous comments, the Committee noted that section 28 of the Act No. 90-11 of 21 April 1990 concerning employment relationships (Employment Relationship Act) prohibits the employment of workers of

either sex under 19 years of age in night work which means any work performed between 9 p.m. and 5 a.m. (section 27). The Committee further noted that the prohibition of night work for young persons under the Employment Relationship Act did not cover a period of at least 11 consecutive hours, including the interval between 10 p.m. and 5 a.m., as required by *Article 3(1)* of the Convention. The Government indicated that the Committee's comments on that matter would be taken into account in the draft Labour Code under preparation.

The Committee notes the Government's indication in its report that, to give full effect to the provisions of *Article 3(1)* of the Convention, section 45 of the draft Labour Code prohibits the employment of workers and apprentices of either sex under 18 years of age at night, which covers a period of 11 consecutive hours between 7 p.m. and 6 a.m. ***Noting that the Committee has been drawing the Government's attention to the need to bring the national legislation into conformity with the Convention for many years, it firmly hopes that the draft Labour Code will be adopted in the near future and that its provisions will give full effect to Article 3(1) of the Convention. The Committee requests the Government to provide information on any progress made in this respect.***

Minimum Age Convention, 1973 (No. 138) (ratification: 1984)

Article 1 of the Convention. *National policy and application of the Convention in practice.* The Committee previously noted the establishment of the national body for the protection and promotion of the rights of the child (OPPDE) under Act No. 15-12 of 15 July 2015 on child protection. It noted that the main mission of the OPPDE was to oversee the implementation and periodic evaluation of the national and local programmes for the protection and promotion of the rights of the child and to establish a national information system on the situation of children in the country. The Committee also noted the community child protection services (*services du milieu ouvert*) established at the local level to ensure the social protection of children at risk, including children subjected to economic exploitation. It requested the Government to continue its efforts to ensure that children under the minimum age of admission to work, fixed at 16 years, are not engaged in child labour. It also requested the Government to provide information on the measures taken by the OPPDE in this regard, as well as on the number of children under 16 years who have been identified as being "at risk" because of their engagement in work.

The Government indicates, in its report, that among the measures taken by the OPPDE to combat the economic exploitation of children is the establishment of a mechanism for handling complaints of children's rights violations, through a free hotline, on line, by mail or in person. The Government states that in 2019, 188 complaints related to the economic exploitation of children were registered, concerning 470 children at risk (322 boys and 148 girls). From January to the end of April 2020, 49 complaints related to the economic exploitation of children were registered, involving 132 children at risk (80 boys and 52 girls). According to the Government, the OPPDE also established a standing coordination committee within the OPPDE in 2017 and developed a committee work programme to coordinate efforts to combat child rights violations, including child labour. In addition, the OPPDE organized several public awareness-raising actions and training for professionals working in the area of child protection on combating all forms of exploitation. The Government also indicates that the development of a statistical database on the situation of children has been initiated by the OPPDE. The Committee notes that, according to the Government, an inter-ministerial commission coordinates actions to combat child labour. ***The Committee encourages the Government to pursue its efforts to ensure the progressive elimination of child labour and requests it to continue to provide information on the activities carried out by the OPPDE and the results achieved with regard to combating labour of children under 16 years. The Committee requests the Government to provide information on the activities of the inter-ministerial commission to combat child labour. It also requests the Government to intensify its efforts to set up a system for the collection of statistical data on the nature, extent and evolution of labour of children under 16 years and requests it to provide information in this regard.***

Article 2(1). Scope of application and labour inspection. In its previous comments, the Committee noted that Act No. 90-11 on working conditions of 21 April 1990 governed relations between salaried workers and employers, thereby excluding persons working on their own account. It also noted that, under Ordinance No. 75-59 of 26 September 1975 issuing the Code of Commerce, children under 18 years cannot engage in trading, as defined by the Code of Commerce. In this respect, the Government stated that the Code of Commerce applies to all jobs, salaried or own-account. Noting that the Code of Commerce governs activities defined as acts of trading, the Committee noted that Algerian legislation does not regulate all the economic activities that a child under 16 years of age may carry out in the informal economy or on their own account. The Committee encouraged the Government to strengthen the capacities of labour inspection to enable it to monitor child labour in the informal economy. It also requested the Government to provide information on inspections carried out in practice by labour inspectors responsible for monitoring child labour.

The Government indicates that the fight against child labour is a priority focus of the labour inspection services. It states that measures are being taken to strengthen the capacities of labour inspectors to combat child labour, including in the informal sector. According to figures provided by the Government, as a result of investigations conducted by the labour inspectorate, four children under 16 years were identified in the workforce in 2018, and three in 2019. With regard to monitoring, the Government indicates that the child labour rate over the last ten years is 0.03 percent. However, the Committee notes that according to the multiple indicator cluster survey (MICS) conducted in Algeria in 2019 by the Directorate of Population under the Ministry of Health, Population and Hospital Reform in partnership with UNICEF, 4.2 per cent of children aged 5 to 17 are engaged in child labour (5.7 per cent of boys and 2.7 per cent of girls), including in hazardous conditions. ***The Committee therefore requests the Government to intensify its efforts to strengthen the capacities of the labour inspectorate in order to detect all cases of child labour, including in the informal economy. It requests the Government to provide information on this matter and on the number of violations found related to child labour, including in hazardous conditions, and the penalties imposed. The Committee also requests the Government to take the necessary measures to ensure in practice that the protection set out by the Convention is applied to children working in the informal economy or on their own account, and not restricted to activities governed by the Code of Commerce.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Articles 3 and 7(1) of the Convention. Worst forms of child labour and the penalties applied. Clause (a). Sale and trafficking of children. The Committee previously noted that section 303bis(4) of Act No. 09-01 of 25 February 2009 provides for imprisonment and a fine in cases of trafficking of persons, in particular, for economic and sexual exploitation. Where the trafficking involves a person who is in a vulnerable situation owing to their age, among other things, the prison sentence is between 5 and 15 years. The Committee noted the creation of the National Committee on Preventing and Combating Trafficking in Persons. It also noted that training workshops on investigations and prosecutions for cases of trafficking in persons, and on victim protection, had been held in collaboration with the United Nations Office on Drugs and Crime (UNODC). The Committee requested the Government to provide information on the impact of the training workshops on the elimination of the sale and trafficking of children under 18 years of age.

The Government indicates, in its report, that training on trafficking in persons has strengthened the intervention capacities of investigators, particularly in identifying victims of trafficking and in determining the crime, in order to better identify cases of trafficking throughout the country, including trafficking in children for labour and sexual exploitation. The Government states that the training of personnel responsible for combating trafficking in persons is a priority of the Directorate General of National Security. There are also 50 Brigades for the protection of vulnerable persons within the police force, one mission of which is to ensure the protection of children against all forms of exploitation. In

addition, the Government indicates that in 2018, two cases of child trafficking, involving six child victims, were identified and led to criminal proceedings. As a result of the prosecutions, one person was sentenced to imprisonment and a fine, and four persons were acquitted. In 2019, three cases of child trafficking were registered, two of which were processed, involving three child victims. As a result, two persons were sentenced to imprisonment and a fine and two others were acquitted. ***The Committee requests the Government to continue its efforts to combat child trafficking by ensuring that the perpetrators of these acts are identified and prosecuted, and that sufficiently effective and dissuasive sanctions are imposed. It requests the Government to continue to provide statistical information on identified cases of trafficking in children under 18 years, the prosecutions brought, the convictions obtained and the penalties imposed.***

Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. In its previous comments, the Committee highlighted the absence of a legislative provision prohibiting the use, procuring or offering of a child under 18 years of age for the production and trafficking of drugs. It noted with regret the absence of information from the Government and urged it to take, as a matter of urgency, the necessary measures to ensure, in law and in practice, the prohibition of the use, procuring or offering of a child under 18 years of age for illicit activities, in particular for the production and trafficking of drugs, and to establish sufficiently effective and dissuasive sanctions.

The Government indicates that where children are used for serious crimes related to drugs, the law prohibits legal proceedings against them if they are under 10 years of age. The Government provides figures on the number of children involved in cases linked to the trafficking and use of drugs. However, the Committee notes that the Government does not specify the number of children used, procured or offered for the production and trafficking of drugs.

The Committee once again emphasizes that although national legislation establishes penalties for the possession, use or trafficking of drugs, it does not define specific offences on the use, procuring or offering of children by other persons for the production and trafficking of drugs. It also reminds the Government that all children under 18 years used, procured or offered for illicit activities, in particular for the production and trafficking of drugs, must be treated as victims and not criminals. The Committee can only express its ***concern*** at the absence of provisions expressly prohibiting the use, procuring or offering of a child under 18 years of age for the production and trafficking of drugs. ***The Committee therefore urges the Government to take, as a matter of urgency, immediate measures to ensure that national legislation prohibits the use, procuring or offering of a child for the production and trafficking of drugs. It also requests it to take the necessary measures to ensure that all children under 18 years used for the production and trafficking of drugs are treated as victims and not criminals, and are therefore not punished for their involvement in illicit activities. The Committee requests the Government to provide information on the measures taken in this regard.***

Article 4(1). Determination of hazardous types of work. For several years, the Committee has been noting the Government's indication that the issue of determining hazardous types of work had been addressed during the current drafting of the new Labour Code. In its previous comment, the Committee noted that section 48 of the draft Labour Code of October 2015 prohibits children below the age of 18 from engaging in hazardous work and provides for the establishment of a list of these types of work through legislation. The Committee urged the Government to take immediate measures to ensure the adoption of the draft Labour Code and the relevant regulation on the list of types of hazardous work prohibited to children under 18 years of age.

The Government indicates that the Bill issuing the Labour Code, which provides that the list of hazardous work prohibited to children under 18 years of age will be determined by legislation and revised on a regular basis following consultation with the employers' and workers' organizations concerned, is being finalized. In addition, the Government indicates that a copy of the above Bill has

been communicated to the most representative trade union organizations for their opinion. ***The Committee urges the Government to take, without delay, the necessary measures to finalize and adopt the Bill issuing the Labour Code, in order to determine, following consultation with the employers' and workers' organizations concerned, the types of hazardous work prohibited to children under 18 years of age. It requests the Government to provide a copy of the legislative text issuing the Labour Code and the regulatory text fixing the list of the types of hazardous work, once adopted.***

Article 6. Programmes of action. Sale and trafficking of children. In its previous comment, the Committee requested the Government to take the necessary measures to combat the trafficking of children under 18 years of age for economic or sexual exploitation.

The Government indicates that a three-year programme for the implementation of the action plan to prevent and combat trafficking in persons 2019–2021 was adopted in 2019. This three-year programme, which incorporates the main pillars of the 2015 action plan, provides, inter alia, for: (i) reliable and accurate data on trafficking in persons; (ii) capacity building for those who deal with cases of trafficking in persons cases; (iii) adaptation of the national legal arsenal to prevent and combat trafficking in persons; (iv) provision of necessary protection and assistance for victims of trafficking; and (v) strengthening of cooperation to combat trafficking in persons. The Government states that the National Committee on Preventing and Combating Trafficking in Persons has initiated the drafting of a Bill on trafficking in persons. The Committee takes note of this information. It notes, however, that the Government does not indicate any specific measures taken under the 2019–2021 three-year programme to combat trafficking in children under 18 years. ***The Committee requests the Government to provide information on the measures taken within the framework of the 2019–2021 three-year programme to effectively combat trafficking in children, and the results achieved.***

Article 7(2). Effective and time-bound measures. Clauses (b). Providing assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking of children. The Committee previously requested the Government to take effective and time-bound measures to establish services for the recovery of child victims of trafficking, and for their rehabilitation and social integration. It also requested the Government to take measures to ensure that child victims of trafficking are treated as victims rather than offenders and to provide information on progress in this regard.

The Government indicates that there is currently no national guidance mechanism for victims of trafficking in persons to provide coordinated care for victims but that a working group had been set up to formalize such a mechanism. The Committee further notes the information of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), in its concluding observations of 25 May 2018, according to which "victims of trafficking, including children, continue to be considered migrants in an irregular situation and risk being jailed for illegal activities, such as prostitution, that they engage in because they are victims of trafficking". The CMW also refers to "the absence of shelters for victims of trafficking and the ban on them being opened by civil society under pain of criminal sanctions for housing migrants in an irregular situation." (CMW/C/DZA/CO/2, paragraph 59). ***The Committee urges the Government to take effective and time-bound measures to ensure that children under 18 years of age who engage in illegal activities, such as prostitution, in the context of trafficking, are not punished for that. It also urges the Government to take specific measures to remove child victims of trafficking from this worst form of labour, and to ensure their rehabilitation and social integration, for example by establishing reception and support centres. The Committee requests the Government to provide information on the measures taken in this regard, including within the framework of the national guidance mechanism for victims of trafficking, particularly on the number of children below the age of 18 who have been removed from trafficking and given appropriate care and assistance.***

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

Angola

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 7(2) of the Convention. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously noted from the Government's report of 2016 to the United Nations Committee on the Rights of the Child (CRC), that the net enrolment rate in secondary education rose from 48.7 per cent in 2013 to 51.8 per cent in 2014, and that it was expected to rise to 54.8 per cent in 2015 and 57.5 per cent in 2016 (CRC/C/AGO/5-7, page 31). The Committee requested the Government to intensify its efforts to improve the functioning of the education system and to facilitate access to free, quality basic education, particularly for children from poor families, children living in rural areas, and girls.

The Committee notes that the Government's report contain no information on this point. The Committee notes that according to the United Nations Sustainable Development Cooperation Framework, 2020–2022, Angola made substantial efforts which resulted in visible progress in primary education registration which increased from 5.8 million to 10 million between 2009 and 2018. However, this report indicates that 40 per cent of the children between the ages of 6 and 11 are not at school; 18 per cent of the young population have never been to school; and 19 per cent do not have any level of education. Almost half the population in the age group between 12 and 17 are not satisfactorily in programmes of secondary or vocational education that correspond to their age (pages 25 and 27). ***Recalling that education is key in preventing the engagement of children in the worst forms of child labour, the Committee encourages the Government to pursue its efforts to improve the functioning of the education system and to facilitate access to free, quality basic education, to all children, particularly at the secondary level. It once again requests the Government to provide information on the measures taken in this regard and the results achieved, particularly with regard to increasing school enrolment and completion rates and reducing dropout rates in the primary and secondary education. To the extent possible, this information should be disaggregated by age and gender.***

Clause (b). Removing children from the worst forms of child labour and ensuring their rehabilitation and social integration. Child victims of trafficking and commercial sexual exploitation. In its previous comments, the Committee noted the Government's information, in its report of 2016 to the CRC, regarding the existence of a programme for the family reunification and placement in institutions of child victims of sexual exploitation and trafficking. It also noted from this report that the National Development Programme (PND) 2013–17 implemented policies, programmes and actions to eliminate the sale and trafficking of children, as well as child prostitution, and that the National Children's Institute (INAC) and the National Children's Council (CNAC) were the agencies responsible for ensuring the implementation of the government policies at the national level in the areas of investigation relating to children and their social protection (CRC/C/OPSC/AGO/1, paragraphs 51, 54 and 56).

The Committee notes that the Government's report does not contain any information as requested by the Committee regarding the measures taken by the INAC and CNAC in identifying and providing assistance to the child victims of trafficking and sexual exploitation. The Committee, however, notes from the concluding observations of the CRC on the application of the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) of 2018 that an Inter-ministerial Commission to Combat Trafficking in Persons and a child abduction alert system were developed in 2014 and 2017 respectively and a National Action Plan (NAP) to Combat Trafficking in Persons was adopted in 2018. However, the CRC expressed its concern at the prevalence of cases of trafficking in children from and into neighbouring countries, in particular undocumented migrant children from the Democratic Republic of the Congo, for commercial sexual exploitation (in particular of girls) and for forced labour in diamond-mining districts, and of cases of boys trafficked for forced labour, in particular cattle herding. The CRC also expressed concern at the prevalence of sexual exploitation of children in the travel and tourism sectors (CRC/C/OPSC/AGO/CO/1, paragraphs 6, 19(d), and 21). The Committee

must express its ***deep concern*** at the situation of children trafficked for labour and sexual exploitation. ***The Committee therefore urges the Government to strengthen its measures, including within the framework of the PND and the NAP to Combat Trafficking in Persons, to prevent children from becoming victims of trafficking and commercial sexual exploitation, to remove child victims from the worst forms of child labour and to ensure their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard and the results achieved in terms of the number of children who have been removed and rehabilitated. In this regard, the Committee further requests the Government to indicate the measures taken by the INAC, the CNAC and the Inter-ministerial Commission to Combat Trafficking in Persons in identifying, removing and providing appropriate services and assistance to child victims of worst forms of child labour.***

Clause (d). Children at special risk. HIV/AIDS orphans and other vulnerable children (OVC). The Committee previously noted the Government's indication that a national action plan on OVC was being developed and that the plan sought to strengthen the capacities of families, communities and institutions to respond to the needs of OVC and to expand social protection services and mechanisms for these children. It however noted from the UNAIDS estimates of 2016, that approximately 130,000 children aged 17 years and younger had been orphaned by HIV/AIDs in Angola.

The Committee notes that the Government's report does not contain any information on this matter. It notes that according to the UNAIDS estimates for 2020, the number of children under 17 years who have been orphaned due to HIV AIDS in Angola has doubled, to approximately 260,000 children. ***Recalling that OVC are at an increased risk of being engaged in the worst forms of child labour, the Committee strongly urges the Government to take immediate and effective measures, as part of the national action plan on OVC, to ensure that HIV/AIDS orphans and OVC are protected from the worst forms of child labour. The Committee requests the Government to provide information on the specific measures taken in this respect and on the results achieved.***

Application of the Convention in practice. In its previous comments, the Committee noted the Government's statement that there are children in Angola who are engaged in the worst forms of child labour, such as those who perform hazardous types of work (in the diamond mines and in the fishing industry).

The Committee notes that the Government has not provided any information on the measures taken to protect children from these worst forms of child labour. The Committee notes that the Human Rights Committee, in its concluding observations of May 2019, expressed concern at the insufficient efforts to tackle child labour, particularly in the mining sector (CCPR/C/AGO/CO/2, paragraph 33). ***The Committee urges the Government to intensify its efforts to ensure that children are protected in practice against the worst forms of child labour, particularly in hazardous work. It also requests the Government to take the necessary measures to ensure the availability of sufficient data on these issues and to provide information on the nature and scope of, and trends on the worst forms of child labour and on the number of children covered by measures giving effect to the Convention. To the extent possible, this information should be disaggregated by gender and age***.

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

Antigua and Barbuda

Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3(1) and (2) of the Convention. Minimum age for admission to hazardous work and determination of these types of work. The Committee previously noted the Government's indication that the unions and employers' federation were consulted regarding the activities and occupations which should be prohibited to persons below 18 years of age. It noted that although a recommendation was made, it was not submitted

before the National Labour Board, as it was the Government's aim to revamp the occupational health and safety legislation. Thereafter, the Committee noted the Government's statement that the proposed amendments to the provisions of the Labour Code on occupational health and safety have been circulated to Cabinet, but have not yet been adopted. It further noted the Government's indication that technical assistance was sought in relation to new and separate occupational health and safety legislation.

The Committee notes the Government's indication in its report that the National Labour Board is currently reviewing the occupational health and safety legislation. The Government states that it has noted the Committee's comments and that it will act accordingly. The Committee notes with ***regret*** that the list of hazardous types of work prohibited for children under 18 years of age has still not been adopted. The Committee therefore once again reminds the Government that *Article 3(1)* of the Convention provides that the minimum age for admission to any type of employment or work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of young persons, shall not be less than 18 years. It also reminds the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***Observing that the Convention was ratified by Antigua and Barbuda more than 30 years ago, the Committee urges the Government to take the necessary measures to ensure that a list of activities and occupations prohibited for persons below 18 years of age is adopted in the near future, in accordance with Article 3(1) and (2) of the Convention. It encourages the Government to pursue its efforts in this regard through amendments to the occupational health and safety legislation, and to provide information on progress made. Lastly, it requests that the Government provide a copy of the amendments to the occupational health and safety legislation once adopted.***

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

Armenia

Minimum Age Convention, 1973 (No. 138) (ratification: 2006)

Article 2(1) of the Convention. Scope of application. The Committee previously noted that according to the Armenia Child Labour Survey, carried out with ILO technical assistance and published in 2016, a large number of children were involved in child labour, of which a large majority (90.1 per cent) worked in agriculture. Out of these children, only 5 per cent were employees with a verbal agreement, 25 per cent worked on their own account, and 70 per cent were unpaid family workers not covered by the provisions of the Labour Code concerning the minimum age for admission to employment. In this regard, the Committee urged the Government to take immediate steps to ensure that all children, including those who work outside a formal labour relationship, enjoy the protection afforded by the Convention. The Committee notes with ***regret*** that once again the Government's report does not provide information in this respect. ***Therefore, the Committee once again urges the Government to take all necessary measures to ensure that all children, particularly children working in the informal economy or as own-account workers, can enjoy the protection afforded by the Convention and to provide information in this regard in its next report.***

Article 8 Artistic performances. In its previous comments, the Committee noted that part 2.2 of section 17 of the Labour Code provides that children under 14 years of age can be engaged in cinematographic, sport, theatre and concert organizations, in circuses, in creative work and/or performance of television and radio productions with the written consent of one of the parents or adopter or guardian or a custody and guardianship body. The activities in these organizations or productions should not be harmful to their health, morality or safety, or prejudice their education. The Committee requested the Government to take measures to ensure that the labour legislation provides that individual permits be granted by the competent authority, and not only by the parents or legal guardians to authorize the participation of children under the minimum age in artistic performances in accordance with the Convention. The Committee notes that the Government indicates that the Ministry

of Labour and Social Issues has proposed to repeal part 2.2 of section 17 of the Labour Code. Taking note of this legislative proposal, the Committee recalls that *Article 8* of the Convention *allows* exceptions to the prohibition of employment or work of children under the general minimum age, which is 16 years in Armenia. Moreover, by virtue of *Article 8(1)*, children may participate in artistic performances, provided that permits are granted in individual cases by the competent authorities. ***In this regard, the Committee requests the Government to continue to provide information on the measures taken or envisaged to regulate the participation of children in artistic performances.***

Article 9(1). Penalties. The Committee previously noted the high number of children involved in child labour, including hazardous work and requested the Government to redouble its efforts to identify and impose appropriate sanctions for violations of the provisions of the Convention. The Committee notes that the Government indicates that, in order to ensure the effective application of the provisions of the Convention, section 41.6 of the Code on Administrative Offences of December 6, 1985 was amended. According to the amended section, the act of hiring or employing a person under the age of 16 in violation of the requirements of the law or involving a person under the age of 18 in work prohibited by the labour legislation shall result in a fine, which shall be equivalent to 200 times the minimum wage. If the violation is repeated within one year after the date of imposing the sanction, a new fine will be imposed amounting to 400 times the minimum wage. ***The Committee encourages the Government to continue taking measures to ensure that violations of the provisions of the Convention are detected and adequate penalties are imposed. In this respect, the Committee requests the Government to provide information on the application in practice of section 41.6 of the Code on Administrative Offences.***

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

Azerbaijan

Minimum Age Convention, 1973 (No. 138) (ratification: 1992)

Article 2(1) of the Convention. 1. *Scope of application and the application of the Convention in practice.* In its previous comments, the Committee observed that the provisions relating to the minimum age of admission to employment or work in the Labour Code did not appear to apply to work performed without an employment agreement, including self-employment or work in the informal sector. The Committee however noted the Government's statement that the Convention constitutes part of the labour legislation in the country and must therefore be implemented by all employers and private individuals. The Committee further noted the significant number of children involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations, as well as children who work on their own account.

The Committee notes the Government's indication in its report that, various awareness-raising events on preventing child labour were conducted by the state labour inspectorate for employers, police officers, and students in 2020. The Government also indicates that in 2020, the police identified 21 cases of work performed by children without an employment agreement. In addition, three cases of the use of child labour were identified by the state labour inspectorate. In this connection, administrative fines of 3,000 Azerbaijani manats (AZN) were imposed on the employers for employing children under 15 years of age, in accordance with section 192.8 of the Code of Administrative Offences. However, the Committee once again observes that while a significant number of children are involved in informal work in the agricultural sectors of tea, tobacco and cotton, including in hazardous situations, only few cases of the use of child labour were identified by the state labour inspectorate and the police. ***The Committee requests the Government to take the necessary measures to ensure that the Convention is applied to children and young persons who perform work without an employment agreement including self-employment or work in the informal economy. Referring to its comments made under the Labour Inspection Convention, 1947 (No. 81) and the Labour Inspection (Agriculture) Convention, 1969***

(No. 129), the Committee once again urges the Government to take measures to strengthen the capacity and expand the reach of the labour inspectorate services to better monitor children working in the informal economy and on their own account, particularly in the agricultural sector. The Committee also requests the Government to provide information on the number and nature of violations relating to the employment of children and young persons detected by the labour inspectorate and the police as well as the penalties imposed.

2. *Minimum age for admission to employment or work.* For many years, the Committee has been pointing out that the minimum age of 16 years for admission to employment or work specified upon the ratification of the Convention under its *Article 2(1)* is not established in the national legislation. In particular, section 42(3) of the Labour Code allows a person who has reached the age of 15 years to be part of an employment contract, and section 249(1) specifies that "persons who are under the age of 15 shall not be employed under any circumstances".

The Committee notes with ***concern*** that the relevant provisions of the Labour Code have not been amended with a view to raise the minimum age for admission to employment or work from 15 to 16 years. The Committee notes the Government's indication that raising the minimum age from 15 to 16 years would restrict the existing opportunity to work for children who have reached 15 years of age, which is the age of completion of compulsory education. ***Recalling that the Convention allows and encourages the raising of the minimum age but does not permit lowering of the minimum age once specified, the Committee once again urges the Government to take the necessary measures, without further delay, to ensure the establishment of a minimum age of 16 years for admission to employment or work in the Labour Code.***

Bahamas

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(2) and (3) of the Convention. Raising the minimum age for admission to employment or work and the age of completion of compulsory schooling. The Committee previously noted that the minimum age for admission to employment or work specified by the Bahamas at the time of ratification was 14 years. It also noted that section 7(2) of the Child Protection Act of 2007 establishes a minimum age of 16 years for admission to employment or work. Furthermore, the Committee noted that, by virtue of section 22(3) of the Education Act, the age of completion of compulsory schooling is 16 years.

The Committee notes the Government's indication in its report that efforts will be taken through a Tripartite Council to rectify the situation and raise the minimum age to 16 as laid down in the national legislation. ***The Committee welcomes this information and expresses the firm hope that the Government will take the necessary measures to raise the minimum age for admission to employment or work from 14 years (initially specified) to 16 years in accordance with the Child Protection Act and in accordance with the age of completion of compulsory schooling under the Education Act. In this regard, the Committee requests the Government to consider the possibility of sending a declaration under Article 2(2) of the Convention thereby notifying the Director-General of the ILO that it has raised the minimum age that it had previously specified.***

Article 3(2). Determination of types of hazardous work. In its previous comments, the Committee had noted that draft regulations under the Health and Safety at Work Act, which include provisions determining the types of hazardous work prohibited for persons under 18 years of age, had been approved by the tripartite social partners.

The Committee notes the Government's information that the draft regulations under the Health and Safety at Work Act have not yet been finalized. It states that these draft regulations will be presented again to the Tripartite Council and will be finalized. ***The Committee once again expresses the firm hope that the Government will take the necessary measures, without delay, to ensure that the draft regulations on the list of types of hazardous work prohibited for persons under the age of 18 years, will be adopted in the near***

future. It requests the Government to provide information on any progress made in this regard as well as to supply a copy of the list, once it has been adopted.

Article 7(1) and (3). Minimum age for admission to light work and determination of types of light work activities. The Committee previously noted that section 7(3)(a) of the Child Protection Act provides that a child under the age of 16 may be employed by the child's parents or guardian in light domestic, agricultural or horticultural work. The Committee requested the Government on several occasions to provide information on the measures taken or envisaged in respect of provisions or regulations which would determine light work activities and the conditions in which such employment or work may be undertaken by young persons from the age of 12 years.

The Committee notes the Government's indication that these regulations determining light work activities will be presented to the Tripartite Council and will be finalized. In this regard, the Committee may wish to draw the Government's attention to *Article 7(4)* of the Convention which allows for a lower minimum age of *12* years for light work, only if the specified minimum age is 14 years as per *Article 2(4)* of the Convention, while *Article 7(1)* sets *13* years as the minimum age for light work, if the minimum age declared is 15 years or above. Hence, the Committee requests the Government to take into consideration that in the event of any progress with regard to the raising of the minimum age for admission to employment or work from 14 to 16 years as per *Article 2(2)* and *(3)* of the Convention, the minimum age for light work should also be amended accordingly. ***The Committee once again urges the Government to take the necessary measures without delay to bring the national legislation in line with the Convention by determining the light work activities that may be permitted to children of 12 or 13 years and above, subject to raising of the minimum age, and the conditions in which such employment or work may be undertaken by them. It requests the Government to provide information on any progress made in this regard.***

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

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

Bangladesh

Minimum Age (Industry) Convention (Revised), 1937 (No. 59) (ratification: 1972)

Application of the Convention in practice. In its previous comments, the Committee noted the information provided by the Government on the various measures taken for the effective abolition of child labour, as well as the adoption of a list of 38 types of hazardous work prohibited to children under 18 years of age. In addition, free school books and financial assistance in the form of stipends or tuition fees were provided by the Government which benefited a total of 3,250,563 children. The Committee further noted the Government's information on the impact of these measures, such as an increase in the net enrolment rate at the primary level and a decrease in the primary school dropout rate. The Committee, however, noted that according to the Child Labour Survey of 2013, of the 3.45 million children between 5 and 17 years who were working, 1.7 million children were involved in child labour with the manufacturing sector dominating (33.3 per cent in child labour). It urged the Government to strengthen its efforts to eliminate child labour in the sectors covered by the Convention.

The Committee notes with ***interest*** the Government's information in its report that six sectors were declared child labour free in February 2021, such as the tannery, glass, ceramic, ship recycling, export oriented leather goods and footwear and silk sectors, in addition to the garment and shrimp sectors which was earlier declared as child labour free. The Committee also notes the Government's information that in order to improve labour inspection, the Department of Inspection for Factories and Establishments (DIFE) was restructured and upgraded by increasing the number of inspectors to 575 and establishing new offices in 23 districts and by increasing the budget by 452 per cent in the fiscal year 2020–21. The Government also indicates that in 2020–21, a total of 47 in-house training programmes for labour inspectors were organized with a participation of about 988 inspectors. During 2020–21, a total of 47,361 inspection visits were carried out by the DIFE, and a total of 1421 cases were filed against the employer, of which 98 cases were related to the violation of section 34 (prohibition of

employment of children and adolescent) of the Employment Act. Moreover, with the assistance of the ILO, a mobile and web-based application namely "Labour Inspection Management Application (LIMA)" has been developed and around 8367 inspections were carried out in 2020–21 using this application.

The Committee also notes from the draft National Plan of Action (NPA) for the Elimination of Child Labour 2021–25 document that the Seventh Five year Plan (SFYP) 2016–20 under its inclusion strategy addresses child labour and calls for effective measures to reduce child labour. The Committee takes due note of the information that the Ministry of Labour and Employment has also identified actions beyond SFYP, which include the preparation for the ratification of the ILO Minimum Age Convention, 1973 (No. 138). ***The Committee encourages the Government to continue its efforts to eliminate child labour in the sectors covered by the Convention, including through strengthening the capacities of the labour inspectors in identifying and monitoring child labour. It requests the Government to provide information on the concrete measures taken within the framework of the NPA for the Elimination of Child Labour 2021–25 and the results achieved. The Committee also requests the Government to continue to provide updated statistical information on the extent of child labour in the sectors covered by this Convention, as well as on the practical application of the Convention, including reports of inspection services, number and nature of violations reported and penalties applied.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Articles 3(a), 5 and 7(1) of the Convention. Worst forms of child labour, monitoring mechanisms and penalties. Sale and trafficking of children. The Committee previously noted the establishment of an Anti-Human Trafficking Offence Tribunal at the district level wherein the offences under the Prevention and Suppression of Human Trafficking Act No. 3 of 2012 (Trafficking Act) shall be tried. While observing that the Government did not provide statistics related to the number of penalties imposed on persons found guilty of child trafficking specifically, the Committee noted from the 2016 UNODC Global Report on Trafficking in Persons, that 232 child victims of trafficking were identified by the police between May 2014 and April 2015. It also noted from the list of issues of 14 February 2017 under the International Covenant on Civil and Political Rights (ICCPR), that the Human Rights Committee pointed out that there seemed to be numerous acquittals in human trafficking cases for the number of prosecutions.

The Committee notes the Government's information in its report that the Police has set up two tiers of monitoring cells, namely the Human Trafficking Monitoring Cell at the Police Headquarters in each district and a Monitoring Cell headed by the Additional Superintendent of Police which has been monitoring, guiding and liaising with the district level monitoring cells. A Trafficking in Human Beings (THB) Cell has also been set up in the Criminal Investigation Department (CID) of the Bangladesh Police to monitor the investigation of human trafficking cases and to provide necessary instructions and guidance to the field level officers. Moreover, an 'Integrated Crime Data Management System' (CDMS) has been set up at the Monitoring Cell in Police Headquarters where relevant statistics on human trafficking cases are regularly preserved and analysed. According to the statistical information provided by the Government concerning cases of trafficking in persons, from 2018 to 2020, a total of 715 cases of trafficking were reported, which included cases involving the trafficking of 182 children. It further states that, as of June 2021, 554 cases are under investigation while 4,945 cases are pending trial before the tribunal. The Committee once again observes that the Government has not provided any specific information concerning the investigations, prosecutions and penalties applied for trafficking of children. ***The Committee therefore once again urges the Government to take the necessary measures to ensure that, in practice, thorough investigations and prosecutions are carried out for persons who engage in the trafficking of children, and that sufficiently effective and dissuasive sanctions are imposed. In this regard, the Committee once again requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied by the Anti-Human Trafficking Offence Tribunal for the offence of trafficking in persons under 18 years of age, in accordance with the provisions of the Trafficking Act.***

Articles 3(d) and 5. Hazardous work and labour inspection. In its previous comments, the Committee noted the information on the measures taken to strengthen the capacity of the labour inspectors of the Department of Inspection for Factories and Establishments (DIFE). It also noted that the DIFE regularly inspects the shrimp and dried fish industries, the construction sector, brick factories and tanneries and the ready-made garment sector and that as of 2016, a total of 95 cases were filed by the DIFE against employers for employing children below the minimum age. However, it noted from the National Child Labour Survey (NCLS) findings published in 2015, that 1.28 million children aged 5 to 17 were found to be engaged in hazardous work in manufacturing (39 per cent); agriculture, forestry and fishing (21.6 per cent); wholesale and retail (10.8 per cent); construction (9.1 per cent); and transportation and storage (6.5 per cent). The Committee requested the Government to continue taking measures to strengthen the capacity and improve the ability of labour inspectors of the DIFE to detect all children under the age of 18 engaged in hazardous work, and to provide information on the progress achieved in this regard.

The Committee notes the Government's information that from 2020 to 2021, more than 47,000 inspections were carried out and 98 cases were filed by the DIFE against employers for employing children in violation of the Bangladesh Labour Act 2006 (as amended up to 2018), of which 14 cases were settled. The Committee also notes the Government's indication that the DIFE withdrew 5,088 children from hazardous work during 2020–21. The Committee notes, however, the Government's statement in its report under the Minimum Age (Industry) Convention (Revised), 1937 (No. 59) that the inspectors are mandated for inspection of child labour in the formal sector. However, child labour is mostly concentrated in the informal sector where regular inspection is not possible.

In this regard, the Committee notes from the draft National Plan for the Elimination of Child Labour 2021–25 that according to the Multiple Indicator Cluster Survey of 2018, child labour continues to affect 6.8 per cent of children aged 5–17 years with a massive majority of 95 per cent working in the informal sector which includes: food shop and tea stalls, motor and steel workshops, grocery and furniture shops, clothing and tailoring and waste collection. The Committee further notes from the UNICEF research document of 2021 entitled "*Evidence on Educational Strategies to Address Child Labour in India and Bangladesh*" (UNICEF document 2021) that although the findings from the two NCLS of 2003 and 2015 indicates a significant drop in child labour levels in Bangladesh, the number of children engaged in hazardous work decreased by just 0.01 million, from 1.29 to 1.28 million. This report also points to the fact, based on the findings of the NCLS of 2015, that over 1 million children identified as hazardous child labourers are invisible to the formal authorities. In this regard, the Committee notes that the Committee on Economic, Social and Cultural Rights in its concluding observations of April 2018, expressed concern about the large number of children still engaged in child labour, their dire conditions of work, particularly in domestic settings, and the lack of sufficient labour inspections focusing on child labour (E/C.12/BGD/CO/1, paragraph 54). While noting the measures taken by the Government, the Committee must once again express its ***concern*** at the significant number of children who are engaged in hazardous work, particularly in the informal economy. ***The Committee strongly urges the Government to take the necessary measures, in law and practice, to strengthen and adapt the capacities and expand the reach of the labour inspectors to ensure that children under the age of 18 years are not engaged in hazardous work, particularly in the informal economy and that they benefit from the protection afforded by the Convention. In this regard, the Committee requests the Government to take the necessary measures to promote collaboration between the labour inspectorate and other relevant stakeholders and to provide adequate training to the labour inspectors to detect cases of children engaged in hazardous work and remove them from this worst form of child labour. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

Articles 3(d) and 7(2)(d). Hazardous work and effective and time-bound measures. Identifying and reaching out to children at special risk. Child domestic workers. The Committee previously noted that the Domestic Workers' Protection and Welfare Policy of 2015 (DWPWP) provides the legal framework for

the protection of domestic workers, including child domestic workers. By virtue of this policy, any kind of indecent behaviour, physical or mental torture, towards domestic workers, is strictly prohibited and existing laws, including the Penal Code and the Women and Child Repression Prevention Act, are applicable. While this Policy sets the minimum age for light domestic work at 14 years, and hazardous domestic work at 18 years, the Committee observed that children of 12 years of age could possibly be employed with the consent of the legal guardian of the child. The Committee therefore requested the Government to provide information on the measures it envisages in the framework of this Policy, to ensure that all children under 18 years of age are protected from performing hazardous work in the domestic work sector.

The Committee notes the Government's information in its report that the DWPWP provides guidelines for the working conditions and safety of domestic workers, a decent working environment, decent wages and welfare enabling workers to live with dignity, good employer–employee relations, and redress of grievances. Appropriate actions in line with the existing laws will be taken in case of any physical or mental torture or engaging child domestic workers in hazardous work. The Government also indicates that a "Central Monitoring Cell on Domestic Workers" has been created to monitor implementation of this Policy and two divisional level workshops were organized in 2019 as part of the awareness raising campaign of this Policy. However, the Committee notes from the draft document on the National Action Plan for the Elimination of child labour 2020–25 (NPA document) that a study on the DWPWP revealed that only 7 per cent of the employers were aware of this policy and identified poor media coverage and illiteracy as the prime reasons behind poor policy awareness. The NPA document also states that the Policy establishes a very loose grievance settlement process in which a domestic worker has to report to the Central Monitoring Cell, human rights organisations or child help line for any support. This Policy, without any supportive legal instrument and mass awareness, is largely unimplemented. This document also refers to the findings of the NCLS of 2015 which indicates that 115,658 children aged between 5 and 17 years are domestic workers in Bangladesh, of which 91 per cent are girls. The Committee once again recalls that child domestic workers constitute a high-risk group who are outside the normal reach of labour controls and are scattered and isolated in the households in which they work. This isolation, together with the children's dependency on their employers, lays the ground for potential abuse and exploitation. In many cases, the long hours, low or no wages, poor food, overwork and hazards implicit in the working conditions, affect the children's physical health (General Survey on the fundamental Conventions, 2012, paragraph 553). ***The Committee therefore urges the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children engaged in domestic work from hazardous working conditions and ensure their rehabilitation and social integration. It requests the Government to indicate the measures taken or envisaged by the Central Monitoring Cell on Domestic Workers in ensuring that children under 18 years of age are not engaged in hazardous domestic work. In addition, the Committee requests the Government to provide information on the imposition, in practice, of sufficiently effective and dissuasive penalties on persons who subject children under 18 years of age to hazardous work.***

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

Barbados

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3(a) of the Convention. Worst forms of child labour. Sale and trafficking of children. The Committee previously noted the adoption of the Transnational Organized Crime (Prevention and Control)

Act in 2011, section 8 of which criminalizes the trafficking of persons for the purposes of labour and sexual exploitation.

The Committee takes due note of the Government's information in its report that the Transnational Organized Crime (Prevention and Control) Act of 2011 was repealed and replaced by the Trafficking in Persons Prevention Act 2016-9, which contains comprehensive provisions addressing the issue of trafficking. According to section 4, the trafficking of children for labour and sexual exploitation is punishable by a fine of 2 million Barbadian dollars (BBD) (about US$990,099), life imprisonment or both. The Committee notes, however, that according to the Government's written replies to the list of issues of the Committee on the Elimination of Discrimination against Women (CEDAW) of 2017, since 2015, no new arrests and charges have been made in relation to trafficking (CEDAW/C/BRB/Q/5-8/Add.1, paragraph 52). In its concluding observations of 2017, the CEDAW expressed its concern that Barbados remains both a source and a destination country for women and girls, including non-nationals, who are subjected to trafficking for purposes of sexual exploitation and forced labour, as a result of high unemployment, increasing levels of poverty and the weak implementation of anti-trafficking legislation. The CEDAW was also concerned about the lack of information on the number of complaints, investigations, prosecutions and convictions related to the trafficking of women and girls (CEDAW/C/BRB/CO/5-8, paragraph 25). The Committee on the Rights of the Child (CRC) similarly expressed its concern at the high level of internal trafficking of children, the lack of information on the situation in general and the lack of effective measures to address and prevent the sale and trafficking of children in its concluding observations of 2017 (CRC/C/BRB/CO/2, paragraph 58). ***The Committee therefore requests the Government to take the necessary measures to ensure the effective implementation of the Trafficking in Persons Prevention Act 2016-9, particularly in relation to the trafficking of children. It also requests the Government to provide information on the application of section 4 of the Act in practice, including the number and nature of offences reported, investigations, prosecutions, convictions and penal sanctions imposed.***

Articles 3(d) and 4(1). Determination of hazardous work. The Committee previously noted that, while section 8(1) of the Employment (Miscellaneous Provisions) Act prohibits the employment of a young person in any work that by its nature or the circumstances in which it is done is likely to cause injury to his/her health, safety or morals, the national legislation does not contain a determination of these types of work, as required under *Article 4(1)* of the Convention. The Government indicated that the formulation of a list of types of hazardous work prohibited to persons under 18 years of age was being considered. The Committee also noted that the Safety and Health at Work Act 2005 entered into force in January 2013 and that draft regulations under the provisions of this were forwarded for comments to the representative employers' and workers' organizations.

The Committee notes the Government's repeated indication that the types of hazardous work prohibited to persons under 18 years of age are addressed in specific pieces of legislation, including the Factories Act, the Pesticide Control Regulations, the Protection of Children Act and the Employment (Miscellaneous Provisions) Act. However, the Committee observes that these provisions together do not constitute a comprehensive determination of the types of hazardous work prohibited for persons under 18 years of age. The Committee also notes the Government's statement that none of the draft regulations under the Safety and Health at Work Act deal with this issue. Considering that it has been referring to this issue since 2004, the Committee must express its ***deep concern*** at the absence of a comprehensive list of the types of hazardous work prohibited for children. The Committee once again draws the Government's attention to *Article 4(1)* of this Convention, according to which the types of work referred to under *Article 3(d)* must be determined by national laws or regulations or by the competent authority, taking into consideration relevant international standards, in particular Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). ***The Committee therefore urges the Government to take the necessary measures to ensure that the determination of types of hazardous work prohibited for persons under the age of 18 is included in national legislation, after consultation with the organizations of employers and workers concerned, and to provide information on any progress made in this regard.***

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

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

Belize

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report, due since 2014, has not been received. In light of its urgent appeal launched to the Government in 2019, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 3 of the Convention. Clause (b). 1. *Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that section 49 of the Criminal Code, Chapter 101 only prohibited the procurement of female children for prostitution and urged the Government to take measures to ensure the adoption of legislation prohibiting the use, procuring or offering of boys and girls under the age of 18 for prostitution.

While reiterating its concern at the absence of a Government report, the Committee takes due note of the adoption of the Commercial Sexual Exploitation of Children (Prohibition) Act, 2013. According to section 6(1) of the Act, a person having the authority or control over a child (defined by section 2 of the Act as a person below the age of 18), who takes advantage of his authority or control over that child or causes another person to sexually exploit that child, commits an offence and is liable on conviction on indictment to imprisonment for a term of ten years.

2. *Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted the absence of provisions in the Criminal Code establishing offences related to the involvement of a child for the production of child pornography and it urged the Government to take the necessary measures to ensure the adoption of specific provisions in this regard. While reiterating its concern at the absence of a Government report, the Committee takes due note that, pursuant to section 7(2) of the Commercial Sexual Exploitation of Children (Prohibition) Act, 2013, a person who coerces, induces, encourages, pays for, or exchanges any material benefit for, or otherwise causes any child to pose for any photographic material or to participate in any pornographic video or film or audio, visual or other electronic representation of any child involved in any form of child pornography commits an offence and is liable on conviction on indictment to imprisonment for a term of ten years.

The Committee welcomes the Government's efforts to prohibit child prostitution and child pornography, and requests the Government to provide information on the application in practice of sections 6(1), and 7(2) of the Commercial Sexual Exploitation of Children (Prohibition) Act, 2013, including information on the number and nature of violations reported, investigations, prosecutions, convictions and penalties imposed on the offenders.

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

Benin

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

Article 2(1) and (3) of the Convention. Minimum age for admission to employment or work and age of completion of compulsory schooling. Further to its previous request to indicate clearly the age of completion of compulsory schooling, the Committee notes the Government's indication in its report that, according to section 13 of the Act No. 90-32 establishing the Constitution of the Republic of Benin of 11 December 1990, primary education shall be compulsory. The Government further indicates that, pursuant to section 113 of the Act No. 2015-08 issuing the Children's Code in Benin of 2015, schooling is compulsory from nursery level to the end of primary school. The Government points out that the duration of education at primary school lasts until the age of 14 years, which is the minimum age for admission to employment, according to section 166 of the Labour Code of 1998.

The Committee, however, observes that, pursuant to section 24 of the Act on the Orientation of National Education No. 2003-17 of 2003, the usual duration of primary education is six years and it begins for children approximately at the age of four and a half years. Furthermore, the Committee also previously referred to the 2014 Multiple Indicator Cluster Survey (MICS) indicating that, in principle, children attend secondary school from the age of 12 years. The Committee therefore observes that in Benin, the age of completion of compulsory education is lower than the minimum age for admission to employment or work. In this respect, in its 2012 General Survey on the fundamental Conventions, paragraph 371, the Committee observed that if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children. The Committee further notes that, according to the data of the United Nations Children's Fund (UNICEF), in Benin, completion rates for children of primary school age was 48 per cent in 2018. The Committee on Economic, Social and Cultural Rights (CESCR), in its concluding observations of 2020, expressed concern that many pupils drop out before having completed their primary schooling and about the high level of inequality in primary school completion between boys and girls (63.51 per cent and 56.85 per cent) (E/C.12/BEN/CO/3, paragraph 45). ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee requests the Government to ensure that compulsory education is effectively implemented in the country. In this regard, it requests the Government to provide information on the measures taken to increase the school enrolment, attendance and completion rates for children under 14 years, paying special attention to girls. The Committee also strongly encourages the Government to consider raising the age of completion of compulsory education to coincide with that of the minimum age for admission to employment or work.***

Articles 6 and 9(1). Apprenticeships and penalties. In its previous comments, the Committee noted the cases recorded by the Departmental Service for Further Training and Apprenticeships of non-compliance with the minimum age required for apprenticeships. The Committee also noted the reluctance of artisanal employers to provide the information requested by the inspection teams and that these teams rarely managed to meet the employers in order to raise their awareness. In this respect, the Government indicated that it was taking action to ensure that effective penalties constituting an adequate deterrent were imposed in practice on artisanal employers who admitted children under 14 years of age to apprenticeship centres.

The Committee notes the Government's indication that labour inspectors have identified cases of non-compliance with the minimum age for admission of children to an apprenticeship, non-endorsement of apprenticeship contracts by labour inspectors, use of apprentices in tasks that do not fall within their training, and use of corporal punishment by artisanal employers. The Committee also observes that, according to the 2020 report on labour statistics of the Ministry of Labour and Public Service, in 2020, most of the children (87.44 per cent) identified in child labour by labour inspectors were apprentices. The Government further indicates that penalties established for the violation of the national legislation on employment of children are not dissuasive enough and that it will be taken into account during the review of the Labour Code of 1998. The Government, however, indicates that the situation with a high proportion of children under 14 years of age in apprenticeship has changed due to the active involvement of the Ministry of Labour and Public Service and the UNICEF. In particular, the Committee welcomes the measures undertaken in 2019–20 to eliminate child labour in the apprenticeship sector, such as the creation and operationalization of departmental services to combat child labour as well as the undertaking of various awareness-raising campaigns and trainings on child protection at work for artisanal employers. The Government points out that as a result of the undertaken measures, the number of children under 14 years of age in apprenticeships has decreased. ***The Committee requests the Government to continue its efforts to ensure that children under 14 years of age are not admitted to an apprenticeship in practice. It further requests the Government to ensure that effective penalties constituting an adequate deterrent are applied for violations of the provisions***

regarding the minimum age of 14 years for admission to an apprenticeship. Lastly, the Committee requests the Government to continue to provide information on the number and nature of violations reported and penalties imposed in this respect.

Article 7(1), (3) and (4). Admission to light work and determination of such work. In its previous comments, the Committee noted that the Order No. 371 of 26 August 1987, issuing exceptions to the minimum age for admission to employment for children, authorizes as an exception the employment of children between 12 and 14 years of age in domestic work and light work of a temporary or seasonal nature. The Committee observed that the terms of *Article 7* of the Convention – namely, that the work: (i) is not likely to be harmful to children's health or development; (ii) is not such as to prejudice their attendance at school or their participation in vocational guidance or training programmes; and (iii) shall be determined by the competent authority, which shall prescribe the number of hours and the conditions of employment – were not fulfilled. The Government further indicated that the National Labour Council had approved a draft order amending Order No. 371, with a view to raising the minimum age for the admission of children to light work and that it was planned to determine the types of light work.

The Committee notes the Government's indication that the amendment of Order No. 371 and the adoption of the list of light work are scheduled for 2021. ***The Committee once again firmly hopes that the amendment of Order No. 371 and adoption of the list of types of light work will be undertaken as soon as possible, with provisions that are in line with Article 7 of the Convention. It requests the Government to continue to provide information on progress made in this respect.***

Labour inspection and application of the Convention in practice. In its previous comments, the Committee noted with concern the high number of child labour in Benin, including under hazardous conditions and in the informal sector. In particular, according to the 2014 MICS, 53 per cent of children between 5 and 17 years of age were involved in child labour and 40 per cent of them were working under hazardous conditions. The Committee also noted that the database on the child labour monitoring system (SSTEB) installed in five departmental directorates was not operational.

The Committee notes the Government's indication that, according to the Demographic and Health Survey carried out by the National Institute of Statistics and Economic Analysis, in 2018, 33 per cent of surveyed children between 5 and 17 years of age were engaged in child labour. Most of these children were children between 12 and 14 years (40 per cent), were from rural areas (40 per cent), and from poor families (47 per cent). The Government further indicates that the SSTEB has been integrated into a database "Integrated System for the Collection and Publication of Labour Statistics" (SIRP-STAT). The Committee notes with ***interest*** that, since 2017, the Ministry of Labour and Public Service produces annual reports on labour statistics, which contain a chapter on child labour. In particular, the 2020 report on labour statistics indicates that the number of children identified by labour inspectors as engaged in child labour doubled between 2019 and 2020, from 1,328 to 2,836. The 2020 report also indicates that more than half of the identified children were girls (56 per cent). The Government indicates that most of the cases of child labour have been identified in the informal economy, particularly in markets, craft trades, and construction sector. The 2020 report indicates that 963 awareness-raising sessions on the fight against child labour were carried out, which included 2,825 participants. ***Given that the number of children under 14 years of age engaged in child labour remains high, the Committee strongly encourages the Government to pursue its efforts to prevent and progressively eliminate child labour in the country, including in construction sector. It also requests the Government to continue to provide statistical information on the number and nature of violations recorded by labour inspectors in the course of their work involving children below the minimum age for admission to employment, including those who are working in the informal economy. To the extent possible, this information should be disaggregated by gender and age.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Clause (a). Worst forms of child labour. Forced labour. Vidomégon children. In its previous comments, the Committee noted with concern that *vidomégon* children, namely children who are placed in the home of a third party by their parents or by an intermediary in order to provide them with education and work, face various forms of exploitation in host families. The Committee further noted that section 219 of the Children's Code (Act No. 2015-08 of 8 December 2015) establishes the obligation for the child placed in the family to attend school and prohibits the use of such children as domestic workers. The Committee, however, noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 2016, expressed concern at the distortion of the traditional practice of *vidomégon* into forced labour and that children placed outside their families, particularly *vidomégon* children, face sexual exploitation. The United Nations Human Rights Committee, in its concluding observations of 2015, also expressed concern at the persistent misuses of the placement of *vidomégon* children, who had become a source of financial and sometimes sexual exploitation.

The Committee notes the Government's indication in its report that the identification of cases of labour exploitation of *vidomégon* children is hampered by the fact that labour inspectors cannot access households. The Government, however, points out that in case of identified abuse or violence against *vidomégon* children, perpetrators of such actions are prosecuted and convicted. The Government further indicates the launch of a helpline for child victims of violence and abuse, including *vidomégon* children, with a view to combat mistreatment and physical violence against children. It further points out that the phenomenon of *vidomégon* children has declined since more parents are aware of the exploitation of children in host families. The Committee, however, notes that the CRC, in its concluding observations of 2018, expressed concern about the persistence of harmful practices in Benin, such as *vidomégon,* and recommended to investigate and prosecute persons responsible for such harmful practices (CRC/C/OPSC/BEN/CO/1, paragraphs 20(e), 21(e)). The Committee further notes the indication in the 2017 Report of the Office of the United Nations High Commissioner for Human Rights that 90 per cent of *vidomégon* children do not go to school and that they are employed at markets and in the street trade, in addition to performing unpaid domestic tasks. The 2017 Report further indicates that young *vidomégon* girls, in addition to being exploited economically, were reportedly often victims of prostitution (A/HRC/WG.6/28/BEN/2, paragraph 38). The Committee notes with ***deep concern*** the continuing situation of v*idomégon c*hildren exposed to various forms of exploitation in host families. ***While noting certain measures taken by the Government, the Committee urges the Government to intensify its efforts to protect children under 18 years of age from all forms of forced labour or commercial sexual exploitation, particularly vidomégon children. It also requests the Government to take the necessary measures to ensure, as a matter of urgency, that thorough investigations and prosecutions are conducted of persons subjecting children under 18 years of age to forced labour or commercial sexual exploitation, and that sufficiently effective and dissuasive penalties are imposed in practice. The Committee requests the Government to provide information on the results achieved in this regard.***

Articles 3(a) and 7(1). Worst forms of child labour and penalties. Sale and trafficking of children. In its previous comments, the Committee noted that the Act No. 2006-04 of 10 April 2006 establishing conditions for the movement of young persons and penalties for the trafficking of children in the Republic of Benin prohibits the sale and trafficking of children for economic or sexual exploitation. The Committee also noted that the Children's Code of 2015 contains provisions relating to the sale and trafficking of children (sections 200–203 and 212). The Committee, however, noted that statistics on the number of convictions and criminal penalties handed down were not yet available. The Committee further noted that the CRC, in its concluding observations of 2016, expressed concern at the number of children who fell victim to internal trafficking for the purpose of domestic work, subsistence farming or trade or, particularly in the case of adolescent girls, to transnational trafficking for sexual exploitation

and domestic labour in other countries. Furthermore, the Committee noted that the Human Rights Committee, in its concluding observations of 2015, continued to express concern that Benin was at the same time a country of origin, transit and destination for trafficking in persons, and in particular women and children.

The Committee notes the Government's indication that, in January–May 2020, the Central Office for the Protection of Children and Families and the Elimination of Trafficking in Persons (OCPM) identified 10 cases of trafficking of children in Benin. The Government further indicates that statistical data on the number of investigations, prosecutions, convictions and penal sanctions imposed for trafficking of children is being currently collected. The Committee further notes in the Government's report concerning the application of the Forced Labour Convention, 1930 (No. 29) the establishment of the branches of the OCPM in risk areas and the adoption of identification procedures of child victims of trafficking. The Committee, however, notes that the CRC, in its concluding observations of 2018, expressed concern about the prevalence of cases of trafficking in children from and into neighbouring countries, particularly for domestic servitude and commercial sexual exploitation in cases of girls, and for forced labour in mines, quarries, markets and farms in cases of boys, especially in diamond-mining districts. The CRC further noted that the system in place for identifying child victims of sale and trafficking, is inadequate and inefficient (CRC/C/OPSC/BEN/CO/1, paragraphs 20(f), 32(a)). ***The Committee requests the Government to strengthen its efforts to ensure the effective implementation and enforcement of the provisions of the Act No. 2006-04 of 10 April 2006, including by conducting thorough investigations and prosecutions of persons who engage in the trafficking of children under 18 years of age. The Committee further requests the Government to provide information on the number of investigations, prosecutions, convictions and penalties imposed for the offence of trafficking of children under 18 years of age. Lastly, the Committee requests the Government to provide information on the activities of the OCPM in preventing and combatting trafficking of children.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing assistance for the removal of children from such labour. Children working in mines and quarries. The Committee previously noted that, according to a survey conducted as part of the ILO–IPEC ECOWAS II project (December 2010–April 2014), 2,995 children had been found working on 201 different mining sites, and 88 per cent of them were children of school age. The Committee also noted that further to the implementation of the ILO–IPEC ECOWAS II project, targeted actions had been carried out to prevent child labour on mining sites, such as awareness raising and occupational safety and health training for mining site operators. Quarry operators had also established internal regulations prescribing penalties for operators or parents who use child labour on the sites. Alert mechanisms had also been put in place to notify site supervisors of the presence of working children.

The Committee notes the Government's indication that the committees to monitor child labour in quarries and on granite crushing sites were established in the communes of Djidja, Zangnanado, Bembéréké, Tchaourou, and Parakou with the UNICEF's support in 2020. The monitoring committees are consisted of labour inspectors, heads of mining and quarrying departments, heads of social promotion centres, judicial police officers, site and quarry operators, heads of women's crushers' associations, and district and village leaders. The Government further indicates that a training workshop on child labour, particularly in mines and quarries, was conducted for the members of the monitoring committees. During the monitoring committees' visits, several working children were found at the granite crushing sites in the commune of Bembéréké. ***The Committee once again encourages the Government to continue to take effective and time-bound measures to protect children from hazardous work in the mining and quarrying sector. It further requests the Government to provide statistical data on the number of children protected or removed from this hazardous type of work and to indicate the rehabilitation and social integration measures from which they have benefited.***

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

Plurinational State of Bolivia

Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1973)

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1973)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide an overview of the issues concerning the application of the core Conventions on the medical examination of young persons, the Committee considers it appropriate to examine Conventions Nos 77 and 78 in a single comment.

Article 2(1) of Conventions Nos 77 and 78. Medical examination for fitness for employment. The Committee previously noted Decision No. 001 of 11 May 2004, issued by the Ministers of Labour and of Health and Sports (SEDES), section 1 of which provides that the Ministry of Health and Sports, through its ministries and municipal authorities, shall allocate the necessary and adequate medical personnel so that, in coordination with the Ministry of Labour, free medical examinations are carried out for boys, girls and young persons who are working in the industrial and agricultural sectors and who work on their own account in urban or rural areas, under the terms of section 137(1)(b) of the Code on Boys, Girls and Young Persons of 1999. In this respect, the Committee noted section 137(1)(b) of the Code, under the terms of which young persons engaged in work shall periodically undergo medical examination. It observed that the expression "medical examinations" contained in section 1 of Decision No. 001 of 11 May 2004 only appears to refer to the periodical medical examinations that young persons have to undergo during employment, but not the thorough medical examination of their fitness for work. The Government indicated, however, that the Ministry of Labour, Employment and Social Welfare was preparing a new Bill on occupational safety and health.

While noting that section 131(4) of the new Code on Children and Young Persons provides that the issuance of work permits is subject to prior medical examination for persons under 18 years, the Committee observes that this work permit can be granted to children from the age of ten. The Committee recalls that this issue was raised by this Committee as well as the Committee on the Application of Standards in 2015. ***In this regard, the Committee refers to its detailed comments of 2015 concerning the application of the Minimum Age Convention, 1973 (No. 138).***

Periodical medical examinations (Article 3(2) and (3) of Conventions Nos 77 and 78). Medical examinations required until the age of 21 years in occupations which involve high health risks (Article 4 of Conventions Nos 77 and 78). Appropriate measures for the vocational guidance and physical and vocational rehabilitation of young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations (Article 6 of Conventions Nos 77 and 78). Further to its previous comments, the Committee notes once again that the Bill on occupational safety and health has still not been adopted and that the Government does not appear to have taken any measures to give legal effect to these provisions of the Conventions. ***The Committee requests the Government to take the necessary measures to adopt the Bill without delay to ensure observance of these provisions of the Conventions. It requests the Government to provide information on any progress made in this regard.***

Article 7(2) of Convention No. 78. Supervision of the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents. The Committee previously noted that no measure has been taken by the Government to ensure the supervision of the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents, or in the informal economy. ***The Committee expresses the firm hope that the Bill on occupational safety and health will be adopted in the near future and that it will contain provisions determining the measures of identification to ensure the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets or in places to which the public have***

access, as well as the other methods of supervision to be adopted for ensuring the strict enforcement of the Convention, in accordance with Article 7(2) of the Convention.

Application of the Conventions in practice. In its previous comments, the Committee noted that due to economic constraints, there are certain shortcomings in the application of this Convention, particularly in the capitals of remote departments, such as Cobija and Trinidad, and in rural areas. Nevertheless, it noted that the Government had adopted measures, in accordance with the possibilities available to it, so that all young persons who work in the country will progressively be covered by the protection afforded by the Convention. ***Noting the absence of information in the Government's report, the Committee requests the Government to provide information on progress achieved in relation to the application of the Convention in practice, by providing in particular, in accordance with available capacities, information concerning the number of children and young persons who are engaged in work and have undergone the periodical medical examinations envisaged in the Convention and extracts from the reports of the inspection services relating to any infringements reported and the penalties imposed.***

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

Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124) (ratification: 1977)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(1) of the Convention. Medical examination for fitness for employment and periodic re-examinations required for persons under 21 years of age. In its previous comments, the Committee noted that the Ministry of Labour, Employment and Social Welfare was drafting a new Bill on occupational safety and health. The Committee notes the Government's indication in its report that the Bill on occupational safety and health has not yet been adopted. ***Recalling that the Plurinational State of Bolivia ratified the Convention more than 30 years ago, the Committee requests the Government to take the necessary measures to ensure that the Bill on occupational safety and health is adopted as soon as possible in order to give effect to the provisions of the Convention. It requests the Government to provide information on any progress made in this regard.***

Application of the Convention in practice. In its previous comments, the Committee noted the description by the Ministry of Labour, Employment and Social Welfare of the child labour inspection system (SITI), through which it will be possible to obtain information on the number of children and young persons working in the country. It noted that the inspection system is based on a standard questionnaire which seeks to evaluate the working conditions of these children and young persons and which is particularly concerned with the issue of the medical examination for fitness for employment. ***Noting the absence of information on this subject, the Committee requests the Government to provide information on the number of children and young persons covered by the Convention and extracts from the reports of the inspection services.***

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

Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the joint observations of the International Organisation of Employers (IOE) and the Confederation of Private Employers of Bolivia (CEPB), received on 31 August 2018, the Government's report and the in-depth discussion on the application of the Convention by the Plurinational State of Bolivia that took place in the Committee on the Application of Standards at the 107th Session (June 2018) of the International Labour Conference.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)

Article 2(1) of the Convention. Minimum age for admission to employment or work and labour inspection. In its previous comments, the Committee noted the observation made by the International Trade Union

Confederation (ITUC) concerning the adoption by the Government of the new Code for Children and Young Persons of 17 July 2014, amending section 129 of the previous Code through the addition of section 129(II), which reduces, under exceptional circumstances, the minimum age for admission to work for children from 14 to 10 years for own-account workers, and reduces it to 12 years for children in an employment relationship. The ITUC observed that these exemptions from the minimum age of 14 years are incompatible with the exceptions to the minimum age authorized for light work established under *Article 7(4)* of the Convention, which does not authorize work by children under 12 years of age. The Committee also noted the ITUC's statement that authorizing children to work from the age of 10 years would inevitably affect their compulsory schooling, which, in the Plurinational State of Bolivia, consists of a fixed period of 12 years, namely at least up to 16 years of age. The Committee also noted the joint observations of the IOE and the CEPB indicating that the high proportion of work in the informal economy (70 per cent) encourages child labour, since it is not subject to labour inspection, and that there is no child labour in the formal sector.

Also in its previous comments, the Committee deeply deplored the Government's indication that the amendments made to section 129 of the Code for Children and Young Persons would remain in place as provisional measures. The Government indicated that the new exemptions from the minimum age of 14 years, as set out in section 129 of the Code, can only be registered and authorized on condition that the work done does not jeopardize the child's right to education, health, dignity and general development. Furthermore, the Committee expressed deep concern at the distinction made between the minimum age fixed for own-account child workers (10 years), and the minimum age fixed for children engaged in an employment relationship (12 years). Lastly, the Committee noted that the Ministry of Labour, Employment and Social Welfare was giving effect to the Convention through integrated and inter-sectoral routine and complaint-based inspections conducted by the services for the protection of children and young persons in order to highlight cases involving work by children under 14 years of age.

Recalling that the objective of the Convention is to eliminate child labour and that it encourages the raising of the minimum age, but does not authorize its reduction once the minimum age has been set (14 years at the time of ratification of the Convention by the Plurinational State of Bolivia), and while duly noting the positive results of the economic and social policies implemented by the Government, the Committee urged the Government to repeal the provisions of the legislation setting the minimum age for admission to employment or work and to immediately prepare a new law, in consultation with the social partners, increasing the minimum age for admission to employment or work in conformity with the Convention. Lastly, the Committee observed the Government's indication that there are 90 labour inspectors (four more than in 2012), and it asked the Government to provide the labour inspectorate with increased human and technical resources and training for inspectors with a view to ensuring a more effective application of the Convention.

The Committee notes that the Government representative drew the Conference Committee's attention to Decision No. 0025/2017 of the Constitutional Court of 21 July 2017, which declared section 129(II) of the Code for Children and Young Persons and its related sections (130(III); 131(I), (III) and (IV); 133(III) and (IV); and 138(I)) to be unconstitutional. The Conference Committee noted that the Constitutional Court used *Articles 1, 2* and *7* of the Convention as a reference point and the legal basis for its decision. In its conclusions, the Conference Committee urged the Government to adapt the national legislation, in consultation with the most representative employers' and workers' organizations, following the repeal of the provisions of the Code for Children and Young Persons by the Constitutional Court, in accordance with the Convention. The Conference Committee also urged the Government to provide the labour inspectorate with increased human, material and technical resources, in particular in the informal economy, in order to ensure the more effective application of the Convention in law and in practice.

The Committee notes the joint observations of the IOE and the CEPB, asking the Government to bridge the legal gap left by the Constitutional Court decision by amending the legislation to bring it into conformity with the Convention. The Committee notes with ***interest*** the Government's indication in its report that, further to the decision of the Constitutional Court, the minimum age for access to employment or work established in section 129 of the Code for Children and Young Persons is 14 years, in conformity with the Convention. However, the Committee notes the Government's indication that, since the decision of the Constitutional Court is binding, there is no need to revise the Code for Children and Young Persons since the provisions which are contrary to the Convention no longer have the force of law. Moreover, the Committee notes the Government's indication that the number of labour inspectors has increased to 103 since 2017 and

that the labour inspectorate used mobile offices in 2016–17 to carry out 1,874 inspections in connection with child labour and forced labour, of which 30 per cent were referred to the courts. ***While noting that section 129(II) of the Code for Children and Young Persons and its related sections have been declared unconstitutional by the Constitutional Court, the Committee also notes the importance in legal terms and in accordance with the ILO Constitution, of having the legislation being in conformity with the ratified Conventions. Accordingly, the Committee requests the Government, in consultation with the employers' and workers' organizations, to take all necessary steps to amend the Code for Children and Young Persons so as to fix the minimum age for access to employment or work at 14 years, in conformity with the Convention and the decision of the Constitutional Court in order to eliminate any confusion and thereby minimize the risk of non-compliance with the Convention. It requests the Government to send information on all progress made in this regard. The Committee also requests the Government to continue its efforts to strengthen the capacities of the labour inspectorate and to indicate the methods used to ensure that the protection provided for by the Convention is also afforded to children working in the informal economy.***

Article 6. Apprenticeships. In its previous comments, the Committee noted that, under sections 28 and 58 of the General Labour Act, children under 14 years of age may work as apprentices with or without pay, and it reminded the Government that, under *Article 6*, the Convention does not apply to work done by persons at least 14 years of age in undertakings where such work is carried out as part of a course of education or a programme of training or vocational guidance. The Committee also noted the Government's indication that labour inspectors were responsible for implementing measures to ensure that children under 14 years of age do not engage in apprenticeships. The Committee recognized that measures to reinforce the labour inspection services were essential to combat child labour, but noted that labour inspectors needed a basis in law consistent with the Convention to enable them to ensure that children are protected against conditions of work liable to jeopardize their health or development. It noted that, although the Government refers to Act No. 070 *Avelino Siñani–Elizardo Pérez* of 20 December 2010 which regulates the system of education and apprenticeships, this Act does not prescribe a minimum age for work as an apprentice.

The Committee notes once again with ***concern*** that the Government's report still does not provide any new information on the steps taken to prohibit children under 14 years of age from engaging in apprenticeships. The Government merely indicates that sections 28–30 of the General Labour Act taken together with section 129 of the Code for Children and Young Persons fix the minimum age for apprenticeships at 14 years. However, the Committee notes that sections 28–30 of the General Labour Act do not prescribe the minimum age for signing an apprenticeship contract and do not make any reference to section 129 of the Code for Children and Young Persons. ***Recalling once again that it has been drawing the Government's attention to this matter for over ten years, the Committee strongly urges the Government to take the necessary steps to harmonize the provisions of the national legislation with Article 6 of the Convention so as to fix without delay the minimum age for admission to employment or work at 14 years.***

Article 7(1) and (4). Light work. The Committee previously noted that sections 132 and 133 of the Code for Children and Young Persons allow children between 10 and 18 years of age to perform light work, subject to the authorization of the competent authority, under conditions which limit their hours of work, do not endanger their life, health, safety or image, and do not interfere with their access to education. It recalled that under *Article 7(1)* and *(4)* of the Convention, the employment of persons in light work is permitted, under certain conditions, from 12 and not 10 years of age, and it therefore urged the Government to take the necessary steps to amend sections 132 and 133 of the Code for Children and Young Persons.

The Committee notes the Government's indication that it does not consider it necessary to amend the legislation since Decision No. 0025/2017 of the Constitutional Court has invalidated the provisions of sections 132 and 133, which are contrary to the Convention. ***The Committee requests the Government, in consultation with the social partners concerned, in the light of the decision of the Constitutional Court, and the importance, in accordance with the ILO Constitution of having the legislation being in conformity with the ratified Conventions, to take the necessary steps to amend the Code for Children and Young Persons so that the age for admission to light work is fixed at no less than 12 years, in accordance with Article 7(1) and (4) of the Convention.***

Article 9(3). Keeping of registers. In its previous comments, the Committee noted that, under section 138 of the Code for Children and Young Persons, registers for child workers are required in order to obtain authorization for work. The Committee observed that these registers include the authorization for children between 10 and 14 years of age to work. It also noted Decision No. 434/2016, which provides for the inclusion

in a register of minors under 14 years of age who are engaged in work, and Decision No. 71/2016 created the Information System on Children and Young Persons (SINNA), which registers and contains information on the rights of the child, including information relating to children working on their own account or for a third party.

The Committee notes the Government's indication that further to Decision No. 0025/2017 of the Constitutional Court declaring section 138(I) of the Code for Children and Young Persons unconstitutional, the SINNA system has been modified to enable the registration of young workers from the age of 14 and not 10 years. ***The Committee urges the Government, in consultation with the social partners, to take the necessary steps to amend the Code for Children and Young Persons so that, further to inclusion in the registers, only children who are at least 14 years of age may be permitted to work, in accordance with the Convention and the practice of the SINNA system.***

The Committee reminds the Government that it may request technical assistance from the ILO in order to bring its law and practice into conformity with the Convention.

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the joint observations of the International Organisation of Employers (IOE) and the Confederation of Private Employers of Bolivia (CEPB) received on 1 September 2017.

Articles 3(a) and 7(2)(a) and (b) of the Convention. Debt bondage and forced and compulsory labour in the sugar cane and Brazil nut harvesting industries, and effective and time-bound measures. Preventing children from being engaged in the worst forms of child labour and providing direct assistance for their removal from child labour and for their rehabilitation and social integration. In its previous comments, the Committee noted the prevalence and conditions of exploitation of children working in hazardous conditions in sugar cane and nut harvesting plantations. The Committee also noted the Government's corporate incentives programme *"Triple Sello"*, under which the provision of certain benefits is conditional on the enterprise demonstrating that it does not practice any form of child labour, including in work related to the harvesting of nuts. The Committee noted that, based on the Plan of Action 2013–17 with UNICEF, a programme had been established in 17 Bolivian nut and sugar cane producing municipalities to provide education assistance to children, and that 3,400 children had been reintegrated into basic education.

The Committee notes the Government's indication in its report that no cases of child labour have been identified in the sugar cane production sector. With regard to the nut production sector, the Government indicates that a tripartite agreement has been signed with the representatives of employers and their workers in the sector, including a clause prohibiting child labour. According to the Government, during the harvest period, labour inspectors undertake inspections to assess the conditions of work, and also keep a special record of cases of children working in the sector. The Government adds that these inspectors are empowered to impose penalties when they detect violations of labour rules. However, the Committee notes that the Government does not indicate the number of violations identified or the penalties imposed. It also notes with ***regret*** the absence of information on the effective and time-bound measures taken to prevent children becoming victims of debt bondage or forced labour. ***The Committee once again urges the Government to take effective and time-bound measures to prevent children from becoming victims of debt bondage or forced labour in the sugar cane and Brazil nut harvesting industries, and to remove child victims from these worst forms of child labour and ensure their rehabilitation and social integration. The Committee once again requests the Government to explain the manner in which it ensures that persons using the labour of children under 18 years of age in the sugar cane and Brazil nut harvesting industries, under conditions of debt bondage or forced labour, are prosecuted and that effective and dissuasive sanctions are applied. The Committee requests the Government to indicate how the tripartite agreement signed in the nut production sector will concretely impact on child labour, and to provide a copy of the agreement.***

Articles 3(d) and 7(2)(a) and (b). Hazardous types of work. Children working in mines. Effective and time-bound measures for prevention, assistance and removal. The Committee noted previously that over 3,800 children work in the tin, zinc, silver and gold mines in the country. It also noted the awareness-raising and educational measures and the economic alternatives offered to the families of children working in mines. The Committee noted that, according to the Government's statistical data, only 8 per cent of the inspections carried out in mines found children under the age of 12 years working there. However, the Committee also noted that around 2,000 children were identified in 2013 in labour activities in traditional artisanal mines in the municipalities of Potosí and Oruro. The Committee further noted that 145 young persons below 18 years of age were found working in mines in Cerro Rico in June and July 2014. Finally, the Committee noted the Government's indication that it intended to formulate a national policy for the eradication of child labour within the next two years.

The Committee notes the joint observations of the IOE and the CEPB that it is necessary for the Government to adopt a national plan for the eradication of child labour after consulting the social partners.

The Committee notes that, according to the Government, the Ministry of Labour has taken action directed at employers in the mining sector to discourage them from using child labour. The Government also refers to the establishment by the Ministry of Labour of Integrated Mobile Offices *(Oficinas Móviles Integrales)* in remote areas where the presence of the worst forms of child labour is suspected, including in mining areas. However, the Committee notes with ***regret*** that the national policy for the eradication of child labour has not yet been adopted. ***The Committee therefore requests the Government to take the necessary measures for the adoption in the very near future of the national policy for the eradication of child labour and to provide information on this subject. It also requests the Government to indicate the effectiveness of the action undertaken by Integrated Mobile Offices in preventing children from being engaged in hazardous work in mines, their removal from such work and their rehabilitation.***

Article 5. Monitoring mechanisms and application in practice. The Committee previously noted the lack of resources of labour inspectors and the difficulties encountered in gaining access to plantations in the Chaco region. It also noted that the most recent information provided by the Government merely repeated the statistics provided previously indicating that only 5 per cent of the inspections carried out had identified children under 14 years of age engaged in work.

The Committee notes that, according to the Government, the labour inspectorate has six inspectors specialized in the progressive elimination of child labour. It adds that inspectors supervise labour standards relating to all fundamental rights. The Government adds that in remote areas where there are no Ministry of Labour offices, it has established Integrated Mobile Offices composed of labour inspectors with competence for the exhaustive supervision of the application of labour standards. The Committee notes that 265 inspections relating to child labour were carried out in 2015, all of which were undertaken by the Mobile Offices. The Committee also notes the Government's indication in its report on the application of the Minimum Age Convention, 1973 (No. 138), that studies and analysis have been carried out of the situation of children working in domestic service, mines, on their own account, in sugar cane fields and those engaged in hazardous types of work, but it notes that the Government has not provided the findings of these studies. The Government indicates that the analyses in the studies are helping in the formulation of a plan of action which will be coordinated by municipal authorities and government departments. ***The Committee requests the Government to continue providing updated statistics on the results of routine and unscheduled inspections, including inspections carried out by inspectors specialized in child labour. It also requests the Government to ensure that these statistics clearly indicate the nature, scope and trends of the worst forms of child labour, particularly in the sugar cane and Brazil nut harvest, and in the mining sector. Finally, the Committee requests the Government to provide information on the adoption of the plan of action referred to above.***

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

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

Bosnia and Herzegovina

Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1993)

Article 1(1) and (2) of the Convention. Definition of "industrial undertaking". Federation of Bosnia and Herzegovina (FBiH). The Committee previously noted that the Labour Law of the FBiH No. 62 of 2015 (Labour Law of the FBiH, 2015) prohibits minors from performing particularly hard manual labour, underground or underwater works, or other jobs, which could have a harmful effect or pose increased risks to their life and health, development or morality, given their psychological and physical capacities (section 57(1)). In addition, section 42(1) of the Labour Law of the FBiH, 2015 prohibits night work of minors, and section 42(2) states that for minors employed in industry, "night work" includes work between 7 p.m. and 7 a.m. According to section 42(5), the Federal Minister of Labour and Social Policy shall prescribe the activities considered to be industrial in terms of night work for minors by virtue of a Rulebook.

The Committee notes with ***regret*** the Government's reply in its report that the Rulebook, pursuant to section 42(5) of the Labour Law of the FBiH, 2015, has not been adopted yet. The Committee also takes note of the Government's intention to harmonize the national legislation with the Convention on this point. ***The Committee therefore once again expresses the firm hope that a Rulebook, prescribing the activities considered as industrial for night work for minors and which will take into account the compliance with Article 1(1) and (2) of the Convention will be adopted in the near future. The Committee requests the Government to provide information on any progress made in this regard.***

Brčko District. The Committee previously noted the Government's statement that in the Brčko District, activities that fall under the term "industrial undertakings" are regulated by collective agreements based on the laws regulating agricultural, commercial and other activities and which determine the boundary that separates industry from other activities. The Committee requested the Government to clarify whether the classification by collective agreement in the Brčko District includes all the activities mentioned under *Article 1(1)* of the Convention, in particular activities related to mining and quarrying.

The Committee notes an absence of information in the Government's report in this respect. The Committee observes, however, that section 2(a) of the new Labour Law of the Brčko District No. 34/19 of 2019 (the Labour Law of the Brčko District, 2019) defines the term "employer" as a domestic or foreign legal entity or entrepreneur who employs persons in accordance with the Labour Law. The Committee observes therefore that an employer is determined regardless of the business performed and that the prohibition on night work of young persons under the age of 18 years set out by section 57(1) of the Labour Law of the Brčko District, 2019 is applied in industry and in other branches of business activities. The Committee further observes that the Classification of Activities in Bosnia and Herzegovina of 8 June, 2010 (KD BIH 2010) includes the activities established by *Article 1(1)* of the Convention.

Articles 2(1) and 3(1) of the Convention. Period during which night work is prohibited for persons under 18 years. Republika Srpska. The Committee previously noted that section 72(1) of the Labour Law of the Republika Srpska, 2015, read in conjunction with section 70(2), prohibits the night work of young persons under the age of 18 years between 7 p.m. and 6 a.m., that is for a period of 11 consecutive hours, which is inconsistent with *Article 2(1)* of the Convention. The Committee recalled that *Article 2(1)* of the Convention, read in conjunction with *Article 3(1)*, stipulates that the prohibition on night work of young persons under the age of 18 years shall constitute a period of at least 12 consecutive hours.

The Committee notes with ***regret*** the indication by the Government, according to which there were no changes during the reporting period in this respect. ***The Committee once again requests the Government to take the necessary measures to bring the Labour Law of the Republika Srpska, 2015***

into line with Articles 2(1) and 3(1) of the Convention thereby prohibiting night work of a period of at least 12 consecutive hours for young persons under the age of 18 years.

Articles 4(2) and 5. Exemptions from the prohibition of night work of persons of 16–18 years of age in case of emergencies. FBiH, Republika Srpska and Brčko District. The Committee previously noted with regret that the Labour Law of the FBiH, 2015 and the Labour Law of the Republika Srpska, 2015 had not taken into account the Committee's comments related to the age of young persons for whom temporary exceptions from the prohibition of night work in case of emergencies may be granted, according to *Articles 4(2)* and *5* of the Convention. In particular, the Committee observed that the exceptions from the prohibition of night work under section 42(4) of the Labour Law of the FBiH, 2015 refer to minor employees (between 15 and 18 years of age), and under section 72(2) of the Labour Law of the Republika Srpska, 2015, apply to workers younger than 18 years of age. In addition, the Committee noted that section 28(3) of the Labour Law of the Brčko District No. 19/06 of 2006 exempted temporarily minor employees (between 15 and 18 years of age) from night work in case of major breakdowns and force majeure, based on the approval of the competent authority of the canton. The Committee recalled that pursuant to *Articles 4(2)* and *5* of the Convention, the prohibition of night work shall not apply or may be suspended only with regard to young persons between the ages of 16 and 18 years in case of emergencies.

The Committee notes with ***regret*** that the new Labour Law of the Brčko District, 2019 did not take into account the Committee's comments on this matter. In particular, section 57(2) of the Labour Law of the Brčko District, 2019 allows minor employees under the age of 18 years to be temporarily exempted from the prohibition of night work in the event of elimination of the consequences of force majeure and accidents or for the purpose of protection of general interests, based on the approval of the labour inspector. The Committee further notes the indication by the Government that the Committee's comments will be taken into consideration during the next review of the Labour Law of the FBiH, 2015. The Government also indicates that in the Republika Srpska and the Brčko District, there were no cases of the work carried out at night by young persons under 18 years of age in case of emergencies. ***The Committee once again requests the Governments of the FBiH, the Republika Srpska and the Brčko District to take the necessary measures to ensure that the exemption on the prohibition of night work shall be applicable only to children between the ages of 16 and 18 years in accordance with Article 4(2) in case of emergencies which could not have been controlled or foreseen or suspended in accordance with Article 5 when in case of serious emergency, the public interest demands it. The Committee requests the Government to provide information on any measures taken in this regard.***

Minimum Age Convention, 1973 (No. 138) (ratification: 1993)

Article 3(2) of the Convention. Determination of hazardous work. 1. *Federation of Bosnia and Herzegovina (FBiH).* In its previous comments, the Committee noted that pursuant to section 57 of the Labour Law of the FBiH No. 26/16 of 2016, underage persons may not be assigned to any physically demanding work, underground or underwater work, or any other work likely to create a hazard or increased risk to their life, health, development or morale, taking into account their mental and physical characteristics. The Committee further noted that a by-law that shall define the types of work referred to in section 57 of the Labour Law had not been adopted. The Committee notes with ***regret*** that according to the information provided by the Government in its report, such a by-law has not been adopted yet. ***Observing that it has been raising this issue since 2005, the Committee once again urges the Government to take the necessary measures to ensure, pursuant to section 57 of the Labour Law of the FBiH, that a list of activities and occupations prohibited for persons below 18 years of age is adopted, after consultation with the employers' and workers' organizations concerned, in accordance with Article 3(2) of the Convention. It requests the Government to provide information on any progress made in this regard.***

2. *Brčko District.* The Committee previously noted that section 41 of the Labour Law of the Brčko District No. 19/06 of 2006 provides that underage persons may not be assigned to any dangerous or demanding work, underground or underwater work, or any other work likely to pose a hazard or jeopardize their life, health, physical development or morale, and that these types of work shall be regulated under collective agreements. The Committee requested the Government to provide information on the progress made in adopting the list of types of work prohibited to children and young persons under 18 years of age, as well as on the types of work prescribed by collective agreements.

The Committee notes with ***regret*** an absence of information in the Government's report in this respect. The Committee further notes that pursuant to section 75(1) of the new Labour Law of the Brčko District No. 34/19 of 2019, employees under the age of 18 may not be assigned to any physically demanding work, underground or underwater work, work carried out at a height, or any other work likely to create a hazard or increased risk to their life, health, development or morale, taking into account their mental and physical characteristics. ***Observing that it has been raising this issue since 2005, the Committee urges the Government to take the necessary measures to adopt a regulation determining the types of hazardous work prohibited for persons under the age of 18 years, after consultation with the employers' and workers' organizations concerned, in accordance with Article 3(2) of the Convention. It requests the Government to provide information on any progress made in this regard.***

The Committee reminds the Government that it may avail itself of ILO technical assistance in order to facilitate the application of the Convention.

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

[The Government is asked to reply in full to the present comments in 2022.]

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Articles 3(a) and 7(1) of the Convention. Trafficking of children and penalties. The Committee observes that pursuant to the Criminal Code of Bosnia and Herzegovina of 27 June 2003, transnational trafficking (section 185(2)) and organized transnational trafficking of persons under 18 years of age (section 186(2)) are criminal offences. Furthermore, section 210(a)(2) of the Criminal Code of the Federation of Bosnia and Herzegovina of 9 July 2003, section 146 of the Criminal Code of the Republika Srpska of 2017, and section 207(a)(2) of the Criminal Code of the Brčko District of 2003 penalize trafficking of children. The Committee observes from the 2018–20 Reports of the State Coordinator for Combating Trafficking in Human Beings that there were two persons convicted under section 207(a)(2) of the Criminal Code of the Brčko District in 2017 and two persons convicted under section 146 of the Criminal Code of the Republika Srpska in 2018. The Committee further notes that the Committee on the Rights of the Child (CRC), in its concluding observations, expressed concern about the low rate of prosecutions and convictions of the trafficking and exploitation of children and urged the Government to strengthen training for law enforcement officers at all levels to investigate all cases of child trafficking and to ensure that the perpetrators of those criminal offences are prosecuted and adequately punished at all levels of jurisdiction (CRC/C/BIH/CO/5-6, paragraph 46). The Committee recalls that, under *Article 7(1)* of the Convention, the Government is obliged to take all the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of penal sanctions. ***The Committee therefore requests the Government to ensure that persons involved in the trafficking of children are investigated and prosecuted and that sufficiently effective and dissuasive sanctions are imposed upon them. The Committee requests the Government to provide information on training sessions for law enforcement officers addressed to investigating child trafficking and apprehending perpetrators, including the number, nature, and duration of sessions and the number of officers attending. It also requests the Government to provide statistical data on the above-mentioned sections of the Criminal Codes concerning the trafficking of children, including statistics on the number of investigations, prosecutions, convictions and penalties imposed.***

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

Botswana

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Botswana Federation of Trade Unions (BFTU), received on 1 September 2018.

Articles 3(a) and 6 of the Convention. All forms of slavery or practices similar to slavery and programmes of action. Sale and trafficking of children. The Committee takes due note of the adoption of the Anti-Human Trafficking Act in July 2014, introducing a specific offence of trafficking in persons in the national legislation, as well as the establishment of a Human Trafficking (Prohibition) Committee in 2015. It notes that the perpetrator of trafficking for the purposes of forced labour or exploitation of another person's prostitution is liable to a term of imprisonment of up to 30 years and/or a fine not exceeding 1 million Botswana pula (approximately US$93,170), pursuant to section 9 of the Anti-Human Trafficking Act. The law provides for the creation of centres for child victims of trafficking, to ensure protection, care, counselling, education and rehabilitation of children (section 18). The Committee notes the Government's indication in its report that a National Action Plan on human trafficking has been developed. Furthermore, it notes the Government's indication that the Southern African Development Community (SADC) Strategic Plan on combating trafficking in persons, especially women and children for the 2009–19 period, is being implemented through the SADC Regional Political Cooperation Programme. The United Nations Office on Drugs and Crime (UNODC) indicates that together with SADC Member States, including Botswana, UNODC has developed an Anti-Trafficking in Persons Data Collection System, to ensure the collection of reliable data on the crime of trafficking in persons.

The Committee notes the observations of the BFTU reporting the continued existence of practices of trafficking in children despite national laws and control measures. The BFTU also states that public education on trafficking and slavery is not adequately done. ***The Committee urges the Government to strengthen its efforts to ensure the effective application of the Anti-Human Trafficking Act and requests it to provide information in this regard, including the number of infringements reported, investigations, prosecutions, convictions and penalties applied for the sale and trafficking of children under 18 years of age. It also requests the Government to provide information on the adoption and implementation of the National Plan of Action on human trafficking and its impact in terms of the elimination of trafficking in children.***

Article 4(1). Determination of hazardous work. The Committee previously noted the Government's statement that the Tripartite Labour Advisory Board had prepared a draft list of hazardous types of work prohibited to young persons, which was being circulated to the relevant ministries for their endorsement. The Committee accordingly requested the Government to pursue its efforts to ensure the adoption, in the near future, of the list determining the types of hazardous work prohibited to persons under 18 years of age.

The Committee notes with ***interest*** the drafting of the list of hazardous types of work by the tripartite constituents, which includes such types of work as: handling and spraying of pesticide and herbicide and the exposure to chemicals, toxic dust, fumes and gases; garbage collecting; the lifting of heavy loads; unsupervised fishing and extraction of water from wells; the brewing of alcoholic beverages; working underground, at night or at heights; and building and construction work. The Committee notes the Government's indication that the incorporation of the list of hazardous types of work into the Employment Act will be considered during the ongoing labour law review process. ***The Committee expresses the firm hope that the draft list of types of hazardous work prohibited to children under 18 years of age will be adopted in the very near future. It requests the Government to supply a copy of this list, once it is adopted.***

Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour. Child victims of commercial sexual exploitation. In its previous comments, the Committee noted that the United Nations Committee on the Elimination of Discrimination against Women expressed concern, in its concluding observations of 2010, that women and girls enter into prostitution to support themselves and their families as a result of poverty. It noted that, within the national Action Programme on the Elimination of Child Labour (APEC), a total of 1,927 children were prevented and

withdrawn from child labour, including from commercial sexual exploitation. The Committee also noted the Government's statement that children engaged in commercial sexual exploitation are identified as children in need of protection under the Children's Act of 2009 and that, according to section 54, the Minister shall develop programmes and rehabilitative measures to reintegrate abused or exploited children.

The Committee notes the Government's statement that children in need of protection can be placed in child welfare institutions, and receive psychosocial support. The Government indicates that, taking into account all forms of vulnerability, there are currently more than 450 children in child welfare institutions. The Government also states that a study on violence against children has recently been completed and that the results will give an indication of the prevalence of violence, in its different forms, among children. ***The Committee requests the Government to pursue its efforts to remove children engaged in commercial sexual exploitation, and to provide them with the necessary and appropriate direct assistance, pursuant to section 54 of the Children's Act. It requests the Government to provide information on the number of child victims of commercial sexual exploitation who have been effectively removed, rehabilitated and socially integrated as a result of the measures implemented, including by providing the statistics compiled as a result of the study on violence against children.***

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

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

Burkina Faso

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 1 of the Convention. National policy, labour inspection and application of the Convention in practice. In its previous comments the Committee noted that, according to the last National Survey of Child Labour in Burkina Faso (ENTE), published in 2008, child labour affected 41.1 per cent of children between 5 and 17 years of age a total of 1,658,869 working children. The Committee noted that the National Economic and Social Development Plan 2016–2020 (PNDES) gives priority status to combating child labour and that one of the expected outcomes was to "reduce the proportion of children in the 5–17 age group involved in economic activities from 41 per cent to 25 per cent in 2020."

The Committee notes the information in the Government's report on the activities undertaken as part of the PNDES, including the implementation of the road map for the prevention, removal and reintegration of children from small-scale gold mines and quarries (2015–19). The Government also indicates that action has been engaged under the GOVERNANCE (2016–19) project, implemented in the framework of the France–ILO partnership, to strengthen the capacities of the labour inspection in respect of the informal economy. The action includes the elaboration of strategic plans for intervention by the labour inspectorate in general engineering workshops, construction and public works. It also covers the informal economy, and is piloted in four Regional Directorates for Labour and Social Protection. Training is provided for labour inspectors, duplicated across the different regional labour directorates. Finally, the Committee notes that the Government has adopted the National Strategy to Combat the Worst Forms of Child Labour 2019–23 (SN-PFTE). However, the Government indicates that it has no recent statistics on the nature, extent and trends in child labour, but that a nation survey is under way, with the support of the ILO and UNICEF. ***The Committee encourages the Government to continue to take measures, within the framework of the SN-PFTE or otherwise, to ensure the progressive elimination of child labour, and to provide detailed information on the impact of the measures taken in terms of the number of working children under 15 years of age who have been able to enjoy the protection granted by the Convention, particularly children working in the informal economy. The Committee requests the Government to take the measures necessary to ensure that the national survey on child labour is completed in the near future, so as to be able to provide sufficient updated statistics on the child labour situation, such as recent statistics disaggregated by gender and by age group, relating to the nature, extent and trends of work done by children and young persons***

who are under the minimum age specified by the Government at the time of ratification, and extracts from the reports of the inspection services.

Article 3(2) and Article 9(1). Hazardous work and penalties. In its previous comments, the Committee noted with concern the large number of children engaged in hazardous types of work in Burkina Faso. It noted that in accordance with section 8 of Decree No. 2016 504/PRES/PM/MFPTPS/MS/MFSNF determining the list of hazardous types of work in Burkina Faso (Decree No. 2016-504) of 9 June 2016, any person committing an offence constituting one of the worst forms of child labour shall be punished according to the terms of section 5 of Act No. 029-2008/AN of 15 May 2008 combating trafficking in persons and similar practices, which provides for imprisonment of 10 to 20 years for offenders. The Committee requested the Government to provide information on the application in practice of Decree No. 2016-504.

The Committee notes the Government's information, according to which the 88 monitoring exercises carried out in 2019 recorded 1,636 children (434 girls and 1,202 boys) engaged in work on 437 sites (19 gold-mining sites, 409 informal sector structures and nine agricultural undertakings). Violations observed included failure to respect the minimum age for admission to employment; failure to grant paid annual leave or weekly rest; failure to respect the prescribed number of working hours for children. However, the Government indicates that the focus is on raising the awareness of the actors and on the social reintegration of the victims of the worst forms of child labour and that it has no statistics on the number of penalties imposed. The Committee recalls that under *Article 9(1)*, all necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention. Furthermore, with reference to the General Survey on the fundamental Conventions, 2012, the Committee underlines that even the best legislation only takes value when it is applied effectively (paragraph 410). ***The Committee therefore requests the Government to take the measures necessary to ensure the implementation and effective application of Decree No. 2016-504 against persons who engage children under 18 years of age in hazardous work, and that appropriate penalties are imposed. It requests the Government to provide information on the measures taken in this regard and on the number of convictions handed down and penalties imposed for violations.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3(a) and 7(1) of the Convention. Sale and trafficking of children and penalties. In its previous comments, the Committee noted the considerable extent of internal and cross-border trafficking of children for the labour exploitation. While noting the figures provided by the Government on the number of convictions and sanctions imposed by the courts in this regard, the Committee observed that the number of prosecutions and convictions remain low in light of the high number of presumed child victims of trafficking (1,099 in 2015). The Committee therefore encouraged the Government to step up its efforts to ensure that the criminal law concerned, Act No. 029 2008/AN of 15 May 2008 on combating the trafficking in persons and similar practices, are effectively implemented and that the capacities of the enforcement bodies are strengthened.

The Committee notes the statistics provided by the Government in its report, according to which ten new cases were filed with the courts of the first instance in 2018, four in 2019 and four in 2020. There were six prosecutions in 2018 and five in 2019. Only five convictions were handed down in 2019. However, the 2018 national report on the trafficking of persons in Burkina Faso states that 1,047 presumed victims of trafficking were intercepted, of which 962 were children under 18 years of age. Moreover, in its report, the Government indicates that thanks to action by the National Committee for Vigilance and Surveillance (CNVS), 2,303 child victims of trafficking were intercepted in 2019 (of which 172 were trafficked for the purpose of sexual exploitation and 2,131 for labour exploitation). While noting the efforts made to intercept child victims of trafficking, the committee observes with ***concern*** that the number of cases, prosecutions and convictions remains low when compared with the number

of presumed child victims of trafficking. ***Recalling that the established sanctions are only effective if they are actually applied, the Committee urges the Government to take the necessary measures without delay to ensure that thorough investigations and prosecutions are carried out of persons who violate the provisions related to the sale and trafficking of children and that effective and dissuasive sanctions are imposed on them in application of Act No. 029 2008/AN of 15 May 2008 on combating the trafficking in persons and similar practices. In this regard it again urges the Government to take the necessary steps to strengthen the capacities of law enforcement bodies to combat the sale and trafficking of children under 18 years of age, including by means of training and adequate resources. The Committee requests the Government to continue providing concrete information on the application of the provisions related to the worst forms of child labour, especially by providing statistics on the number of convictions and penal sanctions imposed.***

Article 6. Plan of action and application of the Convention in practice. Sale and trafficking of children. The Committee previously noted with regret that the drafting of the National Action Plan to Combat Trafficking and Sexual Violence against Children in Burkina Faso (PAN-LTVS), which sets out clear strategies for combating the trafficking and sexual exploitation of children, and the implementation of a national study for evaluating action against trafficking in children remained unchanged.

The Committee again notes with ***regret*** that the PAN-LTVS and the national study for evaluating action against trafficking in children remain unfinished. The Government indicates that a national study on violence against children in Burkina Faso was validated in 2018, and that a national action plan on violence against children, 2021–23, was adopted in September 2020. The Committee notes, however, that this action plan does not address the specific issues related to the scourge of sale and trafficking of children. The Committee further notes, according to the 2018 national report on the trafficking of persons in Burkina Faso, published in 2020, that the Government encountered difficulties in combating the trafficking of persons and children, including the non-functioning of the CNVS, the situation of insecurity in the country and insufficient resources. The Committee recalls that under *Article 6* of the Convention, the Government shall design and implement programmes of action to eliminate as a priority the worst forms of child labour, including the sale and trafficking of children for the purposes of their sexual or commercial exploitation, and that this is made more important still by the prevalence of the problem in the country and the difficulties encountered by the Government in combating the problem. ***The Committee therefore again urges the Government to take the necessary steps to ensure that the national study for evaluating action against trafficking in children is conducted and the PAN/LTVS is drafted and adopted as soon as possible, and requests it to provide information on progress made in this respect.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. *Sale and trafficking of children.* Further to its previous comments, the Committee notes the detailed information provided by the Government regarding measures taken to prevent children from becoming victims of trafficking for the purposes of sexual exploitation or labour exploitation and to remove child victims for rehabilitation and social integration, as well as the results achieved. In particular, the Government indicates that 685 vulnerable children have been fostered, 10,890 persons were made aware of the issue of trafficking, displacement and the worst forms of child labour and that 29,337 vulnerable children had been enrolled or re-enrolled in school.

The Committee further notes the Government's indication that Burkina Faso has, since 2018, implemented the subregional project to assist and protect children on the move (DFID), with the assistance of UNICEF. The results achieved include the following: (i) 9,894 displaced children or other vulnerable children have received high-quality protection; (ii) 2,871 children and youths have benefited from psychosocial care; (iii) 3,769 displaced children, including 769 migrant children in transit, 547 returning children and 349 internally displaced children have received support through 13 regional

directorates of social action; (iv) 803 displaced children have benefited from sustainable reintegration, 4,319 children have been issued birth certificates; and (v) 1,083 multisectoral actors (frontier officers responsible for security, social, education and health officers) have received training on child mobility, case management, and the child protection information management system (CPIMS+). ***The Committee strongly encourages the Government to pursue its efforts to prevent children under 18 years of age from becoming victims of trafficking for economic or sexual exploitation and to remove child victims of sale and trafficking and ensure their rehabilitation and social integration. It requests the Government to continue providing information on the measures taken in this respect and on the results achieved.***

2. *Children working in small-scale gold mines and quarries.* In its previous comments, the Committee noted that around one third of the population at the 86 small-scale gold mines were children, making a total of 19,881 children, of whom 51.5 per cent were boys and 48.6 per cent were girls, used in all forms of mining operations, such as work in mine galleries, dynamiting of rocks, rock breaking, crushing and sieving, selling water and hauling minerals to sheds. The Committee urged the Government to take time-bound measures to remove children from the worst forms of labour in small-scale gold mines and ensure their rehabilitation and social integration.

The Committee notes the information provided by the Government according to which several measures have been taken to remove children from the worst forms of child labour. These include: monitoring and visits to the gold mining sites by the monitoring services accompanied by the security forces; information and awareness-raising activities on the gold mining sites; the development of income-generating activities to assist the families of children removed from gold mining sites; and socio-occupational integration for children removed from work in gold mines. The Committee also notes that according to the information available on the UNICEF website, around 3,000 children are removed from small-scale gold mines each year and re-enrolled in school or in occupational training. ***The Committee strongly encourages the Government to pursue its efforts, with UNICEF or otherwise, to remove children from the worst forms of child labour in small-scale gold mines and quarries, and ensure their rehabilitation and social integration. The Committee requests the Government to provide information on progress made and results achieved in this regard.***

Article 8. International cooperation and assistance. Regional cooperation regarding the sale and trafficking of children. Further to its previous comments, the Committee notes with ***interest*** the information from the Government according to which the tripartite cooperation agreement with Togo and Benin was signed on 23 December 2019. The objectives of this agreement are to: (i) prevent and repress child trafficking through effective cooperation between the three States; (ii) protect, rehabilitate, reintegrate and reinsert displaced children or victims of cross-border trafficking in a protective environment; (iii) cooperate in the investigation, arrest, prosecution and extradition of the guilty through the competent authorities in each State; and (iv) establish systems to protect and accompany these children. A permanent monitoring committee has been established to follow up and evaluate action carried out in the framework of this agreement. In addition, the Government indicates that an agreement to protect displaced children was signed on 31 July 2019 in the framework of the existing friendship and cooperation treaty between Burkina Faso and Côte d'Ivoire. ***In view of the importance of cross-border trafficking in the country, the Committee requests the Government to provide information on the implementation of the cooperation agreement signed with Togo and Benin, as well as the agreement signed with Côte d'Ivoire, as well as the funds allocated to such agreements. Please also provide information on the results achieved in terms of interception of child victims of sale or trafficking, as well as their rehabilitation, social reintegration and repatriation.***

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

Burundi

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), received on 28 August 2021.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously noted the National Plan of Action (NPA) for the elimination of the worst forms of child labour 2010–2015, one of the goals of which is to contribute to the elimination of child labour, in all its forms, by 2025. The Committee requested the Government to provide information on the results achieved under the NPA 2010–2015 to ensure the progressive elimination of child labour and on any new national policy formulated in this respect.

The Government indicates in its report that the NPA 2010–2015 enabled awareness-raising among children, parents and professionals on child protection under the Convention. The Government specifies that a national policy to combat child labour and a corresponding action plan will soon be formulated. The Committee notes that, according to UNICEF statistical data, 30.92 per cent of children were engaged in child labour in 2017 in Burundi (32.16 per cent of girls and 29.66 per cent of boys). ***The Committee requests the Government to intensify its efforts to ensure the progressive elimination of child labour in the country, particularly through the adoption of a national policy on the matter, in accordance with Article 1 of the Convention. It requests the Government to communicate information on the specific measures taken in this respect as well as on the results achieved.***

Article 2(1). Scope of application. In its previous comments, the Committee noted that sections 3 and 14 of the Labour Code prohibit work by young persons under 16 years of age in public and private enterprises where such work is carried out on behalf of and under the supervision of an employer. It noted the Government's indication that the question of extending the application of the Convention to the informal economy, where there is evidence of child labour, would be taken into account during the revision of the Labour Code. The Committee further noted the survey on domestic labour, especially child domestic labour, in Burundi carried out in 2013–14, according to which 5.3 per cent of children in the 7–12 age group and over 40 per cent of children in the 13–15 age group are domestic workers. The Committee therefore requested the Government to take the necessary steps to extend the scope of application of the Convention to work done outside a formal employment relationship, particularly in the informal economy and in agriculture.

The Government indicates in its report that child labour in the informal sector has been taken into account in the revision of the Labour Code. The Committee notes the observations of COSYBU that the revised Labour Code, promulgated on 24 November 2020 (Act No. 1/11), has enabled progress to be made in extending the scope of application of the Convention to work done outside a formal employment relationship. The Committee notes in this regard that under Article 2 of the 2020 Labour Code, relations between domestic workers and employers and the informal sector are governed by this Code, to the extent permitted by specific laws applicable to them. The minimum age of admission to employment, set at 16 years, applies to family agricultural, breeding, commercial or industrial activities. Section 3 of the Code specifies that relations between employers and workers, and working conditions in strictly informal sectors are determined by a special law.

The Committee notes that according to UNICEF's 2020 annual report in Burundi, the majority of young people in work occupy jobs in the informal sector, as the economy is heavily dependent on agriculture. The Committee notes with ***interest*** the adoption of the revised Labour Code of 2020, which extends the scope of application of the Convention to the informal economy. ***The Committee encourages the Government to pursue its efforts and requests it to indicate any measures taken or envisaged to ensure in practice the application of the minimum age of admission to employment of***

16 years in the informal economy. It also requests the Government to communicate a copy of the Act governing work in the informal economy.

Article 2(3). Age of completion of compulsory schooling. The Committee previously noted Act No. 1/19 of 10 September 2013 establishing the structure of primary and secondary education, which had strengthened core education by increasing it from six to nine years of schooling, starting at the age of 6 years. Hence, a child who starts school at six years of age completes compulsory schooling at the age of 15 years. It noted that COSYBU, in its observations, asked the Government to fix the minimum age for the completion of compulsory schooling. The Committee requested the Government to take the necessary steps without delay to ensure that schooling is compulsory up to the minimum age of admission to employment, namely 16 years, so that the age of completion of compulsory schooling coincides with the minimum age of access to employment or work.

The Committee notes the absence of new information from the Government on this point. ***The Committee urges the Government to take the necessary measures so that, in accordance with Article 2(3) of the Convention, schooling up to the minimum age of admission to employment, namely 16 years, is compulsory. It requests the Government to provide information on progress made in this regard.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children. In its previous comments, the Committee noted that Act No. 1/28 of 29 October 2014 concerning the prevention and suppression of trafficking in persons and the protection of victims (Anti-Trafficking Act) established penalties of 15–20 years' imprisonment for persons found guilty of trafficking in children. It noted the Government's information that women and children were victims of trafficking in 2017 to Oman, Saudi Arabia and Kuwait, for economic and sexual exploitation. The Government had pointed out that some cases of trafficking escaped the control of the law. The Committee noted the increase in the number of cases of trafficking in persons, including girls, for purposes of domestic servitude and sexual slavery. The Committee therefore requested the Government to intensify its efforts to ensure the thorough investigation and effective prosecution of individuals who engaged in the sale and trafficking of children and to ensure that penalties constituting an effective deterrent were applied in practice.

The Government indicates in its report that a mechanism for the identification, repatriation and reintegration of victims of trafficking and for the search and prosecution of perpetrators is being implemented. It further indicates that, according to the National Observatory to Combat Transnational Crime, in 2018, 24 underage girls who were victims of trafficking to Gulf countries were identified. The Government reiterates the indication that some perpetrators of trafficking escaped the control of the law. It also refers to several sections of the revised 2017 Criminal Code (Act No. 1/27). Section 246, which reproduces the definition of trafficking in the Anti-Trafficking Act, provides that trafficking in persons, including children, is punishable with a prison sentence of five to ten years and a fine. Section 245 provides for a prison sentence of up to 20 years for any person who brings in or takes out of the country a child under 18 years of age with the intention of violating the child's freedom, including for the purpose of sexual or domestic exploitation. In addition, the Committee notes that section 255 of the Criminal Code provides that the offence of trafficking in persons is punishable by a prison sentence of 15–20 years and a fine where it is committed against a child.

The Committee also notes that, according to the website of the Independent National Human Rights Commission (CNIDH), the Commission is responsible for the reception and handling of complaints from victims of trafficking in persons. In its 2020 annual report, the CNIDH indicates that in 2020 only one case was referred to it concerning allegations of trafficking of a girl. The CNIDH also indicates that it was informed of networks of trafficking in persons to other countries, and that it envisaged leading in-depth investigations with the cooperation of the competent services. In addition,

the Committee notes that a programme to combat trafficking in Burundi has been developed by the Government, in partnership with the International Organization for Migration, for 2019–22, to strengthen the Government's capacity to combat trafficking in persons. ***The Committee requests the Government to intensify its efforts, including by strengthening the capacities of the law enforcement bodies, to ensure that all persons who commit acts of trafficking in children are subject to investigation and prosecution, and that sanctions constituting effective deterrents are imposed. It requests the Government to provide information on the number of investigations conducted by the CNIDH and the competent services concerning trafficking in children under 18 years and on the number of proceedings brought. It also requests it to indicate the penalties imposed on the perpetrators of trafficking in children, the facts that formed the basis of the convictions and the provisions under which the sanctions were imposed.***

Article 7(2). Effective and time-bound measures. Clause (a). Prevention of the engagement of children in the worst forms of child labour. Access to free basic education. In its previous comments, the Committee noted the adoption of a Sectoral plan for the development of education and training 2012–20. It noted the Government's indications that measures had been taken to improve access to education, including a policy of free schooling, the setting up of schools and school canteens, the abolition of official school fees in primary education and for the poorest pupils of secondary school fees, and the distribution of school kits in some provinces. The Committee also noted information from UNESCO and the Committee on the Elimination of Discrimination against Women (CEDAW) according to which the dropout rate for girls at secondary level is extremely high. The Committee requested the Government to continue its efforts to improve access to, and the functioning of, the education system in the country, including by increasing the rate of enrolment and the rate of completion in secondary education for girls.

The Government refers to several measures taken to improve access to education, including: (i) the ongoing "Back to School" and "Zero Pregnancies" campaigns; (ii) the establishment of a national school canteens policy; (iii) the establishment of a system for the reintegration of girls who have dropped out of school; and (iv) the launch of the "aunt/school and father/school" project in all schools in Burundi. The Committee highlights, in its observation formulated under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), adopted in 2020, that the "aunt/school and father/school" project was developed to combat school dropouts and unwanted pregnancies. The Committee notes the Transitional Plan for Education in Burundi 2018–20, the priority pillars of which include access for and retention of children in basic education and improvement of the quality of education.

The Committee notes, however, that according to the 2020 annual report of the CNIDH, although basic education was free, *Batwa* (indigenous community) households and poor families had difficulty keeping their children in school and children dropped out very early. The Committee also notes the information of the UNICEF Burundi office, in its 2020 annual report, according to which the percentage of children completing basic education has decreased, falling from 62 per cent in 2017/2018 to 53.5 per cent in 2018/2019, mainly owing to disparities in quality education in the country. One in five girls and one in four boys completes secondary education, and one in five women aged 15 to 24 is illiterate. UNICEF reports that 30 per cent of adolescents are not in school, 95 per cent of whom are girls. In addition, according to UNICEF information, school enrolment of children aged 6–11 has increased sharply in recent years but has declined significantly for children aged 12–14 (63.7 per cent of children aged 12–14 were enrolled in school in 2018), particularly due to household poverty, early pregnancy, school violence, including cases of sexual abuse by teachers, and low-quality education. While noting the measures taken by the Government, the Committee notes with ***concern*** the decline in the rate of completion for children in basic education and the low enrolment rates in junior secondary schools. ***Recalling that education plays a key role in preventing children from being engaged in the worst forms of child labour, the Committee requests the Government to intensify its efforts to improve the***

functioning of the education system in the country, through measures aimed, in particular, at increasing the school enrolment rate and reducing the school dropout rate in primary and secondary education, including for girls and the Batwa community. It requests the Government to continue to provide information on the measures taken or envisaged in this respect, as well as on results achieved.

Clause (d). Children at special risk. Street children. In its previous comments, the Committee noted the Government's indications that parties involved in child protection cooperated to promote the socio-economic reintegration of street children. It noted that several centres for the rehabilitation of children were opened in Ruyigi and Rumonge, and in Ngozi, particularly for girls. It noted, however, that these rehabilitation centres were presented as prisons for children, and noted the arrest and detention of minors working or living in the streets. The Committee requested the Government to take specific measures to adequately protect children living in the streets against exploitation and to ensure their rehabilitation and social integration.

The Government indicates that the child protection committees, established at the hill-settlement, communal and provincial levels, coordinate with the police unit for the protection of minors and morals to repatriate street children. The Committee also notes the Government's indication, in its report to CEDAW of 26 August 2019, that part of the mission of the homes managed by Humanitarian Work for the Protection and Development of Children in Difficulty is to reintegrate street children (CEDAW/C/BDI/CO/5-6/Add.1, paragraph 15). The Committee notes that, according to information from UNICEF, the number of street children is rising, and that some of them are arrested by the authorities. In addition, the Committee notes that section 527 of the 2017 revised Criminal Code (Act No. 1/127) provides for a prison sentence of five to ten years and a fine in the case of exploitation of minors for begging. ***Recalling that street children are particularly exposed to the worst forms of child labour, the Committee requests the Government to step up its efforts to protect these children from the worst forms of child labour, and not to treat them like criminals, so as to ensure their rehabilitation and social integration. It requests the Government to provide information in this regard, including on the number of children identified as living or working in the streets and the support measures provided to them.***

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

Cameroon

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes the observations of the General Union of Workers of Cameroon (UGTC), received on 16 September 2021. ***The Committee requests the Government to provide its comments in response to the observations made by the UGTC.***

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted that over 1.5 million children under 14 years of age were working in Cameroon and over a quarter of children aged 7 or 8 years were engaged in some form of economic activity (27 and 35 per cent, respectively) and were at serious risk (of abuse, injuries and disease) in the workplace owing to their extreme youth. In addition, 164,000 children between 14 and 17 years of age were forced to perform hazardous work. The Committee also noted with concern that the National Plan of Action for the elimination of the worst forms of child labour (PANETEC) had still not been adopted.

The Committee notes that the Government indicates in its report that the PANETEC was adopted on 18 October 2017, and was updated in 2020. The Government indicates that the Ministry of Labour and Social Security has established the National Committee against child labour in Cameroon (CNLTEC) and that, at the Committee's third session, held on 26 September 2018, the PANETEC was presented to the public, with a view to eradicating the worst forms of child labour by 2025. However, the Committee

notes the UGTC's observation that neither the PANETEC nor the CNLTEC is operational due to lack of funds. Moreover, the Committee notes that the Economic and Social Council, in its 2019 concluding observations, again noted with concern that many children aged between 6 and 14 years of age were engaged in some form of economic activity, particularly in the informal sector (E/C.12/CMR/CO/4, paragraph 42). ***The Committee urges the Government once again to step up its efforts to ensure the effective elimination of child labour below the minimum age for admission to employment, including in hazardous types of work, in particular by taking measures to implement the PANETEC. In that connection, it requests the Government for information on the implementation of the PANETEC and the results achieved.***

Article 2(1). Application and labour inspection. Children working in the informal economy. In its previous comments, the Committee noted that the Labour Code only applies within the framework of an employment relationship and does not protect children engaged in work outside a contractual employment relationship. However, the Committee noted the Government's indication that children are essentially engaged in activities in the informal economy. The Committee also noted that the resources allocated to the labour inspection services were not adequate to conduct effective investigations and that the services did not carry out inspections in the informal economy. It noted that, within the framework of the PANETEC, the reinforcement of the means of action of labour inspectors and the extension of their scope of intervention were priorities.

The Committee notes the information provided by the Government that labour inspectors receive training in labour standards covering all aspects related to work, including child labour. Inspections carried out by the labour inspectors are, in conformity with the legislation, general in nature and cover all sectors and branches of work; they are also directed at all targets, including cases potentially involving children. The objective set for the number of annual inspections is revised upwards each year. The Government reports that 6,500 inspections were foreseen for 2020 and that despite the upheavals caused by the COVID-19 pandemic, 5,365 had been carried out. However, the Committee notes the Government's indication that it is unaware of any recorded violations and therefore unable to transmit any related information or extracts of reports.

The Committee recalls that the Convention applies to all branches of economic activity and covers all kinds of employment or work, whether or not there is a labour relationship or paid remuneration. In that regard, the expansion of the relevant monitoring mechanisms to the informal economy can be an important manner to ensure that the Convention is applied in practice, particularly in countries where expanding the scope of the implementing legislation to address children working in the informal economy does not seem a practicable solution (General Survey on the fundamental Conventions, 2021, paragraph 345). ***The Committee urges the Government to take the steps necessary, within the framework of the PANETEC or otherwise, to reinforce the capacities of the labour inspectorate and widen the scope of its intervention to fully and adequately address participation in informal economic activity by children. It requests the Government to take measures to obtain relevant information on the inspections carried out by labour inspectors in the area of child labour, both in the formal and informal economy, including the number of violations recorded and extracts from the inspection reports.***

Article 2(3). Age of completion of compulsory education. The Committee previously noted that the school attendance rate of working children aged between 6 to 14 years (70 per cent) was substantially lower than that of non-working children (86 per cent). The Committee noted that by virtue of Act No. 98/004 of 14 April 1998 governing education in Cameroon, only primary education is compulsory in the country, and that it ends at 12 years of age, which is two years before the minimum age for admission to employment or work (14 years). The Committee urged the Government to take the necessary steps to make education compulsory up to the minimum age for admission to employment, namely 14 years.

The Committee notes the Government's indication that parents are incited to place their children in schooling under article 355(2) of the Penal Code, which sanctions parents who have sufficient means but who refuse to do so. The Committee stresses however that parents are only obliged to send their children to school until the end of compulsory education, and that this age is still linked to the completion of elementary school, i.e at 12 years of age. Moreover the UGTC observes that despite the provisions of the Penal Code, certain children do not go to school and are forced to remain idle due to lack of means. With reference to the 2012 General Survey, the Committee again observes that if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (paragraph 371). The Committee therefore recalls that it is preferable to raise the age of completion of compulsory education to coincide with that of the minimum age for admission to employment, as provided in paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***Recalling that compulsory schooling is one of the most effective means of combating child labour, the Committee once again urges the Government to take the necessary steps to make education compulsory up to the minimum age for admission to employment, namely 14 years. It requests the Government to provide information on progress made in this respect in its next report.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

The Committee takes note of the observations of the General Union of Workers of Cameroon (UGTC) of 16 September 2021. ***The Committee requests the Government to send its comments in reply to the observations made by the UGTC.***

Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children and penalties. In its previous comments, the Committee noted section 342-1 of the new Penal Code, which renders any person who engages in the trafficking of persons liable to imprisonment. The Committee also noted, according to the estimates of the study produced jointly by the Government and the "Understanding child labour" programme, that between 600,000 and 3 million children were victims of trafficking in Cameroon but that the number of investigations into the trafficking of children was very low, and so this could hardly be considered an adequate response given the scale of the problem. In the Committee on the Application of Standards at the 104th Session of the International Labour Conference in June 2015, the Government representative of Cameroon pointed out that the low number of investigations was due to the small number of complaints made. The Committee also noted the Government's indications that measures had been taken to raise the awareness of stakeholders involved in combating child labour, but observed that this did not respond to its concerns regarding the low number of investigations and prosecutions in this field.

The Committee notes that the United Nations Human Rights Committee, in its concluding observations of 2017, again noted with concern the persistence of trafficking for the purposes of forced prostitution of women or child domestic labour. The Committee was also concerned at reports that most cases of trafficking were detected by civil society organizations (CCPR/C/CMR/CO/5, paragraph 31).

The Committee notes the Government's indications in its report that a freephone number and helpline has been set up for the purpose of reporting cases of human trafficking. The Government also indicates that the law enforcement agencies intercepted 40 *Baka* (adults and children) who were victims of trafficking and that the perpetrator of this act was handed over to the competent authorities. Moreover, the competent operational technical units of the Ministry of Social Affairs took care of 381 victims of trafficking, including 304 children, in the first six months of 2020.

The Government indicates that any allegation relating to the sale and trafficking of children triggers an investigation and, where appropriate, leads to the prosecution and conviction of the perpetrators. According to the Government, 13 children (7 boys and 6 girls) were victims of trafficking in 2020 and judicial proceedings have been opened against the perpetrators. Moreover, the Government indicates that the Regional Court of Diamaré sentenced one person to three years'

imprisonment for having instigated the transfer of two children (nine and 11 years old) from Kousseri to the border with Chad to meet an unknown person, in violation of the provisions of section 342-1(2)(a) of the Penal Code.

While noting the efforts made to intercept child victims of trafficking in Cameroon, the Committee notes with ***concern*** that the number of prosecutions and convictions remains low. ***Recalling that the established penalties are only effective if they are actually applied, the Committee requests the Government to intensify its efforts, including by reinforcing the capacities of law enforcement bodies, to ensure that all persons who engage in the trafficking of children are investigated and prosecuted, and that penalties which constitute an effective deterrent are imposed. The Committee requests the Government to provide information on the number of investigations conducted by the competent services in relation to the trafficking of children under 18 years of age and on the number of prosecutions initiated. It also requests the Government to indicate the sentences imposed on persons guilty of the trafficking of children, the facts giving rise to the convictions, and the provisions under which the penalties have been imposed.***

Article 3(b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities. In its previous comments, the Committee observed that the provisions of the Penal Code adopted through Act No. 2016/007 – including sections 344 and 346 prohibiting the corruption of young people and indecent behaviour in the presence of a minor – do not adequately prohibit the use, procuring or offering of a child for the production of pornography or for pornographic performances, or for illicit activities. The Committee also noted that the Conference Committee had urged the Government to adopt and implement the Child Protection Code, which had been pending for almost ten years, in order to prohibit the use, procuring or offering of children for the above-mentioned purposes.

The Committee notes the Government's indication that sections 80–83 of Act No. 2010/012 of 21 December 2010 concerning cybersecurity and cybercrime in Cameroon makes any person liable to punishment who commits the above-mentioned acts in relation to children. The Committee observes that under section 80 of the above-mentioned Act any person who disseminates, fixes, records or transmits for payment or free of charge images depicting paedophilic acts on a minor through electronic media or an information system shall be liable to punishment. Furthermore, any person who offers, makes available or disseminates, imports or exports, by any electronic means whatsoever, an image or representation of a paedophilic nature, or any person who possesses paedophilic images or representations, shall be liable to punishment. Under section 81, any person who offers, produces or makes available child pornography with a view to its dissemination, or who procures for self or others, or disseminates or transmits, child pornography through an information system, or adults who make sexual proposals to young persons under 15 years of age, shall be liable to punishment. Moreover, indecent acts committed through electronic media (section 82) also constitute an offence.

The Committee observes that Act No. 2010/012 of 21 December 2010 addresses only the production or electronic dissemination of pornographic material involving children, which appears to include the use, but not the procuring or offering, of children for the production of pornographic material. Moreover, the Committee notes with ***regret*** that the Government does not supply any information on the prohibition on the use, procuring or offering of children for illicit activities. ***The Committee requests the Government to provide information on the application in practice of the relevant provisions of Act No. 2010/012 of 21 December 2010 concerning the use, procuring or offering of children under 18 years of age for the production of pornographic material or for pornographic performances. It also requests the Government to take the necessary steps to ensure that the use, procuring or offering of a child under 18 years of age for illicit activities is prohibited by the legislation of Cameroon as quickly as possible, and to provide information on measures taken in this regard.***

Article 4(3). Periodic review and revision of the list of hazardous types of work. In its previous comments, the Committee noted that Order No. 17 of 27 May 1969 concerning child labour (Order No. 17) does not prohibit work under water or work at dangerous heights, as in the case of children employed in fishing or banana harvesting. The Committee noted that the Conference Committee had urged the Government to urgently revise, in consultation with the social partners, the list of hazardous types of work established by Order No. 17 in order to prevent the engagement of children under 18 years of age in hazardous activities, including underwater work and work at dangerous heights. In this regard, the Government indicated that the revision of the list of hazardous types of work was due to take place in 2018 and would be undertaken in conjunction with the social partners.

The Committee notes the Government's indication that the process for the revision of the list of hazardous types of work is under way. ***Observing that the Government has been referring to this for many years, the Committee urges the Government to take the necessary steps to ensure, as quickly as possible, the adoption of the revised and adapted list of hazardous types of work prohibited for children under 18 years of age, in consultation with the social partners. The Committee once again requests the Government to provide information on progress made in this respect.***

Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. HIV/AIDS orphans. In its previous comments, the Committee noted with concern that, according to estimates of the Joint United Nations Programme on HIV/AIDS (UNAIDS), the number of children who were HIV/AIDS orphans in Cameroon had risen from 310,000 in 2014 to 340,000 in 2016. The Committee asked the Government to take immediate and effective measures to protect these children from the worst forms of labour.

The Committee notes the Government's indications that Cameroon has a national strategy for the care of orphans and vulnerable children, implemented by the Ministry of Social Affairs, which includes cases of HIV/AIDS orphans in its operations. To this end, welcome centres set up throughout the national territory take care of the children, who receive training in various fields with a view to their social integration. While noting the measures taken by the Government, the Committee observes that the number of HIV/AIDS orphans continues to rise, with UNAIDS estimating putting this figure at 390,000 in 2020. ***Recalling that children who are HIV/AIDS orphans are at particular risk of being engaged in the worst forms of child labour, the Committee requests the Government to intensify its efforts to protect them from these worst forms of labour, particularly as part of the national strategy for the care of orphans and vulnerable children. The Committee also requests the Government to provide information on the measures taken in this respect and the results achieved, and also on the number of HIV/AIDS orphans who have been received by the welcome structures set up for their benefit.***

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

Central African Republic

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Articles 1 and 2(1) of the Convention. National policy, scope of application and application of the Convention in practice. In its previous comments, the Committee noted that the Labour Code only covers occupational relationships deriving from a contract of employment. It noted the absence of a national policy, despite the significant number of children engaged in work who are below the minimum age for admission to employment, set at 14 years. The Committee noted the Government's indications that the activities undertaken in collaboration with UNICEF had led to a reduction in the number of children working on their own account or in the informal economy. It requested the Government to continue taking measures to ensure that children working in the informal economy benefit from the protection of the Convention.

In its report, the Government reaffirms its commitment to strengthening the measures ensuring adequate protection for all children, including those working in the informal economy, in collaboration with UNICEF and the country's other partners. The Government indicates that the draft revised Labour Code contains provisions protecting children against child labour. The Committee also notes that according to the multiple indicator cluster survey (MICS) undertaken in 2018–19 by the Central African Institute for Statistics and Economic and Social Studies with the support of UNICEF, the proportion of children between the ages of five and 11 years engaged in child labour is 33.5 per cent, with a rate of 22.9 per cent for children aged 12–14 years, a significant number of whom work under hazardous conditions. The Committee notes with ***concern*** the significant number of children under 14 years of age engaged in child labour, including under hazardous conditions. ***The Committee urges the Government to take all the necessary measures to ensure the progressive elimination of child labour, including through the implementation of a national policy, in accordance with Article 1 of the Convention. It requests the Government to provide information on the measures taken in this regard. The Committee also requests the Government to continue taking measures so that children working in the informal economy or on their own account benefit from the protection of the Convention in law and practice. It requests the Government to provide information on the progress achieved in this respect.***

Article 3(1) and (2). Minimum age for admission to hazardous types of work and determination of these types of work. In its previous comments, the Committee noted with concern the absence of a list of hazardous types of work, despite section 261 of the Labour Code adopted in 2009, which provides that an order shall determine the nature and types of work and the categories of enterprises prohibited for children and the age limit up to which this prohibition shall apply. It urged the Government to take the necessary measures to ensure that the list of hazardous types of work prohibited for children under 18 years of age is adopted as soon as possible.

The Committee notes the absence of information from the Government on this point. It is therefore bound to note once again with ***deep concern*** the absence of a list determining the hazardous types of work prohibited for children under 18 years of age. It recalls that, in accordance with *Article 3(2)* of the Convention, the hazardous types of work prohibited for children under 18 years of age shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***The Committee therefore urges the Government to take the necessary measures without delay to determine the list of hazardous types of work prohibited for children under 18 years of age. It requests the Government to report any progress achieved in this regard.***

Article 9(3). Keeping of registers by employers. The Committee previously noted that, under section 331 of the Labour Code, certain enterprises or workplaces may be exempted from the obligation to keep an employment register by order of the Ministry of Labour. It urged the Government to take the necessary measures as soon as possible to bring the legislation into conformity with the *Article 9(3)* of the Convention by ensuring that no employers may be exempted from the obligation to keep a register of persons under 18 years of age employed by them or working for them.

The Government indicates that, within the framework of the current legal reform, the draft revised Labour Code contains measures protecting children from child labour. ***The Committee therefore expresses the firm hope that, on the occasion of the current legal reform, the Government will take into account the Committee's comments and ensure that no employers are exempt from keeping a register of the children under 18 years of age employed by them or working for them, and ensure that the registers contain, as a minimum, the names and ages or dates of birth, duly certified wherever possible, of such children. It requests the Government to provide information on the progress achieved in the adoption of the revised Labour Code, and to provide a copy once it has been adopted.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. The Committee previously noted the forced recruitment of children of under 18 years of age for use in the armed conflict which was taking place in the country. The Committee noted an agreement signed on 5 May 2015 by ten armed groups to stop and prevent the recruitment and use of children, and the adoption of a new Constitution in March 2016. It noted the information provided by the Government, according to which, as part of the first pillar of the National Recovery and Peacebuilding Plan for the Central African Republic (RCPCA) for 2017–21, entitled "Support peace, security and reconciliation", the Government has initiated the process of disarmament, demobilisation, reintegration and repatriation, and also the reform of the security sector, with a view to restoring the authority of the State to allow it undertake investigations and prosecute the perpetrators of forced recruitment of children. The Committee observes, however, from a report dated 28 July 2017 by the independent expert on the human rights situation in the Central African Republic, that the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimated that between 4,000 and 5,000 children were enlisted. The Committee expressed deep concern at the current situation and urged the Government to intensify its efforts to eliminate the forced recruitment of children under 18 years of age by all armed groups in the country. It also urged the Government to take immediate measures to ensure that the investigation and prosecution of offenders is carried out and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting children under 18 years of age for use in armed conflict.

The Government indicates in its report that efforts continue under the implementation of the first pillar of the RCPCA for 2017–21. It states that, in partnership with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), the progressive redeployment of the defence and security forces is intensifying throughout the territory, especially in the secondary cities of the country, previously occupied by armed groups, in order to ensure the security and protection of the civilian populations. The Government further indicates the adoption of an Act issuing the Child Protection Code in 2020, to protect children from enlistment in the armed forces or by armed groups. The Committee takes due note of this information and observes that the Report of the United Nations Secretary-General of 12 October 2020 on the Central African Republic clarifies that the Child Protection Code, promulgated on 15 June 2020, criminalizes the recruitment and use of children by the armed forces and groups, and considers enlisted children as victims (S/2020/994, paragraph 70).

The Committee notes the Political Agreement for Peace and Reconciliation in the African Republic (APPR-RCA), signed on 6 February 2019 between the Government and 14 armed groups, which calls for a stop to hostilities between the armed groups, as well as the ceasing of all exactions and violence against the civilian populations. The Agreement, which includes an implementation mechanism, calls for the establishment of a Truth, Justice, Reparation and Reconciliation Commission (CVJRR). The Committee notes from the report by the independent expert on the human rights situation in the Central African Republic of 24 August 2020, covering the period from July 2019 to June 2020, that the time limit fixed by the national authorities of the end of January 2020 to complete disarmament and demobilisation was not respected. Regardless of their engagements under the Agreement, the armed forces and armed groups in the country that were signatories thereof had recourse to the recruitment and use of children (A/HRC/45/55, paragraphs 24, 25, 33, 36, 39 and 40).

According to a report dated 4 August 2021 published jointly by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the MINUSCA on violations of human rights and international humanitarian law in the Central African Republic during the electoral period, and specifically on the period from July 2020 to June 2021, the security situation worsened progressively in the country. The recruitment of children by parties to the conflict were included among the violations observed.

The Committee notes from the report of the United Nations Secretary-General of 6 May 2021 on children and armed conflict, that 584 cases of children (400 boys and 184 girls) recruited and used by armed groups and the armed forces were confirmed in 2020, including by ex-Séleka factions (the majority), and other armed groups as well as by the internal security forces and the Central African armed forces. Children were used as combatants and in support roles, and were subjected to sexual violence. Moreover, 42 cases of child deaths were confirmed and 82 cases of sexual violence were verified; 58 children were abducted by armed groups for the purposes of recruitment, sexual violence and ransoms. The Secretary-General expressed alarm at the sharp increase in recruitment and use of children in the armed conflicts as well as the increased incidence of sexual violence, abduction, compounded by electoral violence (A/75/873-S/2021/437, paragraphs 24, 26, 27, 30, 34, 35). The same report also emphasizes the conviction of 110 perpetrators of violations against children (paragraph 32). The Committee finds itself obliged to ***deplore*** the continuing recruitment and use of children in the armed conflict in the Central African Republic, all the more so as it gives rise to other serious violations of the child rights, such as abductions, murder and sexual violence. ***While recognizing the complexity of the situation prevailing on the ground and the existence of an armed conflict and armed groups in the country, the Committee urges the Government to pursue its efforts to put an end to the practice of forced recruitment of children of less than 18 years of age by the armed forces and armed groups in the country. Moreover, the Committee again urges the Government to take immediate and effective measures to ensure that all persons, including members of the regular armed forces, who recruit children of under 18 years of age for use in armed conflict, are thoroughly investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice, in conformity with the Child Protection Code. The Committee requests the Government to provide information on the number of investigations undertaken, prosecutions filed and convictions handed down against such persons. It also requests a copy of the Child Protection Code.***

Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously observed that the impact of the political and security crisis in the Central African Republic has aggravated the situation regarding basic education for children. It noted various measures taken by the Government to promote children's access to education. However, the Committee noted information according to which the school attendance rate is extremely low, in particular for girls, and the dropout rate between primary and secondary education is high. The Committee urged the Government to intensify its efforts and take effective and time-bound measures to improve the operation of the education system and facilitate access to good quality basic education for all children in the Central African Republic, including in the zones affected by the conflict, giving special attention to the situation of girls.

The Government indicates that the Act issuing the Child Protection Code, adopted in 2020, includes provision on education and the protection of children in the school environment. The Committee notes that the Report of the United Nations Secretary-General on the Central African Republic of 16 June 2021 highlights the fact that half of the country's children are out of school (S/2021/571, paragraph 38). Furthermore, the independent expert on the human rights situation in the Central African Republic draws attention, in his report of 24 August 2020, to the partial or total closure of several schools as a result of the armed conflict, particularly in the hinterland, cutting off children's access to education (A/HRC/45/55, paragraph 61). According to the UNICEF communication of 27 April 2021, available on the UN info internet site, one school in four is not functioning due to the combat.

The Committee also noted that the confrontations during the electoral period between July 2020 and June 2021 gave rise to pillaging, attacks and occupation of numerous schools, gravely affecting the resumption of school in early January 2021 joint report of the OHCHR and the MINUSCA on violations of human rights and international humanitarian law in the Central African Republic during the electoral period, paragraphs 31, 112, 113 and 115). The Committee is obliged to express its ***deep concern*** at the large number of children deprived of education as a result of the climate of insecurity prevailing in the

country. It recalls that education plays a key role in preventing children from engaging in the worst forms of child labour, including their recruitment in armed conflicts. ***While recognizing the difficult situation prevailing in the country, the Committee urges the Government to intensify its efforts to improve the operation of the education system and facilitate access to free basic education for all children, including girls, and in the zones affected by the conflict. It requests the Government to provide information on the concrete measures taken in this regard as well as on the school attendance, maintenance and dropout rates at primary and secondary levels.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Forced recruitment of children for use in armed conflict. In its previous comments, the Committee noted the revision of the national disarmament, demobilization and reintegration strategy to include appropriate provisions concerning children. It noted information from UNICEF to the effect that 9,449 children had been freed from armed groups between January 2014 and March 2017, but only 4,954 had benefited from reintegration programmes. Furthermore, the United Nations Secretary-General indicated that many demobilized children and been enlisted again in the armed groups. The Committee urged the Government to intensify its efforts to provide appropriate direct assistance to remove child victims of forced recruitment from armed groups and ensure their rehabilitation and social integration so as to guarantee their long-term, definitive demobilization.

The Committee notes the absence of information in the Government's report on this point. The Committee notes the report of the independent expert on the human rights situation in the Central African Republic of 24 August 2020, which covers the period from July 2019 to June 2020, according to which, within the framework of the Programme for Disarmament, Demobilisation, Reintegration and Repatriation, the armed groups signed protocols and action plans with the authorities to liberate children from their ranks and abstain from further recruitment. The independent expert remarks that some children were discharged following the signature of the protocols. However, he notes that cases of enlistment and use of children by armed groups had been documented (A/HRC/45/55, paragraph 59).

The Committee notes that the United Nations Secretary-General, in his report on children and armed conflict of 6 May 2021, indicates that 497 children recruited into the armed groups were liberated in 2020, and that 190 children, self-demobilized from the armed groups, were identified (A/75/873-S/2021/437, paragraph 33). The Secretary-General also indicates, in his report of 16 February 2021, that on 30 November 2020 four children, accused of association with armed groups and imprisoned, were released and enrolled in reintegration programmes. The Secretary-General also indicates that, as part of the "ACT to protect children affected by armed conflict" campaign, MINUSCA has raised awareness among 2,000 persons on the increased risk of grave violations child rights violations during the electoral period (S/2021/146, paragraph 65 and 66). The Committee notes the information in the UNICEF communication of 27 April 2021, to the effect that although, since 2014, UNICEF and its partners have helped liberate more than 15,500 children from the armed groups, more than one in five of the children had yet to be enrolled in a reintegration programme. ***The Committee urges the Government to take appropriate and time-bound measures to ensure the removal of children recruited for use in the armed conflict and for their rehabilitation and social integration. It also urges the Government to take the measures necessary to ensure that all children removed from the armed groups and from the armed forces benefit from reintegration programmes. It requests the Government to provide information in this regard, including on existing reintegration programmes for these children and on the number of children that have benefited from rehabilitation and social integration.***

In light of the situation described above, the Committee deplores the continued recruitment and use of children in armed conflict by both armed groups and the armed forces, especially as it entails other violations of children's rights, such as abductions, murders and sexual violence. The Committee has been raising this issue since 2008, and the recruitment and use of children in armed conflict, both as combatants and in support roles, has sharply increased in recent years. The Committee must also express its deep concern at the significant number of children deprived of education due to the climate

of insecurity in the country. The Committee considers that this case meets the criteria set out in paragraph 96 of its General Report to be asked to come before the Conference.

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

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Chad

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845–S/2013/245, paragraphs 45 and 46), despite progress in the implementation of the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad, and although the national army of Chad did not recruit children as a matter of policy, the country task force verified 34 cases of recruitment of children by the army during the reporting period. The 34 children appeared to have been enlisted in the context of a recruitment drive in February–March 2012, during which the army gained 8,000 new recruits. In this respect, the Committee noted the new roadmap of May 2013, adopted further to the review of the implementation of the action plan concerning children associated with the armed forces and armed groups in Chad and aimed at achieving full observance of the 2011 action plan by the Government of Chad and the United Nations task force. The Committee observed that, in the context of the roadmap, one of the priorities was to speed up the adoption of the preliminary draft of the Child Protection Code, which prohibits the recruitment and use of young persons under 18 years of age in the national security forces and lays down penalties to that effect. Moreover, during 2013 it was planned to establish transparent, effective and accessible complaint procedures regarding cases of recruitment and use of children, and also to adopt measures for the immediate and independent investigation of all credible allegations of recruitment or use of children, for the persecution of perpetrators and for the imposition of appropriate disciplinary sanctions.

The Committee takes note of the information contained in the United Nations Secretary-General's report of 15 May 2014 to the Security Council on children and armed conflict (A/68/878–S/2014/339). According to this report, the deployment of Chadian troops to the African-led International Support Mission in Mali (AFISMA) has prompted renewed momentum to accelerate the implementation of the action plan signed in June 2011 to end and prevent underage recruitment in the Chadian National Army, and the Chadian authorities have renewed their commitment to engage constructively with the United Nations to expedite the implementation of the action plan. The Government of Chad, in cooperation with the United Nations and other partners, has therefore taken significant steps to fulfil its obligations. For example, a presidential directive was adopted in October 2013 to confirm 18 years as the minimum age for recruitment into the armed and security forces. This directive also establishes age verification procedures and provides for penal and disciplinary sanctions to be taken against those violating the orders. The directive was disseminated among the commanders of all defence and security zones, including in the context of several training and verification missions. Furthermore, on 4 February 2014, a presidential decree explicitly criminalized the recruitment and use of children in armed conflict.

The Secretary-General states, however, that while the efforts made by the Government to meet all obligations under the action plan have resulted in significant progress, a number of challenges remain to ensure sustainability and the effective prevention of violations against children. Chad should pursue comprehensive and thorough screening and training of its armed and security forces to continue to prevent the presence of children, including in the light of Chad's growing involvement in peacekeeping operations. While no new cases of recruitment of children were documented by the United Nations in 2013 and no children were found during the joint screening exercises carried out with the Chadian authorities, interviews confirmed that soldiers had been integrated in the past into the Chadian National Army from armed groups while still under the age of 18. According to the Secretary-General, the strengthening of operating

procedures, such as those for age verification, which ensure the accountability of perpetrators, should remain a priority for the Chadian authorities. Finally, the Secretary-General invited the National Assembly to proceed as soon as possible with the examination and adoption of the Child Protection Code, which should provide greater protection for the children of Chad. ***The Committee therefore requests the Government to intensify its efforts to end, in practice, the forced recruitment of children under 18 years of age by the armed forces and armed groups and to undertake immediately the full demobilization of all children. The Committee urges the Government to take immediate measures to ensure that the perpetrators are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting and using children under 18 years of age in armed conflict. Finally, the Committee urges the Government to take the necessary measures to ensure the adoption of the Child Protection Code as soon as possible.***

Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Preventing children from being engaged in the worst forms of child labour, removing children from these forms of labour and ensuring their rehabilitation and social integration. Children who have been enlisted and used in armed conflict. In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845–S/2013/245, paragraph 49), the actions taken by the Government for the release, temporary care and reunification of separated children, while encouraging, were not yet in line with the commitments made in the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad. The Committee noted that one of the priorities referred to in the 2013 roadmap was to secure the release of children and support their reintegration.

The Committee notes that, according to the Secretary-General's report of 15 May 2014, a central child protection unit has been established in the Ministry of Defence, as well as in each of the eight defence and security zones, to coordinate the monitoring and protection of children's rights and to implement awareness-raising activities. Between August and October 2013, the Government and the United Nations jointly conducted screening and age verification of approximately 3,800 troops of the Chadian national army in all eight zones. The age verification standards had been previously developed during a workshop organized by the United Nations in July. In addition, between August and September 2013, a training-of-trainers programme on child protection was attended by 346 members of the Chadian National Army. As from July 2013, troops of the Chadian National Army deployed in Mali started to receive pre-deployment training on child protection and international humanitarian law; in December of the same year, 864 troops attended child protection training at the Loumia training centre. ***The Committee encourages the Government to intensify its efforts and continue its collaboration with the United Nations in order to prevent the enrolment of children in armed groups and improve the situation of child victims of forced recruitment for use in armed conflict. In addition, the Committee requests the Government once again to supply information on measures taken to ensure that child soldiers removed from the armed forces and groups receive adequate assistance for their rehabilitation and social integration, including reintegration into the school system or vocational training, wherever appropriate. It requests the Government to supply information on the results achieved in its next report.***

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

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

Chile

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3(c) of the Convention. Use, procuring or offering of a child for illicit activities. In its previous comments, the Committee referred to the absence of legal provisions penalizing the use, procuring or offering of a child under 18 years of age for illicit activities. The Committee noted the Government's indication that a Bill had been prepared to amend the Penal Code to provide that the use of children under 18 years of age constitutes an aggravating circumstance. In this respect, the Committee requested the Government to ensure that the Bill covers not only the use, but also the procuring or offering of children under 18 years of age for illicit activities. The Committee notes the Government's

indication that the Bill (Bulletin 10356-07) is being examined by the Chamber of Deputies, and that it only refers to the use, and not to the procuring or offering of children under 18 years of age for illicit activities. The Committee also notes the Government's indication that, according to the System for the Recording of the Worst Forms of Child Labour, the number of children used for illicit activities was 252 in 2018, 369 in 2019 and 337 in 2020. ***The Committee once again requests the Government to take the necessary measures to ensure that both the use and the offering or procuring of children under 18 years of age for illicit activities are penalized by the national legislation. The Committee requests the Government to provide information on any progress achieved in this respect in its next report.***

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

China

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 3(1) of the Convention. Hazardous work performed through work–study programmes. The Committee previously noted from the report on the labour protection of interns in Chinese textile and apparel enterprises, carried out with ILO assistance, that 52.1 per cent of interns continue to work in conditions that do not meet national minimum standards for labour protection, and 14.8 per cent of interns are engaged in involuntary and coercive work. It noted with concern that a significant number of schoolchildren continued to engage in hazardous work within the context of work–study programmes. The Committee also noted the adoption of the Regulations on the Management of Student's Internship in Vocational Schools (Management Regulations) in 2016, which protect the basic rights of internship students and establishes penalties for violations thereof. The Committee requested the Government to take the necessary measures to ensure the effective application of the Management Regulations, and to provide statistical information concerning the number and nature of infringements detected, as well as the specific penalties applied.

The Committee notes the Government's information, in its report that it has increased its efforts in disseminating the Management Regulations and strengthened information campaigns, through the Internet, WeChat and school information campaigns, so that more students and parents are aware of the rights and interests that students should enjoy during their internship, hence reducing the possibility of illegal practices. The Ministry of Education, in conjunction with relevant departments, ensures the effective implementation of the Management Regulations, including by strengthening institutional cooperation and supervision and inspection. In this regard, key inspections were conducted in 2017 on the work carried out in schools and internship entities in ten provinces and autonomous regions. In 2021, a circular was issued to conduct a comprehensive survey of typical problems with internships in vocational colleges and schools, and to strictly implement relevant rules and regulations. Other circulars concerning (i) reporting violations on internship regulations; (ii) improving and supporting policies related to internship training; and (iii) strengthening and standardizing the management of internships were also issued. Moreover, a hotline specifically dedicated to offer advice on internship management for students of vocational institutions, suggestions and responses to related issues reported, was established. ***The Committee requests the Government to continue taking effective measures to protect the rights of the students participating in work–study programmes and to ensure that such students are not engaged in hazardous, involuntary and coercive work. It requests the Government to continue providing information on the measures taken in this regard, including the effective implementation of the Management Regulations and other circulars issued in this regard. Finally, the Committee requests the Government to provide information on the outcome of the inspections conducted in schools and internship entities, including statistical information on the number and nature of infringements detected, as well as the specific penalties applied.***

Article 8. Artistic performances. The Committee previously noted that section 13(1) of the 2002 Regulations Banning Child Labour provides that organizations for performing arts and sports may

recruit professional artists and athletes under the age of 16 years upon consent from their parents or legal guardians. According to the report from the 2013 ILO technical assistance mission, there were 2.01 million performances in China in 2012, including 13,000 registered performing groups, half of which included children. It also noted the Government's indication that according to the working rules of school art education (Ministry of Education Order No. 13 of 2002), no entities or schools shall organize students to participate in any commercial artistic activities or commercial celebration activities. However, the Government indicated that as this internal working rules lacked wider legal effect, the Ministry of Education was making efforts to incorporate it into the legislative process. The Committee requested the Government to take the necessary measures to enact national legislation that is in conformity with *Article 8* of the Convention by specifying that children employed in artistic performances are permitted to do so on the basis of individual permits granted by the competent authority.

The Committee notes the Government's information that section 15 of the Labour Law was amended in December 2018 to state that "Art, sports and special-skill units that plan to recruit juveniles under the age of 16 shall comply with the relevant provisions of the state and guarantee the right of the employed to receive compulsory education." The Government also indicates that this amendment abolishes the administrative approval procedures; reduces unnecessary prior approvals; strengthens the responsibility of employing units to comply with the relevant employment related laws and regulations; and focuses on post-recruitment monitoring and investigation. The Government also indicates that Chinese cultural and sports talents are trained by the professional school education system and that in 2021, 1,172 professional faculties of culture and art in secondary vocational schools nationwide have been registered, involving 629 vocational schools. Moreover, with regard to athletic performances, the Measures for the Administration of Sports Schools for Children and Adolescents stipulates that sports schools should ensure that: (i) the students complete the nine-year compulsory education courses; (ii) the students should be trained scientifically and systematically in accordance with the national youth teaching and training programme; and that (iii) the training time per day should be limited to 2.5 hours in principle. The Committee however observes that the amendments to section 15 of the Labour Law concerning the recruitment of juveniles under 16 years by art, sports and special units do not contain the requirement of granting of individual permits for children participating in artistic and sports activities as required by *Article 8* of the Convention.

While taking note of the Government's information, the Committee notes with ***regret*** that, despite its reiterated comments for many years, the Government has not taken any measures to establish, in law and in practice, the system of granting individual permits for artistic performances by young persons under the age of 16 years. In this regard, the Committee once again recalls that, by virtue of *Article 8* of the Convention, children below the minimum age of admission to employment or work of 16 years, who are employed in artistic activities, shall do so on the basis of individual permits granted by the competent authority. Moreover, permits so granted shall limit the number of hours during which and prescribe the conditions in which such employment or work is allowed. ***The Committee therefore urges the Government to take the necessary measures to ensure the establishment of a system of individual permits for children under 16 years of age who are engaged in artistic and sports activities and to regulate such activities in accordance with Article 8 of the Convention. It requests the Government to provide information on any measures taken in this regard as well as information on the number of children under 16 years who currently participate in artistic and professional sports activities, and who fall within the exception provided for by section 13(1) of the 2002 Regulations Banning Child Labour.***

Article 9(1). Labour inspectorate and penalties. The Committee previously noted that labour security advisers from trade unions and other institutions monitor the compliance of employers with national labour laws and regulations. The Government indicated that the labour inspectorate carries out law enforcement activities jointly with the departments of public security, industry and commerce, administration of work safety and public health, with regard to child labour. The Committee noted with

regret the Government's statement that the data on investigations and penalties regarding child labour was considered confidential and hence could not be provided. However, it noted that according to the Measures on the Disclosure of Major Labour Violations to the Public (MoHRSS Order No. 29 of 2016), the Department of Human Resources and Social Security must publish the cases of major labour violations which have been investigated and closed, including the violations of the Regulations Banning Child Labour, among others (section 5(5)). The Committee requested the Government to provide the relevant data in this regard.

The Committee notes the Government's information that in March 2021, the "Trial Measures for Trade Union Supervision over Labour Law Enforcement" were issued to further strengthen their supervision work in the area of labour laws, with focus on the use of child labour. The Government also indicates that currently there are 26,000 full time labour inspectors in China. The Committee further notes the statistical information provided by the Government concerning the employment of young persons aged 16 years and above which indicates that 1.2 per cent of the 775.86 million people employed in China are persons between 16 and 19 years of age. In this regard, the Committee notes that the United Nations Special Rapporteur on extreme poverty and human rights on his mission to China, in its report of March 2017 indicated that "the data-collection process in official surveys lacks transparency. Beyond references to household surveys, detailed information on sources and collection procedures is sparse. Expert interlocutors pointed to examples of negative data being withheld from publication". (A/HRC/35/26/Add.2, paragraph 29). ***The Committee therefore once again urges the Government to take the necessary steps to ensure that sufficient and accurate data on the situation of working children in China is made available, including, for example, data on the number of children and young persons below the minimum age of 16 years who are engaged in economic activities, and statistics relating to the nature, scope and trends of their work. It also once again requests that the Government provide information on the number and nature of violations detected by the labour inspectorate and the trade unions, and the penalties imposed.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

Article 3(a) of the Convention. Worst forms of child labour. Sale and trafficking of children. In its previous comments, the Committee noted that section 240 of the Criminal Law of 1997 prohibits trafficking in women and children. However, it noted that section 9 of the Judicial Interpretation No. 28 of 2016 on the effective application of the laws regarding trafficking in women and children, referred to children under section 240 of the Criminal Code as persons under 14 years of age. The Committee therefore requested the Government to indicate the measures taken or envisaged to protect boys aged 14 to 18 years from trafficking.

The Committee notes the Government's information in its report that the Criminal Law of China adopts a multi-crime decentralized legislative model to protect citizens from trafficking, namely (i) crimes related to the sale and trafficking of women and children for labour or sexual exploitation; (ii) the crime of forced labour; (iii) the crime of luring, organizing or forcing into prostitution or the production and dissemination of pornography; and (iv) the crime of engaging children in hazardous work. Referring to the definition of a child as "persons under the age of 14 years" and regarding the protection of boys from 14 to 18 years from trafficking, the Government states that in China, the vast majority of trafficking of children occurs around the age of six years for illegal adoption. In judicial practice, trafficking of boys over the age of 14 is rare. If boys aged 14–18 are trafficked for forced labour or prostitution, the perpetrators can be held criminally responsible for other related crimes under the Criminal Law of China, and the punishment is relatively heavier. In this regard, the Committee recalls that the Convention applies to all children under 18 years of age and that the prohibition of child trafficking must extend to boys and girls (paragraph 450 of the General Survey on the fundamental Conventions, 2012). ***The Committee therefore requests the Government to indicate the provisions in***

the national legislation that establish penalties for the offences related to the sale and trafficking of boys aged 14–18 years.

Articles 5 and 7(1). Monitoring mechanisms and penalties. Sale and trafficking of children. The Committee notes the Government's information that the Supreme People's Court, in conjunction with the Supreme People's Procuratorate and the Ministry of Public Security, continues to carry out special crackdowns on crimes of trafficking in women and children, effectively curbing the high incidence of such crimes. The Government indicates that the number of such cases accepted by the People's Court has been declining year by year. Since 2021, the public security organs have launched an operation named "Reunion", making an all-out effort to resolve cases of child trafficking, arrest suspects and search for children who were trafficked. The Government further indicates that in 2018, 30 people were prosecuted in a mega case of transnational child trafficking in Yunnan Province. In 2020, the Supreme People's Procuratorate guided the handling of a series of child trafficking cases in southeast Hubei province and identified more than 20 cases of trafficking in children. Furthermore, according to the statistical information provided by the Government, in 2020, the People's Courts at all levels across the country examined 546 cases of trafficking in women and children. Of the 1,103 defendants convicted of trafficking in women and children, 55.94 per cent were sentenced to imprisonment of more than five years. ***The Committee requests the Government to continue to provide information on the investigations, prosecutions and penalties applied, in particular the data concerning the sale and trafficking of children under 18 years for labour and sexual exploitation.***

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

Colombia

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes the observations of the National Employers Association of Colombia (ANDI) received on 31 August 2021. It also notes the joint observations of the Confederation of Workers of Colombia (CTC), the Single Confederation of Workers of Colombia (CUT) and the General Confederation of Labour (CGT), received on 1 September 2021.

Article 1 of the Convention. National policy for the abolition of forced labour and application in practice. The Committee welcomes the response to its previous request, with the information in the Government's report on the adoption of the Public Policy Framework for the Prevention and Eradication of Child Labour and the Comprehensive Protection of Young Workers, 2017–2027, structured around six strategic pillars: (1) the strengthening of institutional architecture; (2) the promotion of rights and prevention of violations; (3) the quality and coverage of care; (4) the participation of children and their families; (5) knowledge management; and (6) monitoring and evaluation. The Committee notes that the Policy Framework has been discussed by national, regional and local authorities responsible for providing care for children engaged in child labour; and that the Colombian Family Welfare Institute (ICBF), in coordination with the Ministry of Labour, provided guidance in the formulation of action plans in 32 Inter-institutional Committees for the Eradication and Prevention of Child Labour and its Worst Forms (CIETIs) in the departments and the capital city. It notes the provision, under the Progressive Plan for Social Protection and Guaranteeing Rural Sector Workers' Rights (under the Peace Agreement), of technical assistance in the area of child labour targeting family commissioners, territorial officials, social leaders, employers and workers.

The Committee welcomes the statistical information provided by the Government according to which the rate of child labour for boys and girls aged between 7 and 14 years fell by 2.1 per cent between 2015 and 2020. However, approximately 522,593 child and young workers were identified who were engaged in hazardous types of work affecting their mental and physical health, while 573,477 performed more than 15 hours work a week in their homes. The Committee notes that, in the framework of the ILO project Responsible Business Conduct in Latin America and the Caribbean

(RBCLAC), the communication campaign "Coffee Producers for Child Protection" was launched by the Salgar Coffee Growers' Cooperative in Antioquía to provide information and raise the awareness of families in coffee-growing areas to encourage them to take action to prevent child labour.

The Committee notes that the ANDI highlights the Government's achievements in reducing child labour and emphasizes that the private sector is contributing actively to achieving this objective by raising enterprise leaders' awareness of the importance of eradicating child labour in supply chains, as well as by supporting and participating in the elaboration of public policies. Public–private partnerships have been set up through the Network of Employers against Child Labour, which currently includes 44 enterprises and 19 strategic partnerships. Finally, the Committee notes that the Government emphasizes that it has an Integrated Information System for Identification, Registration and Classification of Child Labour and its Worst Forms (SIRITI), which provides a basis on which to build an institutional response to child labour. However, the CTC, CUT and CGT indicate that there are inconsistencies in the SIRITI, and that it does not provide information on the number of child workers assisted and how many have had their rights restored.

The Committee requests the Government to continue adopting measures, in collaboration with the social partners, to eliminate child labour, including child labour in dangerous conditions. To this end, the Committee requests the Government to provide information on the measures adopted in the context of the Public Framework Policy for the Prevention and Eradication of Child Labour and the Comprehensive Protection of Young Workers, 2017–2027, and their results. The Committee also requests the Government to continue providing updated statistical data on the nature, extent and trends of child labour, particularly for child workers under the minimum age of 15 years, as well as information on the number of child workers covered by the measures adopted under the new policy.

Article 2(3) of the Convention. Compulsory education. The Committee has previously encouraged the Government to continue its efforts to ensure that all children attend school at least up to the age of 15 years (as provided in article 67 of the Political Constitution). The Committee notes with ***interest*** the detailed information provided by the Government and in particular that: (1) progress has been made in structuring a National Observatory of Educational Trajectories as an information system on the situation of students (access, repetition, those who have fallen behind or dropped out, and graduation) from pre-school to middle school, to facilitate analysis and the formulation of evidence-based public policies; (2) the Ministry of Education, in collaboration and coordination with the Certified Territorial Bodies (ETCs), is implementing a school retention strategy designed to take account of the health emergency, which includes reinforcing school retention strategies (including school meals programmes, coaching to prevent students falling behind, additional education days and flexible education, school residences and school transport); and (3) to promote retention within the education system, the Government has taken numerous measures, including providing training to 5,558 teachers and school heads in 83 ETCs in flexible education models during the second half of 2020, strengthening education services in rural areas by providing 234 educational establishments in 14 ETCs with sets of supplementary educational materials, such as libraries, laboratories and maps for use in the flexible education models.

The Committee, however, notes the Government's indication that approximately 164,407 child workers (aged between 5 and 17 years) were without schooling in the fourth quarter of 2020. The Committee also notes, according to UNESCO statistics, that in 2019 there were 35,080 children and 106,186 young persons who were not at school; while in the same year the net primary (6 to 10 years of age) school attendance rate was at 93.9 per cent, and the secondary (11 to 16 years of age) school attendance rate was at 79.8 per cent. The Committee notes the Government's indication that it is necessary for the Ministry of Labour, together with the various social actors and strategic partners, to continue developing innovative strategies for activities to prevent and eradicate child labour in order to make further progress in achieving this goal. ***The Committee trusts that the measures adopted will make it possible to continue promoting and ensuring compulsory schooling for children at the national level, at least up to the age of 15 years, and requests the Government to continue providing information***

on any measures adopted and their results. The Committee also requests the Government to continue providing updated statistics on the school attendance and completion rates of children under the age of 15.

Article 9(1). Penalties and labour inspection. The Committee notes the information provided by the Government on: (1) the legal instruments available to the labour inspectorate in carrying out its investigations; (2) the penalties that can be imposed (ranging from fines to the immediate stoppage of work); (3) section 113 of the Children and Young Persons Code, under which labour and social security inspectors responsible for authorizing work by young persons over the age of 15 years are required to undertake inspections to ascertain safety and working conditions for the health of the worker. For that purpose, in 2016 the Ministry of Labour issued a memorandum setting out inspection strategies and guidelines for the protection of the labour rights of children. While taking note of the functions of the labour inspectorate, the possibility of carrying out investigations and imposing penalties, the Committee observes that, according to the Government's report, the rate of child labour, as well as that of children engaged in hazardous types of work, has further increased. ***Under these circumstances, the Committee trusts that the Government will continue taking all the necessary measures to give full effect to the Convention and once again requests it to provide information on the number of investigations carried out by the labour inspectorate in which penalties have been imposed for violations of the law in respect of work by persons under the minimum age of 15 years, with an indication of the type of penalty imposed and the nature of the violation.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)

The Committee notes the observations of the National Employers Association of Colombia (ANDI) received on 31 August 2021. It also notes the joint observations of the Confederation of Workers of Colombia (CTC), the Single Confederation of Workers of Colombia (CUT), and the General Confederation of Labour (CGT) received on 1 September 2021.

Articles 3(a), 7(1) and (2) of the Convention. Worst forms of child labour, penalties and effective and time-bound measures. Clause (b). Direct assistance for the removal and rehabilitation of victims. 1. *Sale and trafficking of children.* In reply to its request that measures continue to be taken to protect children and young persons from sale and trafficking, the Committee notes the adoption of Decree 1818 of 2020 establishing the National Strategy against Trafficking in Persons 2020–2024. It duly notes that the Strategy places coordination and cooperation between the competent authorities at the centre of strategic action for the purpose of ensuring comprehensive care for child and young victims of trafficking, including access to health, education and legal services, and regularization of migratory status, taking account of their particular conditions and the purpose of the exploitation to which they have been subjected. The Committee also notes that the Government indicates that since 2016 the Colombian Family Protection Institute (ICBF) has kept a registry of trafficking cases, disaggregated by purpose of exploitation. During the period from July 2017 to May 2021, a total of 67 children and young persons began the Administrative Process for the Restitution of Rights on the grounds of trafficking (61 for sexual exploitation and 6 for labour exploitation). The Committee further notes, from their observations, that the CTC, CUT and CGT refer to a case where six children were removed from begging in Bucaramanga and 145 others in Bogotá, a practice which according to these organizations also occurs frequently in other regions of the country. The Committee also notes that the Government reports that a number of cases of trafficking of children and young persons for sexual and labour exploitation were identified between January 2017 and May 2021. ***The Committee requests the Government, in following up the identifications mentioned above, to take the necessary measures to identify, prosecute and punish the perpetrators of trafficking of children for purposes of sexual or labour exploitation and report thereon. It also requests the Government to provide information on the results obtained within the framework of the National Strategy against Trafficking of Persons 2020–2024 in providing direct***

and adequate assistance to the child victims of trafficking in persons and in ensuring their rehabilitation and social integration.

2. *Forced recruitment of children for use in armed conflict.* In reply to the request for information on the investigations conducted and on the penal sanctions imposed regarding the forced recruitment of children and young persons, for the most part by illegal armed groups, the Committee notes that in August 2021, the Special Jurisdiction for Peace Chamber for the Recognition of Truth, Responsibility, and Determination of Fact and Conduct issued Order No. 159 under Case No. 07 "Recruitment and use of boys and girls in armed conflict", which set a provisional total of 18,677 child victims of recruitment and use by the FARC-EP. In its Order, the Chamber decided that it would prioritize investigation of recruitment occurring between 1 January 1996 and 1 December 2016, and that it would investigate the different impact of the recruitment and use of children belonging to ethnic groups. The Committee notes, from its 2020 concluding observations for Colombia, that the United Nations Committee on the Elimination of Racial Discrimination refers to the continuing recruitment of indigenous children and children of African descent by non-State armed groups (CERD/C/COL/CO/17-19, paragraph 12).

Furthermore, the Committee notes the information provided by the Government on the implementation of the specialized care programme on restoring rights for child and young victims of illicit recruitment by armed groups, which comprises three phases: identification, analysis and reception; intervention and outreach to reinforce the process of guaranteeing rights; and preparation for leaving the programme. The Committee duly notes that between 2017 and 2021 a total of 2,093 child and young victims were detached from the illegal armed groups. The Committee welcomes the approach taken to ensure the effectiveness of programmes providing care for demobilized young persons, involving coordination between the ICBF, the National System for Family Protection, the Public Prosecutor's Office, the Operational Committee for Disarmament, the National Unit for Care and Overall Reparation for Victims and the Agency for Reintegration and Normalization. The Committee notes that the ANDI recognizes progress made in assistance, care and restitution of rights for children and young victims of illicit recruitment. ***The Committee requests the Government to provide information on the investigations, prosecutions and convictions imposed on those responsible for the recruitment and use of persons under 18 years of age in the armed conflict. The Committee also requests the Government to continue taking measures to ensure comprehensive care for child victims of forced recruitment by armed groups and to prepare them for their social reintegration, and to continue providing information on the number of victims that have benefited from the specialized care programme for their social reintegration.***

Article 3(b) and 7(1). Use, procuring or offering of a child for prostitution and penalties. The Committee takes due note that the Government, in its reply to a request for information on the development of a policy to combat the commercial sexual exploitation of children and young persons, provides information on the adoption of the Public Policy Framework for the Prevention of Commercial Sexual Exploitation of Children and Young Persons, structured around three pillars: (i) Promotion of rights, prevention, participation and social mobilization; (ii) care and restitution of rights; and (iii) prosecution, surveillance and control of sexual exploiters. It notes the detailed information provided by the Government on action undertaken under this policy from 2018 to 2021, which includes awareness-raising activities for public servants, private entities, workers in the transport and tourism sectors, teachers, students and civil society organizations. The Government indicates that the Ministry of Labour collaborated with the Ministry of Trade, Industry and Tourism in drawing up plans for different municipalities aimed at reducing the risks to which children and young persons are exposed from tourists. The Committee also notes that the ANDI highlights the action coordinated with the National System for Family Protection to ensure that the prevention and eradication of commercial sexual exploitation of children and young persons is included in departmental and municipal development plans. For their part, the CTC, CUT and CGT reiterate their concern at the high number of victims of commercial sexual exploitation reported in 2018 (a total of 1,399 cases recorded by the Public

Prosecutor's Office and the Police), and emphasize the need to have updated information on the state of the related investigations and legal proceedings. ***The Committee hopes that the implementation of the policy framework will contribute to the combat against commercial sexual exploitation of children and young persons and requests to provide information on the results obtained in this regard. The Committee also requests the Government to provide information on the number of investigations and legal proceedings instituted in relation to the commercial sexual exploitation of children and on the penal sanctions imposed on its perpetrators.***

Articles 3(d) and 4(1). Determination of the types of hazardous work. Child domestic work. In response to its request that measures be taken to protect children engaged in domestic work from hazardous types of work, the Committee notes that the Government refers to the adoption of Resolution No. 1796 of 2018 updating the list of hazardous work prohibited for persons under 18 years of age. It notes with ***satisfaction*** that the list includes domestic work at home of more than 15 hours a week as hazardous, as well as domestic work in third party houses. The Government indicates that it envisages updating the list to ensure effective protection of working minors in view of the new reality brought about by the COVID-19 pandemic. ***The Committee invites the Government to continue providing information on revisions, undertaken following prior consultation of the employers and workers organizations concerned, to the list of work considered hazardous for persons under 18 years of age.***

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

Comoros

Minimum Age Convention, 1973 (No. 138) (ratification: 2004)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(3) of the Convention. Compulsory schooling and application of the Convention in practice. In its previous comments, the Committee noted that child labour was a visible phenomenon in the country, particularly as a result of poverty and of the low school enrolment rate in some cases. In this regard, the Committee noted that the capacity of schools was very limited and that some primary and secondary schools were obliged to refuse to enrol certain children of school age. Consequently, a large number of children, particularly from poor families and disadvantaged backgrounds, were deprived of an education.

The Committee noted the Government's indication that there had been a positive trend towards gender parity in school, standing at 0.87 at primary level. However, it was less satisfactory at secondary level, where the numbers of girls in school had fallen significantly. According to the Government, particular problems in the educational situation for girls involved late enrolment, a very high repetition rate – around 30 per cent in primary school and 23 per cent in secondary school – and a high drop-out rate, with only 32 per cent of pupils completing primary education.

The Committee notes the Government's statement in its report that it is taking steps to reduce the disparity in school enrolment rates for girls and boys. The Government indicates that the school mapping system is being revised by the Ministry of Education, in conjunction with the education offices and UNICEF, with a view to boosting educational coverage and ensuring better access to education for children living in rural areas. Moreover, the Committee notes that a UNICEF country programme has been adopted for 2015–19, which aims, among other things, to support the Government's efforts to enhance children's right to education. One of the main objectives of the programme is to ensure that all children are enrolled in and complete inclusive, high-quality education, with the focus on equity and achievement.

However, the Committee notes that section 2 of Framework Act No. 94/035/AF of 20 December 1994 provides that schooling is only compulsory from 6 to 12 years of age, which is three years earlier than the minimum age for admission to employment or work, namely 15 years. Referring to the General Survey of 2012 on the fundamental Conventions, the Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (paragraph 371). The Committee therefore considers it desirable to raise the age of completion of compulsory schooling so that it coincides with the minimum age for admission

to employment or work, as provided for in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee strongly encourages the Government to take the necessary steps to make education compulsory until the minimum age for admission to employment, namely 15 years. Moreover, the Committee requests that the Government intensify its efforts to increase the school attendance rate and reduce the school drop-out rate, especially among girls, in order to prevent children under 15 years of age from working. The Committee requests that the Government provide information on the results achieved in this respect.***

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

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

Congo

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted that a large number of children were involved in economic activity but that no national policy had been adopted in this regard. It noted the Government's indication that there were no inspection reports providing any information on the presumed or actual employment of children in enterprises in Congo during the reporting period. However, the Committee noted that 25 per cent of Congolese children were involved in child labour, according to UNICEF statistics.

The Committee notes with ***regret*** that the Government's report still does not contain any information on the adoption of a national policy for ensuring the effective abolition of child labour. The Committee also observes that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of 2014, noted that child labour and the economic exploitation of children remain widespread, particularly in the big cities (CRC/C/COG/CO/2-4, paragraph 74). ***Expressing its deep concern at the large number of children working below the minimum age in the country, and given the lack of a national policy designed to ensure the effective abolition of child labour, the Committee once again urges the Government to take the necessary steps to ensure the adoption and implementation of such a policy as soon as possible. It requests that the Government provide detailed information in its next report on the measures taken in this respect.***

Article 3(2) and (3). Determination of hazardous types of work and age of admission to hazardous work. In its previous comments, the Committee noted that section 4 of Order No. 2224 of 24 October 1953, which establishes employment exemptions for young workers, determines the types of work and the categories of enterprises prohibited for young persons and sets the age limit for the prohibition, prohibits the employment of young persons under 18 years of age in certain hazardous types of work, and includes a list of such types of work.

The Committee notes the Government's indication that Order No. 2224 is no longer in force. The Committee also notes that section 68(d) of Act No. 4-2010 of 14 June 2010 concerning child protection (Child Protection Act) provides that any work which, by its nature or the conditions in which it is performed, is likely to harm the health, safety or morals of the child is prohibited. It also provides that a decree issued further to the opinion of the National Labour Advisory Committee shall determine the list and the types of work and the categories of enterprises prohibited for children and the age limit for the prohibition. ***The Committee requests that the Government take the necessary steps to ensure the adoption as soon as possible of the decree determining the list of hazardous types of work, in accordance with section 68(d) of the Child Protection Act.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

The Committee notes with ***deep concern*** that the report of the Government, due since 2009, has not been received. In view of the urgent appeal that it launched to the Government in 2019, the Committee proceeded with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or similar practices. Sale and trafficking of children. In its previous comments, the Committee noted the Government's statement that there is child trafficking between Benin and Congo for the purpose of forcing children to work in Pointe-Noire in trading or domestic work. The Committee noted that sections 345, 354 and 356 of the Penal Code lay down penalties for anyone found guilty of the forcible or fraudulent abduction of persons including young persons under 18 years of age. It requested the Government to indicate to what extent sections 345, 354 and 356 of the Penal Code have been implemented in practice.

The Committee notes that, in addition to the provisions of the Penal Code, Act No. 4-2010 of 14 June 2010 on child protection in the Republic of the Congo contains provisions prohibiting and punishing the trafficking, sale and all forms of exploitation of children, including exploitation for prostitution or other forms of sexual exploitation, forced labour or services and slavery (section 60 onwards). Furthermore, the Committee takes note of the adoption of Act No. 22-2019 of 17 June 2019 on combating trafficking in persons, which contains detailed provisions on the offence of trafficking and other related offences (such as sexual exploitation, labour exploitation or exploitation of begging), as well as harsher penalties when the offence is committed against a particularly vulnerable victim, such as a child.

However, the Committee notes that in its concluding observations of 25 February 2014, the Committee on the Rights of the Child (CRC), while welcoming the local plan of action developed against trafficking in Pointe-Noire, notes with concern the persistence of cross-border trafficking of children for forced labour and sexual exploitation and internal "fostering". The CRC also expresses its concern over allegations of the complicity of some authorities in activities related to trafficking and the fact that the number of successful prosecutions remains low (CRC/C/COG/CO/2-4, paragraph 78). Furthermore, the Committee notes the concern, expressed by the Committee on the Elimination of Discrimination Against Women (CEDAW) in its concluding observations of 14 November 2018, that the Congo is a country of origin, transit and destination for trafficking in persons. The CEDAW is particularly concerned about: (i) the absence of data on the number of victims, investigations, prosecutions and convictions relating to trafficking in persons; and (ii) the low rate of prosecutions and convictions (CEDAW/C/COG/CO/7, paragraph 30). ***Recalling that penalties are only effective if they are actually enforced, the Committee requests the Government to redouble its efforts to ensure that all persons who commit acts of trafficking in children and related crimes are investigated and prosecuted and that sufficiently effective and dissuasive penalties are applied. It requests the Government to provide information on the number of investigations carried out by the competent services concerning trafficking in children under 18 years of age and the number of prosecutions carried out, convictions handed down and penalties imposed under the Penal Code and/or Act No. 4-2010 of 14 June 2010 and/or Act No. 22-2019 of 17 June 2019.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these worst forms and ensuring their rehabilitation and social integration. Sale and trafficking of children. Further to its previous comments, the Committee notes the concern expressed by the CRC, in its concluding observations of 25 February 2014, at the insufficiency of the information provided by the Congo on the assistance and reintegration services available to child victims of trafficking (CRC/C/COG/CO/2-4, paragraph 78). In this regard, the Committee notes that, in its national report submitted to the Human Rights Council of 14 September

2018 (A/HRC/WG.6/31/COG/1, paragraphs 71–74), the Government indicates that state and non-state actors are focusing their efforts on prevention, victim identification, reception and care, repatriation and reintegration. With regard to the identification of victims, the principal actors are: the Government, neighbourhood or village leaders, law enforcement officers (police officers, gendarmes, border guards and immigration officials) and NGOs. Child victims of trafficking are housed with foster families. The Government arranges the repatriation and reintegration of foreign victims of trafficking and organizes return assistance for this purpose.

The Committee further notes that Act No. 22-2019 of 17 June 2019 on combating trafficking in persons contains a chapter on prevention, identification, protection and assistance to victims. Among other things, the Act provides that a national committee against trafficking in persons shall be created, tasked with: (i) preventing and combating trafficking in persons in all its forms; (ii) guaranteeing the protection of victims; (iii) collecting data relating to trafficking; and (iv) promoting cooperation and collaboration for these purposes (article 34). ***The Committee requests the Government to provide detailed information on the specific measures taken to prevent and combat child trafficking and to provide child victims of trafficking with appropriate services for their rehabilitation and social integration, including through the implementation of the provisions of Act No. 22-2019 of 17 June 2019 on prevention, identification, protection and assistance to victims and, in particular, the action taken by the national committee against trafficking in persons. It also requests the Government to provide information on the number of children thus prevented from being trafficked or removed from trafficking and subsequently rehabilitated and socially integrated.***

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

Costa Rica

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the observations of the Confederation of Workers Rerum Novarum (CTRN), received on 31 August 2021.

Article 3(a) and (b) of the Convention. Worst forms of child labour. Sale and trafficking of children for commercial sexual exploitation; use, procuring or offering of a child for prostitution. The Committee previously requested the Government to intensify its efforts to ensure the thorough investigation and robust prosecution of persons who commit criminal acts such as the sale and trafficking of children for commercial sexual exploitation, and to ensure that assistance is provided to children in all cases. The Committee requested the Government to indicate the measures taken to implement the provisions of Act No. 9095 related to child victims of trafficking, and to indicate the number of investigations, prosecutions, convictions, and the penalties imposed in this regard.

The Committee notes that, according to CTRN, despite progress in combating the trafficking of children and young persons, the efforts made by the Government are inadequate, in view of the low number of convictions in cases of trafficking of children for commercial sexual exploitation.

The Committee notes, in the Government's report, various amendments to the Penal Code concerning child victims of trafficking: (i) the amendment to Act No. 9685 of 21 May 2019, extending the limitation period for prosecutions in cases of sexual offences against minors; (ii) the amendment to sections 172 and 189 of Act No. 4573, increasing the length of prison sentences in cases of trafficking of children; and (iii) the amendment to section 5 of Act No. 9095 concerning the definition of types of trafficking to which children are subjected.

The Committee also notes that in 2018 the Office of the Deputy Prosecutor against trafficking in persons and migrant smuggling improved the institutional response at the local level, establishing "liaison prosecutors" in 23 territories in Costa Rica most affected by the trafficking of children. Local and inter-institutional teams for combating the trafficking of persons have also been set up, involving the

prosecution authorities, the criminal investigation police, the Office for the Care and Protection of the Victims of Crimes, and the administrative, border and migration police forces in certain priority areas. The Committee notes that the Ministry of Public Education, as an active member of the National Coalition against Migrant Smuggling and Human Trafficking (CONATT), has developed a programme called "Training strategy for the teaching and student community for protection against child labour and its worst forms, trafficking in persons and migrant smuggling". In 2019, a total of 553 persons were trained in these subjects by means of 20 workshops in seven regions of Costa Rica. CONATT also conducted awareness-raising courses for 500 local judiciary officials and representatives of civil society through the production of a training manual on offences related to the trafficking of persons for labour exploitation.

The Committee notes the different sources of statistical data between 2017 and 2019 concerning the trafficking of children for commercial sexual exploitation: (i) in 2017, the judiciary's Directorate of Planning recorded a total of 137 complaints filed with the Public Prosecutor's Office and the Judicial Investigation Agency, which resulted in 23 convictions and three acquittals; (ii) the 2019 report on the trafficking of persons indicates that the CONATT rapid response team recorded that there were two girls among 14 victims of trafficking for sexual exploitation; (iii) statistics for 2019 from the judiciary's Gender-Based Violence Observatory, cited in the CTRN report, indicate a total of 32 victims of human trafficking (28 girls and four boys), 48 victims of pimping (36 girls and 12 boys), including nine cases of aggravated pimping and 58 cases of paid sexual relations with minors (44 girls and 14 boys); (iv) the 2019 report from the Directorate-General for Migration and Foreigners on trafficking in persons, which is attached to the Government's report, indicates that out of 62 trafficking victims, two girls were victims of sexual exploitation and two girls were victims of domestic servitude. ***The Committee welcomes the Government's efforts to combat the trafficking and commercial sexual exploitation of children. The Committee requests the Government to continue providing detailed information on the number of investigations, prosecutions, convictions and penalties imposed in this regard.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (c). Preventing children from becoming engaged in the worst forms of child labour and ensuring access to free basic education for all children removed from the worst forms of child labour. The Committee previously asked the Government to intensify its efforts to improve the operation of the education system through the *Avancemos* ("Let's move forward") and *Yo me apunto* ("I'm enrolling") programmes to increase the school attendance and completion rates. It also asked the Government to indicate the results achieved through these two programmes and the National Scholarship Fund (FONABE), including the number of children, disaggregated by age and gender, who have been removed from the worst forms of child labour and reintegrated into the education system as a result of these programmes.

The Committee notes the indication in the Government's report that the number of working minors aged between 5 and 17 years has decreased as a result of the coordination of different actions such as: (i) the *Puente al Desarrollo II* ("Bridge to development II") national strategy; (ii) the use of scholarships and conditional money transfers enabling students to remain in the education system; (iii) a cooperation agreement between the Joint Social Assistance Institute (IMAS) and the Ministry of Labour and Social Security; and (iv) the *Yo me apunto* programme of the Ministry of Public Education. The Government also refers to a reduction in the child employment rate, which also coincides with an increase in the integration of persons under 18 years of age in the education system, compared with 2011.

The Committee also notes that, according to IMAS data for 2019, bursary funds and items for nursery and primary schools from FONABE have been transferred to IMAS for the purpose of a conditional monetary transfer programme called *Crecemos* ("We're growing"), set up in 2019. A total of 188,960 children under 12 years of age and a total of 19,216 children between 13 and 18 years of age have been the beneficiaries of this programme. The Committee also notes the statistics of the *Avancemos* programme: the number of beneficiary children under 12 years of age was 60 in 2017; 88 in

2018; and 68 in 2019; as regards children between 13 and 18 years of age, the number of beneficiaries was 153,839 in 2017; 151,028 in 2018; and 148,696 in 2019. In 2020, a total of 157 children (48 girls and 109 boys) also benefited from this programme. ***While noting the Government's efforts to improve access to free basic education for the most vulnerable children, to prevent their involvement in the worst forms of child labour, the Committee requests the Government to provide information on the school enrolment, attendance and completion rates in primary and secondary education, and also the school dropout rate, including for the most vulnerable children. The Committee also requests the Government to indicate the number of children, disaggregated by age and gender, who have been removed from the worst forms of child labour and reintegrated in the education system through these programmes.***

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

Côte d'Ivoire

Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted with concern the high number of children under the minimum age for admission to work of 14 years that were engaged in work, particularly under hazardous conditions (1,424,996 children aged from 5 to 17 years were engaged in types of work that are to be abolished, of which 539,177 were victims of hazardous types of work). While noting the National Plan of Action to Combat the Worst Forms of Child Labour 2015–2017 (PAN-PFTE 2015–2017), the Committee requested the Government to intensify its efforts and to take the necessary measures for the progressive elimination of child labour, particularly in rural areas.

The Committee notes the detailed information provided by the Government in its report concerning the review of the implementation of the PAN-PFTE 2015–2017. The Government indicates that considerable progress has been observed, both in terms of preventing the phenomenon and in the protection of victims, strengthening of the legal framework, prevention and monitoring. For example, grass-roots awareness campaigns, through visits to the rural communities, have made it possible to cover more than 2 million people. These awareness-raising and communication campaigns have informed the populations of the prohibition and abolition by law of child labour. As a result, parents are now able to distinguish between hazardous work prohibited for children and light work authorized for young persons. Moreover, 1,574 labour inspections were conducted by the General Labour Directorate (DGT) to monitor compliance with labour regulations and combat child labour. The Government also indicates that two child labour monitoring mechanisms are now functioning in Côte d'Ivoire, of which the observation and monitoring system for child labour in Côte d'Ivoire (SOSTECI), was launched by the Ministry of Employment and Social Protection. This mechanism makes it possible not only to identify and refer victims or children at risk of child labour, but also establishes a national database on the phenomenon.

The Committee notes with ***interest*** that a third National Plan of Action, the PAN-PFTE 2019–2021, was launched on 25 June 2019. It aims at contributing to the vision of a Côte d'Ivoire "free from child labour by 2025" by taking the protection of children aged between 5 and 17 years from types of work that are to be abolished as its strategic result. To that end, action has been structured around three poles: (i) access for children to basic social services; (ii) reduction of the socioeconomic vulnerability of families and communities; and (iii) the institutional, legal and programmatic framework to combat child labour. ***While noting the measures taken, the Committee requests the Government to pursue its efforts to ensure the progressive elimination of child labour in the country. It also requests the Government to provide information on the measures adopted in this regard, including concrete measures taken under the PAN-PFTE 2019–2021, and on the results obtained. Finally, the Committee requests the Government to continue to provide information on the application of the Convention in practice – in***

particular the information collected by the SOSTECI – for example, by providing statistical data related to the nature, extent and trends of work by children and young persons under the minimum age specified by the Government when it ratified the Convention, and extracts from the reports of the inspection services.

Article 2(3). Age of completion of compulsory schooling. In its previous comments, the Committee noted that education is neither compulsory nor free in Côte d'Ivoire. It also noted that a bill is being drawn up to make schooling compulsory until the age of 16 years. Noting the large number of children of the age to be in primary school or the first cycle of secondary education that do not attend school (nearly 1.7 million), the Committee requested the Government to take immediate measures to ensure that the legislation introducing compulsory schooling for children aged between 6 and 16 years is introduced as soon as possible.

The Committee notes with ***satisfaction*** that section 2-1 of Act No. 2015-635 amending the Act of 7 September 1995 concerning education, adopted on 17 September 2015, makes school attendance for children aged between 6 and 16 years compulsory. The Committee notes further that the Government indicates in its report that, for effective application of a law introducing compulsory schooling, the State has committed to the construction of schools, school canteens, and decent housing for teachers every year, throughout the national territory, in order to enable all children, wherever they may be, to have access to free basic education of quality. The Government also announces the adoption of a decree promoting schooling for children, in particular for girls, in both urban and rural areas. This is Decree No. 2020-997 of 30 December 2020, amending Decree No. 2012-488 of 7 June 2012 on the attributions, organization and operation of the management committees of public educational establishments (COGES) which, in its new section 3(9) strengthens the mandate of the COGES, by making them responsible for "contributing to the schooling of children, in particular of girls, in both urban and rural areas".

Articles 6 and 7. Apprenticeship and light work. In its previous comments, the Committee noted a divergence within the legislation of Côte d'Ivoire. Section 23(8) of the new Labour Code (Act No. 2015-532 of 2015) sets the age of apprenticeship at 14 years, while under section 3 of Decree No 96-204 of 7 March 1996 on night work (Decree No. 96-204 of 1996) children under 14 years of age may be admitted to apprenticeship or pre-vocational training provided they are not engaged in work during the period defined as night work or, more generally, during the period of 15 consecutive hours between 5 p.m. and 8 a.m. In this regard, the Committee noted the Government's indication that a draft text to revise Decree No. 96-204 of 1996 is under preparation. The Committee expressed the hope that, in the context of this revision, the Government would take the necessary measures to bring the said Decree into conformity with *Article 6* of the Convention and set the minimum age for entry into apprenticeship at 14 years throughout all the legislation of Côte d'Ivoire.

The Committee takes note of the Government's indication that the revision of Decree No. 96-204 of 7 March 1996 on night work is not yet complete and that it will keep the Committee informed of the adoption of the new text. ***Recalling that under Article 6 of the Convention, the age of admission to work as part of an apprenticeship programme is 14 years, the Committee again hopes that the Government will take the necessary measures to bring Decree No. 96-204 of 1996 into conformity with the Convention and thus fix the age of entry to apprenticeship at 14 years. It requests the Government to provide information in this regard in its next report.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

Articles 3(d) and 7(2)(a) and (b) of the Convention. Hazardous work, preventing children from being engaged in and removing them from the worst forms of child labour. Children in agriculture, in particular the cocoa sector. In its previous comments, the Committee noted the adoption in June 2017 of Order No. 2017-017 determining the list of hazardous types of work prohibited for children under 18 years of age, prohibiting hazardous work in several agricultural branches. The Committee nonetheless noted

that the National Plan of Action to Combat the Worst Forms of Child Labour 2015–17 (PAN-PFTE 2015–17), which refers to the 2014 report on the situation of child labour in Côte d'Ivoire, indicates that the number of children subjected to hazardous types of work in the agricultural sector is 189,427, with a total of 105,699 children between the ages of 14 and 17.

The Committee notes the review of the implementation of the PAN-PFTE 2015–2017, according to which the majority of the interventions were registered in the agriculture sector, specifically the cocoa sector, that is 64 per cent of the initiatives carried out in the context of the plan. This involves mainly programmes for supporting cocoa sustainability or productivity, certification, child labour monitoring and remediation systems, improving the living conditions of cocoa-producing communities, and improving children's access to education. Further, the Committee notes the Government's indication in its report submitted under the Minimum Age Convention, 1973 (No. 138) that the Child Labour Monitoring and Remediation System (SSRTE), implemented by the cocoa and chocolate industry, is operational in Côte d'Ivoire and enables the identification and referral of children at risk or victims of labour in the cocoa agriculture sector.

The Committee notes the Government's indication in its report that the implementation of the Third National Plan of Action to Combat the Worst Forms of Child Labour 2019–21 (PAN-PFTE 2019–21) reflects Côte d'Ivoire's firm commitment to intensify its efforts to combat child labour by tackling the root causes of the phenomenon, including the poverty of cocoa farming households. Specific objectives of the PAN-PFTE 2019–21include strengthening the implementation of international commitments made by Côte d'Ivoire, such as those of the 2001 Harkin-Engel Protocol, which aimed to reduce child labour in cocoa sector in Côte d'Ivoire by 70 per cent by 2020, and target 8.7 of the Sustainable Development Goals, which calls for the elimination of child labour by 2025. The PAN-PFTE 2019–21 also envisages addressing new challenges that hamper the country's efforts to combat child labour, including the issue of traceability of the cocoa supply chain to track the product's route from field to market. ***While noting the efforts made by the Government, the Committee encourages it to intensify its efforts to prevent children under 18 years from engaging in hazardous work, in particular in the cocoa agriculture sector. In this regard, the Committee requests the Government to provide information on the impact of the PAN-PFTE 2019–21, particularly regarding the number of children removed from hazardous work in cocoa agriculture and subsequently rehabilitated and reintegrated into society. Lastly, the Committee requests the Government to provide any data collected by the SSRTE on the number of children engaged in this worst form of child labour, disaggregated as much as possible by age and gender.***

Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Child HIV/AIDS orphans. In its previous comments, the Committee noted that the 2016 estimates published by UNAIDS gave the figure of 320,000 orphans and vulnerable children (OVC) due to HIV/AIDS in the country and that the Government, with the support of UNAIDS, had established a National HIV/AIDS Strategic Plan 2016–20 covering care and support for OVC and their families.

The Committee notes the Government's information regarding the results achieved through the implementation of the National HIV/AIDS Strategic Plan 2016–20, particularly: (i) the revision of the national policy document on care and support for OVC (June 2018); and (ii) the establishment of a comprehensive package of medical, psychosocial, physical, socioeconomic, legal, food and nutrition care and support services for the well-being and survival of persons living with HIV, carers and OVC. The Government also indicates several measures and strategies adopted to combat the HIV/AIDS epidemic in the country, including free antiretroviral treatment since 2008 and all measures offered to persons living with HIV since 2019. The Committee notes, however, that, according to UNAIDS estimates, the number of OVC due to HIV/AIDS stood at 340,000 in 2020. ***Recalling that children who are orphaned because of HIV/AIDS are at particular risk of being engaged in the worst forms of child labour, the Committee requests the Government to step up its efforts to protect against the worst forms of labour, especially within the framework of the national policy on care and support for OVC, as well as other***

measures adopted by the Government. It requests it to continue to provide information on the measures taken in this respect and the results achieved.

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

Democratic Republic of the Congo

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted that the Committee on the Rights of the Child (CRC) expressed concern at the large number of children involved in child labour in the country. It also noted that, according to the Government's initial report to the CRC, because of the economic situation, many parents allow or even send their children to do work which they are forbidden to perform by law. The Committee observed that virtually one out of two children between 5 and 14 years of age is engaged in child labour, particularly in rural areas (46 per cent in rural areas compared to 34 per cent in urban areas).

The Committee notes the Government's indication in its report that the National Plan of Action to combat the worst forms of child labour (PAN) was adopted in 2015. However, the Committee observes that, according to the Second Demographic and Health Survey (EDS-RDC II 2013–14), 38 per cent of children between 5 and 17 years of age who were questioned had worked during the week preceding the survey, among whom 27.5 per cent had worked under dangerous conditions (pages 336–337). The Committee expresses its ***deep concern*** at the number of children involved in child labour, including in dangerous conditions. ***The Committee urges the Government to step up its efforts to secure the elimination of child labour. It requests that the Government provide information on the application of the Convention in practice, including statistics, disaggregated by gender and age, on the employment of children and young persons, together with extracts from labour inspection reports.***

Article 2(1). Scope of application and labour inspection. The Committee noted previously that Act No. 015/2002 of 16 October 2002 issuing the Labour Code applies only where there is an employment relationship. It also noted that the CRC expressed concern at the prevalence of child labour in the informal economy, which frequently falls outside the protection afforded by national legislation. The Committee reminded the Government that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether or not it is performed on the basis of an employment relationship and whether or not it is remunerated. The Government indicated in this regard that it would intensify its efforts to make labour inspection more effective. The Committee noted the Government's indication that the Committee's recommendations regarding child labour in the informal economy would be taken into account when the PAN is implemented.

The Committee notes that there is no information on this subject in the Government's report. It observes that the PAN refers to the fact that labour inspection faces a particularly difficult challenge in the context of enforcing the Labour Code in certain sectors where there is a concentration of child labour, such as the informal urban economy or agriculture (page 22). In this regard, the Government plans to draw up and implement a programme whereby state law enforcement officials will collaborate in the monitoring and prohibition of child labour. It also plans to establish a community-based child labour surveillance mechanism which collaborates with the labour inspectorate and also plans to develop an institutional capacity-building programme (PAN, Part 1, actions 1.1.2 and 1.2). In this regard, referring to the General Survey of 2012 on the fundamental Conventions (paragraph 407), which indicates that the inability of the labour inspectorate to monitor outside a given area is particularly problematic when child labour is concentrated in sectors outside its coverage, the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors. ***Recalling that the Convention applies to all forms of work or employment, the Committee once again requests that the Government take measures, in the context of the PAN, to adapt and strengthen the labour inspection services so as to ensure the monitoring of child labour in the informal economy, and to ensure that children benefit from the protection afforded by the Convention. It also requests that the Government provide information on the structure, functioning and work of the labour inspectorate in relation to child labour.***

Article 2(3) of the Convention. Age of completion of compulsory schooling. In its previous comments, the Committee noted that, according to the information available on the website of the Senate, a Bill establishing the fundamental principles of the national education system had been put to the vote and adopted at the ordinary session of March 2013. The Committee also noted the detailed statistics on education provided in the Government's report. It observed that the primary school completion rate is close to 65 per cent at national level. However, there are significant disparities between the regions: for example, 78.5 per cent in the Kinshasa region compared with 56.2 per cent in South Kivu. Furthermore, the primary school completion rate is much higher for boys than for girls (73.8 per cent compared with 54.7 per cent). As regards secondary education, the gross enrolment rate for the first year of secondary school is barely 47 per cent at national level. The Committee also noted that, according to the *Education for All Global Monitoring Report 2012*, published by UNESCO, although the results of household surveys suggest that the proportion of out-of-school children fell by 25 per cent between 2001 and 2010, the number of out-of-school children is probably well above 2 million, which means that the Democratic Republic of the Congo is likely to be among the five countries with the highest numbers of out-of-school children.

The Committee notes the adoption of Framework Act No. 14/004 of 11 February 2014 on the national education system (Education Act, a copy of which is attached to the Government's report), which introduces an eight-year duration for basic education. It also notes the adoption of the Sectoral Strategy for education and training for 2016–25. ***In view of the fact that compulsory schooling is one of the most effective means of combating child labour, the Committee urges the Government to step up its efforts to ensure that children below the minimum age of 14 years for admission to employment or work are integrated into the education system, with a special focus on girls. It requests that the Government provide detailed information on the measures taken and the action programmes implemented to this end, and on the results achieved.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Organisation of Employers (IOE), received on 30 August 2017, and of the International Trade Union Confederation (ITUC), received on 1 September 2017, and of the in-depth discussion on the application of the Convention by the Democratic Republic of the Congo which took place in the Conference Committee on the Application of Standards in June 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict. In its previous comments, the Committee noted that section 187 of Act No. 09/001 of 10 January 2009 establishes a penalty of penal servitude of ten to 20 years for the enlistment or use of children under 18 years of age in the armed forces, armed groups or the police. The Committee noted the Government's indication that the Armed Forces of the Democratic Republic of the Congo (FARDC) does not recruit children under 18 years of age. However, the Committee observed that, according to the 2011 report of the United Nations (UN) Secretary-General on children and armed conflict, a large number of children were still being recruited and continued to be associated with FARDC units. The report indicated that armed groups and the FARDC were responsible for numerous serious violations against children, including physical and sexual violence, killings and maimings.

The Committee notes the observations of the ITUC according to which the serious violations committed by the FARDC have not given rise to criminal prosecutions. The ITUC also states that numerous witnesses have made allegations that FARDC officers played an active role in the enlistment of children and that the Government has sufficient information to open investigations and prosecute the suspected perpetrators of these atrocities. Lastly, the ITUC highlights the contradictory actions of the Government, which is carrying out reforms to prevent further recruitment, but at the same time allows the police and the armed forces not only to recruit children but also to commit physical and sexual violence against them.

The Committee also notes the IOE's statement that the adoption of legislation is insufficient without effective enforcement.

The Committee notes the Government's indication in its report that an action plan to combat the recruitment and use of children in armed conflict and other serious violations of children's rights by the armed forces and security services of the Democratic Republic of the Congo was adopted in 2012. The Government also indicates that one of the measures taken as part of the action plan was the appointment in 2015 of the Special Adviser to the Head of State on action to combat sexual violence and the recruitment of children into the armed forces. It also notes the Government's indication that 17 children's courts have been set up and are operational. The Committee observes that, according to the report of 20 April 2016 of the UN Secretary-General on children and armed conflict (A/70/836–S/2016/360) (2016 report), three new provincial joint technical working groups were established to accelerate the implementation of the action plan (paragraph 54). In this regard, it notes that, according to information from the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), a total of seven joint technical working groups were established in the provinces in 2017 (Goma, Bukavu, Kisangani, Lubumbashi, Kalemie, Bunia and Katanga), in addition to the national group. The Committee also takes note, according to the report of 24 August 2017 of the UN Secretary-General on children and armed conflict (A/72/361–S/2017/821) (2017 report of the Secretary-General), of the validation of standard operating procedures for age verification, the adoption of a Ministry of Defence directive for the dissemination of those procedures within the FARDC and the screening of new recruits. The report also indicates that the UN documented the arrest of at least 15 FARDC members and five Congolese National Police (PNC) officers, in particular for offences linked to the recruitment and use of children in armed conflict before 2016, and that 41 individuals (including 23 FARDC members and 11 PNC officers) were convicted of sexual violence against children and received sentences ranging from three years' imprisonment to the death penalty. The Government reported that perpetrators of sexual violence against children were convicted in 129 cases (paragraph 71).

While noting these measures, the Committee nevertheless observes that, according to the 2017 report of the Secretary-General, the UN verified that 492 children (including 63 girls) were recruited and used by armed groups in 2016, with 82 per cent of cases occurring in North Kivu. At the time of recruitment, 129 children were under 15 years of age (paragraph 63). In addition, the report indicates that at least 124 children were killed and 116 maimed (paragraph 65). The rape of 170 girls and one boy was verified, the FARDC being responsible for 64 cases and the PNC for 12 cases (paragraph 66). The Committee also notes that, according to the 2016 report of the Secretary-General, a total of 488 cases of new recruitment of children were recorded in 2015, 89 per cent of which involved armed groups in North Kivu, in addition to the cases of ten boys previously recruited by the FARDC (paragraph 45). The report also refers to 254 cases of sexual violence against children, including 68 perpetrated by the FARDC, 19 by the PNC, and two by the National Intelligence Agency (paragraph 48). Lastly, it states that 68 individuals, including high-ranking officers, were arrested, with 37 receiving sentences of up to 20 years' imprisonment for sexual violence against girls (paragraph 55).

The Committee further observes that the report of the Secretary-General on MONUSCO of 9 March 2016 (S/2016/233) refers to the fact that the Military Academies High Command (CGEM) screened new FARDC recruits and found among them 84 children, who were then demobilized. The CGEM called on the FARDC Joint Chiefs of Staff to impose sanctions on the recruiters (paragraph 48).

The Committee also notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017 (S/2017/565), between January and March 2017 MONUSCO documented 28 new cases of child recruitment by the Kamuina Nsapu militia in the Kasai provinces, where numerous cases of violence have been recorded. It also documented the killing of at least 59 children, including 25 girls, and the maiming of 44 children, including four girls (paragraph 48). The Committee also notes that, according to the MONUSCO report "Invisible survivors: Girls in armed groups in the Democratic Republic of Congo from 2009 to 2015", since the adoption of the Child Protection Act in 2009, which criminalizes the recruitment of children, a total of 8,546 children, including 600 girls, were documented as recruited by the armed groups in the Democratic Republic of the Congo (up to May 2015). Furthermore, the Committee observes that the UN Committee on the Rights of the Child (CRC), in its concluding observations of 28 February 2017 (CRC/C/COD/CO/3-5), noted that, despite some improvements, there have been reports of the involvement of children in the activities of the national armed forces and reports of collaboration of the armed forces with armed groups that are

known for the recruitment or use of child soldiers (paragraph 47). The Committee also observes that, according to the report of MONUSCO and the UN Office of the High Commissioner for Human Rights (OHCHR) entitled "Accountability for human rights violations and abuses in the DRC: Achievements, challenges and way forward (1 January 2014–31 March 2016)", the number of prosecutions of members of armed groups remains very low. The report states that this is mainly due to the volatile security situation in the affected areas, which complicates investigations, particularly in terms of identifying the victims and the alleged perpetrators (paragraph 47). The report also describes the obstacles that exist, such as political considerations or de facto immunities enjoyed by certain suspected perpetrators on account of their customary powers. It adds that legal proceedings against members of armed groups would send a strong signal at national level and would also have a strong impact on the vetting of the security forces, since a conviction would make an individual ineligible to join the national armed forces (paragraphs 54–55). In this regard, the Committee notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017, MONUSCO engaged in advocacy with the military prosecutor with a view to bringing to justice the perpetrators of serious children's rights violations (paragraph 48).

The Committee expresses its ***deep concern*** at the large number of children who are still being recruited by armed groups, especially as the persistence of this worst form of child labour leads to other violations of children's rights, such as killings and sexual violence, which have also been committed by the armed forces. ***While recognizing the complexity of the situation on the ground and the existence of armed conflict and armed groups in the country, the Committee once again urges the Government to take urgent measures to ensure the full and immediate demobilization of all children in the FARDC ranks and to put a stop in practice to the forcible recruitment of children under 18 years of age into armed groups. The Committee urges the Government to take immediate and effective measures to ensure the thorough investigation and robust prosecution of all persons, including officers in the regular armed forces, who forcibly recruit children under 18 years of age for use in armed conflict, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Act No. 09/001 of 10 January 2009, including by the 17 courts established for this purpose. The Committee requests the Government to provide information on the number of investigations conducted, prosecutions brought, convictions issued against such persons and sanctions imposed.***

Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child labour in mines. In its previous comments, the Committee noted the observations of the Confederation of Trade Unions of the Congo (CSC) that young persons under 18 years of age are employed in mineral quarries in the provinces of Katanga and East Kasai. It noted the UN Special Rapporteur's observation that military groups were recruiting children for forced labour for the extraction of natural resources. The Committee observed that, although the legislation is in conformity with the Convention on this point, child labour in mines was a problem in practice. The Committee noted UNICEF statistics indicating that nearly 50,000 children are working in mines in the Democratic Republic of the Congo, including 20,000 in the province of Katanga (south-east), 12,000 in Ituri (north-east) and some 11,800 in Kasai (centre).

The Committee notes the observations of the ITUC indicating that a 2016 Amnesty International report revealed that children work in the mines for up to 12 hours per day, carrying heavy sacks of rocks and earning only between US$1 and US$2 per day. The report also states that children work in the open air, in very high temperatures or rain, without any protective clothing and in constant contact with heavy concentrations of cobalt. The ITUC also reports that the climate of impunity that prevails regarding the employment of children in the mining sector is a direct consequence of the ineffectiveness and incompetence of the labour inspectorate. It adds that penalties for the use of forced labour remain inadequate and are not an effective deterrent.

The Committee also notes that, in the Conference Committee on the Application of Standards, the Worker member of the Democratic Republic of the Congo referred to the 2015 Amnesty International report on five mining sites in Katanga, according to which the health risks faced by children in mines include a potentially fatal lung disease, respiratory sensitization, asthma, shortness of breath and decreased pulmonary function.

The Committee also notes the observations of the IOE to the effect that if the human resources allocated to law enforcement are sparse, the revenue from these provinces and from the mining sector must be reinvested in recruiting the necessary staff, in the interests of the country and of its children.

The Committee notes the Government's indication that the economy of the Democratic Republic of the Congo is mainly based on the exploitation of natural resources, involving hazardous operations in mining and quarrying, forestry, oil and gas. It adds that children between 16 and 18 years of age are most exposed to hazardous work in small-scale mining. The Committee takes notes of the Ministerial Order No. 0058/CAB.MIN/MINES/01/2012 of 29 February 2012 issuing procedures for the classification and authorization of gold- and tin-mining sites in the provinces of Katanga, Maniema, North Kivu, South Kivu and Eastern Province, attached to the Government's report. Section 8 of the Order provides that the socio-economic situation of the region of the Great Lakes in general, and of the Democratic Republic of the Congo in particular, must be taken into account as an indicator and that steps must be taken to ensure that children are not employed on mining sites. The Committee also notes the Government's indication that an inter-ministerial committee responsible for monitoring child labour in mines and on mining sites was set up in 2016. It indicates that the mandate of this committee is to: (1) coordinate and facilitate the various initiatives for combating child labour in mines and on mining sites; (2) act as the Government's advisory, monitoring and follow-up body vis-à-vis the competent ministries and departments; and (3) engage in advocacy vis-à-vis third parties. The report also states that the abovementioned committee has drawn up a three-year action plan for 2017–20 with the general objective of coordinating actions on the ground to put an end to the presence of children in mining operations by 2020. The plan contains five specific objectives, namely: (i) monitor and evaluate the implementation of actions to combat child labour in mines and on mining sites; (ii) resolve the issue of the presence of children; (iii) step up the enforcement of measures for removing children from mineral supply chains, giving priority to "3TG" (tungsten, tantalum, tin and gold); (iv) implement corrective measures on the ground proposed by the competent ministries and departments; and (v) adopt a communication strategy. Lastly, the Committee notes that, according to information gathered by the ILO in the Democratic Republic of the Congo, a draft sectoral strategy was formulated and discussed at a workshop in September 2017 and is currently awaiting final adoption. The prime objective of this strategy is the gradual removal of children from small-scale mines and small-scale mining sites, and their social reintegration within their national community. The strategy also reproduces the objectives of the three-year action plan, with the additional objective of combating impunity. The Committee notes that the strategy states that an operational plan must be formulated as soon as possible. While noting the measures taken by the Government, the Committee once again expresses ***deep concern*** at the large number of children working under dangerous conditions in mines. ***The Committee urges the Government to take immediate and effective measures, as a matter of urgency, to eliminate forced child labour and hazardous work for children under 18 years of age in mines. In this regard, it requests the Government to take the necessary steps to ensure the thorough investigation and robust prosecution of offenders, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the actions taken and the results achieved as part of the implementation of the three-year action plan for 2017–20 and of the sectoral strategy for 2017–25, once the latter has been officially adopted.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. 1. *Child soldiers.* Further to its previous comments, the Committee notes the Government's indication that it is consolidating data on children who have been the beneficiaries of demobilization and social and economic reintegration programmes. The Committee notes that, according to the 2017 report of the Secretary-General, a total of 1,662 children (including 177 girls) were separated from armed groups in 2016 (paragraph 74). In 2015, a total of 2,045 children were separated from armed groups and ten boys were separated from the FARDC (2016 report of the Secretary-General, paragraph 53). The Committee also observes that, according to the report of the Secretary-General on MONUSCO of 10 March 2017 (S/2017/206), between January and March 2017, 61 boys and nine girls were separated or escaped from armed groups (paragraph 33). In addition, it notes that, according to the report of the Secretary-General on MONUSCO of 30 June 2017 (S/2017/565), between March and June 2017 at least 269 children (including 14 girls) were separated or escaped from armed groups (paragraph 47). The Committee also notes that the MONUSCO report "Invisible survivors: Girls in armed groups in the Democratic Republic of Congo from 2009 to 2015" highlights the harsh reality faced by girls, half of whom have been subjected to sexual violence and often remain behind in armed groups for fear of stigmatization. In this regard, the Committee notes that the CRC, in its concluding observations of 2017, indicates that the human and financial resources for the demobilization, rehabilitation and reintegration of child soldiers are scarce, disproportionately affecting girl soldiers who comprise up to 30 per cent of children involved with the armed

forces and armed groups (paragraph 47(e)). The CRC also refers to the fact that girl soldiers face stigmatization and rejection by their communities and thus are sometimes obliged to rejoin armed groups (paragraph 47(f)). Furthermore, the Committee observes that the CRC, in its concluding observations of 28 February 2017 relating to the sale of children, child prostitution and child pornography (CRC/C/OPSC/COD/CO/1), expresses concern at the fact that a significant number of girls remain victims of sexual exploitation and forced labour in the hands of armed groups (paragraph 40) and that there is no clear procedure or referral service for the protection and care of child victims of sexual exploitation (paragraph 36). In this regard, the Committee notes that in 2016 UNICEF supplied medical, psycho-social, economic and legal assistance to 100,000 children who were subjected to sexual and gender-based violence (2016 UNICEF annual report on the Democratic Republic of the Congo, page 1). ***The Committee urges the Government to intensify its efforts and take effective and time-bound measures to remove children from the armed forces and armed groups, as well as from forced labour and sexual exploitation, and to ensure their rehabilitation and social integration, with a particular focus on the demobilization of girls. The Committee also requests the Government to provide information on the number of child soldiers who have been removed from the armed forces and armed groups and have been reintegrated through appropriate assistance with rehabilitation and social integration.***

2. *Children working in mines.* The Committee previously noted that several projects for the prevention of child labour in mines and the reintegration of these children through education were being implemented, aimed at covering a total of 12,000 children, of whom 4,000 were to be covered by prevention measures and 8,000 were to be removed from labour and reintegrated through vocational training. The Government also indicated that more than 13,000 children were removed from three mining and quarrying locations in Katanga, East Kasai and Ituri as part of the work of the non-governmental organizations Save the Children and Solidarity Centre. These children were then placed in formal and non-formal education structures and also in apprenticeship programmes. However, the report also indicated that, in view of the persistence of the problem, much remained to be done. The Committee further noted that Congolese girls were victims of forced prostitution in improvised prostitution centres, in camps, around mining sites and in markets.

The Committee notes that the Conference Committee urged the Government to step up its efforts to prevent children from working in mining and other hazardous types of work and to provide the necessary and appropriate direct assistance for their removal from the worst forms of child labour.

The Committee notes that there is no information in the Government's report on the number of children removed from mining work. However, it observes that the stated aim of part 5 of the draft sectoral strategy for combating child labour in mines – namely, providing protection and care for children – is to remove children from mines and cater for their needs in terms of protection and socio-economic reintegration. In this regard, planned actions are to identify the number of children working in informal mines, to implement alternative and sustainable solutions in educational and socio-economic terms, and to reinforce community mechanisms for prevention and for the protection and promotion of children's and women's rights. The Committee also notes that a draft plan to remove children from supply chains in small-scale mining has been adopted. ***The Committee requests the Government to intensify its efforts to prevent children under 18 years of age from working in mines and from being subjected to prostitution on mining sites. It also requests the Government to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour and to ensure their rehabilitation and social integration. It further requests the Government to send information on the measures taken under the three-year action plan for 2017–20 and the sectoral strategy for 2017–25, once the latter has been officially adopted, and on the results achieved.***

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

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

Djibouti

Minimum Age Convention, 1973 (No. 138) (ratification: 2005)

The Committee notes with ***deep concern*** that the Government's report, due since 2017, has not been received. In the light of its urgent appeal to the Government in 2020, the Committee has proceeded with the examination of the application of the Convention on the basis of the information at its disposal.

Article 1 of the Convention. National policy for the effective abolition of child labour and application of the Convention in practice. The Committee previously requested the Government to take the necessary steps to ensure the effective implementation of the National Strategic Plan for Children (PSNED) in Djibouti and to provide information on the results achieved in the progressive elimination of child labour and the progress made in formulating a national policy to combat child labour.

The Committee notes the various legislative changes introduced by the Government between 2017 and 2021 with respect to child labour, such as: (i) Decree No. 2017-354/PR/MFF of 2 November 2017 amending Decree No. 2012-067/PR/MPF, on the establishment and organization of the National Children's Council (CNE). The CNE is the national supervisory body for the implementation of the PSNED which coordinates child protection actors by guiding and defining child rights policies; (ii) Law No. 66/AN/719/8ème L of 13 February 2020, on taking measures with a view to combating early school dropouts, including among girls; (iii) Decree No. 2021-193/PR/MEFF of 3 August 2021 on the organization and operation of the National Council for the Rights of the Child (CNDE) in the Republic of Djibouti. The CNDE is the national supervisory body for the implementation of the National Policy for Children in Djibouti and is under the authority of the Prime Minister; and (iv) Decree No. 2021-194/PR/MEFF of 3 August 2021 on the establishment and organization of the National Child Protection Platform in the Republic of Djibouti.

The Committee notes that, in the context of the International Year for the Elimination of Child Labour, the Ministry of Labour and Industrial Relations has undertaken to develop an action plan to eliminate child labour in Djibouti. The three actions to be implemented are: (i) the establishment of a national committee, (ii) the identification of a national and international consultant to develop the plan; and (iii) the organization of a workshop to approve the plan. ***The Committee requests that the Government take the necessary measures for the development and adoption of the new action plan for the elimination of child labour in Djibouti. The Committee also requests the Government to provide information on the implementation of the policy of the CNE and the National Child Protection Platform.***

Article 2(1). Scope of application and labour inspection. The Committee previously requested the Government to take steps to ensure that the protection afforded by the Convention is secured to children under 16 years of age working in the informal economy, particularly by adapting and strengthening the labour inspectorate in order to improve the capacity of labour inspectors to identify cases of child labour. It requested the Government to provide information in this regard and on the results achieved. ***Noting the absence of information on this subject, the Committee reiterates its request to the Government to take steps to ensure that the protection afforded by the Convention is secured to children under 16 years of age working in the informal economy, particularly by adapting and strengthening the labour inspectorate in order to improve the capacity of labour inspectors to identify cases of child labour. It once again requests the Government to provide information on this subject and on the results achieved.***

Article 2(3). Age of completion of compulsory schooling. The Committee previously requested the Government to intensify its efforts to take measures that will ensure children's participation in compulsory basic schooling, or in an informal school system. In this respect, it requested the Government to provide information on the recent measures taken to increase the school attendance

rate, so as to prevent children under 16 years of age from working, and recent statistics on the primary and secondary school enrolment rates in Djibouti.

The Committee takes due note that, according to its 2021 report to the Committee on the Elimination of Discrimination against Women, the Government indicates the different measures taken with regard to education, including: (i) the Education Action Plan 2017–2020 of the Ministry of National Education and Vocational Training, which was revised in 2018; (ii) the continuation of the Blueprint 2010–2019; (iii) the development of pre-school education in collaboration with the private sector, the community and the Ministry of Women and the Family, with a focus on children from poor communities and rural areas.

The Committee also notes that, according to the Government's indications in the Education Action Plan 2017–2020, the gross primary school attendance rate increased from 78.1 to 81.5 per cent between 2015 and 2016, while the gross enrolment rate for the first year of primary school rose from 71 to 80.5 per cent. However, the Government indicates that the gender parity index has not changed and that it is much lower in rural areas, thus highlighting strong disparities between girls and boys.

The Committee also notes in the same report that, according to the latest household survey carried out in 2017, around 16 per cent of children aged between 6 and 14 had never attended school or did not attend school that year, which represents one out of six children. This figure is higher than 30 per cent in the regions of Dikhil, Obock, Arta and Tadjourah. Furthermore, according to the Country Office Annual Report 2019 Djibouti of the United Nations Children's Fund (UNICEF), the school dropout rate remains high, with a gross rate of secondary school attendance of 66 per cent. ***While noting the measures taken by the Government, the Committee requests the Government to intensify its efforts and take steps to enable all children under 16 years of age to attend compulsory basic education. The Committee also requests the Government to provide information on the results of the implementation of the Education Action Plan 2017–2020, as well as recent statistical data disaggregated by age, gender and region.***

Article 3(1) and (2). Age of admission to hazardous work and determination of hazardous types of work. The Committee previously recalled that, pursuant to section 111 of the Labour Code, an order was adopted at the proposal of the Minister of Labour and the Minister of Health, after consultation with the National Council for Labour, Employment and Social Security, which determined the nature of the work and the categories of enterprises prohibited for women, pregnant women and young people, and the applicable minimum age. The Committee requested the Government to adopt such an order on the types of work and enterprises prohibited for young people.

The Committee also notes that, according to the report by the Ministry of Health in October 2020 concerning staff management procedures (page 54) in the context of two projects financed by a loan from the World Bank, a list of hazardous types of work was established, which considered as hazardous for children "work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of children". Work activities prohibited for children include the following types of work: (a) work which exposes children to physical, psychological or sexual abuse; (b) work underground, underwater, at dangerous heights or in confined spaces; (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (d) work in an unhealthy environment which may expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

However, the Committee once again notes the lack of information from the Government on the order determining the nature of the work and the categories of enterprises prohibited for women, pregnant women and young people, and the applicable minimum age. ***The Committee once again requests the Government to take the necessary steps to ensure that the order determining the nature***

of the work and the categories of enterprise prohibited for young people under 18 years of age is adopted in the near future under section 111 of the Labour Code.

The Committee reminds the Government that it may avail itself of ILO technical assistance in order to facilitate the application of the Convention.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)

The Committee notes with ***deep concern*** that the Government's report, due since 2017, has not been received. In the light of the urgent appeal made to the Government in 2020, the Committee has proceeded with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 3(b) and 7(2)(b)of the Convention. Worst forms of child labour and effective and time-bound measures. Use, procuring or offering of a child for prostitution and and assistance for the removal of children from the worst forms of child labour. The Committee previously noted the concern expressed by the Committee on the Rights of the Child (CRC) at the high number of children, particularly girls, involved in prostitution and at the lack of facilities providing services for child victims of sexual exploitation. It requested the Government to take effective and time-bound measures to remove children from prostitution, and to ensure their rehabilitation and social integration. It also requested the Government to supply information on the progress achieved in this respect. ***Noting the absence of information on this matter, the Committee once again urges the Government to take effective and time-bound measures to remove children from prostitution, and to ensure the follow-up of their rehabilitation and social integration. It also requests the Government to supply information on the progress achieved in this respect.***

Articles 3(d) and 4(1). Hazardous work and determination of these types of work. With regard to the prohibition on employing children under 18 years of age in work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, as set out in *Article 3(d)* of the Convention, and also the adoption of a list of hazardous types of work, the Committee refers to its detailed comments relating to the Minimum Age Convention, 1973 (No. 138).

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee previously requested the Government to take immediate and effective measures to ensure that the national plan of action for the elimination of the worst forms of child labour is formulated, adopted and implemented as soon as possible and to provide information on the progress made in this respect.

The Committee notes that, according to the National Strategic Plan for Children in Djibouti (PASNED), the adoption of a law defining and prohibiting the worst forms of child labour, and the preparation of a study on the worst forms of child labour are planned, as well as the implementation of awareness-raising campaigns on the issue. However, the Committee notes a lack of information on the activities carried out under the PASNED. It further notes a lack of information on the current status of the plan of action for the elimination of the worst forms of child labour. ***The Committee once again requests the Government to take immediate and effective measures to ensure that the national plan of action for the elimination of the worst forms of child labour is formulated, adopted and implemented as soon as possible and to provide information on the progress made in this respect. It also requests the Government to provide information on the results of the action planned under the PASNED with a view to eliminating the worst forms of child labour.***

Article 7(2)(d). Identifying children at special risk. 1. *HIV/AIDS orphans.* The Committee previously emphasized the increase in the number of HIV/AIDS orphans and recalled that such children are at greater risk of involvement in the worst forms of child labour. It requested the Government to supply information on the impact of the measures, policies and plans implemented to prevent the engagement of HIV/AIDS orphans in the worst forms of child labour, and on the results achieved.

The Committee notes that, according to the social protection assessment of January 2017, conducted by the Government with a view to developing the National Social Protection Strategy 2018–2022, there are several types of shelter institutions working with orphans. They provide a favourable environment for their development and progression, including school retention, access to technical training and the right to care and leisure. There are also financial support activities and food distribution operations for specific groups such as orphans and vulnerable children, school-age girls in disadvantaged/rural areas and persons affected by HIV/AIDS. The Government has also established a "solidarity fund for orphans and children affected by HIV/AIDS".

The Committee also notes that, according to the PASNED, the activities planned include: (i) the development of minimum standards for care in institutions responsible for the care and education of orphaned and all other vulnerable children; (ii) the training and integration of young persons who are out of school, in difficult situations or in conflict with the law; and (iii) an analysis of the vulnerability of children, including child victims of HIV/AIDS. ***The Committee requests the Government to provide information on the impact of the measures, policies and plans implemented to ensure that HIV/AIDS orphans are protected from the worst forms of child labour, and on the results achieved.***

2. *Street children.* The Committee previously noted the Government's statement that most of the children living and working on the streets are of foreign origin and often work as beggars or shoe-shiners. The Committee requested the Government to take immediate and effective measures to protect them from the worst forms of child labour and ensure their rehabilitation and social reintegration, and also to provide information on the progress made in this respect.

The Committee notes that, in the PASNED report, one of the objectives is to develop and strengthen measures for the protection, care and integration of children in difficult situations, such as street children. However, the Committee notes that, according to the Government's periodic report in reply to the Committee on the Rights of the Child (CRC) (CRC/C/DJI/3-5) of 6 February 2019, it does not yet have statistical data on this group of children, emphasizing that food crises and emergencies and increasing poverty are mobilizing Government efforts and resources. The Government adds that the protection of the basic social rights of street children therefore continues to be ensured by non-governmental organizations.

The Committee notes that a study on street children was to be carried out in 2018 to provide information on the socio-demographic and economic circumstances and living conditions of street children in Djibouti, including: (i) providing an indication of the number of street children, disaggregated by gender, age and origin; (ii) analysing the living conditions, activities, income and expenditure, and family relationships of street children; and (iii) identifying the causes of the presence of children in the streets and their aspirations with regard to their situation. ***Recalling that street children are particularly exposed to the worst forms of child labour, the Committee once again urges the Government to take immediate and effective measures to protect them from the worst forms of child labour and ensure their rehabilitation and social integration, and also to provide information on the progress made in this respect. It also requests the Government to provide the results of the study on street children planned for 2018.***

Application of the Convention in practice. The Committee previously requested the Government to take steps to ensure the availability of statistics on the nature, extent and trends of the worst forms of child labour, disaggregated by age and gender, and on the number of children covered by the measures giving effect to the Convention. The Committee invited the Government to avail itself of ILO technical assistance to facilitate the implementation of the Convention.

The Committee notes Act No. 26/AN/18/8eme L of 27 February 2019, establishing the National Statistical Institute of Djibouti (INSD), which replaces the Directorate of Statistics and Demographic Studies. The INSD is responsible, inter alia, for: producing, analysing and disseminating official statistics; undertaking periodic or specific surveys of general interest in enterprises or households; and ensuring

the dissemination and publication of studies and other statistical data. ***The Committee requests the Government to take measures to ensure the availability of statistics on the nature, extent and trends of the worst forms of child labour, disaggregated by age and gender, and on the number of children covered by the measures giving effect to the Convention.***

The Committee invites the Government to avail itself of ILO technical assistance in order to facilitate the application of the Convention.

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

Dominica

Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report, due since 2014, has not been received. In light of its urgent appeal launched to the Government in 2019, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 2(2) and (3) of the Convention. Minimum age for admission to employment and age of completion of compulsory schooling. In its previous comments, the Committee noted that the Government had specified a minimum age of 15 years upon ratification of the Convention. The Committee also noted that, according to section 2 of the Education Act (No. 11 of 1997), school is compulsory for all children from the age of 5 to 16 years, and that section 46(1) of the Act prohibits employing a child of school age during the school year. However, the Committee notes that pursuant to the Employment of Women, Young Persons and Children Act, Chapter 90:06, no children under the age of 14 years can be employed in industrial undertakings, other than family undertakings (section 4); or on ships, other than those in which only members of the same family are employed (section 5). ***In this regard, the Committee requests the Government to clarify the relationship between sections 4 and 5 of the Employment of Women, Young Persons and Children Act and sections 2 and 46(1) of the Education Act. The Committee also wishes to recall that Article 2(2) of the Convention provides that a ratifying country may subsequently notify the Director General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified. Thus, the Committee would be grateful if the Government would consider sending a declaration of this nature to the Office, taking into consideration sections 2 and 46(1) of the Education Act, so that the minimum age for admission to employment fixed by the national legislation is harmonized with that provided for at the international level.***

Article 3(1) and (2). Minimum age for admission to and determination of hazardous work. In its previous comments, the Committee noted the absence of a legislative provision setting a minimum age for admission to hazardous work. The Committee also noted the Government's indication that consultations were envisaged with the social partners with a view to determining a list of types of hazardous work prohibited for children under the age of 18 years. ***Noting the absence of information on progress made in this respect, the Committee once again requests the Government to take the necessary measures to ensure that children can only undertake hazardous work from the age of 18 years, as required by Article 3(1) of the Convention. The Committee also requests the Government to take measures to ensure that a list of hazardous types of work prohibited for children under 18 years of age, as required by Article 3(2) of the Convention, is adopted after consultation with the organizations of employers and workers concerned.***

Article 7(1). Minimum age for admission to light work. In its previous comments, the Committee noted that, according to section 3 of the Employment of Children (Prohibition) Act, Chapter 90:05, children above 12 years of age may be employed in domestic work or agricultural work of a light nature at home by the parents or guardian of the child. In this regard, the Committee recalls that *Article 7(1)* of

the Convention only permits the employment or work of children, who have reached the age of 13 and under the condition that such work is not likely to be harmful to their health or development; and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes or their capacity to benefit from the instruction received. ***The Committee therefore requests the Government to take the necessary measures to bring section 3 of the Employment of Children (Prohibition) Act in line with the Convention by permitting employment in light work only by children who have reached the age of 13 years.***

Article 7(3). Determination of types of light work activities. Light work during school vacations. The Committee previously noted that section 46(3) of the Education Act permits the employment of children above 14 years of age during school vacations but observed that the Act does not indicate the types of light work permitted for these children. The Committee recalls that pursuant to *Article 7(3)* of the Convention, the competent authority shall determine the types of light work permitted to children and shall prescribe the number of hours during which and the conditions in which, such employment or work may be undertaken. ***The Committee, therefore, once again requests the Government to provide information on any measures taken or envisaged to determine the types of light work that children above the age of 14 years can undertake during school vacations, as well as the hours during which and the conditions in which such work can be performed.***

Article 9(3). Keeping of registers by employers. The Committee previously noted that section 8(1) of the Employment of Women, Young Persons and Children Act requires every employer in an industrial undertaking and every shipmaster to keep a register of all persons employed under the age of 16 years. In this regard, the Committee had recalled that *Article 9(3)* of the Convention requires the keeping of such registers for all persons employed who are less than 18 years of age. ***In this respect, the Committee requests the Government to take the necessary measures to review section 8(1) of the Employment of Women, Young Persons and Children Act, so as to bring its legislation into conformity with Article 9(3) of the Convention with a view to ensuring that registers be kept and made available by the employer in respect of all working children under 18 years of age. The Committee requests the Government to provide information on any progress made in this regard.***

Labour inspection and application of the Convention in practice. In its previous comments, the Committee noted the Government's indication that measures would be taken to broaden the mandate of the national inspectorate to cover child labour issues, in consultation with the social partners. ***In this regard, the Committee requests the Government to indicate whether the mandate of the national inspectorate has been expanded to cover child labour issues and, if so, to provide information on the activities undertaken by the national inspectorate in the area of child labour, including the number of labour inspections conducted and the number and nature of violations detected. The Committee also requests the Government to provide updated statistical data on the employment of children and young persons.***

The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. The Committee invites the Government to consider technical assistance from the ILO to bring its legislation into conformity with the Convention.

Ecuador

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Articles 3(a) and (b) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children and use, procuring or offering of a child for the production of pornography or for pornographic performances. The Committee duly notes the amendment to section 91 of the Basic Comprehensive Penal Code (COIP) in 2021, communicated by the Government as an appendix to its report. The amendment is concerned with the prohibition of the trafficking of persons for sexual

exploitation, including forced prostitution, sex tourism and child pornography, and also for labour exploitation, including forced labour, debt bondage and child labour.

The Committee duly notes that the Government, in reply to its request to pursue efforts to ensure that the various ministries and entities responsible for monitoring the application of the COIP provisions collaborate in cases of trafficking of children, refers to: (i) the project for the elimination of child labour (PETI), which aims to prevent this practice in all its forms and encourages inter-sectoral coordination with a view to providing overall care for the victims of child labour. This collaboration includes the participation of the Ministry of Labour, the Ministry of the Interior, the Public Prosecutor, the Ministry for Economic and Social Inclusion, the Ministry of Education, the Ministry of Public Health and the Cantonal Rights Protection Councils; and (ii) the activities of the Inter-Institutional Coordinating Committee for the prevention of human trafficking and migrant smuggling and the protection of their victims; the purpose of this Committee is to supervise the application of the Human Mobility Act and monitor the issue of human trafficking, in accordance with Inter-Ministerial Decision No. 0010 of 2017. This Committee has technical working groups, in addition to the coordination team for the victims of trafficking and migrant smuggling, which includes the Technical Investigation and Justice Office, the Ministry of Foreign Affairs and Human Mobility and the Attorney-General's Office, with a view to implementing joint actions against the trafficking of persons.

The Committee notes the action taken by the Government concerning the application of the provisions of the COIP relating to the trafficking of children: (i) 16 investigations into trafficking for sexual exploitation and one investigation into labour exploitation were conducted by the unit for the investigation of trafficking of persons and smuggling of migrants; (ii) six investigations into forced labour or other forms of labour exploitation and one investigation into the trafficking of persons, labour exploitation, servitude and child labour were conducted by the National Police Department specializing in matters relating to children and young persons (DINAPEN). ***The Committee requests the Government to provide detailed information on the prosecutions initiated, the convictions handed down and the penalties imposed as a result of these investigations.***

Article 6. Programmes of action. Trafficking of children. In its previous comments, the Committee asked the Government to take all necessary measures to complete the process of adopting a new national plan of action to combat trafficking in persons and to provide detailed information in that regard.

The Committee notes with ***satisfaction*** Ministerial Decision No. 194 of 25 November 2019 adopting the Plan of Action against trafficking in persons 2019–30, published in Official Journal No. 349 of 14 February 2020, with details of the Plan appended to its report, including a conceptual and strategic framework, an analysis of the situation and a specific model for management, monitoring and evaluation of the actions to be taken.

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these forms of labour and ensuring their rehabilitation and social integration. Trafficking of children. In its previous comments, the Committee asked the Government to continue its efforts to prevent the trafficking of children. It also asked the Government to provide information on the number of children removed from trafficking who have then been rehabilitated and socially integrated, disaggregated by age and gender.

The Committee notes Inter-institutional Decision No. 003 published in Official Journal special edition No. 425 of 10 March 2020, which adopts the protocol of actions to provide full care and protection for trafficking victims, incorporating a specific procedure vis-à-vis girls, boys and young persons. The Committee also notes the forthcoming interactive mapping of human trafficking and migrant smuggling by the Ministry of the Interior, supported by the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC).

Furthermore, the Committee notes the statistical data on the trafficking of persons issued by the REGISTRATT system for the registration of victims of trafficking and migrant smuggling, which recorded 331 victims of trafficking, including 103 children under the age of 17 years, between 2017 and May 2021. It also notes the competencies of the Ministry for Economic and Social Inclusion with regard to providing care for girls, boys and young persons who are trafficking victims. The institutional care service caters for young persons between 12 and 17 years of age in two specialist centres, *Casa Linda* and *Casa El Nido* of the *Alas de Colibrí* foundation. A family reintegration programme catered for 19 girls and young persons in 2020 and 12 girls and young persons in 2019.

The Committee also notes the measures taken in 2019 in the context of the Human Mobility Act to direct the population in situations of human mobility towards social and legal services through the "host towns" project. This project, which exists in 14 locations, focuses on the protection of children, identifying and providing support for girls, boys and young persons who are the victims of violence, trafficking or exploitation. ***The Committee requests the Government to continue its efforts to combat the trafficking of children and to continue taking steps to protect child victims of trafficking. The Committee also requests the Government to provide information on the number of children, disaggregated by gender and age, who have been removed from trafficking and then rehabilitated and socially integrated.***

Article 8. International cooperation and assistance. Trafficking of children. In its previous comments, the Committee asked the Government to indicate whether the exchange of information with Peru carried out within the framework of the agreement concluded in 2016 has provided information on the identification of, and penalties imposed on, perpetrators of trafficking of children and their networks. The Committee also asked the Government to continue its efforts to detect and intercept child victims of trafficking at the borders and to provide statistical data in its next report, disaggregated by gender and age, and information on the results achieved.

The Committee notes the bilateral cooperation activities between the Ministry of the Interior and Peru in 2020, aimed at prevention, investigation and victim protection in the context of human trafficking. In this regard, a number of activities have been implemented, including the 2020–21 road map on the trafficking of persons covering: (i) the updating and exchange of contact points in the institutions responsible for the provision of care, protection and reintegration services and/or for the repatriation of trafficking victims; and (ii) the exchange of instruments for the care, protection, reintegration and repatriation of victims of human trafficking and migrant smuggling. Furthermore, an online meeting on experiences relating to the prevention of cases of trafficking originating from the Internet was held with the collaboration of rapporteurs from the UNODC, the IOM and the International Centre for Missing and Exploited Children (ICMEC), with the participation of officials from both countries. The Committee also notes the campaign to combat the trafficking of persons between the two countries, aimed at formulating a communication strategy for the prevention of human trafficking which has an impact on vulnerable groups.

Lastly, the Committee notes, according to the Government's report, that since the agreement is recent and in view of the situation arising from the COVID-19 pandemic, it has not been possible to provide additional data on the results of the action taken since 2020. ***The Committee requests the Government to continue its efforts to detect and intercept child victims of trafficking at the borders and to provide statistical data in its next report, disaggregated by gender and age, and information on the results achieved.***

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

Egypt

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 1 of the Convention. National policy on the effective abolition of child labour and application of the Convention in practice. The Committee previously noted that, according to the 2016 UNICEF report "Children in Egypt 2016: A Statistical Digest", 7 per cent of children aged from 5 to 17 years were involved in child labour or hazardous work in 2014. The Committee noted the measures taken by the Government to combat child labour in Egypt, including the finalization of a National Action Plan on Combating the Worst Forms of Child Labour, but expressed its concern at the situation and number of working children in Egypt.

The Committee notes the Government's indication in its report according to which it places great importance on curbing the phenomenon of child labour and seeks to do this through concerted national effort. In this regard, the Committee notes with ***interest*** the Government's indication that it launched the National Action Plan to Combat the Worst Forms of Child Labour 2018–2025 (NAP-WFCL), in the framework of which several actions are being undertaken, including: (i) the implementation of the Programme to accelerate the action of the elimination of child labour in global supply chains 2018–2022 (ACCEL Africa), which aims to accelerate the elimination of child labour in Africa and, in the case of Egypt specifically, in the cotton supply chain and in the textile and readymade garment sector; (ii) the holding of a number of national workshops on the topic of "Strengthening capacities for analysing data on child labour and forced labour", in collaboration with the ILO; (iii) the launch, in coordination with the Ministry of Manpower's offices and directorates, of intensive inspection campaigns in the quarrying and brickwork sectors throughout all governorates in order to combat child labour and hazardous work; (iv) the review of existing child labour legislation; (v) the implementation of a number of training courses for labour inspectors/civil society associations/owners of workshops in the governorates where the phenomenon of child labour is most rife; and (vi) the set-up of a helpline as a mechanism for monitoring cases of child labour.

The Government indicates that such measures have had significant effects, including protecting a large number of children against being drawn into the labour market and integrating them into non-formal education programmes or the formal schooling system. The Committee notes in particular the Government's indication that, as a result, 47,383 children were given protection. ***The Committee therefore encourages the Government to continue strengthening its efforts to ensure the progressive elimination of child labour. It requests that the Government continue providing information on the measures taken in the framework of the NAP-WFCL and the results achieved in terms of the number of children who are effectively removed from child labour. It also requests the Government to provide information relating to the application of the Convention in practice, including updated statistical data on the employment of children and young persons below the age of 15.***

Article 6. Apprenticeship. The Committee previously noted that sections 26 and 58 of the draft Labour Code provided for a minimum age for admission to apprenticeship or training of 13 years. The Committee recalled that *Article 6* of the Convention provides that training or apprenticeship performed in undertakings shall only be permitted for children of at least 14 years of age.

The Committee notes the Government's information that the draft Labour Code still permits the engagement of children as of the age of 13 in apprenticeships, as long as it does not disrupt the continuity of their education. The Government indicates that measures are being taken to change the age for apprenticeship to 14 years, in accordance with international labour standards. ***The Committee therefore requests the Government to finalize their measures taken with a view to ensuring that sections 26 and 58 of the draft Labour Code are amended to raise the minimum age of admission to apprenticeship or training from 13 to 14 years of age, in accordance with Article 6 of the Convention.***

Article 7. Determination of types of light work. The Committee previously noted the provisions of section 64 of the Child Law permitting children between the ages of 12 to 14 years, by decree of the governor concerned, with the agreement of the Minister of Education, to perform seasonal work which is not prejudicial to their health or development and does not interrupt their education. The Committee noted, at the time, that the minimum age for employment or work was 14 years in Egypt, but that it has since been raised to 15 years, in accordance with *Article 2(2)* of the Convention. The Committee observed that section 59 of the draft Labour Code maintains the ages set by the Child Law for admission to light work by referring to section 64 of the Child Law. It recalled that, in accordance with *Article 7(1)* of the Convention, light work is only permitted for persons from 13 to 15 years of age, given that Egypt has specified 15 years as the minimum age for admission to employment or work.

The Committee notes the Government's information that it is reviewing some sections of the Child Law in order to come into line with international labour standards. It notes that, in the context of a tripartite Committee meeting held in February 2021 on the legislative gaps of the Child Law, it was recommended that the provisions of section 64 of the Child Law permitting children aged 12 to 14 to perform seasonal work should be abrogated because of the lack of clarity regarding the definition of term "seasonal work". If this recommendation is implemented – and as the Government indicates in its report – section 64 of the Child Law will provide only that children may be engaged in trainings ("apprenticeships") as of the age of 14 years, and there will be no provisions permitting children under the age of 15 to perform light work (seasonal or otherwise). ***The Committee therefore requests the Government to take the necessary measures to ensure that section 64 of the Child Law is amended either to raise the minimum age of admission to light work to 13 years, in accordance with Article 7(1) of the Convention, or to remove the possibility for children under the age of 15 to perform light work altogether, in accordance with the recommendations made by the tripartite Committee in the framework of the revision of the Child Law. The Committee requests the Government to provide information, in its next report, on the progress made in this regard.***

The Committee is raising another matter in a request addressed directly to the Government.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

Articles 3(a), 6 and 7(1) of the Convention. Worst forms of child labour, programmes of action and penalties. Sale and trafficking of children. The Committee previously noted that a third National Plan of Action against Human Trafficking (NAP-HT) for the years 2016–21 was adopted, which aimed to maintain referral mechanisms, train law enforcement officials and combat the trafficking of street children. It requested the Government to provide information on the impact of the measures taken within the framework of the NAP-HT 2016–21, as well as on the measures taken to ensure the thorough investigation and robust prosecution of perpetrators of child trafficking for labour or sexual exploitation.

The Committee notes the Government's information in its report that it is keen to boost child protection against crimes of trafficking or sexual exploitation. The Government provides detailed information on the measures undertaken in the framework of the NAP-HT 2016–21, which include: (i) the assignment of eight specialized judicial chambers to handle human trafficking offences, and the establishment of the Department of Illegal Migration and Human Trafficking of the Anti-Drug and Organized Crime Sector within the Ministry of Interior; (ii) the holding of specialized training courses for all employees of sectors concerned with combating human trafficking, including judges, public prosecutors, police officers, social workers, members of civil society organizations and others who are engaged in child protection and the combating of human trafficking; (iii) the establishment in 2020 of child protection offices by the Public Prosecutor, which work to overcome any obstacles that the Public Prosecutor or any other body might encounter in the course of implementing the child protection mechanism against trafficking, exploitation or exposure to danger; and (iv) the preparation of a number of specialized guidance manuals for those engaged in combating human trafficking offences, including

the "Guide to Evidence Collection, Investigation and Prosecution of Human Trafficking Crimes and Protection of Victims in the Context of Law Enforcement", intended for circulation among law enforcement authorities.

The Committee further notes, from the Government's report under the Forced Labour Convention, 1930 (No. 29), that 154 cases of human trafficking were reported in 2019, resulting in 10 convictions. In addition, according to the replies of Egypt to the list of issues and questions raised by the Committee on the Elimination of Discrimination against Women (CEDAW) of 7 July 2021, 156 cases of trafficking were reported in 2020, affecting 365 victims, including 242 children; 30 people were accused in these cases (CEDAW/C/EGY/RQ/8-10, paragraph 59). ***The Committee requests the Government to continue taking the necessary measures, within the framework of the NAP-HT 2016–21 or otherwise, to ensure the thorough investigation and prosecution of perpetrators of child trafficking for labour or sexual exploitation, and to provide information on the convictions and penalties applied. In addition, the Committee requests the Government to provide information on the penalties applied in the cases of the 30 people accused of trafficking in 2020.***

Article 3(b). Use, procuring or offering of a child for prostitution. The Committee previously noted that section 291 of the Penal Code provides for penalties for persons who violate the right of a child to protection against commercial sexual exploitation. It noted, however, that section 94 of the 2008 Child Law provides that the age of criminal responsibility starts at 7 years. Moreover, although section 111 of the Child Law prohibits handing down criminal sentences amounting to the death sentence, life imprisonment or hard labour to children under 18 years of age, it provides that children over 15 years of age are liable to confinement in jail for not less than three months or to the measures stated in section 101. In this regard, it noted that section 101 of the Child Law provides that a child under the age of 15 years who has committed a crime shall be subjected to the following sanctions: reprimand; being institutionalized; following a course of training and rehabilitation; carrying out specific duties; judicial testing; performing work for the public interest which is not hazardous; and placement at one of the specialized hospitals or at social welfare institutions. The Committee thus noted the provisions of the Child Law and of the Penal Code are insufficient to protect children who are used, procured or offered for the purpose of prostitution, as they allow for child victims of prostitution who are over 15 years of age to be held criminally responsible.

The Committee notes the Government's indication that it has taken a series of measures to ensure that children below the age of 18 qualify for the definition of victims of trafficking, but notes with ***regret*** that the Government provides no information on measures taken to resolve the legislative gap created by section 111 of the Child Law. The Committee notes the Government's information that it is reviewing some sections of the Child Law in order to come into line with international labour standards. It notes that, in this context a tripartite Committee meeting was held in February 2021 on the legislative gaps of the Child Law. However, it notes with ***concern*** that section 111 does not appear to be among the provisions being considered for amendment. The Committee once again reminds the Government that *Article 3(b)* of the Convention prohibits the procuring, offering of use of a child for prostitution, and that the child's consent does not preclude it from the prohibition (see General Survey on the fundamental Conventions, 2012, paragraphs 508–509). Therefore, children 15 to 18 years of age who enter prostitution "on their own free will" are still victims of commercial sexual exploitation. ***The Committee once again urges the Government to take the necessary measures to ensure that all child victims of prostitution who are under the age of 18 years are treated as victims rather than offenders. To this end, the Committee urges the Government to amend section 111 of the Child Law – in the framework of the current revision process – to ensure that children under 18 years of age who are victims of prostitution are not criminalized and/or imprisoned.***

Article 7(2). Effective and time-bound measures. Clauses (b) and (d). Providing the necessary and direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration and identifying and reaching out to children at special risk. Child victims of trafficking

and street children. The Committee previously noted that there were some 1 million street children in in Egypt. It noted that, according to a report by the National Centre for Social and Criminological Research, at least 20 per cent of street children, most of whom were in the age group of 6–11 years, were victims of trafficking who were exploited by a third party for sexual purposes and for begging. The Committee also took note of the establishment of the El Salam Centre for the rehabilitation and reintegration of child victims of exploitation, including child victims of trafficking, which provides secure, transitional accommodation, medical and legal assistance as well as assistance for their return and reintegration into society. It requested the Government to provide information on the number of child victims of trafficking under the age of 18 years who have been received by the El Salam Centre and rehabilitated and socially integrated, as well as on the impact of the measures taken to ensure that children under 18 years of age living and working on the streets are protected from the worst forms of child labour.

The Committee notes the Government's information that protection of children against trafficking and sexual exploitation is provided for those who are taken off the streets and efforts are made to reintegrate them into society through care institutions and by providing them with the requisite psychosocial, educational, vocational and technical care, as well as consolidated psychosocial support for victims' families. With regard to work done by the El Salam Centre, the Government provides the following information: (i) 11,245 children have been reached out to by the field team responsible for supporting children working on the streets who are exposed to exploitation; (ii) by the end of 2017, 4,111 children had benefited from the services provided by the day-care reception centre which works to reintegrate children into society and provides medical and other services. Work is under way to expand the operation of the centre to include child victims of trafficking; and (iii) by the end of 2017, there were about 60 children taken off the streets and provided with temporary accommodation in the transition house, where children are prepared and rehabilitated by individual case managers for reintegration into vocational training and education befitting the child's age and circumstances.

The Government also provides other information on measures taken to protect children from the worst forms of child labour, including exploitation or trafficking, such as the establishment of four institutions throughout the country for the implementation of the "Takaful and Karama Programme (TKP)" by the Ministry of Social Solidarity, which aims to offer children aid for a decent life through several initiatives. By the end of 2020 3,072,016 children below the age of 18 had benefited from the programme, including 57,326 who had received a pension and 44,488 who had received scholarships. ***The Committee encourages the Government to continue its efforts to ensure that children under 18 years of age living and working on the streets are protected from the worst forms of child labour, particularly trafficking, commercial sexual exploitation and begging. The Committee requests the Government to continue providing information on the impact of the measures taken, including the number of children who have been removed from the streets, provided with assistance and socially integrated into education or vocational training, as well as on the number of child victims of trafficking under the age of 18 years who have been rehabilitated and socially integrated, either through the El Salam Centre or through other institutions.***

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

Eritrea

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy, labour inspection and application of the Convention in practice. In its previous comments, the Committee noted the Government's indication that it had collected data and information to formulate a national policy and that an upcoming Comprehensive National Child

Policy document was expected to strengthen efforts to provide sustained services to children. However, it noted that the UN Human Rights Council (A/HRC/26/L.6 and A/HRC/26/45) in its reports of 2014, continued to highlight child labour in the country, including in hazardous activities such as harvesting and construction. The Committee therefore strongly urged the Government to intensify its efforts to implement concrete measures, such as by adopting a national plan of action to abolish child labour as well as strengthening the capacity of the labour inspection system.

The Committee notes the Government's information, in its report, that considering that a holistic approach is the best solution for the elimination of child labour, the Government has adopted a Comprehensive Child Policy in 2016. It also notes the Government's information that it is in the process of developing a national action plan for the elimination of child labour. In this regard, two members of the Ministry of Labour and Social Welfare (MLSW) have participated in the National Capacity Building Workshop on Child Labour and Forced Labour Data Analysis organized by the ILO in February 2020 in Cairo, Egypt. The Committee further notes the Government's indication that labour inspection plays a critical role in preventing child labour by conducting regular inspections of workplaces and ensuring that conditions of work are respected as prescribed by law. Several efforts are being taken to improve the number and quality of labour inspections, such as providing trainings to the inspectors. The Government indicates that more than 45 labour inspectors, including new recruits are engaged in inspection throughout the six regions of the country. The Committee further notes the Government's reference to the findings of the Eritrea Labour Force Survey 2015–16 which indicated that among the 809,670 eligible children (referred to as children within the age group of 5–13 who are eligible for study), 16.4 per cent were engaged in some work activities, of whom 71.3 per cent were then currently attending school. The average age at which children start working is 7 years. The main reasons reported for working at early age were "to help in household enterprises" (53 per cent) and "supplement family income" (33.3 per cent). The survey also indicated that while 11.7 per cent of children combined work with schooling, 4.8 per cent of children were involved in child labour either by missing some classes or without going to school at all. In this regard, the Committee notes from the Technical Advisory Mission Report on the Tripartite Inter-ministerial Workshop on the Worst Forms of Child Labour Convention, 1999 (No.182) held in Asmara in March 2019, that the tripartite constituents identified that measures are required to "Strengthen the capacity of labour inspectorate to identify children engaged in child labour with a view to removing them and providing them with assistance". ***While noting the measures taken by the Government, the Committee urges it to intensify its efforts to progressively eliminate child labour in the country, including through the adoption and effective implementation of the National Action plan for the elimination of child labour and the Comprehensive Child Policy. In this regard, the Committee requests the Government to continue to take measures to strengthen the capacity of the labour inspection system in order to adequately monitor and detect cases of child labour in the country. It further requests the Government to provide information on the number of inspections on child labour carried out by the labour inspectors as well as on the number and nature of violations detected and penalties applied. Finally, the Committee requests the Government to continue to provide information on the application of the Convention in practice, in particular statistical data on the employment of children and young persons by age group.***

Article 2(3) and (4). Age of completion of compulsory schooling and minimum age for admission to employment. In its previous comments, the Committee noted the Government's indication that education is compulsory for eight years (five years of elementary school and three years of middle school), which would be completed at 14 years of age. It noted the measures taken by the Government to provide free education to all school children up to the middle school level as well as its policies, in particular the Nomadic Education Policy, to make education inclusive to all children. However, the Committee noted from the draft proposal within the Strategic Partnership Cooperation Framework (SPCF) 2013–16 between the Government and the United Nations system and from the Government's fourth periodic report to the Committee on the Rights of the Child (CRC/C/ER/4, paragraph 301 and table 28), a decline in the elementary school enrolment rates. The Committee therefore requested the Government to continue to cooperate with the UN bodies to improve the functioning of, and access to, the education system so as to increase school enrolment rates and reduce school drop-out rates for children at least up to the age of completion of compulsory education, particularly with regard to girls.

The Committee notes the Government's statement that efforts are being taken as a priority to improve the compulsory basic education in the country. In order to counter the challenges and hostilities including

capacity and resources, and to a limited extent the cultural obstacles affecting nomadic children and girl's education in some of the lowland areas, basic schools without any barriers are being introduced gradually throughout the country. According to the statistics provided by the Government, in 2017–18, 654,399 students were enrolled from pre-primary up to secondary level. In the last two decades, school enrolment rates have increased by 96.4 per cent (106.3 per cent for girls), number of teachers by 131 per cent and number of schools by 178 per cent. Moreover, alternative education through Complementary Elementary Education (CEE) has been introduced for out-of-school children as well as to address the challenges in remote and rural areas. In this regard, 8,575 out of school children (46.4 per cent girls) aged 9–14 years benefited from the CEE in 2016–17. The Committee further notes from the UNICEF Annual Report of 2016 that the ongoing measures to promote access to education resulted in 17,145 out-of-school children including (6,541 girls) from the most disadvantaged areas enrolling in primary education during the 2015–16 academic year. The Committee, however, notes that according to the UNESCO estimates for 2018, the net enrolment rates at primary and secondary level were 51.5 per cent and 41.6 per cent respectively, and the number of out-of-school children was 241,988. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee encourages the Government to pursue its efforts to increase school enrolment, attendance and completion rates, and reduce drop-out rates, particularly of children up to 14 years of age. The Committee requests the Government to provide information on the measures taken in this regard and on the results achieved, including statistical data on the number of children enrolled at the primary and secondary schools.***

Article 3(2). Determination of the types of hazardous work. The Committee recalls that the Government has been referring to the upcoming adoption of a list of hazardous activities prohibited to young employees under section 69(1) of the Labour Proclamation since 2007. The Committee urged the Government to finalize this ministerial regulation, without delay.

The Committee notes the Government's information that child labour in Eritrea does not involve hazardous work. However, the MLSW is in the process of finalizing the regulation prescribing the list of types of hazardous work that are prohibited to young persons under 18 years of age. ***The Committee accordingly expresses the firm hope that the ministerial regulation issuing the list of hazardous activities prohibited to persons under the age of 18 will be adopted in the near future. It requests the Government to provide a copy, once it has been adopted.***

Article 9(3). Keeping of registers by employers. The Committee previously noted the Government's indication that the requirement for employers to maintain a register of persons who are employed and are under 18 years would be addressed in an upcoming regulation and studies in this regard were ongoing.

The Committee once again notes the Government's indication that the MLSW is still undertaking studies to develop this regulation. ***Noting that the Government has been referring to the adoption of this regulation since 2007, the Committee urges the Government to take the necessary measures to ensure that the regulation concerning the registers to be kept by employers is adopted without delay. It also requests the Government to provide a copy, once it has been adopted.***

The Committee encourages the Government to seek ILO technical assistance in its efforts to combat child labour.

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

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

Ethiopia

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Organisation of Employers (IOE), and the International Trade Union Confederation (ITUC) received on 29 August 2019 and 1 September 2019, respectively. It also notes the detailed discussion which took place at the 108th Session of the Conference Committee on the Application of Standards (CAS) in June 2019, concerning the application by Ethiopia of the Convention.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted the various measures taken by the Government to eliminate child labour, including the Ethiopians Fighting Against Child Exploitation (E-FACE) project; the Community Care Coalition whereby in-kind and cash support is used to prevent child labour; as well as the National Action Plan (NAP 2011–17) to prevent child labour exploitation. The Committee observed that according to the 2015 Child Labour Survey results, the number of children aged 5–13 years engaged in child labour was estimated to be 13,139,991 (page 63) with 41.7 per cent aged between 5 and 11 years (page xii).

The Committee notes the Government's information in its 2019 report that within the framework of the NAP 2011–17 to eliminate child labour, several public awareness-raising programmes were conducted on child labour through conversation and media forums reaching about 1,170,904 people in child labour affected areas and 441 labour inspectors were provided with capacity-building training on prevention of child labour. The Committee also notes the Government's indication that on an average, 39,000 inspections were carried out annually in different establishments with a focus on child labour. The Government also indicates that the grassroots community organizations known as Community Care Coalition have made significant contributions through mobilizing community resources to prevent vulnerable children from entering into child labour by supporting their families and providing shelter. Moreover, a comprehensive child labour policy has been issued in consultation with the social partners and relevant stakeholders to address child labour. The Committee further notes from the document on the E-FACE project that to date this project has impacted the lives of more than 18,000 children engaged in child labour allowing them to attend school and reducing the risk of dropout.

The Committee further notes the Government's information in its supplementary report that in December 2019, the Government launched the Alliance 8.7, the global partnership for eradicating forced labour, child labour and human trafficking around the world. In addition, in response to the COVID-19 pandemic, child protection activities were provided to vulnerable children and a significant number of street children were protected from socio-economic hazards. Moreover, close monitoring and support of community-based protection activities for families and children in need have been set in place. ***While noting the measures taken by the Government, the Committee urges the Government to continue to take the necessary measures for the progressive elimination of child labour. It requests the Government to continue to provide specific information on the concrete measures taken in this regard as well as the results achieved. The Committee also requests the Government to provide detailed information on the manner in which the Convention is applied in practice, including, for example, statistical data on the employment of children and young persons, extracts from the reports of the inspection services, and information on the number and nature of violations detected and penalties applied involving children and young persons.***

Article 2(1). Scope of application. The Committee previously noted that although section 89(2) of the Labour Law Proclamation No. 42 of 1993 prohibits the employment of persons under 14 years of age, the provisions of the Labour Law did not cover work performed outside an employment relationship. It noted the Government's indication that the Constitution provides for the right of children to be protected from any forms of exploitative labour, without any discrimination, whether employed or self-employed, working in the formal or informal sector. The Committee noted that according to the 2015 Child Labour Survey results, 89.4 per cent of the children engaged in child labour worked in the agricultural, forestry and fishing sectors and in wholesale and retail trade sector. The majority of children performing economic activities were working as unpaid family workers (95.6 per cent) (page xii). Noting with concern the high number of children working in the informal economy, the Committee requested the Government to take the necessary measures to ensure that all children under 14 years of age, particularly children working on their own account or in the informal economy, benefit from the protection laid down by the Convention.

The Committee notes that the Conference Committee, in its concluding observations, urged the Government to strengthen the capacity of the labour inspectorate and competent services, including human,

material and technical resources and training, particularly in the informal economy. It also notes that the IOE, in its observations, commended the Government for taking the following steps to address the gaps in the Labour Law, such as: (i) extending the labour advisory services in the informal sector; and (ii) strengthening the labour inspectorate system in the country to make it accessible to all enterprises and workplaces.

The Committee notes the Government's information in its 2019 report that measures are being taken to extend labour advisory services in the informal economy with the aim of protecting the rights of all workers, including young workers working without an employment relationship such as work on their own account or in the informal economy. The Government also indicates that efforts are being made to strengthen the labour inspectorate system in the country so as to ensure that such services are effectively accessible to all enterprises and workplaces. ***The Committee requests the Government to take the necessary measures to ensure that all children under 14 years of age, particularly children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. In this regard, the Committee requests the Government to continue to take measures to strengthen the capacities and expand the reach of the labour inspectorate so that it can adequately monitor and detect cases of child labour, particularly involving children working in the informal economy, and on their own account. It requests the Government to provide information on any measures taken or progress made in this regard.***

Article 2(3). Age of completion of compulsory schooling. In its previous comments, the Committee noted the Government's indication that it had started the process of drafting legislation which aims at making primary education compulsory. It also noted that according to the Child Labour Survey of 2015, the school attendance rate was 61.3 per cent among children aged 5–17 years. Moreover, 2,830,842 children in the 5–17 years age group (7.6 per cent of the total number of children in the country), dropped out of school with the dropout rate higher among working children (10.9 per cent) than non-working children (4.1 per cent) and among working boys (11.6 per cent) than working girls (9.8 per cent) (pages 86 and 88). The Committee further noted that the United Nations Committee on the Rights of the Child (CRC), in its 2015 concluding observations, expressed concern at: (i) the lack of national legislation on free and compulsory education; (ii) the persistent regional disparities in enrolment rates and the high number of school-aged children, particularly girls, who remained out of school; as well as (iii) the high dropout rates and the significant low enrolment rates in pre-primary education and secondary education (CRC/C/ETH/CO/4-5, paragraph 61).

The Committee notes the statement made by the Government representative of Ethiopia to the Conference Committee that the School Feeding Programme supplemented by specific interventions have significantly improved inclusiveness, participation and achievements in education. The Government representative also stated that a rural–urban Productive Safety Net Programme to improve the income of targeted poor households in the rural and urban areas and the Ethiopian Education Development Roadmap, 2018–2030 to address the gap in access to quality education has been developed. Moreover, Alternative Basic Education modalities are being implemented, such as mobile schools for children of pastoral and semi-pastoral communities. It notes that the Conference Committee, in its conclusions, urged the Government to introduce legislative measures to provide free and compulsory education up to the minimum age of admission to employment of 14 years and ensure its effective implementation as well as to improve the functioning of the educational system through measures to increase the school enrolment rates and decrease dropout rates.

The Committee notes the observations made by ITUC that there is a close link between compulsory education and the abolition of child labour and hence it is essential that Ethiopia introduce compulsory schooling at least up to the minimum age for admission to employment.

The Committee notes the Government's information in its 2019 report that it is committed to achieving universal and quality primary education for all school-aged children. Accordingly, it is implementing the Education and Training Policy and the Education Sector Development Programme (ESD) (2016–20) which has led to the achievement of the following results: (i) the number of primary schools has increased from 33,373 in 2014–15 to 36,466 in 2017–18; (ii) the net enrolment rate has increased from 94.3 per cent in 2014–15 to nearly 100 per cent in 2017–18 with a gender parity index of 0.9 per cent; and (iii) the school dropout rates have decreased from 18 per cent in 2008–09 to 9 per cent in 2013–14. The Government further indicates that the Urban Productive Safety Net Programme which has the objective of providing access to basic nutrition

through the school feeding programme to over 300,000 marginalized school children is being implemented in selected urban areas.

The Committee notes, from the UNICEF Annual Report 2018 that while the enrolment rate in primary education has improved (which has tripled from 2000 to 2016), the transition from primary to secondary education remains a bottleneck, with children in rural areas predisposed to dropping out of school and only 25 per cent of secondary school-aged girls attending secondary school. Furthermore, according to the UNICEF report entitled *Multidimensional Child Deprivation in Ethiopia, National Estimates,* 2018, 50 per cent of children aged 5–17 years were deprived of education in 2016. The proportion of children in rural areas aged 7–17 years who are not attending school is more than double that of children residing in urban areas. The Committee finally notes that the United Nations Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in its concluding observations of March 2019 remained concerned that primary education is still not compulsory and at the high dropout and low completion rates of girls at the primary level (CEDAW/C/ETH/CO/8, paragraph 33(a)). ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee once again urges the Government to take the necessary steps to make education compulsory up to the minimum age of admission to employment of 14 years in accordance with Article 2(3) of the Convention. While noting the measures taken by the Government, the Committee strongly encourages the Government to pursue its efforts to increase school enrolment rates, decrease dropout rates and ensure completion of compulsory education with a view to preventing children under 14 years of age from being engaged in child labour.***

Article 3. Determination of hazardous work. The Committee previously noted that the Decree of the Ministry of Labour and Social Affairs of 2 September 1997 concerning the prohibition of work for young workers which contained a detailed list of types of hazardous work was undergoing revision. The Committee observed that, according to the Child Labour Survey, the rate of hazardous work among children aged 5–17 years was 23.3 per cent (28 per cent for boys versus 18.2 per cent for girls). The average hours of work per week performed by children engaged in hazardous work in this age group was 41.4 hours with 50 per cent of them working more than 42 hours per week. The Committee also noted that among children engaged in hazardous work, 87.5 per cent work in the agricultural sector, and 66.2 per cent are involved in other hazardous working conditions such as night work, working in an unhealthy environment or using unsafe equipment at work (page xiii). The Committee urged the Government to strengthen its efforts to ensure that, in practice, children under 18 years of age were not engaged in hazardous work. It also requested the Government to indicate whether a new list of types of hazardous work was adopted and to supply a copy.

The Committee notes the Government's information in its 2019 report that the list of activities prohibited to young persons has been revised in consultation with social partners and a directive has been issued by the Ministry of Labour and Social Affairs in 2013 in this regard. It notes the unofficial translated copy of the directive provided by the Government which contains a list of 16 activities which are harmful to the health, safety and well-being of young workers and therefore prohibited. This list includes: work in transport of passengers and goods by road, railway, air and waterways; works related to handling of heavy material; fishing at sea; underground work at mines and quarries; works connected with electric power generation plants or transmission lines; work at elevation in construction; work on production of alcoholic drinks and drugs; work in extremely hot and cold conditions; work exposed to ionizing and non-ionizing, x-rays and ultraviolet rays; work with flammable and explosive materials; work with toxic chemicals and pesticides; and all works that will have adverse effects on the physical and psychological development of young persons. The list also provides the maximum weight limits that could be carried by young persons. ***The Committee requests the Government to provide information on the application in practice of the revised list under the directive of 2013, particularly for hazardous work in agriculture, including statistics on the number and nature of violations reported and penalties imposed.***

The Committee reminds the Government that it may avail itself of technical assistance from the ILO with respect to the issues raised in its present comment.

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3(a) and 7(1) and 7(2)(b) of the Convention. Sale and trafficking of children, penalties, and rehabilitation. The Committee notes the Government's reference in its report to the adoption in 2015 of the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909 (Anti-Trafficking Act) that has replaced the relevant sections of the Criminal Code related to trafficking in persons. The Committee notes with ***interest*** that section 3(2) of the Anti-Trafficking Act makes it an aggravating circumstance if the victim of any of the crimes under this Act is a child and provides for a penalty of imprisonment from 25 years to life imprisonment. The Committee also notes the Government's statement that several measures have been undertaken to combat trafficking in persons as a whole and women and children in particular, including: (i) the organization of awareness-raising campaigns within communities (to date more than 10 million community members have taken part in trainings on the issue of prevention of trafficking); (ii) the provision of training on the effects of child trafficking to law enforcement bodies; and (iii) the establishment of a control mechanism in transport services that aims to check whether children travelling in public transportation are with their parents or guardians.

The Committee observes, however, that in its 2015 concluding observations, the Committee on the Rights of the Child (CRC) expressed its deep concern about the persistence of trafficking in children abroad and within the country for the purpose of domestic servitude, commercial sexual exploitation and exploitation in the worst forms of child labour. The CRC was also deeply concerned at the lack of rehabilitation and reintegration centres to provide child victims of trafficking and commercial sexual exploitation with the adequate, age-sensitive medical and psychological assistance (CRC/C/ETH/CO/4-5, paragraph 69).

Regarding the establishment of rehabilitation centres for child victims of trafficking, the Committee observes that under section 26 of the Anti-Trafficking Act, the Government shall put in place necessary working procedures to identify, rescue, repatriate and rehabilitate victims of trafficking. Under section 39, a National Anti-Trafficking Committee aimed at coordinating the activities for victims' protection has been established, as well as an Anti-trafficking Task Force to support the rehabilitation of victims of trafficking (section 40). ***The Committee encourages the Government to strengthen its efforts to ensure the effective application of the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909 of 2015 and to take the necessary measures to ensure that thorough investigations and prosecutions of persons who engage in the sale and trafficking of children are carried out and that effective and dissuasive penalties are imposed in practice. The Committee requests the Government to provide information in this regard, including statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penal sanctions imposed with regard to the trafficking of children under 18 years. The Committee also requests the Government to provide information on the number of child victims of trafficking who have been identified and rehabilitated.***

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Child victims/orphans of HIV/AIDS and other vulnerable children (OVCs). The Committee previously noted the Government's Orphan and Vulnerable Children programme with the involvement of relevant government bodies, NGOs and the community, as well as its small-scale OVC care and support activities throughout the country. It also noted the Government's reference to the National Plan of Action to Eliminate the Worst Forms of Child Labour (2013–15) (NPA) and requested information in this regard.

The Committee once again notes an absence of information on this point in the Government's report. The Committee notes that an ILO mission took place in Ethiopia in September 2016 as a follow-up to the March 2015 mission on implementation gaps in the application of the child labour Conventions. According to the mission report, the mapping of a new National Plan of Action to eliminate the worst forms of child labour, is ongoing.

The Committee also observes that, according to UNAIDS estimates, there are nearly 710,000 adults and children living with HIV/AIDS in Ethiopia, of whom 650,000 persons are aged 15 and over (2016 estimates). The Committee further notes that the CRC remained concerned that HIV/AIDS still remains a major challenge, particularly in the urban areas and for children in vulnerable situations, including orphans,

children in street situations, and children living in poverty and in single parent and child headed households (CRC/C/ETH/CO/4-5, paragraph 57).

The Committee expresses its ***concern*** at the large number of children who are HIV/AIDS orphans in the country. The Committee recalls that OVCs are at an increased risk of being engaged in the worst forms of child labour. ***The Committee therefore urges the Government to take immediate and effective measures to ensure that children orphaned by HIV/AIDS and other vulnerable children do not fall into the worst forms of child labour. The Committee also requests the Government to provide information on the results of the NPA (2013–15) on protecting children orphaned by HIV/AIDS, indicating for instance, the number of OVCs who have effectively been prevented from becoming engaged in the worst forms of child labour or removed from these worst forms. Lastly, the Committee requests the Government to indicate whether a new NPA has been adopted and, if so, to indicate its major outcomes.***

Clause (e). Special situation of girls. Domestic work. The Committee previously noted that there were approximately 6,500–7,500 child domestic workers in Addis Ababa, who were subject to extreme exploitation, working long hours for minimal pay or modest food and shelter, and that they are vulnerable to physical and sexual abuse.

The Committee notes the Government's indication that it is working on creating awareness amongst the family and community to prevent children from being exploited and to prevent families from rendering their children to strangers or relatives living in urban areas.

The Committee observes that, in its 2015 concluding observations the CRC was seriously concerned about the situation of child domestic workers, called *seratenyas*, of orphans and children in street situations, as well as of young girls moving to foreign countries and being economically exploited and abused (CRC/C/ETH/CO/4-5, paragraph 63). The Committee recalls that children engaged as domestic workers are particularly exposed to the worst forms of child labour. ***In this regard, the Committee requests the Government to take immediate and effective measures to protect child domestic workers, and girls in particular, from engaging in exploitative domestic work. The Committee requests the Government to provide information on the effective and time-bound measures taken in this regard and on the results achieved.***

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

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

Fiji

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

Articles 3(b) and 7(2)(b) and (e). Worst forms of child labour and effective and time-bound measures. Use, procuring or offering of a child for prostitution and direct assistance for their removal from prostitution and for their rehabilitation and social integration. Taking account of the special situation of girls. The Committee previously noted that prostitution of children was prevalent in the country and urged the Government to take effective and time-bound measures to remove children from this worst form of child labour, taking into account the special situation of girls. The Committee notes that the Government indicates in its report that one of the actionable items of the Measurement, Awareness-raising and policy engagement project (MAP16 Project) in Fiji is to empower law enforcement bodies to remove children from the worst forms of child labour and to strengthen mechanisms for investigation and prosecution. However, the Committee notes that the Government's report does not provide information on the effective and time-bound measures taken to remove and assist child victims of commercial sexual exploitation and their results. Moreover, the Committee observes that in its 2018 concluding observations for Fiji, the United Nations Committee on the Elimination of Discrimination against Women noted that the child prostitution industry in the country was growing (CEDAW/C/FJI/CO/5, paragraph 33). ***The Committee requests the Government to take all the necessary measures to ensure that thorough investigations and prosecutions are carried out for persons who engage in the use, procuring or offering of children for prostitution and that sufficiently effective and dissuasive***

sanctions are imposed. In this regard, the Committee requests the Government to provide information on the number of investigations, prosecutions and penalties imposed. Lastly, the Committee once again urges the Government to take effective and time-bound measures to remove children from prostitution, taking into account the special situation of girls, and to provide concrete information on the number of child victims that have been effectively rehabilitated and socially integrated.

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

Ghana

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2021. The Committee notes the detailed discussion, which took place at the 109th Session of the Conference Committee on the Application of Standards in June 2021, concerning the application by Ghana of the Convention, as well as the Government's reports.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery and practices similar to slavery. Sale and trafficking of children. The Committee previously noted from the document on the National Plan of Action (NPA) for the Elimination of Human Trafficking in Ghana 2017–21 that the Anti-Human Trafficking Unit (AHTU) of the Ghana Police Service conducts investigations of cases of trafficking of persons and seeks to prosecute offenders; and that the Anti-Human Smuggling and Trafficking in Persons Unit (AHSTIPU) of the Ghana Immigration Service investigates and arrests human trafficking and smuggling offenders while also building the capacities of immigration officials to detect such cases. It noted, however, that according to this document, Ghana continues to be a source, transit and destination country for trafficking of persons, while trafficking of girls and boys for labour and sexual exploitation is more prevalent within the country than transnational trafficking. The document further indicated that children are subjected to being trafficked into street hawking, begging, portering, artisanal gold mining, quarrying, herding and agriculture. The Committee requested the Government to take the necessary measures to ensure that, in practice, thorough investigations and robust prosecutions are carried out for persons who engage in the trafficking of children, and that sufficiently effective and dissuasive sanctions are imposed; and to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied by the AHTU and the AHSTIPU for the offence of trafficking in persons under 18 years of age, in accordance with the provisions of the Human Trafficking Act.

The Committee notes the observations of the ITUC that the number of prosecutions and convictions for the offences related to the trafficking of children is insufficient in comparison to the scale and persistence of this worst form of child labour.

The Committee notes the Government's information, in its report, that the Ghana Police Service has introduced child friendly policing for all officers in all training institutions to effectively deal with child victims of trafficking and developed a standard operating procedure on child trafficking. It also notes from the Government's written information to the Conference Committee that a total of 556 human trafficking cases were investigated out of which 89 accused persons were prosecuted and 88 were convicted. Out of the convictions, 41 were under the Human Trafficking Act, 20 under the Children's Act, 1998 and 27 convictions were related to other offences. Out of the 88 convicts, 65 were given jail terms ranging from 5–7 years and the remaining 23 convicts were fined up to 120 penalty units each (a penalty unit is GH12 Cedis, approximately USD240). The Committee, however, notes that the number of prosecutions and convictions regarding trafficking in persons remain low, despite the

significant number of investigations initiated. ***The Committee therefore strongly urges the Government to pursue its efforts to strengthen the capacity of the law enforcement officials, including the Ghana police Service, AHTU, AHSTIPU, prosecutors and judges so as to ensure that thorough investigations and prosecutions of persons who engage in the sale and trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It also requests the Government to continue to provide information on the measures taken in this regard as well as specific information on the number of prosecutions, convictions and specific penalties applied on persons found guilty of trafficking children under 18 years of age.***

Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances. The Committee previously noted that section 101A of the Criminal Offences Act, 1960 (Act 29), as amended by the Criminal Offences (Amendment) Act of 2012 defines "sexual exploitation" as the use of a person for sexual activity that causes or is likely to cause serious physical and emotional injury or in prostitution or pornography and establishes penalties for sexually exploiting a child. Observing that this provision applies only to children under *16 years* of age the Committee requested the Government to take the necessary measures to ensure that its legislation is amended in order to protect all persons under the age of 18 years from the production of pornography and pornographic performances.

The Committee notes the statement made by the Government representative of Ghana to the Conference Committee that section 101A(2)(b) of the Criminal Offences Act, 1960 (Act 29), as amended by the Criminal Offences (Amendment) Act 2012, covers the use of children in pornography and pornographic performances, and establishes penalties for offenders. Section 101A(2)(b) states as follows: "A person who sexually exploits another person who is a child commits an offence and is liable on summary conviction to a term of imprisonment of not less than seven years and not more than twenty-five years." The Committee notes the Government's information that a child in this context means a person under the age of 18 years as defined under section 1 of the Children's Act of 1998. ***The Committee requests the Government to provide information on the application in practice of section 101A(2)(b), including the number of infringements reported, investigations, prosecutions, convictions and penalties applied for the use, procuring or offering of children under the age of 18 years for the production of pornography or for pornographic performances.***

Clause (d) and Article 7(2)(a) and (b). Hazardous work in cocoa farming, and preventing children from being engaged in and removing them from such hazardous work. In its previous comments, the Committee noted the Government's information on the various measures taken by the Ghana Cocoa Board in collaboration with other social partners such as the International Cocoa Initiatives, WINROCK, and the World Cocoa Foundation to prevent child labour and hazardous work in the cocoa sector. It noted, however, from a report by Understanding Children's Work (UCW) of 2017, entitled *Not Just Cocoa: Child Labour in the Agricultural Sector in Ghana* that the incidence of children's employment in cocoa had increased and that almost 9 per cent of all children (about 464,000 children) in the principal cocoa growing regions were involved in child labour in cocoa, of whom 84 per cent (294,000 children) were exposed to hazardous work, resulting in injuries, including serious ones. The majority of these children were working as unpaid family workers. The Committee urged the Government to intensify its efforts to prevent children under 18 years of age from being engaged in hazardous types of work in this sector, remove them from such work and rehabilitate them, by ensuring their access to free basic education and vocational training.

The Committee notes the information provided by the Government in its written information to the Conference Committee on the various interventions made to improve school enrolment which have led to 98 per cent and 95 per cent enrolment rates at the primary and secondary school levels, respectively. In addition, measures are also been taken in collaboration with the social partners to intensify child labour awareness and sensitisation activities throughout the country. The Committee also notes the statement made by the Government representative that the interventions to address the

causes of child labour have been implemented, such as measures that contribute to improving cocoa productivity and the income of farmers. Moreover, the Governments of Ghana and Cote d'Ivoire and the representatives of the International Chocolate and Cocoa Industry initiated a public–private partnership aimed at accelerating the elimination of child labour in the cocoa sector.

The Committee notes the ITUC's observation that cocoa has a prime place in the country's economy which brings in about 40 per cent of Ghana's total earnings. The ITUC further states that child labour in its worst forms also has implications for Ghana's cocoa supply chains in the global economy.

In this regard, the Committee notes that the Trade for Decent Work Project (T4DW Project), a productive partnership project funded by the European Commission (EC) has been launched in Ghana in April 2021. This project will support Ghana at improving the application of the ILO fundamental Conventions, in particular regarding child labour and the worst forms of child labour, in sectors with high incidence such as the cocoa sector. The Committee notes that the Conference Committee deeply deplored the high number of children who continued to be involved in hazardous work in the cocoa industries. While taking note of the measures taken by the Government, the Committee must express its ***concern*** at the high number of children involved in hazardous work in the cocoa sector. ***The Committee therefore strongly urges the Government to intensify its efforts to prevent children under 18 years of age from being engaged in hazardous types of work in this sector. It requests the Government to continue to provide information on the measures taken in this regard as well as the measures taken to ensure that child victims of hazardous types of work are removed from such work and rehabilitated, particularly by ensuring their access to free basic education and vocational training. It also requests the Government to provide information on the activities undertaken within the framework of the T4DW project, particularly with regard to child labour in the cocoa sector and the results achieved.***

Article 4(1) and (3). Determination and revision of the list of hazardous types of work. In its previous comments, the Committee noted the Government's statement that the process for comprehensive review on hazardous activities had begun and that measures were taken to adopt and incorporate the Ghana Hazardous Child Labour List (GHAHCL), into the Children's Act. Noting that the Government had been referring to the revision of the list of hazardous types of work since 2008, the Committee urged the Government to take the necessary measures, without delay, to ensure the finalization and adoption of the GHAHCL and its incorporation into the Children's Act.

The Committee notes the Government's information that the Hazardous Activities Framework (HAF) developed for the Cocoa sector in 2008 and the HAF covering other 17 sectors developed in 2012 are being reviewed. There has been an inception meeting of stakeholders and a technical committee meeting towards the revision of the HAF. The technical committee will identify other sectors for inclusion in the HAF and the final document will be reconciled with the hazardous list in the Children's Act. Moreover, the Government indicates that within its partnership project T4DW, a consultant has been selected to lead the discussions of the review of the HAF. In its conclusions, the Conference Committee urged the Government to adopt the GHAHCL and incorporate it into the Children's Act without delay. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the GHAHCL is finalized and adopted in the near future. It requests the Government to provide information on any progress made in this regard and to provide a copy, once it has been adopted.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.
1. *Trafficking in the fishing industry and domestic service.* The Committee previously noted the information from a study carried out by ILO–IPEC that children are engaged in hazardous fishing activities and are confronted with poor working conditions. Among the children engaged in fishing

activities, 11 per cent were aged 5–9 years and 20 per cent were aged 10–14 years. Furthermore, 47 per cent of children engaged in fishing in Lake Volta were victims of trafficking, 3 per cent were involved in bondage, 45 per cent were engaged in forced labour and 3 per cent were engaged in sexual slavery. It also noted from the document concerning the National Plan of Action (NPA) for the Elimination of Human Trafficking in Ghana 2017–21 that boys and girls are trafficked into forced labour in fishing and the domestic service, in addition to sex trafficking which is most prevalent in the Volta region and in the oil-producing western region. This document also indicated that across the 20 communities in the Volta and central regions, 35.2 per cent of households consisted of children who had been subjected to trafficking and exploitation primarily in the fishing industry and domestic servitude. The Committee urged the Government to take effective and time-bound measures to prevent children from becoming victims of trafficking and to remove child victims from the worst forms of child labour and ensure their rehabilitation and social integration.

The Committee notes the statement made by the Government representative that the AHTU and the AHSTIPU, in their efforts towards the elimination of trafficking of children, have strengthened their collaboration with Civil Society Organizations (CSO) as well as international partners particularly the International Organisation for Migration (IOM). These institutions undertake monitoring and rescue exercises on the Volta Lake and in the Central Region and conduct awareness raising and sensitization activities in targeted areas. Moreover, stakeholder groups, including Community Child Protection Committees (CCPC), child rights clubs, farmer cooperative and associations, fishermen, boat owners and teachers have been formed to create awareness and to monitor trafficking of children and child labour. According to the Government representative, about 2,612 CCPCs have been formed and as a result 7,543 children in child labour and at risk of being involved in child labour have been identified through routine monitoring systems. Furthermore, under the Child Protection Compact Agreement of 2018, a total of 11 government and private shelters are functioning, with 142 children residing in various shelters.

The Committee further notes the information from a report by the IOM that in March 2021, the Ghana Police Service rescued 18 child victims of trafficking between the ages of 7 and 18 years who were exploited in the fishing industry on the Volta lake. The Committee notes that the Conference Committee noted with grave concern the information relating to the trafficking of children for labour and sexual exploitation and deeply deplored the high number of children who continued to be involved in hazardous work in the fishing industries and in domestic servitude. ***While noting the efforts made by the Government to combat trafficking of children, the Committee strongly encourages the Government to intensify its efforts to prevent children from becoming victims of trafficking and to remove child victims from the worst forms of child labour and ensure their rehabilitation and social integration. It also requests the Government to continue providing information on the measures taken in this regard and the results achieved in terms of the number of child victims of trafficking, disaggregated by age and gender, who have been removed and rehabilitated.***

2. *Trokosi system.* The Committee previously noted that, despite the Government's efforts to withdraw children from *trokosi* (a ritual in which teenage girls are pledged to a period of service at a local shrine to atone for another family member's sins), the situation remained prevalent in the country. It also noted that the United Nations Human Rights Committee in its concluding observations of 9 August 2016 (CCPR/C/GHA/CO/1, paragraph 17) expressed concern about the persistence of the *trokosi* system, notwithstanding their prohibition by law. The Committee urged the Government to indicate the measures taken or envisaged to protect children from the practice of *trokosi* system as well as to withdraw child victims of such practices and to provide for their rehabilitation and social integration.

The Committee notes the statement made by the Government representative that the *trokosi* system has been outlawed and there is no official data on this practice. The Government, in partnership

with stakeholders, has been sensitizing and educating stakeholders such as fetish priests/priestesses, family heads, traditional rulers, religious bodies and indigenes on the abolition of *trokosi*.

The Committee notes the observations made by the ITUC that the harmful practice of servitude and debt bondage is still ongoing and thousands of children are suffering its consequences. The Government must ensure that children are not subjected to this practice and must take measures to monitor the enforcement of the law and to carry out an appropriate statistical evaluation system. According to the Government's report a total of 328 children have been rescued from the *trokosi* practice over the last six years. The Committee notes that the Conference Committee noted with grave concern the information relating to the unacceptable conditions experienced by teenage girls trapped in the *trokosi* system. ***The Committee therefore once again urges the Government to strengthen its measures to protect children from the practice of trokosi system as well as to withdraw child victims of such practices and to provide for their rehabilitation and social integration. It requests the Government to continue to provide information on the measures taken in this regard as well as information on the number of children under 18 years of age who have been removed from the trokosi system and rehabilitated.***

Referring to the recommendations made by the Conference Committee, the Committee requests the Government to accept an ILO Technical Advisory Mission, within the context of the current technical assistance provided by the ILO, to help expedite its efforts to eliminate the worst forms of child labour.

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

Guyana

Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

Article 1 of the Convention. National policy for the elimination of child labour, labour inspection and application in practice. For a number of years, the Committee has urged the Government to strengthen its efforts to adopt a national policy for the elimination of child labour and to provide information on the measures taken in this direction. The Committee notes with ***satisfaction*** the adoption in 2019 of the National Child Labour Policy, that covers both the formal and informal economy, and the National Action Plan for the Elimination of Child Labour (2019–2025), as indicated in the Government's report. The objective of the National Child Labour Policy is to provide a supportive environment that fosters and enables the coordination, collaboration and cooperation of all parties concerned (including child protection, education and health sectors), to effectively prevent and eliminate child labour in all its forms. The National Action Plan has a threefold dimension (preventive, protective and rehabilitative) and focuses on ten strategic issues: (1) enhancing public awareness; (2) promoting civil engagement and children participation; (3) widening access to education; (4) ensuring security for at risk families; (5) strengthening legislation; (6) ensuring rehabilitation for children removed from child labour; (7) building capacities to combat child labour; (8) implementation of a child management information system; (9) guaranteeing adequate resources; and (10) strengthening of leadership and coordination of a multi-sectoral response. The Committee notes that a National Child Labour Prevention and Elimination Committee and a Child Labour Inspectorate will be created to ensure the implementation of the National Action Plan. In this regard, the Child Labour Inspectorate should undertake regular investigation, inspection and monitoring of child labour in collaboration with other actors. The Committee also notes that the Government indicates that the National Steering Committee on Child Labour was re-established by the Ministry of Labour in 2020 and includes representatives from different ministries, the Guyana Child Protection Agency, associations of miners and the private sector. The Committee further notes that, according to the information contained in the National Action Plan, as of 2014, 18 per cent of children aged 5–17 years were engaged in child labour activities and 13 per cent worked under hazardous conditions. ***The Committee encourages the Government to continue taking measures towards the effective elimination of child labour, including hazardous child labour, within***

the framework of the National Child Labour Policy and National Action Plan 2019–2025, and to provide information on the results achieved. In this regard, the Committee requests the Government to provide information on the progress made towards the creation and subsequent functioning of the Child Labour Inspectorate. Finally, the Committee requests the Government to provide updated statistical information on the employment of children and young persons below the age of 15 in the country.

Article 3(1) and (2). List of hazardous work. In reply to the Committee's request for information on the revision of the list of hazardous work, the Government indicates that this matter is still under consideration by the National Tripartite Committee. ***The Committee requests the Government to continue providing information on the progress made towards the revision of the list of hazardous work prohibited for children under the age of 18 years and to supply a copy of the new list once adopted.***

Article 3(3). Authorization to work in hazardous employment from the age of 16 years. For a number of years, the Committee has observed that section 6(b) of the Employment of Young Persons and Children Act (Chapter 99:01) authorizes the Minister to regulate the employment of children between the ages of 16–18 years in hazardous work. Recalling that *Article 3(3)* of the Convention requires that any hazardous work for persons from the ages of 16–18 years be authorized only upon the conditions that the health, safety and morals of the young persons concerned are fully protected and that they, in practice, receive adequate specific vocational training, the Committee urged the Government to bring the Employment of Young Persons and Child Act into conformity with the Convention. The Committee notes the Government's indication that, in line with the National Action Plan's strategic objective of strengthening national legislation related to child labour, the Government will send the Employment of Young Persons and Children Act to the National Steering Committee on Child Labour for its consideration and action. ***The Committee firmly hopes that the National Steering Committee on Child Labour will take the necessary steps to bring the Employment of Young Persons and Children Act into conformity with the Convention and requests the Government to provide a copy of the amendments to the Act once they have been finalized.***

Article 9(3). Keeping of registers. The Committee previously noted that section 86(a) of the Occupational Safety and Health Act, Chapter 99:06, provides for the obligation of employers of industrial establishments to keep registers of all employees under the age of 18 years and requested the Government to indicate the legislation that establishes the same obligation for employers in non-industrial undertakings. The Committee notes that the Government indicates that while section 86(a) of the Occupational Safety and Health Act only concerns industrial establishments, the practice of the Ministry of Labour is to have in the general register the particulars of persons under the age of 18 years employed outside industrial undertakings. Taking note of the practice of the Ministry of Labour, the Committee recalls that, according to *Article 9(3)* of the Convention, national laws or regulations or the competent authority shall prescribe the registers or other documents, which shall be kept and made available by the employer, of persons whom he/she employs or who work for him/her and who are less than 18 years of age. Such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of all persons employed under the age of 18 years. ***Therefore, the Committee requests the Government to take the necessary measures to ensure that national legislation or regulations be adopted to ensure that all employers of non-industrial undertakings are obliged to keep registers of all persons below the age of 18 years who work for them, in conformity with Article 9(3) of the Convention and the indicated practice.***

The Committee recalls that the Government can avail itself of ILO technical assistance in relation to the issues raised in this observation.

Haiti

Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1957)

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1957)

While noting the difficult situation prevailing in the country, the Committee notes with ***deep concern*** that the Government's reports on Convention No. 77 and on Convention No. 78, both due since 2016, have not been received. In light of its urgent appeal launched to the Government in 2019, the Committee proceeds with the examination of the application of these Conventions on the basis of the information at its disposal.

In order to provide an overview of matters relating to the application of the main Conventions on the medical examination of young persons, the Committee considers it appropriate to examine Conventions Nos 77 and 78 in a single comment.

Articles 2, 3 and 4 of Conventions Nos 77 and 78. Annual repetition of medical examinations, medical examination for fitness for employment in types of work with high risks to health, re-examinations until the age of 21, and determination of these types of work. The Committee previously noted that, according to section 336 of the Labour Code, the fitness of minors for the employment in which they are engaged shall be subject to regular medical supervision until they have reached the age of 18. However, the Committee observed that the Labour Code does not require these examinations to be repeated at intervals of not more than one year, in accordance with *Article 3, paragraph 2* of both Conventions. Furthermore, the Committee noted that the Labour Code does not contain provisions concerning the medical examination for fitness of children and young persons for occupations involving high health risks, until at least the age of 21 years, as required by *Article 4* of both Conventions.

The Committee notes that, in its observations of 4 September 2019, the Confederation of Public and Private Sector Workers (CTSP) refers to the presence of working children in the informal economy carrying out activities in the sectors of transportation, mining, construction and the textile industry who are not covered by the Labour Code and, therefore, excluded from the requirement of medical examinations for fitness for employment. The Committee also notes from the 2016 Government's report to the Human Rights Council that a tripartite commission comprising representatives of employers, employees and the Government was set up to update the labour code (A/HRC/WG.6/HTI/1 paragraph 116). ***The Committee requests the Government to take all the necessary measures to ensure that all children and young persons carrying out industrial and non-industrial occupations, including in the informal economy, benefit from the protection conferred by Conventions Nos 77 and 78. The Committee also requests the Government to take the necessary measures, within the framework of the ongoing revision of the Labour Code, to ensure that: (1) the continued employment of a child or young person under eighteen years of age is subject to the repetition of medical examinations for fitness for employment at intervals of no more than one year; and (2) medical examination and re-examinations for fitness for employment is required for persons until at least the age of 21 years when they carry out occupations involving high health risks, indicating the categories of occupations for which such an examination is required. The Committee requests the Government to provide information on any progress made in this regard.***

Article 7(2)(a) and (b) of Convention No. 78. Ensuring the application of the system of medical examination for fitness for employment to children engaged either on their own account or on account of their parents. The Committee previously noted that the Labour Code does not contain provisions ensuring the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or any other occupation carried out in the streets or in places to which the public have access.

The Committee noted the Government's indication that itinerant workers (young persons) can request from the Women and Children's Department a certificate for fitness for employment and undergo a medical examination by a doctor approved by the competent authority, according to section 336 of the Labour Code. It also noted that the Government indicated that efforts would be made to secure effective supervision of itinerant workers (young persons). ***Noting the absence of information on this matter, the Committee requests the Government to take measures to ensure supervision of the application of the system of medical examination for fitness for employment to young persons engaged either on their own account or on account of their parents, in itinerant trading or in any other occupation carried out in the streets or in places to which the public have access. The Committee requests the Government to provide information on any progress made in this regard.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2007)

While noting the difficult situation prevailing in the country, the Committee notes with ***deep concern*** that the Government's report, due since 2011, has not been received. In light of its urgent appeal launched to the Government in 2019, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children. The Committee previously noted the adoption of the Law No. CL/2014-0010 of 2 June 2014 on the fight against trafficking in persons, which provides for sanctions of life imprisonment for trafficking of children. The Committee also noted the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 30 August 2017 and 29 August 2018 referring to the weakness of the law enforcement bodies in combating trafficking in children.

The Committee notes that in its more recent observations of 4 September 2019, the CTSP indicates that in, 2016, several people suspected of trafficking in children were arrested in a hotel with at least thirty children, but that all the suspected traffickers were quickly released. It also notes that, in its 2016 concluding observations for Haiti, the United Nations Committee on the Elimination of Discrimination against Women expressed concern about cases of trafficking of girls, especially at the border with the Dominican Republic, which are reportedly often not investigated by the police (CEDAW/C/HTI/CO/8-9, paragraph 23). The Committee further notes from the 2016 Government's report to the United Nations Human Rights Council the establishment in 2015 of a National Committee to Combat Trafficking in Persons (CNLTP) with the aim of improving the implementation of the Law No. CL/2014-0010 (A/HRC/WG.6/HTI/1, paragraph 82). In his statement on the occasion of the 2018 IOM'S International Dialogue on Migration, the President of the CNLTP indicated that a National Plan against Trafficking in Persons has been finalized and subject to approval by the Ministry of Labour and Social Affairs. ***While noting the measures taken by the Government to improve the implementation of its anti-trafficking legislation, the Committee urges the Government to intensify its efforts to ensure that thorough investigations of cases of trafficking of children, particularly at the border between Haiti and the Dominican Republic, are conducted and that prosecutions of their perpetrators are carried out. In this regard, the Committee requests the Government to provide information on the number of investigations, prosecutions, convictions and sanctions imposed under the Law No. CL/2014-0010 against perpetrators of child trafficking. Finally, the Committee requests the Government to provide information on the activities carried out by the National Committee to Combat Trafficking in Persons, including information on any difficulty encountered in the discharge of its mandate.***

Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic workers (restavèk children). In its previous comments, the Committee noted the situation of a large number of children, including 5- and 4-year-old children, carrying out domestic work (so-called *restavèk* in creole) under exploitative conditions similar to slavery and in hazardous conditions. The Committee noted that approximately the number of children working as *restavèk* represented about one in ten children in

Haiti. The Committee also took note of the 2003 Act for the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhumane treatment of children (Act of 2003), which prohibits the exploitation of children, including servitude, forced or compulsory labour and forced services. The Committee noted, however, that the Act of 2003 does not provide for penal sanctions for this practice. The Committee also observed that section 3 of the Act of 2003, according to which children can be entrusted to a host family in the context of a relationship of assistance and solidarity, allows the continuation of the practice of *restavèk* and therefore urged the Government to revise it.

The Committee notes that, according to the 2017 Report of the United Nations Independent Expert on the Situation of Human Rights in Haiti, the exploitation of children as domestic workers persists (*A/HRC/34/73, paragraph 69*). Likewise, the United Nations Committee on the Rights of the Child (CRC), in its 2016 concluding observations expressed concern at the fact that the number of child domestic workers remains high, noting that these children are subjected to physical, emotional and sexual abuse by their host family and are frequently malnourished and stunted. The CRC also expressed concern at the prevalence of the practice of *restavèk* among children from poor families, where parents cannot feed their children and often see sending their child away as domestic workers as their only choice (CRC/C/HTI/CO/2-3, paragraph 62). The Committee ***deplores*** the exploitation of children under 18 years of age in domestic work performed under conditions similar to slavery and in hazardous conditions. ***Therefore, the Committee firmly urges the Government to take immediate and effective action to ensure that, in law and practice, children under 18 years of age are not engaged as domestic workers under conditions similar to slavery or in hazardous conditions. In this respect, it urges the Government to take the necessary measures to amend the provisions of the national legislation, and particularly section 3 of the Act of 2003, which allow the continuation of the practice of restavèk. The Committee also requests the Government to take the necessary measures to ensure, as a matter of urgency, that thorough investigations and prosecutions are conducted of persons subjecting children under 18 years of age to forced domestic work or to hazardous domestic labour, and that sufficiently effective and dissuasive penalties are imposed in practice. Lastly, the Committee requests the Government to provide information on the results achieved in this regard.***

Articles 3(c) and 7(2)(a). Use, procuring or offering of a child for illicit activities. Preventing the engagement of children in the worst forms of child labour. The Committee previously noted that section 2(3) of the Act of 2003 prohibits the offering, procuring, transfer or use of children for illicit activities. It also noted that well organized and well-armed criminal groups were using children for, inter alia, transporting weapons and carrying out arson attacks, or destroying public or private property. The Committee notes that pursuant to section 469 of the Penal Code, adopted in 2020, inducing a minor to commit a crime is a penal offence punishable with up to five years of imprisonment. The Committee also notes that under section 467 of the Penal Code, a person who engages a minor in the transportation or sale of drugs is liable to five to seven years of imprisonment. According to article 16.2 of the Constitution of Haiti, persons under 18 years of age are considered minors. The Committee notes from the 2021 UNICEF Humanitarian Situation Report No. 1 on Haiti that criminal gangs are increasingly gaining control over the territory of the metropolitan area of Port-au-Prince, and that due to the widespread and normalization of violence, lack of employment opportunities and access to basic social services, children and youth are joining these gangs. While observing that legislative provisions have been adopted to punish the use of children for illicit activities, the Committee notes with ***deep concern*** that children under 18 are increasingly exploited by criminal gangs to commit various types of illicit activities. ***Therefore, the Committee urges the Government to take effective and time-bound measures to ensure that children are not used by criminal groups to commit illicit activities. In this regard, it strongly urges the Government to ensure that thorough investigations and prosecutions are carried out against the perpetrators of such acts and that sufficiently effective and dissuasive penalties are imposed in practice. The Committee also requests the Government to provide information on the***

application in practice of sections 467 and 469 of the Penal Code, including on the number of investigations, prosecutions, convictions and penal sanctions applied in this regard.

Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Restavèk children. The Committee previously noted the observations of the CTSP concerning the the absence of rehabilitation and reintegration measures for *restavèk* children (child domestic workers). It noted that the Social Welfare and Research Institute (IBESR) was responsible for placing *restavèk* children in families for the purposes of their physical and psychological rehabilitation. The Committee also noted the Government's indication that only few cases had been reported to the IBESR. The Committee notes that in its 2019 observations, the CTSP states that the practice of *restavèk* continues to perpetuate in the country and that no measures have been taken by the Government for the reintegration of *restavèk* children. The Committee further notes that in its 2016 concluding observations for Haiti, the *CRC expressed concern at the situation of many children* in domestic service who escape this condition but start living in the streets and are forced into prostitution, begging and street crime (CRC/C/HTI/CO/2-3, paragraph 62). ***The Committee urges the Government to take all the necessary measures to ensure the physical and psychological rehabilitation and social integration of restavèk children. In this regard, the Committee requests the Government to provide information on the programmes undertaken by the IBESR to reintegrate restavèk children and the number of children who have been rehabilitated.***

Clause (c). Access to free and basic education. The Committee previously noted that pursuant to section 32(3) of the Constitution of Haiti, primary education is compulsory and educational materials should be provided free of charge by the State. The Committee also noted that despite the Government's efforts, the education services remained inadequate, inefficient and low quality. The Committee notes with ***concern*** that, the United Nations Independent Expert on the Situation of Human Rights in Haiti highlighted in his 2017 Report that the number of children not attending school and the number of school-age children who do not finish their secondary education are very high (A/HRC/34/73, paragraph 37*).* Moreover, according to UNESCO, some 10 per cent of Haitian students drop out before Grade 6 of basic education and 40 per cent before the end of Grade 9 (the last grade). In addition, the Committee notes that private schools account for 85 per cent of schooling in the basic education cycle, and even more at the secondary level (UNESCO, press release, 26 October 2020). In this respect, the Committee recalls that free basic education contributes to improving enrolment and attendance rates as tuition fees and other costs are viewed as a barrier for many children to receive basic education (General Survey on the fundamental Conventions, 2012, paragraph 571). ***Considering that access to free basic education is key in preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to take effective and time-bound measures to facilitate access to free basic education to all children. The Committee requests the Government to provide information on the progress made in this regard.***

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

Kiribati

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2009)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2021. The Committee notes the detailed discussion which took place at the 109th Session of the Conference Committee on the Application of Standards in June 2021, concerning the application by Kiribati of the Convention, as well as the Government's report.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously noted that section 118(f) of the Employment and Industrial Relations Code, 2015 (EIRC), established penalties for the use, procuring or offering of a child for prostitution. It noted that the ILO-IPEC Rapid assessment study of 2012 identified 33 girls between 10 and 17 years who were engaged in prostitution. This study indicated that 85 per cent of these girls first engaged in prostitution between 10 and 15 years of age and that the most common place for prostitution was on foreign boats. The Committee further noted that the Committee on the Elimination of Discrimination against Women as well as the UN Country Team Fiji (which covers Kiribati) highlighted, in their reports of 2020, the existence of commercial sexual exploitation of children, in particular on foreign fishing vessels. The Committee requested the Government to take the necessary measures to ensure that persons contravening section 118(f) of the EIRC are investigated and prosecuted and to provide information on the number of violations identified as well as on the prosecutions, convictions and penalties applied.

The Committee notes from the Government's written information to the Conference Committee that the labour inspectors are working with the police department for prosecutions of more serious ongoing cases of non-compliance. The Committee also notes the statement made by the Government representative to the Conference Committee that initiatives are under way to improve monitoring of the worst forms of child labour through policy and legislative reforms, better response systems in the form of referral pathways and better coordination with stakeholders. The Committee notes that the Conference Committee urged the Government to effectively investigate and prosecute perpetrators of child prostitution, including through the establishment of formal procedures to proactively identify victims and refer them to protective services.

The Committee notes the observations made by the ITUC that there is a persistent practice of child prostitution and sexual exploitation of girls among vulnerable populations. However, there are no reported cases which points to the severe shortcomings in the enforcement of the legislation, programmes and institutional measures.

The Committee notes the Government's information in its report that currently there are no prosecutions of perpetrators of child prostitution with the Kiribati Police Service (KPS). The Government indicates that the KPS through the Domestic Violence, Child Protection and Sexual offence Unit (DCSU) provides protective measures to children at risk and support in prosecuting perpetrators involved in the worst forms of child labour. The Committee further notes the Government's statement referring to the need to (i) establish a well-coordinated approach towards the worst forms of child labour; (ii) the revision of legislative and policy measures; and (iii) to provide special training and capacity building of the labour inspectors and law enforcement bodies to attain a more successful result in prosecution. ***The Committee encourages the Government to take the necessary measures to strengthen the capacities of the law enforcement bodies in order to better identify, investigate and prosecute perpetrators of the offences related to the use, procuring or offering of children under 18 years for prostitution. It requests the Government to continue providing information on the measures taken in this regard as well as information on the application in practice of section 118(f) of the EIRC, including the investigations, prosecutions and penalties applied.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these worst forms of child labour and ensuring their rehabilitation and social integration. Commercial sexual exploitation. The Committee previously noted that the Kiribati Community Police patrol carried out rounds during the night to prevent and remove child victims of commercial sexual exploitation. It also noted that the Ministry of Women, Youth, Sports and Social Affairs (MWYSSA) and the Ministry of Health and Medical Services

established new divisions responsible for providing counselling and guidance in resolving problems, including for cases of the worst forms of child labour. It further noted that the MWYSSA conducted awareness-raising activities among owners and members of kava bars who employ underage girls to work at night and also provided advice and counselling to these children and empowered them to integrate into the community, including through education and awareness-raising.

The Committee notes the Government's information that the Social Welfare Officers (SWO) are mandated to ensure the safety, welfare and well-being of children under 18 years of age pursuant to the provisions of the Children, Young People and Family Welfare Act of 2013. Accordingly, a Child Protection Referral Pathway (CPRP) which comprises the related ministries, the KPS, NGOs and communities has been established to report and refer cases of exploitation of children and provide protection and assistance to child victims. For any reports received concerning the exploitation of children, the SWO takes immediate measures to withdraw children from such situation and send them to their parents and monitor the case. The Government also indicates that it has initiated a toll-free number to report on activities considered to be the worst forms of child labour. The MWYSSA, the Ministry of Employment and Human Resource and the Ministry of Education conduct awareness raising programmes at schools on the worst forms of child labour. ***While noting the measures taken by the Government, the Committee requests the Government to strengthen its measures to prevent the engagement of children in commercial sexual exploitation, and to remove them from this worst form of child labour as well as to rehabilitate and socially integrate them. It requests the Government to provide information on the measures taken in this regard, as well as on the number of children under 18 years of age who have been removed from commercial sexual exploitation and provided with appropriate care and assistance.***

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

Lebanon

Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 2(1) of the Convention. Scope of application. In its earlier comments, the Committee noted that the Labour Code only applies to work performed under an employment relationship (by virtue of sections 1, 3 and 8 of the Code). The Committee recalled that the Convention applies to all branches of economic activity and covers all types of employment or work, whether they are carried out on the basis of an employment relationship or not, and whether they are remunerated or not. The Committee also noted that under Chapter 2, section 15, of the draft amendments to the Labour Code, it seemed that the employment or work of young persons would also include non-traditional forms of employment relationship. The Committee therefore requested that the Government provide information on the progress made in relation to the adoption of the provisions of the draft amendments to the Labour Code.

The Committee notes an absence of information in the Government's report on this point. ***Considering that the Government has been referring to the draft amendments to the Labour Code for a number of years, the Committee once again expresses the firm hope that the Government will take the necessary steps to ensure that the amendments to the Labour Code relating to self-employed children and children in the informal economy are adopted in the very near future. The Committee requests that the Government provide a copy of the new provisions, once adopted.***

Article 2(2). Raising the minimum age for admission to employment or work. In its earlier comments, the Committee noted that, at the time of ratifying the Convention, Lebanon declared 14 years as the minimum age for admission to employment or work and that Act No. 536 of 24 July 1996, amending

sections 21, 22 and 23 of the Labour Code, prohibits the employment of young persons before the age of 14. The Committee also noted the Government's intention to raise the minimum age for admission to employment or work to 15 years of age and that the draft amendments to the Labour Code would include a provision in this regard (section 19). The Committee requested that the Government provide information on the progress made in the adoption of the provisions of the draft amendments to the Labour Code on the minimum age for employment or work.

The Committee notes the Government's indication in its report that the Committee's comments have been taken into account in the draft amendments to the Labour Code. The draft has also been submitted to the Council of Ministers for its examination. ***The Committee once again requests that the Government provide information on any progress made in the adoption of the provisions of the draft amendments to the Labour Code regarding the minimum age for employment or work.***

Article 2(3). Compulsory education. In its earlier comments, the Committee noted that the age limit for compulsory education is 12 years of age (Act No. 686/1998 relating to free and compulsory education at the primary school level). The Committee also noted the Government's indication that a draft law aimed at raising the minimum age of compulsory education to 15 years had been sent to the Council of Ministers for examination. The Committee requested that the Government indicate the progress made in this regard.

The Committee notes the Government's indication that the Ministry of Labour took into account the Committee's comments which were inserted in the draft amendments to the Labour Code. Moreover, the Committee notes that in its 2016 concluding observations, the UN Committee on Economic, Social and Cultural Rights is concerned at the number of children, especially refugee children, who are not in school or have quit school owing to the insufficient capacity of the educational infrastructure, the lack of documentation, and the pressure to work to support their families, among other reasons (E/C.12/LBN/CO/2, paragraph 62).

In this regard, the Committee recalls the necessity of linking the age of admission to employment to the age limit for compulsory education. If the two ages do not coincide, various problems may arise. If the minimum age for admission to work or employment is lower than the school leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work (see 2012 General Survey on the fundamental Conventions, paragraph 370). Noting the Government's intention to raise the age of completion of compulsory schooling to 15 years, the Committee once again reminds the Government that pursuant to *Article 2(3)* of the Convention, the minimum age for admission to employment (currently 14 years) should not be lower than the age of completion of compulsory schooling. ***Therefore, the Committee urges once again the Government to intensify its efforts to raise the minimum age for admission to employment or work to 15 years, and to provide for compulsory education up until that age, within the framework of the adoption of the draft amendments to the Labour Code. The Committee requests that the Government provide a copy of the new provisions, once adopted.***

Article 6. Vocational training and apprenticeship. In its earlier comments, the Committee noted that the Government had stated that the draft amendments to the Labour Code (section 16) had set the minimum age for vocational training under a contract at 14 years. The Committee expressed the firm hope that such a provision under the draft amendments would be adopted in the near future.

The Committee notes the Government's indication that section 16 will be adopted along with the draft amendments to the Labour Code. The Government also indicates that the National Centre for Vocational Training is in charge of carrying out vocational training and apprenticeships. ***The Committee once again expresses the firm hope that section 16 of the draft amendments to the Labour Code, setting a minimum age of 14 years for entry into an apprenticeship, in conformity with Article 6 of the Convention, will be adopted in the very near future.***

Article 7. Light work. In its earlier comments, the Committee noted that under section 19 of the draft amendments to the Labour Code, employment or work of young persons in light work may be authorized when they complete 13 years of age under certain conditions (except in different types of industrial work in which the employment or work of young persons under the age of 15 years is not authorized). The Committee also noted that light work activities would be determined by virtue of an Order from the Ministry of Labour. The Committee requested that the Government provide information on any progress made in this regard.

The Committee notes the Government's indication that it has asked for light work to be included in the ongoing ILO–IPEC Project "Country level engagement and assistance to reduce child labour in Lebanon" (CLEAR Project) and that a few meetings have been held in this regard. The Government indicates that, once the CLEAR Project is launched, it will be able to prepare a statute on light work in accordance with the relevant international standards. ***The Committee once again requests that the Government take the necessary measures to ensure the formulation and adoption of a statute determining light work activities, including the number of hours during which, and the conditions in which, light work may be undertaken. It requests that the Government provide information on the progress achieved.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 3, 7(1) and (2)(b) of the Convention. Worst forms of child labour, penalties and direct assistance for rehabilitation and social integration. Clause (a). All forms of slavery or practices similar to slavery. Trafficking. In its previous comments, the Committee noted the adoption of the Anti-Trafficking Act No. 164 (2011). The Committee requested the Government to provide information on the application of this Act, in practice.

The Committee notes the statistical information related to trafficking of children provided by the Government in its report. It notes that in 2014, five child victims of trafficking for labour exploitation (street begging), and one child victim of trafficking for sexual exploitation, were identified. According to the Government's indication, all the child victims identified were referred to social and rehabilitation centres, such as the *"Beit al Aman"* shelter in collaboration with Caritas. The Government also indicates that in 2014 the Higher Council for Childhood drafted a sectorial Action Plan on Trafficking of Children that is still under consultations with the relevant stakeholders.

The Committee also notes that in its 2015 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) recommended the Government to provide mandatory gender-sensitive capacity-building for judges, prosecutors, the border police, the immigration authorities and other law enforcement officials to ensure the strict enforcement of Act No. 164 to combat trafficking by promptly prosecuting all cases of trafficking in women and girls (CEDAW/C/LBN/CO/4-5, paragraph 30(a)). ***The Committee requests the Government to take the necessary measures to ensure that the draft sectorial Action Plan on Trafficking of Children is adopted in the near future, and to provide information on any progress made in this regard. The Committee also requests the Government to continue to provide information on the application in practice of Act No. 164 of 2011, including statistical information on the number of investigations, prosecutions, convictions and penal sanctions applied for the offence of trafficking of children. Lastly, the Committee requests the Government to provide information on any measures adopted in order to prevent trafficking of children as well as measures taken to ensure that child victims of trafficking are provided with appropriate rehabilitation and reintegration services.***

Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities, in particular for the production and trafficking of drugs. In its previous comments, the Committee noted that under section 33(b) and (c) of the draft amendments to the Labour Code, the use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities is punishable under the Penal Code, in addition to the penalties imposed by the Labour Code. It also noted that section 3 of Annex No. 1 of Decree No. 8987 of 2012 on hazardous work prohibits such illicit activities for minors under the age of 18. The Committee noted the statistical information (disaggregated by gender and age) provided by the Government on the number of children found engaged in prostitution from 2010 to 2012.

The Committee notes the Government's indication that the labour inspectorate is the body responsible for the supervision of the implementation of Decree No. 8987. The Committee notes with ***concern*** that according to the Government's indication no cases related to the application of the Decree have been detected so far. ***The Committee urges the Government to take immediate and effective measures to ensure the application in practice of the provisions of Decree No. 8987 of 2012 prohibiting the engagement of children for prostitution or pornographic purposes or for illicit activities. The Committee requests the Government to provide statistical information on any prosecutions and convictions made with regard to the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.***

As for the draft amendments to the Labour Code, the Committee once again requests the Government to take the necessary measures without delay to ensure the adoption of the provisions prohibiting the use, procuring or offering of persons under the age of 18 for the production of pornography or for pornographic performances, and the use, procuring or offering of persons under the age of 18 for illicit activities, as well as of the provisions providing for the penalties imposed.

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. 1. *Refugee children.* In its previous comments, the Committee requested the Government to provide information on the measures taken within the work programme of the National plan of action on the elimination of child labour (NAP–WFCL) for working Palestinian children to protect them from the worst forms of child labour.

The Committee notes the Government's indication that no new measures have been taken due to the political and security situation in the country. The Committee also notes that according to the 2016 United Nations High Commissioner Job Refugees (UNHCR) report entitled "Missing out: Refugee Education in Crisis", there are more than 380,000 refugee children between the ages of 5 and 17 registered in Lebanon. It is estimated that less than 50 per cent of primary school-age children have access to public primary schools and less than 4 per cent of young persons have access to public secondary schools. The report highlights that since 2013 the Government has introduced a two-shift system in public schools to encourage the enrolment of refugee children. About 150,000 children have entered this system. It also notes from the ILO report entitled "ILO response to the Syrian Refugee crisis in Jordan and Lebanon", of March 2014, that many refugee children are working in hazardous conditions in the agricultural and urban informal sector, street peddling or begging. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take effective and time-bound measures to protect refugee children (in particular Syrian and Palestinian) from the worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the number of refugee children who have benefited from any initiatives taken in this regard, to the extent possible disaggregated by age, gender and country of origin.***

2. *Children in street situations*. The Committee notes the Government's indication that the Ministry of Social Affairs has taken a series of measures to address the situation of street children, including: (i) undertaking activities to raise awareness through education, media and advertisement campaigns; (ii) training of a certain number of social protection actors/players working in child protection institutions; (iii) providing rehabilitation activities for a certain number of street children and their reintegration in their families; (iv) within the framework of the Poverty Reduction Strategy (2011–13) 36,575 families have been chosen to benefit from free basic social services, such as access to free compulsory public education as well as medical facilities. The Government also indicates that the 2010 draft "Strategy for Protection, Rehabilitation and Integration of Street Children" has not been implemented yet, but is in the process of being revised.

The Committee notes the 2015 study "Children Living and Working on the Streets in Lebanon: Profile and Magnitude" (ILO–UNICEF–Save the Children International) which provides detailed statistical information on the phenomenon of street-based children across 18 districts of Lebanon. The Committee also notes that the report comprises a certain number of recommendations, including: (i) enforcing relevant legislation; (ii) reintegrating street-based children into education and providing basic services; and (iii) intervening at the household-level to conduct prevention activities. The Committee further observes that despite street work being one of the most hazardous forms of child labour under Decree No. 8987 on hazardous forms of child labour (2012), it is still prevalent with a total of 1,510 children found to be living or working on the streets. Moreover, the Committee notes that in its 2016 concluding observations, the

UN Committee on Economic, Social and Cultural Rights recommended that the Government raise resources so as to provide the necessary preventive and rehabilitative services to street children and enforce existing legislation aimed at combating child labour (E/C.12/LBN/CO/2, paragraph 45). ***Recalling that street children are particularly vulnerable to the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children, and to provide for their rehabilitation and social reintegration. The Committee also urges the Government to take the necessary measures to actively implement the 2010 draft strategy entitled "Strategy for Protection, Rehabilitation and Integration of Street Children", once revised and report on the results achieved. Finally, the Committee requests the Government to provide information on the number of street children who have been provided with educational opportunities and social integration services.***

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

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

Madagascar

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), which were received on 17 September 2013.

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted that, according to the last National Survey on Child Labour (ENTE), more than one in four children in Madagascar between 5 and 17 years of age (28 per cent) work, namely 1,870,000 children. Most working children are in agriculture and fishing, where most of them are employed as family helpers. As regards children between 5 and 14 years of age, 22 per cent are working and 70 per cent attend school. The Committee also noted the allegations of the General Confederation of Workers' Unions of Madagascar (CGSTM) that many underage children from rural areas are sent to large towns by their parents to work in the domestic sector under conditions that are often dangerous. Moreover, these children have not necessarily completed their compulsory schooling. The Committee previously noted that the National Plan of Action against Child Labour in Madagascar (PNA) was in its extension phase in terms of staffing, beneficiaries and coverage (2010–15). The Government indicated that the workplan of the National Council for Combating Child Labour (CNLTE) for 2012–13 had been adopted. The Government also reported on a number of projects, including the AMAV project against child domestic labour and the plan of action against child labour in vanilla plantations in the Sava region, which was implemented under the ILO–IPEC TACKLE project.

The Committee notes the observations of SEKRIMA stating that the practice of child labour persists in Madagascar. SEKRIMA also highlights a very high drop-out rate during the first five years of schooling.

The Committee notes the Government's indications that the PNA has partly been implemented by mobilization activities under the AMAV project, particularly in the Amoron'i Mania region, with the display of four "Red card against child labour" billboards, the distribution of flyers on combating child domestic labour and awareness-raising activities concerning revision of the *dina* (local convention) in order to incorporate the issue of child domestic labour. Moreover, a total of 125 children between 12 and 16 years of age were withdrawn from domestic labour and trained for the competition to obtain a diploma. The Government also indicates that each year it celebrates the World Day Against Child Labour as a means of mass awareness raising while continuing to display posters in working-class neighbourhoods and hold discussions with parents, local authorities and social partners. It also mentions that there are currently 12 Regional Councils for Combating Child Labour (CRLTEs). The Committee further notes that the capacities of various entities for combating child labour have been reinforced, namely 50 entities involved in vanilla production in the Sava

region and 12 in the Antalaha region, 91 members of trade union organizations, 43 journalists and three technicians of the National Institute of Statistics. Lastly, the Committee notes the Government's indication that in 2014 the CNLTE revamped Decree No. 2007-263 of 27 February 2007 concerning child labour and Decree No. 2005-523 of 9 August 2005 establishing the CNLTE, its tasks and structure. Further to a study on hazardous work, 19 types of hazardous work were officially recognized in 2013 and incorporated into the Decree under adoption. While noting the measures taken by the Government, the Committee observes that the 2012 National Survey of Employment and the Informal Sector (ENEMPSI 2012) reveals that 27.8 per cent of children are working, namely 2,030,000 children. The survey also shows that 28.9 per cent of children between 5 and 9 years of age (83,000) and 50.5 per cent of children between 10 and 14 years of age (465,000) do not attend school. ***While welcoming the Government's efforts to improve the situation, the Committee urges the Government to intensify its efforts to ensure the progressive elimination of child labour. It requests it to provide information on the results achieved by the implementation of the PNA and also on the activities of the CNLTE and CRLTEs. It requests the Government to provide a copy of the revised version of Decree No. 2007-263, once it has been adopted.***

Article 2(3). Age of completion of compulsory schooling. In its previous comments, the Committee noted that, according to UNESCO, the age of completion of compulsory schooling is lower than the minimum age for admission to employment or work. The Committee observed that the official age of access to primary education is 6 years and the duration of compulsory schooling is five years, meaning that the age of completion of compulsory schooling is 11 years. The Committee noted the CGSTM's allegation that no changes had yet been made by the Government to resolve the problem of the difference between the age of completion of compulsory schooling (11 years) and the minimum age for admission to employment or work (15 years). The Committee noted the Government's indication that the Ministry of Education was pursuing its efforts so as to be able to take measures to resolve the gap between the minimum age for admission to employment or work and the age of completion of compulsory schooling.

The Committee notes the Government's indications that the Ministry of Education organized a "national education convention" in 2014 consisting of in-depth national consultations on the implementation of inclusive, accessible and high-quality education for all. However, the Committee notes with ***regret*** that the question of the age of completion of compulsory schooling has still not been settled and has remained under discussion for many years. It reminds the Government that compulsory schooling is one of the most effective means of combating child labour, and underlines the need to link the age for admission to employment or work to the age of completion of compulsory schooling, as established in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). The Committee observes once again that, as stated in the 2012 General Survey on the fundamental Conventions, if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (paragraph 371). ***Observing that the Government has been discussing this matter for ten years, the Committee urges the Government to take measures, as a matter of urgency, to raise the age of completion of compulsory schooling so that it coincides with the age of admission to employment or work in Madagascar. It requests the Government to provide information on the progress achieved in this respect.***

Article 6. Vocational training and apprenticeships. Further to its previous comments, the Committee notes the Government's indication that the Ministry of Employment, Technical Education and Vocational Training has prepared a bill on the national employment and vocational training policy (PNEFP) in collaboration with the ILO and in consultation with the social partners. The Government indicates that the bill is awaiting approval before being submitted to Parliament for adoption. ***The Committee requests the Government to take the necessary measures to speed up the adoption of the bill concerning apprenticeships and vocational training. It requests the Government to provide a copy of this legislative text once it has been adopted.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the

examination of the application of the Convention on the basis of the information at its disposal at its next session.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the Government's report, received on 25 October 2016, and the in-depth discussion on the application of the Convention by Madagascar in the Committee on the Application of Standards at the 105th Session of the International Labour Conference in June 2016.

Articles 3(b) and 7(1) of the Convention. Worst forms of child labour and sanctions. Child prostitution. In its previous comments, the Committee noted that section 13 of Decree No. 2007-563 of 3 July 2007 respecting child labour categorically prohibits the procuring, use, offering or employment of children of either sex for prostitution and that section 261 of the Labour Code and sections 354–357 of the Penal Code, which are referred to in Decree No. 2007-563, establish effective and dissuasive sanctions. The Committee noted the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA) indicating that the number of girls under the age of majority, some as young as 12 years old, who are engaged in prostitution is increasing especially in cities, that 50 per cent of prostitutes in the capital, Antananarivo, are minors, and 47 per cent engage in prostitution because of their precarious situation. For fear of reprisals, 80 per cent of them prefer not to turn to the authorities. Furthermore, the Government has strengthened the capacity of 120 actors engaged in tourism in Nosy-Be and 35 in Tuléar in relation to sexual exploitation for commercial purposes. However, the Committee noted the absence of information on the number of investigations, prosecutions and convictions of those engaged in commercial sexual exploitation. It also noted the increase in sex tourism involving children, the insufficient measures taken by the Government to combat this phenomenon and the low number of prosecutions and convictions, all of which fosters impunity.

The Committee notes that the Conference Committee recommended the Government to strengthen its efforts to ensure the elimination of the sexual exploitation of children for commercial purposes and sex tourism.

The Committee notes the Government's indication in its report that the Ministry of Internal Security, through the Police for Morals and the Protection of Minors (PMPM), is one of the agencies responsible for the enforcement of penal laws on the sexual exploitation of children for commercial purposes, including prostitution. The PMPM centralizes criminal charges concerning children and is responsible for conducting investigations into alleged perpetrators. The Government adds that the PMPM regularly makes unannounced raids on establishments that are open at night to monitor the identity and age of the persons present, but that it is difficult to determine whether the minors who are found are prostitutes. Moreover, the Committee notes that a code of conduct for actors in the tourism industry was signed in 2013. The code of conduct seeks to raise awareness among all actors in tourism with a view to bringing an end to sexual tourism in the country. The Committee also notes the statistics provided by the Government on the cases handled by the courts of first instance in Betroka, Ambatolampy, Arivonimamo, Nosy-be, Taolagnaro, Vatomandry, Mampikony and Ankazobe. It notes that in 2015 no cases of the exploitation of minors or of sex tourism involving minors were brought before these courts. The Committee is therefore once again bound to note with ***deep concern*** the absence of prosecutions and convictions of perpetrators, which is resulting in the continuation of a situation of impunity which seems to persist in the country. ***The Committee therefore urges the Government to take immediate and effective measures to ensure that robust investigations and effective prosecutions are carried out on persons suspected of procuring, using, offering and employing children for prostitution, and that sufficiently effective and dissuasive penalties are imposed. It requests the Government to continue providing statistical information on the number and nature of the violations reported, investigations, prosecutions, convictions and criminal penalties imposed in this respect. Finally, the Committee requests the Government to provide information on the results achieved as a result of the dissemination of the code of conduct among the various actors in the tourism sector.***

Clause (d). Hazardous types of work. Children working in mines and quarries, and labour inspection. In its previous comments, the Committee noted that children work in the Ilakaka mines and in stone quarries under precarious and sometimes hazardous conditions, and that the worst forms of child labour are found in the informal economy and in rural areas, which the labour administration is unable to cover. The Committee also noted that the work carried out by children in mines and quarries is a contemporary form of slavery, as it involves debt bondage, forced labour and the economic exploitation of those concerned,

particularly unaccompanied children working in small-scale mines and quarries. It noted that children work from five to ten hours a day, that they are engaged in transporting blocks of stone or water, and that some boys dig pits one metre in circumference and between 15 and 50 metres deep, while others go down the pits to remove the loose earth. Children between three and seven years of age, often working in family groups, break stones and carry baskets of stones or bricks on their heads, working an average of 47 hours a week when they are not enrolled in school. Moreover, the working conditions are unhealthy and hygiene is extremely poor. All of the children are also exposed to physical and sexual violence and to serious health hazards, particularly due to the contamination of the water, the instability of pits and the collapse of tunnels.

The Committee notes that the Conference Committee recommended the Government to take measures to improve the capacity of the labour inspectorate. It also notes the Government's indication that, in the context of the National Plan of Action to Combat Child Labour (PNA), the labour inspectorate envisages conducting inspections to take preventive and protective measures with a view to combating child labour in mines and quarries in the regions of Diana, Ihorombe and Haute Matsiatra. The Committee notes that the Government representative to the Conference Committee indicated that the lack of resources is a major obstacle to the adoption of rigorous measures. For example, labour inspectors do not have means of transport, even though the Government indicates in its report that one of the main obstacles to inspections by labour inspectors is the fact that mining sites, located on the outskirts of large cities, are often difficult to access. The Committee notes with ***deep concern*** the situation of children working in mines and quarries under particularly hazardous conditions. ***The Committee once again urges the Government to take the necessary measures to ensure that no children under 18 years of age can be engaged in work which is likely to harm their health, safety or morals. It requests the Government to provide information on the progress made in this respect, particularly in the context of the PNA, and the results achieved in removing these children from this worst form of child labour. The Committee also requests the Government to improve the capacities of the labour inspectorate, in particular by providing the necessary resources, such as vehicles, to enable labour inspectors to have access to remote sites.***

Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Street children. In its previous comments, the Committee noted that the Ministry of Labour and Social Legislation (MTLS) was continuing its programme of school enrolment and training for street children in the context of the Public Investment Programme for Social Action (PIP). It however noted that the number of street children has increased in recent years and that the action taken by the Government to help them is still minimal. The Government indicated that the programmes financed under the PIP have the objective of removing 40 children a year from the worst forms of child labour, or 120 children over three years. The Committee nevertheless noted that there are about 4,500 street children in the capital, Antananarivo, most of whom are boys (63 per cent) who live from begging or sorting through rubbish. Girls living on the streets are frequently victims of sexual exploitation to meet their subsistence needs, or under pressure from third parties. Others are engaged in domestic work, swelling the ranks of exploited child workers.

The Committee notes that the Conference Committee, in its conclusions, requested the Government to increase funding for the PIP with a view to removing children from the streets and for awareness-raising campaigns.

The Committee notes the Government's indication that the Ministry of the Population, Social Protection and the Promotion of Women has set up a census programme of children living and working on the streets and homeless families for the period 2015–16. The objective of this programme is to determine the number of children living and working on the streets, identify the needs of homeless families and develop a short-, medium- and long-term plan of action to deal with them. The Committee notes that studies have been carried out, data analysed and interpreted, and shelters set up. The next stages will consist of the provision of shelter, care, guidance, education, school enrolment and placement or repatriation of the persons concerned. ***The Committee requests the Government to continue taking effective and time-bound measures to ensure the targeted implementation of the PIP's programmes, and requests it to intensify its efforts to ensure that street children are protected from the worst forms of child labour and are rehabilitated and integrated in society. It requests the Government to provide information on the results achieved in this respect. The Committee also requests the Government to provide information on the data collected through the census programme on children living and working in the streets and homeless families, as well as the results achieved in removing them from this situation and preventing them from becoming engaged in the worst forms of child labour.***

Application of the Convention in practice. The Committee previously noted that 27.5 per cent of children, or 2,030,000, are engaged in work, of whom 30 per cent live in rural areas and 18 per cent in urban areas. The Committee also noted that 81 per cent of child workers between 5 and 17 years of age, or 1,653,000 children, are engaged in hazardous types of work. Agriculture and fishing account for the majority of child labour (89 per cent), and more than six out of ten working children have reported health problems resulting from their work over the past 12 months. The Committee further noted that child domestic labour is often a feature of the lives of poor rural families who send their children to urban areas in response to their precarious situation. Child domestic workers may be forced to work up to 15 hours per day, and most of them receive no wages, which are paid directly to their parents. In some cases, they sleep on the floor, and many are victims of psychological, physical or sexual violence. The Committee expressed its deep concern at the situation and number of children under 18 years of age forced to perform hazardous types of work.

The Committee notes the Government's indication that it is intensifying its efforts to combat child labour through the Manjary Soa project. The Manjary Soa Centre, established in 2001, offers selected children second chance education. Once these children have been reinserted into the public education system, the Centre covers their school fees and provides them with the necessary school supplies. The Committee also notes the 2014–16 project to combat child labour in the regions of Diana and Atsimo Andrefana. The Government indicates that the objective of this project is to reinforce action in support of the socio-economic reintegration of 100 girls under 18 years of age, who have been removed from sexual exploitation for commercial purposes in Nosy-be, Toliara and Mangily. ***The Committee requests the Government to intensify its efforts to eliminate the worst forms of child labour, and particularly hazardous types of work, and to provide information on any progress made in this regard and the results achieved.***

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

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

Papua New Guinea

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Article 1 of the Convention. National Policy designed to ensure the effective abolition of child labour. In its previous comments, the Committee noted the observations of the International Trade Union Confederation indicating the existence of child labour in agriculture, street vending, tourism and entertainment. The Committee also noted that according to the rapid assessment conducted by the ILO in Port Moresby, children as young as 5 and 6 years of age were working on the streets under hazardous conditions. In this regard, the Committee urged the Government to strengthen its efforts to improve the situation of working children and to ensure the effective elimination of child labour.

The Committee notes from the Government's report the adoption of the National Action Plan to Eliminate Child Labour in Papua New Guinea 2017–2020 (NAP), which is based on four strategic objectives: (i) mainstreaming child labour and worst forms of child labour in social and economic policies, legislation and programmes; (ii) improving the knowledge base; (iii) implementing effective prevention, protection, rehabilitation and reintegration measures; and (iv) strengthening the technical, institutional and human resource capacity of stakeholders. The NAP envisages the establishment of a National Coordinating Committee on Child Labour and a Child Labour Unit within the Department of Labour and Industrial Relations to provide institutional oversight and the coordination and management of child labour. The Committee notes the Government's indication that it is currently working towards the establishment of a National Steering Committee under a government funded child labour project. This project is focused on delivery of the key target outcomes of the NAP. ***The Committee requests the Government to indicate how, following the adoption of the NAP, child labour has been mainstreamed in national social and economic policies and programmes with a view to achieving its progressive elimination. The Committee also requests the Government to provide information on the***

progress made in relation to the establishment of a Child Labour Unit within the Department of Labour and Industrial Relations, as well as the National Coordination Committee as envisaged by the NAP.

Article 2(1). Minimum age for admission to employment. In its previous comments, the Committee noted that, even though the Government had declared a minimum age for admission to employment of 16 years upon ratification of the Convention, section 103(4) of the 1978 Employment Act permits the employment of children above 14 years of age during school hours when the employer is satisfied that the person no longer attends school. The Committee also noted that section 6 of the 1972 Minimum Age (Sea) Act permits children above 15 of age to be employed at sea. In addition, according to section 7 of that Act, the Director of Education can grant an approval for the employment of a child above 14 years of age for service at sea when it is considered that such work will be for the immediate and future benefit of the child. The Committee noted the Government's indication that it was undertaking a review of the Employment Act and the Minimum Age (Sea) Act to address issues related to the minimum age. In this respect, the Committee notes the Government's indication that it aims to complete the reform by finally adopting the Employment Act. ***Noting that the Government has been referring to the review of the Employment Act and the Minimum Age (Sea) Act for a number of years, the Committee strongly urges the Government to take the necessary measures without delay to ensure that section 103(4) of the 1978 Employment Act and sections 6 and 7 of the 1972 Minimum Age (Sea) Act are harmonized with the minimum age declared at the international level, which is 16 years of age.***

Article 2(3). Age of compulsory education. In its previous comments, the Committee noted the absence of legislation making education compulsory. The Committee also noted the absence of a provision in the Education Act 1983 specifying the age of completion of compulsory education. The Committee notes with ***regret*** an absence of information from the Government concerning measures taken to provide for compulsory education. ***The Committee urges the Government to take the necessary measures to provide for compulsory education for boys and girls up to the minimum age for admission to employment of 16 years. The Committee requests the Government to provide information on the progress made in this regard.***

Article 3(1) and (2). Minimum age for admission to, and determination of hazardous work. The Committee had previously noted that according to section 104(1) of the 1978 Employment Act, no person under 16 years of age shall be employed in any employment, or in any place, or under working conditions that are injurious or likely to be injurious to his health. In this regard, the Committee recalled that according to *Article 3, paragraph 1*, of the Convention, the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years. The Committee notes from the Government's report under Convention No. 182 that issues relating to the minimum age for hazardous work, as well as the determination of types of hazardous work prohibited to children under the age of 18 years will be addressed during the review of the Employment Act and the consideration of the proposed Occupational Safety and Health (OSH) legislation. The Committee also notes that the NAP included among the relevant actions and outputs the development and dissemination of a list of hazardous work or occupations that is culturally sensitive and practical. ***The Committee urges the Government to ensure, within the framework of the review of the Employment Act and adoption of OSH legislation, that hazardous work is prohibited for children under the age of 18 years. The Committee also requests the Government to take the necessary measures, without delay, to ensure the adoption of a list of hazardous work prohibited for persons under 18 years of age, in consultation with the organisations of employers and workers concerned. The Committee requests the Government to provide information on any progress made in this respect.***

Article 3(3). Admission to hazardous work from the age of 16 years. The Committee had previously requested the Government to take the necessary measures to ensure that the authorization of the performance of hazardous types of work for persons between the ages of 16 and 18 years is subject to the conditions established under *Article 3(3)* of the Convention, namely that the health, safety and morals

of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity. The Committee noted the Government's indication that the conditions of work for young people would be examined through the Employment Act review and that the legislation relating to occupational safety and health would be reviewed to ensure that hazardous work does not affect the health and safety of young workers. ***Noting the absence of information on this point, the Committee requests the Government to take the necessary measures to ensure that the employment of young persons between 16 and 18 years to perform hazardous types of work is subject to the conditions laid down in Article 3(3) of the Convention. The Committee requests the Government to provide information on the progress made in this regard.***

Article 9(3). Registers of employment. In its previous comments, the Committee had noted the absence of a provision in the 1978 Employment Act requiring the employer to keep registers and documents of employed persons under the age of 18 years. It also noted that section 5 of the Minimum Age (Sea) Act requires the person in charge of a vessel to register the name, birth and terms and conditions of service of persons under 16 years of age that are employed on board. In this regard, the Committee had recalled that *Article 9(3)* of the Convention requires employers to keep registers containing the names and ages or dates of birth, duly certified wherever possible, of persons whom they employ or who work for them and who are less than 18 years of age. The Committee also noted the Government's indication that this issue would be addressed within the review of the Employment Act. The Committee notes with ***regret*** an absence of information on this point. ***The Committee requests the Government to take the necessary measures to ensure that employers are obliged to keep registers of all persons below the age of 18 years who work for them, including of those working on ships, in conformity with Article 9(3) of the Convention.***

While noting the Government's indication that it is focusing on a labour law reform to ensure consistency and conformity of its national legislation with international labour standards, the Committee strongly encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. In this regard, the Committee invites the Government to consider technical assistance from the ILO to bring its legislation into conformity with the Convention.

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

Saint Vincent and the Grenadines

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Articles 3(d) and 4(1). Minimum age for admission to, and determination of, hazardous work. The Committee previously noted that the Employment of Women, Young Persons and Children Act (EWYPC Act), did not contain a general prohibition on the employment of children below 18 years of age in hazardous work, other than the prohibition on night work in any industrial undertaking (section 3(2)) nor a determination of hazardous types of work prohibited to children under 18 years of age. It also noted the Government's indication that consultations with stakeholders to address the issues related to hazardous work by children would be commenced shortly and a draft report would be prepared by the end of 2013.

The Committee notes the Government's information in its report that there has been no new development on this matter. It notes from the Government's report of 2021 under the Minimum Age Convention, 1973 (No.138) that the proposed consultations with the relevant stakeholders to address the issues related to hazardous work by children did not materialize due to budgetary constraints and lack of sufficient staff in the Department of Labour. The Government further states that these consultations are still on the agenda and further developments will be communicated in due course. ***Noting that the Government has been referring to the consultations with the stakeholders since 2013, the Committee once again expresses the firm hope that the consultations with the stakeholders***

including the social partners will be held in the near future and legislation relating to the prohibition on hazardous work by children under 18 years of age as well as a regulation determining the types of hazardous work prohibited to children under the age of 18 years will be adopted soon. The Committee requests the Government to provide information on any developments made in this regard.

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

Senegal

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes the observations of the International Trade Union Confederation (ITUC) of 1 September 2021.

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children for economic exploitation and forced labour. Begging. In its previous comments, the Committee noted that in 2019 it was estimated that in Senegal over 100,000 *talibé* children were compelled to engage in begging. The Committee noted that section 3 of Act No. 2005-06 of 29 April 2005 to combat trafficking in persons and similar practices and to protect victims prohibits the organization for economic gain of begging by others, or the employment, procuring or deception of any person with a view to causing that person to engage in begging, or the exertion of pressure so that the person engages in begging. However, section 245 of the Penal Code provides that "the act of seeking alms on days, in places and under conditions established by religious traditions does not constitute the act of begging". In this regard, the Committee requested the Government to ensure the prohibition of begging by *talibé* children through the adoption of laws to eliminate this legislative ambiguity. The Committee also noted from the information communicated by the ITUC, and the concluding observations of the United Nations Human Rights Committee and Committee Against Torture, which both noted that investigations and prosecutions of persons engaged in forced begging by children were rare and that, far from declining, the exploitation of children by Koranic teachers for forced begging was a phenomenon that was increasing.

The Committee notes that in its written information on the application of the Convention provided to the Committee on the Application of Standards at the 109th Session of the International Labour Conference in 2021, the Government indicates that when Act No. 2005-06 was reviewed, it was finally decided to retain section 245 of the Penal Code, which supplements Act No. 2005-06. The Government indicates that section 245 of the Penal Code does not permit begging, in whatever form, and that it merely notes a reality arising out of the religious practice of requesting or giving alms. The Government emphasizes that the Penal Code formally prohibits begging by persons under 18 years of age and punishes any person who allows a child under their responsibility to engage in begging. The Government adds that the Ministry of Women, the Family, Gender and Child Protection (MFFGPE) organized a workshop in collaboration with the Special Brigade for Children to strengthen their collaboration during removal operations and to facilitate prosecutions. In this regard, 32 judicial investigations into Koranic teachers were opened between 2007 and 2019, leading to 29 prosecutions and 25 convictions for forced begging, torture or the death of children.

However, the Committee is bound to note the observations of the ITUC that, despite the generalized and visible nature of the abuses concerned, investigations and prosecutions are still extremely rare and the policy still frequently fails to investigate cases of forced begging. Charges against Koranic teachers continue to be abandoned or transmuted into less serious offences than forcing *talibé* children to engage in begging under the terms of Act No. 2005-06 or the Penal Code. The ITUC indicates that poor law enforcement and the lack of means of redress for ill-treated *talibé* children have continued. The ITUC observes that the authorities have not opened investigations against persons suspected of having forced *talibé* children to engage in begging who were identified during the programme for the removal of children from the streets implemented by the MFFGPE, and have not taken measures against

public employees who refused to investigate such cases. Moreover, during the reporting period, the Government has not prosecuted or convicted presumed traffickers engaged in the forced begging of children. Instead of launching criminal investigations, administrative penalties are often imposed upon the presumed perpetrators of forced begging, particularly due to public pressure and the social influence of Koranic teachers. Despite allegations of complicity by Government representatives who have refused to investigate cases of trafficking or have exerted pressure on magistrates for cases to be abandoned, the Government has not reported any investigation, prosecution or conviction for complicity.

While noting the Government's indication that a certain number of judicial investigations were undertaken leading to a number of prosecutions and convictions between 2007 and 2019, the Committee notes with ***regret*** that the Government has not provided new information on the imposition of penalties on persons engaged in the use of *talibé* children under the age of 18 for begging. With reference to the 2012 General Survey on the fundamental Conventions, the Committee recalls that, while the issue of seeking alms as an educational tool falls outside the scope of its mandate, it is clear that the use of children for begging for purely economic ends cannot be accepted under the Convention (paragraphs 483–484). The Committee therefore expresses ***deep concern*** at the persistence of the phenomenon of the economic exploitation of *talibé* children and ***strongly deplores*** the low number of prosecutions under section 3 of Act No. 2005-06. ***Recalling that the penalties established are only effective if they are applied in practice, the Committee once again urges the Government to take the necessary measures without delay to ensure the enforcement in practice of section 3 of Act No. 2005–06 and the punishment of persons who use talibé children under 18 years of age for begging for economic exploitation. The Committee once again urges the Government to intensify its efforts for the effective reinforcement of the capacities of the officials responsible for the enforcement of the law and to ensure that the perpetrators of these acts, as well as complicit State officials who fail to investigate such allegations, are prosecuted and that sufficiently dissuasive penalties are imposed in practice on those who are convicted. Noting once again with deep regret the absence of data on this subject, the Committee once again requests the Government to provide statistics on the number of prosecutions, convictions and penalties imposed under Act No. 2005-06.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and the provision of assistance to remove them from these forms of child labour. Talibé children. 1. *Projects and programmes for the removal of children from the streets.* The Committee previously urged the Government to intensify its efforts and to take the necessary measures without delay to protect *talibé* children against sale and trafficking and forced or compulsory labour and to ensure their rehabilitation and social integration.

In its written information on the application of the Convention provided to the Committee on the Application of Standards at the 109th Session of the International Labour Conference in 2021, the Government indicates that, in addition to the measures indicated in 2019 to combat trafficking, begging and the forced or compulsory labour of children, other health measures were taken in 2020 to reinforce this action within the context of COVID-19, in which protection was strongly augmented. The Government reports the following new measures:

– The support project for the protection of child victims of violations of their rights (PAPEV): this project, launched by the Office of the United Nations High Commissioner for Human Rights in collaboration with the Ministry of Justice, is making a broad contribution to the reinforcement of the child protection system in Senegal. The National Steering Committee for the project was established by Order No. 005016 of 3 February 2020 of the Minister of Justice. In 2020, the PAPEV provided support to the State of Senegal for the family reintegration of children removed from the streets through the implementation of a programme of emergency protection for street children. The programme resulted in 5,067 children being removed and placed in reception centres, of whom 175 were from

Gambia, Guinea-Bissau and the Republic of Guinea, and 52 children being reintegrated in their families, including 34 children from Gambia and 18 from Guinea-Bissau. The PAPEV also strengthened the assistance provided in reception centres through educational and health support for children.

– The project "zero street children" is part of the programme for the "removal of children from the streets", the third phase of which was launched in April 2020: starting off from the national contingency plan to respond to specific needs for the protection of children in the context of COVID-19, the project "zero street children" led to 5,333 street children aged between 4 and 17 years being removed and placed in shelter in reception structures with support in the form of the provision of food, hygiene and sanitary products and various types of equipment to contribute to their adequate support. The Coordination, Monitoring and Follow-up Unit of the "zero street children" project is the national body that follows the situation of *talibé* children. It brings together State structures, civil society organizations, non-governmental organizations and technical and financial partners involved in combating the problem of street children, including representatives of religious chiefs. The outcome of the implementation of the project, released on 20 November 2020, shows that 6,187 children between the ages of 4 and 17 years have been removed from the streets. The proportion of children returned to their families also rose by 37.3 per cent, increasing from 22.7 per cent in 2019 to 60 per cent in 2020.

– The Vulnerable Children Programme (PED): between 2016 and 2020, the Ministry of Health and Social Action (MSAS) benefited from a budget for vulnerable children (orphans, children with disabilities, *talibé* children, children of families suffering from leprosy). This Programme achieved the following results: the placement of 700 *talibé* children in apprenticeships in workshops or training centres; the registration of 5,950 *talibé* children in mutual health funds through universal health coverage; support for 70 pilot *daaras* in the form of food and materials; and subsidies for 140 traditional *daaras*.

The Committee also notes the information provided by the ITUC to the effect that the Government has taken positive measures in practice in relation to *talibé* children in response to the COVID-19 pandemic. According to the ITUC, the Government has worked with international organizations, civil society and local populations on the inclusion of the needs of *talibé* children in COVID-19 programmes and projects, including the "zero street children" project. The ITUC indicates that the number of children removed from the streets during the third phase of the "removal programme" clearly exceeded the first and second phases and that the Departmental Child Protection Committees (CDPEs), which include representatives of civil society, have supervised the programme at the regional level.

However, the ITUC refers to several challenges encountered during the implementation of the various projects and programmes. It indicates that the authorities have noted that children who had been removed from the streets have returned. Civil society organizations have reported that the processes for the monitoring of the removal programme were once again inadequate, particularly in relation to the lack of follow up of *talibé* children who had been returned to their families. As a consequence, in most cases, *talibé* children who were returned to their families were sent back to Koranic schools where they were forced to beg. The ITUC adds that disparities have emerged at the level of the implementation of the removal programme throughout Senegal. For example, the Prefect of Kédougou refused the request by the authorities to return the *talibé* children from a particular *daara* to their families; in Matam, the local religious authorities vigorously opposed the programme and it was not possible to remove any children; in Sédhiou, no children were removed from the streets; and in Ziguinchor and Thiès, *talibé* children were confined in *daaras* instead of being returned to their families. The ITUC adds that the resources allocated to the CDPEs were inadequate and that there was a lack of communication with the MFFGPE and the local actors responsible for removal operations, which affected the implementation of the operations and the appropriate follow-up of the *talibé* children who

had been removed. Moreover, the "removal programme" was vigorously opposed by certain Koranic teachers and only a minority of *daaras* agreed to facilitate the return of *talibé* children to their families. By way of illustration, only six of 247 *daaras* in Louga allowed the voluntary return of *talibé* children to their families. Finally, the MFFGPE was due to carry out an evaluation of the implementation of the third phase of the removal programme before proceeding with a fourth phase, but that has not been done and it is not known whether the additional phase is currently under consideration. ***While noting the measures taken by the Government, the Committee urges it to reinforce the relevant programmes so as to continue being able to remove child victims of begging for exclusively economic purposes and ensure their lasting rehabilitation and social integration, particularly by ensuring effective follow up to the removal of children from the streets and providing the CDPEs with the necessary resources to be able to fulfil their functions effectively. The Committee requests the Government to continue providing information on the measures taken in this regard and to supply statistics on the number of talibé children removed from the worst forms of child labour and who have benefited from rehabilitation and social integration measures.***

2. *Project to modernize daaras.* The Committee previously noted the various programmes for the modernization of *daaras* and the training of Koranic teachers, as well as the various framework plans for the elimination of the worst forms of child labour, including the support project for the modernization of *daaras* (PAMOD). However, it noted that the programme for the modernization of *daaras* appeared to be more focused on the construction of new "modern *daaras*" than on the improvement of the infrastructure and practices of existing *daaras*.

The Committee notes the ITUC's observations that the programme for the modernization of *daaras* includes two components: the PAMOD, which was launched in November 2013, and the project to improve the quality and equity of basic education (the PAQUEEB project) financed by the World Bank. The first phase of the PAQUEEB programme focused on the renovation and modernization of 100 *daaras* throughout the country. In March 2020, the Ministry of Education organized a workshop to select the *daaras* which would benefit from the second phase of the PAQUEEB programme. Subsequently, 417 additional *daaras* were selected, making a total of 517 beneficiary *daaras*. The ITUC also reports that the Ministry of Education is envisaging holding a meeting with *daaras* inspectors to discuss the best way of integrating child protection into their inspections, with the assistance of civil society organizations. The ITUC adds that there are failings in the performance of *daaras* inspection services. In overall terms, the inspectors seem to be without clear central directives and instructions and do not appear to develop plans to combat begging and the ill-treatment of children in *daaras*. Nor is it clear whether the inspection services intend to inspect all *daaras*, or only those registered as "modern *daaras",* which gives rise to the risk that unregistered *daaras*, in which the worst abuses persist, are continuing to operate without supervision. Moreover, the ITUC indicates that the Ministry of Justice has not been sufficiently involved in the programme for the modernization of *daaras*, which limits the possibility of closing *daaras* that engage in exploitation and prosecuting abusive teachers.

The Committee notes the Government's indications that the policy for the modernization of *daaras* in Senegal has been carried out through several reforms, including the preparation of a Bill establishing the status of *daaras*, the development of a curriculum for *daaras* including the Koran, French and science subjects and the introduction of disciplines such as reading and mathematics. However, it notes the indication by the ITUC that the Bill establishing the status of *daaras,* introduced for the first time in 2010 and then once again in 2013, has not yet been adopted. The Bill was approved by the Council of Ministers in 2018, but has remained before the National Assembly awaiting adoption for a third year. ***The Committee therefore urges the Government to intensify its efforts to ensure the implementation of the programme for the modernization of daaras, through the PAMOD and PAQUEEB programmes, in a manner that contributes to the protection of talibé children against the worst forms of child labour and ensures the rehabilitation and social integration of these children, and it requests it to provide information on the results achieved. The Committee also requests the Government to take measures***

to reinforce the daaras inspection service and to ensure that all daaras, and not only "modern daaras", are inspected, so that talibé children who are victims of forced begging are effectively identified and then removed and socially integrated. Finally, the Committee requests the Government to take the necessary measures to ensure that the Bill establishing the status of daaras is adopted in the near future and it requests it to provide information on the manner in which this Bill, when it has been adopted, will contribute to the modernization of daaras and will protect talibé children from forced begging.

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

Sierra Leone

Minimum Age Convention, 1973 (No. 138) (ratification: 2011)

Article 2(1). Scope of application. The Committee previously noted that section 125 of the Child Rights Act (2007) sets the minimum age of full-time employment at 15 years in the formal and informal economies. However, according to sections 52 and 53 of the Employers and Employed Act of 1960 (as amended in 1962), children under the age of 15 years shall not be employed or work in any public or private industrial undertaking, or any branch thereof or on any vessel, other than an undertaking or vessel in which only members of the same family are employed. The Committee requested that the Government takes step to address this discrepancy with respect to the application of the minimum age provisions in the Employers and Employed Act and the Child Rights Act.

The Committee notes the response of the Government, in its report, that the Labour Bill of 2018 harmonises national legislation including the Employers and Employed Act of 1960 (as amended in 1962), the Registration of Employees Ordinance (Cap 213), and the Recruitment of Employees Ordinance (Cap 216). The Committee also observes that the Labour Bill in section 102 prohibits the employment of children below the age of 15 in any industrial undertaking, and section 1 defines an industrial undertaking to include mines, quarries and other works for the extraction of minerals from the earth; industries in which articles are produced or processed, including industries concerned with the generation and transmission of electricity and motive power of any kind; industries concerned with the construction and repair of buildings and installations; and industries concerned with the transport of passengers or goods. However, the Committee notes that section 104(2) of the Labour Bill excludes commerce and agriculture from the definition of industrial undertakings. ***Noting the prevalence of child labour in Sierra Leone's informal sector including the commerce and agricultural sectors, the Committee once again requests the Government to take the necessary measures to ensure that children working in all branches of economic activity, including the informal economy, benefit from the protection laid down in the Convention.***

Article 3(2). Determination of the types of hazardous work. The Committee previously requested the Government to take necessary measures to ensure that a List of Hazardous Work Prohibited to Children under the age of 18 years is adopted. The Committee notes the Government's information that the List of Hazardous Work Prohibited to Children under the age of 18 years has been developed, adopted, disseminated and being used by Labour Officials and their partners. Recalling the previous response of the Government that the List of Types of Hazardous Child Labour would be passed by Cabinet as a Statutory Supplementary Instrument, the Committee notes that the copy of the hazardous list, which the Government has provided as a part of its report, is not formatted as a regulation prohibiting hazardous types of work.

The Committee recalls the need for the List of Types of Hazardous Work to be hinged upon national laws or regulations, in consultation with the organizations of employers and workers concerned. ***The Committee therefore urges the Government to take the necessary measures without delay to ensure that the List of Types of Hazardous Work prohibited to Children under the age of 18 in***

Sierra Leone will be adopted in the form of a regulation or statutory instrument. The Committee requests that the Government provide information on progress made in this regard.

Article 3(3). Admission to hazardous types of work from the age of 16 years. The Committee previously noted that section 54(2) of the Employers and Employed Act permits underground work in mines of male persons who have attained the age of 16 years with a medical certificate attesting fitness for such work. It also noted that there were no provisions that establish the requirement to ascertain that young persons between the ages of 16 and 18 years that are engaged in hazardous work receive adequate specific instruction or vocational training in the relevant branch of activity, as required by *Article 3(3)* of the Convention.

The Committee notes the response of the Government that it will review the Labour Bill to reflect principles enshrined in *Article 3(3)* of the Convention. The Committee further observes with ***interest*** that section 102(2) of the Labour Bill expressly prohibits the employment of children below the age of 18 in underground mines. ***Noting the conformity of section 102(2) of the Labour Bill with the Convention, the Committee requests the Government to ensure that this provision is retained during the enactment of the Labour Bill.***

Article 6. Vocational training and apprenticeship. The Committee previously noted that according to section 135 of the Child Rights Act, the minimum age at which a child may commence apprenticeships, including in the informal economy (section 134), shall be 15 years or after completion of basic education, whichever is later. The Committee also noted that, according to section 59 of the Employers and Employed Act, any person of 14 years and above may apprentice himself to any trade or employment. However, according to section 57 of this Act, the father or the guardian of a child above the age of 12 years may, with the consent of that child, apprentice such child to trade or employment in which art or skill is required, or as a domestic worker. The Committee recalled that under *Article 6* of the Convention, a young person must be at least 14 years of age to undertake an apprenticeship.

The Committee notes the response of the Government that the Labour Bill 2018 would address the issue of minimum age for apprenticeship and set the same to at least 14 years. The Committee also observes that section 107 of the Labour Bill sets the minimum age at which a child may commence an apprenticeship with a Craftsman to be 15 years or after completion of basic education. ***Noting the conformity of section 107 of the Labour Bill with Article 6 of the Convention, the Committee requests that the Government take steps to ensure a minimum age of 14 years for apprenticeship is retained during the enactment.***

Article 7(1) and (3). Age for admission to light work and determination of light work. The Committee previously noted that section 127 of the Child Rights Act determines the minimum age for the engagement of a child in light work as 13 years and defines light work as work that is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from schoolwork. However, the Committee also noted that section 51 of the Employers and Employed Act provides for an exception to children under the age of 12 years to be employed by a member of the family of such a child to engage in light work of an agricultural, horticultural or domestic character and which has been approved by the competent authority. The Committee recalled that, under the terms of *Article 7(1)* of the Convention, light work activities may be permitted only to persons between 13 and 15 years of age provided that such work is not likely to be harmful to their health or development and does not prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

The Committee notes the response of the Government that the Labour Bill will address the issues raised with respect to the age for admission to light work and determination of light work in Sierra Leone. The Committee observes that section 103(1) of the Labour Bill sets the minimum age for the engagement of a child in light work at 13 years. The Committee also notes that the Bill, in section 104,

reiterates the position of the Child Rights Act and defines light work to mean any work which is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from schoolwork. ***Noting the conformity of the provisions of the Labour Bill with respect to the minimum age for admission to light work, the Committee, therefore, requests the Government to take the necessary measures to ensure that these provisions are retained during the enactment of the Labour Bill. It also requests the Government to take the necessary measures to determine light work activities as well as the conditions in which light work may be permitted and the number of hours during which such employment of children may be undertaken, ensuring that children have sufficient leisure time and do not miss school.***

Application of the Convention in practice. The Committee previously expressed its deep concern at the large number of children involved in child labour and hazardous work. It urged the Government to pursue efforts to prevent and eliminate child labour in Sierra Leone. It also requested the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons.

The Committee notes the response of the Government that it is pursuing efforts through the review of existing legislation and conduct of inspections and ensuring collaborative partnerships between its ministries, departments and agencies to make sure that child labour is prevented and eliminated. The Committee also notes the plan of the Government to establish a labour market information system (LMIS) that would provide information to support the fight against child labour.

The Committee observes that the response of the Government does not provide current statistical data on the employment of children and young persons. However, an analysis of child economic activity and school attendance statistics from Sierra Leone's national household or child labour surveys, specifically, data from the Multiple Indicator Cluster Survey 6 (MICS 6), 2017, puts the percentage of children aged between 4–15, who are only working (without attending school) at 32 per cent. The Committee also notes that the Government did not publish any data on child labour in 2020, and thus there is limited information on the impact of COVID-19 on the campaign against child labour in Sierra Leone.

The Committee again expresses its ***deep concern*** at the large number of children involved in child labour and in hazardous work. ***It urges the Government to continue to take the necessary measures to prevent and eliminate child labour within the country. It also requests the Government to provide information relating to the application of the Convention in Sierra Leone, including statistical data on the employment of children and young persons below the age of 15.***

The Committee expresses the hope that the Government will take into consideration the Committee's comments while revising the Labour Bill. It further expresses the firm hope that the revised Bill will be adopted in the near future. The Committee invites the Government to avail itself of ILO technical assistance in order to bring its legislation into conformity with the Convention.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2011)

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Trafficking in children. The Committee previously noted that section 2 of the Anti-Human Trafficking Act (2005) penalized trafficking in persons for exploitation. Noting the limited prosecution and conviction rates under the Anti-Human Trafficking Act (2005), and the absence of a specific action plan to implement the Act, the Committee previously requested the Government to ensure that thorough investigations and robust prosecutions of offenders are carried out.

The Committee notes that the Anti-Human Trafficking Act (2005) establishes the National Task Force on Anti-Human Trafficking and empowers the task force to coordinate the implementation of the Act, especially concerning the enforcement of the law against trafficking and the prosecution of corrupt

public officials who facilitate trafficking. The Committee also notes that the National Task Force on Anti-Human Trafficking adopted a new 2021–2023 Anti-Trafficking National Action Plan, which contains a strategic objective to ensure that human trafficking and smuggling incidents are thoroughly investigated, and cases successfully prosecuted, with expected results of at least 35 trafficking cases investigated in 2021, 40 in 2022 and 45 in 2023. It further notes the information that the Government allocated 1 billion Leones ($103,740) to anti-trafficking efforts in the fiscal year 2020.

The Committee, however, notes from the report of the Government that only four successful prosecutions of offenders in both 2020 and 2021. It also notes the absence of a report on the allocation of funds for the Government's anti-trafficking efforts in the fiscal year 2021, and the adverse effect this might have on anti-trafficking efforts including the implementation of the anti-human trafficking national action plan. ***The Committee, therefore, reiterates its request to the Government to strengthen its efforts to combat trafficking in children and to ensure that thorough investigations and prosecutions of offenders are carried out and sufficiently effective and dissuasive penalties are applied in practice. The Committee once again requests the Government to provide information on the application of the Anti-Human Trafficking Act in practice, including statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penal sanctions imposed regarding the trafficking of children under 18 years. It also requests the Government to provide information on the implementation of the Anti-Trafficking Action Plan (2021–2023), and the results achieved.***

Article 5. Monitoring mechanisms. 1. *National Task Force on Anti-Human Trafficking.* The Committee previously noted that the Government established a National Task Force on Anti-Human Trafficking to coordinate, monitor and supervise the implementation of the Anti-Human Trafficking Act. It requested the Government to provide information on the activities of the National Task Force on Anti-Human Trafficking in preventing and combating trafficking in persons and the results achieved.

The Committee notes the response of the Government that the Task Force has conducted training for border patrol agents; created a Family Support Unit within the Sierra Leone police force; created a Fast-Track Court for Sexual Offences (Sexual Offence Mobile Court); convicted 4 offenders; criminalized the offence of the Worst Forms of Child Labour; and Developed an Anti-Trafficking Action Plan 2021–2023.

The Committee further notes that section 4 of the Anti-Human Trafficking Act (2005) empowers the National Task Force on Anti-Human Trafficking to coordinate the implementation of the Act, including the rendering of assistance to victims of trafficking, the prevention of trafficking through the adoption and encouragement of local initiatives to improve the economic well-being and opportunity for potential victims and increased public awareness of the causes and consequences of trafficking. ***The Committee, therefore, requests the Government to provide information on the role of the Task Force in the creation of the Sexual Offence Mobile Court, as well as the scope, function and operationalisation of this court. It also requests information on the scope, functions and operationalisation of the Family Support Unit of the Sierra Leone police created by the Taskforce.***

2. *National Technical Steering Committee, Child Welfare Committees and National Commission for Children.* The Committee previously noted the Government's information that a National Technical Steering Committee on Child Labour (NTSC) was established to guide policy, strategy and documentation relating to child labour in Sierra Leone. The Committee also noted that Child Welfare Committees (CWCs) were established at the national, regional, district, and community levels to coordinate all child protection activities, as well as to monitor and supervise child labour in the local communities. It requested the Government to provide information on the activities and impact of the NTSC, CWCs and the National Commission for Children on preventing and combating trafficking in persons.

The Committee notes the information that the CWCs are in operation at national, regional, district and chiefdom levels, and that members of the CWCs provide counselling services for victims of the worst forms of child labour, and report complex issues to the Ministry of Social Welfare. It further notes the

information that the CWCs have developed Standard Operating Procedures to curb cross border trafficking across the Guinea and Sierra Leone migration corridor.

The Committee also notes the response of the Government on the functions of the National Commission for Child Labour. However, it notes the lack of information on the impact of the activities of the Commission on preventing child labour and trafficking in persons in Sierra Leone. It further notes with ***concern*** the information provided by the Government that the National Technical Steering Committee is not functional. ***While noting the measures taken by the Government, the Committee urges it to continue its efforts to strengthen national, state, district and community level monitoring mechanisms to combat trafficking in children. It also requests the Government to provide information on the impact of the activities of the National Commission for Child Labour, and the National Technical Steering Committee, once this becomes functional, on preventing and combating trafficking in children, as well as the results achieved.***

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

Solomon Islands

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2012)

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children. The Committee previously noted that section 77 of the Immigration Act No. 3 of 2012 criminalizes trafficking of persons under 18 years of age (including for the purpose of sexual exploitation, forced labour or slavery), establishing as penalty for this offence a fine or imprisonment. The Committee notes that the Government indicates in its report that the Solomon Islands Immigration Division has reported three cases of trafficking of children in the period January–March 2020, which have ended in acquittals. The Committee also notes the adoption of the Penal Code (Amendment) (Sexual offences) Act (2016), which, under section 145, establishes a sanction of 25 years of imprisonment for persons engaging in internal trafficking of persons when the victim is a child. However, the Committee notes that the Government, in its report under the Minimum Age Convention, 1973 (No. 138), indicates that there is evidence of sale and trafficking of children, particularly of girls, by their parents to foreign workers. The Committee also notes that the United Nations Committee on the Rights of Child, in its 2018 concluding observations expresses its serious concern about the sale of children to foreign workers in the natural resource sector for the purpose of sex (CRC/C/SL/B/CO/2-3, 28 February 2018, paragraph 48). The Committee further notes that the *Community Health and Mobility in the Pacific, Solomon Islands Case Study* published in 2019 by the International Organization for Migration (IOM) highlights the high number of reported cases of sexual exploitation and trafficking involving children in communities near logging camps (page 46). ***The Committee requests the Government to take the necessary measures to ensure that thorough investigations and prosecutions against persons who engage in the sale or trafficking of children are carried out, and that sufficiently dissuasive penalties are imposed in practice. The Committee also requests the Government to continue to provide information on the number of investigations, prosecutions, convictions and penalties imposed on the offenders on the basis of section 77 of the Immigration Act No. 3 of 2012 and section 145 of the Penal Code (Amendment) (Sexual Offences) Act of 2016, including information on the number of acquittals.***

Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously noted that section 144 of the Penal Code, as amended up to 1990, did not criminalize procuring of male children for prostitution. It also noted that the definition of the crime of disposing of minors for immoral purposes (including prostitution), contained in section 149 of that Code, did not protect children between the age of 15 and 18. The Committee, accordingly, requested the Government to take the necessary measures to prohibit using, procuring or offering of both boys and girls under the age of 18 for the purpose of prostitution. The Committee notes with ***satisfaction*** that, through the adoption of

the Penal Code (Amendment) (Sexual offences) Act (2016), the Penal Code was amended to protect all children under the age of 18 from prostitution, in line with the Committee's previous comments. Section 141(2) of the Amendment stipulates that the person who procures or attempts to procure another person to provide commercial sexual services, either in Solomon Islands or elsewhere, is punishable by a penalty of up to 20 years of imprisonment if the victim is under 15 years of age, and up to 15 years of imprisonment in other cases. According to section 143, the person who obtains commercial sexual services from a child, or induces, invites, persuades, arranges or facilitates its provision is liable to up to 20 years of imprisonment if the child is under 15 years of age, or to up to 15 years of imprisonment in other cases. The same sanction applies to the parent or guardian who permits the child to be used for the provision of commercial sexual services as well as for the person who benefits from such service. ***The Committee requests the Government to provide information on the application, in practice, of sections 141(2) and 143 of the Penal Code (Amendment) (Sexual Offences) Act 2016, including the number of investigations, prosecutions, nature of the offences, convictions and types of sanctions imposed on the offenders.***

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

Syrian Arab Republic

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Application of the Convention in practice. The Committee previously noted that the ongoing conflict in the Syrian Arab Republic has had an alarming impact on children. It noted that the number of children affected by armed conflict in the Syrian Arab Republic has more than doubled, going from 2.3 million to 5.5 million, and the number of children displaced inside the Syrian Arab Republic has exceeded 3 million.

The Committee takes note of the Government's information in its report on the provisions of national legislation that give effect to the provisions of the Convention. However, the Committee notes that, according to the 2015 UNICEF report entitled "Small Hands, Heavy Burden: How the Syria Conflict is Driving More Children into the Workforce", four and a half years into the crisis, as a result of the war, many children are involved in economic activities that are mentally, physically or socially dangerous and which limit or deny their basic right to education. The report indicates that there is no shortage of evidence that the crisis is pushing an ever-increasing number of children towards exploitation in the labour market. Some 2.7 million Syrian children are currently out of school, a figure swollen by children who are forced to work instead. Children in the Syrian Arab Republic were contributing to the family income in more than three quarters of households surveyed. According to the report, the Syria crisis has created obstacles to the enforcement of national laws and policies to protect children from child labour, one of the reasons being that there are too few labour inspectors. In addition, there is often a lack of coherence between national authorities, international agencies and civil society organizations over the role of each, leading to a failure in national mechanisms to address child labour.

The Committee notes the Government's information in its 5th periodic report submitted to the Committee on the Rights of the Child published on 10 August 2017 (CRC/C/SYR/5, para. 203), that the Ministry of Social Affairs and Labour (MoSAL), in collaboration with the Syrian Authority for Family and Population Affairs (SAFPA) and in cooperation with other stakeholders, developed a National Plan of Action for the Elimination of the Worst Forms of Child Labour (NPA-WFCL). The Government also indicates that, in collaboration with UNICEF, the SAFPA conducted a survey on the worst forms of child labour in two industrial towns, Hassia in Homs and Haouch el Blas in Damascus.

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee must once again express its ***deep concern*** at the situation of children in the Syrian Arab Republic who are affected by the armed conflict and driven into child labour, including its worst forms. ***The Committee urges the Government to take immediate and effective measures in the framework of the implementation of the NPA-WFCL to improve the situation of***

children in the Syrian Arab Republic and to protect and prevent them from child labour. It requests the Government to provide information on the results achieved, as well as the results of the surveys conducted in Hassia and Haouch el Blas.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict. The Committee previously noted that the Syrian Arab Republic had adopted a series of legislative reforms such as Law No. 11/2013 which criminalizes all forms of recruitment and the use of children under the age of 18 years by armed forces and armed groups. It noted, however, that numerous armed groups in the Syrian Arab Republic, including the Free Syrian Army affiliated groups (FSA), the Kurdish People Protection Units (YPG), Ahrar al-Sham, Islamic State in Iraq and Sham/the Levant (ISIS/ISIL) and other armed groups were reportedly recruiting and using children for logistics, handling ammunition, manning checkpoints and as combatants.

The Committee notes the Government's indication in its report that armed terrorist groups recruit children and involve them in violence and exploit them sexually. The Committee notes that, according to the report of the Secretary-General on the situation of human rights in the Syrian Arab Republic of 9 June 2016 (A/70/919, paragraphs 50–52), from early 2015, UNICEF verified 46 cases of recruitment (43 boys, one girl, two unknown): 21 were attributed to ISIL, 16 to non-state armed opposition groups, five to armed groups affiliated with the Government, two (including a girl) to YPG, and two to government forces. UNICEF reported that children were increasingly recruited at younger ages (some as young as 7 years old) by non-state armed groups. Children's participation in combat was widespread and some armed opposition groups forced children to carry out grave human rights abuses, including executions and torture, while government forces allegedly submitted children to forced labour or used them as human shields. The Secretary-General also refers to reports from the OHCHR, according to which ISIL publicly announced, on 11 December 2015, the already known existence of a children's section among its ranks, the "Cubs of the Caliphate". The OHCHR also received allegations that ISIL was encouraging children between 10 and 14 years of age to join, and that they were training children in military combat.

The Committee further notes that, according to the report of the Secretary-General on children and armed conflict of 20 April 2016 (2016 report of the Secretary-General on children and armed conflict, A/70/836-S/2016/360, paragraphs 148–163), a total of 362 cases of recruitment and use of children were verified (the Secretary-General indicates that the figures do not reflect the full scale of grave violations committed by all parties to the conflict), and attributed to ISIL (274), the Free Syrian Army and affiliated groups (62), Liwa' al-Tawhid (11), popular committees (five), YPG (four), Ahrar al-Sham (three), the Nusrah Front (two) and the Army of Islam (one). Of the verified cases, 56 per cent involved children under 15 years of age, which represents a significant increase compared with 2014. The Secretary-General further indicates that the massive recruitment of children by ISIL continued, and that centres in rural Aleppo, Dayr al-Zawr and rural Raqqah existed that provided military training to at least 124 boys between 10 and 15 years of age. Verification of the use of child foreign fighters increased as well, with 18 cases of children as young as 7 years of age. In addition, the recruitment and use of children as young as 9 years of age by the Free Syrian Army was also verified, as well as the recruitment of 11 Syrian refugee children from neighbouring countries by Liwa' al-Tawhid, and the YPG continued to recruit boys and girls as young as 14 years of age for combat roles. Recruitment and use by pro-government groups was also verified, with five cases of boys being recruited by the Popular Committee of Tallkalah (Homs) to work as guards and conduct patrols. In addition, there were allegations of the use of children by government forces to man checkpoints.

The Committee must once again ***deeply deplore*** the use of children in armed conflict in the Syrian Arab Republic, especially as it entails other violations of the rights of the child, such as abductions, murders and sexual violence. It once again recalls that, under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, member States must take immediate and

effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee once again strongly urges the Government to take measures, using all available means, to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed forces and groups. The Committee once again urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of all persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Law No. 11 of 2013. It requests the Government to provide information on the number of investigations conducted, prosecutions brought and convictions handed down against such persons.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously noted that, with approximately 5,000 schools destroyed in the Syrian Arab Republic, the resulting sharp decline in children's education continued to be a matter of great concern among the population. This report also indicated that more than half of Syrian school-age children, up to 2.4 million, were out of school as a consequence of the occupation, destruction and insecurity of schools.

The Committee notes that, according to the 2016 report of the Secretary-General on children and armed conflict (paragraph 157), the number of schools destroyed, partially damaged, used as shelters for internally displaced persons or rendered otherwise inaccessible has reached 6,500. The report refers to information from the Ministry of Education, according to which 571 students and 419 teachers had been killed in 2015, and from the United Nations that 69 attacks on educational facilities and personnel were verified and attributed to all fronts, which killed and maimed 174 children. The Committee further notes that, according to the report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic of 5 April 2016 (A/HRC/32/35/Add.2, paragraphs 50–53), a further 400,000 children were at risk of dropping out of school as a direct result of conflict, violence and displacement. While basic education facilities were in place in the displacement centres visited by the Special Rapporteur, such centres, often using school buildings, offer only limited educational facilities.

According to the same report, UNICEF is working with local partners to reach some 3 million children and has implemented an informal education programme to reduce the number of children out of school. The inter-agency initiative "No Lost Generation" is a self-learning programme aimed at reaching 500,000 children who missed out on years of schooling. In areas hosting high numbers of displaced children, UNICEF is also rehabilitating 600 damaged schools and creating 300 prefabricated classrooms to accommodate 300,000 additional children. The Committee further notes that, according to UNICEF's 2016 Annual Report on the Syrian Arab Republic, UNICEF's interventions in education, focusing on quality, access and institutional strengthening, contributed to an increase in school enrolment from 3.24 million children (60 per cent of school-age population) to 3.66 million (68 per cent) between 2014–15 and 2015–16. These efforts also resulted in a decrease in the number of out-of-school children from 2.12 million (40 per cent) in 2014–15 to 1.75 million (32 per cent) in 2015–16.

Nevertheless, the Committee notes that, in his report, the Special Rapporteur on the human rights of internally displaced persons declares that the challenge of providing even basic education access to many internally displaced children is immense and many thousands of children are likely to remain out of education in the foreseeable future (A/HRC/32/35/Add.2, paragraph 53). The Committee is, therefore, once again bound to express its ***deep concern*** at the large number of children who are deprived of education because of the climate of insecurity prevailing in the country. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to strengthen its efforts and take effective and time-bound measures to improve the functioning of the educational system in the country and to facilitate access to free basic education for all Syrian children, especially in areas affected by armed conflict, and giving particular attention to the situation of girls. It requests the Government to provide information on concrete measures taken in this regard.***

Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. 1. *Children affected by armed conflict.* The Committee previously noted that the recruitment and use of children in armed conflict in the

Syrian Arab Republic had become common and that a great majority of the children recruited are trained, armed and used in combat.

The Committee notes the Government's indication that the competent authorities in the Syrian Arab Republic seek to care for children recruited in armed conflict and to help them return to ordinary life. However, the Committee notes with ***deep concern*** that the situation in the Syrian Arab Republic has not changed and that not only are there no reports of children having been withdrawn from armed forces and groups in the 2016 report of the Secretary-General on children and armed conflict but that, according to this report, children continue to be recruited and used in armed conflict. ***The Committee, therefore, strongly urges the Government to take effective and time-bound measures to prevent the engagement of children in armed conflict and to rehabilitate and integrate former child combatants. It once again requests the Government to provide information on the measures taken in this regard and on the number of children rehabilitated and socially integrated.***

2. *Sexual slavery.* The Committee previously noted that ISIS abducted hundreds of Yazidi women and girls, most of whom were sold as "war booty" or given as "concubines" to ISIS fighters, and that dozens of girls and women were transported to various locations in the Syrian Arab Republic, including Al Raqqah, Al Hasakah and Dayr az Zawr, where they were kept in sexual slavery.

The Committee notes with ***regret*** the absence of information in the Government's report on this issue. It notes that, according to the report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 15 June 2016 entitled "They came to destroy: ISIS Crimes Against the Yazidis" (A/HRC/32/CRP.2), ISIS has sought to destroy the Yazidis through such egregious human rights violations as killings, sexual slavery, enslavement, torture and mental harm. The report indicates that over 3,200 women and children are still held by ISIS. Most are in the Syrian Arab Republic where Yazidi girls continue to be sexually enslaved and Yazidi boys indoctrinated, trained and used in hostilities. The report reveals that captured Yazidi women and girls over the age of 9 years are deemed the property of ISIS and are sold in slave markets or, more recently through online auctions, to ISIS fighters. While held by ISIS fighters, these Yazidi women and girls are subjected to brutal sexual violence and regularly forced to work in their houses, in many instances forced to work as domestic servants of the fighter and his family. The Committee ***deeply deplores*** the fact that Yazidi children continue to be victims of sexual slavery and forced labour. ***While acknowledging the difficult situation prevailing in the country, the Committee strongly urges the Government to take effective and time-bound measures to remove Yazidi children under 18 years of age who are victims of forced labour and sexual exploitation and to ensure their rehabilitation and social integration. It once again requests the Government to provide information on specific measures taken in this regard, and the number of children removed from sexual exploitation and rehabilitated.***

Clause (d). Identifying and reaching out to children at special risk. Internally displaced children. The Committee previously noted that, by early 2013, there were 3 million children displaced and in need of assistance inside the Syrian Arab Republic.

The Committee notes that, according to the report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic of 5 April 2016 (A/HRC/32/35/Add.2, paragraph 67), the extent of the conflict and displacement has had a massive impact on children, many of whom have experienced violence first-hand and/or witnessed extreme violence, including the killing of family members and/or separation from family members. The Special Rapporteur indicates that child protection concerns and issues, including child labour resulting from parents' loss of livelihood, trafficking, sexual and gender-based violence and early and forced marriage, continue to be reported. Children have also been recruited and used by different parties to the conflict, both in combat and support roles. ***Observing with concern that internally displaced children are at an increased risk of being engaged in the worst forms of child labour, the Committee once again strongly urges the Government to take effective and time-bound measures to protect these children from the worst forms of child labour. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

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

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

Uganda

Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour and application of the Convention in practice. In its previous comments, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, a total of 2.009 million children aged 5–17 years were in child labour (approximately 16 per cent of all children). Moreover, a total of 507,000 children aged 5–17 years were found in hazardous work (25 per cent of the children in child labour). The Committee also noted that the Government acknowledged the problem of child labour in the country and recognized its dangers. It took due note of the Government's indication that the National Action Plan for the elimination of the worst forms of child labour in Uganda (NAP) was launched in June 2012. This NAP is a strategic framework that will set the stage for the mobilization of policymakers and for awareness raising at all levels, as well as provide a basis for resource mobilization, reporting, monitoring, and evaluation of performance and progress of the interventions aimed at combating child labour. The Committee requested that the Government provide detailed information on the implementation of the NAP and its impact on the elimination of child labour.

The Committee notes the Government's information in its report that the NAP is in the process of being reviewed by the Government with support from the ILO. It also notes, from the ILO–IPEC field office, that a total of 335 children (156 girls and 179 boys) have been withdrawn from child labour and were given skills and livelihood training. Moreover, the child labour agenda has been promoted through the Education Development Partners Forum, Stop Child Labour Partners Forum and other national forums within the education and social development sectors. The Committee finally notes from the 2016 UNICEF Annual Report on Uganda that 7,226 children aged 5–17 years were withdrawn from child labour (page 28). While noting the measures taken by the Government, the Committee must express its ***concern*** at the number of children involved in child labour in the country, including in hazardous work. ***The Committee once again urges the Government to strengthen its efforts to ensure the effective elimination of child labour, especially in hazardous work. In this regard, it requests that the Government provide detailed information on the implementation of the reviewed NAP, once adopted. It also requests that the Government supply information on the application of the Convention in practice, particularly statistics on the employment of children under 14 years of age.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously requested the Government to take the necessary measures to ensure that the procuring or offering of boys under 18 years of age for prostitution is prohibited, to impose criminal responsibility on clients who use boys and girls under 18 years of age for prostitution, and to ensure that boys and girls under 18 years of age who are used, procured or offered for prostitution are treated as victims rather than offenders. The Committee noted that the Director of the Directorate of Public

Prosecutions had indicated that efforts were being made to amend the Children's Act of 2000 to fully comply with the Convention on the prohibition of the use, procuring or offering of children for prostitution.

The Committee notes with ***satisfaction*** that section 8A of the Children's (Amendment) Act of 2016 provides that a person shall not engage a child in any work or trade that exposes the child to activities of a sexual nature, whether remunerated or not. It notes that the perpetrator is liable to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.

Clause (d). Hazardous types of work. Children working in mines. The Committee observes that, according to the UNICEF Situation analysis of 2015, the Karamoja region has a high incidence of child labour in hazardous mining conditions (page 13). The Committee also observes, from the UNICEF Annual Report of 2016, that 344 girls and 720 boys were removed from the worst forms of child labour, such as mining, as a result of the support of the Ministry of Gender, Labour and Social Development to the strategic plan for the national child helpline. Moreover, the Committee notes that section 8 of the Children's (Amendment) Act of 2016 prohibits hazardous work, and that the list of hazardous occupations and activities in which the employment of children is not permitted (first schedule of the Employment of Children Regulations of 2012) includes the prohibition of children working in mining. The Committee notes with ***concern*** the situation of children working in mines under particularly hazardous conditions. ***The Committee urges the Government to take the necessary measures to ensure the effective application of the Children's (Amendment) Act of 2016 and of the Employment of Children Regulations of 2012, so as to prevent children under 18 years of age from working in mines, and to provide the necessary and appropriate direct assistance for their removal.***

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. 1. *Orphans and vulnerable children.* The Committee previously noted the Government's information that a range of factors has contributed to the problem of child labour, such as orphanhood arising from the HIV/AIDS pandemic. The Committee noted that orphans and vulnerable children (OVCs) in Uganda were recognized in both the Policy on orphans and other vulnerable children and the National Strategic Plan on OVCs. The Committee also noted that the policies and activities of the National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2013–17 (NAP) include orphans and HIV/AIDS affected persons in its target groups. However, noting with concern the large number of children orphaned as a result of HIV/AIDS, the Committee urged the Government to intensify its efforts to ensure that such children are protected from the worst forms of child labour.

The Committee notes the absence of information on this point in the Government's report. The Committee however notes that, according to a report by the Uganda AIDS Commission, entitled: "The Uganda HIV and AIDS country progress report: July 2015–June 2016", approximately 160,000 OVCs received social support services and a mapping of OVC actors was conducted, among other achievements. The Committee also notes that the Second National Development Plan 2015/16–2019/20 outlines two programmes to support OVCs: the SUNRISE–OVC (Strengthening the Ugandan National Response for Implementation of Services for OVCs), and the SCORE (Strengthening Community OVC Response). While taking due note of the strategic plans developed by the Government and the decrease in the number of OVCs, the Committee notes with ***concern*** that there are still approximately 660,000 HIV/AIDS orphans in Uganda, according to UNAIDS estimates for 2015. ***Recalling that children orphaned as a result of HIV/AIDS and other vulnerable children are at particular risk of becoming involved in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children from the worst forms of child labour. It requests the Government once again to provide information on specific measures taken in this respect, particularly in the framework of the Policy on orphans and other vulnerable children, the National Strategic Plan on OVCs, the SUNRISE–OVC and the SCORE, and the results achieved.***

2. *Child domestic workers.* The Committee previously noted that the list of hazardous occupations and activities prohibits the engagement of children under 18 years of age in several activities and hazardous tasks in the sector of domestic work. However, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, approximately 51,063 children, that is 10.07 per cent of the number of children aged 5–17 years engaged in hazardous work in Uganda, are domestic housekeepers, cleaners and helpers. In this regard, the Committee observed that domestic workers form a group targeted by the NAP, and requested the Government to provide information on the impact of the NAP on the protection of child domestic workers.

The Committee notes the absence of information from the Government in this regard. Recalling that children in domestic work are particularly vulnerable to the worst forms of child labour, including hazardous work, the Committee once again requests the Government to provide information on the impact of the NAP on the protection of child domestic workers, particularly the number of child domestic workers engaged in hazardous work who have benefited from initiatives taken in this regard.

3. *Refugee children.* The Committee observes that, according to the UNICEF Uganda situation report of 31 May 2017, there are over 730,000 refugee children in Uganda, among more than 1.2 million refugees. The Committee also observes from the joint Updated regional framework for the protection of South Sudanese and Sudanese refugee children (July 2015–June 2017), developed by UNHCR, UNICEF and NGOs, that South Sudanese and Sudanese refugee children are subjected to child labour in Uganda (page 5). The Committee finally notes that a Uganda Solidarity Summit on Refugees took place in Kampala in June 2017 to showcase the Uganda model of refugee protection and management, to highlight the emergency and long-term needs of the refugees and to mobilize resources. ***While acknowledging the difficult refugee situation prevailing in the country and the efforts provided by the Government, the Committee strongly urges the Government to take effective and time-bound measures as a matter of urgency to specifically protect refugee children from the worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard.***

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

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 5** *(Saint Lucia);* **Convention No. 77** *(Algeria, Azerbaijan, Bulgaria);* **Convention No. 78** *(Algeria, Azerbaijan, Bulgaria);* **Convention No. 79** *(Azerbaijan);* **Convention No. 123** *(Uganda);* **Convention No. 124** *(Azerbaijan, Bulgaria, Uganda);* **Convention No. 138** *(Afghanistan, Angola, Armenia, Bahamas, Belize, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Burundi, Chad, Chile, China, Comoros, Congo, Costa Rica, Democratic Republic of the Congo, Djibouti, Ecuador, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Grenada, Haiti, Lebanon, Papua New Guinea, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Solomon Islands, South Sudan, Suriname, Uganda);* **Convention No. 182** *(Afghanistan, Algeria, Angola, Armenia, Azerbaijan, Bahamas, Bangladesh, Barbados, Belize, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Ecuador, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Ghana, Grenada, Guyana, Haiti, Kiribati, Lebanon, Madagascar, Netherlands: Aruba, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, South Sudan, Syrian Arab Republic, Uganda, Vanuatu).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 6** *(Bulgaria);* **Convention No. 79** *(Bulgaria);* **Convention No. 90** *(Azerbaijan);* **Convention No. 138** *(Azerbaijan, Netherlands: Aruba).*

Equality of opportunity and treatment

Afghanistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation. The Committee previously noted that while some of the provisions of the Labour Law (namely sections 8, 9(1), 59(4) and 93) read together provided some protection against discrimination based on sex with respect to remuneration, they did not reflect fully the principle of the Convention. The Committee takes note of the Government's indication, in its report, that the Tripartite Consultative Committee is still engaged in the revision process of the Labour Law with a view to ensuring greater conformity with the provisions of the Convention. The Committee wishes to point out that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 673). ***The Committee requests the Government to continue to provide information on the activities and recommendations of the Tripartite Consultative Committee concerning the revision of the Labour Law, and trusts that in the near future its national legislation will explicitly give full legislative expression and effect to the principle of equal remuneration for men and women for work of equal value set out in the Convention.***

Gender pay gap. The Committee welcomes the statistics provided by the Government and notes that, according to the Afghanistan Living Conditions Survey (ALCS) for 2013–14, women's average monthly wages were lower than those of men in all job categories, except in the public sector. Men were earning on average 30 per cent more than women in the same occupation and up to three and a half times more than women in the agriculture and forestry sector, where women represented two-thirds of the workforce. The Committee notes that, according to the ALCS for 2016–17, the situation of women has deteriorated as the labour force participation rate of women decreased from 29 per cent in 2014 to 26.8 per cent in 2017, and remained far lower than the labour force participation of men (80.6 per cent in 2017). Moreover, more women than men were in a vulnerable employment situation (89.9 per cent of women compared to 77.5 per cent of men). The Committee ***regrets*** that the ALCS for 2016–17 does not contain any more information on the gender pay gap. ***The Committee requests the Government to provide information on the measures taken to reduce the gender pay gap and identify and address its underlying causes, as well as on the results achieved in this regard. Recalling the importance of the regular collection of statistics in order to undertake an assessment of the nature, extent and evolution of the gender pay gap, the Committee requests the Government to provide updated information on the earnings of men and women disaggregated by economic activity and occupation, both in the private and public sectors, as well as any available statistics or analysis on the gender pay gap.***

Article 3. Objective appraisal of jobs. Civil service. Referring to its previous comments, the Committee takes note of the salary scale annexed to the Civil Servants Law, 2008, according to which salaries are determined by reference to grades and steps. It notes that section 8 of the Law refers to the criteria used to determine employment grades according to diploma, skills and work experience. The Committee notes from the data of the national Central Statistics Organization that in 2016 women represented 22.5 per cent of all public sector employees, but only 7.5 per cent of those were placed in the third grade or higher position. ***The Committee requests the Government to provide information on the practical application of section 8 of the Civil Servants Law, 2008, including on the methods and factors used to classify jobs under the different grades in order to ensure that tasks mainly performed by women are not being undervalued in comparison to the tasks traditionally performed by men. The Committee further requests the Government to provide***

information on the distribution of men and women in the various categories and positions of the civil service with their corresponding levels of earnings.

Article 4. Awareness-raising activities. Cooperation with employers' and workers' organizations. The Committee notes the Government's indication that public information campaigns and activities to raise awareness about the principle of the Convention, particularly among employers' and workers' organizations, have been continued, some of which with the assistance of the ILO. ***The Committee requests the Government to continue to provide information on awareness-raising activities carried out to promote the principle of the Convention, and to indicate whether any cooperation or joint activities have been undertaken together with the employers' and workers' organizations. The Committee also requests the Government to specify whether, as a result of the awareness-raising activities already implemented, the principle of the Convention has been effectively addressed by the social partners in collective agreements and, if so, to provide information in this respect, including copies of the relevant provisions.***

Enforcement. The Committee notes that, in the National Labour Policy for 2017–20, the Government recognizes laxity in the enforcement of labour-related legislation and indicates that periodic inspections will be conducted to reveal quality of compliance, as well as gaps in compliance for which appropriate actions would be taken against defaulting employers. The Committee further notes that, in its last concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the fact that decisions of informal justice mechanisms are discriminatory against women and undermine the implementation of existing legislation, and recommended that women's accessibility to the formal justice system be enhanced (CEDAW/C/AFG/CO/1-2, 30 July 2013, paragraphs 14 and 15). ***The Committee requests the Government to provide information as to the steps taken to ensure stricter enforcement of labour legislation as regards the application of the Convention. In particular, the Committee requests information regarding compliance with the requirements of the Convention, including the level of compliance and the identification of gaps in compliance, as well as any actions taken against defaulting employers. The Committee further requests the Government to provide information on any measures taken or envisaged to enhance women's accessibility to the formal justice system, as well as on any complaints made with regard to the principle of the Convention dealt with by the courts or any other competent authorities, including information on sanctions and remedies provided.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 2 of the Convention. Legislation. The Committee previously noted that the prohibition of discrimination in section 9 of the Labour Law is very general and urged the Government to take the opportunity of the Labour Law reform process, in the context of the Decent Work Country Programme and the National Action Plan for Women of Afghanistan (NAPWA) 2007–17, to amend its legislation to explicitly prohibit direct and indirect discrimination covering all the grounds listed in *Article 1(1)(a)* of the Convention, as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with *Article 1(1)(b)* of the Convention. The Committee notes the Government's indication, in its reports, that the Tripartite Consultative Committee is still engaged in the revision process of the Labour Law. Referring to its previous comments on section 10(2) of the Civil Servants Law, 2008, which only prohibits discrimination in recruitment based on the grounds of sex, ethnicity, religion, disability and "physical deformity", the Committee notes the Government's general statement that provisions of the Labour Law are also applicable to civil servants. ***The Committee requests the Government to continue to provide information on the activities and recommendations of the Tripartite Consultative Committee concerning the revision of the Labour Law, and trusts that in a near future its national legislation will explicitly prohibit, both in the private and public sectors, direct and indirect discrimination covering all the grounds listed in Article 1(1)(a)***

of the Convention, as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with Article 1(1)(b) of the Convention, covering all aspects of employment and occupation. In the meantime, the Committee requests the Government to clarify the relationship between section 9 of the Labour Law and section 10(2) of the Civil Servants Law and, more generally, to indicate whether all the provisions of the Labour Law shall apply to civil servants or whether this is limited to provisions of the Labour Law which are expressly referred to by the Civil Servants Law.

Article 1(1)(a). Discrimination on the ground of sex. Work-related violence and sexual harassment. The Committee takes note of the Law on the Prohibition of Harassment against Women and Children, adopted in December 2016 and approved by the President on April 2018, which defines and criminalizes physical, verbal and non-verbal harassment, and provides that harassment is punishable with a fine. On the other hand, it notes that section 30 of the Law on the Elimination of Violence against Women (EVAW), 2009, which provides that harassment is punishable by up to six months of imprisonment, was firstly incorporated into the revised Penal Code in March 2017 and then removed on the instruction of the Government in August 2017, as a result of pressure exerted by some members of the Parliament, which left the status of the EVAW Law in a state of uncertainty. The Committee also notes that several United Nations (UN) bodies expressed concern at the escalating level of targeted attacks, including killings, against high profile women, particularly those in the public sector, as well as at the prevalence of sexual harassment against women in the workplace (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 55 and Report of the UN Special Rapporteur on violence against women, its causes and consequences, A/HRC/29/27/Add.3, 12 May 2015, paragraphs 21 and 26). It notes that, according to a survey carried out in 2015 by the Women and Children's Legal Research Foundation, based in Afghanistan, 87 per cent of the women interviewed experienced harassment in the workplace. It further notes that the Afghanistan Independent Human Rights Commission (AIHRC) recently indicated that women police officers are particularly affected and that the Ministry of the Interior is currently finalizing an internal complaints mechanism to this end (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 53). The Committee notes that, pursuant to the 2015 Regulations on the Elimination of Harassment Against Women (11/07/1394), commissions aimed at addressing complaints have been established in several provinces, but that the UN High Commissioner for Human Rights recently highlighted that the mechanisms to combat sexual harassment against women in the workplace remained largely ineffective owing to underreporting, which is mainly due to the social stigma attached to the issue (Report of the UN High Commissioner for Human Rights, A/HRC/37/45, 21 February 2018, paragraph 54). ***The Committee requests the Government to provide information on any concrete measures (such as, for example, campaigns addressed to the general public to promote gender equality) and specific programmes taken or envisaged to combat violence against women (and more particularly high-profile women), and sexual harassment at the workplace, both in the private and public sectors, including any social stigma attached to this issue. It further requests the Government to provide information on the number, nature and outcome of any complaints or cases of work-related violence or sexual harassment in the workplace handled by the commissions established under the 2015 Regulations, the labour inspectorate and the courts. The Committee also requests the Government to clarify the relationship between the Law on the Elimination of Violence against Women, 2009, and the Law on the Prohibition of Harassment against Women and Children, 2016, as well as the current status of both legislations. Please provide a copy of the Law on the Prohibition of Harassment against Women and Children, 2016, and of the 2015 Regulations on the Elimination of Harassment Against Women (11/07/1394).***

Article 2. Equal access of men and women to vocational training and education. The Committee notes the Government's indication that girls represent 45 per cent of total school enrolment. Referring to the discussion held at the Conference Committee on the Application of Standards at its 106th Session (June 2017) on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee notes that non-state groups deliberately restricted the access of girls to education, including attacks and closure of girls' schools, and that 35 schools were used for military purposes in 2015. It further notes the low enrolment rate of girls, in particular at the secondary school level, high dropout rates especially in rural areas owing to a lack of security in the journey to and from school, and the written threats warning girls to stop going to school by non-state armed groups. The Committee notes that, in the Afghanistan Living Conditions Survey (ALCS) for 2016–17, the Central Statistics Organization indicates that, in 2016, girls' access to primary education was in decline, and female gross attendance rates in primary, secondary and tertiary education represented only 0.71, 0.51 and 0.39 per cent of the corresponding male rates, respectively. Furthermore, it

is estimated that only 37 per cent of adolescent girls are literate, compared to 66 per cent of adolescent boys and that 19 per cent of adult women are literate compared to 49 per cent of adult men. ***While acknowledging the difficult situation prevailing in the country, the Committee requests the Government to step up its efforts to encourage girls' and women's access and completion of education at all levels, and to enhance their participation in a wide range of training programmes, including those in which men have traditionally predominated. It requests the Government to provide updated statistics disaggregated by sex, on participation and completion rates of the different levels of education, as well as in the various vocational training programmes. The Committee again requests the Government to provide information on any measures taken as a result of the affirmative action policy in education envisaged by the NAPWA 2007–17***.

Article 5(1). Special measures of protection. Work prohibited for women. The Committee previously noted that the list of physically arduous or harmful work prohibited for women to be established under section 120 of the Labour Law was still under preparation. ***Noting the absence of updated information provided by the Government in that respect, the Committee again urges the Government to ensure that, in the process of the Labour Law reform, any restrictions on the work that can be done by women are strictly limited to maternity protection and are not based on stereotyped assumptions regarding their capacity and role in society that would be contrary to the Convention. It requests the Government to provide a copy of the list of work that is prohibited for women, once adopted.***

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

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

Barbados

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1974)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation. In previous comments, the Committee noted the absence of a legislative framework supporting the right to equal remuneration for men and women for work of equal value. Having noted also that the existing mechanisms for collective bargaining and wage councils for wage determination did not seem to promote and ensure effectively this right, the Committee requested the Government to take measures to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee notes from the Government's report on Discrimination (Employment and Occupation) Convention, 1958 (No. 111) that the draft National Gender Policy, which includes a section on employment, is currently being reviewed by the relevant ministries but that the Employment (Prevention of Discrimination) Bill is yet to be adopted. The Committee once again recalls the particular importance of capturing in legislation the concept of "work of equal value" in order to address the segregation of men and women in certain sectors and occupations due to gender stereotypes. ***In light of the ongoing legislative and policy developments on gender equality and non-discrimination, the Committee asks the Government to take the necessary measures to ensure that the principle of equal remuneration for men and women for work of equal value will be fully reflected in the National Gender Policy and in the Employment (Prevention of Discrimination) Bill, and to provide a copy of the policy and the new legislation, once adopted.***

Gender earnings gap and occupational segregation. The Committee notes from the statistics published by the Barbados Statistical Service (Labour Force Survey) that of all women employed in 2015, 52.4 per cent earned less than 500 Barbadian dollars (BBD) per week compared to 41.8 per cent of all men employed in that same year. Among those earning between BBD500 and BBD999 per week, men represented almost 56 per cent and women only 44 per cent. Among those earning between BBD1,000 and BBD1,300, women represented 46.6 per cent and men 53.1 per cent. Men also account for a little more than half of the workers (52.5 per cent) in the highest earnings group (over BBD1,300). The Committee further notes from the Labour

Force Survey data for 2015 the persistent occupational gender segregation of the economy with women mostly employed as service workers and clerks while men are mostly employed as craft and related workers or plant and machine operators. When looking at economic sectors, women workers are highly represented in "Accommodation and Food Services", and their numbers sometimes more than doubles or triples the number of male workers in "Finance and Insurance", "Education" and "Human Health and Social Work". Women are also over-represented among household employees. In contrast, men largely predominate in the "Construction" and "Transportation and Storage" sectors. The Committee further refers to its comments on Convention No. 111. ***The Committee asks the Government to take measures to reduce the earnings gap between men and women and to increase the employment of women in jobs with career opportunities and higher pay. Recalling that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations, the Committee also asks the Government to provide information on the results achieved under the National Employment Policy and the National Gender Policy, once adopted, to address occupational gender segregation and to increase the employment of women and men in sectors and occupations in which they are under-represented.***

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1974)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1–3 of the Convention. Legislative protection against discrimination. The Committee had previously noted that the Employment Rights Act 2012, while protecting workers against unfair dismissal on all the grounds enumerated in *Article 1(1)(a)* and certain additional grounds under *Article 1(1)(b)* of the Convention, did not ensure full legislative protection against both direct and indirect discrimination for all workers in all aspects of employment and occupation. The Committee previously asked the Government to address the protection gaps in the legislation. The Committee notes that the Government in its report merely restates the constitutional provisions on equality, and the protections afforded by the Employment Rights Act 2012. The Government also maintains that no distinctions, exclusions, or preferences based on the prohibited grounds set out in *Article 1(1)(a)* or on any additional grounds determined in accordance with *Article 1(1)(b)* exist in the country, and that no discrimination cases have been reported. Regarding the presumed absence of discrimination, the Committee considers that it is essential to acknowledge that no society is free from discrimination, and that continuous action is required to address discrimination in employment and occupation, which is both universal and constantly evolving (see 2012 General Survey on the fundamental Conventions, paragraphs 731 and 845). ***Noting that the Employment (Prevention of Discrimination) Bill 2016 is still in draft form, the Committee urges the Government to take steps, without further delay, to address the protection gaps in the legislation, and to ensure that the anti-discrimination legislation expressly defines and prohibits direct and indirect discrimination in all aspects of employment and occupation, for all workers, and on all the grounds set out in the Convention. The Committee also repeats its request to the Government to provide information on the steps taken to ensure that all workers are being protected in practice against discrimination not only with respect to dismissal but with respect to all aspects of employment and occupation, on the grounds set out in the Convention. Such measures could include public awareness raising aimed at, or in cooperation with, workers and employers and their organizations, or the development of codes of practice or equal employment opportunities guidelines to generate broader understanding on the principles enshrined in the Convention. Noting with regret that for several years the Government has not provided any information on the action taken to promote and ensure equality of opportunity and treatment with respect to race, colour and national extraction, and to eliminate discrimination in employment and occupation on these grounds, the Committee urges the Government to***

provide such information without delay, including any studies or surveys on the labour market situation of the different groups protected under the Convention.

Article 1(1)(a). Discrimination on the grounds of sex. Sexual harassment. The Committee previously noted the absence in the Employment Rights Act 2012 of provisions protecting workers against sexual harassment. The Committee notes the Government's indication that the proposed Sexual Harassment in the Workplace Bill will define and prohibit both quid pro quo and hostile environment sexual harassment and provide for a tribunal to hear complaints and determine matters related to sexual harassment. ***The Committee urges the Government to take steps to ensure that the draft Sexual Harassment in the Workplace Bill is adopted speedily and that it will define and prohibit sexual harassment (both quid pro quo and hostile environment harassment) in all aspects of employment and occupation, and asks that the Government provide a copy of the latest version of the Bill, or as enacted, with its next report.***

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

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

China

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2006)

With reference to its previous comments, the Committee recalls the observations by the International Trade Union Confederation (ITUC) received on 16 and 28 September 2020 and notes that additional observations by the ITUC were received on 6 September 2021 reiterating and supplementing its previous observations. The Committee also notes the Government's reply received on 19 November 2020 and the additional information communicated by the Government on 30 August 2021 in reply to the Committee's direct request.

Article 1(1)(a) and (3) of the Convention. Definition and prohibition of discrimination in employment and occupation. Prohibited grounds of discrimination. Legislation. The Committee recalls that the English translation of section 12 of the Labour Law of 1994 provides that "[w]ith regard to employment, the workers shall not be discriminated in aspects of nationality, race, sex and religious beliefs" and the English translation of section 3 of the Employment Promotion Law of 2007 provides that "[i]n seeking employment, the workers shall not be subject to discrimination because of their ethnic backgrounds, races, gender, religious beliefs, etc." The Committee notes that, in its report, the Government refers to: (1) the revised "Regulation on Religious Affairs", which took effect on 1 February 2018 and provides that "no organization or individual … may discriminate against citizens who believe in any religion … or citizens who do not believe in any religion …"; and (2) the Labour Law and the Employment Promotion Law that contain provisions on the prohibition of employment discrimination and the promotion of fair employment. The Committee notes nonetheless that these laws and regulations do not provide for a definition of discrimination, whether direct or indirect, and both do not seem to cover all aspects of "employment and occupation" as defined in *Article 1(3)* of the Convention. ***The Committee therefore asks the Government to take steps to: (i) include a clear and comprehensive definition of discrimination (both direct and indirect) in its labour legislation; and (ii) clarify whether the provisions of the Labour Law of 1994 also cover access to employment and vocational training. With respect to the anti-discrimination legal provisions in force, the Committee also asks the Government to confirm that: (i) the Labour Law of 1994 covers only the grounds of nationality, race, sex and religious beliefs; and (ii) the Employment Promotion Law of 2007 provides for an open list of prohibited discrimination grounds and therefore also covers discrimination based on colour, national extraction, social origin and political opinion (even if such grounds are not explicitly mentioned). It further asks the Government to indicate whether any interpretation concerning the wording "etc." in the Employment Promotion Law of 2007 has been handed down by the judicial authorities and, if so, to provide a copy of the given decisions.***

Articles 1(1)(a), 2 and 3. Allegations of discrimination based on race, religion, national extraction and social origin affecting ethnic and religious minorities in Xinjiang. The Committee refers to its comments on the application of the Employment Policy Convention, 1964 (No. 122). In the interest of coherence and transparency in its comments, considering that both the allegations and the information in reply raise a close connection between employment policy, the free choice of employment of ethnic and religious minorities and their protection against discrimination in employment and occupation, the Committee presents the same synopsis of the information available in both comments.

In its observations of 2020 and 2021, the ITUC alleges that the Government of China has been engaging in a widespread and systematic programme involving the extensive use of forced labour of the Uyghur and other Turkic and/or Muslim minorities for agriculture and industrial activities throughout the Xinjiang Uyghur Autonomous Region (Xinjiang), in violation of the right to freely chosen employment set out in *Article 1(2)* of Convention No. 122. The ITUC maintains that some 13 million members of the ethnic and religious minorities in Xinjiang are targeted on the basis of their ethnicity and religion with a goal of social control and assimilation of their culture and identity. According to the ITUC, the Government refers to the programme in a context of "poverty alleviation", "vocational training", "re-education through labour" and "de-extremification".

The ITUC submits that a key feature of the programme is the use of forced or compulsory labour in or around internment or "re-education" camps housing some 1.8 million Uyghur and other Turkic and/or Muslim peoples in the region, as well as in or around prisons and workplaces across Xinjiang and other parts of the country.

The ITUC indicates that, beginning in 2017, the Government has expanded its internment programme significantly, with some 39 internment camps having almost tripled in size. The ITUC submits that, in 2018, Government officials began referring to the camps as "vocational education and training centres" and that in March 2019, the Governor of the Xinjiang Uyghur Autonomous Region described them as "boarding schools that provide job skills to trainees who are voluntarily admitted and allowed to leave the camps". The ITUC indicates that life in "re-education centres" or camps is characterized by extraordinary hardship, lack of freedom of movement, physical and psychological torture, compulsory vocational training and actual forced labour.

The ITUC also refers to "centralized training centres" that are not called "re-education camps" but have similar security features (e.g. high fences, security watchtowers and barbed wire) and provide similar education programmes (legal regulations, Mandarin language courses, work discipline and military drills). The ITUC adds that the "re-education camps" are central to an indoctrination programme focused on separating and "cleansing" ethnic and religious minorities from their culture, beliefs, and religion. Reasons for internment may include persons having travelled abroad, applied for a passport, communicated with people abroad or prayed regularly.

The ITUC also alleges prison labour, mainly in cotton harvesting and the manufacture of textiles, apparel and footwear. It refers to research according to which, starting in 2017, the prison population of Uyghurs and other muslim minorities increased dramatically, accounting for 21 per cent of all arrests in China in 2017. Charges typically included "terrorism", "separatism" and "religious extremism".

Finally, the ITUC alleges that at least 80,000 Uyghurs and other ethnic minority workers were transferred from Xinjiang to factories in Eastern and Central China as part of a "labour transfer" scheme under the name "Xinjiang Aid". This scheme would allow companies to: (1) open a satellite factory in Xinjiang; or (2) hire Uyghur workers for their factories located outside this region. The ITUC alleges that the workers who are forced to leave the Uyghur Region are given no choice and, if they refuse, are threatened with detention or the detention of their family. Outside Xinjiang, these workers live and work in segregation, are required to attend Mandarin classes and are prevented from practicing their culture or religion. According to the ITUC, state security officials ensure continuous physical and virtual surveillance. Workers lack freedom of movement, remaining confined to dormitories and are required

to use supervised transport to and from the factory. They are subject to impossible production expectations and long working hours. The ITUC adds that, where wages are paid, they are often subject to deductions that reduce the salary to almost nothing. ITUC adds that, without these coercively arranged transfers, Uyghurs would not find jobs outside Xinjiang, as their physical appearance would trigger police investigations.

According to the ITUC's allegations, to facilitate the implementation of these schemes, the Government offers incentives and tax exemptions to enterprises that train and employ detainees; subsidies are granted to encourage Chinese-owned companies to invest in and build factories near or within the internment camps; and compensation is provided to companies that facilitate the transfer and employment of Uyghur workers outside the Uyghur Region.

In its 2021 observations, the ITUC supplements these observations with information, including testimonies from the Xinjiang Victims Database, a publicly accessible database which as of 3 September 2021 had allegedly recorded the experience of some 35,236 ethnic minority members forcibly interned by the Government since 2017.

The Government states that the right to employment is an important part of the right to subsistence and development, which constitute basic human rights. The Government indicates that, under its leadership, Xinjiang has made great progress in safeguarding human rights and development. It adds that people of all ethnic groups voluntarily participate in employment of their own choice, and that the ITUC has ignored the progress made in economic development, poverty alleviation, improvement of people's livelihood and efforts to achieve decent work in Xinjiang.

With respect to the ITUC observations in relation to the use of forced labour, the Government emphasizes that these allegations are untrue and politically motivated.

The Government indicates that, pursuant to the Constitution, the State creates conditions for employment through various channels. The Employment Promotion Law (2007) stipulates that workers have the right to equal employment and to choose a job on their own initiative, without discrimination. Under the Vocational Education Law of 1996, citizens are entitled to receive vocational education and the State takes measures to develop vocational education in ethnic minority areas as well as remote and poor areas.

The Government indicates that residents of deeply poverty-stricken areas in southern Xinjiang have suffered insufficient employability, low employment rates, very limited incomes and long-term poverty. It states that eliminating poverty in Xinjiang has been a critical part of the national unified strategic plan to eradicate poverty by the end of 2020. The Government adds that it has eliminated absolute poverty, including in southern Xinjiang, thanks to government programmes such as the Programme for Revitalizing Border Areas and Enriching the People during the 13th Five-Year Plan Period (GUOBANFA No. 50/2017) and the Three-Year Plan for Employment and Poverty Alleviation in Poverty-stricken Areas in the four prefectures of Southern Xinjiang (2018-2020). The Programme for Revitalizing Border Areas and Enriching the People had set development targets for nine provinces and autonomous regions, including Xinjiang, such as the lifting out of poverty of all rural poor and the continuous expansion of the scale of employment combining individual self-employment, market-regulated employment, government promotion of employment and entrepreneurship, and vocational training to increase the employability of workers. The Three-Year Plan laid the foundation for the Xinjiang government to provide dynamic, categorized and targeted assistance to people with employment difficulties and families where no one is employed, and create structured conditions for people to find jobs locally, to seek work in urban areas, or to start their own businesses.

The Government reports that the task of relocating the poor for the purpose of poverty relief has been completed, and that the production and living conditions of poor people have been greatly improved: the poverty incidence rate in the four poverty-stricken prefectures of Xinjiang dropped from 29.1 per cent in 2014 to 0.21 per cent in 2019. Between 2014 and 2020, the total employed population

in Xinjiang grew from 11.35 million to 13.56 million, representing an increase by 19.4 per cent. In the same period, an average of 2.8 million urban job opportunities were provided annually to the "surplus rural workforce".

The Government is firm in its view that it fully respects the employment wishes and training needs of Xinjiang workers, including ethnic minorities. The Xinjiang Government regularly conducts surveys of labourers' willingness to find employment and keep abreast of their needs in terms of employment location, job positions, remuneration, working conditions, living environment, development prospects and training needs. These surveys demonstrate that more urban and rural "surplus" workers hope to go to cities in northern Xinjiang or other more developed provinces and cities in other parts of the country, which offer higher wages, better working conditions and a better living environment. Ethnic minorities count on the government to provide more employment information and other public employment services to their members. The fact that ethnic minority workers go out to work is entirely voluntary, autonomous and free. According to the Government, the Three-Year Plan for Southern Xinjiang explicitly refers to the "willingness for employment" and states that the wishes of individuals "who are unwilling to work due to health and other reasons" shall be fully respected, and that they will never be forced to register for training.

The Government stresses that language training for ethnic minority workers in Xinjiang is necessary to increase their language ability, and enhance their employability, and does not deprive them of the right to use their own language.

The Government also replies to the ITUC allegations that the Uyghur and other ethnic minorities in Xinjiang are not paid the applicable local minimum wage, indicating that the Labour Law of the People's Republic of China stipulates that the minimum wage system applies across the country, although minimum wage standards may vary across administrative regions. As of 1 April 2021, the minimum wage in Xinjiang is divided into four grades: 1,900 yuan, 1,700 yuan, 1.620 yuan and 1,540 yuan. The Government considers reports that the wages of some migrant workers in Xinjiang are as low as US$114 (approximately 729 yuan) per month to be groundless, stating that the overwhelming majority of this information is taken from individual interviews and lacks clear sources of data or statistical information. In addition, the Government points out that the reports do not fully clarify whether the workers concerned are working less than the statutory working hours, in which case they would be paid less. The Government states that by going out to work, the actual income of many people is much higher than the minimum wage of Xinjiang.

The Government also reports that the local government of Xinjiang has put in place labour inspection systems for protecting the rights and interests of workers and addressing their reports and complaints concerning wage arrears, failure to sign labour contracts and other infringements. The Government indicates that it will take steps to further strengthen the supervision and inspection of employer compliance with minimum wage provisions, call on employers to respect the minimum wage standards and address violations.

The Government provides detailed information on its laws, regulations and policies regarding freedom of religion; equality among the 56 ethnic groups in China and for consolidating and developing unity between and within these groups.

The Government reports that China adopts policies securing freedom of religious belief; manages religious affairs in accordance with the law; adheres to the principle of independence from foreign countries and self-management; and actively guides religions to adapt to the socialist society so that religious believers may love their country and compatriots, safeguard national unity and ethnic solidarity, be subordinate to and serve the overall interests of the nation and the Chinese people. The Law of the People's Republic of China on the Administration of Activities of Overseas Non-Governmental Organizations within China prohibits overseas NGOs from illegally engaging in or sponsoring religious activities. China's Criminal Law, National Security Law, and Counter-Terrorism Law provide for the

protection of citizens' freedom of religious belief. The Counter-Terrorism Law of the People's Republic of China states that China opposes all extremism that seeks to instigate hatred, incite discrimination and advocate violence by distorting religious doctrines or through other means, and forbids any discriminatory behaviour on the grounds of region, ethnicity and religion. The Regulations on Religious Affairs prohibit any organization or individual from advocating, supporting or sponsoring religious extremism, or using religion to undermine ethnic unity, divide the country, or engage in terrorist activities. According to the Government, China takes measures against the propagation and spread of religious extremism, and at the same time, carefully avoids linking violent terrorism and religious extremism with any particular ethnic group or religion.

The Committee takes due note of all the allegations and information communicated by both the ITUC and the Government on the application of Convention Nos 111 and 122, which appear interrelated, as well as stated government policy as it transpires from various regulatory and policy documents.

The Committee takes note of the Government's explanation of its various regulations and policies, including on the eradication of poverty without discrimination. However, the Committee expresses ***concern*** in respect of the methods applied, the impact of their stated objectives and their (direct or indirect) discriminatory effect on the employment opportunities and treatment of ethnic and religious minorities in China.

The Committee recalls that Convention No. 111 requires the formulation and the adoption of a national equality policy, with a view to eliminating any discrimination (*Article 2*) and defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (*Article 1(1)(a)*). Under the Convention, the term "race" includes any discrimination against linguistic communities or minority groups whose identity is based on religious or cultural characteristics or national or ethnic origin (see General Survey on the fundamental Conventions, 2012, paragraph 762). It further recalls that racial harassment, which is a serious form of discrimination, occurs where a person is subject to physical, verbal or non-verbal conduct or other conduct based on race which undermines their dignity or which creates an intimidating, hostile or humiliating working environment for the recipient (see the general observation of 2018 on the application of the Convention).

The Committee recalls that freedom from discrimination is a fundamental human right and is essential for workers in order to choose their employment freely, to develop their full potential and to reap economic rewards on the basis of merit. As such, the promotion of equality of opportunity and treatment in employment and occupation should be mainstreamed in relevant national policies, such as education and training policies, employment policies, poverty reduction strategies, rural or local development programmes, women's economic empowerment programmes, and climate mitigation and adaptation strategies (see the 2018 general observation).

The Committee also recalls that the Convention aims to provide protection against religious discrimination in employment and occupation, which often arises as a result of a lack of religious freedom or intolerance towards persons of a particular faith, a different faith, or towards those who profess no religion. The expression and manifestation of religion is also protected. Appropriate measures need to be adopted to eliminate all forms of intolerance (see 2012 General Survey, paragraph 798).

The Committee observes that discrimination on the basis of actual or perceived religion, combined with exclusions and distinctions based on other grounds such as race, ethnicity or national extraction continues to acquire greater significance, especially in the context of increasing global movements of people looking for better opportunities, and concerns about countering and preventing terrorism. Measures to promote tolerance and coexistence among religious, ethnic and national minorities and awareness-raising on the existing legislation prohibiting discrimination are therefore

more than ever essential to achieving the objectives of the Convention (2012 General Survey, paragraph 801).

The Committee recalls that, in its previous comment, it referred to the concluding observations by the United Nations Committee on the Elimination of Racial Discrimination (CERD) regarding the situation in the Xinjiang Uyghur Autonomous Region. It notes that the CERD was alarmed, inter alia, by: (1) "numerous reports of the detention of large numbers of ethnic Uighurs and other Muslim minorities, held incommunicado and often for long periods, without being charged or tried, under the pretext of countering religious extremism"; (2) "reports of mass surveillance disproportionately targeting ethnic Uighurs"; and (3) "reports that all residents of the Xinjiang Uighur Autonomous Region are required to hand over their travel documents to police and apply for permission to leave the country, and that permission may not come for years". The CERD recommended that action be taken in this regard, in particular halting "the practice of detaining individuals who have not been lawfully charged, tried and convicted for a criminal offence in any extra-legal detention facility" and immediately releasing "individuals currently detained under these circumstances, and allow those wrongfully held to seek redress"; undertaking "prompt, thorough and impartial investigations into all allegations of racial, ethnic and ethno-religious profiling" and eliminating "travel restrictions that disproportionately affect members of ethnic minorities". The Committee further notes the concern expressed by the CERD regarding "reports that ethnic Uighurs … often face discrimination in job advertisements and recruitment processes" (CERD/C/CHN/CO/14-17, 19 September 2018, paragraphs 40, 42 and 47).

In addition, the Committee refers to its comments on the application of Convention No. 122 for the concern expressed by UN human rights experts mandated by the Human Rights Council about the forceful relocation of minority workers, especially Uyghur, across the country and the vocational training policy with the stated objective of combatting terrorism and religious extremism.

The Committee recalls that *Article 3* of Convention No. 111 establishes a number of specific obligations with respect to the design of a national policy to promote equality of opportunity and treatment and eliminate discrimination in respect of employment and occupation. In particular, it requires parties to the Convention to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with such policy; to pursue the policy under the direct control of a national authority; and to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority.

The Committee notes that in its white paper on vocational education and training in Xinjiang (2019), the government describes Xinjiang, which is home to the Uyghur people and other muslim minorities, as a "key battlefield in the fight against terrorism and extremism in China". In accordance with the law, the government has established "a group of vocational centres" to offer systematic education and training in response to "a set of urgent needs": to curb frequent terrorist incidents; to eradicate the breeding ground for religious extremism; to help trainees acquire better education and vocational skills, find employment, and increase their incomes; and, most of all, to safeguard social stability and long-term peace in Xinjiang. Article 33 of the Decision of 10 October 2018 to revise the Xinjiang Uyghur Autonomous Region regulation on de-radicalization (the "XUAR decision") introduced a new provision defining the responsibility of the vocational education and training centres and other education and transformation bodies in de-radicalization efforts as follows: to carry out education and training efforts on the national spoken and written language, laws and regulations, and occupational skills; to organize and carry out de-radicalization ideological education, psychological rehabilitation, and behavioural corrections; and to promote ideological conversion of those receiving education and training, returning them to society and to their families.

The Decision read jointly with the white paper provide the basis to authorize the administrative detention for the purpose of ideological conversion, including of "people who participated in terrorist or extremist activities that posed a real danger but did not cause actual harm, whose subjective

culpability was not deep, who acknowledged their offences and were contrite about their past actions and thus do not need to be sentenced to or can be exempted from punishment, and who have demonstrated the willingness to receive training" (White Paper on vocational education and training in Xinjiang). The white paper considers that education and training is not a measure to limit or circumscribe the freedom of the person but is rather an important measure to help trainees to break free from ideas of terrorism and religious extremism.

The Committee notes that the XUAR decision also lays down de-radicalization responsibilities for enterprises (article 46) and trade unions (article 34). Enterprises failing to perform their de-radicalization duties are subject to "criticism and education" by the unit they are located at or by their higher-ranking competent department and ordered to reform (article 47).

The Committee shares the concerns expressed by the Special Rapporteurs to the UN Human Rights Council (see commentary on the Counter-Terrorism Law of the People's Republic of China (2015) and its Regional Implementing Measures; and the Xinjiang Uyghur Autonomous Region Implementing Measures of the Counter-Terrorism Law (2016)) about terrorist profiling practices based on a person's ethnicity, national origin or religion in as much as they generate a climate of intolerance, which is conducive to discrimination in employment and occupation and forced labour practices such as those alleged in the observations of the ITUC.

In this regard, the Committee recalls that under *Article 4* of the Convention, any "measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice". However, the mere expression of religious, philosophical or political beliefs is not a sufficient basis for the application of the exception. Persons engaging in activities expressing or demonstrating opposition to established political principles by non-violent means are not excluded from the protection of the Convention by virtue of *Article 4*.

Having duly considered the information provided by the Government in response to these serious allegations, the Committee expresses its deep concern in respect of the policy directions expressed in numerous national and regional policy and regulatory documents and requests therefore the Government to:

- ***(i) review its national and regional policies with a view to eliminating all distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity and treatment in employment and occupation;***
- ***(ii) repeal provisions in the XUAR decision that impose de-radicalization duties on enterprises and trade unions and prevent enterprises and trade unions from playing their respective roles in promoting equality of opportunity and treatment in employment and occupation without discrimination based on race, national extraction, religion or political opinion;***
- ***(iii) revise national and regional policies with a view to ensuring that the activities of vocational guidance, vocational training and placement service serve the purpose of assisting ethnic and religious minorities in the development and use of their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society;***
- ***(iv) amend national and regional regulatory provisions with a view to re-orienting the mandate of vocational training and education centres from political re-education based on administrative detention towards the purpose set out in (iii);***
- ***(v) provide information on the measures taken to ensure observance of the policy to promote equality of opportunity and treatment in vocational training activities carried out in Xinjiang's vocational training and education centres; and***

(vi) provide information on the measures taken to ensure observance of the policy to promote equality of opportunity and treatment for the Uyghurs and other ethnic minority groups when seeking to access employment outside the Xianjing Autonomous Province.

Articles 2 and 3. Equality of opportunity and treatment of ethnic and religious minorities, including in the civil service. Further to its request, the Committee notes the information provided by the Government regarding: (1) increased efforts on training programmes for skilled personnel in ethnic areas (more than 30 advanced training programmes in ethnical areas such as Inner Mongolia, Guangxi, Yunnan, Qinghai, Tibet, Guizhou, Ningxia, and Xinjiang), with a number of trained personnel reaching 10,000 people per year; (2) special training programmes for skilled personnel in Xinjiang and Tibet (selection of 200 ethnic talents selected from Xinjiang and 120 from Tibet); (3) the effective recruitment of a total of 25,000 ethnic civil servants nationwide in 2016 (13.3 per cent of the newly recruited civil servants) and 23,000 in 2017 (11.75 per cent of the newly recruited civil servants); and (4) the continuation of the workforce capacity building in ethnic areas, through intensified efforts to support the training targeted at civil servants in ethnic areas, thematic training sessions and on-site training workshops (14 sessions, with more than 870 civil servants engaged, since 2016) and active engagement in bilingual programmes. ***Noting these developments, the Committee requests the Government to continue to provide information on the measures taken, and their results, to promote equality of opportunity and treatment for ethnic and religious minorities, indicating if, and how, the social partners and the groups concerned are consulted when designing and implementing such measures. The Committee also requests the Government to provide information on the current employment situation of various ethnic and religious minorities inside and outside the autonomous regions, including employment data disaggregated by sex and ethnicity in the civil service.***

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

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Congo

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 2(a) of the Convention. Principle of equal remuneration for men and women workers for work of equal value. Laws and regulations. The Committee recalls that, since 2005, it has been drawing the Government's attention to the need to amend sections 80(1) and 56(7) of the Labour Code, which limit the application of the principle of equal remuneration to the existence of "equal working conditions, qualifications and output" (section 80(1)) or to "equal work" (section 56(7)), and do not reflect the notion of "work of equal value". The Committee notes that the Government reaffirms that amendments to sections 80(1) and 56(7) of the Labour Code are envisaged to ensure that the concept of "work of equal value" is binding. ***Noting the Government's commitment, the Committee requests it to ensure, within the framework of the ongoing revision of the Labour Code, that the principle of equal remuneration for men and women workers for work of equal value set out in the Convention is set out in the Labour Code.***

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1999)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1–3 of the Convention. Protection against discrimination. Legislation. For many years the Committee has been emphasizing the shortcomings in the Labour Code and the General Civil Service Regulations regarding the protection of workers against discrimination, since these texts do not cover all of the grounds of discrimination or all the aspects of employment and occupation set out in the Convention. The Committee recalls that the Labour Code only covers the grounds of "origin", gender, age and status in relation to wage discrimination (section 80) and the grounds of opinion, trade union activity, membership or not of a political, religious or philosophical group or a specific trade union in relation to dismissal (section 42). The General Civil Service Regulations prohibit any distinction between men and women in relation to their general application and any discrimination on the basis of family situation in relation to access to employment (sections 200 and 201). The Committee notes the Government's indication that a preliminary draft of a new Bill amending and supplementing certain provisions of the Labour Code will take into account the grounds of discrimination set out in *Article 1(1)(a)*. ***The Committee asks the Government to ensure that, within the framework of the ongoing revision of the Labour Code, discrimination on all of the grounds set out in the Convention is explicitly prohibited, as well as discrimination on any other grounds which it considers appropriate to include in the Code, at all stages of employment and occupation, including recruitment. The Committee also asks the Government to take the necessary measures to amend the provisions of the General Civil Service Regulations in order to ensure that civil servants are protected as a minimum in relation to the grounds set out in Article 1(1)(a) in respect of all aspects of employment, including recruitment and promotion. The Committee also requests the Government to provide information on any legislative developments in this respect.***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. The Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed deep concern at the high prevalence of violence against women and girls, especially sexual harassment at school and at work, the delay in adopting a comprehensive law to combat all forms of violence against women and the lack of awareness regarding this issue and of reporting of gender-based violence (CEDAW/C/COG/CO/6, 23 March 2012, paragraph 23). The Committee notes the Government's indication that, since 2011, the new draft Bill amending and supplementing certain provisions of the Labour Code has contained provisions against sexual harassment. ***The Committee once again asks the Government to ensure that provisions covering both quid pro quo harassment and sexual harassment which creates a hostile, intimidating or offensive environment are adopted and that they protect the victims of sexual harassment and establish penalties for the perpetrators. The Committee also asks the Government to take steps, in collaboration with employers' and workers' organizations, to prevent and combat sexual harassment, such as awareness-raising measures for employers, workers and educators as well as for labour inspectors, lawyers and judges, and to establish information systems and complaints procedures which take into account the sensitive nature of this issue in order to bring an end to these practices and allow victims to exercise their rights without losing their jobs.***

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

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

Ghana

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1961)

Article 1 of the Convention. Prohibited grounds of discrimination. Legislation. In its previous comment, after noting that consultations to review the Labour Act of 2003 were ongoing, the Committee asked the Government to seize this opportunity to ensure that the new Labour Act includes as a minimum the seven prohibited grounds of discrimination listed in *Article 1(1)(a)* of the Convention. Specifically, the Committee had stressed that the expressions "social status", "politics" and "political status", set out as prohibited grounds of discrimination in sections 14 and 63 of the Labour Act, appeared to be narrower than the terms "social origin" and "political opinion" enumerated in the Convention. ***Noting that the Government reports that the review of the Labour Act of 2003 is still ongoing at the National Tripartite Committee, the Committee reiterates its request that the new provisions adopted in the Labour Act cover, as a minimum, all the prohibited grounds listed in Article 1(1)(a).***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. Previously, the Committee asked the Government to provide information on: (1) any developments concerning the expansion of the definition of sexual harassment in the Labour Act (to explicitly cover hostile environment sexual harassment); and, in the meantime, (2) the number, nature and outcome of any complaints or cases of violence or sexual harassment at work handled by the labour inspectorate and the courts. The Government indicates that the expansion of the definition of sexual harassment is part of the ongoing review of the Labour Act. The Government further indicates that there has not been any report or complaints in respect of sexual harassment at work to the Labour inspectorate, the National Labour Commission, or the courts. The Committee recalls in this regard that the absence of complaints regarding sexual harassment does not necessarily indicate that this form of sex discrimination does not exist; rather, it is likely to reflect the lack of an appropriate legal framework, the lack of awareness, understanding and recognition of this form of sex discrimination among government officials, and workers and employers and their organizations, as well as the lack of access to or the inadequacy of complaints mechanisms and means of redress, or fear of reprisal (General Survey on the fundamental Conventions, 2012, paragraph 790). ***The Committee therefore asks the Government to take steps to raise awareness on sexual harassment among labour inspectors and other officials in charge of detecting and addressing the issue, as well as among workers and employers and their respective organizations. The Committee also asks the Government to provide detailed information on the complaints mechanisms in place to address cases of sexual harassment at work and their use in practice (number of cases treated and outcome of these cases). Lastly, the Committee asks the Government, once again, to provide information on any legislative developments concerning the expansion of the definition of sexual harassment with a view to explicitly covering hostile environment sexual harassment.***

Article 2. Equality of opportunity and treatment irrespective of race, colour, religion or national extraction. In its last comment, the Committee noted that the report of the Government was silent on the issue of discrimination on the grounds of race, colour, religion and national extraction. It also drew the Government's attention to its 2018 general observation on discrimination on the grounds of race, colour and national extraction and requested information in response to the questions raised therein. The Committee notes that the Government expresses its commitment to fighting against discrimination on the grounds of race, colour, religion and national extraction. The Government refers to section 17(2) and (3) of the 1992 Constitution which prohibits discrimination on the grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status (section 17(2)); and defines discrimination as giving "different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed,

whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description" (section 17(3)). The Government also reports that the grounds of race, colour, religion and national extraction are covered by the protection afforded by the Labour Code (sections 14 and 63). While taking note of the provisions in the national legislation referred to by the Government, the Committee recalls that when reviewing the situation and deciding on the measures to be taken in the context of a national equality policy, it is essential that attention be given to all the grounds protected under the Convention. The Committee also recalls that the implementation of a national equality policy presupposes the adoption of a range of specific measures, which often consist of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes, and awareness raising (2012 General Survey, paragraphs 848 and 849). ***The Committee therefore asks the Government to provide information on the measures adopted in practice to promote the principle of equality of opportunity and treatment in employment and occupation irrespective of race, colour, religion or national extraction and to address instances of discrimination on these grounds. In particular, the Committee asks the Government to provide information on: the adoption and implementation of specific administrative measures; collective agreements; public policies; affirmative action measures; dispute resolution and enforcement mechanisms; specialized bodies; practical programmes; and awareness raising activities; directed at addressing discrimination on the grounds of race, colour, religion or national extraction in employment and occupation.***

Enforcement. The Committee asked the Government to provide: (1) concrete examples of measures taken to enhance the capacity of law enforcement agencies and institutions to identify and address discrimination in employment and occupation; (2) a copy of the new labour inspection form when adopted, as well as information on any cases of discrimination in employment and occupation identified by or reported to labour inspectors; and (3) copies of any decisions by the courts, the National Labour Commission, the Commission on Human Rights and Administrative Justice or any other competent body. The Government indicates that more officers have been recruited by the law enforcement agencies and institutions. In collaboration with the European Union, ILO, the United Nations Children's Fund (UNICEF), the World Bank and the German Corporation for International Cooperation (GIZ), the Government has trained labour inspectors and provided logistics to enhance inspections in workplaces. The Committee notes, however, that the Government does not specify whether the training delivered to law enforcement agencies, including to labour inspectors, was designed to enhance their capacity to identify and address cases of discrimination in employment and occupation. The Committee also notes the indication by the Government that the new inspection form referred to in its previous report is at its final stage for validation and that there has been no reported complaints about discrimination during the reporting period. In this regard, the Committee recalls that, as stated above, the absence of complaints does not necessarily indicate that discrimination does not exist. It also recalls that the supervision of the provisions against discrimination in employment and occupation often rests in the first instance with the labour inspection services (2012, General Survey, paragraphs 790 and 872). ***The Committee therefore asks again that the Government provide concrete information on any training undergone by labour inspectors, court officials or other authorities to identify and address cases of discrimination in employment and occupation. The Committee also asks that the Government provide a copy of the new labour inspection form when it has been adopted. Lastly, the Committee asks the Government to provide detailed information, if possible disaggregated by sex, on the number of cases of discrimination in employment and occupation brought to or identified by the authorities and their outcome (including information on sanctions imposed and remedies granted).***

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

Guinea

Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1995)

Articles 3, 6 and 8 of the Convention. National non-discrimination policy. Information and education. Protection against dismissal. In its previous comment, the Committee emphasized that that there was still no national policy concerning workers with family responsibilities and it asked the Government to take the necessary measures, in law and practice, to ensure that men and women workers with family responsibilities who so wish are able to access employment or be engaged in employment without discrimination and, if possible, without conflict between their employment and family responsibilities. It also recalls that it previously highlighted the absence of a provision prohibiting dismissal on the basis of family responsibilities in the Labour Code and it asked the Government to indicate the measures taken or envisaged to ensure that family responsibilities do not constitute a valid reason for terminating the employment relationship. The Committee notes the Government's brief indications in its report that it will take account of the Committee's concerns in the context of the forthcoming revision of the Labour Code and requests ILO technical assistance in the process of revision of the Code. The Committee also notes the Government's general reference to the formulation of "national policies on children and welfare, the family and social values". ***While recognizing the difficult situation prevailing in the country, the Committee requests the Government to formulate and implement a genuine national policy having the objectives, inter alia, of eliminating all discrimination in law and practice against workers with family responsibilities and promoting the principle of equal opportunities and treatment for these workers in all areas of employment and occupation. To this end, the Committee requests the Government to take steps to: (i) prohibit explicitly in the Labour Code any discrimination on the basis of family responsibilities in all areas of employment and occupation, including recruitment and dismissal; (ii) allow workers with family responsibilities to be informed of their rights and to assert them; and (iii) support these workers, particularly through the setting up of suitable structures and mechanisms and the implementation of public awareness-raising and information campaigns on the problems faced by workers with family responsibilities. The Committee requests the Government to provide information on each of the points raised above and to send copies of the national policies to which it refers in its report.***

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

Guyana

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)

Articles 1(b) and 2 of the Convention. Equal remuneration for men and women for work of equal value. Legislation. The Committee observes that, for years, it has been referring to the need to amend section 2(3) of the Equal Rights Act No. 19 of 1990, which provides for "equal remuneration for the same work or work of the same nature" to bring it into conformity with the provisions of the Convention and align it with the Prevention of Discrimination Act No. 26 of 1997 (section 9(1)). In its report, the Government indicates that it has recently constituted the Law Reform Commission and that both the Equal Rights Act, Cap. 38:01, and the Prevention of Discrimination Act, Cap. 99:08, are currently under review. With respect to "work of equal value", the Committee recalls that comparing the relative value of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal value overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the value of work performed by women and men free from gender bias. It further recalls that the principle has been applied to compare the remuneration received by men and women engaged in different occupations, such as wardens in sheltered accommodation for the elderly (predominantly women) and security guards in office premises (predominantly men); or school meal supervisor (predominantly women) and garden and park supervisors (predominantly men)

(see General Survey of 2012 on the fundamental Conventions, paragraph 675). ***The Committee asks the Government to ensure that the legislation duly reflects the principle of equal pay for men and women for jobs that are of a different nature, but are of equal value, and requests the Government to provide information in this regard. The Committee also recalls the importance of consultations with the social partners in the process of labour law reform and hopes that the Government will ensure this occurs in relation to any measures implementing the principle of the Convention. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in connection with the revision of the legislation relating to the application of the Convention.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1975)

Article 1(1)(a). Multiple discrimination, including discrimination based on race. Persons of African descent, in particular women. In its previous comments, the Committee asked the Government to provide information on: (1) the steps taken in practice to address discrimination faced by persons of African Descent, in particular women and girls, with respect to access to and advancement in education and employment and occupation; and (2) the situation of men and women of African descent in employment and occupation, in particular in rural areas. The Committee notes the Government's indication that the Ethnic Relations Commission (ERC), which is a constitutional body, was re-established on 22 February 2018 with the swearing in of ten new Commissioners. According to the 2020 ERC report, from the 164 complaints received, although 8 of those were submitted by women of African descent, none of those complaints dealt with racism in the workplace or unequal advancement in education. Moreover, the Government states that the ERC has not received complaints from men and women of African descent resident in the rural areas in relation to discrimination in employment or advancement in education. The Committee notes however that, according to the Government, these complaints related to hateful remarks made by persons of other ethnic origins that seek to incite hostility or ill will against women of African descent. None of these complaints were forwarded to the Ministry of Labour. In that regard, the Committee wishes to point out that "hateful remarks made by persons of other ethnic origins that seek to incite hostility or ill will against women of African descent" could in certain circumstances amount to racial discrimination or harassment, and that it has the potential to create tensions in the workplace. It recalls that, in its general observation on discrimination based on race, colour and national extraction adopted in 2018, the Committee indicated that "racial harassment occurs where a person is subject to physical, verbal or non-verbal conduct or other conduct based on race which undermines their dignity or which creates an intimidating, hostile or humiliating working environment for the recipient. Moreover, the intersection of factors such as race, religion, gender or disability increases the risk of harassment, particularly in respect of young women from an ethnic or racial minority".

The Committee notes the Government's statement that, in its view, the legal framework adequately supports protection for persons of African descent from discrimination including women and girls, as it gives victims of such discrimination a right to seek redress in courts. The Committee observes however that, in its 2020 report on the national-level review of the implementation of the Beijing Declaration and Platform for Action, 1995 (Beijing +25 national report), the Government indicates that: (1) "There is a wide perception that the legal system is a bottleneck, is ineffective in protecting the rights of the population in general, and specifically in protecting women's and girls' rights against discrimination and violence. Enforcement appears to be weak, particularly in relation to discrimination and gender-based violence offences"; (2) "The [United Nations Committee on the Elimination of Discrimination Against Women (CEDAW)] and other consulted sources noted that women's ability to exercise their rights and to bring cases before the courts is greatly limited by the absence of permanent magistrates' courts in all regions and the lack of knowledge and awareness of the anti-discrimination

laws among the population at large and the women themselves, particularly in the rural and hinterland areas"; and (3) "In many cases concerning women and gender related issues, officials tend to base their judgments on their own gender-biased beliefs and not on the existing legal provisions. Another great limitation, particularly for the poorest of the population, is the absence of free public legal assistance. So far, the less-resourced people, and particularly women, are limited to seeking legal advice from non-governmental organisations, such as The Guyana Legal Aid Clinic, which provides free or subsidized legal advice and representation to people who cannot afford to pay for an attorney" (Beijing+25 report, page 7). In this regard, the Committee wishes to recall that it is an obligation for member States to make the provisions of a ratified Convention effective in law and in practice. It is therefore necessary, though not sufficient in itself, for the provisions of the national law to be in conformity with the requirements of the Convention. Certain forms of discrimination based on race, national or social origin, sex-based occupational segregation and sexual harassment are not, on the whole, caused by an intention to discriminate or by legislative provisions or regulations, but are rather the result of behaviour, attitudes or an expression of prejudice, in respect of which positive measures should be adopted. ***In light of the challenges mentioned above, the Committee urges the government to take steps: (i) to carry out awareness-raising activities for workers, employers and their organizations, labour inspectors, judges and society in general, in order to combat gender stereotypes and occupational gender segregation; (ii) to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of discrimination and to secure compliance with the provisions of the applicable labour law; (iii) to examine whether the applicable substantive and procedural provisions allow claims to be brought successfully in practice; (iv) to ensure that victims of discrimination based on race, colour or national extraction, in particular women of African descent, have effective access to legal assistance; (v) to consider promoting the development of workplace policies or race relations awareness training sessions to prevent racial and ethnic harassment; and (vi) to provide information on any court or administrative decisions regarding discrimination based on race, colour, national extraction and gender.***

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

Islamic Republic of Iran

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)

Articles 1 and 2 of the Convention. Protection against discrimination in employment and occupation. Legislation. The Committee recalls that the Labour Code provides that "skin colour, race, language and the like do not constitute any privilege or distinction" and "all individuals, whether men or women, are entitled to the same protection of the law". With reference to its previous comments and to the conclusions of the Committee on the Application of Standards of the International Labour Conference (June 2013), the Committee recalls that the adoption of a law on non-discrimination in employment and education had been envisaged and a Bill passed by the Parliament some ten years ago. It further recalls that over the years a number of bills, policies, plans and proposals had been referred to by the Government but have never come to fruition. In this context, the Committee notes with ***concern*** that, either through a national equality policy or through legislation, there is still no comprehensive protection of workers against discrimination based on all the grounds enumerated in *Article 1(1)(a)* of the Convention and covering all aspects of employment and occupation, including recruitment, in accordance with *Article 1(3)*. In this regard, the Committee recalls that the Convention requires the State to review whether legislation is needed to secure the acceptance and observance of the principles of the Convention. The necessity of legislative measures to give effect to the Convention must thus be assessed within the framework of the national policy as a whole, having regard in particular to the other types of measures which may have been taken, and to the effectiveness of the overall action pursued,

including whether there are adequate and effective means of redress and remedies. The enactment of constitutional or legislative provisions or regulations continues to be one of the most widely used means to give effect to the principles of the Convention (see 2012 General Survey on the fundamental Conventions, paragraphs 734–737). ***In light of the above, the Committee asks the Government to take appropriate steps to ensure that effective and comprehensive legal protection for all workers is ensured, whether nationals or foreigners, against direct and indirect discrimination on at least all of the grounds enumerated in Article 1(1)(a) of the Convention, including political opinion, religion, national extraction and social origin, and with respect to all aspects of employment and occupation, including access to vocational training and employment. The Committee asks the Government to provide information on the steps taken to that end and their outcome.***

Articles 1(1)(a) and 3(c). Discrimination based on sex. Legal restrictions on women's employment. The Committee recalls that since 1996, it has been asking the Government to repeal or amend section 1117 of the Civil Code, which allows a husband to prevent his wife from engaging in an occupation or technical profession which, in his view, is incompatible with the family's interests or his dignity or the dignity of his wife. Recalling that, pursuant to *Article 3(c)* of the Convention, ratifying States undertake to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the equality policy, the Committee notes once again with ***deep regret*** that there has been no significant development in this regard. It notes, however, the Government's indication, in its report, that "the issue of addressing ambiguity or amendment of article 1117 of the Civil Code is still on the Government's agenda" and "is under consideration by the Judiciary in close collaboration with the Government". The Government also indicates that the Bill for the Amendment of certain provisions of the Family Protection Act of 2012 provides, in its section 7, that "[i]f the wife is employed prior to marriage and the husband is informed or ask employment to be a condition within the marriage contract, or the future employment of the wife is inferred from the wife's status and the husband has not conditioned prohibition of employment, or in cases where the husband after marriage has agreed with the employment of the wife, the husband's lawsuit regarding employment prohibition against the wife is not admissible". ***While taking note of this draft provision that could mitigate some of the effects of section 1117 of the Civil Code on women's access to employment in certain cases if it is adopted and applied in practice, the Committee strongly urges the Government, once again, to take the necessary measures to repeal section 1117 of the Civil Code to ensure that women have the right, in law and in practice, to freely pursue any job or occupation of their own choosing, in accordance with the Convention. To be able to assess the impact of section 1117 of the Civil Code on women's employment in practice, it asks the Government to provide information on the number, nature and result of cases in which a husband has invoked section 1117 of the Civil Code to oppose his wife's engagement in an occupation.***

Sexual harassment. The Committee notes the Government's indication that all forms of harassment at work, whether in the form of sexual harassment from a superior or hostile work environment, are prohibited and, according to criminal law, any sexual assault, harm, harassment and violence is recognized as a crime and penalties exist for it. The Government adds that: (1) complaints regarding any kind of sexual harassment, harm and violence are addressed by criminal courts; (2) the non-governmental organizations active in supporting women can lodge complaints for women with the competent judicial authorities and be present during proceedings; and (3) a trained woman officer will be responsible for investigating a woman's case. The Committee notes this information and the Government's indication that it has translated the Violence and Harassment Convention, 2019 (No. 190), and its accompanying Recommendation No. 206, and had them disseminated in both the private and public sectors. The Committee notes the Government's indication that the Protection, Dignity and Security of Women against Violence Bill was: (1) approved on 14 January 2021 by the Government and the President; (2) sent to Parliament for approval; and (3) referred to the Legal and Judiciary Committee of Parliament for examination. It further notes the Government's indication that the legal, policy and

executive measures it has taken on sexual harassment at the workplace include: (1) the organization of awareness-raising activities with employed women; (2) the setting up of a task force on women's security at the workplace; (3) the pilot implementation of a women's security plan at the workplace in the Judiciary; and (4) the proposal to include women's security at the workplace (i.e. no violence and no sexual harassment at the workplace) in the gender equity indicators under article 101 of the 6th Development Plan as well as the draft 7th Development Plan.

In this regard, the Committee considers that, to prevent and address effectively all forms of sexual harassment in employment and occupation and protect workers against such practices, explicit and comprehensive legislation, applicable to both women and men workers and taking into account the specificities of the workplace, including the fear of losing their job and therefore their earnings, is necessary and would enable workers to avail themselves more efficiently of their right to a workplace free from sexual harassment. In this regard, the Committee recalls that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses (which is often the case), and the fact that criminal law generally focuses on sexual assault or "immoral acts", and not the full range of behaviour that constitutes sexual harassment in employment and occupation (General Survey on the fundamental Conventions, 2012, paragraph 792). ***While noting the steps taken by the Government on "women's security", the Committee once again asks the Government to take the necessary steps to ensure that clear and comprehensive legal provisions aimed at preventing and addressing all forms of sexual harassment against all workers not only by a person in a position of authority but also by a colleague or a person with whom workers have contact as part of their job (client, supplier, etc.), including provisions against victimization, appropriate complaint mechanisms and procedures, sanctions and remedies, are included in the Labour Code. The Committee also asks the Government to provide information on the progress made with regard to the adoption and implementation of the Protection, Dignity and Security of Women against Violence Bill and to provide information on the manner in which sexual harassment in employment and occupation is addressed, and to specify the relevant provisions. Finally, the Committee asks the Government to continue undertaking specific activities to prevent sexual harassment at work, through the Committee for Prevention of Violence and the Special Taskforce on the security of women at the workplace, including awareness-raising campaigns at both the national and workplace levels in the public and private sectors.***

Equality of opportunity and treatment for men and women. The Committee takes due note of the detailed statistics provided by the Government, disaggregated by major occupational group, regarding the employment of men and women in the private and public sectors in 2019. It notes that, according to this data, women represented 16.2 per cent of employees in the private sector and 36.6 per cent in the public sector. The Committee also notes the data concerning the number of women judges. In addition, it takes note of the information on the situation of women in employment provided by the Government to the United Nations (UN) Human Rights Committee in its fourth periodic report under the International Covenant on Civil and Political Rights. The Government indicates that: (1) the rate of women's economic participation has increased from 12.4 per cent in 2013 to 16.4 per cent in 2018; (2) the number of women working in governmental organizations has increased from 34.64 per cent in 2009 to 41.67 per cent in 2018; (3) more than 4,000 women active entrepreneurs; (4) by 2018, 223 centres had been established and are operating throughout the country, of which about 20 per cent are managed by women entrepreneurs; (5) between 2011 and 2019, a total of 523,371 companies and institutions were registered by women (CCPR/C/IRN/4, 23 August 2021, paragraph 20). The Committee recalls that it previously noted the Government's indication that women's economic participation was 17.3 per cent in 2016, which seems to indicate that their level of participation fell in 2018 (16.4 per cent) and clearly shows that women's participation in the labour market remains very low and change is occurring slowly. It further notes from the Report of the Special Rapporteur on the situation of human

rights in the Islamic Republic of Iran that "women's access to formal employment is restricted, with 29.7 per cent of women between the ages of 18 and 35 being unemployed in 2019. Despite major advances in education, female labour force participation in the country is 17 per cent. The majority of working women are employed in the informal sector with minimal labour law protection; female university graduates make up 67.5 per cent of all unemployed individuals. Women from minority backgrounds face intersectional discrimination, with the highest unemployment rates found in provinces where the majority of the population are from ethnic and religious minorities" (A/HRC/46/50, 11 January 2021, paragraph 57). The Committee also notes, from the 2021 Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran that, "between December 2019 and December 2020, the annual rate of individual economic activity fell by 2.9 per cent with close to 1.5 million people leaving the job market, the vast majority of them women" (A/HRC/47/22, 14 May 2021, paragraph 53). In addition, the Committee recalls that, in its previous comment, it noted that the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran regretted that discrimination on the basis of gender pervades society and that the pace of change concerning the protection of women from discrimination was slow (A/75/213, 21 July 2020, paragraph 46), and that discrimination in the job market continued to prohibit women from working in certain professions (A/HRC/37/68, 5 March 2018, paragraph 63).

The Committee notes the Government's indication in its report that it is identifying and supporting capable women with a view to recruiting them into management positions, thereby implementing the 30 per cent employment quota, and that it has set up a database in order to increase women's share in such positions. The Government adds that it has organized tens of specialized training workshops, including on marketing, production, sales, entrepreneurship, innovation, for 53,000 female graduates in order to facilitate their access to employment. Since 2000, it has been implementing the Plan on rural and tribal women micro-credit funds, with more than 2,200 micro-credit rural funds active, covering about 100,000 members (direct beneficiaries) and 300,000 others (indirect beneficiaries), as well as other plans to develop micro-businesses and sustainable farming. The Government also indicates that technical economic working groups to manage the damage caused by the COVID-19 pandemic on the status of women's production units and home workshops were set up, and support was provided for home businesses and production units during the pandemic. With regard to technical and vocational training, the Committee notes from the data provided by the Government, that female students represented 37.5 per cent of total students in 2019–20. ***In light of the above and the persistent low participation rates of women in the labour market, the Committee asks the Government to take steps to: (i) address actively the obstacles that exist in law and practice to women's access to the labour market, including prejudice and stereotypes regarding women's aspirations and capabilities, their suitability for certain jobs or their interest or availability for full-time jobs; (ii) continue to promote and encourage the participation of women in the labour market in a wider range of occupations at all levels on an equal basis with men; and (iii) continue to provide up-to-date statistics disaggregated by sex and occupation in both the public and private sectors. The Committee asks the Government to provide information on the measures adopted to that end and the results achieved on the equal participation of women in the labour market in all sectors of the economy.***

Draft Comprehensive Population and Family Excellence Plan and other measures. In its previous comment, the Committee took note of the new draft of the Comprehensive Population and Family Excellence Plan (Bill No. 264) with the same objective as the former Bill, which is to achieve a fertility rate of 2.5 children per woman by 2025. The Committee recalls that Bill No. 264 maintains some of the hiring priorities: section 10 provides that governmental and non-governmental departments shall give priority in employment to married men with children and to married men without children, and the employment of single persons is permitted only in the absence of qualified married applicants. It further recalls that it expressed its concern on the approach taken to restrict women's access to employment in Bill No. 264, and particularly that of single women and women without children, in contravention of the protection

against discrimination set out in the Convention. The Committee notes that the Government also emphasizes that the right of women after their maternity leave to return to their job is protected by labour inspectors and the courts. It takes note of the Government's indication that the draft Comprehensive Population and Family Excellence Plan is still under consideration. ***In light of the above, the Committee once again urges the Government to ensure that the measures taken to promote population policies and maternity protection do not constitute obstacles to the employment of women in practice. More specifically, the Committee asks the Government to ensure that all of the restrictions on women's employment and the prioritization of men's employment in draft Bill No. 264 are removed from the Comprehensive Population and Family Excellence Plan. In the absence of information in the Government's report, the Committee once again urges the Government to ensure that restrictive measures are not taken in practice through the introduction of quotas which serve to limit women's employment in the public sector. It asks the Government to provide information on any developments regarding the adoption of the Comprehensive Population and Family Excellence Plan and its content regarding gender equality.***

Discrimination based on religion and ethnicity. With regard to its previous comments on the situation of non-recognized minorities and the practical impact of the Selection Law based on Religious and Ethical Standards, 1995, which requires prospective state officials and employees to demonstrate allegiance to the state religion *(gozinesh),* the Committee notes the Government's repeated statement that the education, employment and occupation of religious minorities are protected in law and in practice. The Government adds that, according to the Constitution, religious minorities enjoy the right to education; they can freely study at regular schools, as well as in their special schools, and teach their religious studies and enjoy their own local and ethnic language in press, media and schools. It further indicates that religious minorities are entitled to participate in Islamic labour councils, and the role of the Special Adviser to the President for religious and ethnic minority affairs is to help the President make decisions to facilitate the affairs of ethnic groups and religious minorities. While noting this general information, the Committee notes that the Government's report does not contain any reply to its previous requests regarding the practical impact of the Selection Law on the access to employment of members of religious minorities and the situation of non-recognized religious minorities. ***The Committee therefore once again urges the Government to take the necessary steps to eliminate discrimination in law and practice against members of religious minorities, especially non-recognized religious groups, in education, employment and occupation, and to adopt measures to foster respect and tolerance of all religious groups in society. The Committee once again asks the Government to consider amending or repealing the Selection Law in order to ensure that people from all religions and ethnic backgrounds have equal access to employment and opportunities in both the public and private sectors, as well as to training and educational institutions. Noting once again the lack of information communicated in this regard, the Committee again asks the Government to provide information on the labour market participation rates of men and women from religious minorities in the public and private sectors.***

Article 3(a). Social dialogue. Further to its request regarding activities and efforts for cooperation with employers' and workers' organizations to promote the application of the Convention, the Government indicates that it monitors the application of ILO Conventions by organizing tripartite meetings and continues to consult workers' and employers' organizations and "other beneficiary organizations on various grounds and occasions, including during phases of formulating laws and regulations". ***While noting this general information, the Committee encourages the Government to formulate and adopt awareness-raising, training and capacity-building measures aimed at employers and workers and their respective organizations to promote equality in employment and occupation and a better understanding of how to identify and address discrimination. It asks the Government to provide information on any steps taken to that end.***

Enforcement. The Committee notes the Government's indication that petitions, claims and disputes lodged with the courts and the Administrative Court of Justice are not registered under the heading of "discrimination in employment and occupation", and it is therefore impossible to provide exact data and statistics on litigation regarding this issue. In this regard, the Committee stresses the need to collect and publish information on the nature and outcome of discrimination complaints and cases as a means of raising awareness of the legislation and of the avenues for dispute resolution, and in order to examine the effectiveness of the procedures and mechanisms (2012 General Survey, paragraph 871). ***Recalling that data collection and analysis is an important aspect of monitoring the implementation of the Convention in practice and is necessary to determine whether the measures taken have had a positive impact on actual situations and to inform future decisions, the Committee asks the Government to take steps to begin compiling information on the number and nature of claims and disputes relating to discrimination in employment and occupation filed with the competent authorities and to provide such information, when it is available.***

Iraq

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2021. The ITUC acknowledges in its observation that the country has been through a series of extremely painful events over the last three decades; that violence and armed conflicts have caused significant displacement of the population and that the political and social tensions in the country have certainly impacted on the Government's ability to deal with all the forms of discrimination covered by the Convention. The ITUC considers, however, that this situation does not relieve the Government of the need to meet its obligations under the Convention, which is an integral part of the reconstruction process. ***The Committee asks the Government to provide its comments in this respect.***

The Committee is aware of the process of transition and reconstruction being undertaken in the country. In this regard, it takes note of the ILO technical assistance mission to Erbil/Iraq (16–18 August 2021), following the request by the Conference Committee on the Application of Standards (CAS) to the Government to avail itself of technical assistance to effectively implement its conclusions.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the detailed discussion which took place at the 109th Session of the Conference Committee on the Application of Standards (CAS) in June 2021 concerning the application of the Convention by Iraq, as well of the conclusions adopted.

Article 1(1)(a) of the Convention. Discrimination based on race, colour, religion or national extraction. In its previous comments, the Committee noted that ethnic and religious minorities in the country have long faced discrimination and exclusion from certain labour markets, including employment in the public sector. The Committee also noted that bills on diversity protection and anti-discrimination and on the protection of the rights of religious and ethnic minority groups were under consideration. The Committee notes that the CAS urged the Government to take the necessary measures to ensure the adoption without delay of the draft bills on diversity protection and anti-discrimination and on the protection of the rights of religious and ethnic minorities. The Government has informed the Committee of the adoption of Law No. 8 of 2021 on Yazidi women survivors, which provides for financial support and other forms of redress as compensation for what they endured during the armed conflict. Consequently, a General Directorate for the welfare of female Yazidi Survivors has recently been established, which is attached to the Ministry of Labour and Social Affairs. The ITUC recalls that the two

bills aimed at combating discrimination and protecting minorities have been pending before Parliament for several years. While recognizing the difficult situation prevailing in the country, the Committee notes with ***regret*** that the Government's report does not provide information on any progress made in the adoption of the two bills mentioned above. It is therefore bound to reiterate its request. ***The Committee asks the Government to provide information on: (i) the measures taken or envisaged regarding the adoption of the draft bills on diversity protection and anti-discrimination bill and on the protection of the rights of religious and ethnic minority groups; and (ii) the strategy it intends to develop to overcome the obstacles encountered in the adoption of these bills. In the meantime, it once again asks the Government to: (i) strengthen its efforts and adopt proactive measures to address discrimination against ethnic and religious minority groups, such as measures to promote tolerance and coexistence among religious, ethnic and national minorities, awareness-raising on the existing legislation prohibiting discrimination, setting quotas or targets for the representation of minorities; (ii) report on a regular basis on the results of these measures in terms of increasing the access of these groups to employment and occupation; and (iii) provide any available statistical information, disaggregated by sex, on the employment of ethnic minority groups and the sectors and occupations in which they are employed.***

Articles 2 and 3. National policy to promote equality of opportunity and treatment in employment and occupation. The Committee notes that the authorities of the Ministry of Labour and Social Affairs: (1) formalized a request to the ILO technical assistance mission held in August 2021 for the development of a National Equal Employment Opportunity Policy with a plan of action for a period of three–five years; and (2) requested the ILO to include a specific component on the Convention in the Iraqi Decent Work Country Programme 2019–23 (DWCP). The Committee welcomes this information. ***It hopes that the technical assistance requested will be provided in the near future to assist the Government in declaring and pursuing a national equality policy by methods appropriate to national conditions and practice, as set out in Article 2 of the Convention, and asks the Government to report on the progress achieved in this regard.***

Articles 2 and 5. Equality of opportunity and treatment for men and women. Situation of women, including women migrant workers. The Committee notes the Government's indication, in response to the CAS conclusion on the situation of women workers in the country, that a Working Group has been established under the presidency of the Director General of the Women's Empowerment Department (one of the structures of the General Secretariat of the Council of Ministers) to supervise the implementation of the Women's Economic Empowerment Plan (hereinafter the Plan) developed with the support of the World Bank Group. The Plan is composed of several components, including one on implementing legislative reforms to reduce gender gaps. The Committee also notes that the National Development Plan (2018–22) recognizes that traditional stereotypes concerning women's roles influenced by the dominance of male culture deeply rooted in social structures explain the low participation of women in economic, social and political activities and their limited role in legislative and political institutions. It identifies the gender gap as one of the main social challenges for the development of the country. In that regard, the Committee notes the Government's statement in its 2019 National Report on the implementation of the Beijing Declaration and Platform for Action (Beijing +25) that it aims to increase the number of women participating in the labour force by 5 per cent over the next five years. It also notes some of the statistical data provided in the above report: (1) the percentage of female workers aged 15 years and above was 12.6 per cent in 2017, while for male workers it was 72.7 per cent; (2) the overall unemployment rate of 13.8 per cent is distributed as follows, 10.9 per cent for men compared by 31.0 per cent for women; (3) the percentage of women who held the post of director general in ministries was 36 per cent of total general manager's positions, while the percentage of women in senior management was 37 per cent; and (4) the number of women judges reached 113 in 2017 compared with 18 in 2003. The Committee further notes that equal opportunities for men and women is a cross-cutting requirement of the three priorities identified by Iraq constituents

during the formulation of the current DWCP (job creation, social protection coverage and governance). Moreover, according to the 2020 World Bank report entitled "Women's economic participation in Iraq, Jordan and Lebanon": "Women face additional barriers related to social norms, legal constraints and market failures. Several factors have disproportionate effects on women's ability to effectively participate in the labour market, including more limited access to capital (human, physical, and financial) than men, lack of affordable and adequate childcare and of safe public transportation, and laws and societal preferences for men that result in their taking the few available jobs. Although girls get an equal start with boys [...] in terms of school attendance at early ages, completing education is a challenge for Iraqi girls, particularly in rural areas. In addition, gender gaps associated with certain fields of study may, in turn, be shaped by society's expectations" (page 16). ***In light of the above, the Committee asks the Government to: (i) step up its efforts to address the obstacles that exist in practice, including cultural and stereotypical barriers, to women's equality of opportunity and treatment in employment and occupation; (ii) promote the participation of women in the labour market and decision–making positions on an equal footing with men; and (iii) communicate any available statistics, disaggregated by sex, concerning the participation of men and women in the various sectors of economic activity in both the private and public sectors.***

Women migrant workers. In its conclusions, the CAS asked the Government to pay particular attention to the situation of women migrant workers. The Committee notes the Government's reminder that the Labour Law applies to all workers without discrimination (section 3). The Government indicates in addition that: (1) an Employment Resource and Workers Migration Centre was inaugurated in collaboration with the International Organization for Migration (IOM); (2) it is in the process of establishing a Centre for Jobs, Migration and Reintegration with the assistance of the German Agency for International Cooperation to develop the private sector within the framework of a migration programme; and (3) a hotline dealing with migrant workers' complaints has been established. While taking note of the information provided by the Government on the situation of migrant workers in general, the Committee wishes to recall that women migrant workers are particularly vulnerable to prejudices and differences in treatment in the labour market on grounds such as race, colour and national extraction, often intersecting with other grounds such as gender and religion (General Survey on the fundamental Conventions, 2012, paragraph 778). ***The Committee therefore asks the Government to ensure that women migrant workers are protected against all the forms of discrimination prohibited by the Convention and to provide any information available in this regard.***

Legal obstacles faced by women. The Committee recalls that in its conclusions the CAS asked the Government to review and adapt relevant provisions to lift the legal obstacles faced by women in the country, including concerning their civil status. In its observations, the ITUC states that: (1) in practice, women in Iraq remain largely under-represented in the world of work and suffer a great deal of discrimination in accessing employment; (2) these obstacles are aggravated by a series of legal conditions and provisions, which literally place them under supervision; and (3) the obstacles concerning the situation of women in the labour market are based in part on the legal provisions relating to their civil status, thus it is crucial that these aspects are also examined and modified. The Committee notes that no specific information was provided by the Government on a possible strategy to lift the legal obstacles faced by women, including concerning their civil status. ***The Committee asks the Government to consider launching a gender audit or analysis of its current legal framework to ensure that any gender discrimination is removed.***

Special protection measures. The Committee recalls that section 85(2) of Labour Law No. 37/2015 prohibits women from working in jobs deemed hazardous or arduous and also prohibits women from performing night work (sections 85(2) and 86(1)). The Committee wishes to recall in this regard that protective measures for women may be broadly categorized into those aimed at protecting maternity in the strict sense (that is during pregnancy or childbirth and its consequences or nursing) which come within the scope of *Article 5,* and those aimed at protecting women generally because of their sex or

gender, based on stereotypical perceptions about their capabilities and appropriate role in society, which are contrary to the Convention and constitute obstacles to the recruitment and employment of women (2012 General Survey, paragraph 839). Provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific health risks. Therefore, any restrictions on women's access to work based on health and safety considerations must be justified and based on scientific evidence and, when in place, must be periodically reviewed in the light of technological developments and scientific progress to determine whether they are still necessary for protection purposes. The Committee also emphasizes the need to adopt measures and put in place facilities to enable workers with family responsibilities, in particular women, who continue to bear the unequal share of family responsibilities, to reconcile work and family life. With a view to repealing discriminatory protective measures applicable to women's employment it may be necessary to examine what other measures are necessary to ensure that women can access these types of employment on an equal footing with men, such as improved health protection of both men and women, adequate transportation and security, as well as social services (General Survey, 2012, paragraph 840). ***The Committee asks the Government to take the necessary measures to review section 85(2) and section 86(1) of Labour Law No. 37/2015 in light of the principle of equality for men and women workers with a view to ensuring that protective measures applicable to women's employment in certain jobs or industries are still necessary and are not based on stereotypes regarding women's professional abilities and capabilities and are strictly limited to maternity protection.***

Technical assistance. ***The Committee reminds the Government of the possibility of availing itself of the technical assistance of the Office on all the questions raised above.***

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

Lebanon

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 2 of the Convention. *Gender pay gap.* The Committee recalls its previous comments in which it noted that, according to statistics published in October 2011 by the Central Statistics Office, in 2007 the gender pay gap was an estimated 6.2 per cent in services; 10.8 per cent in commerce; 21 per cent in agriculture; 23.8 per cent in manufacturing; and 38 per cent in transport and communications. ***In the absence of updated information in this regard in the Government's report, the Committee once again requests it to take the necessary steps to gather, analyse and communicate data on the remuneration of men and women and wage gaps in the different sectors of economic activity, including the public sector, and for different professional categories. The Committee once again requests the Government to adopt specific measures to rectify gender pay gaps, including raising awareness among employers, workers and their organizations of the principle of equal remuneration for men and women for work of equal value, and to provide information on any action taken to this end and on any obstacles encountered.***

Article 2. *Legislation.* *Equal remuneration for men and women for work of equal value.* For more than 40 years the Committee has been requesting the Government to ensure that the principle of equal remuneration for men and women for work of equal value is given full legal expression. The Committee notes with ***regret*** that the Government's report merely indicates that the new draft Labour Code is still under examination. ***The Committee is therefore bound to urge the Government to ensure that the draft Labour Code gives full legal expression to the principle of equal remuneration for men and women for work of equal value, in order to facilitate a broad scope of comparison encompassing not only equal or similar work, but also work of an entirely different nature that is of equal value overall. Expressing the firm hope that the***

Government will be in a position to report progress on this matter in the near future, the Committee asks the Government to provide a copy of the relevant provisions when they have been adopted.

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 2 of the Convention. Protection of workers against discrimination, including sexual harassment. Law and practice. For more than 20 years the Committee has been requesting that the Government introduce a definition and a general prohibition of direct and indirect discrimination on the grounds set out in *Article 1(1)(a)* of the Convention, within the framework of the Labour Code reform, applicable to all aspects of employment and occupation. The Committee recalls that the Labour Code currently in force (the Labour Code of 1946, as amended) only covers discrimination between men and women in certain aspects of employment (section 26) and does not provide effective protection against all forms of sexual harassment, namely quid pro quo and hostile working environment sexual harassment. Indeed, the only section of the Code that could be applied in cases of sexual harassment is a provision that authorizes employees to leave their jobs without notice when "the employer or his representative commits the offence of molestation of the worker" (section 75(3)). The Committee recalls in this regard that legislation under which the sole redress available to victims of sexual harassment is the possibility to resign, while retaining the right to compensation, does not afford sufficient protection for victims of sexual harassment since it punishes them and could therefore dissuade victims from seeking redress (see 2012 General Survey on the fundamental Conventions, paragraph 792). The Committee notes with ***regret*** that the Government's report does not contain any information on the progress or content of the ongoing reform of the Labour Code. However, the Committee observes that, according to the third annual report (2015) on the implementation of the National Strategic Plan for Women in Lebanon (2011–21), the Ministry of Labour has prepared a bill criminalizing sexual harassment in the workplace. ***Consequently, the Committee urges the Government to take the necessary steps to ensure that the new Labour Code contains provisions defining and prohibiting direct and indirect discrimination on at least all of the grounds set out in Article 1(1)(a) of the Convention, in all aspects of employment and occupation, as defined in Article 1(3), and all forms of sexual harassment (quid pro quo harassment and the creation of a hostile working environment). The Committee once again asks the Government to provide information on any progress made with a view to adopting the draft Labour Code. In the absence of full legislative protection against discrimination, the Committee also once again requests the Government to adopt specific measures to ensure, in practice, the protection of workers against discrimination on the grounds of race, colour, religion, political opinion, national extraction and social origin, and against sexual harassment in employment and occupation, including measures to raise awareness of these issues among workers, employers and their respective organizations, in order to improve prevention.***

Foreign domestic workers. Multiple discrimination. For more than ten years, the Committee has been examining the measures taken by the Government to address the lack of legal protection for domestic workers, most of whom are women migrants, since these workers are excluded from the scope of the Labour Code and are particularly vulnerable to discrimination, including harassment, on the basis of sex and other grounds such as race, colour and ethnic origin. The Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) noted with concern that "abuse and exploitation of migrant domestic workers continues to occur in spite of the measures taken by the State party". The CERD also noted with concern that "victims are often not able to seek assistance when they are forcibly confined to the residence of their employers or when their passports have been retained". The CERD recommended the following measures: "abolish the conditions that render migrant domestic

workers vulnerable to abuse and exploitation, including the sponsorship system and the live-in setting"; "extend the coverage of the Labour Code to domestic work, thereby granting domestic workers the same working conditions and labour rights as other workers, including the right to change occupation, and subjecting domestic work to labour inspections"; "ensure that any specific legislation on domestic employment is aimed at tackling migrant domestic workers' increased vulnerability to abuse and exploitation"; and "conduct campaigns to change the population's attitudes towards migrant domestic workers and to raise awareness of their rights" (CERD/C/LBN/CO/18–22, 5 October 2016, paragraphs 41–42). The Government reports that domestic workers are covered by the Code of Obligations and Contracts, and once again refers to the model contract and the Bill on the employment of domestic workers. The Government also indicates that a Bill to ratify the Domestic Workers Convention, 2011 (No. 189), was submitted to the Council of Ministers and that the national steering committee of the Ministry of Labour, which is responsible for examining relations between employers and domestic workers, is currently developing significant measures to guarantee compliance with contracts and abolish the sponsorship system. However, the Government states that this process will take time. In this regard, the Committee notes the Government's indication that the Ministry of Labour and official bodies have not established restrictions regarding changes of employer and that this is an issue that only concerns the worker and the employer. ***Recalling its previous comments and noting with regret that the situation remains unchanged, the Committee urges the Government to take the necessary measures, in cooperation with the social partners, to ensure genuine protection for migrant domestics workers, in law and practice, against direct and indirect discrimination on all of the grounds set out in the Convention, including against sexual harassment, and in all areas of their employment, either through the adoption of a bill on the employment of domestic workers or, more generally, within the framework of the labour legislation. The Committee asks the Government to supply information on any progress made in this regard and on any legislative changes to abolish the sponsorship system. The Committee asks the Government, in particular, to ensure that any new regulations envisaged on the right of migrant workers to change employers do not impose conditions or restrictions likely to increase these workers' dependence on their employer and thus increase their vulnerability to abuse and discriminatory practices.***

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

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

Madagascar

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)

The Committee takes note of the observations of the Autonomous Trade Union of Labour Inspectors (SAIT) received on 9 March 2021, which address issues related to the application of the Convention. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. Legislation. For several years, the Committee has been emphasizing that the provisions on equal remuneration of section 53 of the Labour Code are more restrictive than those of the Convention, as they limit the application of the principle of equal remuneration for work of equal value to persons engaged in the same job and with the same vocational qualifications. The Committee notes the Government's indication in its report that in March 2016 the National Conference of Labour Inspectors raised the issue of the amendment of certain provisions of the Labour Code, including section 53, and that a draft text to amend this provision will soon be submitted to the National Labour Council (CNT) to seek the views of the social partners on this subject. ***While recalling that it considers that the full and complete incorporation into the legislation of the principle of equal remuneration for men and women for work of equal value is essential to ensure the effective application of***

the Convention, the Committee trusts that the Government will take the opportunity of the draft amendment of the Labour Code to achieve the full integration of the principle of the Convention in the new Labour Code, in cooperation with employers' and workers' organizations, and that it will ensure that the new provisions encompass not only equal work or work performed under equal conditions, but also work which is of an entirely different nature, but nevertheless of equal value. It requests the Government to provide information on any progress achieved in this regard and on any other measures adopted or envisaged to promote and ensure equal remuneration for men and women for work of equal value in practice.

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1 of the Convention. Protection against discrimination. For several years, the Committee has been emphasizing that neither the Labour Code nor the Civil Service Regulations prohibit discrimination on all the grounds covered by the Convention and has been asking the Government to take the necessary measures to bring the legislation into conformity with the Convention. The Committee noted that the Labour Code does not prohibit discrimination on the basis of colour and social origin (section 261), and that the Civil Service Statute does not prohibit discrimination on grounds of race, colour and social origin (section 5). The Committee notes the Government's indication in its report that, in March 2016, the National Labour Inspectors Conference (SAIT) raised the issue of amending the Labour Code provisions concerning prohibited grounds for discrimination and that a draft to introduce colour and social origin into the list of these grounds and expressly prohibit all discrimination, including indirect discrimination, will be transferred shortly to the National Labour Council (CNT) in order to gather the opinions of the social partners in this regard. With regard to the public service, the Committee notes the Government's indication that, while it considers that the term "colour" is not appropriate to the reality of Malagasy society, it is currently studying the possibility of including this motive in the list of grounds of prohibited discrimination. The Government adds that it also plans to introduce the provisions defining and prohibiting all discrimination, including indirect discrimination, and that all these issues will be raised during the forthcoming revision of the Civil Service Regulations. ***The Committee requests the Government to provide information on progress made regarding the revision of the Labour Code and the Civil Service Regulations to harmonize and supplement national legislative provisions in order to prohibit, in both the public and the private sectors, any discrimination on all of the grounds listed in the Convention, including race, colour and social origin, and to include a definition of discrimination which explicitly covers indirect discrimination. The Committee requests the Government to indicate any measures taken or envisaged in this respect, in cooperation with workers' and employers' organizations. The Committee also requests the Government to provide information on the interpretation and application in practice of section 261 of the Labour Code and section 5 of the Civil Service Regulations, and to provide copies of any administrative or judicial decisions issued in accordance with these provisions.***

Discriminatory job vacancy announcements. In its previous comments, the Committee noted the allegations of the General Confederation of Workers' Unions of Madagascar (FISEMA) concerning the fact that vacancies for jobs as guards, domestic employees or workers in export processing zones advertised on the radio or through notices in the street, impose affiliation to a certain religion as a condition for recruitment or specify that the job is solely for men or women. The Committee notes the Government's statement that some advertisements for vacancies on radio or through notices in public places, are discriminatory in nature with regard to religion or sex. Given that the advertisement of job vacancies on the radio or on public notices has become common practice, the Government indicates that it envisages adopting legislation to regulate

this practice in line with the provisions of the Convention. ***The Committee trusts that the Government will adopt, in cooperation with the workers' and employers' organizations, measures aimed at enforcing national legislation and prohibiting in practice all forms of direct and indirect discrimination on all the grounds listed in the Convention, including religion and sex, in job vacancies advertised on the radio or on public notices. It requests the Government to provide information on any progress made in this regard.***

Domestic workers. In its previous comments, the Committee noted that the Christian Confederation of Malagasy Trade Unions (SEKRIMA) highlighted the precarious nature of the conditions of employment of domestic workers, some being employed without an employment contract. The Committee notes the Government's indication that domestic workers enjoy the same rights as other workers, as labour legislation is applicable to them and they can lodge complaints with the labour inspectorate in cases of violations of their rights. The Committee notes, however, that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern about the precarious situation of women and girls in domestic work in private households and recommended that the Government strengthen the capacity of labour inspectors to monitor workplaces, including in private households (CEDAW/C/MDG/CO/6-7, 24 November 2015, paragraphs 30–31). ***The Committee trusts that the Government will take the necessary measures to ensure that domestic workers enjoy, in practice, the protection set out in the provisions of the Labour Code, particularly those relating to non-discrimination and employment conditions. It requests the Government to provide detailed information on the number and outcomes of checks conducted by labour inspectors to ensure the effective application of the provisions of the Labour Code for domestic workers, by sending extracts from inspection reports or relevant studies.***

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

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

Malawi

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) received on 30 August 2021 concerning women workers on tea plantations and in agriculture.

Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment. In its previous observation, the Committee asked the Government to: (1) amend section 6(1) of the Gender Equality Act (GEA) of 2013 to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser, but to an outside person; (2) provide information on the measures adopted pursuant to section 7 of the GEA to ensure that employers have developed and are implementing appropriate policies and procedures aimed at eliminating sexual harassment in the workplace; and (3) take steps to address sexual harassment in the public service, including the provision of adequate reporting procedures, remedies and sanctions. In addition, the Committee encouraged the Government to consider conducting awareness-raising campaigns, in cooperation with workers' and employers' organizations, focusing specifically on sexual harassment in employment and occupation. The Committee notes that in its report the Government indicates that the Department of Human Resource Management and Development (DHRMD), in partnership with Ministry of Gender, is in the process of developing a Sexual Harassment Workplace Policy pursuant to section 7 of the GEA. In addition, the DHRMD has conducted awareness-raising campaigns on sexual harassment in some ministries, departments and agencies, such as agriculture, defence, competition and fair trade, and district councils. The Committee also notes from the submissions of the Working Group on the Universal Periodic Review (UPR) carried out under the auspices of the United Nations, that the National Human Rights Commission stated that violence against women continues to resurface in the county (A/HRC/WG.6/36/MWI/3, 28 February 2020, paragraph 6).

The Committee notes from the observations of the IUF that, on 6 April 2021, the National Human Rights Commission announced that it would embark on an exercise to audit all public and private institutions on their compliance with the provisions of the GEA and ensure that they have workplace policies on sexual harassment. The IUF also states that, in December 2019, a London-based law firm filed a case on behalf of 36 Malawian women alleging that they had been subjected to gender-based violence and harassment (including rape and sexual harassment) while working on tea estates in Mulanje and Thyolo districts. In March 2021, the same law firm filed another complaint in London's High Court concerning 22 instances of sexual harassment, 13 instances of sexual assault, 11 instances of coerced sexual relations and 10 instances of rape on tea plantations and macadamia nut orchards in southern Malawi. These alleged cases happened between 2014 and 2019. The IUF states that the Malawian tea industry is the country's biggest private sector employer, employing 50,000 workers, of whom 30 per cent are women, who are mainly employed as seasonal workers. It emphasizes that the fact that the workers' complaint was made public and dealt with through a law firm based in the United Kingdom indicates that the established procedures in Malawi at the local and national levels are inadequate for victims of gender-based violence in the workplace who are seeking to achieve justice and to ensure an end to sexual harassment on tea estates.

The IUF refers to a meeting convened on 7 April 2021 with its affiliates in Malawi to discuss these cases. Subsequently, an IUF affiliate, the Plantations and Agricultural Workers Union (PAWU), met the Tea Association of Malawi Limited (TAML) and agreed to investigate cases of sexual harassment on tea plantations. Eleven managers and supervisors who were found to be involved in sexual harassment cases were dismissed. The IUF also states that its affiliates are currently working on awareness-raising activities to tackle sexual harassment on tea plantations. According to the IUF, the existing legal framework, as well as current initiatives that aim to stop gender-based violence, are not sufficient to eradicate the systemic problem of gender-based violence and sexual harassment on tea plantations. The IUF reports that male supervisors abuse their position of power (for example, hiring rights, allocation of tasks) and use it to demand sexual favours from women and/or to commit violence, especially on women employed under seasonal, and hence precarious, contracts. The IUF believes that women workers in agriculture and other sectors are also subject to sexual harassment. ***Noting with serious concern the gravity of these allegations, the Committee requests the Government to provide its comments in this respect and expresses the firm hope that the Government will consider requesting technical assistance to address the matters raised by the IUF. The Committee urges the Government to: (i) undertake, in cooperation with the organizations of workers and employers, an evaluation of the existing legal framework on sexual harassment and, in particular, to amend the definition of sexual harassment in section 6(1) of the Gender Equality Act of 2013 to explicitly include hostile work environment harassment; (ii) identify the initiatives taken to date to prevent and address sexual harassment in the public and private sectors, and the procedures and remedies available to victims, with a view to identifying existing gaps and risk factors and designing effective interventions to strengthen the protection of women workers against sexual harassment; (iii) provide information on the results of the evaluation and the actions envisaged as a follow-up; (iv) increase the capacity of the competent authorities, including labour inspectors, to prevent, identify and address cases of sexual harassment in employment and occupation, including on tea plantations; (v) continue undertaking awareness-raising campaigns in collaboration with the social partners; (vi) provide information on the adoption of the Sexual Harassment Workplace Policy pursuant to section 7 of the Gender Equality Act and its implementation; and (vii) consider amending section 6(1) of the Gender Equality Act to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser, but to an outside person.***

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

[The Government is asked to supply full particulars to the Conference at its 110th Session and to reply in full to the present comments in 2022.]

Mongolia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

Articles 1 and 2 of the Convention. Definition of remuneration. Equal remuneration for men and women for work of equal value. Legislation. The Committee recalls that, in its previous comments, it emphasized the lack of reference to the principle of equal remuneration for work of equal value in the Labour Law and in the Law on the Promotion of Gender Equality (LPGE), and stressed the importance of seizing the opportunity provided by the Labour Law reform to incorporate the concept of "work of equal value" into the national legislation and adopt a broad definition of "remuneration". The Committee notes with ***satisfaction*** that, in the new Labour Law adopted on 2 June 2021, the definition of "salary" includes the "basic salary, allowances, additional wages and vacation pay and bonuses" (section 101.1) and that, pursuant to section 102.1.1, the salary of employees "performing jobs of equal value shall be the same". In addition, the Committee welcomes the explicit prohibition of salary discrimination on the basis of sex or other grounds (section 102.1.4). ***In light of these positive legislative developments, the Committee asks the Government to take steps to raise awareness of the principle of equal remuneration for men and women for work of equal value enshrined in the new Labour Law among workers, employers and their organizations as well as among labour inspectors and officials. It also asks the Government to clarify whether section 101.1 of the Labour Law applies also to the additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment and to provide examples of application in practice of this provision. The Committee asks the Government to consider the inclusion of the principle of equal remuneration for men and women for work of equal value in the Law on the Promotion of Gender Equality (LPGE) to align its provisions on equal pay with the provisions of the Labour Law.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

Articles 1, 2 and 3(c) of the Convention. Legislative developments. New Labour Law. The Committee notes that the new Labour Law was adopted on 2 June 2021 and will enter into force on 1 January 2022. The Committee notes with ***satisfaction*** that the Labour Law: (1) defines and prohibits both direct and indirect discrimination; (2) limits the exceptions to discrimination to the inherent requirements of the work or duty performed and special protective measures; (3) broadens significantly the list of prohibited grounds of discrimination, including "political opinion" and many additional grounds such as "ethnicity", "language", "age", "marital status", "trade union membership", "health status", "pregnancy or childbirth", "sexual orientation", "sexual expression", "disability" and "appearance"; (4) removes the provisions that allowed for the adoption of a general prohibition on the employment of women in specified jobs; (5) extends rights to fathers of children under 3 years of age, including the right to parental leave; (6) defines and prohibits sexual harassment and includes provisions regarding awareness-raising, prevention and the resolution of complaints; and (7) introduces provisions regarding violence and harassment "in employment and labour relations". ***Emphasizing the importance of these significant positive legislative developments, the Committee asks the Government to take steps to ensure the wide dissemination of the new Labour Law across the country and raise awareness concerning the practical application of the new provisions regarding non-discrimination, workers with family responsibilities, violence, harassment and sexual harassment for workers, employers and their respective organizations, as well as labour inspectors and officials and judges.***

Article 1(2). Inherent requirements of the job. Legislation. The Committee recalls that the provisions of the Law on Promotion of Gender Equality of 2011 (LPGE) regarding exceptions to gender discrimination are overly broad in permitting sex-based distinctions (in particular sections 6.5.1, 6.5.2 and 6.5.6) and go beyond what is permitted under *Article 1(2)* regarding inherent requirements of a

particular job. With reference to the above, the Committee notes that in the new Labour Law the exceptions to discrimination are limited to the inherent requirements of the work or duty performed and special protective measures (sections 6.3.1 and 6.3.2). ***Welcoming this development, the Committee once again urges the Government to review sections 6.5.1, 6.5.2 and 6.5.6 of the Law on Promotion of Gender Equality in order to ensure that they do not in practice deny men and women equality of opportunity and treatment in respect of their employment, and that they are consistent with the provisions of the Labour Law in this respect.***

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

Namibia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received by the Office on 1 September 2021. ***The Committee requests the Government to provide its comments in this respect.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the detailed discussion which took place at the 109th Session of the Conference Committee on the Application of Standards (CAS) in June 2021 concerning the application of the Convention by Namibia. The Committee notes with ***interest*** that, following the CAS conclusions, an ILO Technical Advisory Mission was undertaken – virtually, due to the prevailing pandemic situation – from 14 September to 27 October 2021 to review the progress made and discuss a possible road map of future measures to be taken in consultation with the social partners. The Committee hopes that the road map will allow all the issues raised to be dealt with in a tripartite manner, setting deadlines for discussion. ***The Committee asks the Government to provide information on the outcome of this mission and its follow-up.***

Article 1(1)(b) of the Convention. Prohibited grounds of discrimination: HIV status, disability and family responsibilities. Legislation. In its previous comments, the Committee requested the Government to take steps to ensure coherence between the general non-discrimination provision of the Labour Act (section 5) and section 33 of the Act which prohibits unfair dismissal, so as to prohibit dismissals on the grounds of HIV status, the degree of physical or mental disability, and family responsibilities. The Committee notes that, in its observation, ITUC recalls that, despite the Committee raising this issue for a number of years, the Labour Act still does not explicitly prohibit dismissal based on HIV status, physical or mental disability, or family responsibilities. The Committee notes that the Government indicates in its report that it will consult the tripartite Labour Advisory Council on a proposed amendment to add these three prohibited grounds of discrimination to section 33 of the Labour Act so as to ensure consistency with section 5, and will pursue the necessary steps to table the amendment before the National Assembly. ***In view of the above, the Committee asks the Government to provide information on the progress made in the adoption of the amendment to section 33 of the Labour Act so as to prohibit dismissals on the grounds of HIV status (actual or perceived), the degree of physical or mental disability, and family responsibilities.***

Articles 2 and 5. Implementation of the national equality policy. The Committee recalls that the CAS, in its conclusions, requested the Government to: (1) provide detailed information on the concrete measures taken to implement the National Human Rights Action Plan (NHRAP) for the period 2015–19 and following and in particular the review of the legislative and regulatory framework, and report on the results achieved; and (2) report on the implementation of the recommendations of the Office of the

Ombudsman's Special Report on Racism and Discrimination submitted to the National Assembly in October 2017, including with regard to the review of recruitment procedures, training to detect discrimination, and the establishment of procedures to deal with discrimination claims. The Committee recalls that the following actions were envisaged in the NHRAP: (1) a comprehensive review of the regulatory framework to assess its compliance with the principle of non-discrimination; (2) the development of a White Paper on Indigenous Peoples' Rights; (3) research into comparable legal instruments protecting the rights of persons with disabilities and the development of benchmarks (i.e. building design standards); (4) research and review of laws and policies to identify and rectify provisions that discriminate against "vulnerable groups" (i.e. women, children, elderly persons, sexual minorities, persons with disabilities and indigenous peoples); (5) the review of the Affirmative Action (Employment) Act (Act No. 29 of 1998) with a view to establishing the continued relevance of race as part of affirmative action criteria; and (6) the review of the current Racial Discrimination Prohibition Act (Act No. 26 of 1991) with a view to enacting new legislation against discrimination. The Committee notes the ITUC's observations in this regard in which it: (1) notes that despite being designed to be delivered by 2019, the NHRAP has not led so far to concrete results; and (2) recalls that persons with disabilities are almost absent from the Namibian labour market. Regretting that the only action taken by the Government regarding the recommendations contained in the Special Report on Racism and Discrimination was to disseminate them to employers, the ITUC also calls for concrete and proactive action appropriate to national conditions and practice. The Committee notes the Government's indication that the two key interventions in order to implement the NHRAP recommendations are: (1) research on current discriminatory practices in recruitment in the public service; and (2) a review of the Affirmative Action (Employment) Act. Furthermore, the Government indicates that the Ministry of Labour, Industrial Relations and Employment Creation (MLIREC) and the Office of the Ombudsman agreed to: (1) conduct thorough research in the public sector in order to establish the existence of discrimination in employment pertaining to racism, ethnicity and inequality; (2) design a research proposal on discrimination that would include the component of race and ethnicity; and (3) mobilize funds for these research projects. The Committee also notes that, in the information that it submitted to the CAS on 20 May 2021, the Government indicated that the Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill, which repeals the Racial Discrimination Prohibition Act of 1991, has been circulated for comments and that a stakeholders' consultative meeting was scheduled for 28 May 2021. Regarding specifically the recommendations contained in the Ombudsman's Special Report on Racism and Discrimination, the Government indicates that the measures it has identified to address these recommendations are as follows: (1) review the recruitment process in the public service; (2) introduce a code of good practice on the elimination of discrimination in employment; (3) disseminate information on the elimination of discrimination in employment; (4) train arbitrators to adjudicate cases of discrimination and labour inspectors to detect "victimization" in employment and occupation; and (5) train affirmative action reports review officers and ombudsman officials on the concepts of discrimination. The Committee notes the list of measures identified by the Government as necessary to implement the NHRAP and the recommendations contained in the Ombudsman's Special Report on Racism and Discrimination. ***The Committee therefore asks the Government to provide detailed information on the progress achieved regarding: (i) the review of the recruitment process in the public service; (ii) the development and adoption of a code of good practice on the elimination of discrimination in employment in consultation with employers' and workers' organizations; (iii) the dissemination of information on the elimination of discrimination in employment; (iv) capacity building for judges, arbitrators, labour inspectors, affirmative action reports review officers and Ombudsman officials; and (v) the adoption of the Prohibition of Unfair Discrimination, Hate Speech and Harassment Bill.***

Designated groups. Persons disadvantaged on the ground of race, women and persons with disabilities. Affirmative action. The Committee notes that, in its conclusions, the CAS requested the

Government to: (1) report on the actions taken to promote access to employment and occupational training for groups disadvantaged because of race, gender or disability, pursuant to the Affirmative Action (Employment) Act, 1998; (2) report on the planned legislative review, including the final legislative changes to the Affirmative Action (Employment) Amendment Act 6 of 2007; (3) reinforce the mandate of the Employment Equity Commission (EEC) to deal with cases of discrimination, strengthen its capacity and clarify how its decisions affect the employers' filling of certain job positions; and (4) report on the reform to the New Equitable Economic Empowerment Framework Bill 2015. In its observations, the ITUC noted that the Government reported a number of planned affirmative action measures but did not indicate the results expected through these initiatives, such as, for example, setting specific targets on improving the representativity of different groups in workplaces. ITUC considers that the Government must step up its efforts to implement effectively its national equality policy. The Committee notes the Government's statement that section 17(3)(a) and (b) of the Affirmative Action (Employment) Act – which empowers the EEC to determine whether a designated group is equitably represented in the various positions of employment offered by a "relevant employer" – is the legislative framework on which the EEC relies regarding the issue of access to training and employment opportunities for designated groups. Regarding the amendments to this Act, the Government, in the information it submitted to the CAS in May 2021, indicated that the final draft amendment Act, including the inputs provided by the Labour Advisory Council, was submitted to the Employment Equity Commissioner on 11 May 2021 and that the EEC was now conducting a desk review with a view to align it with international law and best practices on several issues. As regards the definition of "relevant employer", the EEC is of the view that it is time to reduce the threshold (which stands since 2007 at 25 or more employees) in order to cover more employers (and employees). The Committee takes note of the Government's undertaking to share the final legislative changes with the ILO before they are adopted into law. The Committee also notes the pamphlet annexed to the Government's report issued by the Division of Marginalized Communities of the Ministry of Gender Equality, Poverty Eradication and Social Welfare and refers, in that regard, to the direct request it addresses to the Government on this issue under the Convention. ***The Committee asks the Government to continue to provide information on: (i) the actions taken to promote access to employment and occupational training for designated groups and the measures put in place in order to review regularly the affirmative action measures to assess their relevance and impact; (ii) the progress made towards the revision of the Affirmative Action (Employment) Act 1998, amended in 2007; and (iii) any measure taken to reinforce the mandate of the EEC to deal with cases of discrimination.***

The Committee refers to the CAS request to the Government to report on the adoption of the New Equitable Economic Empowerment Framework Bill 2015, which aims to promote the achievement of the constitutional right to equality and to bring about socio-economic transformation in order to enhance equity, social justice and empowerment of the previously disadvantaged majority, and to promote a higher economic growth rate, increased employment and more equitable income distribution. In this respect, the Committee notes that the Government, in the information it submitted to the CAS in May 2021, indicated that the draft bill was "almost ready for Cabinet consideration before it is tabled in the National Assembly in the third or fourth quarter of the 2021–22 financial year". However, it notes that, in its report, the Government declares that it is premature to report on the Bill as there is no consensus with stakeholders. The Committee takes note of this information.

Enforcement. The Committee notes that, in its conclusions, the CAS asked the Government: (1) to adopt specific measures to ensure that workers who are victims of discrimination on the basis of any of the prohibited grounds have effective access to legal remedies; and (2) to provide information on the number of cases of discrimination dealt with by labour courts and on their outcome. In this regard, the Committee takes note of ITUC's concerns vis à vis the shortcomings of the labour inspections and labour courts and of its view that the absence of cases of discrimination based on HIV status (actual or perceived) is an indication of significant barriers to a remedy for victims, lack of awareness of rights and fear of retaliation. The Committee notes the Government's statement that the following measures are

envisaged to make remedies more accessible: (1) carrying a desktop research on how other countries ensure effective access to legal remedies; (2) enacting regulations requiring employers to display information at the workplace informing employees of available legal remedies for discrimination and how to access them; (3) disseminating information to members of the public and specific stakeholders on rights and remedies regarding discrimination; (4) designing electronic pamphlets on referral of discrimination disputes, to be displayed on a wide range of platforms; and (5) airing radio announcements in different languages. Regarding the number of cases of discrimination, the Government indicates that, in the last three years there were six cases recorded by the Office of the Labour Commissioner and none registered by the courts. ***The Committee asks the Government to provide information on: (i) the progress made towards the adoption and implementation of the measures enumerated by the Government to make remedies more accessible for victims of discrimination on the basis of any of the prohibited grounds; and (ii) cases of discrimination dealt with by labour courts, if any, and their outcome.***

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

Nigeria

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1974)

Articles 1(b) and 2 of the Convention. Equal remuneration for men and women for work of equal value. Legislation. The Committee previously noted the Government's repeated statement that a provision covering the principle of equal remuneration for men and women for work of equal *value* has been incorporated in the Labour Standards Bill (section 11.2) which has been pending since 2006. The Committee notes the Government's indication, in its report, that the National Labour Advisory Council has been reconvened and that the Bill will be forwarded to the National Assembly for adoption. ***The Committee urges again the Government to speed up the adoption of the Labour Standards Bill that should fully reflect the principle of equal remuneration for men and women for work of "equal value" in its provisions, allowing for the comparison not only of equal, the same or similar work but also of work of an entirely different nature.***

Gender wage gap. Application of the Convention in practice. The Committee notes that, in the 2021 Global Gender Gap Report from the World Economic Forum, the gender wage gap for Nigeria was estimated at 37.3 per cent (it was 35 per cent in 2018), the country being ranked at the 139th place out of 156 countries assessed (11 places lost between 2020 and 2021). ***Noting that the government does not provide information in this regard, and in light of the absence of legislation that fully reflects the principle of the Convention and the persistence of a significant gender wage gap, the Committee urges once again the Government to strengthen its efforts to take proactive measures to raise awareness and promote the application of the provisions of the Convention in practice, in particular among workers, employers, their respective organizations and law enforcement officials. It further asks the Government to provide information on the measures taken to: (i) address the underlying causes of the persistent gender wage gap, identified in its report under the national-level review of implementation of the Beijing Declaration and Platform for Action, 1995 (Beijing+25); (ii) promote women's access to a wider range of jobs with career prospects and higher pay; (iii) indicate the concrete measures adopted to promote women's economic empowerment and entrepreneurship, as well as the results thereof; and (iv) provide updated statistical information on the earnings of men and women, disaggregated by economic sector and professional category.***

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

Articles 1 and 2 of the Convention. Protection of workers against discrimination. Legislation. The Committee notes the Government's indication in its report that the National Labour Advisory Council

has been established and that the Labour Standards Bill and the Gender and Equal Opportunities Bill will be forwarded to the National Assembly. The Committee notes with ***deep regret*** that the Government has not taken steps for the adoption of comprehensive anti-discrimination legislation. ***Recalling that the Committee has been raising this specific issue for a number of years, it urges the Government to take the necessary steps to accelerate the adoption of the Labour Standards Bill and the Gender and Equal Opportunities Bill. It trusts that progress will be made soon in adopting legislation that explicitly prohibits direct and indirect discrimination based on at least all the grounds set out in Article 1(1)(a) of the Convention concerning all stages of employment.***

Article 1(1)(a). Discrimination based on sex. Maternity. For a number of years, the Committee has been asking that the Government provide information on the specific measures taken to address discriminatory practices in the workplace against women based on maternity and marital status. It notes once again that the Government has not provided any information in its report on this point. ***The Committee urges the Government to provide information on: (i) the measures taken or envisaged in the near future, including in collaboration with workers' and employers' organizations, to address discriminatory practices in the workplace based on maternity and marital status; and (ii) the number and nature of the cases identified and addressed by the competent authorities, in particular by labour inspectors, the sanctions imposed and remedies granted.***

Articles 1 and 3(c). Discrimination based on sex with regard to employment in the police force. For many years, the Committee has been drawing the Government's attention to the fact that sections 118 to 128 of the Police Regulations of 1968, which provide for special recruitment requirements and conditions of service applicable to women, are discriminatory on the basis of sex and thus incompatible with the Convention. The Committee notes with ***satisfaction*** that the 1968 Police Regulations and the 2004 Police Act, Cap P.19, were repealed by the 2020 Police Act. It notes in particular that the provisions relating to the recruitment of women police officers have been replaced by general provisions applying to both male and female candidates (Part iv of the Act) with gender-neutral terminology. ***The Committee encourages the Government to take measures to ensure that women in the police force benefit from effective equality of opportunity and treatment in practice. The Government is requested to provide statistical information on the number of women who have been recruited to the police force following the entry into force of the 2020 Police Act.***

Articles 2 and 3. Equality of opportunity for men and women. In its previous comment, noting the absence of legislation that fully reflects the principles of the Convention, the Committee urged the Government to strengthen its efforts to take proactive measures, in collaboration with employers' and workers' organizations, to raise awareness, make assessments and promote and enforce the application of the provisions of the Convention in practice. It also asked the Government to provide information on: (1) any progress made in the review of the National Gender Policy of 2006; (2) the measures taken to improve equality of opportunity and treatment for men and women in employment and occupation, in particular in rural areas (for example, by improving the school attendance rate for women and girls and reducing their early dropout from school, enhancing women's economic empowerment and access to education and employment, etc.); and (3) statistical information on the participation of men and women in education, training, employment and occupation, disaggregated by occupational categories and positions, in both the public and private sectors, as well as in the informal economy. The Committee notes the Government's indication that, to address the issue of the school attendance rate of girls, a National Policy on Gender in Basic Education and the Adolescent Girls Initiative for Learning and Empowerment (AGILE) (2020–25) have been adopted. It notes in particular that the AGILE programme aims to enhance women's economic empowerment and facilitate access to education and employment. Moreover, the Committee observes that in 2018 the Government launched the Nigeria for Women Project with the support of the World Bank. The project focuses on creating an enabling environment for women to overcome institutional obstacles (including market failures) and barriers to enhance productive livelihoods and socio-economic advancement through the formation and strengthening of

Women Affinity Groups (WAGs) with a strong livelihood focus to enhance household income. ***The Committee asks the Government to provide information on the results of its efforts to promote access to education and women's economic empowerment (for example, in terms of the school attendance rate of women and girls and the reduction of early school dropout rates, the number of women in decision-making positions) in particular in rural areas. Noting that the Government's report is silent on the other points raised in previous comments, the Committee once again urges the Government to: (i) address underlying obstacles to women's employment, in particular patriarchal attitudes and gender stereotypes and the lack of access to productive resources; and (ii) provide statistical information, disaggregated by sex, on the participation of men and women in all stages of education and in the various vocational training courses, as well as on the number of men and women who have filled vacancies following such training, including for jobs traditionally held by persons of the other sex. It asks the Government to provide information on any progress made in the adoption of a revised National Gender Policy.***

Discrimination based on race, colour, religion, national extraction or social origin. Ethnic and religious minorities. Noting that Nigeria is an ethnically and linguistically diverse society, the Committee has repeatedly asked the Government to provide information on the application of the Convention with respect to the different ethnic and religious groups in the country. The Government indicates that, to ensure that there is no discrimination in employment opportunities, it has set up the Federal Character Commission and the National Human Rights Commission. The Committee notes that the National Human Rights Commission is mandated to: (1) monitor and investigate all alleged cases of human rights violations and make appropriate recommendations to the federal government for criminal prosecution; and (2) assist victims of human rights violations and seek appropriate redress and remedies on their behalf. The Committee notes with ***regret*** the lack of information in the Government's report on the measures taken to address the discrimination faced by ethnic and religious minorities in employment and occupation. ***The Committee asks the Government to take proactive measures to address discrimination against ethnic and religious minority groups, and particularly nomadic groups and Christians in the northern states. It asks the Government to provide information on any affirmative action and awareness-raising measures taken to promote equality of opportunity and treatment in employment and occupation for ethnic and religious minorities, as well as on legislative developments relevant to the rights of minorities. The Committee asks the Government to provide information on the number and nature of complaints, as well as the grounds relied upon, filed with the Human Rights Commission that relate to discrimination based on race, colour, religion and national extraction.***

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

Papua New Guinea

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report, due since 2017, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 1 and 2 of the Convention. Definition of remuneration. Equal remuneration for men and women for work of equal value. Legislation. The Committee recalls that, for years, it has been requesting the Government to take measures to ensure that both the final draft of the Industrial Relations Bill as well as the revision of the Employment Act of 1978: (1) contain a definition of remuneration which includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever, payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment; and (2) provide for equal remuneration for men and women for work of equal value (and not only for *equal,* the *same* or *similar* work), in conformity with

the Convention. The Committee notes with ***deep concern*** that neither the Industrial Relations Bill nor the revision of the Employment Act of 1978 have been enacted to date. ***Noting that once again the latest Decent Work Country Programme 2018–22 has set as one of its top priorities the revision of the Industrial Relations Act and the Employment Act, the Committee urges the Government to avail itself of the technical assistance of the Office for this purpose in order to be in a position to report progress in the near future regarding the labour law reform, in particular with regard to the provisions which are not in conformity with the principle of the Convention.***

Article 2. Methods of wage determination. ***In the absence of any updated information, the Committee reiterates its requests to the Government to provide: (i) information on the methods used by the Industrial Registrar to assess the gender neutrality of wage determinations made through collective agreements; (ii) copies of collective agreements including provisions on equal remuneration or on wage determinations.***

Article 3. Objective job evaluation. The Committee recalls that, in response to the Government's statement that women are part of the appraisal process in whatever capacities they occupy in the respective organizations that conduct appraisals of jobs, it had: (1) pointed out that whatever methods are used for the objective evaluation of jobs, particular care must be taken to ensure that they are free from gender bias; and (2) asked the Government to provide information on the appraisals of jobs conducted and the methods and criteria used both in the private and public sectors. In this regard, the Committee recalls that it is important to ensure that the selection of factors for comparison, the weighting of such factors and the actual comparison carried out, are not inherently discriminatory, as skills considered to be "female", such as manual dexterity and those required in caring professions, are often undervalued or even overlooked, in comparison with traditionally "male" skills, such as heavy lifting (see General Survey of 2012 on the fundamental Conventions, paragraph 701). ***In the absence of any information in this regard, the Committee again requests the Government to provide information on: (i) job evaluation methods used to determine remuneration rates in the public sector and the measures taken to ensure that they are free from gender bias; and (ii) any measures taken to promote the use of objective job evaluation methods and criteria that are free from gender bias (such as qualifications and skills, effort, responsibilities and conditions of work) in the private sector. Please provide a copy of the salary scales and schemes of public sector employees as well as indications of the number of men and women respectively employed in each of the salary scales.***

Enforcement. ***The Committee, once again, requests the Government to provide information on any awareness-raising or training activity undertaken by the Office of the Industrial Registrar or otherwise specifically to promote knowledge and foster understanding of the principle of equal remuneration for men and women for work of equal value. It also requests the Government to provide information on any administrative or judicial decisions relating to equal remuneration.***

Statistics. ***Recalling that collecting and analysing data on the position and pay of men and women in all job categories, within and between sectors, is required to determine and address the nature and extent of the remuneration gap between men and women, the Committee once again requests the Government to provide statistical information on the distribution of men and women in the different sectors of economic activity, job categories and positions, and their corresponding earnings.***

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report, due since 2017, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation. The Committee recalls that the Government indicated previously that section 8 of the final draft of the Industrial Relations Bill would prohibit direct and indirect discrimination on the grounds of race, colour, sex, religion, pregnancy, political opinion, ethnic origin, national extraction or social origin, against an employee or applicant for employment or in any employment policy or practice. At the time, the Government also stated that it would report any development regarding the revision of sections 97–100 of the Employment Act, 1978, which only prohibit sex-based discrimination against women. The Committee notes that none of these Bills has yet been enacted, despite the fact that the latest Decent Work Country Programme (2018–22), in the same way as the previous ones, has set as a priority the enactment of the Industrial Relations Bill and the revision of the Employment Act through the adoption of a new Employment Relations Bill. In this regard, the Committee observes that, according to the United Nations Development Programme Country Programme 2018–22, the country's instability is impeding progress towards the elaboration and promulgation of revised laws. ***While acknowledging the difficult situation prevailing in the country, the Committee asks the Government to act expeditiously to review and amend these laws, in collaboration with workers' and employers' organizations, in order to bring them into line with the requirements of the Convention and to provide information on any progress made in this regard.***

Discrimination on the ground of sex. Public service. The Committee recalls that in its last comment it noted that the new Public Services (Management) Act adopted in 2014 maintains the discriminatory impact of section 36(2)(c)(iv) of the Public Services (Management) Act 1995 and allows employers to advertise for candidates indicating that only males or females will be appointed, promoted or transferred in "particular proportions". It also noted that section 20.64 of General Order No. 20, as well as section 137 of the Teaching Services Act 1988, which provide that a female official or female teacher is only entitled to certain allowances for her husband and children if she is the breadwinner (a female officer or female teacher is considered to be the breadwinner only if she is single or divorced, or if her spouse is medically infirm, a student or certified unemployed) had not been modified. ***In the absence of any information on this point, the Committee urges the Government to review and amend these laws to bring them into conformity with the Convention.***

Article 2. National equality policy. In its previous comments, the Committee, noting that the issue of gender equality in employment and occupation seems to be addressed in some sections of the National Public Service Policy on Gender Equity and Social Inclusion of 2013 and the National Policy for Women and Gender Equality 2011–15, emphasized that it is essential for attention be given to *all* the grounds of discrimination set out in the Convention in formulating and implementing a national equality policy (2012 General Survey on the fundamental Conventions, paragraphs 848–849). ***In the absence of information in this regard, the Committee once again urges the Government to provide full particulars on the specific measures taken or envisaged, in collaboration with workers' and employers' organizations, to develop and implement a national policy aimed at ensuring and promoting equality of opportunity and treatment in employment and occupation on all the grounds enumerated in the Convention (race, colour, sex, religion, political opinion, national extraction and social origin).***

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

Peru

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)

The Committee notes the observations of the National Confederation of Private Business' Institutions (CONFIEP) communicated with the Government's report, as well as the observations of the Autonomous Workers' Confederation of Peru (CATP), the Confederation of Workers of Peru (CTP), the General Confederation of Workers of Peru (CGTP) and the Single Confederation of Workers of Peru (CUT-Peru),

received on 1 September 2021. ***The Committee requests the Government to provide its comments in this respect***.

Articles 1 and 2 of the Convention. Gender pay gap. With reference to the statistics requested in previous comments, the Committee notes the Government's indication in its report that the gender wage gap was 25.8 per cent in 2019 and 19.3 per cent in 2020 (the figures for 2020 have to be seen in the context of the COVID-19 pandemic). The Government also refers to a study on women in the Peruvian civil service, issued in 2021, according to which the wage gap in the public sector has been narrowed (by 12 per cent in 2019), although there remain differences, particularly due to the limited and lower access of women civil servants to the best paid jobs in the State sector. In this respect, the Committee notes that the CGTP, CUT-Peru, CTP and CATP emphasize in their observations that the causes of the pay gap include the fact that women work fewer hours than men in order to be able to care for their families, and that the majority of women workers are self-employed or unpaid family workers, or are in feminized and lower valued jobs. The confederations add that the wage gap in the public sector is still 53 per cent in some occupational groups, that the greater presence of women in occupations such as primary education and nursing barely changed between 2008 and 2016, and that the most alarming wage gaps are a result of the coexistence of three labour regimes in the public sector (the administrative services contract (CAS); the public service, and the employment scheme with the public administration).

The Committee also notes that, in reply to its request on the measures adopted to address the underlying causes of the pay gap, the Government refers to: (1) the application of the Sectoral Plan for Equality and Non-discrimination in Employment and Occupation 2018–21 through the joint action of several bodies with a view to the implementation of measures on equality and non-discrimination (preparation of technical and normative documents, compliance inspections and communication campaigns); (2) the adoption in 2021 of the National Decent Work Policy, priority objective five of which includes a platform for the identification of the pay gap between men and women and the examination of complaints concerning discrimination and the failure to comply with equal remuneration regulations: and (3) the approval in 2019 of the National Gender Equality Policy, which includes an assessment of the gender pay gap, priority objective five of which is "to reduce institutional barriers to equality in public and private life". The Committee also notes that the National Gender Equality Policy adopted in 2019 includes in item 4.3: "Strengthening the formal labour integration of women", technical, productive and higher training for women in traditionally male-dominated and/or better paid careers (service 4.3.3) and higher technical training in non-traditional areas (construction) to increase the participation of women (service 4.3.4). The Committee further notes with regard to the preparation of assessment studies that: (1) the Sectoral Plan for Equality and Non-discrimination in Employment and Occupation 2018–21 includes in its indicators the preparation of six assessment studies to gather information on the situation of women and specially protected groups in the labour market; and (2) according to the Government's report under the national-level review of the implementation of the Beijing Declaration and Platform for Action, 1995 (Beijing +25 national report), there were 80 public bodies in 2018 that had provided information for the assessment studies of the pay gap in the public sector envisaged by Presidential Decree No. 068-2017-PCM. The Government refers to the adoption of various measures to promote better understanding of the principle of equality, including training of those responsible for human resources in enterprises on job evaluation and on the laws and regulations on equal remuneration. It also refers to technical assistance on the framework and application of Act No. 30709 prohibiting discrimination in remuneration between men and women, as well as the assistance provided in collaboration with the ILO Regional Office to build capacity for analysis of the pay gap.

With regard to the information requested on the evaluation of plans and programmes relating to the application of the principle of the Convention, the Committee notes the Government's indication that, through the programmes "Productive Youth" *(Jóvenes Productivos)* and "Onwards Peru" *(Impulsa Perú)*, vocational skills programmes were provided in 2020 for 492 women and 544 men aged between

15 and 29 years and 552 women and 555 men were placed in the labour market. The Government adds that at the end of 2021 a study will be commenced on the impact of the National Employability Programme on the reduction of the pay gap between men and women. The Committee notes the observations of the CGTP, CUT-Peru, CTP and CATP indicating that workers' organizations have not been called upon to participate in any evaluations of plans and programmes relating to the principle of the Convention, and in particular that: (1) the National Decent Work Policy does not have a follow-up mechanism based on tripartite dialogue and institutionalized tripartite action; and (2) the Sectoral Plan for Equality and Non-discrimination in Employment and Occupation 2018–21 envisaged the establishment of a quadripartite body for its implementation and follow-up, but there has been no news on that subject. The Committee refers to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in relation to the evaluation of labour policies and to regimes in the public sector. ***Noting all this information, the Committee requests the Government to take steps to reduce the gender pay gap in the public sector. It also requests the Government to provide information on the impact of the programmes and policies referred to in terms of the effective reduction of the pay gap between men and women and addressing its underlying causes, such as occupational segregation and the unequal sharing of family responsibilities, and on the challenges identified in their implementation.***

Articles 1 and 3. Work of equal value and objective job evaluation. In reply to its previous comments, the Committee notes with ***interest*** the information provided by the Government on the adoption of: (1) the "Guide containing reference guidelines that can be used by the employer to evaluate jobs and determine the index of categories and duties" (Ministerial Decision No. 243-2018-TR), which includes the minimum components for a wage policy and a model index of categories and duties as a basis for assessing whether the same remuneration is paid for jobs of equal value; and (2) the "Methodological guide for objective job evaluation, without gender discrimination, and the formulation of indices of categories and duties" (Ministerial Decision No. 145-2019-TR), which covers the process of job evaluation taking into account such factors as skills and qualifications, responsibilities, effort and working conditions. The Government acknowledges, in relation to the Act on productivity and labour competitiveness and in reply to the Committee's request in its previous comments, that the principle set out in the Convention, which provides the basis for Act No. 30709, is equal remuneration for work of equal value. The Committee also notes that the CGTP, CUT-Peru, CTP and CATP reiterate that Act No. 30709 refers to equal remuneration "for equal work" and that none of the references to the "evaluation" of jobs in its Regulations give full expression to the principle of the Convention. The confederations add that the guides cited are intended as references and are not compulsory, and that the Regulations issued under Act No. 30709 only apply to the private sector. While taking due note of the measures adopted to provide guidance for job evaluation processes, the Committee recalls the importance of ensuring that men and women have a clear legal basis for asserting the right to equal remuneration for work of equal value in relation to their employers and the competent authorities. ***Under these conditions, the Committee requests the Government to take the necessary measures to include in the legislation the principle of equal remuneration for men and women "for work of equal value", as set out in the Convention. The Committee requests the Government to provide information on any measures adopted or envisaged in this regard.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)

The Committee notes the observations of the National Confederation of Private Business Institutions (CONFIEP) communicated with the Government's report, as well as the observations of the Autonomous Workers' Confederation of Peru (CATP), the Confederation of Workers of Peru (CTP), the General Confederation of Workers of Peru (CGTP) and the Single Confederation of Workers of Peru (CUT-Peru),

received on 1 September 2021. ***The Committee requests the Government to provide its comments in this regard***.

Article 1 of the Convention. Discrimination on the basis of sex, colour and race. With reference to its request to evaluate the consequences of the differences of legislative treatment and of indirect discrimination in the special labour regimes (in agriculture, domestic work and microenterprises), the Committee notes with ***satisfaction*** that the agricultural sector is now governed by Act No. 31110 on the agrarian labour regime and incentives for the agrarian sector and irrigation, agricultural exports and agro-industry (published on 31 December 2020) and its Regulations, and that section 6 of the Act prohibits discrimination and acts of violence or harassment and establishes protection measures for pregnant and nursing workers. With regard to domestic work, the Government also refers to the adoption of Act No. 31047 on women and men domestic workers (published on 17 September 2020) and its Regulations, which also prohibit any act of discrimination and establish measures to protect maternity and prevent and punish sexual harassment. The Committee notes that the CGTP, CUT-Peru, CTP and CATP indicate in their observations that: (1) the adoption of new laws on the agricultural sector and domestic work is encouraging, as they remove certain differences of legislative treatment and introduce mechanisms to combat discrimination; (2) the new regime for the agricultural sector has equalized most terms and conditions of employment, but certain differences in treatment persist which are not related to the specific characteristics of agricultural work, such as coverage by life insurance; (3) there are no tripartite evaluation mechanisms to assess whether differences of treatment are appropriate or involve structural discrimination, and the measures adopted are still inadequate to ensure the enforcement of existing standards; and (4) information is lacking on the situation of women in agriculture and stock-raising and in domestic work. The Committee also observes that the Government has not provided information on the regime governing micro- and small enterprises, and that the workers' organizations indicate that, according to the Sectoral Strategy for Labour Formalization 2018–21 and the National Decent Employment Policy, this regime has only limited coverage and has not had a significant effect on reducing levels of informality. ***In this context, the Committee requests the Government to provide information on the measures adopted or to be adopted with a view to identifying and addressing any element of the special regime for micro- and small enterprises that may lead to indirect discrimination against women and indigenous peoples in access to employment and conditions of employment, which would be contrary to the principle of equality and non-discrimination in employment and occupation. The Committee also requests the Government to provide information on the application of Acts Nos 31110 and 31047 respecting the agricultural sector and irrigation, agricultural exports and agro-industry, and domestic work, respectively, including information on: (i) measures taken to provide training to labour inspectors and awareness-raising among domestic workers and workers and employers in the agricultural sector; and (ii) any cases dealt with by the labour inspection, courts or any other competent body, the sanctions imposed and the remedies granted.***

Article 2. Equality of opportunity and treatment for men and women. In reply to its previous request on the measures adopted under the Sectoral Plan for Equality and Non-discrimination in Employment and Occupation 2018–21, the Committee notes the Government's indication that the 2020 evaluation is currently being carried out and that joint and coordinated action has been undertaken by the Ministry of Labour and Employment Promotion (MTPE), the National Labour Inspection Superintendent Authority (SUNAFIL) and labour inclusion programmes in the field of equality and non-discrimination with a view to: (1) the preparation of technical documents, including two projects to promote formal and productive self-employment for women, six technical and normative documents and the report on labour statistics based on data from the National Household Survey of Living Conditions and Poverty (ENAHO) 2018, including the employed economically active population by gender updated to 2018; (2) the training of 4,358 women in vocational skills for dependent employment, as well as diverse measures regarding the certification of labour skills, employment placement,

temporary employment and productive and formal self-employment targeting women and other specially protected groups, without indicating the specific number of women beneficiaries; and (3) the strengthening of capacity-building in relation to equality and non-discrimination through ten awareness-raising campaigns, as well as capacity-building for 305 persons in the civil service. The Government also refers in its report to the formulation of the National Decent Employment Policy, approved in 2021, which includes items 5.1 "implementing effective measures to combat sexual harassment at work and gender discrimination among the working population", 5.2 "implementing incentives and normative measures with cultural relevance for the recruitment of groups suffering discrimination or vulnerable groups" and 5.4 "strengthening the skills of vulnerable groups or those in a vulnerable situation to improve their employability". The Committee also notes the reference by the Government in the national report for the Beijing+25 Declaration and Platform for Action, 1995, to: (1) the National Gender Equality Policy, adopted in 2019, which includes in item 4.3 "strengthening the formal labour market inclusion of women", measures for the certification of labour skills, skills training to improve employability and labour market integration, training and technical assistance in enterprise management and productivity, and financing for women heads of undertakings and enterprises; and (2) the Intergovernmental Committee for Gender Equality and Vulnerable Populations was created in 2019 to articulate and implement policies, strategies and action for the reduction of the gender gap.

The Committee notes the indications by the CGTP, CUT-Peru, CTP and CATP that: (1) the trade union confederations have not been called upon to participate in the evaluation of the Sectoral Plan; and (2), according to the 2019 data of the National Statistics and Information Technology Institute (INEI), differences in the activity rate between women and men have remained practically unchanged since 2009, the unemployment rate of women has been higher than that of men in all years and, even though the income gap has been reduced, its underlying causes have not been the target of specific public policy measures. The Committee recalls that it is essential to follow up the implementation of plans and policies in terms of their results and effectiveness, and that employers' and workers' organizations can play an important role in their formulation, promotion and evaluation.

The Committee requests the Government to provide detailed information on: (i) the progress made in the process of evaluating the Sectoral Plan for Equality and Non-discrimination in Employment and Occupation, in collaboration with workers' and employers' organizations, and particularly their impact on the prevention of gender-based discrimination in employment and occupation and the challenges that have been identified in their implementation; and (ii) the specific measures adopted within the framework of the National Decent Employment Policy and that National Gender Equality Policy, including the number of beneficiaries of these measures disaggregated by sex.

With reference to the transition to a single employment regime in the civil service, the Committee notes the Government's reference to the approval of Directive No. 001-2021-SERVIR-GDSRH "Orientations for the transition of a public body to the Civil Service employment regime", and its indication that as of June 2021, a total of 506 public bodies had commenced the process of transition to the new civil service employment regime. In this regard, the Committee notes the indication by the CGTP, CUT-Peru, CTP and CATP that incorporation into the civil service employment regime lacks political support (as the process was completed between 2014 and 2020 by only seven out of a total of 3000 bodies), and that Act No. 31131 adopting provisions for the eradication of discrimination in the employment regimes of the public sector (published on 9 March 2021) is the subject of an appeal to the Constitutional Court. The confederations also reiterate that the three employment regimes can give rise to indirect cases of discrimination when women are in feminized sectors of the public sector in which the public careers regime is predominant, under which wages are low and employment conditions are precarious. ***The Committee trusts that the Government will take measures to guarantee progress in the transition towards a single employment regime in the civil service and requests the Government to provide full information in this regard.***

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

Poland

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1961)

The Committee notes the observations of the Independent and Self-Governing Trade Union "Solidarnosc" received on 30 August 2021, and the Government's response.

Article 1(1)(a) of the Convention. Prohibited grounds of discrimination. Legislation. In its previous comment, the Committee noted that section 11^3 of the Labour Code and section 3(1) of the Equal Treatment Act, 2010, do not prohibit discrimination on all the grounds enumerated in *Article 1(1)(a)* and requested the Government to provide information on any progress made in this regard, for instance in the context of the envisaged elaboration of a new draft Labour Code. The Committee notes the indication by the Government that the draft of the new Labour Code developed by the Labour Law Codification Commission in 2018 did not receive the recognition of the social partners and that as a result its enactment did not appear to be feasible. The Committee also notes the Government's explanation that section 11^3 of the Labour Code prohibits any discrimination for any reason and that, similarly, section 18^{3a}(1) of the Labour Code: (1) provides for the obligation to treat employees equally in terms of establishing and terminating an employment relationship, conditions of employment, promotion and access to training to improve professional qualifications; and also (2) uses the same open list of grounds for discrimination, explicitly mentioning sex, age, disability, race, religion, nationality, political opinion, union membership, ethnic origin, sexual orientation, employment for a definite or indefinite period of time, and full-time or part-time employment. The Committee therefore notes that the Labour Code does not explicitly refer to colour, national extraction (which differs from ethnic origin and nationality) or social origin, but contains an open list of prohibited discrimination grounds. With respect to the Equal Treatment Act, the Committee notes that the definition of direct (section 3(1)) and indirect discrimination (section 3(2)) and the prohibition of unequal treatment in employment and occupation (section 3(1) and (2)) cover explicitly only the following grounds: sex, race, ethnic origin, nationality, religion, denomination, beliefs, disability, age and sexual orientation. It therefore notes that the Equal Treatment Act omits the grounds of colour, political opinion, national extraction and social origin that are enumerated in *Article 1(1)(a)* of the Convention. It also notes the indication by the Government that, during the reporting period, the courts did not issue any rulings relating to discrimination on the basis of skin colour or social origin. ***The Committee therefore asks the Government to: (i) ensure that the Equal Treatment Act explicitly prohibits discrimination in employment and occupation based on at least all the grounds set out in Article 1(1)(a) of the Convention, by adding political opinion, colour, national extraction and social origin to the list of explicitly prohibited grounds; (ii) consider aligning the Equal Treatment Act with the provisions of the Labour Code in this regard, while also ensuring that the additional grounds already enumerated in the Labour Code and the Equal Treatment Act are maintained; (iii) consider the possibility, when revising the Labour Code in future, to explicitly cover the grounds of colour, national extraction and social origin, in order to avoid any legal uncertainty; and (iv) ensure that the prohibition of discrimination on the basis of colour, national extraction and social origin is implemented in practice, including with respect to Roma people (see paragraph below).***

Discrimination based on sex. Sexual harassment. The Committee previously requested detailed information on the measures adopted to prevent and address all forms of sexual harassment, and the implementation in practice of the relevant provisions of the Labour Code. It notes that the Government refers to section 18^{3a}(6) and (7) of the Labour Code defining sexual harassment and protecting employees against retaliation. The Committee also notes the information provided by the Government on the number of complaints of sexual harassment filed with the National Labour Inspectorate, according to which: in both 2018 and 2019, 24 complaints were filed; in 2020, 15 were filed; and between January and June 2021, eight complaints were filed. In this regard, the Committee recalls that the

absence of, or a low number, of complaints regarding sexual harassment does not necessarily indicate that this form of sex discrimination does not exist; rather, it is likely to reflect the lack of an appropriate legal framework, the lack of awareness, understanding and recognition of this form of sex discrimination among government officials, and workers and employers and their organizations, as well as the lack of access to or the inadequacy of complaints mechanisms and means of redress, or fear of reprisals (General Survey on the fundamental Conventions, 2012, paragraph 790). ***The Committee therefore asks the Government to: (i) provide information on any activities planned or effectively conducted to raise awareness on and prevent sexual harassment among employers and workers and their respective organizations, such as training activities or media campaigns; and (ii) continue providing information on the number of cases of sexual harassment handled by the National Labour Inspectorate and the courts and their outcome, including the compensation granted and penalties imposed.***

Discrimination based on sexual orientation. The Committee notes the "Memorandum on the stigmatisation of LGBTI people in Poland" (CommDH (2020)27) issued by the Commissioner for Human Rights of the Council of Europe on 3 December 2020. ***Recalling that the Labour Code prohibits discrimination based on sexual orientation, the Committee asks the Government to provide information on: (i) the measures taken to combat discrimination against lesbian, gay, bisexual, trans and intersex (LGBTI) persons at all stages of employment, and to address prejudice and promote tolerance; and (ii) any cases of discrimination based on sexual orientation handled by the National Labour Inspectorate and the courts, indicating the compensation granted and the penalties imposed.***

Articles 2 and 3. Equality of opportunity and treatment of men and women. The Committee previously requested the Government to provide information on the measures taken to address both horizontal and vertical segregation between men and women in the labour market, and gender stereotypes. The Committee takes note of the adoption of the National Action Programme for Equal Treatment for 2021–30 (NAPET 2021–30). It observes that one of the priorities enumerated in the NAPET 2021–30 is to support equal opportunities for women and men in the labour market. In particular, the NAPET 2021–30 stresses the importance of reducing occupational segregation and identifies the promotion of the participation of women in decision-making processes in enterprises, institutions, universities and non-governmental organizations as one of its objectives. The Committee also takes note of the statistical information provided by the Government on occupational groups, showing that in 2018 men remained over-represented in certain categories such as chief executives, senior officials and legislators, and science and engineering professionals. ***The Committee therefore asks the Government to provide detailed information, including statistical data, on the implementation and impact of the NAPET 2021–30, and of any other relevant measure adopted, on the horizontal and vertical segregation of men and women in the labour market, and more generally, on its impact on the promotion of equality of opportunity and treatment of men and women in employment and occupation.***

Equality of opportunity and treatment irrespective of race, colour and national extraction. Roma people. The Committee previously asked the Government to ensure equality of opportunity and treatment of the Roma people in employment and occupation in practice, and in this context requested information on: (1) any measures adopted in the context of the Programme for the Integration of the Roma Community for 2014–2020 (PIRC 2014–20); and (2) statistical data on the participation of the Roma people and persons belonging to other minorities in education and the labour market, disaggregated by sex. The Committee takes note of the Government's indication that an independent evaluation was conducted on the effectiveness of the activities of the PIRC 2014–20. It welcomes the Government's indication that it adopted the new Programme of social civic integration of Roma in Poland for 2021–2030 (PSCIRP 2021–30) and that, despite the prospect of a post-pandemic crisis, the PSCIRP's budget has been maintained. Education remains a priority of the PSCIRP, with a focus on secondary education and particular emphasis on vocational education. In this regard, the Government further reports on a

number of activities undertaken to reduce the over-representation of Roma students in special schools from the level of about 17 per cent (2010 data) to about 10 per cent. Reducing this over-representation to a level comparable to that of the general population (approximately 3.5 per cent) remains one of the important objectives of the current strategy. With regard to access to employment, the Government reports that in the period 2017–20, under the above-mentioned programme, more than 1,000 persons from the Roma community were employed, with 80 per cent of them under a permanent contract. Access to the labour market is also being addressed in the context of European Union structural funds with larger budgets than the ones allocated to the PIRC. The Committee also notes that, in its concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expresses concern at: (1) the persistence of structural discrimination against Roma; (2) the low attendance rates of Roma children in primary school, their high rates of high school dropout, their persistent over-representation in special schools and their under-representation in secondary and post-secondary education; (3) the extreme poverty and substandard living conditions faced by Roma in segregated neighbourhoods with no proper infrastructure and basic services, as well as threats of eviction; and (4) the high rates of unemployment among Roma and the large wage gap between Roma and the rest of society (CERD/C/POL/CO/22-24, 24 September 2019, paragraph 21). ***Noting this information, the Committee asks the Government to continue taking steps to implement the Programme of social civic integration of Roma in Poland 2021–2030 (PSCIRP) and adopt measures to effectively address discrimination against Roma people, including stereotypes and prejudice against them. It also asks the Government to provide detailed information on the implementation of the Programme in practice and its impact on the participation of the Roma people in education, vocational training and the labour market, and particularly on the reduction of the over-representation of Roma students in special schools.***

The Committee notes that under the priority "work and social security" of the NAPET 2021–30, one of the objectives is to support groups exposed to discrimination in the labour market due to age, disability, race, nationality, ethnic origin, religion, belief, sexual orientation and family status (II.3). In this regard, the Committee welcomes the detailed statistics provided by the Government on the number of complaints reported to the National Labour Inspectorate of instances of discrimination based on race, ethnic origin and nationality. According to the data: (1) 15 cases were reported between 2018 and 2020 and 1 between 1 January 2021 and 30 June 2021 of non-compliance with the prohibition of discrimination by employment agencies and other related entities; (2) 31 cases were reported between 2018 and 2020, and 8 between 1 January 2021 and 30 June 2021 of discrimination in the creation or termination of employment; (3) 34 cases were reported between 2018 and 2020, and 5 between 1 January 2021 and 30 June 2021 of discrimination in the determination of pay or other terms or conditions of employment; and (4) 5 cases were reported between 2018 and 2021 of discrimination in promotion or other work-related benefits. ***Recalling that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all, the Committee asks the Government to provide information on any policies envisaged or adopted to address specifically such discrimination, and the results achieved.***

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

Portugal

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)

The Committee notes the observations of the Confederation of Portuguese Industry (CIP) and the General Confederation of Portuguese Workers – National Trade Unions (CGTP-IN) communicated with the Government's report.

Articles 1 to 4 of the Convention. Assessing and addressing the gender pay gap. The Committee previously noted the persistence of occupational gender segregation and stereotypes that are underlying causes of the gender pay gap and requested the Government to adopt specific measures in order to reduce such gap. Referring to its previous comments regarding indirect discrimination against women with respect to pay bonuses or performance assessment, as a result of their family responsibilities, the Committee notes with ***satisfaction*** the adoption of Law No. 90/2019 of 4 September 2019, which introduces a new article 35-A in the Labour Code, prohibiting any form of discrimination based on the exercise by workers of their maternity and paternity rights, in particular regarding the attribution of attendance and productivity bonuses or career progression. It notes the Government's indication, in its report, that concrete measures have been implemented, in the framework of National Strategy for Equality and Non-Discrimination for 2018–30 (ENIND) and its Action Plan for Equality between Women and Men 2018–2021 (PAIMH), in order to combat the gender pay gap and address vertical and horizontal occupational gender segregation and stereotypes, in particular through the project «Equality Platform and Standard», launched in 2020 and promoted by the Commission for Equality in Labour and Employment (CITE). The Committee notes the Government's indication that this project aims at designing a platform to monitor the implementation of public policies and compliance with legal instruments, as well as at elaborating the Portuguese Reference Document for an Equal Pay Standard Management System, which will help organizations wishing to implement a process leading to equal pay between women and men. It notes that, in 2019, the Government has become a member of the Equal Pay International Coalition (EPIC), an initiative launched by the ILO and UN Women. The Committee however notes that the CGTP-IN reiterates its concerns regarding the persistence of substantial gender wage differences, in particular in higher positions, despite the existing legal framework. The CGTP-IN adds that, in the public sector, women face difficulties in accessing managerial positions (representing less than 42 per cent of senior managers while they represent 61 per cent of workers in the public sector), which is reflected by lower wages. While women have higher levels of education than men, this positive evolution is not reflected in the level of their wages, as a result of persistent discrimination based on gender stereotypes. The Committee notes that, in reply to CGTP-IN's observations, the Government refers to the measures introduced by Law No. 60/2018 of 21 August 2018 for the promotion of equal pay for men and women for equal work or work of equal value, as well as the continued decrease of the gender pay gap. In that regard, it notes, from the 2019 CITE report, that, in 2018, the gender pay gap slightly decreased being estimated at 14.4 per cent for the average monthly basic remuneration and 17.8 per cent for the average monthly overall remuneration (compared to 14.8 per cent and 18.2 per cent, respectively, in 2017) but remains wider in higher positions, being estimated at 26.2 per cent for the average monthly basic remuneration and at 27.4 per cent for the average monthly overall remuneration. The Committee observes that, despite a slight diminution, the gender pay gap remains high. It notes that, in its observations, the CIP highlights that wage differences need to be analysed carefully, by taking into consideration several criteria such as the tasks effectively performed, the qualifications and level of education required, gender and age, in order to determine whether such differences can be considered or not as discrimination. The CIP adds that, in its views, the gender pay gap is a cultural and sociological issue, the existing occupational gender segregation being largely rooted in stereotypes regarding the professions and sectors that are considered more appropriate for men or for women, which has an impact on the academic choices of young people and is later reflected in the labour market. In that regard, the Committee notes that, in its 2021 country report on gender equality, the European Commission highlights that the implementation of the national legislation is still weak as the gender pay gap persists, mainly as a result of the traditional stigma attached to the social roles of men and women in public and private life and the unbalanced share of the family and care responsibilities. Such inequality in the reconciliation of professional and family life leads to shorter working time; undervalued work; shorter careers; increased difficulties in promotion and less training for women. All these factors involve or lead to lower pay and to fewer professional

opportunities (country report, page 29). In that regard, the Committee refers to its 2021 comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Workers with Family Responsibilities Convention, 1981 (No. 156). ***Welcoming the steps already taken by the Government, the Committee asks the Government to pursue its efforts in order to address the gender pay gap and its underlying causes, such as persistent vertical and horizontal occupational gender segregation and stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family. It asks the Government to provide information on the measures implemented to that end, including in cooperation with the social partners or with EPIC. The Committee asks the Government to provide statistical information on the earnings of men and women, disaggregated by economic sector and occupation, both in the public and private sectors.***

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

Romania

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Discrimination based on religion. Access to education, training and employment. The Committee notes, from the European Commission's website, that a draft bill to amend the Romanian Education Law was filed on 2 December 2017 and received a positive advisory opinion from the Economic and Social Council on 9 January 2018. The bill proposes the following additions to section 7 of the Education Law: "for the purpose of facilitating the identification of persons in educational units, institutions and all spaces used for education and professional training, it is prohibited to cover one's face with any material which make it difficult to recognize the face, except for medical reasons. Infringement of these provisions constitutes a reason to deny access to the perimeter of the educational units, institutions and spaces for education and professional training." The sanction, introduced as an amendment to section 360(1) of the Education Law would be a fine ranging from 5,000 to 50,000 Romanian Leu (RON) (approximately €1,100 to €11,000). The Committee notes that, if adopted, this new provision will be discriminatory towards those Muslim women and girls who wear a full face veil in terms of their access to educational or training institutions and might therefore limit their opportunities to find and exercise employment in the future – for reasons associated with their religious convictions, contrary to the Convention. ***Noting that this provision of the draft bill may have a discriminatory effect towards Muslim women who wear a full-face veil in terms of their possibilities of finding and exercising employment, the Committee requests the Government to provide information on: how it is ensured that this provision of the draft bill will not have the effect of reducing the opportunities of girls and women to access education and finding employment in the future; (ii) the progress of the draft bill in the legislative process; and (iii) to supply information on the number of girls and women who might be affected by the implementation of this new provision.***

Articles 1(2) and 4. Discrimination based on political opinion. Inherent requirements of the job. Activities prejudicial to the security of the State. For a number of years, the Committee has been drawing the Government's attention to the fact that the restriction set by section 54(j) of Act No. 188/1999, which provides that "to hold public office a person shall meet the following conditions: … (j) shall not have been carrying out an activity in the political police as defined by the law", could amount to discrimination on the basis of political opinion because it applies broadly to the entire public service rather than to specific jobs, functions or tasks. In its previous report, the Government had explained that, in order to clarify the legal norm and remove any possible inconsistency with the Convention, it had proposed an amendment to the current text of section 54(j) of Act No. 188/1999 as follows: "… was not a worker of the Securitate or a collaborator thereof, as provided by specific legislation". According to the Government, "specific legislation" refers to section 2 of Ordinance No. 24/2008 which defines an "employee of Securitate" and a "collaborator of Securitate". While understanding the Government's concerns regarding the requirement for all government unit members to be loyal to the State, the Committee had drawn attention to the fact that, for such measures not to be deemed discriminatory under *Article 4* of the Convention relating to activities prejudicial to the security of

the State, they must affect an individual on account of activities he or she is justifiably suspected or proven to have undertaken. These measures become discriminatory when taken simply by reason of membership to a particular group or community. They must refer to activities that are objectively prejudicial to the security of the State and the individual concerned must have the right to appeal to a competent body in accordance with national practice (see 2012 General Survey on the fundamental Conventions, paragraphs 832–835). The Committee therefore requested the Government to specify and define the functions in respect of which section 54(j) of Act No. 188/1999 would apply and to provide information on its application in practice. The Committee notes that the Government's report does not contain any information in this regard. It notes, however, that the European Court of Human Rights (ECHR) *(Naidin v. Romania*, No. 38162/07) held that the barring of a former collaborator of the political police from public service employment was justified by the loyalty expected from all civil servants towards the democratic regime. In this regard, the Committee recalls that, under *Article 1(2)*, political opinion may be taken into account as an inherent requirement of a particular position *involving special responsibilities* in relation to developing government policy, which is not the case of section 54(j) given that it applies to any state civil service position, whatever the level of responsibility. Further, the Committee recalls that the principle of proportionality must apply and that the exception under *Article 4* should be interpreted strictly. ***The Committee urges the Government to take the necessary steps to amend section 54(j) of Act No. 188/1999 or to adopt other measures clearly stipulating and defining the functions to which this section applies. It also asks the Government to provide information on the application of section 54(j) of Act No. 188/1999 in practice, including information on the number of persons dismissed or whose application has been rejected pursuant to this section, the reasons for these decisions and the functions concerned, as well as information on the appeal procedure available to the affected persons and any appeals lodged and their results.***

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

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

Saint Lucia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report, due since 2014, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

The Committee notes that, in its 2019 report on the national-level review of the implementation of the Beijing Declaration and Platform for Action, 1995 (Beijing +25 national report), the Government indicated that: (1) according to a national report of living conditions published in 2016, the labour force rates for women continued to be lower than for men (68.1 per cent compared to 81.8 per cent) with lower earnings for women in almost every case; and (2) although the rate of participation of women in the economy was increasing, it was still lower than that of men, with an increasing tendency towards job segregation reinforced by gender stereotypes. Despite a stronger educational performance of females – which could be expected to result in higher incomes than for males – a 2015 report from UN Women stated that women in Saint Lucia continued to be paid, on average, 10 per cent less than their male peers. According to the "Gender at Work in the Caribbean – Country report: Saint Lucia" published by the ILO Decent Work Team and Office for the Caribbean in 2018, this suggests systematic barriers to higher earnings, including discrimination.

Article 1(a) of the Convention. Definition of remuneration. The Committee recalls that the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, contains no definition of the term "remuneration". The Committee notes the adoption of the Labour Code (Amendment) Act No. 6 of 2011, which amends section 95 of the Labour Code of 2006 to include the definition of "total remuneration" as "all basic wages which the employee is paid or is entitled to be paid by his or her employer in respect of labour performed or services rendered by him or her for his or her employer

during that period of employment". The Committee notes that section 2 of the Labour Code continues to exclude overtime payments, commissions, service charges, lodging, holiday pay and other allowances from the definition of wages. The Committee recalls that the Convention sets out a very broad definition of "remuneration" in *Article 1(a)* which includes not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment" (see 2012 General Survey on the fundamental Conventions, paragraph 686). ***The Committee asks the Government to take the necessary measures to further amend section 95 of the Labour Code in order to ensure that at least for the purposes of the application of the principle of the Convention the concept of remuneration covers not only the basic wages, but also any additional benefit or allowance arising out of the worker's employment.***

Different wages and benefits for women and men. The Committee also notes with ***regret*** that the Labour Code (Amendment) Act No. 6 of 2011 did not repeal the existing laws and regulations establishing differential wage rates for men and women, nor did it revoke the Contract of Service Act which provides for different ages for men and women with respect to entitlement to severance pay. ***The Committee urges the Government to take measures without delay to ensure that all laws and regulations are repealed which contain differential wages for men and women, as well as the Contract of Service Act, which provides for different ages for men and women with respect to entitlement to severance pay. The Committee requests the Government to provide information on any development in this regard.***

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

Saint Vincent and the Grenadines

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

Article 1(b) and 2 of the Convention. Equal remuneration for men and women for work of equal value. Legislation. For a number of years, the Committee has been indicating to the Government that section 3(1) of the Equal Pay Act of 1994, which provides for "equal pay for equal work", is not in conformity with the principle of equal remuneration for men and women for work of equal *value*. The Committee notes the Government's statement, in its report, that "the matter to amend section 3(1) of the Equal Pay Act is still awaiting Cabinet's action". In this regard, it notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in its 2015 concluding observations, also noted with concern that the Equal Pay Act was not in conformity with the principle of equal remuneration for men and women for work of equal *value* (CEDAW/C/VCT/CO/4–8, 28 July 2015, paragraphs 32 and 33). ***The Committee urges the Government to take steps to amend section 3(1) of the Equal Pay Act without further delay in order to ensure that the legislation provides for equal remuneration for men and women for work of equal value, as specified in the Convention; and to provide information on any progress achieved in this regard.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

The Committee notes that, in its report, the Government repeats what it had stated in its previous report, the only exception being an updated table on selected positions held in the public service. This information has been taken into account in the Committee's comments on the application of the Equal Remuneration Convention, 1951 (No. 100). ***The Committee is therefore bound to repeat its previous comment.***

Article 1 of the Convention. Protection of workers against discrimination. Legislation. The Committee recalls that article 13 of the Constitution Order of 1979 contains a general prohibition

against discrimination on the grounds of sex, race, place of origin, political opinions, colour or creed. For a number of years, the Committee has been drawing the Government's attention to the fact that Article 13 of the Constitution: (1) does not refer to the grounds of national extraction and social origin listed in *Article 1(1)(a)* of the Convention; and (2) excludes non-citizens from its scope of application, while the Convention covers both nationals and non-nationals. The Committee has further highlighted the lack of any specific legislation prohibiting discrimination in employment and occupation and has recalled that constitutional provisions, while important, have generally not proven to be sufficient to address specific cases of discrimination in employment and occupation, and that a more detailed legislative framework is required (see General Survey on the fundamental Conventions, 2012, paragraph 851). Referring to its previous comments, in which it noted the Government's intention to adopt a law similar to the Caribbean Community (CARICOM) Model Law on Equal Opportunity and Treatment in Employment and Occupation, the Committee notes with ***regret*** the Government's statement in its report that no further action has been taken in this regard. With regard to section 27 of the Education Act (Cap 202) of 2006 which prohibits discrimination in admission to an educational institution or schools on a certain number of grounds, the Committee notes the Government's indication that social status is similar to social origin, but that there has been no judicial decision with respect to the meaning of social status.

The Government adds that draft amendments to the Protection of Employment Act of 2003 have been made to prohibit termination of employment on the grounds of race, colour, gender, marital status, social status, sexual orientation, pregnancy, religion, political opinion or affiliation, nationality, or social or indigenous origin of the employee. Noting that such amendments are awaiting the approval of the competent authority, the Committee wishes to recall that the principle of equality of opportunity and treatment should apply to all aspects of employment and occupation. Under *Article 1(3)* of the Convention "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment (General Survey, 2012, paragraph 749). The Committee notes that, in their concluding observations, several United Nations treaty bodies have recently expressed concerns about: (1) the fact that article 13 of the Constitution is not applicable to non-citizens; and (2) the lack of provisions specifically prohibiting discrimination in employment and occupation (CCPR/C/VCT/CO/2/Add.1, 9 May 2019, paragraph 8; and CMW/C/VCT/CO/1, 17 May 2018, paragraph 26).

In light of the persistent lack of progress in the drafting of legislation that fully reflects the provisions of the Convention, the Committee urges the Government to take the necessary steps without delay to ensure the adoption of an effective legislative framework that explicitly prohibits direct and indirect discrimination based on at least all the grounds enumerated in Article 1(1)(a) of the Convention (race, colour, sex, religion, political opinion, national extraction and social origin) concerning all stages of the employment process and covering all workers, both nationals and non-nationals. It asks the Government to provide information on any progress made in this respect. The Committee recalls that the Government can avail itself of the technical assistance of the Office in this regard.

Articles 2 and 3(a). National equality policy. Referring to its previous comments concerning the lack of a national policy promoting equality of opportunity and treatment in employment and occupation, the Committee notes the Government's repeated statement that the competent authority has not developed a national equality policy yet. The Government however states that appropriate steps are being taken to formulate such a policy in the near future. In that regard, the Committee draws the Government's attention to the fact that the primary obligation of ratifying States is to declare and pursue a national policy designed to promote equality of opportunity and treatment in employment and occupation, with a view to eliminating any discrimination in respect thereof (General Survey, 2012, paragraph 841). ***In light of the absence of legislation that fully reflects the principles of the Convention, the Committee urges the Government to take the necessary measures to develop and implement a***

national policy promoting equality of opportunity and treatment in employment and occupation, in order to effectively contribute to the elimination of direct and indirect discrimination and the promotion of equality of opportunity and treatment for all categories of workers. It asks the Government to provide information on any progress made in this regard.

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

Sao Tome and Principe

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1982)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. Equal remuneration for men and women for work of equal value. Legislative developments. For many years, the Committee has been drawing the Government's attention to the fact that article 43(a) of the Constitution does not fully reflect the principle of the Convention as it only guarantees "equal wages for equal work". Referring to its previous comments where it noted that a draft General Labour Act had been prepared and submitted to the Office for comments, the Committee notes with ***interest*** the adoption of the Labour Code through Act No. 6/2019 of 16 November 2018, and notes that the provisions on equality and non-discrimination apply to public sector employees (section 3). It notes, in particular, that section 22(1) of the Labour Code provides for equal working conditions for men and women, in particular with regard to pay, and that section 234(5) provides that "all workers of the same company under identical contractual conditions are entitled to receive equal pay for work of equal value, any wage discrimination being prohibited". The Committee wishes to point out that while the new provisions guarantee "equal pay for work of equal value", the formulation used under section 234(5) of the Labour Code which requires "identical contractual conditions" is narrower than the principle of the Convention. It recalls that while factors such as complexity, responsibility, difficulty and working conditions are clearly relevant in determining the value of jobs, when examining two jobs, the value does not have to be the same with respect to each of the factors considered. Determining whether two different jobs are of equal value consists of determining the overall value of the jobs when all the factors are taken into account. The principle of the Convention requires equal remuneration for "equal", "the same" or "similar work", but also addresses situations where men and women perform different work that is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraphs 676–679). Furthermore, the Committee recalls that the application of the principle of equal remuneration for men and women for work of equal value should not be limited to comparisons between men and women in the same company, as it allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers (see General Survey of 2012, paragraphs 697 and 698). ***Regretting that the adoption of the Labour Code has not been taken as an opportunity to give full legislative expression to the principle of the Convention, the Committee asks the Government to consider amending section 234(5) of the Labour Code to ensure that when determining whether two jobs are of equal value: (i) the overall value of the job is considered without limiting the comparison to «identical contractual conditions», and the definition allows for the jobs of an entirely different nature to be compared free from gender bias; and (ii) the scope of comparison goes beyond the same company. The Committee also asks the Government to provide information on the practical application of article 43(a) of the Constitution and sections 22(1) and 234(5) of the Labour Code, including any cases or complaints concerning inequality of remuneration dealt with by the labour inspectorate, the courts or any other competent authorities, specifying the penalties imposed and the compensation awarded. It asks the Government to provide information on any awareness-raising activities undertaken on the new legislative provisions and the principle of the Convention, including in collaboration with employers' and workers' organizations.***

Articles 2 and 3. Assessing and addressing the gender wage gap. The Committee has repeatedly emphasized the importance of gathering and analysing statistics on salary levels, disaggregated by sex, in order to be in a position to assess the application of the Convention by adequately evaluating the nature, extent and causes of the gender wage gap. The Committee once again notes with ***regret*** the absence of information provided by the Government in this regard. It notes that, according to the last available statistical information, women are more often affected by poverty than men (71.3 per cent and 63.4 per cent,

respectively, in 2010). Furthermore, in 2012, the women's labour force participation rate was nearly twice as low as men's (41.3 per cent and 75.4 per cent, respectively), with women being mostly concentrated in low-qualifications jobs such as unskilled labour force (71 per cent), domestic workers (94 per cent) and services or trade (58.9 per cent of women). It further notes that women are mostly working in the informal economy, which affects 75.7 per cent of the economically active population, characterized by low wages and the lack of social protection. The Committee notes that the Decent Work Country Programme (DWCP) for 2018–21, adopted in July 2018, sets as a specific objective the promotion of productive employment for all, in particular for young people and women, including by raising awareness and encouraging transition from informal to formal economy, enhancing women's entrepreneurship and access to vocational training, as well as strengthening the National Statistics Institute (INE). Noting that a National Statistical Development Strategy (ENDE) for 2018–21, adopted in February 2018, is currently implemented, the Committee recalls that appropriate data and statistics are crucial in determining the nature, extent and causes of discrimination and unequal remuneration, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and make any necessary adjustments (see General Survey of 2012, paragraph 891). ***Consequently, the Committee asks the Government to provide information on any measures undertaken to assess and address the gender wage gap, both in the formal and informal economy, in the framework of the DWCP or otherwise. The Committee trusts that the Government will be soon in a position to provide relevant information that would permit an assessment of the remuneration levels of men and women and wage differentials. It again asks the Government to provide updated information on the distribution of women and men in the various economic sectors and occupations, and their corresponding earnings, both in the public and private sectors.***

Article 4. Cooperation with workers' and employers' organizations. In response to the Committee's long-standing indication that workers' and employers' organizations play an important role with respect to giving effect to the provisions of the Convention, the Government reiterates, in its report, that social partners play an important role in the effective implementation of international standards and national legislation. The Government adds that a revision of Act No.1/99 on the National Council for Social Dialogue (CNCS) is planned. The Committee notes that the DWCP for 2018–21 sets as a specific objective the strengthening of the CNCS and other institutions of social dialogue, as well as capacity-building of the tripartite constituents to promote, inter alia, gender equality and non-discrimination. ***The Committee asks the Government to provide information on any progress made in the revision of Act No. 1/99 on the CNCS, as well as on any capacity-building activities of employers' and workers' organizations undertaken, in the framework of the DWCP or otherwise, to promote gender equality and non-discrimination. In light of the absence of legislation giving full expression to the principle of the Convention, the Committee again asks the Government to seek the cooperation of employers' and workers' organizations with regard to the amendment of the legislative framework, as indicated above, as well as with regard to practical measures to ensure equal remuneration for men and women for work of equal value. It asks the Government to provide information on any progress made in this regard.***

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1982)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Legislative developments. The Committee has been requesting the Government to ensure that the draft General Labour Act, which was under preparation, would include a prohibition of direct and indirect discrimination at all stages of the employment process and on all the grounds listed in *Article 1(1)(a)* of the Convention. The Committee notes with ***satisfaction*** the adoption of the Labour Code, through Act No. 6/2019 of 16 November 2018, and more particularly sections 15–17, which define and prohibit both direct and indirect discrimination in access to employment, vocational training and promotion and working conditions, based on the grounds of ancestry and social origin, race, colour, age, sex, sexual orientation, marital status, family status, genetic heritage, reduced working capacity, disability

or chronic illness, nationality, ethnic origin, religion, political or ideological beliefs and trade union membership. It further notes that section 18 of the Labour Code defines and prohibits both quid pro quo and hostile work environment sexual harassment, which is expressly defined as a form of discrimination. It notes that, in accordance with section 20, any employee or jobseeker adversely affected by discriminatory practices would be entitled to receive compensation. The Committee notes that, pursuant to section 3(1)(a) and (2) of Act No. 6/2019, the provisions on equality and non-discrimination and sexual harassment at the workplace apply to public employees. In that respect, it further notes the adoption of Act No. 2/2018 of 22 November 2017, amending Act No. 5/1997 on the Civil Service Statute, and more particularly new section 52(B)(1)(e), which provides that civil servants are prohibited from exerting pressure, threatening or harassing other officials or agents or subordinates that may affect the dignity of the person, or include malicious actions. ***The Committee asks the Government to provide information on the application in practice of sections 15–18 and 20 of the Labour Code, as well as section 52(B)(1)(e) of the Civil Service Statute. The Committee also asks the Government to provide information on any concrete measures taken to raise public awareness and understanding of the relevant new legislative provisions, the procedures and remedies available, in particular for employers, workers and the general public. It asks the Government to provide detailed information on the number and nature of cases of direct and indirect discrimination in employment and occupation dealt with by labour inspectors, the courts or any other competent authorities, as well as the sanctions imposed and compensation awarded.***

Articles 2 and 3. Equality of opportunity and treatment of men and women. Policies and institutions. The Committee previously noted the adoption of the National Strategy for Gender Equality and Equity (ENIEG) for 2007–12, dealing with issues relating to women's equality in the world of work, as well as the establishment of the National Institute for the Promotion of Gender Equality and Equity (INPG) under the Ministry of Labour to implement the ENIEG. Referring to its previous request concerning statistical information on the participation of men and women in vocational training and the labour market, the Committee notes the Government's general indication, in its report, that such information is not available so far, but that women's access to decision-making positions and vocational training has improved. The Committee however notes that, according to the latest available statistical information from the National Statistics Institute (2012): the women's unemployment rate was more than twice as high as that of men (19.7 per cent compared to 9.3 per cent for men), while women's labour force participation rate was nearly twice as low as men's (41.3 per cent and 75.4 per cent, respectively), with women being mostly concentrated in low-skilled jobs, such as the unskilled labour force (71 per cent of women), domestic workers (94 per cent) and services or trade (58.9 per cent). It notes that, according to the NSI, women mostly work in the informal economy, which accounts for 75.7 per cent of the economically active population. Furthermore, only 31.1 per cent of women have attained at least a secondary level of education (compared with 45.2 per cent of men). The Committee notes that the Decent Work Country Programme, 2018–21, adopted in July 2018, sets as a specific objective the promotion of productive employment for all, in particular for young persons and women, including by raising awareness and encouraging the transition from the informal to the formal economy, enhancing women's entrepreneurship and access to vocational training, as well as strengthening the INE. The DWCP further explicitly aims at building this capacity of the tripartite constituents to promote, inter alia, gender equality and non-discrimination. The DWCP refers to the adoption of: (i) a Second National Strategy for Gender Equality and Equity (ENIEG II) for 2013–17 which highlights that one of the main challenges is that men and women benefit from equal opportunities to effectively achieve financial autonomy; and (ii) the National Employment Policy (PNE) in 2015, which highlights the importance of decent work and sets as specific objectives to strengthen technical education and vocational training and promote women's entrepreneurship, and its accompanying Action Plan on Employment and Vocational Training (PANEF), adopted in 2017, both developed in collaboration with the ILO. It also notes with ***interest*** the ratification of the Maternity Protection Convention, 2000 (No. 183), on 12 June 2017. ***The Committee asks the Government to provide information on any specific measures taken, particularly in the framework of the ENIEG II, the PNE, the PANEF and the DWCP 2018–21, to effectively enhance women's economic empowerment and access to the formal economy and vocational training, including in sectors where they are under-represented, and to improve equality of opportunity and treatment for men and women in employment and occupation, in both the public and private sectors, including in collaboration with employers' and workers' organizations. Noting that a National Statistical Development Strategy for 2018–21 is currently being implemented, the Committee hopes that the Government will soon be in a position to collect and provide updated statistical information on the participation of men and women in vocational***

training and the labour market, indicating the proportion of men and women in the various economic activities, disaggregated by occupational categories and positions, in both the public and private sectors, as well as in the informal economy.

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

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

Saudi Arabia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1978)

Article 1(1) of the Convention. Prohibited grounds of discrimination. Legislation. The Committee noted in its previous comments the extension in 2019 of the list of prohibited grounds of discrimination in section 3 of the Labour Law (i.e. "sex, disability and age") to include "any other form of discrimination" in recruitment, including job advertisements and in the course of employment. It asked the Government to: (1) consider the possibility of including in section 3 of the Labour Law an explicit reference to all the grounds other than sex set out in the Convention (race, colour, religion, national extraction, political opinion and social origin) to avoid any divergent legal interpretations; and (2) clarify whether the non-discrimination provision of section 3 applies to non-citizens. Regarding the incorporation in section 3 of the Labour Law of an explicit reference to the additional grounds of discrimination set out in the Convention, the Government refers in its report to the "Unified Work Environment Regulations in the private sector" prohibiting discrimination during the performance of work, recruitment or in job advertisements, as well as in access to vocational training, on grounds such as sex, disability, age or any other form of discrimination (Regulation No. 4904 of 1442 Hegire (2020)). ***The Committee asks the Government to take the necessary steps to amend section 3 of the Labour Law with a view to incorporating a comprehensive definition of discrimination which includes direct and indirect discrimination and explicitly includes the seven grounds listed in the Convention. It also asks the Government to indicate whether there have been cases in which the courts have interpreted the expression "any other form of discrimination" as including discrimination based on the other grounds listed in the Convention. Recalling once again that the Convention applies to all workers (nationals and non-nationals), and observing that the Government has not clarified whether the prohibition of discrimination in section 3 of the Labour Law applies only to "citizens", the Committee is bound to request the Government to ensure that the non-discrimination provision in section 3 also applies to non-citizens so that it covers migrant workers.***

Discrimination against migrant workers. The Committee previously urged the Government to continue: (1) taking steps to ensure that all migrant workers, including women migrant workers, enjoy effective protection against discrimination on the grounds set out in the Convention, including effective access to dispute settlement mechanisms and the right to change employer in the event of abuse; (2) taking active measures to increase the effective enforcement of existing legislation and carrying out awareness-raising activities concerning the respective rights and duties of migrant workers and employers; and (3) providing information, disaggregated by sex, race and colour, on the number of complaints lodged by migrant workers, and the number of complaints or cases that have been brought before the courts, and the remedies granted to victims. The Committee observes that, within the framework of the National Transformative Programme and the Labour Reform Initiative (2020), Decision of the Minister of Human Resources and Social Development No. 51848 of 1442 Hegire (2020) was adopted to allow for the possibility of a migrant worker putting an end to his/her employment contract and therefore changing the sponsor/employer providing that a notice period of 90 days is given. According to the Government, within this framework, migrant workers are not now required to obtain an exit visa to leave the country. The Committee notes that the Residence Regulations, issued by Act

No. 17/2/25/1337 of 4 June 1959, regulating the entry and exit visa of migrant workers to and from Saudi Arabia, are still in force and have not been amended. Migrant workers are therefore still obliged to obtain permission from the employer or sponsor to leave the country. It notes however the information provided by the Government under the Forced Labour Convention, 1930 (No. 29), according to which it has adopted procedures to regulate and facilitate the granting of visas to workers to enable them to leave the country without the agreement of the employer.

With regard to raising awareness of the respective rights and duties of migrant workers and employers, the Government refers to the Labour Education online portal established to provide information on labour legislation and working conditions, as well as advice services in four languages, including English and Arabic. Awareness campaigns were also conducted through social media in collaboration with the embassies of the countries of origin of migrant workers, business centres, recruitment agencies, etc. According to the Government, during the first half of 2021, amicable settlement departments dealt with 65,789 cases, most of them related to working conditions and trafficking of migrant workers. The Committee takes note of this information. ***The Committee asks the Government to: (i) take steps to ensure that Decision of the Minister of Human Resources and Social Development No. 51848 of 1442 Hegire (2020) is applied in practice and monitored, and to provide information on the nature and number of cases in which a request for a transfer to another employer has been refused and the basis for such refusal; (ii) communicate a copy of the text regulating the procedures that have been adopted to facilitate migrant workers to leave the country when they have not obtained the agreement of the employer/sponsor, including information on the criteria on the basis of which the employer may still object to a worker's departure from the country; and (iii) provide statistical information disaggregated by sex and the other prohibited grounds of discrimination on the nature and number of complaints lodged by migrant workers, and on the number of complaints or cases that have been brought to the courts, their outcome and the remedies granted. It also asks the Government to provide information on the complaints lodged (formally or informally) regarding discrimination in wages and conditions of work between migrants and nationals, and also within the migrant community between migrants of different national origin, for the same type of jobs; as well as statistical information disaggregated by sex and the other prohibited grounds of discrimination on the number and nature of the complaints lodged by migrant workers, and on the number of complaints or cases that have brought to the courts, their outcome and the remedies granted.***

Article 2. National equality policy. With regard to the adoption of a national equality policy, the Committee notes the Government's indication that the draft national equality policy is being prepared, in consultation with the ILO and partnership with the government authorities concerned and employers' and workers' representatives and that a draft has been submitted for adoption to the competent authority. ***The Committee hopes that the national equality policy will be adopted in the near future and asks the Government to provide information on any progress in this regard.***

Promoting women's employment. In its previous comments, the Committee asked the Government to: (1) continue taking concrete steps to develop training and job opportunities in a wider range of occupations, including non-stereotypical jobs and decision-making positions, and to assist women to reconcile work and family responsibilities, for example through the development of childcare facilities; and (2) specify whether all sectors targeted by the Saudization policy are open to women. The Committee notes the Government's indication that the National Platform for Women Leaders was launched as a tool for the authorities to communicate with women leaders with a view to nominating them to leadership positions in official bodies and delegations, as well as to decision-making positions. The Government indicates that to date 1,700 women are working in the private and public sectors and 20 per cent of the seats in the Consultative Council are occupied by women. It also indicates that efforts have been made to assist women to reconcile work and family responsibilities, including by developing the "Qurrah" programme, an e-service provided by the Human Resources Development Fund (Hadaf) that organizes childcare services with a view to supporting an increase in the number of Saudi women

working in the private sector. The programme contributes to supporting women's empowerment by paying part of the cost of the monthly fees for registration in a child hospitality centre licensed by the "Qurrah" programme, up to a maximum of SR800 (US$213) a month per child and for a maximum of two children between the ages of 1 month and 6 years. As of 2020, some 4,185 beneficiaries have been provided with this service and a total of 4,928 children have benefited from the services of child hospitality centres. There are currently 374 accredited child hospitality centres under the programme throughout the country. The Committee notes the Government's indication that, within the framework of the Saudization policy, a number of sectoral activities have been opened to women, such as pharmaceutical and dental occupations, real estate and commercial sectors, which has contributed to the entry of 417,165 Saudi men and women into the labour market, of whom 54 per cent are women. ***The Committee asks the Government to continue providing information on the measures taken to enhance the participation of women in the labour market, including through measures to address stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family. The Committee encourages the Government to continue taking steps to address the legal and practical barriers to women's access to the broadest possible range of sectors and industries, at all levels of responsibility, and to promote a more equitable sharing of family responsibilities between men and women, and to report on the results achieved in this regard.***

Article 5. Special protection measures. Restrictions on women's employment. In its previous comments, the Committee asked the Government to provide information on the steps taken to enforce the application of the 2012 Ministerial Decree prescribing that women no longer need the authorization of a guardian to work and on any cases brought to the labour inspectorate or a court concerning failure to comply with the Decree, and their outcome. The Committee notes the Government's indication that the 2012 Decree has been implemented by the enactment of Decision No. 14 of 1442 Hegire (2020) and Royal Decree No. 5 of 1442 Hegire. The Committee notes with ***interest*** that, as a result, section 150 of the Labour Law (prohibiting night work by women) has been abrogated and section 186 amended, so that work in mines or quarries is not prohibited for women any more, only for workers under 18 years of age. The Committee notes however that section 142 of the Labour Law provides that the Minister shall specify industries and occupations in which the employment of women is prohibited. ***In light of the above, the Committee asks the Government to take the opportunity of the ongoing labour review process to ensure that any restrictions on women's employment are limited to maternity in the strict sense, and to provide information on any steps taken in this regard.***

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

Senegal

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)

Articles 1(b) and 2 of the Convention. Equal remuneration for men and women for work of equal value. Legislation and collective agreements. For around 15 years, the Committee has been emphasizing that section L.105 of the Labour Code, which provides that "where conditions of work, vocational qualifications and output are equal, wages shall be equal for all workers, irrespective … of gender", does not give full effect to the principle of equal remuneration for men and women for work of equal *value* established by the Convention as it does not reflect the concept of "work of equal *value*". The Committee notes the Government's statement that section L.105 of the Labour Code "targets precisely work of equal *value*" and that "this same requirement is contained in the collective agreements". It also indicates that aspects linked to the concept of "work of equal *value*" are always settled through social dialogue and collective bargaining between employers and workers with the support of the Government and that, after its adoption by the parties, each collective agreement is the focus of an outreach, training and information campaign among the actors concerned, in order to make it more accessible. In this regard, the Committee notes that the Government refers to provisions prohibiting gender-based wage

discrimination in the new national inter-occupational agreement adopted on 30 December 2019. The Committee emphasizes, however, that these provisions are not sufficient to give effect to the principle of the Convention as they do not take into account the concept of "work of equal *value*". The Committee recalls that *Article 2(2)* of the Convention gives free choice as to how to give effect to the principle of equal remuneration for work of equal *value* and that wage fixing processes and collective bargaining mechanisms can go a long way to eliminating gender pay gaps and wage discrimination, and to promoting equal pay, where such processes and mechanisms are consistent with the principle of the Convention itself. However, where the issue of equal pay is regulated by legislative provisions, these must not be more restrictive than the principle of the Convention, as they constitute an obstacle to the elimination of discrimination against women in respect of remuneration. Furthermore, noting the Government's indication that the term "work of equal *value*" could be interpreted in different ways, the Committee recalls that the concept of "work of equal *value*", while not defined as such in the Convention, implies that men and women who hold jobs which are different in content, involve different responsibilities and require different skills or qualifications, or different degrees of effort, and which are performed under different conditions but which, as a whole, are of equal *value*, must be paid equally. While criteria such as working conditions, vocational qualifications and output are among the relevant factors in determining the *value* of jobs, when two jobs (a female-dominated job and a male-dominated job) are compared, the *value* does not necessarily have to be the same for each factor – rather the determining *value* is the overall *value* of the job, that is to say when all factors are considered as a whole (added together). This principle is essential for eliminating discrimination and promoting equality, as women and men most often hold different jobs, under different working conditions and often in different establishments or for different employers. In this regard, in its 2012 General Survey on the fundamental Conventions, the Committee provided as examples comparisons between the occupations of wardens in sheltered accommodation for the elderly (predominantly women) and security guards in office premises (predominantly men); or school meal supervisors (predominantly women) and garden and park supervisors (predominantly men). ***Noting that the steering committee for the Labour Code reform was set up in 2021, the Committee urges the Government to take the necessary measures without delay to give full effect in the Labour Code to the principle of equal remuneration between men and women for work of equal value by amending section L.105, which contains provisions that are more restrictive than the principle enshrined in the Convention and section L.86(7), which provides that the principle of "equal work, equal wage" must be included in collective agreements. It requests the Government to specify how it shares with the social partners the contours of the principle of equal remuneration for men and women for work of equal value and how the social partners take into account this principle in collective bargaining on wages.***

Article 3. Objective job evaluation. The Committee recalls that the concept of equal value necessarily implies the adoption of a method that allows for the relative value of different jobs to be measured and compared objectively, whether at the enterprise or sector level, national level, in the framework of collective bargaining or through wage-setting mechanisms. The Government indicates that everything relating to vocational qualifications, classification and relative value of occupations at all levels, basic pay of each occupational category, conditions for career development and all other aspects associated with the equal value of work are determined in the freely chosen collective agreements of enterprises, sectors or branches between employers and workers. ***The Committee requests the Government to take the necessary measures to promote the use, by the social partners, of objective job evaluation methodology based on non-discriminatory criteria such as qualifications, effort, responsibility and working conditions to determine the relative value of jobs when setting wages and/or classifications. It requests the Government to carry out, in cooperation with the social partners, awareness-raising activities on the concept of "work of equal value" and the importance of using objective job evaluation systems, free from gender bias (namely under-evaluation of skills considered as "natural" for women, such as dexterity and those required in caring professions, and the***

over-evaluation of skills traditionally considered as "masculine", such as physical force). It once again requests the Government to provide information on any measures taken in this regard.

Statistics. Since 2007, the Committee has been requesting the Government to provide full statistical information on the remuneration received by men and women in the various sectors and branches of activity. The Committee notes the statistical data provided by the Government on employment and wages. It notes, however, that these statistics are not disaggregated by sex and therefore do not allow for an evaluation of the extent of any wage gaps between men and women. The Committee recalls that appropriate data and statistics are crucial in determining the nature, extent and causes of discrimination and unequal remuneration, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and make any necessary adjustments. It recalls further that comparable statistics are necessary to enable an accurate assessment of changes over time (see 2012 General Survey, paragraph 891). ***The Committee therefore urges the Government to take the necessary steps to collect and analyse data on the remuneration of men and women in the public and private sectors, disaggregated by sex, sector of the economy, and, if possible, occupational group, and to include this information in its next report. It also asks the Government to provide any information or survey available on the gender pay gap in the country.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)

Article 1 of the Convention. Protection of workers against discrimination and promotion of equality of treatment. Legislation and collective agreements. For several years, the Committee has been emphasizing that the Constitution (article 25) and the Labour Code (sections L.1 and L.29) do not cover all the prohibited grounds of discrimination set out in the Convention, as they omit national extraction and colour, and they do not refer explicitly to social origin, but only to origin or origins. The Committee notes that the Government reaffirms its willingness to provide a better framework for combating discrimination at work and that it once again refers to the labour legislation revision process still under way, in which issues related to protection against discrimination have been taken into account. It welcomes the creation of the steering committee for the reform of the Labour Code by order of 15 June 2021 of the Ministry of Labour, Social Dialogue and Relations with Institutions. The Committee also notes with ***interest*** that the new national inter-occupational collective agreement, signed on 30 December 2019, provides that "no one may be barred from the recruitment procedure or access to internships or on-the-job training, or be subjected to a discriminatory measure based race, colour, age, sex, trade union activity, belonging to a religion, fraternity or sect, political opinion, national extraction, ethnicity, social origin, disability, pregnancy, family situation, health status or HIV status, and which has the effect of destroying or impairing equality of opportunity or treatment in employment or occupation". It adds that "no employee may be penalized, dismissed or subjected to a discriminatory measure for witnessing or reporting the conduct defined in the above paragraphs" and that "the employer must ensure respect of equality of treatment among employees relating to working conditions, as well as remuneration, training and professional promotion". ***Noting the willingness expressed by the Government with regard to combating discrimination and promoting equality of treatment in employment and occupation, the Committee urges it to ensure that the reform of the Labour Code extends protection to workers against discrimination based on all the grounds listed under Article 1(1)(a), including national extraction, colour and social origin, as well as any additional grounds that the Government deems it appropriate to include, such as those listed in the 2019 national inter-occupational collective agreement. It also requests the Government to take measures to raise awareness among workers and employers and their respective organizations of the provisions of the new collective agreement prohibiting discrimination and promoting equality of treatment.***

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

Singapore

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Assessing and addressing the gender pay gap. The Committee recalls the lack of legislation requiring equal remuneration for men and women for work of equal value. The Committee previously noted the Guidelines issued by the Tripartite Alliance for Fair Employment Practices (TAFEP) on 3 May 2007, which include a section on remuneration stating that "[e]mployers should pay employees wages commensurate with the value of the job [...] regardless of age, gender, race, religion and family status, employees should be paid and rewarded based on their performance, contribution and experience". It notes, from the TAFEP's website, that as of September 2019, 7,144 organizations have signed the Employers' Pledge for Fair Employment Practices, which is a public commitment from employers to create fair and inclusive workplaces according to the TAFEP's Guidelines. The Committee notes the Government's statement, in its report that, in July 2017, Tripartite Standards (TSes) were introduced to enhance fair and progressive employment practices on flexible work agreements, recruitment practices and unpaid leave for unexpected care needs. Noting that the TAFEP continued training workshops to assist employers implementing fair and progressive employment practices, the Committee notes the Government's indication that the Human Capital Partnership (HCP) Programme was launched in 2017 by tripartite partners to "grow an inclusive community of progressive employers", and will be managed by the TAFEP. The Committee however observes that the Government does not provide information on any measures taken by the TAFEP to promote specifically the principle of equal remuneration for men and women for work of equal value. While noting the Government's statement that the gender pay gap was estimated at 11.8 per cent in 2017 with broad-based improvement across most occupational groups, the Committee notes, from the statistical information provided by the Government, that in 2017 the median gross monthly salary of women employed in the same occupational category as men was systematically lower than that of men, except for clerical support workers where it was slightly higher. It notes in particular that the gender wage gap was estimated at 12.2 per cent for managers and administrators; 18.7 for working proprietors; 14.4 for professionals and still remains wider for craftsmen and related trades workers (22.3 per cent) and plant and machine operators and assemblers (19.1 per cent). The Committee notes the Government's indication that the wage gap can be attributed to the fact that women are more likely to exit the workforce or have intermittent patterns of work, for reasons such as childcare and the care of the elderly. The Government adds that its approach to address the gender pay gap is to empower women with choices to stay in the workforce, instead of having to exit it to fulfil caregiving responsibilities. In this regard, the Committee welcomes the adoption and implementation of measures to assist women to enter, re-enter or remain in the workforce, including through flexible working arrangements and the introduction of measures to encourage shared parental responsibilities (such as a two weeks paid paternity leave and the possibility for fathers to share up to four weeks of their wife's maternity leave). The Committee however notes that, in its 2017 concluding observations, the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW) remained concerned about: (i) the persistent gender wage gap in all occupational categories, except clerical support; (ii) the continued vertical and horizontal occupational segregation in both the public and private sectors; (iii) the persistence of discriminatory stereotypes about the role of women as primary caregivers, including as caregivers of older persons; (iv) the fact that women still remain underrepresented in traditionally male-dominated fields of study, such as engineering, electronics and information technology, at the tertiary level; as well as (v) the underrepresentation of women on corporate boards, notwithstanding their high educational and professional achievements and qualifications. The Committee further notes that the CEDAW recommended that "the Government reduces the gender wage gap by regularly reviewing wages in sectors in which women are concentrated and by establishing effective monitoring and regulatory mechanisms for employment and recruitment to ensure that the principle of equal pay for work of equal value is adhered to in all sectors" (CEDAW/C/SGP/CO/5, 21 November 2017, paragraphs 18, 26, 28 and 29). The Committee notes that the CEDAW, as well as the UN Independent Expert on the enjoyment of all human rights by older persons, also expressed specific concern that older women frequently lack sufficient savings to sustain a living as a result of the gender pay gap, a lack of employment opportunities and their caregiving responsibilities, and are therefore forced to continue to work beyond their

retirement age in low-paid and low-skilled occupations (CEDAW/C/SGP/CO/5, 21 November 2017, paragraph 38 and A/HRC/36/48/Add.1, 31 May 2017, paragraphs 27 and 93). ***In light of the absence of a legislative framework providing for equal remuneration for men and women for work of equal value and the persistence of significant gender wage gaps, in particular in sectors where women are traditionally concentrated, the Committee asks the Government to take proactive measures, including legislative measures in the framework of the Tripartite Alliance for Fair Employment Practices, to establish the principle of the Convention and raise awareness among workers, employers and their respective organizations, as well as among law enforcement officials of the right to equal remuneration for men and women for work of equal value. It also asks the Government to continue to take measures to address the underlying causes of the gender wage gap, such as vertical and occupational gender segregation and stereotypes relating to the aspirations, preferences and abilities of women, including by encouraging girls and women to choose non-traditional fields of study and professions and promoting their access to jobs with career prospects and higher pay. The Committee asks the Government to continue to provide statistical information on the level of earnings of men and women, disaggregated by economic activity and occupational group, both in the public and private sectors.***

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

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

Slovenia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Protection of workers against discrimination. Legislation. The Committee notes with ***interest*** the adoption of the Protection against Discrimination Act which came into force on 24 May 2016 and which replaced the Implementation of the Principle of Equal Treatment Act of 2004. It notes that the Act strengthens protection against direct and indirect discrimination and harassment and sexual harassment, irrespective of sex, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, sexual identity or sexual expression, social status, property status, education, or any other personal circumstance in various fields of social life including employment and occupation. The Committee notes that the Act does not explicitly refer to political opinion in the list of grounds covered. The Government reports that the Act's non-exclusive list of grounds which includes "any other personal circumstance", and the protection against employment discrimination provision on the ground of "belief" in the Employment Relationship Act of 2013, along with article 14 of the Constitution, which guarantees everyone equal human rights and fundamental freedoms irrespective of political or other conviction, among other grounds, provides protection against "inadmissible" unfavourable treatment on the basis of political conviction. The Committee further notes that the new Act established the new Advocate of the Principle of Equality as an independent body with enforcement powers. In the field of employment, the Committee notes that this Act overlaps and reinforces the existing non-discrimination provisions in the Employment Relationship Act of 2013, as amended. ***The Committee asks the Government to provide information on the measures adopted to promote and apply the Discrimination Act of 2016 as well as the non-discrimination provisions in the Employment Relationship Act of 2013, as amended, with respect to employment and occupation in the public and private sectors, including any steps taken to raise awareness among employers and workers. The Government is also asked to provide detailed information on the implementation of the protection against discrimination on the ground of political opinion. The Government is asked to provide information on the functioning of the office of the Advocate of the Principle of Equality and on any steps taken by the Advocate's Office to enforce the Discrimination Act in employment and occupation, including the number of cases dealt with and the ground of discrimination concerned, disaggregated by sex.***

Article 1(1)(a). Discrimination on the ground of national extraction. The Committee recalls its previous concerns regarding non-Slovenes from the former Socialist Federal Republic of Yugoslavia, namely "erased

people" and the difficulties they face in terms of access to social and economic rights, including access to education and employment, because of the loss of their citizenship and by extension their right to remain in the country. The Committee recalls that, on 26 February 1992, 1 per cent of the population of Slovenia (25,671 people) was removed overnight from its registry of permanent residents, following the declaration of independence of Slovenia. "Erased people" are mostly of non-Slovene or mixed ethnicity, and they include a significant number of members of Roma communities. The Committee notes that the Act Regulating the Legal Status of Citizens of the Former Yugoslavia Living in the Republic of Slovenia, 1999, as amended in 2010, expired on 24 July 2017. It notes from the report of the Government that, between 1999 and 31 December 2013, 12,373 permanent residence permits were issued under this Act; and from 1 January 2011 to 31 August 2017, 316 additional residence permits were issued. It further notes that, following the judgment of the European Court of Human Rights in *Kuric et al v. Slovenia*, the Committee of Ministers decided in May 2016 that the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population Register, 2013, satisfied the judgment of the European Court of Human Rights and, thus, concluded the case. The Committee notes that this Act has begun to be implemented. However, it notes that the United Nations Special Rapporteur on minority issues, in its report following its visit to Slovenia (5–13 April 2018) highlighted that the situation of "erased people" (who for the most part are members of various ethnic, religious or linguistic communities of the former Socialist Federal Republic of Yugoslavia) – is still unsettled, as compensation is still being fought over – despite the judgements made by the European Court of Human Rights and a decision by the Constitutional Court in April 2018 ruling against the limitations for those who filed claims for damages in judicial processes on the amount of compensation awarded. The Committee notes also that the UN High Commissioner for Human Rights and the Commissioner for Human Rights of the Council of Europe, among others, have expressed their concern at this matter (A/HRC/40/64/Add.1, 8 January 2019, paragraphs 52–55). ***In light of the Constitutional Court ruling, the Committee urges the Government to take steps to provide a fair compensation scheme to "erased people" still awaiting to be compensated, to take into account losses such as property or employment and to continue to provide information on the steps taken and the results achieved.***

Article 2. Equality of opportunity and treatment. Roma. The Committee recalls that for a number of years it has highlighted that one of the main reasons for the high unemployment rate among Roma people is their education level. Hence, its previous request to the Government to pursue its efforts to promote equal access for Roma to education and training, and to provide information on: (i) the measures implemented to promote access to employment and to particular occupations of Roma men and women, including a description of the community work programmes, and their concrete results; (ii) the reasons for focusing primarily on community work in the context of employment programmes; and (iii) the measures taken to prevent and address discrimination, stereotypes and prejudice against the Roma community. The Committee recalls that, under *Article 1(3)* of the Convention, "employment and occupation" explicitly includes "access to vocational training". Moreover, in paragraph 750 of its General Survey of 2012 on the fundamental Conventions, the Committee highlights that access to education and to a wide range of vocational training courses is of paramount importance for achieving equality in the labour market [as] it is a key factor in determining the actual possibilities of gaining access to a wide range of paid occupations and employment, especially those with opportunities for advancement and promotion. The Committee adds that not only do apprenticeships and technical education need to be addressed, but also general education, "on the job training" and the actual process of training.

The Committee notes the very detailed information provided by the Government on the labour market situation of the Roma people and the range of measures adopted to improve their situation in education and employment. The Government states that it places great importance on measures (systemic, specific, and project-based) for the effective integration of Roma children in education. The Committee notes that from 2015 to 2017 there has been a slight decrease in unemployment and a slight increase in the employment of Roma men and women, with men having higher employment rates than women. It notes that Roma people continue to be a target group of the Active Employment Policy and that over 2,400 Roma participate, annually, in programmes including formal and informal education, training, career counselling, job-seeking assistance and public works projects. The Committee further notes the adoption of the National Programme of Measures for the Roma for the 2017–21 period, which includes raising educational levels, reducing unemployment, elimination of prejudice, stereotypes and discrimination, preserving Roma culture, language and identity, among its objectives. The Committee notes that the Commissioner for Human Rights of the Council of Europe, in its 2017 report, recognized that Slovenia has a solid legislative and policy

framework for promoting Roma rights and welcomed the recent adoption of a revised National Programme of Measures for Roma 2017–21, which includes a plan for strengthening the pre-school education of Roma children; the tutoring system for Roma pupils; Slovenian language learning; the inclusion of Roma in the apprenticeship system; and the training of education professionals who work with Roma children. The Commissioner however observed that, if officially segregation (schooling in separate classes) is no longer present, *de facto* the situation is still not satisfactory, for example: (i) Roma children continue to be underrepresented in pre-schools and overrepresented in special needs schools, with about 12.2 per cent of Roma children being directed to such schools in the school year 2017–18 in comparison with 6.18 per cent of other children; (ii) in kindergartens they can be placed together with other children in mixed kindergarten classes or in "special classes" (which is possible only in the regions with large Roma populations); (iii) there is still a high level of absenteeism from school and drop-out rates in some regions; and (iv) a very low number of Roma children who reach secondary and tertiary education in the country (over 60 per cent of Roma have not completed elementary school). The Commissioner noted that teachers, Roma children and parents generally acknowledge that many of the difficulties Roma children encounter in primary schools are due to language barriers as many Roma children have no or limited command of the language spoken by the majority population. He also identified the following additional reasons for this as: insufficient value placed on education by families; poor housing conditions that do not allow families to make school a priority; early marriages and pregnancies; and criminality among teenage boys. The Committee notes further that, in its 2019 Country Report on Non-Discrimination in Slovenia, the Network of legal experts in gender equality and non-discrimination of the European Commission, observed that "In Slovenia, there are specific trends and patterns (whether legal or societal) in education regarding Roma pupils, such as segregation." In addition, the Committee notes that, the United Nations Special Rapporteur on Minority issues commended Slovenia for the considerable efforts it has made in recent years to improve the situation of Roma and the protection of their human rights, including in key areas such as education and employment. The Special Rapporteur noted that Slovenia does not officially collect disaggregated data on ethnicity, language or religion, and for this reason, no one has a clear idea of the actual size of the country's most vulnerable and marginalized minorities; and that no disaggregated population data have been collected since 2002. The Special Rapporteur however observed that the Roma (and the Sinti) continue to be the most marginalized and vulnerable minorities and recommended inter alia temporary affirmative action programmes in employment and increased awareness-raising campaigns to provide a more rounded view of members of the Roma community (A/HRC/40/64/Add.1, 8 January 2019, paragraphs 20, 29, 33, 62). While welcoming the various initiatives taken by the Government to promote non-discrimination, education and employment of Roma, women and men, the Committee wishes to stress that the unemployment rate for Roma people continues to be high and that improving access to education is key to combat marginalisation and poverty experienced by the Roma people. ***The Committee asks the Government to pursue its efforts to promote equal access for Roma people to education (in particular through a better access to pre-school education and the employment of suitably trained Roma teaching assistants), training and employment programmes. At the same time, the Committee asks the Government to increase its efforts to address discrimination and prejudice against the Roma community and to take steps to encourage Roma women and men to participate in programmes which will lead to their employment. Observing that there remains a fundamental gap between adopted policies and programmes on the one hand and reality as experienced by members of the Roma minority on the other hand, the Committee asks the Government to continue to provide detailed information on the results of the various initiatives taken to promote non-discrimination in education and employment of Roma women and men. Finally, recalling that appropriate data and statistics are crucial in determining the nature, extent and causes of discrimination, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and make any necessary adjustments, the Committee asks the Government to take steps to collect and analyse relevant data, including comparable statistics to enable an accurate assessment of changes over time while being sensitive to and respecting privacy.***

General observation of 2018. With regard to the above issues and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with ***concern*** that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in

persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. ***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

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

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

Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1992)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3 and 4 of the Convention. National policy, non-discrimination, leaves and benefits. Legislative developments. The Committee notes with ***interest*** the substantial amendments to the Parental Protection and Family Benefits Act in 2014, 2015, 2017 and 2018, which have the objective of transposing European legislation, including Council Directive 2010/18/EU, and of facilitating a more equal distribution of parental protection and childcare responsibilities between both parents. The Committee welcomes the various entitlements provided under the Act, including longer paternity leave, paternity leave benefit, parental leave for both parents, parental leave benefits, the possibility of reduction from full-time to part-time work, and other family and child support allowances and assistance. The Committee also notes the adoption of the Protection against Discrimination Act 2016 which prohibits discrimination on the basis of a number of specified grounds and on the basis of "any other personal circumstance", and which covers all areas of social life, including employment. It further notes that explanatory information about the 2016 Act on the official website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, indicates that an example of "any other personal circumstance" could be "parental or other family status". The Committee notes the adoption on 20 June 2019 of EU Directive 2019/1158 on work–life balance for parents and carers, repealing Council Directive 2010/18/EU on parental leave. ***Noting the recent adoption of EU Directive 2019/1158 on work–life balance, the Committee asks the Government to provide information on: (i) the steps taken to transpose it into its national legislation; (ii) the manner in which the Parental Protection and Family Benefits Act of 2014, as amended, has been implemented in practice by both men and women taking up the various entitlements provided under the Act; (iii) the impact of this Act on any increase in the use of these measures by men; and (iv) the manner in which the Protection against Discrimination Act 2016 has been implemented to promote application of the Convention with respect to non-discrimination in employment of persons with family responsibilities, including any action taken under the office of the Advocate of the Principle of Equality***.

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

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

Spain

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1967)

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the observations of the Spanish Confederation of Employers Organizations (CEOE) transmitted with the Government's report. The Committee also notes the Government's reply.

Article 1(1)(a) of the Convention. Discrimination based on race, colour, religion and national extraction. The Committee notes the Government's indication in its report, in response to the Committee's request for information regarding the evolution of discrimination in employment and occupation based on race, colour, religion and national extraction, that: (1) the Council for the Elimination of Racial and Ethnic Discrimination has concluded its 2020 Study of the perception of discrimination, which finds employment to be one of the areas in which there is the most discrimination on grounds of racial or ethnic origin, with the non-Mediterranean African population group the most affected, followed by persons of African descent and those from the Maghreb; (2) according to the study, the most common discriminatory situations concern the assignment of worse timetables and harder tasks, lower wages for the same work, refusal to issue an employment contract and the obligation to perform tasks not covered by the contract; and (3) according to the "Approach to the African and Afro-descendent population in Spain: Identity and access to rights", a study conducted in 2021, 24 per cent of persons surveyed work in low-skilled employment, 44 per cent in mid-level skilled employment, irrespective of their training level, while 95 per cent consider that they have at present less chance of acceding to positions of responsibility, and 94 per cent of finding a job. The Committee also notes that the Government emphasizes, with respect to the collection of statistics, that data on belonging to a group based on race, ethnicity, sex, religion or other circumstances, are protected under Spanish law and are therefore not reflected in the statistics. However, the Government indicates that the General Directorate for Equality of Treatment and Racial and Ethnic Diversity (DGITYDER) is in dialogue with various actors concerned regarding the suitability of collecting data on ethnic origin where the objective is to eliminate racial discrimination.

The Committee welcomes the reactivation since 2018 of the Council for the Elimination of Racial and Ethnic Discrimination. In this regard, the Government indicates that the Council's care service for victims of racial or ethnic discrimination continues to provide support in specific cases of discrimination (65 cases in respect of employment in 2019), as well as undertaking information and awareness-raising activities and that, in view of the low level of complaints, measures will be taken to promote and give visibility to the service, for example by filing legal action and, in certain cases, representing victims. The Committee also notes the Government's reference to the II Strategic Plan for Citizenship and Integration (PECI) 2011–14 and that the CEOE, in its observations, considers it primordial to progress in formulating a new plan. Regarding the assistance measures taken for migrant workers, including migrant domestic workers, the Committee refers to its earlier comments made in relation to the application of the Migrant Workers' Convention (Revised), 1949 (No. 97).

With regard to the measures adopted in respect of the Gypsy population, the Committee also notes that the Government refers to the 2018 Progress Report on the National Strategy for the social inclusion of the Gypsy population 2012–20, according to which approximately 32.2 million euros has been invested in action and measures aimed at the Gypsy population, the largest proportion of which (39.04 per cent) is in the field of employment, and principally for the improvement of access to employment and the reduction precarious work. Nevertheless, the Committee notes the Government's indication of the need to intervene more effectively, given that the 2019 Comparative study on the situation of the Gypsy community carried out by *Fundación Secretariado Gitano* (Roma Foundation) shows that while the Gypsy population's participation rate in paid work fulfilled the objectives of the Strategy, the objectives for the employment and unemployment rates were not met, and the rate of

temporary employment remained at 68 per cent. In this regard, the Committee also notes, from the Government's web page, that a final evaluation of the 2012–20 strategy was begun in December 2020, and that the next national strategy is being prepared for 2021–30, in line with the guidelines issued under the European Union Roma strategic framework for equality, inclusion and participation 2020–30. The Committee notes the measures taken and the cross-cutting and substantive efforts made by the Government. ***The Committee trusts that the Government will continue its efforts to the extent possible to promote equality in employment and occupation effectively of the Gypsy population, taking account of the evaluations and results of previous measures. The Committee requests the Government to provide information on: (i) progress made in the adoption of the National Strategy for the Social Inclusion of the Gypsy Population 2021–30; (ii) the results of the II Strategic Plan for Citizenship and Integration (PECI) 2011–14 and and follow-up measures; (iii) the action taken by the Council for the Elimination of Racial and Ethnic Discrimination; and (iv) the evolution of discrimination in employment and occupation based on race, colour, religion and national extraction, including the possible integration of related data in national statistics.***

General observation of 2018. In respect of the issues raised above, and more generally, the Committee wishes to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction, adopted in 2018.

Article 2. Equality of opportunity for men and women. Equality plans and measures. Legislative developments. The Committee notes with ***satisfaction*** that in response to its request to continue adopting proactive measures, in collaboration with the social partners, with a view to increasing the number of enterprises which adopt equality plans, the Government reports the adoption of Royal Decree-Law No. 6/2019 of 1 March on urgent measures to ensure equality of opportunity and treatment for women and men in employment and occupation, amending section 45.2 of Basic Act 3/2007 of 22 March on effective equality for women and men, and making it obligatory for enterprises of more than 50 workers to adopt an equality plan (an obligation previously applicable to enterprises of more than 250 workers), and also requiring the preparation of the plan following prior negotiated analysis and its entry in the registry of equality plans in enterprises. The Government adds that the application of this obligation is gradual and allows enterprises different timeframes according to the size of the payroll. The Committee notes the implementation of these obligations through Royal Decree No. 901/2020 of 13 October regulating equality plans and their registration, and amending Royal Decree No. 713/2010 of 28 May on the registration and deposit of collective labour agreements, which addresses: (1) the procedure for negotiating equality plans, including the establishment of the negotiating commission and the negotiating procedure; (2) the content of the prior negotiated analysis covering selection and recruitment, occupational classification, training, career development, terms and conditions of employment (including a pay audit), co-responsibility in the exercise of personal, family and work life rights, under-representation of women, remuneration and the prevention of sexual and gender-based harassment; (3) the minimum content of the equality plan (qualitative and quantitative objectives, specific means and resources, implementation programme) and the plan's statistical sheet; and (4) the period of validity, follow-up, evaluation and revision of the plan. In this regard, the Committee notes the CEOE's observation that an appeal against section 5 of Royal Decree No. 901/2020 has been lodged with the Supreme Court, on the grounds that it imposes undue restrictions on the legal rights of those entitled to negotiate equality plans.

The Committee also notes that the Institute for Women (IMS) has strengthened its free counselling service to assist in the design, execution and implementation of equality plans, offers subsidies for the elaboration and implementation of plans by enterprises that are not obliged to adopt them (that is, since 2019, enterprises with between 30 to 49 workers) and has published information material on the elaboration and registration of equality plans. The Committee also observes that Royal Decree-Law No. 6/2019 amends the Royal Legislative Decree 5/2000, of 4 August approving the consolidated text of the Act on social offences and penalties to include a definition of a serious offender

in case of failure by enterprises to comply with their obligations in respect of equality plans and measures. The Government also refers to Act No. 11/2018 of 28 December amending the Commercial Code, the consolidated text of the Corporate Enterprises Act, approved by Royal Legislative Decree No. 1/2010 of 2 July, and Act No. 22/2015 of 20 July, on the auditing of accounts in respect of non-financial information and diversity, which provides that: (1) the enterprise's non-financial information shall include the measures adopted to promote the principle of equality of opportunity and treatment between women and men, non-discrimination and inclusion of persons with disabilities and universal accessibility; and (2) that the annual corporate governance report shall describe the diversity policy applied in the executive board, at management level and in the specialized commissions established.

The Committee further notes the information provided by the Government on the "Equality in the Enterprise" label, which was awarded to 57 more entities between June 2017 and May 2021, and on the various activities organized by the network of enterprises that have received the label in exchanging and sharing good practices. The Government also emphasizes the adoption in December 2020 of the III Plan for Gender Equality in the General State Administration (AGE) and in its associated or dependent public bodies, which sets out six types of cross-cutting measures: instrumental measures for organizational transformation; awareness-raising, training and skills acquisition; terms and conditions of employment and career development; responsibility-sharing and personal, family and work life reconciliation; prevention of violence against women; intersectionality and special protection situations.

The Committee requests the Government to provide information on the implementation of Royal Decree-Law No. 6/2019 and Act No. 11/2018, including: (i) the number and most common contents of registered equality plans, as well as the number of violations observed and penalties imposed; (ii) the result of the appeal lodged with the Supreme Court against section 5 of Royal Decree No. 901/2020; and (iii) the equality and diversity measures reported in enterprises. The Committee also requests the Government to provide information on the measures adopted under the III Plan for Gender Equality in the General State Administration (AGE) and in associated or dependent public bodies.

In respect of provisions on equal remuneration and personal, family and work life reconciliation, the Committee refers to its comments on the application of the Equal Remuneration Convention, 1951 (No. 100), and on the Workers with Family Responsibilities Convention, 1981 (No. 156).

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

Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1985)

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the observations of the Spanish Confederation of Employers Organizations (CEOE) transmitted with the Government's report. The Committee also notes the Government's responses.

Article 4(b) of the Convention. Conditions of employment and social security. The Committee notes that the Government reports the adoption of Royal Decree No. 3/2021 of 2 February adopting measures to reduce the gender gap and other matters in the economic and social security fields, which replaces the "maternity supplement" (considered to be discriminatory by the European Court of Justice decision of 12 December 2019) by the "contributory pension supplement to reduce the gender gap". The Government reports that the objective is to correct a pension situation that was structurally unjust in the case of women who assumed childcare responsibilities, and also to reduce the pension gender gap to less than 5 per cent. The number of children is taken as the criterion for the supplement, which is available to mothers and to fathers who can show that the assumption of childcare responsibilities at the birth or adoption of a child negatively impacted their regular contributions. The Committee observes the CCOO's indication that there is a persistent gender gap in the social security system, partly due to the role of women as caregivers in the home and family environment, and that while work-related and social security measures for the protection of workers have contributed to narrowing the gap, more far-reaching measures should be taken to ensure effective equality at all levels of society. The Committee

also notes the detailed information provided by the Government on the increased amounts of the childcare allowances for dependent children, for children with disabilities, for children in large or single-parent families, for mothers with disabilities, and for dependent adult children with disabilities, and the revision of the requirements for access to the allowances. The Committee further notes the Government's indication that the creation of a "minimum subsistence income" benefit has been approved by Royal Decree No. 20/2020 of 29 May. The Government explains that entitlement to this benefit is incompatible with entitlement to the childcare allowances provided for persons with children without disabilities or with a disability of less than 33 per cent, and that the provision of the latter benefit ceased as of June 2020, as it is now covered by the minimum subsistence benefit. The Government also refers, in respect of financial benefits for children suffering from cancer or other serious diseases, to the wider range of diseases covered by this benefit, as well as a more flexible approach to the requirement for continuous review. ***The Committee takes due note of all the information provided and trusts that the application of the contributory pensions supplement and the minimum subsistence income will have the desired effect in reducing the gender gap. The Committee requests the Government to provide information on any developments in this regard and on the number of persons, disaggregated by sex and family situation, who are in receipt of these benefits.***

The Committee is raising other matters in a request made directly to the Government.

Sri Lanka

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. Work of equal value. Legislation. The Committee previously expressed concern at the absence of legislation providing for equal remuneration for men and women for work of equal value, as well as at the limitations of the principle of equal wages for the "same" or "substantially the same" work, arising out of wage ordinances and collective agreements. The Committee notes the Government's repeated indication, in its report, that while no legislative provision explicitly prohibits discrimination in employment, wage ordinances and collective agreements do not contain discriminatory provisions in determining wages. While noting that the Policy Framework and National Plan of Action to address Sexual and Gender-based Violence for 2016–20, elaborated with the assistance of the United Nations Development Programme (UNDP), set as an objective to ensure equal remuneration for "similar work", the Committee again draws the Government's attention to the fact that the concept of "work of equal value", which lies at the heart of the fundamental right of equal remuneration for men and women for equal value, goes beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, but which is nevertheless of equal value. It further recalls that when collective agreements or wage ordinances do not explicitly provide for different remuneration rates for men and women or when they only prohibit sex-based wage discrimination generally, this will not normally be sufficient to give effect to the Convention, as it does not fully capture the concept of "work of equal value" set out in the Convention (see 2012 General Survey on the fundamental Conventions, paragraphs 673 and 676). ***Regretting that unlike the previous National Action Plan for the Protection and Promotion of Human Rights, the new Human Rights Action Plan for 2017–21 does not include "equal pay for work of equal value" as an explicit objective anymore, the Committee again urges the Government to take all the necessary steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and to provide information on any concrete steps taken in this regard.***

Articles 1 and 2. Assessment of the gender pay gap. Noting that the Government only refers to the statistical information forwarded, the Committee draws the Government's attention to the fact that the information provided does not enable the Committee to assess the application of the principle of the Convention in practice. The Committee notes that women represented only 37.3 per cent of the economically active population in 2017 (against 62.7 per cent for men) and that despite steady economic growth, the employment rate of women remained low at 36 per cent in 2017 (against 41 per cent in 2010), with more than one third of working women employed in the informal economy, characterized by low wages. It notes

with ***concern*** that, according to the "Survey on hours actually worked and average earnings" published by the Statistics Division of the Department of Labour in 2016, the average earnings of women are lower than those of men in almost all economic sectors, even when men and women workers are employed in the same occupational category. The Committee further notes that, in its last concluding observations, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) expressed concern about the historically low participation of women in the labour market, and that women tend to be employed in low-paying jobs in tea plantations and the garment sector. It recommended that the Government take steps to effectively address sociocultural barriers that may have a negative impact on women's opportunities for employment, particularly in sectors with high wage levels (E/C.12/LKA/CO/5, 4 August 2017, paragraphs 25 and 26). The Committee also notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the wide gender wage gap, the limited implementation and monitoring of the principle of equal pay for work of equal value and the concentration of women in the informal employment sector (CEDAW/C/LKA/CO/8, 3 March 2017, paragraph 32). ***Taking into consideration the wide gender pay gap and the persistent gender segregation in the labour market, the Committee requests the Government to strengthen its efforts to take more proactive measures, including with employers and workers' organizations, to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value, as enshrined in the Convention. It requests the Government to provide information on the specific measures taken to address the gender remuneration gap by identifying and addressing the underlying causes of pay differentials such as vertical and horizontal job segregation and gender stereotypes, covering both the formal and informal economy, and by promoting women's access to a wider range of jobs with career prospects and higher pay. Recalling that collecting, analysing and disseminating information is important in identifying and addressing inequality in remuneration, it requests the Government to provide updated statistical information on the average level of earnings of men and women, disaggregated by economic activity and occupation, both in the private and public sectors, as well as in the informal economy.***

Article 2. Minimum wages. Wages boards. Referring to its previous comments, the Committee notes the Government's statement that sex-specific terminology is no longer used in the wages board's decisions. Regarding the Government's earlier request for ILO technical assistance for the simplification of the wages boards system, the Committee notes that, in light of the future adoption of the Single Employment Law to replace the Wages Board Ordinance, the Shop and Office Employees Act, the Employment of Women, Young Persons and Children Act and the Maternity Benefits Ordinance – without prejudice to the labour rights guaranteed at present by labour laws – this request is now redundant. The Committee welcomes the adoption of the National Minimum Wage Act No. 3 of 2016 which sets a national minimum wage, but notes that, in its concluding observations, the CESCR expressed concern about the fact that the Act does not cover workers in the informal economy, those not unionized, those on daily wages (for example plantation workers) and domestic workers (E/C.12/LKA/CO/5, 4 August 2017, paragraph 31). ***Recalling that the setting of minimum wages can make an important contribution to the application of the principle of the Convention which applies to all workers, in all sectors, both in the formal and informal economy, and noting that according to the National Action Plan for the Protection and Promotion of Human Rights 2017–21 the Government will consider the ratification of the Domestic Workers Convention, 2011 (No. 189), the Committee requests the Government to indicate how equal remuneration for men and women for work of equal value is also ensured for workers who are not covered by the National Minimum Wage Act, including workers in the informal economy, those not unionized, those on daily wages such as plantation workers, as well as domestic workers, which are sectors characterized by a high proportion of women and particularly low wages. It also requests the Government to provide information on the progress made in simplifying the wages boards system, as well as on the measures taken to ensure that the rates of wages fixed by the wages boards are based on objective criteria free from gender bias (such as qualifications, effort, responsibilities and conditions of work), so that work predominantly done by women, as well as skills considered to be "female" (such as, for example, manual dexterity and those required in the caring professions) are not undervalued or even overlooked, compared to work predominantly done by men or skills traditionally considered to be "male" skills (such as heavy lifting).***

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1998)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. Legislative protection against discrimination. For a number of years, the Committee has been urging the Government to introduce provisions into its national legislation ensuring that all men and women, citizens and non-citizens, are effectively protected from discrimination in all aspects of employment and occupation on all the grounds enumerated in *Article 1(1)(a)* of the Convention. It previously drew the Government's attention to the fact that articles 12, 14 and 17 of the Constitution addressing discrimination appear to cover citizens only and do not prohibit discrimination on the grounds of colour or national extraction. The Committee welcomes the Government's statement, in its report, that it will discuss this matter with all relevant stakeholders exploring the possibility of amending the existing labour legislation or adopting new legislation to address discrimination in employment. The Committee notes that the National Action Plan for the Protection and Promotion of Human Rights for 2017–21 sets, as an explicit objective, the enactment legislation to guarantee the right to non-discrimination on any prohibited ground, including sex, race, ethnicity, religion, caste, place of origin, gender identity, disability or any other status in all workplaces, including in the private sector. However it draws the Government's attention to the fact that the Action Plan does not refer to the grounds of "colour", "political opinion", "national extraction" and "social origin" which are enumerated in *Article 1(1)(a)*. The Committee notes that, in their concluding observations, several United Nations treaty bodies (Committee on Economic, Social and Cultural Rights; Committee on the Elimination of Discrimination against Women; Committee on Migrant Workers; Committee on the Elimination of Racial Discrimination) also expressed concern about the national legislation which does not prohibit discrimination on the grounds of colour or national extraction and does not specifically prohibits both direct and indirect forms of discrimination (E/C.12/LKA/CO/5, 4 August 2017, paragraph 13; CEDAW/C/LKA/CO/8, 3 March 2017, paragraph 10; CMW/C/LKA/CO/2, 11 October 2016, paragraph 26; and CERD/C/LKA/CO/10-17, 6 October 2016, paragraph 8). In that regard, the Committee recalls that clear and comprehensive definitions of what constitute discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur (see the 2012 General Survey on the fundamental Conventions, paragraph 743). ***The Committee urges the Government to take all the necessary steps to introduce specific legislative provisions in order to ensure that all men and women, citizens and non-citizens, are effectively protected from both direct and indirect discrimination in all aspects of employment and occupation and on all the grounds enumerated in the Convention, including colour and national extraction. It requests the Government to provide information on any progress made in this regard. The Committee again requests the Government to provide information on the number and nature of employment discrimination cases that have been handled by the Supreme Court pursuant to articles 12(1) and 17 of the Constitution, and their outcome, as well as copies of any relevant judicial decisions.***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. While welcoming the voluntary Code of Conduct and Guidelines to Prevent and Address Sexual Harassment in Workplaces developed in 2013 by the Employers' Federation of Ceylon, in collaboration with the ILO, the Committee previously raised concerns regarding the absence of effective protection of workers against sexual harassment in employment and occupation. It notes the Government's indication that articles 11 and 12 of the Constitution, on freedom from torture and right to equality respectively, can serve as a legal basis for victims of sexual harassment, and that courts have considered demands for sexual favours for job promotion as a "bribe" punishable under the Bribery Act, 1980. While noting that these general provisions do not explicitly refer to "sexual harassment", the Committee notes that the Government again refers to section 345 of the Penal Code covering sexual harassment, without providing the requested information in order to clarify the scope of the provision regarding the interpretation of the expression "a person in authority". The Committee welcomes the inclusion in the National Action Plan for the Protection and Promotion of Human Rights for 2017–21 of proposed legislation to specifically deal with sexual harassment in the workplace both in the public and private sectors. The Committee also welcomes the plan to take steps to ensure that employers both in the public and private sectors introduce mandatory guidelines and appoint committees to respond to sexual harassment, in consultation with employers' and workers' organizations. It notes that the Policy Framework and National Plan of Action to address Sexual and Gender-based Violence for 2016–20, developed with the

assistance of the United Nations Development Programme (UNDP), which highlights that women working in Export Processing Zones (EPZs) are particularly exposed to sexual harassment, also provides for the promotion of a policy to address sexual harassment in workplaces and implementing mechanisms to address sexual harassment in the private sector. However, the Committee notes that in its concluding observations the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at the high levels of gender-based violence against women, with cases of violence against women being underreported due to a lack of adequate legislation, women's limited access to justice for reasons including fear of reprisals, limited trust in the police and judiciary, extreme delays in the investigation and adjudication of such cases, arbitrary outcomes, and very low conviction rates. The CEDAW also expressed concern at the lack of disaggregated data on sexual harassment in the workplace and on measures taken to address such cases (CEDAW/C/LKA/CO8, 3 March 2017, paragraphs 22 and 32). ***Referring to the National Action Plan for the Protection and Promotion of Human Rights for 2017–21, the Committee urges the Government to take the necessary steps to include specific legislative provisions that clearly define and prohibit all forms of sexual harassment in the workplace, both quid pro quo and hostile environment harassment, and requests the Government to provide information on any progress made in this regard. It again requests the Government to indicate whether section 345 of the Penal Code applies only to sexual harassment committed by a person with authority or also by a co-worker, a client or a supplier, of the enterprise. It requests the Government to provide information on any steps taken to ensure that employers both in the public and private sectors introduce mandatory guidelines and appoint committees to respond to sexual harassment, in consultation with employers' and workers' organizations, including within the framework of the National Action Plan for the Protection and Promotion of Human Rights for 2017–21 and the National Plan of Action to address Sexual and Gender-based Violence for 2016–20. The Committee requests the Government to provide information on the measures taken to promote women's access to justice, including by ensuring that they have a better knowledge of their rights and of the legal procedures available, as well as the number of complaints concerning sexual harassment in the workplace lodged, penalties imposed and compensation awarded, including in the context of unjustified termination.***

Article 2. Equality of opportunity and treatment between men and women. Referring to its previous comments, the Committee notes the Government's statement that the Women's Rights Bill was renamed Women's Commission Bill and the draft bill was prepared in 2017 and awaiting Attorney General's certificate on constitutionality. The Committee takes note of the Local Authorities Elections (Amendment) Act No. 1 of 2016 which includes a 25 per cent quota for women in local public bodies, but notes that, in its concluding observations, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) indicated that despite this new legislation, the participation of women in political and public life and in decision-making remains very low (E/C.12/LKA/CO/5, 4 August 2017, paragraph 23). The Committee notes that, in 2017, women represented only 37.3 per cent of the economically active population (against 62.7 per cent for men) and that despite steady economic growth, the employment rate of women remained low at 36 per cent (against 41 per cent in 2010). It notes, from the 2016 Annual Employment Survey that there is both vertical and horizontal occupational gender segregation, with women being concentrated in the agriculture, manufacturing and education sectors, as well as in elementary occupations (28.5 per cent) and clerical support (13 per cent), while only few women are employed in managerial and senior official positions (3.3 per cent) or as technical and associate professionals (4.5 per cent). It notes in particular that, in its last concluding observations, the United Nations Committee on Migrant Workers (CMW) highlighted that women in Sri Lanka continue to be compelled to become domestic migrant workers owing to the lack of equal access to employment (CMW/C/LKA/CO/2, 11 October 2016, paragraph 52). The Committee welcomes the measures included in the National Action Plan for the Protection and Promotion of Human Rights for 2017–21 which aims to increase the participation of women in employment both in the public and private sectors, including by training women for higher skilled occupations in the formal and non-traditional areas, as well as closing the gender gap in the formal sector by providing childcare facilities, encouraging more flexible work arrangements and promoting men's roles and responsibilities in childcare and family duties. ***The Committee requests the Government to provide detailed information on any policy and measures adopted, in the framework of the National Action Plan for the Protection and Promotion of Human Rights for 2017–21 or otherwise, to enhance women's access to employment and to a wider range of jobs and higher level positions, including through measures aimed at combating stereotypes regarding women's capabilities and role in the society and better reconciling work and family responsibilities. The Committee requests the***

Government to provide information on the status of the adoption of the Women's Commission Bill, as well as a copy of the new legislation once adopted. It requests the Government to provide updated statistical information on the participation of men and women in education, training and employment, both in the public and private sectors, including in the informal economy, disaggregated by occupational categories and positions, as well as on the number of women in Sri Lanka employed as domestic migrant workers (including domestic migrant workers).

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

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

Sweden

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1962)

Article 1(1) of the Convention. Prohibited grounds of discrimination. Legislation. The Committee previously noted that the Discrimination Act (2008:567) does not include "political opinion" and "social origin" as prohibited grounds of discrimination. Welcoming the inclusion of the ground of "transgender identity or expression" in the national hate crime legislation on 1 July 2018, the Committee notes with ***regret*** that the grounds of "political opinion" and "social origin" are still not included in the national legislation. In this regard, the Committee recalls that the Government referred in its previous report to a possible investigation to establish a comprehensive ban on discrimination with an "open list" of prohibited grounds. The Committee notes the Government's statement in its 2017 report that there are currently no plans to review the possibility of having an "open list" of prohibited grounds of discrimination in the Discrimination Act. The Committee wishes to recall that, when legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention (General Survey on the fundamental Conventions, 2012, paragraph 853). ***The Committee therefore asks the Government to take the necessary steps to ensure that the legislation includes an explicit prohibition of discrimination on at least all the grounds enumerated in Article 1(1)(a) of the Convention, in particular "political opinion" and "social origin". It asks the Government to provide information on any progress made to that end. In the meantime, the Committee asks the Government to provide information on the steps taken to ensure protection against discrimination in employment and occupation on the grounds of "political opinion" and "social origin" in practice, as well as any relevant administrative or judicial decisions handed down in this respect.***

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

Switzerland

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Articles 1 and 2 of the Convention. Effective protection of workers against discrimination in employment and occupation. Legislation, national policy and other measures. For many years, the Committee has been drawing the Government's attention to the fact that the legal measures in force are inadequate to ensure the effective protection of workers against discrimination on all of the grounds enumerated in Article 1(1)(a) of the Convention, at all stages of employment, including occupational training, recruitment and terms and conditions of employment, and to enable them to assert their rights in this respect. With regard to discrimination based on sex, the Committee recalls that the Federal Act of 24 March 1995 on equality between women and men explicitly prohibits "discrimination against workers on grounds of sex, either directly or indirectly, in particular on the basis of their civil status,

their family situation or, in the case of women, of pregnancy" (section 3(1)). In this regard, the Committee notes with ***interest*** that the Government refers in its report to the adoption on 28 April 2021 of the Equality Strategy 2030, a national gender equality strategy which focuses on combating discrimination, promoting equality at work, improving the work/life balance and prevention of violence.

Regarding racial discrimination, the Committee recalls that in its previous report the Government recognized that, in so far as the constitutional provisions are not directly applicable to relations between individuals and that the penal provision (section 261bis of the Penal Code) is not often applicable in the field of employment, victims have to avail themselves of the general provisions of the Civil Code or of the Code of Obligations, including general principles such as good faith or the invalidation of the contract. The Committee recalls that the provisions of the Convention, even where prevailing over national law, may not be sufficient in themselves to provide effective legal protection from discrimination to individual workers and that, where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention (General Survey on the fundamental Conventions, 2012, paragraphs 851 and 853).

In order to ensure the effective protection of workers against discrimination in employment and occupation and to enable them to assert their rights, the Committee requests the Government to take the measures necessary to establish, in addition to the Federal Act of 1995 on equality between women and men, an effective legal framework adapted to the world of work that: (i) includes a definition and a prohibition of direct and indirect discrimination; (ii) covers at least all the grounds other than sex enumerated in Article 1(1)(a) of the Convention, that is colour, race, religion, political opinion, national extraction and social origin; (iii) applies to all stages of employment and occupation, including recruitment. The Committee requests the Government to provide information on any other measure taken or envisaged to prevent and combat discrimination on these grounds in practice, as well as on any measure adopted under the Equality Strategy 2030 to combat gender discrimination in employment and occupation. It also requests the Government to provide information on the access to justice of victims of discrimination in these fields, on the legal basis used and the results obtained through the courts (penalties imposed and compensation granted).

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

Syrian Arab Republic

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the complexity of the situation prevailing on the ground and the armed conflict in the country.

Articles 1 and 2 of the Convention. Legislative developments. Work of equal value. The Committee previously noted that section 75(a) of the Labour Code of 2010 provides for the principle of equal remuneration for work of equal value as enshrined in the Convention. It notes however that section 75(b) defines "work of equal value" as "work that requires equal scientific qualifications and professional skills, as attested by a work experience certificate". The Committee points out that such a definition restricts the full application of the principle as set out in the Convention. The Committee recalls that the concept of "work for equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. This concept is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. Moreover, the Committee recalls that the principle has been applied to compare the remuneration received by men and women engaged in different occupations, such as wardens in sheltered accommodation for the elderly

(predominantly women) and security guards in office premises (predominantly men); or school meal supervisors (predominantly women) and garden and park supervisors (predominantly men) (2012 General Survey on the fundamental Conventions, paragraphs 673 and 675). ***In light of the above, the Committee asks the Government to take the necessary measures to amend section 75(b) of the Labour Code in order to ensure equal remuneration for men and women not only in situations in which they perform the same work, but also in situations in which they carry out work which is different but nevertheless of equal value.***

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

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

Tajikistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***regret*** that the Government's report once again contains no information in response to a number of its previous comments. The Committee wishes to reiterate that without the necessary information, it is not in a position to assess the effective implementation of the Convention, including any progress achieved since its ratification. ***The Committee hopes that the next report will contain full information on the issues raised below.***

Articles 1 and 2 of the Convention. Gender wage gap. Private sector. In its previous comments, the Committee noted the persistence of both the gender wage gap and occupational gender segregation. It also noted that agricultural workers were still paid the lowest wage in the economy (367.59 Tajikistani Somoni (TJS) for men and TJS211.34 for women, approximately US$39 and $22 respectively) and that women were concentrated in the informal economy and in low-paid jobs. The Committee therefore requested that the Government step up its efforts to address the gender wage gap, particularly in the agricultural sector, and that it provide information on the measures taken in this regard. It also requested that the Government provide information on the measures taken to improve access of women to a wider range of job opportunities at all levels to address the occupational gender segregation. The Committee notes, from the Government's report, the adoption of a national strategy to enhance the role of women and girls 2011–20 and a state programme on the education, selection and appointment of managerial positions in the Republic of Tajikistan from among capable women and girls 2007–16. With regard to the fact that workers with the lowest paid jobs are found in the agricultural sector, the Government indicates that trade unions intend to make proposals to amend the General Agreement for the period 2018–20. The Government also indicates, in its report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), that as a result of the state programme, in 2017, 1,002 women in need of special social protection were provided with employment and that 528 entrepreneurial initiatives from women received financial assistance. Further, the Committee notes, from the Government's sixth periodic report submitted under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the establishment of presidential grants to support and develop women's entrepreneurial activities in 2016–20, the Plan of Action of the National Strategy on promoting the role of women 2015–20 and the National Development Strategy of the Republic of Tajikistan for the period up to 2030, which includes a special section addressing existing problems of inequality and discrimination, particularly for women in rural areas, and ways of resolving them (CEDAW/C/TJK/6, 2 November 2017, paragraph 136). ***The Committee requests the Government to provide detailed information on the measures taken in the framework of the abovementioned policies to improve the access of women, especially women in rural areas, to job opportunities at all levels, including as managers of farms, and on the impact of such measures. The Committee further requests the Government to pursue its efforts to address the gender wage gap, particularly in the agricultural sector, and to provide information on the measures taken in this regard and the results obtained with regard to achieving pay equity. Finally, noting the absence of information provided in this regard, the Committee once again requests the Government to provide detailed and up-to-date statistics on wages of women and men, including sex disaggregated data by industry and occupational category.***

Civil service. In the absence of any information provided in this regard, the Committee once again requests the Government to indicate how it ensures equal remuneration for men and women for work of equal value in the civil service in practice and to provide statistical information disaggregated by sex on the distribution of men and women in the various occupations and grades in the civil service, and their corresponding earnings.

Article 2. Legislation. In its previous comments, the Committee asked the Government to clarify whether section 102 of the Labour Code and section 13 of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005, both provided for equal pay for "work of equal *value*" or for "equal work". The Committee takes due note that the wording of section 140 of the new Labour Code 2017 and section 13 of the above-mentioned Framework Law of 2005 both guarantee equal remuneration for work of equal value. Noting however that, once again, the report is silent on the application of these provisions in practice, the Committee stresses that the continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations take measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 669). ***Consequently, the Committee reiterates its request to the Government that it provide information on the practical application of section 140 of the Labour Code 2017 and section 13 of Framework Law No. 89 of 1 March 2005.***

Article 3. Wage determination. The Committee previously noted the adoption of Government Decree No. 98 of 5 March 2008, to approve the concept of wage reforms in the Republic of Tajikistan, which provides, among others, for mechanisms of state regulation of wage determination. In this context, it requested the Government to provide information on the measures taken to ensure that the principle of equal remuneration for men and women for work of equal value is being taken into account. The Committee notes that the Government has not provided any information in this regard. ***The Committee therefore once again requests the Government to provide information on the measures taken to ensure that the principle of equal remuneration for men and women for work of equal value is being taken into account in the context of state regulation of wage determination.***

Article 4. Collective agreements. The Committee previously requested the Government to provide examples of collective agreements covering different sectors, to indicate how these agreements promote the principle of equal pay for work of equal value, and to indicate the percentage of the workforce covered by collective agreements. The Committee takes note of the Government's indication that there are 20 sectorial trade union committees covering all sectors of employment. The Government also indicates that trade union committees work with employers on basic wage agreements and collective agreements. While taking due note of the information provided, the Committee notes that the Government does not indicate how collective agreements promote the principle of the Convention. ***The Committee therefore once again requests the Government to provide examples of collective agreements covering different sectors and to indicate how these agreements promote the principle of equal remuneration for men and women for work of equal value. It also requests the Government to indicate the percentage of the workforce covered by collective agreements, disaggregated by sex.***

Enforcement. The Committee previously noted that a Coordinating Council on Gender Issues has been established in the Ministry of Labour and Social Protection and the State Labour Inspectorate to monitor discrimination against women in the labour market and requested the Government to provide information on its activities regarding equal remuneration for men and women. The Committee also requested the Government to provide information on cases of violations of the principle of equal remuneration dealt by the labour inspectorate or the courts. The Committee notes the Government's indication that no complaints regarding remuneration have been recorded. ***The Committee once again requests the Government to provide information on the activities of the Coordinating Council on Gender Issues to monitor sex-based discrimination regarding remuneration. With regard to the lack of complaints, the Committee refers the Government to its comments under Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and requests the Government to indicate the measures taken or envisaged to ensure that the principle of the Convention is enforced by the courts and the labour inspectorate. Once again, the Committee requests the Government to provide information on the number of violations of section 140 of the Labour Code dealt with by the Ministry of Labour and Social Protection and the State***

Labour Inspectorate, and indicate whether the courts have dealt with any cases concerning the principle of equal remuneration for men and women for work of equal value.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC), which were received on 11 September 2019.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

Article 2 of the Convention. Equality of opportunity and treatment between men and women. The Committee notes the discussion in the Committee on the Application of Standards (CAS) of the International Labour Conference, at its 108th Session (June 2019), on the application of the Convention, and the conclusions adopted. The conclusions of the CAS called upon the Government to: (1) report on the concrete measures taken to ensure that direct and indirect discrimination on all grounds is prohibited in law and in practice; and (2) provide without delay information on the implementation in practice of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005 (Law on State Guarantees of 2005).

The Committee welcomes the detailed information provided by the Government in its report regarding the legislative framework and the policies and programmes developed and implemented with respect to equality of opportunity and treatment between men and women. The Committee notes, in particular, that the Government acknowledges that gender equality cannot be achieved if laws and policies are not implemented in practice and indirect discrimination persists. The Government adds that in order to detect indirect discrimination the country's legislation in this area needs to be improved and the first priority is to amend the national legislation. It also indicates that to improve policy to ensure de facto gender equality, the National Development Strategy for 2030 provides for the following measures: (1) improving legislation in order to realize the State guarantees of creating equal opportunities for women and men; (2) developing institutional mechanisms to introduce national and international obligations to ensure gender equality and expand women's opportunities in sectoral policies; (3) activating mechanisms for the literacy and social inclusion of women, including rural women; (4) boosting the gender capacity and gender sensitivity of staff members at agencies in all branches of government; and (5) introducing gender budgeting setting in the budget process. The Committee welcomes the Government's indication that, with a view to achieving de facto gender equality, a working group on the improvement of laws and regulations to eradicate gender stereotypes, protect women's rights and prevent domestic violence has made proposals on introducing the concepts of direct and indirect discrimination, temporary measures, and compulsory gender analysis of laws. As regards the Law on State Guarantees of 2005, the Committee notes that in 2018, the Committee for Women's and Family Affairs (CWFA) monitored its implementation, by collecting and analysing data from central ministries and agencies, and selected local executive authorities. The Government further states that a report, which includes an analysis of the implementation of the law's articles, and conclusions and recommendations to improve its monitoring and implementation, was prepared in this regard.

The Committee notes from ITUC's observations that it regrets the lack of concrete information provided by the Government to the supervisory bodies, which would enable a more comprehensive assessment of the situation in the country. It further notes that ITUC emphasizes the need not only to draft

laws but also to implement specific policies to eliminate all forms of discrimination and take proactive measures to identify and address the underlying causes of discrimination and gender inequalities deeply entrenched in traditional and societal values. The Committee notes ITUC's statement that the very name of the body responsible for the implementation of the national policy to protect and ensure the rights and interests of women and their families, the "Committee for Women's and Family Affairs", raises an issue because it appears to enshrine the idea that women are the only ones who have to assume responsibilities in relation to their families. In this regard, the Committee notes the Government's indication that, with the aim of eradicating stereotypes about the roles and duties of women and men in the family and society, and to boost awareness of and ensure equal rights and opportunities for men and women, a range of measures were implemented for different sections of society and the possibilities of the mass media are widely used. More than 200 programmes on understanding the importance of ensuring equal rights and opportunities for men and women were prepared and broadcasted by the members of the CWFA. In its supplementary information, the Government also indicates that it is taking every measure to root out gender discrimination against women based on stereotyped ideas of their capabilities and role in society, which contradict the Convention and hinder women's recruitment and employment.

The Committee notes the Government's statement that expanding economic opportunities for women and their competitiveness in the labour market, and the development of their entrepreneurial activities play a key role in ensuring gender equality. In this regard, it notes the detailed information regarding measures adopted to support the development of women entrepreneurship, through the allocation of grants, access to microcredit and an inter-agency working group to support women's entrepreneurship operating under the State Committee for State Property Investment and Management. The Government also indicates that further to the adoption of concluding observations in 2018 by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW/C/TJK/CO/6, 14 November 2018, paragraph 37), it has formulated, through broad discussions with the civil society, and adopted in May 2019, a National Plan of Action to Implement the Recommendations of the CEDAW 2019–22. In this regard, the Committee notes that the CEDAW, while welcoming the measures taken to support women entrepreneurs and to regulate domestic work and work from home, expressed concern inter alia about the following: (1) the concentration of women in the informal sector and in low-paying jobs in the healthcare, education and agriculture sectors; (2) the low level of participation of women in the labour market (32.6 per cent) and the low employment rate among women (40.5 per cent), compared with men (59.5 per cent); (3) the absence of social security coverage, the shortage of preschool facilities and family responsibilities non compatible with paid work, which make women particularly prone to unemployment; (4) the adoption in 2017 of the list of occupations for which the employment of women is prohibited; and (5) the lack of access to employment for women with a reduced capacity for competitiveness, such as women with disabilities, mothers with several children, women heads of single-parent families, pregnant women and women who have been left behind by male migrants.

With respect to the employment of women in the civil service, the Committee welcomes the various steps taken by the Government. It notes the indication that, as at 1 July 2019, there were 18,835 active civil servants in total (19,119 as at 1 January 2019), including 4,432 women, which represented 23.5 per cent of civil servants (4,441 or 23.2 per cent as at 1 January 2019). In leadership positions, there were 5,676 persons representing 30.1 per cent of all civil servants and 1,044 of them were women (18.4 per cent in such positions). The Committee further notes, from the Government's additional information, that as at 1 April 2020, women represented 23.7 per cent of civil servants, and 19.1 per cent of leadership positions. With a view to promoting gender equality in the civil service, the Government adds that the Civil Service Agency (CSA) together with all State bodies is taking appropriate steps to recruit women to the civil service at all levels of public administration. The Committee notes the Government's indication that, in the first half of 2019, the CSA together with the Institute for State Administration held 24 professional training courses for civil servants, including four retraining and 20 professional development courses, which were attended by 977 persons – 236, or 24.1 per cent, of whom were women. In line with the requirements of State statistical report form No. 1-GS, "Report on the quantitative and qualitative composition of civil service", the CSA also conducts quarterly monitoring and draws up statistical reports on the number of civil servants, including women, the results of which are transmitted to the appropriate State bodies and discussed at board meetings for the necessary steps to be taken. The Government also mentions positive measures adopted to promote the employment of women in the civil service, through the implementation, since 2017, of the State Programme on the Development, Selection and Placement of Gifted Women and Girls as Leading Cadres of

Tajikistan 2017–2022; the establishment of incentives and quotas for women; and, on first appointment to the civil service, the granting of three additional steps on the grading scale, pursuant to Presidential Decree No. 869 adopted in 2017. According to the Government, as a result of implementing those measures, 36 women were recruited to various civil service positions in the first half of 2019.

Welcoming the positive developments regarding the promotion of gender equality in employment and occupation both in the private and the public sectors, the Committee asks the Government to pursue its efforts to foster equality opportunity and treatment between men and women in employment and occupation and, in particular, to take appropriate steps, including through amending legislation, to address indirect discrimination and occupational gender segregation. The Committee asks the Government to provide information on the content, conclusions and recommendations of the report prepared to analyse the implementation of the Law No. 89 on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights of 2005, as well as on any follow-up measures taken in this regard. The Committee also asks the Government to continue to provide detailed information on the situation of men and women in employment and occupation, both in the private and public sectors, as well as on the results of any positive measures taken to improve women's access to employment, and their results. Noting that the Government's report does not contain any information on any concrete measures taken, and their results, to address direct and indirect discrimination based on grounds other than sex, the Committee asks the Government to provide such information in its next report.

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

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

Thailand

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)

Articles 1(b) and 2 of the Convention. Equal remuneration for men and women for work of equal value. Legislation. In its previous observation, the Committee noted that section 53 of the Labour Protection Act of 2008, in providing only equal wages in cases where men and women perform work of the same nature, quality and quantity, did not fully reflect the principle of the Convention. It: (1) expressed the hope that the necessary steps would soon be taken to amend it in order to include the principle of equal remuneration for men and women for work of equal value explicitly; (2) requested the Government to report on the progress made in this regard; and (3) asked for information on any further activities undertaken, in cooperation with workers' and employers' organizations, to promote the principle of the Convention in the public and the private sectors. The Committee notes with ***satisfaction*** that section 53 of the Labour Protection Act was amended in 2019 (B.E. 2562/2019) so as to prescribe that an employer shall set equal rates of wage, overtime pay, holiday pay, and holiday overtime pay for men and women for "work of equal value". The Committee also notes that, in its report, the Government indicates that under the Homeworkers Protection Act (B.E. 2553/2010) informal workers are recognized as having the right to equal remuneration, irrespective of their sex. The Committee notes that section 16 of the Homeworkers Protection Act prescribes equal remuneration for work "of the same nature and quality and with the same quantity" only, which is narrower than the principle of the Convention. Concerning the activities undertaken in cooperation with the social partners to promote the principle of the Convention in the public and the private sectors, the Committee notes the information provided by the Government on various initiatives, including awareness-raising activities on good labour practices and reach-out activities for businesses. ***The Committee asks the Government to provide information on the application in practice of section 53 as amended (B.E. 2562/2019) of the Labour Protection Act, including any judicial decisions invoking this provision and any violation detected by the labour inspectors, the sanctions imposed and the remedies granted. The Committee asks the Government to adopt the necessary measures so that section 16 of the Homeworkers Protection Act (B.E. 2553/2010) is aligned in the near future to the amended section 53 of the Labour Protection Act in order to include the principle of equal remuneration for men and women for work of equal value explicitly. The Committee***

also asks the Government to continue to provide information on the activities undertaken, in cooperation with workers' and employers' organizations, to promote the principle of the Convention in the public and the private sectors and to raise awareness about it.

Articles 2 and 3. Determination of remuneration. Objective job evaluation. Public sector. In its previous observation, the Committee urged the Government to indicate the specific measures taken to ensure that job descriptions and the selection of factors for job evaluation are free from gender bias, and more particularly with regard to employees working in the public service who are not public officials. The Committee also requested the Government to provide statistical data, disaggregated by sex, on the distribution and remuneration of men and women in the various groups of the compensation schedule. The Committee notes the Government's indications that the Remuneration System Manual for Civil Servants, which has been elaborated by the Office of the Civil Service Commission, sets out the factors that must be taken into account when determining remuneration rates for civil servants. Among these factors figures the "value of the work" performed, however the criteria used to determine the value of the work performed are not indicated. The Committee recalls that in order to determine the value of work, the use of appropriate techniques for objective job evaluation, comparing factors such as skills, effort, responsibilities and working conditions, is required (see 2012 General Survey on the fundamental Conventions, paragraph 675). ***The Committee requests the Government to indicate how the value of the work performed by men and women is determined for the purpose of setting remuneration rates in the public sector and how it is ensured that there is no gender bias in the process, so as to comply fully with the principle of the Convention. The Committee also reiterates its request for statistical data, disaggregated by sex, on the distribution and remuneration of men and women in the various groups of the compensation schedule.***

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

Togo

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1983)

Article 1(a) of the Convention. Protection of workers against discrimination. Legislation. Public service. The Committee recalls that the Labour Code of 18 June 2021 prohibits discrimination on grounds of sex, colour, religion, ethnicity, race, political or philosophical opinion, trade union or cooperative activities, origin, including social origin, morals, legal status, national extraction, physical appearance, age, family situation, pregnancy and health, loss of autonomy or disability (section 4). In its previous comments, the Committee noted that the provisions of the Act of 21 January 2013 issuing the General Public Service Regulations, which prohibit discrimination (section 45), do not cover all the grounds of discrimination set out in the Convention, including race, colour, national extraction and social origin, and that they only concern recruitment. It therefore requested the Government to envisage the possibility of amending section 45 of the General Public Service Regulations with a view to ensuring that public service personnel are fully protected from discrimination. The Committee notes with ***concern*** that the Government once again confines itself to indicating that it has taken due note of this request, without providing any details on the measures envisaged to do so. In this regard, it once again recalls that, when legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention (General Survey on the fundamental Conventions, 2012, paragraph 853). The Committee recalls that the purpose of the Convention is to protect all persons against discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction and social origin (with the possibility of extending its protection to discrimination on the basis of other grounds) and that no provision in the Convention limits its scope with regard to individuals or branches of activity. The Convention therefore applies to all sectors of activity, the public and private sectors, formal

economy and informal economy (2021 General Survey, paragraph 733). ***In light of the above, the Committee firmly hopes that the Government will take the necessary measures in the near future to amend section 45 of the Act of 21 January 2013 issuing the General Public Service Regulations so that, in line with the Convention, public service employees are fully protected from discrimination, including discrimination based on race, colour, national extraction and social origin, as well as any other grounds that it considers useful to add (particularly to bring the protection against discrimination afforded to public servants into line with the protection for workers in the private sector) and to ensure that the prohibition of discrimination covers not only recruitment, but also terms and conditions of employment in the public service.***

Discrimination on the basis of sex. Sexual harassment. The Committee notes with ***interest*** the adoption of Act No. 2021-012 of 18 June 2021 issuing the Labour Code, which amends section 40 of the Labour Code to include and explicitly prohibit – as the Committee had requested in its previous comments – both forms of sexual harassment, namely quid pro quo sexual harassment and sexual harassment resulting in an intimidating, hostile or humiliating work environment. However, the Committee notes, that contrary to its request, the reference to "misuse of authority" has not been removed, which effectively restricts the scope of application of this provision to sexual harassment committed by a hierarchical superior and does not cover harassment by a work colleague with the same status, a junior, customers of the enterprise or other persons encountered in the work context. Furthermore, the Committee once again notes that the provisions of Act No. 2015-010 of 24 November 2015 issuing the new Penal Code relating to sexual harassment (sections 399–401) only cover quid pro quo sexual harassment, or in other words harassment "aimed at obtaining favours of a sexual nature from another person against their will". ***The Committee requests the Government to amend section 40 of the Labour Code to remove any reference to the concept of a misuse of authority. It also requests the Government to provide information on any measures taken or envisaged to prevent sexual harassment in respect of employment and occupation, including through training for labour inspectors and awareness-raising campaigns for employers, workers and their respective organizations.***

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

Trinidad and Tobago

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)

Articles 1 and 2 of the Convention. Assessing and addressing the gender pay gap. The Committee previously noted the persistence of occupational gender segregation and predominant gender pay gap in favour of men. It requested the Government to provide information on the concrete measures taken and the progress made in that regard. The Committee notes the Government's indication that the draft National Policy on Gender and Development (NPGD), which contains initiatives aimed at addressing these issues, has not been adopted yet but that, in the meantime, the Cabinet has agreed to use the draft policy as an «official government policy pending its final adoption». The Committee regrets the lack of information provided by the Government on any concrete measures implemented to address occupational gender segregation or gender pay gap, pending the adoption of the NPGD. In that regard, it notes with ***concern***, from the last available statistical information forwarded by the Government, that, in 2018, women employed in the same occupational categories or industrial groups as men systematically received lower remuneration in all of them (except in "other mining and quarrying" group), with average wage differentials between men and women being estimated at 12.75 per cent. It further notes that, in 2018, the gender pay gap between men and women ranged from 8.9 per cent for technicians and associate professionals, up to 34.7 per cent for service and shop sales workers and 35.8 per cent for plant and machine operators and assemblers. The statistics concerning the average monthly income by sex and industry also show a gender pay gap in favour of men (except in transport, storage and communication), ranging from 1.3 per cent in agriculture, up to 24.5 per cent in wholesale

and retail trade, restaurants and hotels. The Committee further notes that, according to the 2020 Human Development Report from the United Nations Development Programme (UNDP), female participation in the labour market remains low at 50.1 per cent compared to 70.2 per cent for men, and the income inequality Gini coefficient (that is the measure of the deviation of the distribution of income among individuals or households within a country from a perfectly equal distribution; where a value of 0 represents absolute equality and a value of 1 (or 100 per cent) absolute inequality) was estimated at 0.323 in the 2019 index. It further notes that, as highlighted in 2021, in the context of the Universal Periodic Review (UPR), conducted under the auspice of the United Nations (UN) Human Rights Council, the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed specific concern at the wide gender wage gap and persistent occupational segregation in the labour market and specifically recommended the Government to reduce the gender wage gap by guaranteeing and enforcing the principle of equal pay for work of equal value in all sectors (A/HRC/WG.6/39/TTO/2, 26 August 2021, paragraphs 35 and 36 and CEDAW/C/TTO/CO/4-7, 25 July 2016, paragraphs 30 and 31). Regarding occupational gender segregation, the Committee refers the Government to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). ***The Committee urges the Government to step up its efforts in order to address the gender pay gap and its structural causes, including persistent occupational gender segregation of the labour market. It asks the Government to provide information on any concrete measures implemented to that end, as well as on any progress made in the adoption of the National Policy on Gender and Development. The Committee also asks the Government to provide detailed statistical data on the distribution of women and men in the various economic sectors and occupations, and their corresponding earnings, both in the private and public sectors.***

Articles 1(b) and 2. Equal remuneration for men and women for work of equal value. Legislation. The Committee recalls that the Equal Opportunity Act, 2000, prohibits discrimination in employment but does not contain any specific provision regarding equal remuneration for men and women for work of equal value. Since 2003, the Committee has been requesting the Government to take steps to give full legislative expression to the principle of the Convention. It previously noted that, in 2018, consultations were held on the Industrial Relations Advisory Committee's (IRAC) Policy Recommendations on Employment Standards and a proposed list of definitions, and requested the Government to provide information on any progress made in that regard. The Committee notes the Government's statement, in its report, that the elaboration of the Employment Standards Bill is still ongoing. The Government indicates that, since 2018, consultations have continued between the IRAC, the Minister of Labour and Small Enterprise Development (MOLSED), and national stakeholders on the draft Policy Recommendations, which suggest the inclusion of a provision providing that "men and women shall be entitled to equal pay for work of equal value". The Government adds that, in August 2020, a new version of the draft Policy Recommendations was revised by relevant stakeholders through targeted consultations, prior to their submission to the Cabinet. The Committee takes note of this information. It however notes with ***concern*** the lack of progress towards a full legislative implementation of the principle contained in the Convention. It recalls, once again, that *Article 2(2)(a)* of the Convention specifies national laws and regulations as a method of applying the principle of the Convention and that guidance provided by the Equal Remuneration Recommendation, 1951 (No. 90) supports legal enactment for the general application of the principle. It emphasizes that legal provisions that are narrower than the principle laid down in the Convention – in that they do not give expression to the concept of "work of equal value" – hinder progress in eradicating gender-based pay discrimination (see 2012 General Survey on the fundamental Conventions, paragraph 679). ***In light of the ongoing legislative developments that have been under way for a number of years, the Committee urges the Government to give full legislative expression to the principle of the Convention, including through the adoption of the Employment Standards Bill. It asks the Government to provide information on any progress made in that regard, as well as on any proactive measures taken to raise awareness of the***

meaning of the principle of equal remuneration for work of equal value among workers, employers and their representative organizations and also among law enforcement officials. The Committee further asks the Government to provide information on the number, nature and outcome of cases of pay inequality between men and women dealt with by the labour inspectors, the Equal Opportunity Commission and Equal Opportunity Tribunal, the courts or any other competent authorities.

Articles 2(2)(c) and 4. Collective agreements and collaboration with the social partners. The Committee previously noted the continued use of non-gender-neutral terminology in collective agreements in order to describe certain categories of workers (such as "greaseman", "watchman", "handyman", "charwoman", "female scavenger", etc.) which may reinforce stereotypes regarding whether certain jobs should be carried out by men or women, and thus increasing the likelihood of wage inequality. It noted the Government's indication that gender-neutral designation of posts would be given consideration in the framework of the regrading and reclassification exercise for daily rated workers of the Port-of-Spain Corporation, and requested the Government to indicate how it was ensured that, in determining wage rates in collective agreements, the principle of equal remuneration for men and women for work of equal value was effectively taken into account by the social partners. The Committee notes the Government's indication that the regrading and reclassification exercise for daily rated workers of the Port-of-Spain Corporation is still ongoing. Regarding collective agreements, the Government states that the Employers' Consultative Association (ECA) provides collective bargaining services to all employers during the preparation and conduct of collective bargaining negotiations, in particular to include proposals for the use of gender-neutral language to describe job positions. The Government adds that the ECA has committed to continue exploring the possibility of adding the concept of equal pay for work of equal value to new or already existing interventions of its subsidiary, the Employers' Solution Centre (ESC), which conducts training and awareness-raising activities for over 2,000 individuals per year. ***Recalling the important role played by the social partners in giving effect in practice to the principle of the Convention, more particularly in light of the absence of any legislation reflecting the principle of equal remuneration for men and women for work of equal value, the Committee asks the Government to take steps, in collaboration with employers' and workers' organizations, to ensure that gender-neutral terminology is used in defining the various jobs and classifications in collective agreements. It asks the Government to provide information on progress made in this regard, as well as to indicate the results of the regrading and reclassification exercise for daily rated workers of the Port-of-Spain Corporation. The Committee also asks the Government to provide information on the actions undertaken to promote the implementation of the principle of the Convention with the cooperation of the social partners, and the results of such initiatives. In this regard, it asks the Government to specify how it shares with the social partners the contours of the principle of equal remuneration for men and women for work of equal value and how the social partners take into account this principle in collective bargaining on wages.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)

Article 1(1)(a) of the Convention. Discrimination based on sex. For a number of years, the Committee has been expressing concern at the discriminatory nature of several provisions relating to married female police officers, and particularly: (1) Regulation 52 of the Police Commission Regulations, which provides that the appointment of a married female police officer may be terminated on the ground that her family obligations are affecting the efficient performance of her duties; and (2) section 14(2) of the Civil Service Regulations which requires a female officer who marries to report the fact of her marriage to the Public Service Commission. It requested the Government to revoke Regulation 52 of the Police Commission Regulations and amend section 14(2) of the Civil Service Regulations to eliminate any potentially discriminatory impact based on sex. The Committee notes the Government's

indication in its report that, in January 2019, the Police Service Commission decided on the revocation of Regulation 52 and that new draft Regulations, omitting Regulation 52, are currently under review by the Police Service Commission and the Chief Parliamentary Counsel. Regarding the amendment of section 14(2) of the Civil Service Regulations, the Committee notes the Government's statement that a new Civil Service Act and Regulations, omitting section 14(2), have been drafted by the Personnel Department and are currently under review by the relevant stakeholders. ***Welcoming these positive developments, the Committee expresses the firm hope that the Government will without further delay make every possible effort to effectively: (i) revoke Regulation 52 of the Police Commission Regulations; and (ii) amend or revoke section 14(2) of the Civil Service Regulations in order to eliminate any potentially discriminatory impact based on sex. It asks the Government to provide information on any progress made in this regard, in particular with respect to the adoption of the new draft Police Commission Regulations and the new draft Civil Service Act and Regulations, and to submit copies once adopted.***

Articles 2 and 3. Equality of opportunity and treatment of men and women. Public service. The Committee previously noted the persistent occupational gender segregation in the public service, as well as the sex-specific terminology used in the denomination of offices in the Schedule, Parts I–VI, of the Civil Service Regulations. It requested the Government to amend the legislation to ensure that it only contains gender-neutral terminology. The Committee notes, from the detailed statistical information provided by the Government, the persistence, and in some instances the aggravation, of horizontal and vertical segregation in the public sector. Indeed, while women represent 80.5 per cent of personnel in the judicial and legal service and 76.4 per cent in the teaching service, they only represent 16.8 per cent of personnel in the fire service (and none at the higher levels, that is grade five and above); 9.4 per cent in the prison service (and none at the higher levels); and 27.8 per cent in the police service (and only 3.9 per cent at the higher levels). Regarding the sex-specific terminology used in the denomination of the offices mentioned in the Schedule, Parts I–VI, of the Civil Service Regulations, the Committee notes the Government's statement that equality of treatment is ensured to all workers irrespective of sex. The Committee notes with ***concern*** the lack of steps taken by the Government to ensure that the legislation only contains gender-neutral terminology, despite the persistent occupational gender segregation in the public service. In this regard, it wishes to draw the Government's attention to the fact that, even in the absence of any discrimination based on sex, the use of sex-specific terminology to describe certain categories of workers may reinforce stereotypes regarding whether certain jobs should be carried out by men or women (for example, postman, watchman, foreman, repairman, handyman, ward or home sister, matron, maid, laundress), or whether women may have access to decision-making positions (for example, "chief male nurse", or the distinction made between "male airport attendant" and "female airport attendant" for airport attendant I and II). ***In light of the persistent occupational gender segregation and ongoing revision of the Civil Service Regulations, the Committee urges the Government to take the necessary steps to amend the Schedule, Parts I–VI, of the Civil Service Regulations in order to ensure that gender-neutral terminology is used in defining the various jobs and classifications in the public service. It asks the Government to provide information on the progress made in this regard. The Committee further asks the Government to provide information on any measures taken to address occupational gender segregation in the public service and to continue providing statistical information on the distribution of men and women in the different sectors and occupations of the public service.***

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

Tunisia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1968)

Articles 1(b) and 2 of the Convention. Equal remuneration for men and women for work of equal value. Legislation. In its previous comments, the Committee asked the Government to take measures to fully integrate the principle of the Convention in its national legislation, particularly within the context of legislative reforms following the adoption of the new Constitution. The Committee notes the Government's reference in its report to a series of sectoral collective agreements, in particular in the agriculture and fisheries sectors, which mention equal remuneration between men and women. The Committee again draws the attention of the Government to the fact that the concept of "work of equal *value*" lies at the heart of the fundamental right of equal remuneration for men and women. The concept of "work of equal value" permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. The term "value" indicates that something other than market forces should be used to ensure the application of the principle, as market forces may be inherently gender-biased (see 2012 General Survey on the fundamental Conventions, paragraphs 673–674). ***Recalling that it considers that the full and complete recognition in law of the principle of equal remuneration for men and women for work of equal value is of utmost importance to ensure the effective application of the Convention, the Committee again urges the Government to: (i) take without delay the measures necessary to fully integrate the principle of the Convention in its national legislation, in collaboration with the employers' and workers' organizations; (ii) ensure that the new legal provisions cover not only equal remuneration for men and women for "equal" work or work "performed in the same conditions", but also for work of an entirely different nature which is nevertheless of equal value within the meaning of the Convention; and (iii) provide information on all progress in this regard.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)

Article 1(1)(a) of the Convention. Discrimination on grounds other than sex. Legislation. For many years, the Committee has been drawing the Government's attention to the absence of provisions in its legislation, in particular in the Labour Code, prohibiting all discrimination in employment and occupation on grounds not only of sex, but also on the other grounds set out in *Article 1(1)(a)* of the Convention. The Government previously indicated that a Bill prohibiting all forms of discrimination is currently being examined by Parliament. ***As the Government's report is silent on this point, the Committee once again urges the Government to take the necessary measures to: (i) explicitly prohibit all discrimination on the basis of race, colour, national extraction, religion, political opinion or social origin in law and practice; and (ii) conduct awareness-raising activities and ensure better knowledge and understanding of the provisions of the legislation implementing the principles enshrined in the Convention by workers and employers and their organizations, as well as labour inspectors and judges.***

Discrimination on grounds of race, colour and national extraction. The Committee takes note of Basic Act No. 2018-50 of 23 October 2018 respecting the elimination of all forms of racial discrimination. It notes that section 2 defines racial discrimination as "any distinction, exclusion, restriction or preference made on the basis of race, colour, extraction, national or ethnic origin or any other form of discrimination within the meaning of ratified international Conventions". In accordance with section 3 of the Act, "the State shall determine the policies, strategies and action plans to prevent any form and practice of racial discrimination and to combat racist stereotypes common in different groups. It also undertakes to disseminate the culture of human rights, equality, tolerance and acceptance of others among the different components of society. The State shall take, within this framework, the measures

necessary for their implementation in all sectors, notably health, teaching, education, culture, sport and the media". Section 6 also provides for a prison sentence of between six months and three years, as well as a fine of 500 dinars (US$200), for any person committing discriminatory acts or using discriminatory language. Finally, in accordance with sections 10 and 11, a national committee to combat racial discrimination, under the Ministry responsible for human rights, shall be established. It shall be responsible for the collection and analysis of data, and for drawing up and proposing public strategies and policies to eliminate all forms of racial discrimination. ***The Committee requests the Government to: (i) indicate the extent to which Basic Act No. 2018-50 of 2018 also applies to the world of work; and (ii) provide information on the measures taken or envisaged to eliminate all forms of racial discrimination in employment and occupation, in particular through activities undertaken by the future national committee to combat racial discrimination.***

Article 2 and 3. Equality of opportunity and treatment for men and women. In its report, the Government indicates that one of the objectives identified in the Development Plan 2016–20 was an increased level of participation in the labour market by women. In this regard, the Committee notes that, according to the findings of the Decent Work Country Programme (DWCP) 2017–22, the activity rate of women in Tunisia remains relatively low at around 25 per cent. Furthermore, according to the statistical data provided by the Government in 2016, women were over-represented in such sectors as manufacturing industries (30.7 per cent, compared with 14.1 per cent for men) and education, health and administrative services (28.2 per cent compared with 16.2 for men). With regard to the legal sector, the Committee notes that there are 935 women magistrates compared with 1,242 men magistrates; 4,193 women attorneys compared with 9,337 men attorneys, and 445 women notaries compared with 1,104 men notaries. According to the Government, the over-representation of women in health, education and social work could be attributed to prejudices that tend to undervalue the qualifications required for jobs of this type, which could be linked to children's education, for both girls and boys, which accentuates the traditional maternal role of the mother. The Committee notes that such stereotypes, which have their roots in a traditional vision of the respective roles of men and women on the labour market and in society, especially as concerns family responsibilities, have the effect of directing men and women towards different areas of education and occupational training, and thus towards different jobs and careers. As a result, that certain jobs are almost exclusively performed by women and that the jobs considered as "feminine" are generally less highly regarded and therefore poorly paid. For this reason, access to education and to a wide range of occupational training courses is of paramount importance for achieving equality in the labour market for men and women. It is a key factor in determining the actual possibilities of gaining access to a wide range of paid occupations and employment, especially those with opportunities for advancement and promotion. The Committee wishes to emphasize that, not only do apprenticeships and technical education need to be addressed, but also general education, "on the job training" and the actual process of training (General Survey on the fundamental Conventions, 2012, paragraph 750). ***In light of the findings of the DWCP 2017–22, the Committee requests the Government to take proactive measures to: (i) promote and facilitate access by women and girls to more diverse training courses, especially in areas of education and training leading to occupations traditionally considered as masculine, so as to offer them real occupational prospects; and (ii) combat stereotypical attitudes in respect of women's aspirations, capacities and abilities that restrict their access to particular occupations traditionally considered to be "feminine", and promote their access to a wider range of opportunities in employment and training. It also requests the Government to indicate the results obtained in this regard and to provide updated statistics on the activities of men and women in the private and public sectors, disaggregated by economic sector and occupational category, especially positions of responsibility.***

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

Ukraine

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

The Committee takes note of the observations of the Confederation of Free Trade Unions of Ukraine (KVPU) received on 25 August 2021 and the observations of the Federation of Trade Unions of Ukraine (FPU) received on 2 September 2021. ***The Committee requests the Government to provide its comments on the observations of the FPU.***

Articles 1–4 of the Convention. Gender pay gap and its underlying causes, including occupational gender segregation. In its previous comment, the Committee asked the Government to continue its efforts to reduce the gender pay gap and to provide information on any activities undertaken and the results achieved in this respect as well as statistical data on the wages and salary levels of men and women. In its report, the Government indicates that Ukraine joined two leading international initiatives, the Biarritz Partnership for Gender Equality and the Equal Pay International Coalition (EPIC). In this context, the Government approved the plan of action to implement the commitments accepted within the framework of the Biarritz Partnership. According to this plan, the reduction in the gender pay gap shall be achieved by: (1) ensuring that Ukraine meets the relevant criteria for engagement with EPIC; and (2) adopting and implementing a national strategy to reduce the gender pay gap for the period up to 2023 and a draft plan to measure its implementation, that would include specific measures to increase pay transparency. Since Ukraine joined the EPIC, additional efforts have been made towards the adoption of new laws, policies, and measures in line with EPIC's criterion regarding work–family reconciliation or increase in the representation of women in companies' boards. In this regard, the Government refers to the adoption of Act No. 1401-IX, dated 15 April 2021 on the introduction of several legislative acts to ensure equal opportunities for mothers and fathers to care for a child. In addition, the Government indicates that it is working on the implementation of the 2013 OECD Council on Gender Equality in Education, Employment and Entrepreneurship and the 2015 Recommendation of the OECD Council on Gender Equality in Public Life.

In its observations, the KVPU stresses that the wage disparity between men and women is primarily caused by high levels of gender segregation in the labour market and hopes that the successive modifications of the legislation and ongoing efforts to remove restrictions on the employment of women in certain sectors or occupations will improve the situation. In this regard, the Committee also notes that high levels of occupational gender segregation (horizontal and vertical) are also pointed out in the report on the national-level review of the implementation of the Beijing Declaration and Platform for Action, 1995 (Beijing +25 national report) and the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) (Beijing +25 national report, pages 11–12; and E/C.12/UKR/CO/7, 2 April 2020, paragraph 19).

With regard to the collection of statistical information, the Government indicates that the State statistics service collects and publishes statistics on wages in various sectors of the economy, disaggregated by sex. It underlines that, over the course of 2020 and the first quarter of 2021, the gender pay gap in Ukraine showed a steady downward trend: for 2019, it was 22.8 per cent compared to 20.5 per cent at the end of 2020 and 17.8 per cent for the first semester of 2021. Furthermore, a reduction was recorded across almost all types of economic activity. According to the Government, one of the factors that reduced the gender pay gap in that period was a significant increase in the minimum wage.

Noting the persisting significant gender pay gap in the country and its recent trend downwards, the Committee asks the Government: (i) to intensify its efforts towards reducing the gender pay gap and to provide information on the measures adopted to this end, including as a result of the technical assistance received from the ILO, in the context of EPIC or in the framework of the Biarritz Partnership or otherwise, as well as on the impact of these measures; and (ii) to provide detailed information

regarding the planned adoption of a national strategy and a draft plan to reduce the gender pay gap and, if applicable, on their content, implementation and results. Noting the persistence of high levels of occupational gender segregation, the Committee also asks the Government to take steps to address this issue and refers in this regard to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). As no information was provided by the Government in this regard, the Committee also asks it to provide detailed statistics on the wages and salary levels of men and women, by sector of economic activity and, if possible, occupational category, as well as any information or survey available on the gender pay gap.

Articles 1(b) and 2. Equal remuneration for men and women for work of equal value. Legislation. In its previous comment, the Committee requested the Government to indicate the measures taken to amend section 17 of the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men (2005) which requires employers "to pay equally for the work of women and men with the same qualification and the same working conditions", to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and to provide information of the application of this section in practice. The Committee recalls that there are no provisions in the current Labour Code reflecting the principle of the Convention. With respect to the draft labour code, the Committee notes the Government's indication that it was not registered with the Parliament and that the draft Labour Act No. 2708 that had been registered with Parliament was subsequently withdrawn. The Government also indicates that it is currently developing a draft law on the introduction of amendments to several acts relating to the application of the principle of equal remuneration for work of equal value. In its observations, the KVPU states that the current legislation does not contain a provision that would enshrine the principle of the Convention. While taking note of the development of a draft law, the Committee stresses once again that legal provisions narrower than the principle laid down in the Convention hinder progress in eradicating gender-based pay discrimination. The legislation should not only provide for equal remuneration for equal, same or similar work, but also address situations where men and women perform different work that is nevertheless of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 679). ***The Committee therefore once again requests the Government to take steps without delay to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. In this regard, the Committee asks the Government to take the necessary steps to modify accordingly section 17 of the Law on Ensuring Equal Rights and Opportunities of Women and Men (2005) and seize the opportunity of the labour law reform to include provisions reflecting the principle of the Convention in the future labour code. It asks the Government to continue to provide information on any legislative developments regarding the labour law reform. Noting that the Government did not include such information in its report, the Committee also once again asks the Government to provide details on the application in practice of section 17 of the above law, including on the number of cases brought before the competent authorities and their outcome (compensation granted, sanctions imposed and remedies granted).***

Article 3. Objective job evaluation. In its previous comments, the Committee had requested the Government to take specific measures to promote the use of objective job evaluation methods free from gender bias in the public and private sectors, with a view to ensuring the establishment of wages and salary scales in accordance with the principle of equal remuneration for men and women for work of equal value. The Committee takes note of the Government's indication that the draft plan of measures to implement the draft national strategy to reduce the gender pay gap provides for the development, adoption, and implementation of a gender-neutral methodology for assessing work. It would introduce new criteria to compare jobs, such as skills, effort, working conditions and responsibility. Furthermore, the Government specifies that, in 2021, the Confederation of Employers of Ukraine developed and published an employers' guide to gender equality and non-discrimination covering matters related to remuneration. In its observations, the KVPU indicates that measures to promote objective job

evaluation on the basis of the work performed are lacking in the legislation and are not implemented in collective agreements. ***The Committee therefore asks the Government to take steps towards the development, adoption and implementation of a gender-neutral objective job evaluation method, in the context of the adoption of the draft national strategy and plan to reduce the gender pay gap or otherwise. It specifically asks the Government to promote the use of objective job evaluation methods, free from gender bias, in the establishment of wages and salary scales in the private and the public sectors, including when determining remuneration in collective agreements. The Committee once again encourages the Government to seek ILO technical assistance in this regard.***

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

[The Government is asked to reply in full to the present comments in 2023.]

United Arab Emirates

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)

Articles 1 and 2 of the Convention. Equal remuneration for men and women for work of equal value. Definition of remuneration. Legislation. The Committee previously urged the Government to take the necessary measures to bring section 32 of the Federal Act No. 8 of 1980 (Labour Law) into conformity with the Convention, as it only provides for equal remuneration between men and women for the same work, which is narrower than the concept of "work of equal *value*" provided for in the Convention. The Committee notes with ***satisfaction*** that section 32 of the Labour Law was amended by Legislative Decree No. 6 of 2020 as follows: "a woman shall be granted an equal remuneration to a man's remuneration if she performs the same work, or another work of equal value. The Council of Ministers – upon the proposal of the Minister of Human Resources and Emiratization – shall issue a decision which specifies the necessary rules and checks for the evaluation of work of equal value". The Committee also notes the broad definition of remuneration which encompasses all the emoluments in kind or cash (the UAE minimum wage per month is US$1,361).

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

Article 1(1)(a) of the Convention. Definition and prohibition of discrimination in employment and occupation. Legislation and practice. The Committee recalls that Federal Law No. 8 of 1980 on the Regulation of Labour Relations (the Labour Law) does not contain a general definition and prohibition of discrimination. Consequently, in its last comment, the Committee urged the Government to take the necessary steps to ensure that future amendments to the Labour Law include a specific provision defining and explicitly prohibiting both direct and indirect discrimination on all the grounds set out in *Article 1(1)(a)* of the Convention covering all workers, including non-nationals. The Committee takes note of the adoption of Legislative Decree No. 6 of 2019 (amending the Labour Law of 1980), which provides in section 7bis that: "Discrimination shall be prohibited between persons if it weakens equality of opportunity or jeopardizes equality in obtaining or in retaining a job, or in enjoying rights arising therefrom. Discrimination shall also be prohibited in work involving the same tasks". The Committee also notes the Government's indication in its report that the prohibition of discrimination on the grounds set out in the Convention will be enacted in new legislation and that a copy of the legislation will be sent to the Office once it has been promulgated. ***While noting the above amendments of Labour Law No. 8 of 1980, the Committee firmly hopes that the new law announced by the Government will be adopted in the near future and will define and prohibit direct and indirect discrimination based on all the grounds in the Convention with respect to all aspects of employment and occupation (i.e. access to vocational training, to employment and to particular occupations, and terms and conditions of employment). The Committee expects that all workers (i.e. both nationals and non-nationals, in all***

sectors of activity, in the public and private sectors, and in the formal and informal economy) will be covered.

Discrimination based on sex. Sexual harassment. Legislation. ***The Committee hopes that the Government will take the opportunity of the new legislation on discrimination that has been announced to: (i) incorporate a comprehensive definition of sexual harassment, applicable to both the public and private sectors; (ii) provide for access to effective remedies; and (iii) prevent and address sexual harassment in employment and occupation by, for example, launching awareness-raising campaigns, encouraging management training on the prevention of sexual harassment and inviting employers to establish formal workplace policies and procedures to deal with sexual harassment. The Government is requested to provide information on any progress made to this end.***

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

United Kingdom of Great Britain and Northern Ireland

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

The Committee notes the observations of the Trades Union Congress (TUC) received on 30 August 2021 and communicated to the Government. The Committee also takes note of the Government's reply.

Article 1(1)(a) of the Convention. Protection against discrimination based on social origin and political opinion. Law and practice. In its previous comments, the Committee noted that the Equality Act 2010 did not specifically refer to the grounds of social origin and political opinion. It requested the Government to provide concrete examples of how cases alleging discrimination based on social origin and "caste" are dealt with by courts and tribunals, and information on the number of cases of discrimination based on political opinion and on the measures taken to protect workers against such form of discrimination.

Discrimination based on social origin. With regard to the protection against discrimination based on membership of a "caste", the Government, in its report, states that it is aware of only three cases brought before the courts that involved considerations of caste and its relation to social origin. In *Naveed v. Aslam* (2012), the Employment Tribunal declared that the complaint was not well-founded as the "incidents were entirely unrelated to the claimant's caste (or indeed to any other racially tainted characteristic)". In *Begraj v. Manak* (2014), the case was not concluded after the judge in charge of the Employment Appeal Tribunal recused herself. In *Tirkey v. Chandhok* (2014), the Employment Appeal Tribunal found in favour of the claimant's contention that she was discriminated against because of her low status including by reason of her caste. While the judge accepted that "caste" was not explicitly part of the Equality Act 2010, he also stated that many of the identifying features of a person's descent which determined their caste related to their "ethnic origins" and this is explicitly protected under the Equality Act. The claimant was awarded compensation of £180,000. In the Government's view, this judgment means that it is likely that anyone who believes that they have been discriminated against because of caste could now bring a race discrimination claim under the existing ethnic origin limb of the race provisions of the Equality Act 2010 because of their descent. The Government considers therefore that the best way to provide the necessary protection against unlawful discrimination because of caste is by relying on emerging case-law as developed by courts and tribunals. Consequently, section 9(5) of the Equality Act 2010 providing that a Minister of the Crown: (1) must by order amend this section so as to provide for caste to be an aspect of race, and (2) may by order amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to race in specified circumstances, will be repealed. In this regard, the Committee takes note of the observations of the TUC on the employment situation of working-class workers. The TUC emphasizes that people from working class backgrounds still earn less than those from middle class backgrounds,

even when they have the same qualifications and do the same type of job. Even when those from working-class backgrounds attend university, they still enter the job market earning less than those from middle-class and private-school backgrounds. The TUC's analysis of data provided by the Higher Education Statistics Agency (HESA) shows that graduates with parents in "professional and routine" jobs are more than twice as likely as working-class graduates to start on a high salary, no matter what degree level they attain. The Government refers in its response to the National Living Wage and the National Minimum Wage that it states provide essential protection for the lowest paid workers.

While taking note of the information provided by the Government on the case law regarding discrimination based on "caste", the Committee recalls that discrimination and lack of equal opportunities based on social origin refers to situations in which an individual's membership of a class, socio-occupational category or caste determine his or her occupational future (see 2012 General Survey on the fundamental Conventions, paragraph 802). The Committee notes that there has been only one successful case of discrimination connected to "caste", which may indicate that the absence of explicit mention of it in the Equality Act demonstrates a lack of awareness of its protection under the Act. The Committee notes with ***regret*** the fact that the Government is proposing to repeal section 9(5)(a) of the Equality Act 2010.

Further, the notion of "social origin" is broader in scope than the notion of "caste" referenced in the case law reported by the Government. The Committee takes note of the Government's response to the TUC's comments that it does not propose to introduce the socio-economic duty under Part 1 of the Equality Act 2010 for England or in respect of Great Britain-wide bodies, and notes with ***regret*** that the Government does not propose to add a new characteristic to the Equality Act 2010 addressing social origin.

Discrimination based on political opinion. With regard to cases relating to discrimination based on political opinion, the Government indicates that there are no central records on the number of cases brought domestically, broken down by protected characteristic. It is open to people to contest that their political beliefs are so strong that they can be captured by the religion or belief provisions within the Equality Act 2010, and domestic courts have been open to considering such cases on their individual merits. Discrimination on the basis of political opinion is therefore protected against. Furthermore, the Committee notes that while the Equality Act 2010 covers "philosophical belief", it does not appear to cover "political opinion". The Committee notes that protection for political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions, and covers discrimination based on political affiliation. The notion of "belief" explained by the Government is narrower than the concept of political opinion enshrined in the Convention (see 2012 General Survey, paragraph 805).The Committee also recalls that where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention (see 2012 General Survey, paragraph 853). ***The Committee requests the Government to take steps to ensure that at least all the prohibited grounds of discrimination specified in Article 1(1)(a) are included in the legislation and that, in the meantime, workers are protected in practice against discrimination based on their social origin and political opinion. It further asks for detailed information on the measures adopted to address discrimination faced by workers from working-class backgrounds reported by the TUC, as well as on any cases relating to claims of discrimination based on social origin or political opinion, including the facts of those cases (such as the scope and particulars of discrimination based on social origin, at least in terms of salaries and opportunities for advancement) and the remedies provided.***

Discrimination based on religion. The Committee previously requested the Government to continue to provide information on the measures taken or envisaged to address discrimination and stereotyped attitudes concerning religion, including on the impact of these measures on access to employment and education for the Muslim community. The Committee takes note of the indication that the Government engages with Muslim communities through a number of faith and integration projects.

These projects are often geographically targeted to address problems faced by the communities where there can be high degrees of segregation and often seek to address issues of disadvantage or exclusion that create barriers to integration and employability. ***Noting this information, the Committee requests the Government to provide data on the impact of the measures taken on access to employment and education for the Muslim community, as well as any other activities undertaken specifically in the field of discrimination in employment and occupation.***

Northern Ireland. The Committee has been asking the Government to take steps to abolish the exclusion of teachers from protection against discrimination on the ground of religious belief in Northern Ireland (section 71(1) of the Fair Employment and Treatment (NI) Order, 1998). The Committee notes with ***regret*** that the Government's report does not contain any information in this regard. ***The Committee once again requests the Government to take steps to repeal the exclusion of teachers from protection against discrimination on the ground of religious belief in Northern Ireland provided in section 71(1) of the Fair Employment and Treatment (NI) Order, 1998.***

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

Gibraltar

Equal Remuneration Convention, 1951 (No. 100)

Articles 1–4 of the Convention. Assessing and addressing the gender pay gap. The Committee takes note of the statistical data from the Employment Survey for 2019 provided by the Government further to its request. It also notes the data from the Employment Survey for 2020, which continue to show an important gender pay gap and persistent horizontal and vertical occupational gender segregation. In October 2020, the average gross annual earnings for monthly paid full-time employment was £41,936.98 for men and £33,741.18 for women (with an annual gender pay gap around 19.5 per cent). At the same date, the average monthly earnings for the same type of work was £3,430.41 for men employees and £2,813 for women employees (with a monthly gender pay gap around 18 per cent). Similarly, the average annual earnings for weekly-paid full-time employees was £23,032.85 for men and £18,134.93 for women. For part-time work, the average monthly earnings in respect of monthly-paid adult male employees was £1,393.27 against £1,295.46 for women employees. The survey also shows significant occupational gender segregation, with women being predominantly represented in the sectors of health and social work (1,839 women for 861 men), financial intermediation (1,004 women for 886 men), and education (775 women for 219 men), and underrepresented in the occupations of managers and senior officials (1,369 women for 2,952 men), professional (915 women for 1,190 men), and associate professional and technical (1,144 women for 2,190 men).

On the measures adopted to address the gender remuneration gap, the Committee notes the Government's indication that on 8 March 2017, the Minister of Equality had announced the creation of a Working Group to examine the issue of whether there is a pay gap issue between men and women in Gibraltar. However, the COVID-19 pandemic and Gibraltar's departure from the European Union have delayed the implementation of such decision and continue to delay many initiatives. The Government further reports that the Minister for Equality participated in a high-level meeting organised in Iceland by the Equal Pay International Coalition (EPIC) and has provided training on "unconscious bias in the workplace and its effect on women" for both the public and private sectors. It further adds that two cycles of the Women's Mentorship Programmes have been completed and a third is due to commence in the autumn of 2021; and that more women are applying for vacancies within the emergency services and for senior positions. The Government is also encouraging women and girls to take up STEM (science, technology, engineering, and maths) subjects in school. Lastly, the Government reports that the Ministry of Equality has met with the Equalities Committee of the workers' organization in Gibraltar to establish a working relationship for the discussion of any equality issue which may affect any member; and collaborates actively with the unions to address grievances within the public sector. ***Noting the***

persistent and significant gender pay gap and occupational gender segregation, the Committee asks the Government to intensify its efforts to enforce the application of the principle of equal remuneration for men and women for work of equal value. It also asks the Government to adopt targeted measures to reduce the gender pay gap in both the private and public sectors and promote women's access to higher pay jobs. The Committee asks the Government to provide information on the measures taken, including the creation of the working group previously announced, and their results, and continue to provide detailed statistics on the respective earnings of men and women.

Articles 1(b) and 2. Equal remuneration for men and women for work of equal value beyond the same employer. Legislation. In its last comment, the Committee requested the Government to provide updated information on any revision of section 31 of the Equal Opportunities Act, 2006, initiated in order to ensure that the right to equal remuneration between men and women for work of equal value is not restricted to the same or an associated employer and specific information regarding the application of section 31 of the Act in practice. The Committee notes that the Government indicates being committed to considering any necessary reforms of section 31 of the Equal Opportunities Act but has been unable to address this issue at this stage, due to the substantial workload created by its departure from the European Union and the COVID-19 pandemic. The Committee also notes the indication of the Government that it is not aware of any local administrative or judicial decision relating to equal remuneration for men and women for work of equal value. ***Recalling that ensuring a broad scope of comparison is essential for the application of the principle of equal remuneration given the continued prevalence of occupational gender segregation, the Committee reiterates its request to consider reviewing section 31 of the Equal Opportunities Act, 2006, to ensure that the right to equal remuneration between men and women for work of equal value is not restricted to the "same" or an "associated" employer. The Committee also asks the Government to continue to provide information on the practical application of section 31 of the Act relating to equal pay, and to provide information on any measures adopted to ensure that workers can avail themselves in practice of their right to equal remuneration for work of equal value.***

Articles 2 and 3. Application of the principle in the public sector. With respect to the criteria used to determine the classification of jobs and the applicable salary scales in the public sector, the Government indicates that the salary scales applicable in the public sector are set by grade and not by gender and are historically derived from the civil service pay scales of the United Kingdom. The Committee observes that according to the Employment Survey for 2020, the differences in remuneration in the public sector remain prevalent with an average monthly earning of £4,605.29 for full-time men employees against £3,394.14 for full-time women employees (average gender pay gap: 27 per cent). The Committee once again recalls that despite the existence of salary scales applicable to all public officials, without discrimination on the ground of sex, pay discrimination in the public service can arise from the criteria applied in classifying jobs and from an undervaluation of the tasks performed largely by women, or from inequalities in certain supplementary wage benefits (General Survey on the fundamental Conventions, 2012, paragraphs 700–703). ***The Committee therefore asks the Government to take the necessary steps to identify and address efficiently the gender pay gaps in the public sector, in particular to consider the revision of salary scales based on objective criteria that are free from gender bias, such as skills, efforts, responsibilities and conditions of work. It also asks the Government to adopt measures to address horizontal and vertical occupational gender segregation in the public sector and, specifically, to improve the access of women to higher ranking and better paid positions, through training or other means. The Committee asks the Government to provide detailed information on the measures taken and the results achieved on the reduction and elimination of the gender pay gap in the public sector.***

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

United Republic of Tanzania

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Assessing and addressing the gender wage gap. The Committee previously noted that, as a result of sections 7(1) and (2) of the Employment and Labour Relations Act, 2004, and Part III of the Employment and Labour Relations (Code of Good Practice) Rules, 2007, employers have an obligation to elaborate and implement a plan to prevent discrimination and promote equal opportunity in employment, which shall be registered with the Labour Commissioner. The Committee notes the Government's statement, in its report, that a generic plan to be used by employers is being elaborated to that end, in collaboration with the ILO as well as employers' and workers' organizations. The Government adds that it will consider availing itself of ILO technical assistance for building capacities of employers' and workers' organizations in that respect. The Committee notes that, according to the 2018 Global Gender Gap Report of the World Economic Forum, the labour force participation rate of women was 81.1 per cent (compared to 88.3 per cent for men), with women being still mostly concentrated in informal employment (76.1 per cent of women) characterized by low wages. It notes, from the 2016 Formal Sector Employment and Earnings Survey, carried out by the National Bureau of Statistics (NBS) that while the proportion of women employed in formal employment is nearly half of the proportion of men (37.8 per cent and 62.2 per cent of total employees, respectively), 23.7 per cent of women are employed in the private sector, while only 14.1 per cent of them are employed in the public sector, where monthly average cash earnings are about three times higher than in the private sector. Furthermore, in 2016, the remuneration of women (monthly average cash earnings) was 15.3 per cent lower than those of men in the public sector and 6.1 per cent lower than men in the private sector. The Committee also notes that women are still concentrated in lower paid sectors such as manufacturing (19.6 per cent) and agriculture (10.3 per cent) and their average remuneration is lower than their male counterparts in almost all industries. The Committee notes with ***concern*** that, according to the World Economic Forum, men earned on average 39 per cent more than women in 2018. It further notes that, in its 2016 concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) remained concerned at the persistent discrimination against women in the labour market, in particular: (i) the high rate of unemployed young women and their marginalization from formal labour markets; (ii) the continuing horizontal and vertical occupational segregation and the concentration of women in low-paid jobs; (iii) the lack of implementation of the principle of equal pay for work of equal value; and (iv) the persistent gender wage gap (CEDAW/C/TZA/CO/7-8, 9 March 2016, paragraph 32). ***The Committee therefore urges the Government to provide information on: (i) the proactive measures taken to address the gender wage gap, both in the public and private sectors, by identifying and addressing the underlying causes of pay differentials, such as vertical and horizontal job segregation and gender stereotypes, covering both the formal and the informal economy, and by promoting women's access to a wider range of jobs with career prospects and higher pay; (ii) any measures taken to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value, including through the elaboration and implementation by employers of plans to promote gender equality at the workplace, as provided for under sections 7(1) and (2) of the Employment and Labour Relations Act; and (iii) statistical data on the earnings of men and women in all the sectors and occupations of the economy to monitor any progress achieved.***

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(1)(a) of the Convention. Discrimination based on sex. Job advertisements. The Committee previously noted that 14.9 per cent of job vacancies in 2013 contained a sex preference. The Committee

notes the Government's indication in its report that it is developing, with the support of the ILO and in consultation with employers' and workers' organizations, a plan with a view to giving effect to the provisions of section 7(1) and (2) of the Employment and Labour Relations Act No. 6 of 2004 (ELRA), which require an employer to prepare and register with the Labour Commissioner a plan to promote equal opportunities and eliminate discrimination at the workplace. It notes the Government's statement that this plan will provide guidance to employers on the implementation of all matters relating to equality and discrimination, including sex based discrimination in recruitment and job advertisements. The Committee notes that, according to the 2016 Formal Sector Employment and Earnings Survey carried out by the National Bureau of Statistics (NBS), 6.7 per cent of job vacancies still contained a sex preference. It notes that 4.4 per cent of those vacancies (representing 8,914 job vacancies) preferred male employees, while specific sectors which are traditionally considered as female dominated preferred female candidates, such as clerical occupations (92 per cent of job vacancies preferred women). The Committee recalls that recruitment decisions that are based upon stereotyped assumptions regarding women's capabilities and their suitability for certain jobs is a form of sex discrimination. Such discrimination results in segregation of men and women in the labour market. The Committee reminds the Government that the application of the principle of equality guarantees every person the right to have his or her application for a chosen job considered equitably, without discrimination based on any of the grounds of the Convention, and that only objective recruitment criteria should be used in the choice of the candidate (see the 2012 General Survey on the fundamental Conventions, paragraphs 754 and 783). ***The Committee therefore urges the Government to address without delay discriminatory advertising and hiring practices, through the development and implementation of the envisaged generic plan to promote equal opportunity and eliminate discrimination or otherwise through awareness-raising activities, in order to eliminate gender stereotypes, including stereotyped assumptions by employers of women's or men's suitability for certain jobs. The Government is further asked to provide information on any steps taken to encourage women to apply for posts traditionally held by men. The Committee also asks the Government to provide information on the proactive measures taken to this end, including in collaboration with employers' and workers' organizations, and to continue to provide statistical information on the number of job vacancies containing a sex preference.***

Article 1(1)(b). Additional grounds of discrimination. HIV Status. The Committee previously noted the Government's indication that the HIV and AIDS (Prevention and Control) Act No. 28 of 2008 is enforced through policy formulation and the HIV and AIDS Guidelines in the Public Service adopted in February 2014. The Committee notes that the Government repeats the information provided in it last report, namely that (i) the regulations under section 52(m) of Act No. 28 of 2008 have not yet been adopted; (ii) the Tripartite Code of Conduct on HIV and AIDS at the workplace, providing for the promotion of equal opportunities and the elimination of stigma and discrimination at workplaces, has been reviewed in collaboration with the social partners; and (iii) the third National Multi-Sectoral Strategic Framework for HIV and AIDS for 2013/14–2017/18 has been adopted. It notes, however, that the Government has not provided the information previously requested by the Committee in this regard. The Committee further notes that in the framework of the Universal Periodic Review, the United Nations Country Team (UNCT) in Tanzania stated that discrimination related to HIV/AIDS remained institutionalized at the workplace and the practice was prevalent, inter alia, in certain large mining companies in the private sector and in the police force (A/HRC/WG.6/25/TZA/2, 7 March 2016, paragraph 17). ***Noting that the third National Multi-Sectoral Strategic Framework for HIV and AIDS for 2013/14–2017/18 aims at zero stigma and discrimination against persons living with HIV, including in the workplace interventions both in the public and private sectors, the Committee repeats its request that the Government provide information on the implementation of the Framework with respect to matters that relate to discrimination based on HIV and AIDS in employment and occupation in the public and private sectors, in particular in the police force. The Committee requests that the Government provide a timetable for the adoption of the implementing regulations of the HIV and AIDS (Prevention and Control) Act No. 28 of 2008, and asks the Government to provide a copy of such regulations once adopted. The Committee also asks the Government to provide information on any cases of discrimination on the ground of HIV status in employment and occupation dealt with by the labour officers, the courts or any other authorities, specifying the penalties imposed and the compensation awarded.***

Articles 2 and 3. Equality of opportunity and treatment between men and women. The Committee previously noted the low participation rate of women in the economy and the continued occupational gender segregation in the labour market. The Committee notes the Government's general statement that it has continued to take affirmative action, reaffirming its commitment to improving women's access to education,

training, employment and income generation. The Government refers in particular to the measures taken to increase women's access to credit facilities and loans, in collaboration with the private sector, development partners and civil society organizations, including through the Women Development Fund, and to promote rural micro finance services, such as the Savings and Credit Cooperative Societies and the Village Community Banks (VICOBA). The Government adds that it has also strengthened its efforts to promote women's transition from the informal economy to the formal economy, in collaboration with the social partners, with regard to the provision of business development services, the extension of social protection, and the enhancement of the enforcement of labour laws. The Committee takes note of the Five Year Development Plan 2016/2017–2020/21 (FYDP II), implemented in the framework of the Tanzania Development Vision 2025, which sets as objective to accelerate economic growth by making sure that it will benefit to significant poverty reduction and job creation especially for the youth and women. The Committee notes, however, that according to the 2016 Formal Sector Employment and Earnings Survey, the participation of women in the formal employment remained relatively low with only 37.8 per cent of total employees in the formal economy being women. Furthermore, according to the 2018 Global Gender Gap Report of the World Economic Forum, women remain disproportionately concentrated in informal employment (76.1 per cent). The Committee also notes the persisting occupational gender segregation, with women still over-represented in certain sectors, such as education and human health and social work activities. It also notes that in its 2016 concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) remained concerned at the persistent discrimination against women in the labour market, in particular: (i) the high rate of unemployed young women and their marginalization from formal labour markets; (ii) the continuing horizontal and vertical occupational segregation and the concentration of women in low-paid jobs; (iii) the low representation of women in decision-making positions at the local level and in management positions on supervisory boards of companies; (iv) the limited access of women to financial assistance and credit, as well as at the limited support for women's entrepreneurial activities which are mainly confined to the informal sector without access to the wider economic growth; (v) the persistence of adverse cultural norms and practices and deep-rooted patriarchal attitudes regarding the roles and responsibilities of women and men in the family and in society; and (vi) the lack of information on labour inspections of women's working conditions, in particular in the private and informal sectors. The CEDAW was more particularly concerned at the disadvantaged position of women in rural and remote areas who form the majority of women in the country (CEDAW/C/TZA/CO/7-8, 9 March 2016, paragraphs 18(a), 26, 32, 38 and 40). In light of the above, the Committee wishes to emphasize the importance of regularly monitoring and assessing the results achieved within the framework of the national equality policy with a view to reviewing and adjusting existing measures and strategies and identifying any need for greater coordination between measures and strategies and between competent bodies in order to streamline interventions, in order for the Government and the social partners to be able to assess the real impact of such measures periodically. ***The Committee therefore urges the Government to strengthen its efforts to address both vertical and horizontal segregation between men and women in the labour market, as well as gender stereotypes. The Government is asked to provide information on the specific and concrete measures taken to promote women's economic empowerment and access to formal employment as well as to decision-making positions, including within the framework of the FYDP II. The Government is also asked to provide detailed information on the impact of any such measures in improving equality of opportunity and treatment between men and women in employment and occupation, by means of regularly monitoring and assessing the results achieved. Noting that in the framework of the Universal Periodic Review, the Government indicated that it was in the process of reviewing the National Gender Policy in order to incorporate current emerging issues (A/HRC/WG.6/25/TZA/1, 10 February 2016, paragraph 37), the Committee asks the Government to provide information on any progress made in that regard. It also asks the Government to provide updated statistical information on the participation of men and women in employment and occupation, disaggregated by occupational categories and positions, both in the public and private sectors, as well as in the informal economy.***

Access of women to education and vocational training. The Committee notes the statistical information provided by the Government and the efforts made to increase the enrolment rate of children in education as a result of the National Strategy on Inclusive Education (2009–17). The Committee notes, however, that according to the 2017 study on "Women and Men in Tanzania – Facts and Figures" carried out by the NBS, the percentage of men with secondary education or above was larger (25 per cent) than women (18.6 per cent); women account for the highest proportion of those who did not attend school (22.3 per cent of women

compared to 11.3 per cent of men). Only 0.8 per cent of women attended university. The Committee notes that, according to its 2016 concluding observations the CEDAW expressed concern at the persistence of structural and other barriers to girls' access to high-quality education, in particular at the secondary and tertiary levels, especially in rural areas, as well as at the continued prevalence of the practice of mandatory pregnancy testing of girls as a precondition for admission to school and their expulsion if found to be pregnant (CEDAW/C/TZA/CO/7-8, paragraph 30). The Committee wishes to stress in that regard that mandatory pregnancy testing and discrimination on the basis of pregnancy constitutes a serious form of sex discrimination. ***The Committee therefore urges the Government to take all the necessary measures without delay to ensure effective protection of girls and women against discrimination on the basis of pregnancy and mandatory pregnancy testing, including through awareness-raising activities on this serious form of sex discrimination, and to provide information on any progress made in this regard, as well as on the number of girls and women expelled from educational institutions as a result of pregnancy. It also asks the Government to provide information on the concrete measures taken to enhance access for girls and women to higher education and vocational training, especially in areas traditionally dominated by men, as well as on their impact in improving equality of opportunity and treatment between men and women in employment and occupation, including by combatting sexist stereotypes and prejudices which continue to hinder the participation of women in the country's economy. The Committee asks the Government to provide updated information on the number of men and women enrolled in education and vocational training including information on the share of men and women in the different areas of specialization.***

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

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

Uruguay

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1989)

Articles 1 and 4 of the Convention. Gender wage gap. The Committee previously requested the Government to provide information on any measures adopted with a view to reducing the wage gap between men and women workers, including the measures adopted within the framework of the National Gender Equality Strategy 2030 and Act No. 19580 on gender-based violence against women, and any measures adopted with a view to addressing educational and occupational segregation between men and women, and the results achieved. The Committee notes that the Government: (1) reports that it has carried out awareness-raising activities, and information and educational campaigns relating to the Convention, through Government bodies, in particular the Tripartite Commission on Equality of Opportunity and Treatment in Employment (CTIOTE), coordinated by the Ministry of Labour and Social Security, and together with the National Institute for Women and the employer and worker sectors, aiming to overcome, improve and eliminate the gender pay gap; (2) recognizes that there are challenges to the professional advancement of women, known as the glass ceiling, which prevents them from accessing high-level positions in enterprises and institutions, and indicates that work continues in this area; (3) has attached gender statistics from 2019 and indicates that it is noted that women receive on average 76.3 per cent of what men receive (it considers that the gap is due to the fact that, on average, women work fewer paid hours than men as a result of the high burden of unpaid work that constitutes a barrier to the full integration of women in the labour market); (4) states that with regard to the analysis of the difference between women's and men's income, there are significant differences according to the branch of activity in which men and women are occupied; (5) indicates that women's representation increased substantially in the legislative power owing to the Act on quotas; and (6) states that, in the University of the Republic, 54 per cent of the teaching posts are occupied by women and 46 per cent by men (it indicates that in the higher positions, women are less represented). With regard to the National Gender Equality Strategy 2030, the Government states that under the current administration new priority strategic lines are being defined aimed at achieving gender equality. Lastly, with regard to the application of Act No. 19580, the Government indicates that:

(1) the National Institute for Women of the Ministry of Social Development has a gender-based violence response system; (2) the system is integrated into various mechanisms, which in turn are part of the inter-institutional comprehensive response system to gender-based violence, in accordance with the law; and (3) the 2016–2019 Action Plan "For a life free from gender-based violence, with a generational perspective" recognizes the strategic importance of including within the inter-institutional comprehensive response system, a faster and more effective occupational integration response for women who are suffering or who have suffered gender-based violence. The Committee notes this information. ***While noting that the Government acknowledges that there are challenges to the professional advancement of women, which prevents them from accessing high-level positions in enterprises and institutions, the Committee requests the Government to take the necessary measures, in cooperation with workers' and employers' organizations, to continue its efforts to reduce the gender pay gap. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.***

Articles 1 and 2. Equal remuneration for men and women for work of equal value. Definition of remuneration. Legislation. With regard to its request to consider giving full legislative effect to the principle of the Convention and including in the legislation a definition of the term "remuneration", in accordance with *Article 1(a)* of the Convention, the Committee notes in the Government's report that the country has still not established a regulation defining the term "remuneration" and work of equal value. ***The Committee asks the Government to take, without delay, appropriate measures to give full legislative effect to the principle of equal pay for men and women for work of equal value.***

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

Uzbekistan

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), received on 30 August 2021. ***The Committee requests the Government to provide its comments in this regard.***

Article 1(1) of the Convention. Protection against discrimination in employment and occupation. Prohibition and definition of direct and indirect discrimination. Prohibited grounds of discrimination. Legislation. The Committee recalls that, in its previous comment, it requested the Government to consider amending section 6 of the Labour Code, which contains an open list of discrimination grounds, in order to include an explicit reference to the grounds of "colour" and "political opinion" and a prohibition of indirect discrimination. The Committee notes the Government's indication that a draft revised Labour Code is currently at the final stage of adoption. It notes in particular that draft section 4, which is reproduced by the Government in its report, includes: (1) an open list of prohibited discrimination grounds as follows: "sex, age, race, nationality, skin colour, language, social origin, material and employment status, place of residence, attitude towards religion, beliefs, membership of public associations, and any other circumstances unrelated to the qualifications of the worker or the results of his/her work"; (2) an explicit prohibition of discrimination; (3) a definition of discrimination that is not in line with *Article 1(1)* of the Convention; and (4) no definition of indirect discrimination. The Committee further notes the Government's indication that Presidential Decree No. 6012 of 22 June 2020 adopted the National Human Rights Strategy and the Roadmap for its implementation. The Government adds that, pursuant to the Roadmap, a draft law on equality and the prohibition of discrimination, which was originally scheduled for completion by April 2021, will provide for the introduction into law of the concepts of "discrimination", "direct, indirect and multiple discrimination" and "basis of discrimination", and full protection for citizens against possible discrimination in various areas of public life on the basis

of race, sex, language, religion, political beliefs, national or social origin, and material, class or other status.

The Committee notes that, in its observations, the IUF describes the national legal framework respecting discrimination in employment (the Labour Code of 1995, the Law on Employment of 2020 and the Law on the Guarantees of Equal Rights for Women and Men of 2019) and emphasizes that this legislation does not: (1) provide a general definition of discrimination; (2) define the terms "direct discrimination" and "indirect discrimination" on grounds other than gender; (3) refer to "multiple discrimination"; (4) provide any specific examples of actions that are considered discriminatory; and (5) provide any efficient measures of legal protection for victims of discrimination through judicial and administrative litigation procedures. The IUF adds that, in this context, the general prohibition of discrimination is of declarative nature and protection against discrimination remains insufficiently effective. Therefore, there is no clarity for employers and the judiciary of what discrimination is about, what actions are considered discriminatory and how discrimination can and must be prevented, while for employees it is not clear in which cases they should seek protection against discrimination and what to do about it. The Committee wishes to recall that direct discrimination occurs when less favourable treatment is explicitly or implicitly based on one or more prohibited grounds and that it includes sexual harassment and other forms of harassment. It also recalls that indirect discrimination refers to apparently neutral situations, regulations, or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job (General Survey on the fundamental Conventions, 2012, paragraphs 744 and 745).

In light of the above, the Committee asks the Government to seize the opportunity of the revision of the Labour Code, currently before Parliament, to ensure that it includes a definition of "direct discrimination" and "indirect discrimination" and a clear prohibition of both, in all aspects of employment, including recruitment, and an explicit reference to the grounds of "political opinion" and "national extraction" in addition to the grounds already explicitly covered. In the meantime, the Committee asks the Government to indicate how the expression "any other circumstances unrelated to the qualifications of the worker or the results of his/her work" in section 6 of the Labour Code has been interpreted by the courts, indicating in particular if it has ever been used to address discrimination based on "political opinion" or "national extraction". The Committee also asks the Government to indicate the progress made regarding the draft law on equality and the prohibition of discrimination envisaged in the Roadmap for the implementation of the Human Rights Strategy.

Article 1(1)(a). Discrimination based on sex. Sexual harassment. In its previous comment, the Committee asked the Government to: (1) take steps to include provisions in the legislation defining and prohibiting both quid pro quo and hostile working environment sexual harassment; and (2) provide information on any practical steps taken to raise awareness and address the issue of sexual harassment in employment and occupation and any related collaboration with the workers' and employers' organizations. In this regard, the Committee notes that the Government refers to section 121 of the Criminal Code, which criminalizes forced sexual intercourse, physically and verbally, and to section 3 of Law No. ZRU-562 of 2 September 2019 on Guarantees of Equal Rights and Opportunities for Women and Men, which includes "sexual harassment" in the definition of "discrimination based on sex". The Government also refers to Law No. ZRU-561 of 2 September 2019 on the Protection of Women against Harassment and Abuse, which does not define "sexual harassment" as such. The Committee observes however that section 3 of Law No. ZRU-561 contains various definitions, including: (1) "sexual abuse" defined as "a form of abuse of a woman that impinges upon her sexual integrity and sexual freedom through the commencement of acts of a sexual nature without her consent, as well as the compulsion to engage in sexual intercourse with a third party, or female child molestation"; (2) "abuse" defined as

"illegal action (or inaction) against a woman that impinges upon her life, health, sexual integrity, honour, dignity and other rights and freedoms protected by law through the use or threat of other kinds of physical, psychological, sexual or economic coercion"; and (3) "harassment" defined as "action (or inaction) humiliating the honour and dignity of a woman or any repetitive act which does not presuppose administrative or legal liability". The Committee further observes that Law No. ZRU-561 only applies to women, whereas provisions regarding sexual harassment must apply to both men and women, and that the definitions in the Criminal Code and Law No. ZRU-561 do not cover the whole range of behaviours that can constitute quid pro quo and hostile work environment sexual harassment. In that regard, the Committee recalls that addressing sexual harassment through criminal proceedings only is often not sufficient (due to the sensitivity of the issue, the more onerous burden of proof, and the limited range of behaviours addressed) and that *all* forms of sexual harassment (criminal offences or not) should be covered by national legislation. With regard to practical steps taken to raise awareness and address the issue of sexual harassment in employment and occupation and any related collaboration with workers' and employers' organizations, the Committee notes that, according to Law No. ZRU-561, the main objectives of the State policy shall be: (1) the creation of an atmosphere of zero tolerance to harassment and abuse of women in the society; (2) the enhancement of legal awareness and legal culture in the society and the strengthening of the rule of law; and (3) the cooperation between state bodies, self-governing bodies of citizens, non-governmental non-profit organizations and other civil society institutions in order to prevent harassment and abuse (section 5). Moreover, authorized bodies and organizations shall interact in the following areas: exchange of information on the verified facts of harassment and abuse; coordination of response measures and provision of effective assistance to victims of harassment and abuse; joint implementation of measures to exchange experiences; training and advanced training of specialists; monitoring compliance with legislation; and development of proposals for improving the legislation and its application (section 14). ***Recalling that addressing sexual harassment through criminal proceedings only is not sufficient to combat all forms of sexual harassment, the Committee urges the Government to take steps to formally prohibit in the civil or labour law both quid pro quo and hostile environment sexual harassment and to provide dissuasive sanctions and appropriate remedies. In this regard, the Committee asks the Government to provide information on the number of cases of sexual harassment dealt with by the competent authorities.***

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

Bolivarian Republic of Venezuela

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1982)

The Committee notes the observations of the Confederation of Workers of Venezuela (CTV), the Independent Trade Union Alliance Confederation of Workers (CTASI) and the Federation of University Teachers' Associations of Venezuela (FAPUV) regarding the application of the Convention, received on 30 August 2021. The Committee also takes note of the observations of the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP) on 8 September 2021. ***The Committee requests the Government to provide its comments in this respect.***

Articles 1(a) and 2 of the Convention. Definition of remuneration. Legislation. In its previous comment, the Committee asked the Government to adopt the necessary measures to ensure that all the additional benefits received by workers and arising out of their employment, such as those set out in section 105 of the Basic Act concerning labour and men and women workers (LOTTT), are considered to be remuneration so that the principle of the Convention is fully implemented. The Committee observes that, in its report, the Government once again refers to section 104 of the LOTTT, which provides a definition of "remuneration" and "normal salary", and that remuneration is used as the basis to calculate social benefits. The Committee notes, however, that section 105 of the LOTTT continues to

enumerate social benefits that are not considered to form part of remuneration. ***The Committee therefore urges the Government to amend its legislation to ensure that all additional benefits received by workers and arising out of their employment, such as those set out in section 105 of the LOTTT, are considered as remuneration for the purposes of applying the principle of equal remuneration for work of equal value set out in the Convention.***

Articles 1(b) and 2. Equal remuneration for men and women work of equal value. Legislation. Since 2003, the Committee has been referring to the need to include in the legislation the principle of equal remuneration for men and women for work of equal value. The Committee notes that the Government reiterates in its report that section 109 of the LOTTT, which provides for the principle of equal salary for equal work, is in line with the principle of the Convention. It also clarifies that distinctions in salary may be made depending on productivity or reasons founded in criteria foreseen by law, such as family responsibilities, seniority, professional training, assiduity, savings in raw materials, union membership and others. The Committee is bound once again to draw the Government's attention to the fact that provisions that limit equal remuneration to "equal", "the same", "similar" or "substantially similar" are narrower than what is required by the Convention (see General Survey of 2012 on the fundamental Conventions, paragraph 677). ***The Committee once again requests the Government to take the necessary measures without delay to amend section 109 of the LOTTT in order to give full legislative expression to the principle of the Convention. It also asks the Government to provide information on how section 109 of the LOTTT is applied in practice.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1971)

The Committee notes the observations made by the Confederation of Workers of Venezuela (CTV), the Federation of University Teachers' Associations of Venezuela (FAPUV), and the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 30 August 2021, which refer to allegations of discrimination on the basis of political opinion in access to teaching in the public sector, and also to cases of harassment at work and dismissals on the basis of political opinion. The Committee also notes the observations of the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), received on 8 September 2021. ***The Committee asks the Government to send its comments in this respect.***

Article 1(1)(a) of the Convention. Discrimination on the basis of political opinion. In its previous comments, the Committee noted with concern the allegations made by numerous workers' organizations concerning acts of discrimination in employment for political reasons (in particular against employees of the public administration and state enterprises) and asked the Government to take the necessary steps without delay to ensure full respect and compliance with the Convention. The Committee also urged the Government to take measures without delay to establish a working group including all the trade union organizations concerned to examine and to deal with all the complaints, and also to consider the development of a system to prevent discrimination and the establishment of mechanisms and institutions to address in an independent manner complaints of discrimination in employment and occupation, particularly on the basis of political opinion. The Committee notes with ***deep concern*** that once again several trade union confederations allege acts of discrimination, harassment at work and dismissal on the basis of political opinion in the administration of the State, including discrimination against graduates of the Libertador Experimental Pedagogical University (UPEL), dismissals at the Ministry of Foreign Affairs and the Financial Institution Deposit Guarantee Fund, and the dismissal of over 650 officials, workers and contractual employees at the National Assembly.

In this regard, the Committee notes the Government's emphatic reiteration in its report that neither persecution nor discrimination against men and women workers or jobseekers on the basis of

political opinion is a policy of the State. The Government also refers briefly to the forums for dialogue and consultation with the various social partners, which have been taking place since early 2021 with respect to other ratified Conventions, even though it indicates that some organizations have been "self-excluded" from these bodies. The Government also indicates that the Ombudsman's Office has competence for protecting fundamental rights and that any person or organization whose fundamental rights have been violated can have recourse to it. The Committee notes that, according to the recent report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, the activities reported by the Ombudsman's Office in relation to the large number of complaints and petitions that it receives fall short of fulfilling its constitutional role to further, defend and oversee rights and guarantees established under the Constitution (A/HRC/48/69, 16 September 2021, paragraph 101). ***In light of the above, taking account of the seriousness and large number of instances of discrimination based on political opinion reported for years by various trade union confederations in the country, the Committee once more firmly urges the Government to take measures without delay to establish a working group involving all the trade union organizations concerned – and including the Ombudsman's Office, if the parties consider it appropriate – in order to examine and deal with all the complaints in question. The Committee considers that there is an urgent need to consider a system of prevention and mechanisms or institutions to deal independently with complaints of discrimination in employment and occupation, particularly discrimination on political grounds. The Committee asks the Government to provide information on any cases of discrimination on political grounds filed with the Ombudsman's Office or with any judicial body or dispute settlement mechanism, and also their outcome.***

Discrimination on the basis of national extraction. Legislation. With regard to the Committee's request to the Government, in its previous comments, to take measures to include "national extraction" in the prohibited grounds of discrimination, the Government reiterates in its report the reference to article 21 of the Constitution, section 21 of the Basic Act on labour and men and women workers (LOTTT) of 30 April 2012, and section 37 of the Basic Act to combat racial discrimination of 19 December 2011, the latter referring to discrimination on the basis of "ethnic origin", "phenotype features" and "national origin". Taking account of the fact that "national origin" is defined as "nationality of birth or the nationality acquired under specific circumstances", the Committee once again wishes to emphasize that this formulation does not completely cover the concept of "national extraction" provided for in the Convention, since it would not cover cases of discrimination among persons who, though of the same nationality – and without presenting a specific ethnic origin or phenotype features – are of foreign birth or origin, are descendants of foreign immigrants or belong to groups of different extraction. In this regard, the Committee refers to its general observation of 2018 on discrimination on the basis of race, colour and national extraction. ***The Committee firmly urges the Government to take the necessary steps to ensure that the legislation explicitly includes national extraction as one of the prohibited grounds of discrimination. The Committee asks the Government to provide information on any measures taken or envisaged in this respect.***

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

Viet Nam

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)

Articles 1–4 of the Convention. Assessing and addressing the gender wage gap. Previously, the Committee requested the Government to indicate how the measures adopted under the National Strategy on Gender Equality (2011–20) have an impact on reducing the persistent gender wage gap and to provide specific information on any measures taken or envisaged to address the underlying causes. The Committee also requested the Government to collect and provide more specific statistical data, disaggregated by sex, on the distribution of men and women in different sectors of economic activity, occupational categories and positions and their corresponding earnings in both the private and public

sectors. The Committee notes the information provided by the Government in its report on the measures adopted under the National Strategy on Gender Equality (2011–20), including: the promulgation of legal texts containing provisions on gender equality; the implementation of a ratio of male/female employment which has facilitated a relatively balanced gender distribution in the labour force with 52.7 per cent of men and 47.3 per cent of women, according to data from the 2019 Population and Housing Census; and support for woman-owned enterprises or business start-ups. In this regard, the Committee notes that, based on the information on business registration contained in the National Database of Business Registration, as of October 2019, there were 285,689 enterprises owned by women, accounting for 24 per cent of the total number of enterprises in the country. The highest number of enterprises owned by women is found in the field of trade and services (75 per cent), followed by construction (12 per cent), industry (7 per cent) and agriculture/forestry/fisheries (7 per cent). The Government also refers to the measures adopted to promote greater access of women to vocational training, including the scheme on "Support for women in vocational training and employment", which includes the provision of tuition fees and loans to promote self-employment. The Government further reports that in the period 2011–20, women accounted for 52 per cent of customer loans and for 54 per cent of total lending by the Bank for Social Policies.

Concerning the gender wage gap, the Committee notes the Government's indication that the gap has tended to widen. In 2019, the average monthly salary of male salaried workers was VND 6,183 million/month, compared to VND 5,446 million/month for women. The Government indicates that the gender wage gap is related to the average number of working hours of men and women. According to the 2018 Labour and Employment Survey report of the General Statistics Office, about 42.7 per cent of workers work 40–48 hours/week and the proportion of men working more than 48 hours/week is higher (38.4 per cent) than women (31.8 per cent). The Government also indicates that in almost all sectors of the economy the average monthly salary of women is lower than that of men. However, in various occupations with a high proportion of women who have technical qualifications similar to men, notably office assistance and sales, there is almost no gender wage gap. ***Noting the above information, the Committee invites the Government to step up its efforts to address the underlying causes of the persistent gender wage gap, including measures aimed at promoting women's access to a greater range of training opportunities and jobs and to higher level positions, as well as measures to encourage men and women to share career and family responsibilities more equally. The Committee also requests the Government to provide statistical information, disaggregated by sex, on the distribution of men and women in different sectors of economic activity, occupational categories and positions, and their corresponding earnings in both the private and public sectors.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)

Article 1(1) of the Convention. Grounds of discrimination. Legislative developments. The Committee notes the adoption of the new Labour Code of 2019 (Law No. 45/2019/QH14) that entered into force on 1 January 2021. It welcomes section 3(8) of the 2019 Labour Code which extends further the list of prohibited grounds of discrimination that were included in the 2012 Labour Code by adding five additional grounds, namely "national origin", "age", "pregnancy status", "politics", and "family responsibilities". It notes with ***interest*** that the ground of "social class" has been replaced by "social origin", to bring the text in line with the Convention. ***The Committee asks the Government to confirm its understanding that the grounds of "politics" and "national origin" correspond to the grounds of "political opinion" and "national extraction" laid down in the Convention. It also asks the Government to provide information on the application in practice of section 8(1) of the Labour Code, including information on any violation detected by the labour inspectors or addressed by courts, the sanctions imposed and the remedies granted. The Committee also asks the Government to provide information***

on any awareness-raising activities about these provisions undertaken for workers, employers and their respective organizations, as well as public enforcement officials.

Article 1(1)(a). Discrimination based on religion. The Committee notes that, in its report, the Government provides information on the adoption of the Law on Belief and Religion of 2016 that has replaced Ordinance No. 21/2004/PL-UBTVQH11. The Committee notes that section 5 of the Law prohibits, among other things, discrimination and stigmatization of people for their beliefs or religion. The Government states that at present 43 organizations belonging to 16 religions have been recognized by the State and have been granted registration to carry out their religious activities. The Committee notes that the United Nations Human Rights Committee (CCPR) expressed the following concerns: (1) that the Law on Belief and Religion unduly restricts the freedom of religion and belief, such as through the mandatory registration and recognition process for religious organizations and restrictions on religious activities based on vague and broadly interpreted legal provisions related to national security and social unity; and (2) that members of religious communities and their leaders, predominantly unregistered or unrecognized religious groups, ethnic minorities or indigenous peoples, face various forms of surveillance, harassment, intimidation, and property seizure or destruction, and are forced to renounce their faith, pressured to join a competing sect, and subject to physical assaults, which sometimes leads to death (CCPR/C/VNM/CO/3, 29 August 2019, paragraph 43). ***In light of the above, the Committee asks the Government to provide information on the implementation of the Law on Belief and Religion of 2016, in particular on any cases dealt with by the labour inspectorates or the courts regarding religious discrimination alleged by individuals with unrecognized religious beliefs, as well as their outcome.***

Discrimination based on sex. Sexual harassment. In reply to its previous request on the application of the 2012 Labour Code provisions on sexual harassment, the Committee welcomes the fact that the 2019 Labour Code includes a definition of sexual harassment, which did not appear in the previous Code, and that: (1) according to section 3(9) of the Code, "sexual harassment at a workplace is any behaviour of a sexual nature by any person towards another person at a workplace that is not wanted or accepted by the latter person"; (2) section 3(9) clarifies that a workplace is any place where a worker undertakes work as agreed with or assigned by the employer; (3) section 6(2)(d) provides that employers shall develop and implement solutions to prevent sexual harassment at the workplace; (4) section 5(1)(a) recognizes workers' right to be free from sexual harassment at the workplace; (5) section 118 establishes that employers must issue internal work regulations which shall include "prevention and control of sexual harassment at the workplace" and "Steps and procedures for handling sexual harassment at the workplace"; (6) section 125 provides that dismissal, as a disciplinary measure, may be applied by an employer in the case of a worker who commits sexual harassment at the workplace as defined in the internal work regulations; and (7) section 135 provides that the State shall implement measures to prevent sexual harassment at the workplace.

The Committee notes with ***interest*** that section 84 of Decree No. 145/2020/ND-CP of 2020, which supplements the Labour Code, further clarifying the definition provided in the Labour Code by indicating that sexual harassment "may occur in the form of a request, demand, suggestion, threat, [or] use of force to have sex in exchange for any work-related interests; or any sexual act that thus creates an insecure and uncomfortable work environment and affects the mental, physical health, performance and life of the harassed person". The same section specifies that sexual harassment may include: actions, gestures, or physical contact with the body of a sexual or suggestive nature; sexual or suggestive comments or conversations in person, by phone or through electronic media; body language; and display, description of sex or sexual activities whether directly or through electronic media. Furthermore, section 84 of the Decree specifies that "workplace" under section 3(9) of the 2019 Labour Code means "any location where the employee works in reality as agreed or assigned by the employer, including the work-related locations or spaces such as social activities, conferences, training

sessions, business trips, meals, phone conversations, communications through electronic media, shuttles provided by the employer and other locations specified by the employer".

Concerning the application of the Code of Conduct on Sexual Harassment in the Workplace of 2015, the Committee notes the information provided by the Government concerning awareness-raising and capacity-building activities for labour inspectors. The Government observes that despite the increased awareness among different actors about the phenomenon and the applicable rules, few cases of sexual harassment at work are detected and addressed. According to the Government, this is partially due to the lack of understanding or the hesitation of the victims. However, in the Government's view the main reason for the few cases detected and handled resides in the lack of specific and clear regulations on sexual harassment in the workplace and effective complaints procedures within enterprises, agencies and organizations. In order to address this weakness, the Decree No. 145/2020/ND-CP of 2020 provides guidance on the application of the relevant provisions of the 2019 Labour Code and the Ministry of Labour, Invalids and Social Affairs is planning to revise the 2015 Code of Conduct on Sexual Harassment in the Workplace. ***Welcoming all these developments, the Committee asks the Government to provide information on the application of the relevant provisions of the Labour Code and the Decree No. 145/2020/ND-CP, including examples of measures adopted to prevent sexual harassment pursuant to section 135 of the Labour Code and examples of internal regulations setting out measures and procedures to prevent and address cases of sexual harassment at work. The Committee also asks the Government to provide information on any cases of sexual harassment addressed by the labour inspectors and the judiciary, as well as disciplinary measures, including dismissal, applied by employers pursuant to the 2019 Labour Code. The Committee also requests the Government to provide information on the revision of the 2015 Code of Conduct on Sexual Harassment in the Workplace and its outcome.***

Article 5. Restrictions on women's employment. In its previous observation, the Committee requested the Government to provide information on the application of section 160 of the Labour Code of 2012, which prohibits the employment of female workers on work that is harmful to parenting functions, including a list of occupations prohibited under section 160(2) and (3), in addition to the occupations designated in Circular No. 26/2013/TT BLDTBXH of 2013. The Committee also requested the Government to take measures to ensure that future revisions of the above Circular limit its restrictions to women who are pregnant or breastfeeding. The Committee notes with ***interest*** that, with the adoption of the 2019 Labour Code, the norms that established a ban on women's employment in those cases considered harmful to parenting functions have been removed. In this respect, the Committee notes that section 142(1) of the 2019 Labour Code, concerning "occupations and work adversely affecting reproductive and child-nursing functions" provides that the Ministry of Labour, Invalids and Social Affairs shall issue a list of the occupations and works falling under this heading. Section 142(2) provides that the employer has a duty to provide adequate information to all workers about the dangers, risks and requirements of jobs, and to ensure statutory occupational safety and health for workers when requesting them to perform any work included in the list issued by the Ministry of Labour, Invalids and Social Affairs. At the same time, the Government indicates that the new Labour Code places an emphasis on women's "choice" by establishing, for example, at section 137(2) that "a female worker who performs heavy, hazardous or harmful work or extremely heavy, hazardous or harmful work, or work that adversely affects reproductive and child-rearing functions, when pregnant and having informed the employer, is entitled to be transferred to lighter and safer work by the employer or to have her daily working time reduced by one hour without any reduction in her wages, rights and interests during the period while she is caring for a child less than 12 months old". Likewise, section 137(1) leaves to the woman the choice to perform night work or overtime work or to go on long-distance work trips. ***Welcoming these changes, the Committee asks the Government to provide information on the application in practice of both sections 137 and 142 of the 2019 Labour Code, and in particular, regarding: (i) whether the reduction of daily working time provided for in section 137(2)***

applies to pregnant women; and (ii) whether any awareness-raising activities have been foreseen or undertaken for workers and employers, and their respective organizations, as well as public enforcement officials, regarding these two provisions. The Committee also asks the Government to provide a copy of the list of occupations and work adversely affecting reproductive and child-nursing functions issued by the Ministry of Labour, Invalids and Social Affairs under section 142(1) of the 2019 Labour Code.

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

Zambia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1972)

Articles 1–4 of the Convention. Gender wage gap. Previously, the Committee requested the Government to: (1) strengthen its efforts to take more proactive measures, including with employers' and workers' organizations, to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value; (2) provide information on the specific measures taken to address the gender remuneration gap; and (3) provide updated statistical information on the earnings of men and women in all the sectors and occupations of the economy. The Committee notes that the Government's report does not contain information in response to its questions. It notes, however, from the Government's report on the national-level review of the implementation of the Beijing Declaration and Platform for Action, 1995 (Beijing +25 national report), that the percentage of women with at least secondary school education represented 52.3 per cent in 2016. ***Recalling that it had previously noted the persistent vertical and horizontal segregation of men and women in certain sectors and occupations, as well as the significant gender wage gap in the country, the Committee once again requests the Government to: (i) step up its efforts to take more proactive measures, including with employers' and workers' organizations, to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value; (ii) provide information on the specific measures taken to address the gender wage gap by identifying and addressing its underlying causes, such as vertical and horizontal job segregation and gender stereotypes, in both the formal and informal economy, and by promoting women's access to a wider range of jobs with career prospects and higher pay; and (iii) provide updated statistical information on the earnings of men and women in all sectors and occupations.***

Articles 1 and 2. Equal remuneration for men and women for work of equal value. Legislation. In its previous observation, the Committee requested the Government to provide information on: (1) the actual methods and criteria used to evaluate the "demands" made by a specific job, in order to ensure that the definition of the expression "work of equal value" provided for in section 31 of the Gender Equity and Equality Act, 2015, permits a broad scope of comparison in practice, based on the principle of equal remuneration for men and women for work of equal value, as required by the Convention; (2) the measures taken to raise awareness among workers, employers and their respective organizations of the new equal remuneration provisions and the existence of penalties for non-observance; (3) the application and enforcement of section 31 of the Gender Equity and Equality Act in practice, and particularly the number of violations dealt with by labour inspectors, courts and the Gender Equity and Equality Commission, and the penalties imposed; and (4) the progress made with the draft Labour Code.

The Committee notes the document containing "method and criteria used to evaluate demands of specific jobs to cater for the principle of work of equal value in the public service" of May 2021, attached to the Government's report. It notes that the document outlines the factors to be used for the evaluation of management jobs and non-management jobs in the public service. These factors include: professional, academic and vocational qualifications; relevant previous experience; skills; physical and mental effort; responsibility; hazards; and working conditions. The Committee also notes that an appeal

procedure is available for workers who consider that the job evaluation is incorrect. The Committee however notes that the document refers to "equal pay for equal work" explaining that "personnel in job positions with similar job content would be remunerated comparably", which is narrower than the principle of the Convention as well as the notion of "work of equal value", as defined in section 31 of the Gender Equity and Equality Act. Concerning the private sector, the Committee notes the Government's indication that it monitors, through the Ministries of Gender, and Labour and Social Security, compliance with the Gender Equity and Equality Act by means that include the conclusion of collective agreements, contracts of employment attested by the labour officers and the undertaking of labour inspections. The Government also indicates that it carries out sensitization programmes on TV, radio, electronic and social media.

The Committee notes with ***satisfaction*** that section 5(4) of the Employment Code Act, No. 3 of 2019, provides that: "An employer shall pay an employee equal wages for work of equal value". It also notes that section 3 of the Act defines wage as "the pay, remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by a contract of employment which are payable by an employer to an employee for work done or to be done or for services rendered or to be rendered". In this regard, the Committee recalls that *Article 1(a)* of the Convention contains a broad definition of remuneration that also includes "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment". ***Noting the document outlining methods and criteria for job evaluations in the public service refers to equal pay for "equal work", the Committee requests the Government to indicate how it is ensured that the job evaluation methods and criteria applied in the public service also cover in practice work of a different nature that is of "equal value", and to provide information on any appeals filed against job evaluations and the corrective measures adopted as a result. The Committee also requests the Government to supply information on the results of the monitoring activities undertaken through the Ministries of Gender, and Labour and Social Security concerning the application of the Convention in the private sector and to continue providing information on the application of section 31 of the Gender Equity and Equality Act in practice. The Government is also requested to clarify whether section 5(4) of the Employment Code Act, 2019, also applies to the additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment, and to provide examples of the application in practice of this provision.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1979)

Article 1 of the Convention. Protection of workers against discrimination. Legislation. In its previous observation, the Committee noted that the Employment Amendment Act of 2015 ("Act of 2015") and the Constitution of Zambia (Amendment) Act, 2016 do not refer to the grounds of "national extraction" and "social origin" set out in *Article 1(1)(a)* of the Convention. It also noted that the Act of 2015 only refers to discrimination in case of termination of employment under section 36(3). The Committee therefore requested the Government: (1) to provide updated information on the practical application of section 36(3) of the Employment Act, including a copy of any court decisions on cases where dismissal was based on prohibited grounds, more particularly on the ground of "social status" in order to enable the Committee to assess its meaning in practice; and (2) to strengthen its efforts to give full legislative expression to the principle of the Convention by defining and prohibiting direct and indirect discrimination in all aspects of employment and occupation with respect to all the grounds set out in *Article 1(1)(a)* of the Convention and to provide information on any progress made in this regard. The Committee notes with ***satisfaction*** that the Employment Code Act, adopted in 2019, at section 5, prohibits direct and indirect discrimination against an employee or a prospective employee "in respect

of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment". Section 5(2) of the Act lists the following grounds of prohibited discrimination: "colour, nationality, tribe or place of origin, language, race, social origin, religion, belief, conscience, political or other opinion, sex, gender, pregnancy, marital status, ethnicity, family responsibility, disability, status, health, culture or economic grounds". Although national extraction is not expressly referred to, it appears to be covered by the grounds of "tribe or place of origin". The Committee also notes that section 5(5) provides that a person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding 200,000 penalty units. Following the adoption of the Employment Code Act, 2019, the Employment Act Cap 268 of the laws of Zambia, and its Amendment of 2015, were repealed. ***Welcoming this legislative development, the Committee requests the Government to provide information on the application in practice of the provisions of Employment Code Act, 2019, regarding discrimination, including the number and type of offences for which fines have been applied pursuant to section 5(5) of the Act, and examples of cases of discrimination based on the grounds of "tribe or place of origin" which have been addressed under the Act, with a view to allowing the Committee to ascertain the scope of these grounds in practice.***

Articles 2 and 3. National equality policy. The Committee notes the Government's information about the development of a national policy to promote equality of opportunity and treatment in respect of employment and occupation. ***The Committee requests the Government to provide information on any developments concerning the formulation and adoption of the national equality policy and encourages it to consult the social partners and other interested groups with regard to the formulation of such policy in order to ensure its relevance, raise awareness about its existence, promote its wider acceptance and ownership, and enhance its effectiveness.***

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 100** *(Albania, Angola, Barbados, Belize, Congo, Djibouti, Dominica, Equatorial Guinea, Grenada, Guyana, Haiti, Lebanon, Madagascar, Malawi, Mongolia, Peru, Poland, Portugal, Romania, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovenia, South Sudan, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Gibraltar, United Republic of Tanzania, Uruguay, Bolivarian Republic of Venezuela, Viet Nam, Yemen, Zambia);* **Convention No. 111** *(Afghanistan, Barbados, Belize, China, Congo, Djibouti, Dominica, Equatorial Guinea, Ghana, Grenada, Guyana, Haiti, Honduras, Iraq, Lebanon, Liberia, Madagascar, Malawi, Mongolia, Namibia, Nigeria, Panama, Papua New Guinea, Peru, Poland, Portugal, Romania, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Slovenia, South Sudan, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Uzbekistan, Bolivarian Republic of Venezuela, Viet Nam, Yemen, Zambia);* **Convention No. 156** *(Belize, Guinea, Peru, Portugal, San Marino, Serbia, Slovenia, Spain, Sweden).*

Tripartite consultation

Antigua and Barbuda

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2002)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 5(1) of the Convention. Effective tripartite consultations. The Government indicates in its report that the National Labour Board is currently engaged in the revision of the Labour Code. The Committee notes that the Government envisages establishing a subcommittee composed of members of the National Labour Board, along with representatives of workers and employers, to review international labour standards, engage the public in consultations when necessary and to make recommendations to the Minister on actions to be taken. The Committee notes, however, that once again the Government's report does not contain information with regard to tripartite consultations on the matters related to international labour standards covered by *Article 5(1)* of the Convention. ***Recalling its comments since 2008 concerning the activities of the National Labour Board, and noting that section B7 of the Labour Code, which establishes the Board's procedures, does not include the matters set out in Article 5(1) of the Convention, the Committee once again requests the Government to provide detailed information on the activities of the National Labour Board on matters related to international labour standards covered by the Convention. It further requests the Government to identify the body or bodies mandated to carry out the tripartite consultations required to give effect to the Convention. The Committee reiterates its request that the Government provide precise and detailed information on the content and outcome of the tripartite consultations held on all matters concerning international labour standards covered by Article 5(1)(a)–(e) of the Convention, especially those relating to the questionnaires on Conference agenda items (Article 5(1)(a)); reports to be presented on the application of ratified Conventions (Article 5(1)(d)); and proposals for the denunciation of ratified Conventions (Article 5(1)(e)).***

Article 5(1)(b). Submission to Parliament. The Government reiterates information provided in April 2014, indicating that the 20 instruments adopted by the Conference from its 83rd to its 101st Sessions (1996–2012) were resubmitted to Parliament on 11 March 2014. It adds that a request would be made to the Minister by 15 November 2017 via the Labour Commissioner and Permanent Secretary concerning submission of the instruments to Parliament. ***The Committee refers to its longstanding observations on the obligation to submit and once again requests the Government to indicate whether effective consultations leading to conclusions or modifications were held with respect to the proposals made to the Parliament of Antigua and Barbuda in connection with the submission of the above-mentioned instruments, including information regarding the date(s) on which the instruments were submitted to Parliament. In addition, the Committee requests the Government to provide information on the content, agenda, discussions and resolutions and on the outcome of the tripartite consultations held in relation to the submission of instruments adopted by the Conference as of 2014: the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, as well as the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session.***

Article 5(1)(c). Examination of unratified Conventions and Recommendations. The Government reports that the unratified Conventions noted in its report were submitted to the National Labour Board on 11 November 2017 for re-examination with the social partners. ***The Committee requests the Government to provide updated information on the outcome of the re-examination of unratified Conventions, in particular: (i) the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which is deemed a governance Convention; (ii) the Holidays with Pay Convention (Revised), 1970 (No. 132), (which revises the Weekly Rest (Industry) Convention, 1921 (No. 14); the Holidays with Pay (Agriculture) Convention, 1952 (No. 101), to***

which Antigua and Barbuda is a State party); and (iii) the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), (which revises the Seafarers' Identity Documents Convention, 1958 (No. 108), that has also been ratified by Antigua and Barbuda).

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

Democratic Republic of the Congo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the Government's report sent in June 2019, in response to comments formulated in previous observations, starting in 2013. With regard to the serious failure of the obligation to submit the instruments adopted by the Conference, laid down in article 19(5) and (6) of the ILO Constitution, the Government indicates its commitment to submitting the instruments adopted by the International Labour Conference to the competent authorities, in full respect of the provisions of the Convention. It also supplies a list of representative organizations of employers (three organizations) and of workers (12 organizations), indicating that they participated in the drafting of the reports. The Committee nevertheless notes with ***regret*** that the Government's report contains no response to the Committee's previous comments, reiterated since 2013, requesting the Government to provide detailed information on the content of the consultations and the recommendations made by the social partners on each of the matters listed in *Article 5(1)* of the Convention. ***Noting that the Government has not provided for many years any information on the practical application of the Convention, the Committee again requests the Government to provide information on the consultations held with the social partners concerning the proposals made to Parliament upon the submission of instruments adopted by the Conference (Article 5(1)(b) of the Convention. It again requests the Government to provide detailed information on the frequency, the content and the results of the tripartite consultations held on the questions concerning international labour standards covered by the Convention and other ILO activities, in particular with regard to questionnaires concerning items on the agenda of the Conference (Article 5(1)(a)); the submission of instruments adopted by the Conference to the Parliament (Article 5(1)(b)); the re-examination, at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given (Article 5(1)(c); and reports on the application of ratified Conventions (Article 5(1)(d)).***

COVID-19. The Committee notes that as a result of the COVID-19 pandemic, tripartite consultations on international labour standards may have been postponed. With that in mind, the Committee recalls the guidance provided by international labour standards and encourages the Government to use tripartite consultations and social dialogue as a solid basis for formulating and implementing effective responses to the profound socio-economic repercussions of the pandemic. ***The Committee invites the Government to provide, in its next report, up-to-date information on all measures taken in this regard, particularly as concerns the measures taken to strengthen constituents' capacities and also to improve national tripartite mechanisms and procedures. It also requests the Government to provide information on the challenges encountered and good practices identified regarding application of the Convention during and after the pandemic period.***

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

Djibouti

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)

The Committee notes the observations of the General Union of Djibouti Workers (UGTD) and the Labour Union of Djibouti (UDT), received on 4 May 2021. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 3(1) of the Convention. Participation of representative organizations. The Government reiterates in its report that two legislative texts were drafted in 2013 in consultation with the social partners. These texts were referred to the National Council for Labour, Employment and Social Security (CONTESS) in 2014. The aim of the first text is to create an institutional framework for setting the issue of representativeness as provided by section 215 of the Labour Code, which establishes that "the representative nature of trade union organizations shall be determined by the outcome of workplace representation elections" and that "the ranking … thus determined by the workplace elections shall be recorded in an order issued by the Minister in charge of labour". Nevertheless, the draft order is in preparation, hence the criteria for determining the representativeness of employers' and workers' organizations is still to be established. The aim of the second text is to reinforce the electoral procedures to be followed in occupational or national elections, with free and independent elections which are essential for ensuring the formation of legitimate workers and employers' organizations and also their representativeness. The Government points out that the two draft texts have not been approved by CONTESS, which assigned the task of examining the drafts to the standing committee but the latter did not adopt them. The Government indicates that it will keep the Office informed of any developments in the matter. ***The Committee refers to its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and expresses the firm hope that the Government will adopt the abovementioned draft texts as soon as possible so that objective and transparent criteria can be established for appointing workers' representatives to national and international tripartite bodies, including the International Labour Conference.***

Article 4(2). Financing of training. The Government indicates that a seminar on labour law was held for members of grassroots unions affiliated to the two most representative federations of workers' unions in Djibouti. The seminar took place from 28 to 31 August 2016 at the National Institute of Public Administration and was funded by the executive secretariat responsible for reform of the administration. In addition, the Operational Action Plan 2014–18, adopted under the national employment policy, includes a component of training on labour legislation for trade union representatives and employers. ***The Committee requests the Government to continue providing information on appropriate arrangements made for the financing of any necessary training for participants in consultation procedures, as provided for by the Convention.***

Article 5. Tripartite consultations required by the Convention. Frequency of tripartite consultations. The Committee notes the detailed record of the meeting of CONTESS that took place on 27 and 28 November 2016, which the Government attached to its report. In this regard, it notes the agenda of the meeting, which included draft texts for the implementation of the Labour Code and also the discussion of unratified Conventions (*Article 5(1)(c)* of the Convention). In this regard, the Committee notes with ***interest*** the ratification proposals adopted unanimously concerning the Maritime Labour Convention, 2006 (MLC, 2006), and the Protocol of 2014 to the Forced Labour Convention, 1930. ***The Committee requests the Government to continue providing detailed information on the content and outcome of the tripartite consultations held on each of the matters referred to in Article 5(1) of the Convention, and in particular to continue to send copies of the records of CONTESS meetings.***

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

El Salvador

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)

The Committee notes the observations of the National Business Association (ANEP), endorsed by the International Organisation of Employers (IOE), received on 13 October 2020 and 25 October 2021, providing information on issues addressed in this comment. The Committee observes with ***deep concern*** that the observations of the ANEP from October 2020 state, as an element contrary to compliance with the Convention, that since the current President of the ANEP took office in April 2020, the Government has refused to deliver his credentials, and the highest government authorities, including the President of the Republic and the Minister of Labour and Social Welfare – who chairs the Higher Labour Council (Consejo Superior de Trabajo) (CST) – refuse to recognize the unanimous election of Mr Javier Ernesto Simán Dada as President of the ANEP and representative of the employers, as well as denigrating him and launching slanderous attacks against him personally, against his family and his enterprises, and also against the ANEP.

The Committee also takes note of the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021, and of the Single Confederation of Salvadoran Workers (CUTS), endorsed by the National Trade Union Federation of Salvadoran Workers (FENASTRAS) and the Single Federation of Rural Workers of El Salvador (FUOCA) received on 14 October 2021, both of which concern issues addressed in this comment.

Follow-up to the conclusions of the Committee on the Application of Standards (109th Session of the International Labour Conference, June 2021)

The Committee notes the discussion in the Conference Committee on the Application of Standards, in June 2021, on the application of the Convention. The Committee observes that the Conference Committee urged the Government to: (i) refrain from interfering in the constitution and activities of independent workers' and employers' organizations, in particular the National Business Association (ANEP); and (ii) reactivate, without delay, the Higher Labour Council (CST) and other tripartite entities, respecting the autonomy of the social partners and through social dialogue in order to guarantee their full functioning without any interference. The Conference Committee decided to include the case in a special paragraph of its report and requested the Government to continue to avail itself of ILO technical assistance, to submit a detailed report on the application of the Convention in law and in practice to this Committee, in consultation with the social partners, and to accept a high-level tripartite mission to be carried out before the 110th International Labour Conference. The Committee notes that, through a communication received on 3 December 2021, the Government has informed the Office that it agrees to receive the high-level tripartite mission.

Articles 2 and 3(1) of the Convention. Adequate procedures. Reactivation of the Higher Labour Council. In its previous comments, the Committee requested the Government to continue providing detailed and updated information on the measures adopted to ensure the effective operation of the CST, and on the content and outcome of the tripartite consultations held within the framework of that tripartite body. The Committee observes that the Government:

(i) indicates that during the COVID-19 pandemic crisis, it engaged in dialogue with the employers and workers, including holding meetings between the leadership of the ANEP and the President of the Republic, and emphasizes that the drafting of 39 health and safety protocols for different types of enterprises or workplaces, developed following a broad discussion and consultation process with the participation of trade unions from each sector, bears witness to this social dialogue with the enterprise sector. The Government also underlines that for the first time in the country's history, employers' associations collaborated

in establishing the "Institutional Strategic Plan 2020–2024" of the Ministry of Labour and Social Welfare, which includes social dialogue among its main objectives; and refers to the approval of the Act on protecting Salvadoran employment and the Act on teleworking;

(ii) adds that the Minister of Labour sought to maintain tripartite communication to ensure due compliance with the labour standard, to maintain respect for workers' labour rights, and to support the enterprise sector to counter the negative effect the COVID-19 pandemic on enterprise, highlighting meetings regarding the health sector in particular. The Government also reports that, on 29 April 2021, the Ministry of Labour and Social Welfare inaugurated the first Trade Union Training Institute (IFS), to strengthen social dialogue and benefit more than 150,000 workers grouped in various unions; and

(iii) reiterates that the CST was activated on 16 September 2019 – and indicates that in November 2019, the National Minimum Wage Council was also established, with the social partners freely electing their representatives. With regard to the activity of the CST, the Government recalls that the CST, at its meeting held in November 2019, approved ILO participation in the elaboration of a National Strategy for the Generation of Decent Employment. The Government specifies, however, that both the Higher Labour Council and the National Minimum Wage Council have been unable to meet in the normal manner due to the health crisis, and the measures adopted to suspend activities in order to contain it. To address the situation, the Ministry of Labour held meetings with representatives of the workers' organizations, establishing an Inter-sectoral Trade Union Roundtable on 22 April 2020, with a view to providing a space for legitimate, permanent dialogue that would be recognized by workers in the health sector.

With regard to the observations by the social partners, the Committee notes that the ANEP: (i) while recognizing that the CST was reactivated in 2019, specifies that it was not possible to induct all the employer representatives without an amendment to the rules to that end, since the rules listed explicitly the employers' organizations entitled to appoint representatives, and three of the eight organizations listed were inactive; (ii) reports that, after its inaugural meeting, the CST only met on three occasions, the last of which was in March 2020 (to address issues related to childcare facilities), and that no meetings were held during the four months prior to the pandemic emergency; (iii) reports that no meeting of the Officers or of a plenary meeting of the CST has been called since then; (iv) claims that the Government only reactivated the CST for a few months as a publicized tactical move to give the impression of compliance with the conclusions of this Committee and of the Conference Committee; and adds that the CST has not been convened due to the fact that the President of the Republic does not recognize the President of the ANEP, and to the President of the Republic's order, made clear on television and backed up by the Minister of Labour, to prohibit public servants from meeting with the ANEP; (v) emphasizes that the Government's justification for not holding CST meetings as a consequence of the pandemic is not credible (the Government's agenda includes many meetings held during the period that it decided not to convene the CST); since July 2020 the activity in the country has gradually returned to near normality with the corresponding preventive measures in place; the size of the CST is such that a plenary sitting could be accommodated in a large, well-ventilated space – not to mention its three Officers alone; and in any case, the CST would have been able to meet in a virtual session through online platforms; and (vi) rejects the claims that consultations were held with the participation of employers' representatives and affirms that in practice the Government had chosen its interlocutors at its own discretion and that when other employers' representatives are invited, the aim is purely for publicity and there is no true tripartite or bipartite dialogue.

The Committee also notes the observations of the ITUC, emphasizing that by freezing the CST, the Government is failing to comply with the obligation to consult provided under the Convention; and denouncing the Government for its unilateral appointment of workers' representatives for the tripartite consultations.

The Committee also takes note of the observation of the CUTS, indicating that: (i) since its last session on 2 March 2020, neither the plenary nor the Officers of the CST have been convened; (ii) the term of office of the CST expired on 16 September 2021, and there is no indication of what the mechanism for electing representatives might be, given that no clear rules have been established, in consultation with the social partners, for designating the worker representatives on the CST, as the Committee has been requesting; (iii) tripartite consultation is thus absent in the country; and (iv) trade union organizations that are not among the group of unions close to the Government are not invited to meetings convened by the Ministry of Labour and Social Welfare, such as the consultations for the Ministry's Institutional Strategic Plan 2020–2024 or the general health safety protocol for the pandemic.

The Committee notes that the Government claims to have been able to hold a wide variety of meetings and gatherings for social dialogue during the pandemic, including in virtual format, and to take concrete measures. It nevertheless notes with ***concern*** the allegations made by the social partners that the Government, in a contrary and deliberate manner, has not taken a single measure to enable the CST to continue meeting, regardless of the repeated requests from the ILO's supervisory machinery – most recently from the Committee on the Application of Standards in June 2021. The social partners allege that this has enabled the Government to dialogue only with like-minded interlocutors, thus failing to comply with the requirements for tripartite consultation under the Convention. In this regard, the Committee ***regrets*** to observe that despite having requested up-to-date, detailed information on the measures adopted to ensure the effective operation of the CST, the Government simply attributes its inactivity to the pandemic without providing a fuller explanation, when the CST was supposed to play a key role in tripartite consultations on measures to address the pandemic, and the Government itself claims that despite the challenges posed by the pandemic it successfully managed the operation of many other dialogue mechanisms, even creating new, differently constituted fora, instead of promoting tripartite consultation within the CST.

The Committee further notes that, in its communication received on 3 December 2021, the Government indicates that a new CST is in the process of being set up for the period 2021–23. The Government affirms in this respect that the preliminary steps required by the regulations have been taken in order for the worker and employer sectors to designate their representatives and that, these designations having been completed, the first session of the new CST is scheduled to take place on 8 December 2021.

The Committee urges the Government to take all the necessary measures to ensure the effective operation of the CST, respecting the autonomy of the social partners, including with regard to the appointment of their representatives – urging it in particular to ensure full recognition of the President of the ANEP and of this most representative employers' organization in social dialogue and tripartite consultation, as well as during any revision of the Statute of the CST. The Committee refers to its previous recommendations in this regard, and requests the Government to provide information on any developments, as well as on the content and outcome of the tripartite consultations held within this tripartite body. The Committee also urges the Government to take the necessary measures to ensure the full autonomy of the ANEP, the recognition of the results of its April 2020 elections and, in particular, of its President, Mr Simán Dada, and of this employers' organization as a social partner, to allow the full participation of the ANEP in social dialogue through its chosen representatives.

Interference in the election of representatives for tripartite consultation and in delivery of credentials. With regard to the allegations formulated by the ANEP in respect of government interference in the election of representatives at the Superintendency for the Electricity and Telecommunications Sectors (SIGET), the Committee requested the Government to provide a copy of the ruling of the Supreme Court of Justice (CSJ) definitively setting aside the election of the 2017 employer representatives on the SIGET that is challenged by the ANEP, and further requested the Government to provide information on the forms of elections of the representatives of employers and the date on which the elections were held.

The Committee notes that the Government, while reiterating its respect for the free election of representatives of tripartite and joint bodies: (i) recalls that in its judgment of 17 January 2018, the CSJ ordered precautionary measures with immediate provisional effect that suspended the appointments challenged by the ANEP; (ii) specifies that although a definitive ruling was requested, the CSJ stated that the ruling was still pending, with the result that the private sector representatives remained the same persons appointed by the ANEP, and (iii) indicates that, given that procedures for the election of private sector representatives on the SIGET board of directors have not been initiated since the issuance of precautionary measures in January 2018, and because of the pending CSJ decision, for the moment, no election mechanism has been implemented.

The Committee notes that the ANEP, in its observations: (i) states that it is awaiting the results of its appeal regarding the election of the employers' representatives on the SIGET, recalling that in this case the Government had constituted 60 supposed employers' organizations that had participated and won the election illegally; (ii) indicates that the ANEP proposed a reform to the Labour Code which would allow employers' organizations to follow clear, objective, predictable and binding rules for appointing the social partners; (iii) alleges however that the current Government is continuing the same delaying tactics, withholding delivery of credentials to employers organizations with the intent of hindering their participation in the appointment of the directors of various autonomous tripartite or joint public entities; (iv) states in this regard that in September 2020 the Government refused the ANEP's participation in the election of the Board of Governors and Executive Board of the Development Bank of El Salvador – BANDESAL (the refusal was on the grounds of the absence of the ANEP's credentials, which were withheld by the Government itself); and refers to other examples where the appointment of employer representatives was obstructed, in the Salvadoran Social Security Institute, the Maritime Port Authority, and the Independent Executive Committee for Ports; and (v) denounces the submission to the Legislative Assembly by the President of the Republic on 29 May 2021 of reforms, which were then approved by Legislative Assembly, to the manner in which directors are appointed by employers' organizations in 23 autonomous public entities. These reforms grant the President power to appoint the directors who represent the employers' organizations, as well as to arbitrarily remove them from their posts.

The Committee also takes note of the observations of the ITUC, denouncing the Government for imposing a legal obligation on trade unions to request renewal of their legal status every 12 months, thereby deciding unilaterally to withdraw the unions' credentials, preventing them from carrying out their trade union activities, and denying them the conditions for carrying out tripartite consultations.

The Committee also notes that the CUTS alleges that: (i) the Government has been excluding organizations that are not close to it from participating in the elections of tripartite bodies; (ii) as well as the problems regarding worker representation on the CST, the majority of federations and confederations were not convened for the election of representatives in the Salvadoran Vocational Training Institute (INSAFORP), an election that was held without respect for the applicable rules and which resulted in the appointment of persons close to the Government; and (iii) the fact that the Ministry of Labour and Social Welfare delayed delivery of credentials for up to nine months, while other organizations were issued credentials promptly to allow them to participate in the INSAFORP elections, is germane to this issue.

In light of the above and observing with deep concern that multiple allegations of interference by the authorities in the appointment of employers' and workers' representatives in public tripartite and joint bodies have been made for a long time, and that recent developments indicate a worsening of the situation, the Committee urges the Government, in consultation with the social partners, to take the necessary measures to ensure respect for the autonomy of the employers' and workers' organizations in this regard, both in law and in practice, including measures to ensure the prompt delivery of credentials for all organizations, as well as the repeal of any legal provisions in respect of

the above-mentioned 23 autonomous entities that allow the Government the possibility of interfering in the appointment of employers' representatives.

Article 5(1). Effective tripartite consultations. In its previous observation, the Committee reiterated its request to the Government to provide updated information on the outcome of the tripartite consultations held concerning the Protocol on the submission procedure that the Government indicated was drawn up with ILO assistance, and to provide a copy of the Protocol when it has been adopted. It also reiterated its request to the Government to send detailed and updated information on the content and outcome of the tripartite consultations held on all the matters relating to international labour standards covered by *Article 5(1)(a)–(e)* of the Convention. In this regard, the Committee notes that the Government: (i) indicates that an analysis has been conducted, and there is no previous example of a submission process in the country, as no official procedure for undertaking one existed; (ii) asserts that first steps have been taken in defining the procedure for the submission of Conventions, and an inter-institutional round table between the Ministry of Labour and the Ministry of Foreign Relations has been established for that purpose; and (iii) requests ILO assistance to take account of best practices at international level to establish and strengthen the submission process. The Committee further notes in this regard that the ANEP and the CUTS both assert that the tripartite consultations that the Committee requested the Government to undertake in respect of the Protocol on the submission procedure did not take place, and that they concur with the ITUC in denouncing the absence of tripartite consultations in matters related to international labour standards.

The Committee notes with ***concern*** that the Government, in reply to the Committee's previous observation, has not provided the information requested on the content and outcome of the tripartite consultations held on all matters related to international labour standards covered by the Convention, nor on the Protocol on the submission procedure, which the Committee was told had been elaborated; and principally affirms that there is no precedent in the country, nor any procedure in place for submitting international labour standards to the competent authorities exists.

While referring to the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted by the Governing Body of the ILO, the Committee strongly hopes that, in conformity with the Constitution of the International Labour Organization, the submission of international labour standards to the Legislative Assembly can resume as soon as possible, and urges the Government, in consultation with the social partners, to take the necessary measures, in particular with regard to the CST, to comply with the obligation of tripartite consultation provided in the Convention. Once again, the Committee requests the Government to provide detailed and updated information on the content and outcome of tripartite consultations held on all issues related to international labour standards covered by Article 5(1)(a)–(e) of the Convention, including the submission of international labour standards and the preparation of its next report in consultation with the social partners.

Technical assistance. In its previous comments, the Committee requested the Government to continue providing detailed and updated information on the measures adopted or envisaged to promote tripartism and social dialogue in the country within the context of ILO technical assistance, and on their outcome. The Committee duly notes that the Government is grateful for the support and follow-up provided through ILO assistance and cites various areas of cooperation in this regard, including social protection, occupational safety and health or the labour market information system. With regard to social dialogue, the Government reiterates that it had support from the ILO to reactivate the CST in 2019 and that the ILO also provided accompaniment in regional coordination spaces.

In the hope that it will shortly see progress in tripartite consultation, and compliance with the Convention in the country, the Committee recalls that ILO technical assistance remains at the disposal of the tripartite constituents, while emphasizing the importance that such assistance be defined through social dialogue, for example within the framework of the CST.

[The Government is asked to reply in full to the present comments in 2022.]

Grenada

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 5 of the Convention. Effective tripartite consultations. The Committee recalls that, in its previous comment, it had requested the Government to provide detailed information on each of the tripartite consultations held on matters concerning international labour standards covered by the Convention. The Government indicates in its report that tripartism is working well in the country to the extent that it has moved towards establishing a Committee of Social Partners. The said Committee includes civil society organizations and the conference of churches; it is responsible for the monitoring of the IMF Structural Adjustment Programme 2014–16 in Grenada, including labour reforms. Additionally, the Government specifies that a comprehensive review of the Labour Code was conducted during the 2014–15 period. Moreover, the Government recalls that, pursuant to section 21(2) of the Employment Act, the functions of the Labour Advisory Board reflect the provisions of *Article 5(1)* of the Convention. ***The Committee requests the Government to provide detailed information on the activities of the Labour Advisory Board on the tripartite consultations on international labour standards covered by the Convention, including full particulars on the consultations held on each of the matters listed in Article 5(1) of the Convention. The Government is also requested to indicate the intervals at which the abovementioned consultations are held, and the nature of the participation by the social partners during these consultations.***

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

Madagascar

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 2 and 5 of the Convention. Effective tripartite consultations. In its previous comments, the Committee requested the Government to provide detailed information on the subjects and outcome of the tripartite consultations held on each of the items set out in *Article 5(1)*. The Government indicates that it is making efforts to ensure compliance with the obligations deriving from the Conventions that it has ratified, including Convention No. 144, and recognizes that tripartite consultations on international labour standards were not undertaken effectively. However, it emphasizes that significant improvements have been implemented following a workshop to strengthen capacities on international labour standards and for the preparation of reports organized by the ILO on 22 and 23 October 2016. In 2016, the Government replied to the Committee's comments on Conventions Nos 29, 87, 98, 100, 105, 111 and 182. It adds that, although the social partners were consulted before the final replies were sent, they made no observations in that regard. In 2017, the Government replied to the Committee's comments concerning Conventions Nos 6, 26, 81, 87, 88, 95, 97, 98, 124, 129, 159 and 173. Following the tripartite consultations held, the observations made by the most representative workers' organizations were included in the final replies. With regard to the re-examination of unratified Conventions and of Recommendations to which effect has not yet been given, the Government indicates that tripartite consultations have been held on 11 instruments respecting working time (Conventions Nos 1, 30, 47, 106 and 175 and Recommendations Nos 13, 98, 103, 116, 178 and 182). The

Government adds that it sent its replies to the most representative organizations of employers and workers, but that the Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE) was the only one to provide comments on this subject. It adds that, between 28 February and 1 March 2017, the Ministry of Labour organized, with ILO support, a tripartite workshop to validate the situation with regard to the Labour Relations (Public Service) Convention, 1978 (No. 151). This review was validated unanimously by the representatives of the three partners present. Furthermore, a steering committee to promote Convention No. 151 was established to follow the process of ratification and engage in advocacy with the competent authorities, including the Government and Parliament. The Government adds that it has responded to the abrogation of Conventions Nos 21, 50, 64, 65, 86 and 104 and to the withdrawal of Recommendations Nos 7, 61 and 62, included on the agenda of the 107th Session of the International Labour Conference in 2018. It specifies that these responses were communicated to the most representative social partners, but that the latter made no observations on this subject. In its 2000 General Survey, *Tripartite Consultation International Labour Standards*, paragraph 71, the Committee recalls that *Paragraph 2(3)* of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), specifies that consultations may only be undertaken through written communications, "where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient". The Committee notes with ***interest*** that the Government, with ILO support, organized a workshop on 12, 13 and 14 September 2017 to validate the comparative study of the legislation in force and the provisions of the Maritime Labour Convention, 2006 (MLC, 2006), and the Work in Fishing Convention, 2007 (No. 188), with a view to their ratification. It adds that two roadmaps on the ratification of the MLC, 2006, and Convention No. 188 were unanimously approved by the tripartite partners present. ***The Committee requests the Government to continue providing updated information on the manner in which it ensures effective tripartite consultations, as well as on the content and outcome of the tripartite consultations held on each of the issues covered by Article 5(1). It also requests the Government to keep it informed of any developments relating to the ratification of Conventions Nos 151, 188 and the MLC, 2006.***

Article 3. Choice of the representatives of employers and workers by their respective organizations. The Committee notes that the implementation of Decree No. 2011-490 on trade union organizations and representativity implies for the tripartite partners the implementation of various types of action, including the holding of elections for staff delegates at the enterprise level within the territory of Madagascar by the Ministry of Labour, the convening of the social partners for an indication of the provisional results, and the consolidation by ministerial order of the definitive results for national and regional representation. The Government indicates that, in accordance with this process, the elections of staff representatives were launched in 2014 throughout Madagascar. It adds that Order No. 34-2015 to determine trade union representativity for 2014 and 2015 was adopted and was issued in February 2014. However, the Order has been contested by certain workers' organizations, including the General Confederation of Malagasy Trade Unions (FISEMA), FISEMARE and the Revolutionary Malagasy Union (SEREMA), challenging the outcome of the ballot, which placed the Christian Confederation of Malagasy Trade Unions (SEKRIMA) first among the most representative unions at the national level. In March 2015, these unions lodged an appeal for the result to be set aside. The Government explains that, as the appeal was suspensive in its effect, the application of the Order was suspended until the court issued its ruling rejecting the appeal in 2017. Moreover, as the establishment of the various labour-related bodies is conditional upon representativity, as they involve tripartite representation, such as in the case of inter-enterprise medical services management councils and the executive council of the National Social Insurance Fund (CNAPS), the tripartite actors concerned agreed to adopt an alternative solution. In this context, the Government indicates that all the representatives of the various organizations appointed to the different social dialogue structures in existence, and the labour-related bodies referred to above, were subject to tacit renewal of their mandates. ***The Committee requests the Government to make every effort, in consultation with the social partners, to ensure that tripartism and social dialogue are promoted so as to facilitate procedures that guarantee effective tripartite consultations (Articles 2 and 3). In this respect, it requests the Government to provide updated information on any developments relating to the choice of employers' and workers' representatives for the purposes of the procedures covered by the Convention, including the dates and organization of their elections. The Committee also requests the Government to provide a copy of the Order that is in force with its next report.***

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

Bolivarian Republic of Venezuela

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

The Committee notes the observations, concerning the application of the Convention in law and in practice, of the Independent Trade Union Alliance Confederation of Workers (CTASI) of 31 August 2021; and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), with the support of the International Organisation of Employers (IOE), of 1 September 2021; as well as the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), of 8 September 2021. ***The Committee requests the Government to provide its comments thereon.***

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

In its previous observation, the Committee noted the conclusions and recommendations of the report of the Commission of Inquiry concerning the implementation of the Convention. The Committee notes the discussion at the 343rd Session (November 2021) of the Governing Body on the examination of all measures, including those provided for in the ILO Constitution, required to ensure that the Bolivarian Republic of Venezuela complies with the recommendations of the Commission of Inquiry, and the decision adopted in this regard. The Committee notes that the Governing Body will again consider at its 344th Session (March 2022) the Government's progress in ensuring compliance with the recommendations of the Commission of Inquiry and will continue examining possible measures to achieve this objective.

Articles 2, 5 and 6 of the Convention. Effective tripartite consultations. The Committee recalls that the Commission of Inquiry recommended, through tripartite dialogue with the representative organizations of employers and workers: (i) the establishment of effective tripartite consultation procedures, and (ii) the institutionalization of dialogue and consultation covering the subjects envisaged in all ratified ILO Conventions or relating to their application. In its previous observation, having regretted to note that no progress had been made either in complying with the Convention or in implementing the recommendations of the Commission of Inquiry, the Committee encouraged the Government to engage in the widest possible tripartite consultations and social dialogue and invited it to provide updated information on the measures taken in this respect, including on capacity-building measures for the tripartite constituents and measures to reinforce mechanisms and procedures, and on the identified challenges and good practices.

The Committee notes the Government's indication that, within the framework of its renewed policy of national dialogue with all sectors of the country, in accordance and in order to improve compliance with the Convention, it has been conducting wide and inclusive dialogue with all employers' and workers' organizations. In this regard, the Government indicates that: (i) since early 2021, dialogue round tables have been established with the various employers' and workers' organizations, in a climate of respect and goodwill, to address matters related to the Conventions concerned by the Commission of Inquiry, with a view to reaching solutions and continuing to make progress in accordance with the obligations established in the Convention. This invitation was answered by FEDECAMARAS, the Venezuelan Federation of Craft, Micro, Small and Medium-sized Business Associations (FEDEINDUSTRIA), the CBST-CCP, the CTASI, the General Confederation of Labour (CGT), National Union of Workers of Venezuela (UNETE), the Confederation of Autonomous Trade Unions (CODESA, which submitted a document and withdrew), as well as the Confederation of Workers of Venezuela (CTV, which sent a communication declining to attend the dialogue proposed as a dispute settlement mechanism); (ii) meetings were subsequently held in response to the social partners' requests and, as of May 2021, a

forum designated the Meeting for National Dialogue on the World of Work was held virtually through six working sessions, one of which was devoted to matters relating to the implementation of the Convention; and (iii) during these sessions, the partners were able to express their views and make extensive presentations on matters relating to the implementation of the Convention, in a climate of respect and goodwill, with wide participation of a number of them: FEDECAMARAS, FEDEINDUSTRIA, CBST-CCP, the CTASI, UNETE, CTV (which took part in the first two sessions), CODESA (which attended the first session only), and CGT (which expressed interest but had connection problems).

In this respect, the Committee welcomes the actions that, in the context of these forums for dialogue, the Government indicates it has undertaken or will carry out to ensure compliance with the Convention and to strengthen social dialogue. The Committee encourages the Government to continue with these actions:

(i) referral to the National Assembly of the Committee's comments on the revision of laws and standards implementing ILO Conventions, as well as the Government's commitment to engage in consultations with the social partners on draft laws, or their respective reforms initiated by the National Assembly relating to international labour standards (to this end, the social partners were formally consulted on suggestions and recommendations regarding draft laws or reforms currently on the legislative agenda, and the Ministry of People's Power for the Social Process of Labour (MPPPST) undertook to act as a liaison between the legislature and the social partners);

(ii) the establishment of three technical working groups between the social partners and the Government on the application of the Conventions concerned by the Commission of Inquiry, to develop specific proposals on methods and procedures referred to in the texts of the Conventions while taking into account national realities. The Government indicates that these technical working groups started their work on 30 July 2021 and continued on 17 and 18 August 2021, and indicates that a general discussion was held on enhancing procedures to comply with the Convention;

(iii) virtual coordination meetings in May 2021 with the various social partners, employers and workers, to report on the progress of the 109th International Labour Conference, including its special format, agenda items and the composition of delegations. The Government indicates that additional coordination meetings are planned for the second part of the 109th Conference (25 November–11 December 2021);

(iv) referral to the National Assembly of the list of international labour standards adopted by the Conference pending ratification, with a view to furthering consultations on those standards, in accordance with the Convention. In this regard, in March 2021, the National Assembly approved an Agreement for the revision and evaluation of ILO Conventions, through which the competent Ministries were urged to take measures to ensure the participation of workers, employers and other public authorities. Also in March, the MPPPST initiated the consultation process on the Violence and Harassment Convention, 2019 (No. 190), submitting an evaluative instrument on the Convention to the social partners in April 2021, together with the national legal framework and ILO documentation on the instrument (at the time of writing, responses have been received from three of the eight organizations consulted); and

(v) consultation with the social partners on the content of the reports on Conventions Nos 1, 22, 26, 27, 87, 95, 100, 111, and 144, starting on 18 August 2021 with a presentation on each subject and a deadline for submission prior to the deadline set by the ILO.

The Government also indicates that: (i) it plans to hold a forum, with the participation of ILO technical representatives, to discuss the progress made in the framework of the Meeting for National Dialogue on the World of Work and the technical working groups for the improvement of compliance

with the Conventions that are concerned by the Commission of Inquiry; (ii) other spaces for dialogue have been opened between the social partners and the executive authorities, such as the invitation of the Executive Vice-President of the Cabinet to FEDECAMARAS to attend the Higher Council of Productive Economy, with a meeting that took place on 30 July 2021 and which was attended by representatives of FEDECAMARAS and FEDEINDUSTRIA, as well as other productive sector associations in agri-food, fisheries and agriculture; and (iii) spaces for dialogue are being created with other public authorities, such as the dialogue initiated in early 2021 with the new leadership of the National Assembly, through the Special Committee for Dialogue, Peace and National Reconciliation, in which various workers' and employers' organizations have participated.

While noting that the CBST-CCP similarly highlights the spaces for dialogue referred to by the Government as progress, the Committee also notes the other social partners' observations (FEDECAMARAS and CTASI) that the exploratory tripartite and bipartite dialogue carried out has not yet translated into tangible progress, nor does it meet the criteria established in the recommendations of the Commission of Inquiry, given the lack of minutes, independent chairing, methodology for a results-oriented agenda or ILO assistance. Furthermore, FEDECAMARAS indicates that a number of the planned mechanisms, such as the coordination of consultations with regard to the National Assembly's legislative agenda, have not yet been implemented; the CTASI also emphasizes that it is of fundamental importance for the dialogue to ensure the full freedom of all trade unionists and leaders being restricted under judicial proceedings, and freedom from interference in their organizations' autonomy.

While duly noting the above developments, the Committee refers to the recommendations of the Commission of Inquiry and requests the Government, in consultation with the social partners and with the assistance of the ILO, to take additional measures for the proper functioning of effective tripartite consultation procedures, including mechanisms to institutionalize dialogue and consultation. The Committee invites the Government to continue providing updated information on the measures taken in this respect in accordance with the Convention, and the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), including on the consultations undertaken, the nature and form of the procedures established, the measures to strengthen these mechanisms and the capacity-building measures for the tripartite constituents, taking national circumstances into account, and the good practices and challenges that have been identified.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 144** *(Afghanistan, Bahamas, Barbados, Belize, Congo, Czechia, Dominica, Gabon, Ghana, Hungary, Iceland, India, Israel, Jamaica, Japan, Jordan, Kenya, Kuwait, Lesotho, Malaysia, Mali, Mauritania, Mauritius, Morocco, Netherlands: Sint Maarten, New Zealand, North Macedonia, Trinidad and Tobago).*

Labour administration and inspection

Bangladesh

Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021, referring to the matters addressed below, and requests the Government to provide its comments in this respect.

The Committee notes that the complaint submitted in 2019 under article 26 of the ILO Constitution, concerning non-observance by the Government of Bangladesh of the Convention as well as of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), is pending before the Governing Body. At its 343rd Session (November 2021), taking note of the road map of actions submitted by the Government on 23 May 2021 and the report submitted by the Government on 30 September 2021, on the progress made with regard to its timely implementation, the Governing Body: (i) requested the Government to inform it of progress made in the implementation of the road map to address all the outstanding issues mentioned in the article 26 complaint at its 344th Session (March 2022), during which the Governing Body will again discuss the implementation of the road map; and (ii) deferred the decision on further action in respect of the complaint to its 346th Session (November 2022).

The Committee takes note of the additional information provided by the Government on 30 September 2021 on the progress made in the implementation of the road map to address all the outstanding issues mentioned in the article 26 complaint.

Legislative developments. The Committee takes note that, in the additional information provided concerning the implementation of the first priority area of the road map of actions (labour law reform), the Government details the progress made and envisaged with respect to the amendment of the Bangladesh Labour Rules (2015), the Bangladesh Labour Act (2006) (BLA), the Export Processing Zones (EPZs) Labour Act (2019), as well as to the adoption of the EPZs Labour Rules. ***The Committee requests the Government to adopt measures in order to ensure that the ongoing legislative reform process will take into account the outstanding issues addressed below as well as in the direct request to the Government, with a view to ensuring conformity of the legal framework with the Convention. The Committee requests the Government to provide detailed information on any progress made in this respect.***

Articles 2, 4, 12 and 23 of the Convention. Labour inspection in EPZs and special economic zones (SEZs). The Committee previously noted: (i) that Chapter XIV of the EPZs Labour Act provides for inspections to be undertaken by the Directorate of Inspection for Factories and Establishments (DIFE) in the EPZs; (ii) the ongoing consultations with workers, investors and relevant stakeholders to see how labour inspections undertaken by the DIFE can best be integrated with the existing supervision exercised by the Bangladesh Export Processing Zones Authority (BEPZA); and (iii) that under section 168 of the EPZs Labour Act, DIFE inspectors are allowed to undertake inspections but a prior approval of the Executive Chairman of the BEPZA is required. The Committee notes the Government's indication that the development of inspection modalities for EPZs is ongoing and that, to this effect, a further meeting is expected to be held between the DIFE and the BEPZA to follow up on their last meeting held on 16 February 2021. The Committee further notes the Government's indication that labour inspectors of the DIFE are regularly inspecting factories in EPZs without obstacles and in most cases without prior notice (inspections have been undertaken in nine factories between March and May 2021). Furthermore, the Committee takes note of the Government's indication that the Bangladesh SEZs Authority (BEZA), which controls and supervises SEZs, will take all the necessary measures for the effective inspection of

SEZs in accordance with Chapter XIV of the EPZs Labour Act (which provides for inspections by the DIFE). ***The Committee requests the Government to continue to provide information on the outcome of the above-mentioned discussions on the development of DIFE inspection modalities for EPZs. Noting the absence of information on any progress made in this regard, the Committee once again requests the Government to take the necessary measures to ensure that labour inspectors are empowered to enter freely establishments in EPZs and SEZs without any restrictions, such as the approval required from the Executive Chairman of the BEPZA for the undertaking of inspections, pursuant to section 168 of the EPZs Labour Act. In this respect, the Committee once again requests the Government to provide information on the nature and the modalities of the above mentioned approval of the BEPZA, including whether a separate request is required before each inspection, and if so, the number of requests made, the number approved, the time elapsed between each request and approval, and any reasons given for each failure to approve. It also requests the Government to provide statistical information on the labour inspections undertaken in EPZs and SEZs that are in operation, disaggregated into inspections by the DIFE and inspections under the BEPZA and the BEZA, including the overall number of inspections undertaken, the number and nature of all violations detected and the measures taken as a result.***

Article 6. Status and conditions of service of labour inspectors. With regard to its previous comments, the Committee notes the Government's statement in the additional information that the approval process of the proposal providing for the creation of new posts of labour inspectors is already underway and that a meeting was held on 31 August 2021 in the Ministry of Public Administration (MOPA) to assess that proposal. The Government also states that, upon clearance from all the Ministries involved in the approval process, this matter will be referred to the Bangladesh Public Service Commission (BPSC) (responsible for the selection of public service workers) for initiating the recruitment process. The Government specifies in its report that the number of labour inspector posts to be created will depend on the approval of the concerned Ministries. The Committee also notes the Government's indication that new positions for 4 inspector generals, 12 joint inspector generals, 51 deputy inspector generals and 288 assistant inspector generals have been included as part of the proposal submitted to the MOPA. The Government indicates that, if approved, this will create more promotion opportunities for labour inspectors, and it further states that conditions of service for labour inspectors are the same as for other Government employees. The Committee also notes the observations of the ITUC that despite Government commitments in prior years to increase substantially the number of labour inspectors, there were 312 filled inspector posts and 221 vacant posts as of March 2019. ***The Committee requests the Government to provide information on the career structure of the DIFE, including levels and positions as well as the number of appointments made at each position. The Committee requests the Government to continue to provide information on any progress made in the process of creation of new posts and the recruitment of labour inspectors. Noting the absence of information in this regard, the Committee requests once again the Government to provide information on the attrition rate among inspectors at different professional levels. Finally, the Committee requests the Government to provide detailed information on the conditions of service of labour inspectors, including their levels of remuneration and their employment tenure in comparison to the remuneration levels and job tenure of other officials exercising functions of similar complexity and responsibility, such as tax collectors and the police.***

Articles 7, 10, 11 and 16. Human and material resources of the labour inspectorate. Frequency and thoroughness of labour inspections. The Committee takes note that, in reply to its previous comments on the number of labour inspectors, the Government informs that: (i) the DIFE organigram consists of 993 posts, among which 575 are for labour inspectors; (ii) currently, 313 labour inspectors work in the DIFE; (iii) following a request from the DIFE, the recruitment process of 108 inspectors to fill vacant posts is underway; and (iv) due to the COVID-19 pandemic, the normal recruitment process is elongated and many of the public examinations are on hold. The Committee also notes the Government's additional information that the BPSC has recommended to fill 99 of the 108 vacant posts requested by the DIFE,

and that the Government is working on the preparation of a list of qualified inspectors to be promoted to the next upper level. Moreover, the Committee takes note that the labour inspection report of 2020–21 indicates that 14 labour inspectors (health) have joined in the DIFE and that 11 officers and staffs of different grades have retired and left from their jobs in this period. Furthermore, the Committee also notes the Government's information that 47,361 labour inspection visits were carried out between 2020 and 2021. ***The Committee requests the Government to continue to provide information on the number of labour inspectors working at the DIFE and to provide information on any progress made in filling the 108 vacant posts, as well as on any other measures taken or envisaged to fill all of the remaining vacant posts. The Committee also requests the Government to provide information on the promotion of labour inspectors to senior posts, as well as on any specific measures taken to fill the posts left vacant because of those promotions. It also requests the Government to continue to include, in the labour inspection annual report, information on the number of labour inspection visits carried out, disaggregated by sector.***

Furthermore, the Committee also notes the up-to-date information provided by the Government, in reply to its previous comments, on the training provided to labour inspectors (including the number of participants and subjects covered by in-house training programmes between 2020 and 2021). It also notes that, according to the information provided by the Government, the number of computers with internet connections increased from 80 in 2019 to 425 in December 2020 and that labour inspectors were equipped with 425 Android tablets to use during inspections. The Committee also notes that the number of vehicles allocated to the labour inspection service remained the same as in 2019. The Committee also notes an increase in the budget allocated to the DIFE, from 418.5 million taka in 2019–20 to 445 million taka in 2020–21. The Committee takes note that, in its observations, the ITUC indicates that inspectors suffer from logistic and transport shortages to carry out their duties properly, especially considering the additional inspection duties gained by the DIFE with regard to EPZs and SEZs. ***The Committee requests the Government to provide its comments in this respect.***

Articles 12(1) and 15(c). Inspections without previous notice. Duty of confidentiality in relation to complaints. In relation to its previous comments, the Committee notes the Government's indication that: (i) the confidentiality of the complaint and the anonymity of the complainants are ensured, where applicable; (ii) according to the standard operating procedure on labour complaints investigation, adopted in 2020, a minimum of 50 per cent of the regular inspections are unannounced; and (iii) generally, all the special inspections (such as accident investigations and complaint investigations, among others) are unannounced, except where the presence of witnesses or certain documentation are required. The Committee notes that, pursuant to *Article 15* of the Convention, exceptions on confidentiality are understood to require particular justification, with strict standards applied in this respect. ***The Committee requests the Government to take specific measures to ensure that labour inspectors treat as absolutely confidential the source of any complaint and give no intimation to the employer that an inspection visit was made in consequence of the receipt of such a complaint. Noting the absence of information in this regard, the Committee once again requests the Government to provide specific information on the number of unannounced inspection visits and those undertaken with prior notice, disaggregated by ready-made garment factory, shop, establishment, and other factories, as well as statistical information on the outcome of those visits, disaggregated in the same manner.***

Articles 17 and 18. Legal proceedings. Effectively enforced and sufficiently dissuasive penalties. With regard to its previous comments, the Committee notes that the Government once again reiterates that there is one legal officer at the DIFE responsible for the follow-up of labour law violations detected by labour inspectors, and that there is a plan to establish a legal unit at the DIFE, which is proposed to be composed of nine legal officers (less than the 17 legal officers previously mentioned by the Government). The Committee takes note of the Government's additional information that the creation of new posts for a legal unit has already been requested by the DIFE to the MOPA. Furthermore, the

Committee also notes the ITUC's indication that fines for violations under the BLA remain too low to be dissuasive and are not enforced due to the lengthy legal process and to corruption. The ITUC also indicates that little data is available on the extent to which fines or penalties are imposed and that criminal proceedings for violations of the BLA are rare. ***The Committee requests the Government to continue to provide information on the progress made to establish a legal unit at the DIFE, indicating the number of staff and their functions, and to provide information on any other measures taken or envisaged to improve the proceedings for the effective enforcement of legal provisions. While noting the absence of information in this regard, the Committee once again requests the Government to provide information on: (i) any measures introduced or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive; and (ii) the specific outcome of the substantial number of cases, indicated by the Government in the labour inspection report, that are referred to the labour courts (such as the imposition of fines, the amounts collected from fines imposed, and also sentences of imprisonment) and to specify the legal provisions to which they relate. Finally, the Committee requests the Government to provide up-to-date information on the number and nature of violations detected.***

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

[The Government is asked to reply in full to the present comments in 2022.]

Congo

Labour Inspection Convention, 1947 (No. 81) (ratification: 1999)

Labour Administration Convention, 1978 (No. 150) (ratification: 1986)

The Committee notes with ***deep concern*** that the Government's reports on Convention No. 81, due since 2012, and on Convention No. 150, due since 2018, have not been received. In light of its urgent appeal launched to the Government in 2019, the Committee proceeds with the examination of the application of the Conventions on the basis of the information at its disposal.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour administration and labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 150 (labour administration) together.

A. Labour inspection

Labour Inspection Convention, 1947 (No. 81)

Application of the Convention in law and in practice. The Committee notes the adoption of Order No. 21399 of 16 August 2021 on the responsibilities and organization of the departmental labour directorates, which, inter alia, determines the responsibilities of the head of the labour inspectorate. The Committee also notes that a Decent Work Country Programme (DWCP) 2018–22 has been developed in collaboration with the Office. The Committee notes that one of the priority actions to strengthen the social dialogue capacities of actors in the world of work is the restructuring of the labour administration to increase its efficiency (outcome 2.4). Aware of the country's budgetary difficulties, the Committee observes that the Government has not provided detailed information on the legislative framework and the implementation of the Convention for many years. Thus, the Committee is lacking important details for the examination of the labour inspection system in the country. ***The Committee therefore urges the Government to provide, in its next report, any information to enable it to assess the degree of application of the Convention in law and practice. This should include information on:***

(i) the organization of the labour inspectorate, including the updated geographical distribution of the number of officials empowered with inspection functions (Articles 2, 4, and 10);

(ii) the proportion of inspectors' enforcement activities vis-à-vis their conciliation activities (Article 3(1) and (2));

(iii) the cooperation established between the labour inspector services and other government services (Article 5(a)) and collaboration with employers' and workers' organizations (Article 5(b));

(iv) the frequency and content of, and number of participants in training provided to labour inspectors throughout their career (Article 7(3));

(v) the conditions of service of inspection staff, including progress in adopting a special status for labour inspectors (Article 6);

(vi) the financial resources, means of action and transport available to the labour inspectorate (Article 11);

(vii) the measures taken to ensure that cases of occupational disease are notified to the labour inspectorate (Article 14).

In addition, the Committee urges the Government to take the necessary measures to ensure that annual reports on the activities of the labour inspectorate are published and communicated regularly to the ILO, within the time lines set out in Article 20, and that they contain the following information, as set out under Article 21: (a) laws and regulations relevant to the work of the inspection service; (b) number and composition of staff of the labour inspection service, in accordance with the requirements of Articles 6, 7, 8, 9 and 10; (c) statistics of workplaces liable to inspection and the number of workers employed therein; (d) statistics of inspection visits in accordance with the requirements of Article 16; (e) statistics of violations and penalties imposed in accordance with the requirements of Articles 13, 17 and 18; and (f) and (g) statistics of industrial accidents and occupational diseases in accordance with the requirements of Article 14.

The Committee also requests the Government to provide information on the progress made regarding the revision of the Labour Code and to provide a copy of the draft law.

The Committee once again reminds the Government of the possibility of availing itself of ILO technical assistance and of requesting, within the framework of international financial cooperation, financial support in order to ensure the establishment and operation of the labour inspection system, and would be grateful for information on any progress made or difficulties encountered.

B. Labour administration

Labour Administration Convention, 1978 (No. 150)

Articles 1, 4, 5, 6, 8 and 10 of the Convention. Structure and operation of the labour administration. Noting the above-mentioned DWCP 2018–22, the Committee observes an absence of up-to-date information on the structure and operation of the system of labour administration. ***Aware of the complex socioeconomic context, the Committee urges the Government to provide in its next report information on all the following points:***

(i) the updated structure of labour administration at central, regional and local levels and the organizational charts of the bodies provided for in Decree No. 2009-469 (Article 1);

(ii) measures taken to ensure the effective organization of the labour administration in the territory and the coordination between the central administration and the departmental directorates (Article 4);

(iii) consultation, cooperation and negotiation between the public authorities and the most representative organizations of employers and workers carried out within the social dialogue tripartite bodies at the national, regional and local levels for the implementation of the provisions of the Convention (Article 5);

(iv) the responsibilities of the competent bodies within the system of labour administration relating to the preparation, administration, coordination, checking and review of national employment policy (Article 6);

(v) the composition and activities carried out by the technical advisory committee on international labour standards, the issues which led to consultations within the committee and the results thereof (Article 8).

Referring to its comments above concerning the application of Articles 6 and 11 of Convention No. 81, the Committee requests the Government to provide information on the measures taken to ensure that the staff of the labour administration system have the status, material means and financial resources necessary for the effective performance of their duties, in accordance with Article 10 of the Convention.

Dominica

Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)

Labour Administration Convention, 1978 (No. 150) (ratification: 2004)

The Committee notes with ***deep concern*** that the Government's reports on Convention No. 81, due since 2014, and on Convention No. 150, due since 2015, have not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Conventions on the basis of the information at its disposal.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour administration and labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 150 (labour administration) together.

A. Labour inspection

Labour Inspection Convention, 1947 (No. 81)

Article 3 of the Convention. Functions of labour inspection. The Committee notes that inspectors, as defined under the Labour Standards Act, ensure the enforcement of provisions relating to wages, working hours and employment conditions (section 28(2)), while safety officers, as defined under the Employment Safety Act (section 8) are responsible for the inspection of working conditions that affect occupational safety and health. ***The Committee requests the Government to indicate through what measures or activities inspectors and safety officers: (i) provide technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; and (ii) bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions, as required by Article 3(1)(b) and (c) of the Convention.***

Articles 4, 6, 7, 8, 10 and 16. Central authority. Number and conditions of service of labour inspection staff. Frequency of inspection visits. The Committee notes that, according to the information available on the official website of the Government, the Division of Labour is now under the Ministry of National Security and Home Affairs. The Committee notes that the Government Directory of officials in the Division of Labour includes the Labour Commissioner, the Deputy Labour Commissioner and labour officers. It is not clear which of these officials perform the functions of inspectors and safety officers, and there is no information on how the inspection activities are performed. ***The Committee requests the Government to indicate which officials in the Division of Labour perform the functions of inspectors and safety officers. It also requests the Government to provide information on the employment status of the inspectors and safety officers, as well as the recruitment procedures, qualification requirements and trainings available to them. The Committee finally requests the Government to provide***

information on the frequency of inspection visits carried out by both inspectors and safety officers, with a view to ensuring that all workplaces are inspected as often and as thoroughly as necessary.

Article 11. Necessary equipment and material resources available to labour inspectors. ***The Committee requests the Government to provide information on the provision of necessary equipment and material resources to inspectors and safety officers for the performance of their duties, including suitably equipped offices, transport facilities and reimbursement of expenses.***

Articles 14, 20 and 21. Data collection and reporting. Publication and content of annual report. The Committee observes that there does not seem to be any information regarding the notification of industrial accidents and cases of occupational diseases to the Division of Labour. The Committee further notes that no recent annual reports on inspection services have been published or submitted. ***The Committee requests the Government to provide information on the arrangements for the notification of industrial accidents and occupational diseases in practice. The Committee also requests the Government to take the necessary measures to ensure that an annual report on the work of the labour inspection services is prepared and published, and that it contains information on all the items listed under Article 21 of the Convention, notably, statistics of inspection visits, violations and penalties imposed, as well as industrial accidents and cases of occupational disease.***

B. Labour administration

Labour Administration Convention, 1978 (No. 150)

Articles 1 and 4 of the Convention. Organization and operation of the labour administration system. The Committee notes that the Division of Labour is now under the Ministry of National Security and Home Affairs, consisting of a Labour Commissioner, Deputy Labour Commissioner, labour officers, a senior clerk, a senior executive officer and a tribunal officer. ***The Committee requests the Government to provide information on the functions and responsibilities of each of those positions, and on how those functions and responsibilities are coordinated within the labour administration system.***

Articles 5, 6 and 8. Consultations within the system of labour administration. Formulation and monitoring of national labour policy. Participation in the preparation of a national policy concerning international labour affairs. The Committee previously noted that, according to the Government, the Industrial Relations Advisory Committee (IRAC), which is tripartite, is involved in the formulation of the national policy and the preparation of policy concerning international labour affairs, through the submission of draft legislation to Parliament. However, the Committee also recalls that, according to the observations submitted by the Waterfront and Allied Workers Union in 2010 the IRAC was inactive. The Committee also notes that, according to section 7 of the Employment Safety Act, consultative and advisory committees, consisting of the Ministers responsible for planning and health and representatives of employers and workers, may be established to advise on any matters in relation to the administration of the Act, to assist in the establishment of reasonable standards of safety, and to recommend regulations respecting safe employment practices, procedures and techniques. ***The Committee requests the Government to provide information on the activities carried out by the IRAC, including specifically all activities carried out since 2018, and to provide information on the scope of the IRAC's proposals, together with any relevant documents on its meetings. It also requests the Government to indicate whether any consultative and advisory committees, as provided for under section 7 of the Employment Safety Act, have been established, and if so, to provide further information on their functioning in practice. Regarding the preparation of policy concerning international labour affairs, the Committee also refers to its comments under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).***

Article 7. Extension of the functions of the system of labour administration. The Committee notes that, according to the information provided by the Government in its first report, the national labour

legislative system does not cover workers who are not employees, and the Division of Labour does not have the mandate to consider this extension. ***The Committee requests the Government to indicate whether it has any plans to extend the functions of labour administration to include activities relating to the conditions of work and working life of categories of workers who are not, in law, employed persons, as set forth in Article 7(a)–(d) of the Convention.***

Article 10. Human resources and material means for the labour administration system. The Committee notes that, according to the information in the Government's first report, the recruitment of officials in the labour administration falls under the purview of the Public Service Commission and is regulated by the Public Services Act. The Government also indicated that the status of staff of the labour administration and the conditions of services are negotiated between the Establishment, Personnel and Training Department and public personnel unions, such as the Dominica Public Service Union, and reflected in memorandum agreements and general orders. Moreover, specialized technical trainings are available both internally and with external collaboration. The Government further stated that financial resources for the performance of labour administration duties are allocated and budgeted for in the annual estimates of the Government, and are subject to the annual budget change. ***The Committee requests the Government to provide further information on the recruitment procedure and qualifications required for labour administration personnel. It also requests the Government to provide detailed information on the status and conditions of service of those personnel, including copies of related memorandum agreements and general orders, as well as on the content of initial and in-service trainings. The Committee finally requests the Government to provide information, as far as possible, on the elements taken as a basis to determine the annual budgetary allocation for the material means and financial resources available to the labour administration.***

Grenada

Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)

Articles 20 and 21 of the Convention. Establishment, publication and communication to the ILO of annual inspection reports. The Committee notes that, in reply to its previous comments regarding the publication and transmission to the ILO of the annual inspection report, the Government indicates that no labour inspection report has been produced. The Government notes that during the year 2020, given the onset of the pandemic, the Ministry of Labour, along with workers' and employers' representatives, inspected a number of Government offices and statutory bodies to ensure compliance with COVID-19 protocols. The Government indicates that a copy of the report produced on the occasion of those visits will be shared with the Office. ***The Committee once again urges the Government to indicate the measures adopted or envisaged to ensure that annual inspection reports are published and transmitted to the ILO, in accordance with the requirements of Articles 20 and 21. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance for this purpose.***

The Committee requests the Government, in any event, to provide statistical information that is as detailed as possible on the activities of the labour inspection services (such as industrial and commercial workplaces liable to inspection, number of inspections, infringements detected and the legal provisions to which they relate, penalties applied, number of industrial accidents and cases of occupational disease) to enable the Committee to make an informed assessment on the application of the Convention in practice.

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

Guatemala

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1994)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the information provided by the Government in reply to its previous comments in relation to *Article 17* of Convention No. 81 and *Article 22* of Convention No. 129 (legal or administrative proceedings in the case of violations of or failure to comply with legal provisions enforceable by labour inspectors).

Article 3 of Convention No. 81 and Article 6 of Convention No. 129. Functions of labour inspectors. The Committee notes that, in reply to its request for information on the measures adopted to ensure that the conciliation functions of labour inspectors do not interfere with the effective discharge of their primary duties, the Government indicates that labour inspectors fulfil conciliation functions on a daily basis within their inspection duties, as part of their obligation to ensure compliance with conciliatory settlements as set out in section 278 of the Labour Code. The Committee however notes that the Government has provided additional information according to which there are certain labour inspectors to whom conciliation cases are assigned and others who are responsible for carrying out inspections. In this regard, the Government indicates that the delegation of the General Labour Inspectorate of the department of Guatemala has 18 inspectors who undertake conciliation and 23 who carry out inspection visits of workplaces following denunciations. The Committee recalls that, in accordance with *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129, any further functions which may be entrusted to labour inspectors, such as conciliation, shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. ***In view of the high proportion of inspectors in at least one department who undertake conciliation functions on a daily basis, and the absence of information regarding the fulfilment of inspection visits and related duties by these same inspectors, the Committee requests the Government to provide detailed information on the time and resources allocated to the conciliation activities undertaken by labour inspectors, as a percentage of the total time and resources used by inspectors for the discharge of their primary duties, as envisaged in Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129.***

Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129. Powers of labour inspectors to enter freely at any hour of the day or night any workplace liable to inspection. With reference to its request to adopt measures to ensure that labour inspectors can enter enterprises at any hour of the day or night, the Committee notes the Government's indication in its report that for inspectors to be able to enter any workplace liable to inspection without previous notice, they have to take into account its working hours so that their inspection can take the time that is necessary. The Committee notes the Government's indication that the National Tripartite Commission on Industrial Relations and Freedom of Association (CNTRLLS) has been discussing a draft legislative initiative for the reform, among other provisions, of section 281(a) of the Labour Code which, according to the Government's indications, limits the entry of labour inspectors into any workplace liable to inspection to the working day, in accordance with the internal rules or the authorizations issued by the Ministry of Labour and Social Welfare (MTPS). The Committee also notes that, according to the information provided by the Government, the number of inspections carried out at night between 2017 and May 2021 represented fewer than 1 per cent of the total number of inspections undertaken by day over the same period. ***The Committee requests the Government to take concrete measures, including within the context of a possible amendment to section 281(a) of the Labour Code, in order to guarantee that labour inspectors***

provided with proper credentials are empowered to enter at any hour of the day or night any workplace liable to inspection, in accordance with Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129. The Committee also requests the Government to report any progress in the adoption of the legislative initiative for the amendment of section 281(a) of the Labour Code.

Article 12(2) of Convention No. 81 and Article 16(3) of Convention No. 129. Notification of the presence of inspectors unless such notification may be prejudicial to the performance of inspection duties. With reference to its request to adopt measures to ensure that inspectors have the power to omit to notify their presence to the employer if such notification may be prejudicial to the performance of their duties, the Committee notes the Government's indication that labour inspectors do not give prior notice to employers that they will be carrying out controls at workplaces, but only show the employer the letter of appointment and identity documents of the inspectors concerned and the purpose of the control, and the employer is then required to allow the entry of the inspectors. In this regard, the Committee also notes that, according to the information provided by the Government, the CNTRLLS has also been discussing a draft initiative to reform section 271 of the Labour Code, which sets out the requirement to notify the presence of inspectors by producing proof of their identity and appointment, without envisaging exceptions in this regard. ***The Committee requests the Government to adopt concrete measures, including within the context of a possible amendment to section 271 of the Labour Code, to ensure that labour inspectors can choose not to notify the employer or his representative of their presence, if they consider that such notification may be prejudicial to the performance of their duties, in accordance with Article 12(2) of Convention No. 81 and Article 16(3) of Convention No. 129. The Committee also requests the Government to provide information on any progress achieved in the adoption of the legislative initiative to amend section 271 of the Labour Code.***

Article 18 of Convention No. 81 and Article 24 of Convention No. 129. Adequate and effectively enforced penalties. The Committee notes that, in reply to the observations of the Autonomous Popular Trade Union Movement and Global Unions of Guatemala concerning the failure of the labour inspection services to impose penalties in practice, the Government indicates that, although in the past the conditions did not exist for the effective enforcement of the penalties issued by labour inspectors (the necessary units had not been established and the personnel to monitor the enforcement of such penalties had not been recruited), penalty procedures are now being initiated and decisions issued to impose fines on enterprises that are in violation. In this regard, the Committee notes the Government's indication that the lack of personnel responsible for following up cases is still affecting their processing, especially in the General Labour Inspectorate of the department of Guatemala. ***The Committee requests the Government to provide information on the functioning of the units responsible for enforcing the effective application of the penalties imposed by labour inspectors, with an indication of the measures adopted to reinforce their activities and improve the human resources available to them. The Committee also requests that the Government provide detailed information on the number and nature of penalties imposed, including the amounts of fines imposed and collected, once the penalty procedures have been initiated and decisions issued.***

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

Haiti

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 1 September 2019, in which it reiterated its observations of 2016, 2017 and 2018 and adds that the situation has deteriorated.

Articles 3, 12, 13, 15, 16, 17 and 18 of the Convention. Discharge of primary duties of the labour inspectorate. Appropriate sanctions. In its previous comment, the Committee noted the Government's indications concerning the obstacles faced in applying the Convention in practice, particularly the inadequate numbers of labour inspectors, and requested the Government to supply detailed information together with statistics on the planning and implementation of systematic inspections throughout the country, including in the export processing zones, and also their results. The Committee notes the information provided by the Government concerning the planning and implementation of inspection visits in two of the ten departments in the country in several activity sectors, including: (i) in the western department: 64 inspections (32 initial inspections and 32 catch-up inspections) conducted in 2017; 16 inspections (11 of which in the textile industry), 31 unannounced inspection visits in enterprises and 24 investigations, conducted in 2018; and 42 visits planned and ten advice services carried out in 2019; and (ii) in the north-eastern department, ten initial inspections and ten follow-up inspections were conducted in 2018. The Government indicates that the main objective of labour inspection over this period has been redressing the inconformity identified, rather than imposing penalties. The Committee also notes that the CTSP in its observations indicates that inspectors do not provide technical advice to workers and employers, but limit themselves to calculating the statutory benefits due in disputes between employers and workers. The CTSP also indicates that there are no statistics on labour inspection in the country; to its knowledge, there is no planning or implementation of systematic inspections throughout the country; and, in practice, labour inspection was carried out only in the textile industry. ***While duly noting the progress achieved since 2017 by the labour inspectorate in the country, particularly concerning the planning and implementation of visits in two of the ten departments in the country, the Committee requests the Government to strengthen its efforts to progressively expand the planning and conducting of inspection visits to all regions and all economic sectors of the country. The Committee also requests the Government to continue to provide information on the measures taken in this regard, including the statistics concerning the number of inspections planned and conducted, disaggregated by sector, along with details of the results of these visits, including the warnings issues, legal procedures brought or recommended, and penalties imposed and applied. The Committee also requests the Government to ensure that, during their inspection visits, the inspectors perform their primary functions in conformity with Article 3 of the Convention.***

Articles 6, 10 and 11. Human and material resources available to the labour inspectorate. The Committee notes the Government's indication in reply to its previous comments that: (i) between 2014 and 2017, thanks the project to build the capacities of the Ministry of Social Affairs and Labour (ILO/MAST), piloted by the ILO, a team was established of 20 officials, 12 of whom are inspectors in the field and eight are trainers; (ii) in 2018, means of transport (six motorcycles and a car) were provided to certain regional MAST offices and that efforts are envisaged to equip all inspection services with the means necessary to guarantee labour inspection in workplaces; and (iii) it planned to upwardly revise the salaries of labour inspectors in the same way as all other inspectors of the public administration. The Committee notes the CTSP's observations, according to which the Government has not made an effort to change the status of labour inspectors in order to provide them with better employment conditions, such as a decent salary, a guarantee of productive employment and social advantages, which could jeopardize the independence of inspectors. ***The Committee requests the Government to pursue its efforts towards progressively increasing the number of inspectors and the material means placed at their disposal to enable them to effectively discharge the functions of the inspection services. The Committee also requests the Government to take the necessary measures to improve the conditions of service of the inspectors, including increasing their remuneration. In this regard, it requests the Government to provide information on the salary scales and labour inspectors' career prospects, compared with public servants who carry out similar functions within other government services, such as tax inspectors and the police.***

Articles 6, 7(1) and Article 15(a). Recruitment of inspectors. Prohibition from having any direct or indirect interest in the undertakings. In its previous comment, the Committee noted that, in its observations, the CTSP indicated that recruitment of labour inspectors was carried out on the basis of clientelism. The Committee notes the Government's indication that, to ensure full application of sections 47 to 75 of the Decree of 17 May 2005, revising the general public service regulations, which regulate the recruitment procedure of public service agents, including labour inspectors, an administrative structure has been established for this purpose, entitled the Office for Human Resources Management (OMRH). The Committee also notes that the CTSP reiterated in 2019 its previous observations on this matter and indicated the further deterioration of the labour inspectorate's independence vis-à-vis employers. ***The Committee requests the***

Government to ensure that labour inspectors are recruited with sole regard to their qualifications for the performance of their duties and that their status and conditions of service are such that they are independent of changes of government and of improper external influences in conformity with Articles 6 and 7(1) of the Convention. The Committee also requests the Government to provide information on the composition of the OMRH as well as on its prerogatives.

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

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

Honduras

Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)

The Committee notes the observations of the Honduran National Business Council (COHEP), received in 2020, as well as the Government's reply. The Committee also notes the observations of COHEP, received on 31 August 2021 and the Government's response to these observations, received on 18 November 2021.

National Labour Inspection Strategy 2018–22. Further to its previous comments on the specific measures taken for the implementation of the National Labour Inspection Strategy, the Committee notes from the Government's report that it is receiving ILO technical assistance, on which basis the cities of Tegucigalpa and San Pedro Sula have been established as pilot cities to implement the Strategy, in which labour inspectors from the various regional offices will participate. It also notes that the Government indicates that the priority areas of the Strategy target industry, trade, tourism, mining, transport, agriculture, as well as the informal economy. Regarding the progress made, the Committee notes the Government's indications relating to the training and diploma courses for inspectors on the application of labour law, as well as the provision of work equipment. The Committee also notes COHEP's observations that: (i) the National Labour Inspection Strategy has been integrated into the Annual Operating Plan of the Secretariat of Labour and Social Security (STSS); (ii) the implementation of the Strategy has been carried out with all the regional inspectors of the General Directorate of Labour Inspection (DGIT), by introducing information workshops, during which the goals were established in an inclusive manner with all staff, taking into account the available resources; and (iii) to date, COHEP has not received an update from the STSS on the current status of the Strategy's implementation. ***The Committee requests the Government to continue providing information on the specific measures taken to implement the National Labour Inspection Strategy, as well as on the progress made in pursuit of the established goals.***

Article 6 of the Convention. Adequate conditions of service of labour inspectors, including sufficient remuneration to ensure their impartiality and independence from any improper external influences. Further to its previous comments on the remuneration of labour inspectors and investigations launched against them, the Committee notes the Government's indication that the lowest wage paid to a labour inspector is 11,200 Honduran lempiras (equivalent to US$464). The Government also indicates that labour inspectors receive wages graded according to their classification level, based on seniority, five-year bonuses and increments granted. The Committee further notes the Government's indication that on 4 June 2018, it requested budgetary support from the Secretariat of State to cover the wages, as it does not have its own funds to carry out a wage adjustment at the national level. The Committee also notes that COHEP provides information on the budget allocated to the STSS in the general income and expenditure budget for the financial years 2020 and 2021. Regarding the investigations launched against labour inspectors, the Committee notes the information provided by the Government that, in 2018, 2019 and 2020, 74 disciplinary proceedings were undertaken, resulting in 40 complaints being set aside, 24 warnings, 8 suspensions without pay and 2 dismissals. The Committee also notes the Government's indication regarding the creation of the Technical Inspection Audit, governed by

sections 8, 20, 21 and 22 of the Labour Inspection Act. The Government indicates, in this regard, that tripartite efforts are under way to establish the Audit's operating procedure. ***The Committee requests the Government to continue providing information disaggregated by year on the number of complaints received against labour inspectors, indicating the grounds for such complaints, the number of investigations actually launched and their outcomes. It also requests the Government to provide information on the progress made on the functioning of the Technical Inspection Audit. The Committee also requests the Government to step up its efforts and take measures to ensure that the remuneration levels of labour inspectors are in line with those of other public officials carrying out similar functions. It also requests the Government to provide detailed information on the results achieved by these measures, including wage figures for each of the levels of labour inspectors (levels I, II, and III), relative to the wage levels of public officials carrying out similar duties.***

Articles 10 and 16. Number of labour inspectors and the performance of a sufficient number of regular visits throughout the country. Further to its previous comments on the progress achieved in the recruitment of labour inspectors, the Committee notes the Government's indication that, to date, labour inspectors have been recruited on the basis of vacancies left by other inspectors who have retired. The Government reports that the DGIT has 169 labour inspectors nationwide, which allows the Committee to observe that there has been no new recruitment since December 2018. The Committee further notes COHEP's observations that labour inspectors have few financial resources allocated to their activities and that the number of labour inspectors is insufficient to meet the national labour inspection needs. Concerning inspection coverage and priority issues for labour inspection, the Government provides information on controls carried out through the various types of labour inspection, envisaged in the Labour Inspection Act (regular, extraordinary and advisory), in workplaces in prioritized sectors throughout the country. The Government also indicates that priority issues for labour inspection include wages, safety and health, child labour and freedom of association, and that priorities are determined on the basis of the number of complaints received and the violations identified through scheduled and advisory inspections. Finally, the Committee notes the information provided by the Government on the number of regular and extraordinary inspections disaggregated by year and region according to which, in 2019 and 2020, 3,356 regular inspections and 23,252 extraordinary inspections were carried out. It also notes that there was a fall in both regular and extraordinary inspections in the period 2018–20. ***The Committee urges the Government to take the necessary measures to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspection service. In this regard, it requests the Government to provide information on the efforts made to recruit new labour inspectors, indicating the updated number of active inspectors. The Committee also requests the Government to provide detailed information on the number of regular and extraordinary inspections carried out, including in the informal economy. Furthermore, it requests the Government to indicate the resources of the labour inspectorate allocated to labour dispute mediation and the number of cases mediated by labour inspectors each year.***

Article 12(1)(a). Scope of labour inspectors' free access to workplaces liable to inspection. In its previous comments, the Committee noted that section 15(I) of the Labour Inspection Act provides that labour inspectors are authorized to freely enter any workplace, establishment or place liable to inspection at any time of day or night, provided that work is in progress in the workplace. In this respect, it requested the Government to provide information on the application in practice of this requirement. The Committee notes the Government's indication that section 45 of the Labour Inspection Act ensures the employer's participation in the inspection to ensure equality between the parties, transparency and fairness of the inspection. The Government adds that conducting an inspection in a workplace where no work is in progress would not safeguard these principles and could result in the invalidity of the proceedings, and thereby the ineffectiveness of the inspection and consequent impunity of labour violations. The Committee also notes COHEP's observations that section 33 of the Regulations Implementing the 2019 Inspection Act allows for days and hours to be designated for any type of

inspection and provides that, in the event that the workplace to be inspected is not operating on the designated days and times, the labour authority will reschedule the inspection. The Committee notes that the designation of days and times for inspections restricts inspectors' free initiative to enter workplaces. The rescheduling of inspection in the event that the workplace is not operating on the designated days and times also leaves open the possibility that workplaces may close to prevent labour inspectors from verifying compliance with the legal provisions. The Committee recalls that the different restrictions placed in law on inspectors' right of entry into workplaces can only stand in the way of achieving the objectives of labour inspection as set out in the Convention. ***It therefore requests the Government to take the necessary measures, without delay, to remove these restrictions to ensure that labour inspectors may enter freely and without previous notice, at any hour of the day or night, any workplace subject to inspection, as provided for in Article 12(1)(a) of the Convention.***

Article 12(1)(c)(i). Scope of interviews as an investigation method. In its previous comments, the Committee requested the Government to take the necessary measures to amend section 49 of the Labour Inspection Act, which establishes that, during the inspection, the labour inspector shall question the workers and the employer or their representatives separately and the questions shall only relate to the subject matter of the inspection, in order to avoid possible influence on the replies. The Committee observes that, to date, the provisions of section 49 of the Labour Inspection Act have not been amended. It also notes the Government's indications relating to the mechanism for interviewing the parties, that the questions should be directly related to the inspection and not to matters that do not fall within the labour inspector's competence, or even less within the labour sphere. The Government adds that, while during extraordinary inspections, the labour inspector only addresses the content of the complaint lodged by the worker or their representative, in regular inspections the inspector has greater freedom in the questions they may ask, provided they stay within their labour-related area of competence. The Committee recalls that, under *Article 12(1)(c)(i)* of the Convention, labour inspectors shall be empowered to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions. ***The Committee therefore urges the Government to take the necessary measures to amend section 49 of the Labour Inspection Act to ensure the conformity of national legislation with the provisions of Article 12(1)(c)(i) of the Convention.***

Article 18. Adequate penalties for violations of the legal provisions enforceable by labour inspectors. Further to its previous comments, the Committee notes the information provided by the Government according to which, in 2019, penalties were imposed on 207 companies for a total of 39,359,143 lempiras (equivalent to US$1,629,599), and in 2020, penalties were imposed on 75 companies for a total of 344,220 lempiras (equivalent to US$14,251). The Committee notes that the Government does not refer to the number of violations detected relative to the penalties imposed, or to the nature of the penalties imposed. ***The Committee requests the Government to provide detailed information, disaggregated by year, indicating the number of labour law violations identified, the nature of such violations (wages, working time, occupational safety and health, child labour, and others), as well as the number of penalties imposed and the amount of fines paid.***

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

Hungary

Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1994)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Additional functions entrusted to labour inspectors. The Committee previously noted that combating illegal employment was a priority for labour inspection, and that the labour inspection services were regularly associated in joint inspections to eradicate illegal migration, among others, in cooperation with the police and the custom authorities. In this respect, the Committee notes the Government's reference to the Labour Inspection Act, which entrusts labour inspectors, among other things, with the control of the work and residence permits of foreign workers, and the notification to the immigration police of any decision concerning the infringement of the provisions on the employment of foreign workers (sections 3(1)(i) and 7/A(7) of the Labour Inspection Act).

The Committee once again notes that the Government has not provided the information requested on the role of labour inspectors in granting foreign workers in an irregular situation their due rights resulting from their employment relationship. The Committee recalls that, pursuant to *Article 3(1)* and *(2)* of Convention No. 81 and *Article 6* of Convention No. 129, the functions of the system of labour inspection shall be to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties. In this respect it stated in its 2006 General Survey, *Labour inspection*, paragraph 78, that any function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection, which is to protect the rights and interests of all workers and to improve their working conditions. In this respect, the Committee also recalls that in its 2017 General Survey on certain occupational safety and health instruments, it indicated that workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as the loss of their job or expulsion from the country (paragraph 452) or that their complaint will not be kept confidential. ***The Committee requests the Government to take measures to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors to ensure the protection of workers in accordance with labour inspectors' primary duties as provided for in Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. It also once again requests the Government to indicate the manner in which the labour inspectorate discharges its primary duties in ensuring the enforcement of employers' obligations with regard to any statutory rights workers may have in an irregular situation for the period of their effective employment relationship. It urges the Government to provide information on the number of cases in which workers found to be in an irregular situation have been granted their due rights, such as the payment of outstanding wages or social security benefits. In addition, the Committee requests the Government to provide information on the manner in which it ensures that labour inspectors treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions.***

Articles 10 and 16 of Convention No. 81 and Articles 15 and 21 of Convention No. 129. Number of labour inspectors and effectiveness of the labour inspection system. The Committee previously noted a significant decrease in the number of labour inspectors from 696 to 401 between 2008 and 2013. In this respect, the Committee noted that the comments of the workers' representatives of the Tripartite National ILO Council (included in the Government's reports) had indicated that this decrease had compromised the efficiency of inspections as shown by the increase in the number of industrial accidents and violations detected in recent years. On the other hand, the Committee noted the Government's reply to these comments indicating that the increased number of violations detected was in fact a result of the enhanced efficiency of inspections due to the establishment of labour inspection priorities which were determined by annual labour inspection plans (focused on high risk sectors).

The Committee notes with ***concern*** from the statistics provided in the Government's report that the number of labour inspectors continued to decrease to 393 labour inspectors (as of May 2017), and that the number of occupational accidents increased between 2010 and 2016 from 19,948 per year to 23,027. The Committee recalls from its 2017 General Survey on certain occupational safety and health instruments, paragraph 441, that focusing inspections on the most hazardous workplaces must not diminish the overall resource commitment of the labour inspectorate. ***Noting the significant decline in the number of inspectors***

since 2008, as well as the increase in the number of occupational accidents reported, the Committee requests the Government to take the necessary measures to ensure that the number of labour inspections are adequate to ensure the effective protection of workers. The Committee requests the Government to continue to provide statistical information on the number of labour inspectors, inspection visits, violations detected and penalties imposed. It also requests the Government to continue to provide information on the number of occupational accidents, and to provide an explanation for their increased number in recent years.

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

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

India

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 16 September 2020. The ITUC states that, as part of the response to the COVID-19 pandemic, a number of states (including Uttar Pradesh, Madhya Pradesh, Rajasthan and Gujarat) have made changes to their labour laws by way of amendments, ordinances or executive orders, bypassing tripartite consultations and parliamentary debates. The ITUC states that the changes, based on the extraordinary measures provisions of the Factories Act 1948, gravely undermine workers' rights and leave them without protection, in particular with regard to working hours, safety and health and wages. The ITUC also expresses concern about the provisions adopted in the state of Madhya Pradesh that exempt "non-hazardous factories" from routine inspections by the Labour Commissioner, and permit these factories to submit third-party certification regarding compliance instead. The ITUC states that this exemption is a violation of the Convention and will endanger the health and safety of workers. ***The Committee requests the Government to provide its observations in this respect.***

In addition, the Committee notes that the Occupational Safety and Health (OSH) and Working Conditions Bill, previously noted by the Committee, was adopted in September 2020. The Committee proceeded with the examination of the application of the Convention on the basis of the new legislation adopted (see *Articles 12* and *17* below), as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations made by the Council of Indian Employers (CIE), received on 30 August 2019, and the observations made by the International Trade Union Confederation (ITUC), received on 1 September 2019, as well as the Government's reply in relation to the observations made by the ITUC.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

The Committee notes the discussion in the Conference Committee on the Application of Standards (CAS) of the International Labour Conference, at its 108th Session (June 2019), on the application of the Convention, and the conclusions adopted. The conclusions of the CAS called upon the Government to: (i) ensure that the draft legislation, in particular the Code on Wages, and the OSH and Working Conditions Act, is in compliance with the Convention; (ii) ensure that effective labour inspections are conducted in all workplaces, including the informal economy and in all Special Economic Zones (SEZs); (iii) promote collaboration between officials of the labour inspectorate and employers and workers, or their organizations, in particular when it comes to the implementation of inspection reports; (iv) increase the resources at the disposal of the central and state government inspectorates; (v) ensure that labour inspectors have full powers to undertake routine and unannounced visits and to initiate legal proceedings; (vi) pursue its efforts towards the establishment of registers of workplaces at the central and state levels; (vii) provide detailed information on the progress made with respect to measures taken to improve the data collection system, enabling the registration of data in all sectors; (viii) ensure that the operation of the self-certification scheme does not impede or interfere with the powers in functions of labour inspectors to carry out regular and unannounced visits in any way, as this is only a complementary tool; (ix) submit its annual report on labour

inspection to the ILO; and (x) provide information on the number of routine and unannounced visits, as well as on the dissuasive sanctions imposed against infractions to guarantee the enforcement of labour protections in practice. The CAS also invited the Government to accept a direct contacts mission and to elaborate a report in consultation with the most representative employers' and workers' organizations on progress made in the implementation of the Convention in law and practice. The Committee notes with ***concern*** the statement in the Government's report that it does not accept any direct contacts mission.

Articles 2 and 4 of the Convention. Labour inspection in SEZs. In its previous comments, the Committee noted the Government's earlier indication that few inspections had been carried out in SEZs, and that Development Commissioners continued to exercise inspection powers in some SEZs. The Committee notes the observations of the ITUC expressing concern that the power of labour inspectors are being exercised by Development Commissioners who have a responsibility to promote investment in SEZs. The Committee also notes the observations made by the CIE that some of the SEZs have jurisdictions in more than one state, and that due to this administrative difficulty, Development Commissioners have been appointed to oversee the functioning of the SEZs. The CIE adds that Development Commissioners have been given full powers to enforce the labour laws through labour inspectors deputed by the local governments.

The Committee notes the Government's indication, in response to the concerns expressed by the ITUC, that the deputed labour inspectors from the states work independently, are paid by the states and may conduct inspections on their proper initiative without prior intimation to the Development Commissioners. The Committee further notes the Government's indications, in reply to the Committee's request to ensure that effective labour inspections are conducted in all SEZs, that the number of inspections has increased substantially in the last three years. In this respect, the Committee notes with ***interest*** from the statistical information provided by the Government, an increase in the number of inspections undertaken in six of the seven SEZs from 2016–17 to 2018–19: from 0 to 62 in Falta Kolkata; from 26 to 30 in Vishakapatnam; from 46 to 105 in Mumbai; from 16 to 30 in Noida; from 368 to 2,806 in Kandla; and from 189 to 222 in Chennai. The number of inspections undertaken in the SEZ Cochin went from 22 to 18 over the same period. The Committee notes however, that the number of penalties imposed remained low, and in three out of the seven SEZs, no penalties were imposed during this period. ***The Committee requests the Government, in line with the 2019 conclusions of the CAS, to ensure that effective labour inspections are conducted in all SEZs. Welcoming the information already provided, the Committee requests the Government to provide more detailed statistical information on the number of labour inspectors responsible for inspections in these zones, the number of inspection visits, the number and nature of offences reported, the number of penalties imposed, the amounts of fines imposed and collected, and information on criminal prosecutions, if any. It also requests the Government to continue to provide information on the number of enterprises and workers in each SEZ. The Committee further requests the Government to provide up-to-date information indicating in which SEZs labour inspection powers have been delegated to Development Commissioners, including the specific powers so delegated and how inspections are carried out in those SEZs.***

Articles 4, 20 and 21. Availability of statistical information on the activities of the labour inspection services at the central and state levels. Availability of statistics in specific sectors. The Committee notes the Government's reference, in reply to the Committee's previous request for an annual labour inspection report, to the 2018–19 report published by the Ministry of Labour and Employment, which contains statistical information on inspection activities at the central level (including the number of labour inspections, the number of irregularities detected, the number of prosecutions and convictions, as well as the number of accidents in mines). Concerning the state level, the Committee notes the statistical information on labour inspection activities provided by the Government with its report (including on the number of labour inspections in 14 states, and the number of violations detected, prosecutions and penalties imposed in 15 states). Finally, the Committee welcomes the information available on the Shram Suvidha web portal at the Ministry of Labour and Employment concerning the information on registered workplaces in nine states and the information that discussions are ongoing with other states concerning the integration of information into the portal. The Committee also notes the observations made by the ITUC that the statistical data provided does not allow for an assessment of the effective operation of the labour inspection services. ***The Committee urges the Government to pursue its efforts to ensure that the central authority (at the central level or the state levels), publishes and transmits to the ILO annual reports on labour inspection activities containing all the information required by Article 21. In line with the 2019 conclusions of the CAS, the Committee encourages the Government to pursue its efforts towards the establishment of registers of***

workplaces at the central and state levels. In this regard, the Committee also once again requests the Government to provide detailed information on the progress made with respect to measures taken to improve the data collection system enabling the registration of data in all sectors.

Articles 10 and 11. Material means and human resources at the central and state levels. The Committee notes with ***interest*** the Government's indication, in response to the Committee's request to increase the resources at the central and state government inspectorates, that more than 574 labour inspectors have been recruited at the state levels in the last two years, bringing the total number of labour inspectors to 3,721. The Government adds that at the central level, the number of labour inspectors is 4,702. The Committee also notes the information provided by the Government in relation to the central level and 19 states on the transport facilities or transport allowance provided, as well as on the available material resources.

The Committee notes the statement of the CIE that the use of technology, information and communications technology in particular, has contributed to promoting compliance. The Committee also notes the observations made by the ITUC that the human and material resources of the labour inspectorate are inadequate. It notes the Government's reply that inspectors at the central government level and in most states are provided vehicles for conducting inspections. ***In line with the 2019 conclusions of the CAS, the Committee requests the Government to continue to take measures to increase the resources at the disposal of the central and state government inspectorates, and to provide information on the concrete measures taken in that respect. It also requests the Government to continue to provide information on the number of labour inspectors, material resources and transport facilities and/or budget for travel allowances of the labour inspection services at the central level and for each state, and to provide statistical information on the workplaces liable to inspection at the central level and state levels.***

Articles 12 and 17. Free initiative of labour inspectors to enter workplaces without prior notice, and discretion to initiate legal proceedings without previous warning. The Committee previously requested the Government to ensure that, in the ongoing legislative reform, any legislation developed be in conformity with the Convention. The Committee notes the Government's indication, in response to this request, that the Code on Wages was adopted in August 2019. The Committee notes that pursuant to section 51(5)(b) of the Code on Wages, labour inspectors entitled "inspectors-cum-facilitators" may inspect establishments "subject to the instructions or guidelines issued by the appropriate Government from time to time". It further notes that the Code on Wages provides that inspectors-cum-facilitators shall, before the initiation of prosecution for an offence, give employers an opportunity to comply with the provisions of the Code within a certain time limit through a written direction (section 54(3)).

In addition, the Committee notes the adoption of the OSH and Working Conditions Code on 28 September 2020. The Code provides that, subject to rules made, inspector-cum-facilitators may enter any place which is used, or they have reason to believe is used, as a work place and inspect and examine the establishment and any premises, plant, machinery, article, or any other relevant material (section 35(1) and (2)). The Committee notes that while the Code also gives inspectors-cum-facilitators and other appropriately authorized officers the power to enter workplaces at any time during normal working hours or at any other time deemed necessary, it requires them to give notice in writing to the employer prior to undertaking a survey (section 20(1)); and with respect to inspections in mines (section 41), to provide at least three days before conducting inspections (for the purpose of surveying, levelling or measuring any mine or any output therefrom), except in emergency situations pursuant to a written order from the Chief Inspector-cum-Facilitator. The Committee further notes that section 110 provides that an inspector-cum-facilitator shall not initiate prosecution proceedings against an employer for any offence in Chapter XII of the Code (on offences and penalties), and shall give an opportunity to comply with relevant provisions of the Code within a period of thirty days from the date of notice giving opportunity, and, if the employer complies with such provisions within the period, no such proceeding shall be initiated against the employer. Section 110 further provides that the period of notice does not apply in the case of an accident or if it concerns a violation of the same nature repeated within a period of three years from the date on which the first violation was committed. In addition, the Committee notes the statistics provided by the Government concerning the number of convictions and penalties imposed at the central level and for 11 states for the period of 2016–19.

The Committee recalls that under *Article 12(1)(a)* of the Convention, labour inspectors shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, and it further recalls *Article 17* of the Convention provides that, with certain exceptions, persons

who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it must be left to the discretion of labour inspectors to give a warning or advice instead of instituting or recommending proceedings. ***The Committee requests the Government to take measures to ensure that labour inspectors are empowered, in law and practice and in line with Article 12(1)(a) and (b) of the Convention, to make visits without previous notice. In this respect, noting that the Code on Wages provides for inspections subject to the instructions or guidelines issued by the appropriate Government, the Committee urges the Government to ensure that the instructions issued fully empower labour inspectors in accordance with Article 12(1)(a) and (b) of the Convention. The Committee also requests the Government to provide further information on the meaning of the term "survey" in section 20 of the OSH and Working Conditions Code, and to indicate whether labour inspectors are required to provide notice of all inspections in writing under the Code. It also urges the Government to take the necessary measures to ensure that labour inspectors are able to initiate legal proceedings without previous warning, where required, in conformity with Article 17 of the Convention. In this respect, it requests the Government to provide further information on the meaning of the term "inspectors-cum-facilitators," including the functions and powers of officials performing this role. Noting the statistics already provided, the Committee requests the Government to provide information on the number and nature of offences reported, the number of penalties imposed, the amounts of fines imposed and collected, and information on criminal prosecutions, if any.***

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

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

Jordan

Labour Inspection Convention, 1947 (No. 81) (ratification: 1969)

Articles 1 and 2 of the Convention. Supervision of working conditions and protection of workers in special economic zones (SEZs). The Committee previously noted that various deficits had been identified in a joint migration and labour inspection audit of the Aqaba Special Economic Zone Authority (ASEZA), and that technical assistance was being implemented in Jordan to improve coordination between labour inspectors inside and outside of the Aqaba SEZ. ***In the absence of up-to-date information from the Government on this issue, the Committee once again requests the Government to provide detailed information on labour inspection activities undertaken in the SEZs. It requests the Government to include information on the relationship between the ASEZA and the Ministry of Labour, as well as on the number of inspectors assigned to the SEZs, the number of inspections carried out, the number and nature of violations detected, and the sanctions imposed for all such violations.***

Article 3(1)(a) and (2). Duties entrusted to labour inspectors in relation to conciliation and the enforcement of immigration law. Following its previous comments on the enforcement of immigration law by labour inspectors, the Committee notes that, according to 2019 statistics provided in the Government's report regarding inspections, 6,989 decisions of repatriation were issued against migrant workers, and in 1,331 cases, the repatriation of a worker was cancelled by paying a fine. The Committee further notes that the inspectorate detected 3,407 infringements related to section 12 of the Labour Code, addressed to work permits for non-Jordanian workers. The 2019 statistics indicate 250 employer infractions for child labour; there is no data on employer infractions of wage provisions. In addition, the Committee notes the Government's indication that the functions of labour inspectors include conciliation and settlement in the case of labour disputes.

The Committee recalls that, as indicated in its 2006 General Survey, *Labour inspection*, paragraph 78, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection, which is to protect the rights and interests of all workers and to improve their working conditions. It also recalls that, pursuant to *Article 3(2)* of the Convention, any further duties entrusted to

labour inspectors, including enforcement of immigration law and conciliation of labour disputes, shall not be such as to interfere with the effective discharge of labour inspectors' primary duties or prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. ***The Committee urges the Government to take the necessary measures to ensure that any additional duties entrusted to labour inspectors do not interfere with the effective discharge of their primary duties. Furthermore, in the absence of such information, the Committee once again requests the Government to indicate the actions undertaken by the labour inspectorate in the enforcement of employers' obligations towards migrant workers, such as the payment of wages and other benefits, including for workers in an irregular situation and workers liable to deportation or who have already been deported.***

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

Kazakhstan

Labour Inspection Convention, 1947 (No. 81) (ratification: 2001)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2001)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the International Trade Union Confederation (ITUC) on Conventions Nos 81 and 129, received on 1 September 2021.

Articles 12 and 16 of Convention No. 81 and Articles 16 and 21 of Convention No. 129. Limitations and restrictions of labour inspections. Powers of labour inspectors. 1. Moratorium on labour inspections. The Committee notes with ***deep concern*** that the Presidential Decree No. 229 "On Introduction of a Moratorium on Inspections and Preventive Monitoring and Oversight with Visits in the Republic of Kazakhstan" of 26 December 2019, introduces a three year moratorium on labour inspection, which applies to private and state-owned enterprises belonging to the categories of small and microenterprises, starting from 1 January 2020. According to the Decree, the only exceptions allowing for inspections shall be inspections aimed at the prevention or elimination of violations that potentially bear a major threat to human life and health, to the environment, to law and public order; or a direct or indirect threat to the constitutional order and national security, in addition to inspections performed on the grounds specified by the Law of the Republic of Kazakhstan of 4 July 2003 "On the Governmental Regulation, Control and Oversight of Financial Market and Financial Organisations". According to the observations submitted by the ITUC: (i) this moratorium is also valid for unscheduled inspections performed by the State Labour Inspectorate following complaints of employees about various labour violations by employers; (ii) between January and September 2020, the provisions on exceptions provided in the Decree were used by state inspectors only three times (in Kostanay Region, East Kazakhstan Region and in the city of Nur-Sultan); and (iii) according to information from the Ministry of Labour and Social Protection, as many as 16,330 complaints were submitted to the State Labour Inspectorate in the first 8 months of 2020. The Committee further notes that section 140(6) of the Entrepreneur Code of the Republic of Kazakhstan of 2015 (No. 375-V ZRK) provides for the possibility of suspending inspections of private business entities for a specific period after a decision by the Government, in coordination with the Administration of the President of the Republic. In this respect, the Committee recalls its General Observation of 2019 on the labour inspection Conventions, expressing concern at reforms that substantially undermine the inherent functioning of labour inspection systems, including moratoria on labour inspections, and urging governments to remove these restrictions, with a view to achieving conformity with the Conventions. ***Recalling that a moratorium placed on labour inspection is a serious violation of the Conventions, the Committee urges the Government to act***

promptly to eliminate the temporary ban on inspections and to ensure that labour inspectors are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions, in compliance with Article 16 of Convention No. 81 and Article 21 of Convention No. 129.

The Committee previously noted that there appeared to be extensive legal and practical restrictions in relation to scheduled inspections concerning inspectors' access to workplaces and the frequency of inspection visits, resulting in a reduced effectiveness and scope of inspections.

The Committee notes that the Government does not provide in its report information in relation to its previous request on whether Order No. 55-p of 16 February 2011 repeals Order No. 12 of 1 March 2004, and whether the restrictions introduced by the latter Order, especially the prior registration of inspections at the Public Prosecutor's Office, have been lifted.

In addition, the Committee notes with ***concern*** that the Labour Code and the Entrepreneur Code of 2015 contain various limitations on labour inspectors' powers, including with regard to: (i) the ability of labour inspectors to enter freely any workplace liable to inspection (section 12 of the Entrepreneur Code); (ii) the ability of labour inspectors to undertake inspection visits at any hour of the day or night (sections 197(5) of the Labour Code and 147(2) of the Entrepreneur Code); (iii) the ability of labour inspectors to undertake inspection visits without previous notice (section 147(1) of the Entrepreneur Code); (iv) the free initiative of labour inspectors (section 197(2)(2) of the Labour Code and section 144(10) of the Entrepreneur Code); and (v) the scope of inspections, particularly in terms of the issues that can be examined in the course of inspections (section 151 of the Entrepreneur Code).

The Committee urges the Government to take the necessary legislative measures to ensure that labour inspectors are empowered to make visits to workplaces without previous notice at any hour of the day or night, and to carry out any examination, test or enquiry which they may consider necessary, in conformity with Article 12(1)(a) and (c) of Convention No. 81 and Article 16(1)(a) and (c) of Convention No. 129. In addition, the Committee requests once again the Government to provide information on whether Order No. 55-p of 16 February 2011 repeals Order No. 12 of 1 March 2004, and whether the restrictions introduced by the latter Order, especially the prior registration of inspections at the Public Prosecutor's Office, have been lifted.

2. *Frequency of labour inspections*. The Committee previously noted with concern that the number of inspections undertaken had decreased, owing to the discontinuation of inspections of small and medium-sized enterprises starting from 2 April 2014 until 1 January 2015, pursuant to the Presidential Decree on Cardinal Measures to Improve the Conditions for Entrepreneurship in Kazakhstan (Decree No. 757).

The Committee notes the Government's indication that: (i) the risk management system is currently the main tool for determining the frequency of inspections; (ii) the joint Decree of the Ministry of Health and Social Development (No. 1022 of 25 December 2015) and the Ministry for the National Economy (No. 801 of 28 December 2015) established the risk assessment and checklist criteria for inspecting compliance with national labour legislation; and (iii) the risk management system has made it possible to regulate the controls carried out by state labour inspection bodies, to reduce the administrative pressure on employers in the context of their due diligence, and to improve the quality of the work performed by state labour inspectors. According to the ITUC: (i) the risk management system determines the frequency of scheduled inspections depending on the risk category assigned to the employer; (ii) in these conditions, no frequency of inspections is established for low-risk employers, meaning that the employers classified under such risk category are not covered by any scheduled monitoring activities; (iii) the procedure for the assessment of the risk category assigned to the employer depends, among other criteria, on the number of employees, with higher risk categories being assigned to enterprises with a greater numbers of employees; (iv) there is a decreasing probability of inspections of small and medium-sized businesses that carry a significant risk of abuses by

employers; and (v) during scheduled inspections, an inspector is limited to the number of questions included in the checklists.

The Committee notes with ***concern*** that the Labour Code, as well as the Entrepreneur Code of 2015, which uses risk assessment criteria for classifying inspections and their frequency, contain various limitations on the frequency and duration of labour inspections (sections 140(8), 141, 148 and 151(6) of the Entrepreneur Code and section 197(6) of the Labour Code). ***Referring to its general observation of 2019 on the labour inspection Conventions, the Committee urges the Government to take the necessary measures, including the revision of the Entrepreneur Code and the Labour Code, to ensure that labour inspectors are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of relevant legal provisions. In addition, the Committee requests the Government to take the necessary measures to ensure that risk assessment criteria do not limit the powers of labour inspectors or the undertaking of labour inspections. The Committee also requests the Government to continue to provide information on the undertaking of inspections in practice, indicating the number of scheduled and unscheduled inspections, as well as the total number of workplaces liable to inspection. With regard to inspections conducted without prior notice, the Committee requests the Government to indicate the number of such inspections, whether they are conducted on-site or without a visit to the workplace, as well as the number of inspections conducted in response to a complaint, and the results of all such inspections.***

Articles 13, 17 and 18 of Convention No. 81 and Articles 18, 22 and 24 of Convention No. 129. Powers of labour inspectors to ensure the effective application of legal provisions concerning conditions of work and the protection of workers. Further to its previous request, the Committee notes that the Government does not provide information on the penalties imposed for violating labour legislation and for obstructing labour inspectors in the performance of their duties. In this regard, the Committee notes with ***concern***, that section 12 of the Entrepreneur Code of 2015 provides that enterprises may deny the inspection by officials of state control and supervision bodies in cases where they fail to comply with the requirements for inspections established by the Code.

The Committee notes that various legal provisions, such as sections 136 and 153 of the Entrepreneur Code of 2015, appear to limit the powers of labour inspectors to take steps with a view to remedying defects observed in plant, layout or working methods and to order measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

The Committee further notes the Government's indication, in reply to its previous request, that in order to prevent violations of labour law, section 197 of the Labour Code provides for a new form of monitoring of preventive visits to enterprises, following which the state labour inspector issues the employer with an improvement notice only, with no imposition of administrative penalties.

The Committee recalls that *Article 17* of Convention No. 81 and *Article 22* of Convention No. 129 provide that, with certain exceptions, persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it must be left to the discretion of labour inspectors to give a warning or provide advice instead of instituting or recommending proceedings. ***The Committee requests the Government to take the necessary measures, including the revision of the Entrepreneur Code and the Labour Code, to ensure that labour inspectors are able to initiate legal proceedings without previous warning, where required, in conformity with Article 17 of Convention No. 81 and Article 22 of Convention No. 129. The Committee further requests the Government to take the necessary measures to empower labour inspectors to take steps with a view to remedying defects observed in plant layout or working methods, or to order measures with immediate executory force in the event of imminent danger to the health or safety of the workers. In addition, the Committee once again requests the Government to indicate the penalties for violations of the legal provisions enforceable by labour inspectors, and for obstructing labour inspectors in the performance of their duties, to provide a copy of the relevant provisions, and to***

indicate how often such penalties have been assessed, as well as the amounts of sanctions imposed and collected.

Articles 20 and 21 of Convention No. 81 and Articles 26 and 27 of Convention No. 129. Annual report on the work of the labour inspection services. The Committee notes that since the ratification of the Conventions in 2001, an annual report on the activities of the labour inspection services has never been received by the Office. However, the Committee notes that the Government provides statistics on the number of inspectors, the number of inspections carried out, the number of industrial workplaces inspected, the number of industrial accidents, the number of accidents investigated, and the number of violations detected and penalties imposed. The Committee notes that the statistics sent by the Government on the activities of the labour inspectorate do not identify the specific data relating to the agricultural sector, so as to allow the Committee to assess the level of application of Convention No. 129. ***The Committee once again requests the Government to take the necessary measures to ensure the establishment and publication of an annual report on the work of the inspection services and to transmit it to the ILO, in accordance with Article 20 of Convention No. 81 and Article 26 of Convention No. 129, and to ensure that it contains the subjects listed under Article 21 of Convention No. 81, including in particular Article 21(a), (c) and (g). It also requests the Government to take the necessary measures to ensure that the annual reports contain information specific to the agricultural sector, as required by Article 27 of Convention No. 129.***

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

[The Government is asked to reply in full to the present comments in 2022.]

Lebanon

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Labour law reform. The Committee notes the information provided by the ILO Decent Work Technical Support Team and the Regional Office for Arab States that a tripartite meeting took place in 2019 with the support of the ILO and that a new labour law reform is under way. ***The Committee requests the Government to take into account the matters raised below and in a request addressed directly to the Government in the context of this new reform process, in order to ensure the full conformity of a new Labour Code with the Convention, and to provide information on any progress made in this regard.***

Article 3(1) and (2) of the Convention. Primary functions and additional duties of labour inspectors. 1. *Supervision of union matters.* The Committee previously noted that, pursuant to section 2(c) of Decree No. 3273 of 26 June 2000, the labour inspectorate has the power to monitor vocational organizations and confederations at all levels in order to check whether the latter, in their operations, are exceeding the limits prescribed by law and by their rules of procedure and statutes. It recalls that for many years it had requested the Government to take steps to limit labour inspectors' intervention in internal trade union affairs. The Committee notes the Government's reply in its report that the role of labour inspectors is limited to accessing union records and to cases where a union submits its final account or a union council member files a complaint. The Government indicates that there are currently no complaints in this respect with the Department of Labour Relations and Trade Unions. The Committee further notes the statistics provided by the Government indicating that, in 2015, the labour inspectorate supervised 207 trade union elections and received 13 applications for authorization to establish unions.

In this respect, the Committee recalls that, according to *Article 3(1)* of the Convention, the primary functions of the labour inspection system shall be to monitor and secure the conditions of work and the protection of workers while engaged in their work, and that in accordance with *Article 3(2)*, any further duties

which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. Further, the Committee expressed reservations in its 2006 General Survey, *Labour inspection,* paragraph 80, regarding excessive use of close supervision by labour inspectors of the activities of trade unions and employers' organizations, to the extent that it takes the form of acts of interference in these organizations' legitimate activities. ***The Committee urges the Government to take the necessary steps, in the context of the ongoing labour law reform, to ensure that the functions assigned to labour inspectors do not interfere with their main objective, which is to provide for the protection of workers in accordance with Article 3(1) of Convention No. 81. In this respect, it urges the Government to ensure that any supervision of trade union activities is carried out only in relation to the protection of the rights of trade unions and their members, and does not take the form of acts of interference in their legitimate activities and internal affairs.***

2. *Work permits for migrant workers.* The Committee notes the statistics provided by the Government indicating that, in 2015, a significant amount of the labour inspectorate's activities focused on the issuance (60,814) and renewal (148,860) of work permits, as well as inspections related to work permits (253). ***The Committee requests the Government to take specific measures to ensure that the functions assigned to labour inspectors to issue and monitor work permits do not interfere with the main objective of labour inspectors to secure the enforcement of legal provisions relating to conditions of work and the protection of workers, as required under Article 3(1) of the Convention. It requests the Government to provide information on the time and resources spent on labour inspection activities in these work areas, compared to activities aiming at securing the enforcement of legal provisions relating to conditions of work and the protection of workers.***

Article 12(1) and (2). Right of inspectors to enter freely any workplace liable to inspection. In its previous comments, the Committee requested the Government to amend the Memorandum No. 68/2 of 2009 which requires prior authorization in writing for all unscheduled inspection visits. It notes that, according to section 6 of Decree No. 3273 of 2000 on Labour Inspection, labour inspectors shall have the authority to enter freely and without prior notice all enterprises under their supervision during hours of work at the enterprise and all parts thereof; and in conducting an inspection visit they shall apprise the employer of their presence on the premises, unless they consider such information detrimental to the execution of their functions. However, the Committee also notes the Government's indication that written authorization is provided in order for an inspection to be carried out, and that inspections are carried out as part of an inspector's annual or monthly programme. In this regard, the Committee recalls that *Article 12* of the Convention provides that labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. It recalls that the requirement to obtain prior permission to undertake an inspection in all cases constitutes a restriction on the free initiative of inspectors to undertake an inspection, including where they have reason to believe that an undertaking is in violation of the legal provisions. ***The Committee once again requests the Government to take measures to amend Memorandum No. 68/2 of 2009 to ensure that labour inspectors provided with proper credentials are empowered to enter freely any workplace liable to inspection, in accordance with Article 12(1) of the Convention, and to provide copies of any texts or documents showing progress in this regard.***

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

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

Madagascar

Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes that the Government's report due in 2021 has not been received.

The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), communicated with the Government's report in 2017. It also notes the observations of the Autonomous Trade Union of Labour Inspectors (SAIT), received on 9 March 2021.

Articles 6, 10 and 11 of Convention No. 81 and Articles 8, 14 and 15 of Convention No. 129. Status and conditions of service of labour inspectors and controllers. Resources at the disposal of the labour inspectorate. Further to its previous comments, the Committee notes the information previously provided by the Government on the difficulties faced in fully meeting the needs of labour inspection, especially in view of the regular socio-economic crises, the size of the territory in which inspection has to operate and the dilapidated state of the roads. The Government also indicates that, following the general strike led by SAIT in March 2015 and pending the adoption of the labour inspection staff regulations, a memorandum of understanding between the Ministry of Finance and Budgets and the chairperson of SAIT was signed, providing for the grant of an allowance for labour inspectors. In this regard, the Committee notes with ***concern*** the observations of SAIT, according to which this allowance has never been paid and the labour inspection staff regulations have still not been adopted, resulting in a general strike of labour inspectors from 12 November 2020. SAIT also highlights the need to establish a labour inspection system with adequate human and material resources at its disposal, including appropriately equipped work premises, transport facilities and reimbursement of occupational travel costs. ***Recalling that Article 6 of Convention No. 81 and Article 8 of Convention No. 129 provide that inspection staff shall be composed of public officials whose status and conditions of service assure them stability of employment and make them independent of changes of government and of improper external influences, the Committee urges the Government to take the necessary measures in this regard, which includes adopting staff regulations specifically for labour inspectors and controllers. The Committee also requests the Government to take the necessary steps to increase resources at the disposal of labour inspectors and to provide information on the specific measures taken in this respect. The Committee further requests the Government to provide information on the number of labour inspectors, resources and means of transport, and/or budgets available to cover travel costs for the labour inspection services.***

Article 7 of Convention No. 81 and Article 9 of Convention No. 129. Training for labour inspectors. Further to its previous comments, the Committee notes the information sent previously by the Government on initial training for labour inspectors given at the National School of Administration of Madagascar (ENAM) and on the need for reform of the system to enable specialization in other recent branches of activity, particularly in agriculture. SEKRIMA refers to the Government's indication of the need to include a specialization in agriculture in the training programme for labour inspectors and hopes that this will constitute a starting point for improving conditions of work for agricultural workers. ***The Committee requests the Government to continue providing information on the training given to new labour inspectors, particularly the efforts made to provide labour inspectors with specialized training in agriculture. The Committee also requests the Government to provide information on further training for labour inspectors, indicating the duration of the training, the number of participants and the subjects covered.***

Articles 19, 20 and 21 of Convention No. 81 and Articles 25, 26 and 27 of Convention No. 129. Submission of periodic reports to the central inspection authority. Preparation, publication and transmission of the annual inspection report. ***The Committee requests the Government to take all necessary measures to ensure the preparation and publication of an annual report on the work of the labour inspection services, in accordance with Article 20 of Convention No. 81 and Article 26 of Convention No. 129, and to take the necessary measures to ensure that these reports contain information on all the subjects listed in Article 21 of Convention No. 81 and Article 27 of Convention No. 129. The Committee also requests the Government to provide information on the submission to the central inspection authority of periodical reports on the results of the activities of labour inspectors, in accordance with Article 19 of Convention No. 81 and Article 25 of Convention No. 129.***

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

Malaysia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)

Articles 3(2) and 5(a) of the Convention. Duties entrusted to labour inspectors and cooperation with other government services. The Committee previously noted that, since the 2010 amendments to the Anti-Trafficking People and Smuggling of Migrants Act of 2007, labour officers have assumed enforcement functions in this area. The Committee notes the information in the Government's report that the enforcement role of labour inspectors in the Anti-Trafficking People and Smuggling of Migrants Act is limited to identifying elements of forced labour and trafficking in persons through inspection and other operation activities. The Government also indicates that it provides legal protection to all documented and undocumented foreign workers. ***The Committee requests the Government to indicate the measures taken to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors, which is to provide for the protection of workers in accordance with Article 3(1) of the Convention. It also requests the Government to provide detailed information on actions undertaken by labour inspectors when elements of forced labour or trafficking are detected, on the number of such cases and on their outcome after they are submitted to the competent authorities. The Committee further requests that the Government continue to provide information on actions undertaken by the labour inspectorate in the enforcement of employers' obligations towards migrant workers, including those in an irregular situation, such as the payment of wages, social security and other benefits.***

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

Mauritania

Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)

Articles 3, 6, 8, 10, 11 and 16 of the Convention. Duties, status and conditions of service of labour inspectors. Financial and material resources at the disposal of the labour inspection services and number of inspectors for the effective discharge of inspection duties. Composition by gender. The Committee previously noted that Order No. 0743 of 23 August 2017 establishing the structure and territorial competences of regional labour inspectorates separates the structures dealing with the enforcement of legislation in the social field from those responsible for resolving labour disputes. It also noted that, according to an audit of labour administration and inspection needs carried out by the ILO in 2016 (the 2016 audit), there is a real pay gap between inspection personnel and certain other government inspection services. The Committee also noted the need to reinforce the material and human resources of the inspection services and requested the Government to provide information on the measures taken in this regard. Moreover, the Committee notes that, according to the 2017 observations of the General Confederation of Workers of Mauritania (CGTM), it is necessary to ensure that the specific conditions of service of labour inspectors provide sufficient guarantees to prevent undue interference in the discharge of their duties. The Committee notes that, according to the information in the Government's report, the number of inspectors and controllers solely responsible for the main duties is 40, composed of 23 inspectors and 17 controllers. The Government adds that 30 labour inspectors and 30 controllers are undergoing training at the National School of Administration, Journalism and Magistrates. The Government further indicates that the restructuring of regional labour inspection services has resulted in more labour inspectors and controllers having access to positions of responsibility, with the respective compensation, with a view to ensuring stability of employment. The Government is also envisaging the adoption of measures, if resources so permit, to reinforce the transport facilities necessary for the discharge of their duties, particularly for the regional labour inspection services

furthest from urban centres, and to cover the maintenance and repair costs of existing vehicles so as to improve conditions. ***The Committee requests the Government to continue taking the necessary measures to guarantee labour inspectors and controllers conditions of service, including adequate remuneration, to ensure their employment stability and career prospects. It also requests the Government to continue providing information on the number of labour inspectors and controllers and their composition by gender, as well as on the measures taken or envisaged for the reinforcement of the financial and material resources available to the labour inspection services, including personal protection equipment and transport facilities.***

Articles 19, 20 and 21. Preparation, publication and communication to the ILO of an annual inspection report. The Committee previously noted the absence of an annual inspection report and the need to reinforce the capacities of the Ministry for the collection and compilation of statistical and administrative data. In response to this request, the Government reiterates that it will take the necessary measures in this regard. ***Noting the continued absence of an annual inspection report, the Committee urges the Government to take the necessary measures to develop a system for the collection and compilation of data so that local inspection offices can draw up periodic reports, which can then be used by the central inspection authority to draw up an annual report, in accordance with the Convention.***

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

Mauritius

Labour Inspection Convention, 1947 (No. 81) (ratification: 1969)

Article 12(1)(b) and (2) of the Convention. Powers of entry of inspectors into premises which they may have reasonable cause to believe to be liable to inspection. In its previous comments, the Committee noted that, pursuant to section 4 of the Occupational Safety and Health Act (Employees' Lodging Accommodation) Regulations 2011, an authorized officer may enter, with the consent of the head of any undertaking, any building used as lodging accommodation, in order to undertake an inspection or investigation as may be necessary. The Committee notes that, contrary to the information previously provided, the Government indicates that the existing provisions requiring prior notification to carry out inspection in employees' lodging accommodation are being maintained, as the accommodation is a dwelling place provided to an employee and entering such a place without consent may cause prejudice to the privacy of lodgers. In this regard, the Committee recalls that, pursuant to *Article 12(1)(b)* and *(2)* of the Convention, labour inspectors provided with proper credentials shall be empowered to enter by day any premises which they may have reasonable cause to believe to be liable to inspection. Thus, they should be authorized to abstain from notifying their presence to the employer or his/her representative if they consider that such a notification may be prejudicial to the performance of their duties. ***The Committee requests the Government to take the necessary measures to amend the Occupational Safety and Health Act (Employees' Lodging Accommodation) Regulations to achieve full conformity with Article 12 of the Convention, and to provide information on any progress made in this regard.***

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

Mexico

Labour Administration Convention, 1978 (No. 150) (ratification: 1982)

The Committee notes the observations of the National Union of Workers of the Federal Roads and Bridges Access and Related Services (SNTCPF), received in 2016.

Article 4 of the Convention. Organization and operation of the labour administration system. Coordination of its functions and responsibilities. The Committee notes that, in reply to its request for information on the measures adopted to improve coordination between the state secretariats involved in inspections, the Government indicates in its report that: (i) the Secretariat of Labour and Social

Welfare (STPS) maintains communication and coordination between the secretariats of the various federal entities for the purpose of collaborating within their competences in respect of inspection; and (ii) the Directorate General of the Federal Labour Inspectorate of the STPS continues to be responsible, under its 2019 statute, for setting general rules governing the conclusion of coordination and cooperation agreements in respect of labour inspection with the authorities of other federal entities and with other public and private bodies.

The Committee recalls that, following the serious accidents that have taken place in the past in the mining sector, in its previous comment it requested information on all progress made in establishing a unified directory of all enterprises in the sector, an initiative that would help reinforce inspection visits. In this connection, the Committee notes that the SNTCPF indicates in its observations that the Government does not have an adequate and efficient directory of mining enterprises that includes subcontracted enterprises, noting that registration in the directory is not compulsory and that it habitually contains incorrect information. ***The Committee once again requests the Government to provide information on developments in the establishment, functioning and scope of the directory of mining enterprises.***

The Committee also notes the Government's indication that, under a reform of the Federal Labour Act (LFT) adopted in 2021, various provisions on subcontracting of labour were amended to limit the practice solely to specialized activities, with a view to protecting workers' rights and to prevent contracting enterprises from evading fiscal and labour obligations. Following the reform, section 15 of the LFT establishes that enterprises wishing to perform the above-mentioned activities shall register in a public directory of specialized service or works providers, under the responsibility of the STPS. The new section 1004-C of the LFT, included as part of the reform, provides for sanctions (fines) for natural or legal persons providing subcontracting services without registering in the directory, as well as for those benefiting from the provision of services. ***The Committee requests the Government to provide detailed information on the impact of the operation of the directory of specialized service or works providers on the functioning of the labour administration system, including on the activities of the labour inspectorate that are part of that system and the amount of any sanctions issued against persons subcontracting services without registering in the directory. The Committee also requests the Government to inform it of whether there is any link between the directory of specialized service or works providers and the directory of mining enterprises referred to in the preceding paragraph.***

Article 10. Training for the staff of the labour administration system. Material means necessary for the effective performance of their duties. In its earlier comments, the Committee requested the Government to: (1) continue to provide information on the training offered to labour inspectors, particularly on occupational safety and health (OSH) in mines and the certification provided to them; and (2) describe the means of transport and personal protective equipment available to inspection staff for the performance of their duties. In this regard, the Committee notes the information provided by the Government: (i) on the training given during 2018 in the field of OSH (including the number of training courses completed and the number of participants, with their job titles), and on the certification issued to public servants in the STPS (including in OSH in coal mines); and (ii) that emphasis is being placed on appropriate measures to ensure that the resources allocated to the STPS are used and distributed such as to guarantee the provision of more and better benefits and working tools to inspectors.

The Committee notes that the SNTCPF alleges inadequate working conditions for staff in the sub-delegation of the STPS in Coahuila State, which serves a highly critical coal-producing region. The SNTCPF states that the number of personnel and the vehicles assigned to them are insufficient, that the work spaces are inadequate, and that the inspectors lack the necessary safety equipment (self-rescue equipment) to go down the mines and therefore, for all the above reasons, the budget allocated to the sub-delegation in question should be increased. ***While taking note of the training courses for inspectors carried out in 2018, the Committee requests the Government to continue taking measures to provide***

inspectors with continuous training in the areas required by their activities. The Committee requests the Government to provide information on the specific resources at the disposal of the said personnel for the exercise of their functions, with particular reference to the sub-delegation of the STPS in Coahuila State, which is part of the labour administration system.

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

Montenegro

Labour Inspection Convention, 1947 (No. 81) (ratification: 2006)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2006)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Additional functions entrusted to labour inspectors. The Committee previously commented on the results of inspection activities of labour inspectors regarding migrant workers, including joint controls between labour inspectors and the Division for Foreigners, Visas and Combating Illegal Migration of the Police. The Committee notes that, according to the Government's report, 132 joint controls were undertaken in 2020 with the Border Police (down from 342 in 2019), and that, while a focus of inspection is to prevent persons from working in irregular situations, labour inspectors also monitor the protection of migrant workers' labour rights, including on occupational safety and health (OSH). The Committee also notes the Government's statement that labour rights of migrant workers are protected like those of Montenegrin citizens whenever possible, and except where their residence in Montenegro is terminated. The 2020 Annual Report of the Directorate for Inspection Affairs indicates, in this regard, that hiring foreigners without a previously obtained residence and work permit is one of the most common irregularities identified in the field of labour relations and employment, that joint controls have resulted in the termination of residence for a large number of migrant workers caught in an irregular work situation, who could not be regularized, and that the labour inspectorate could only sanction their employers in such occasions. The Committee notes that, according to the same Annual Report, 483 workers in irregular situations were detected in 2020, out of which 144 (29 migrant workers and 115 Montenegrin citizens) were regularized after measures taken by the labour inspectorate. The Committee once again recalls its indication in the 2006 General Survey, *Labour inspection*, paragraph 78, that any function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection, which is to protect the rights and interests of all workers and to improve their working conditions. The Committee also recalls its indication in the same paragraph of the 2006 General Survey that efforts to control the use of migrant workers in an irregular situation require mobilizing considerable resources which inspectorates can only provide to the detriment of their primary duties. ***Noting the Government's indication regarding joint controls and difficulties in enforcing certain migrant workers' labour rights, the Committee requests the Government to take specific measures to ensure that labour inspectors' participation in joint controls does not interfere with the effective discharge of their primary duties under Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129. The Committee requests the Government to provide further information on how it ensures that the functions of verifying the legality of employment, assigned to labour inspectors, do not interfere with their main objective of protecting workers, in accordance with those Articles. It requests the Government to continue to provide information on the actions undertaken by labour inspectors in this area, including the outcomes of joint controls.***

Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Conditions of service of labour inspectors. The Committee previously requested the Government to provide information on circumstances under which labour inspectors may not be reappointed following expiration of term, and on measures to improve their conditions of service. The Committee notes the Government's statement that, pursuant to the Law on Civil Servants and State Employees (Nos 2/18, 34/19 and 8/21), the Chief Inspector and inspectors are appointed for a term of five years, following which they are subject to re-examination of knowledge, competencies and abilities. The Government indicates in this regard that there have been no cases of labour inspectors failing and not being reappointed to the same position, but that this does not make the employment of such officials stable. The Committee recalls that, as it has expressed in its 2006 General Survey, *Labour inspection*, paragraph 201, the status and conditions of service of labour inspection staff under *Article 6* of Convention No. 81 and *Article 8* of Convention No. 129 must assure the staff of stability of employment and independence from improper external influences. The Committee further recalls that, as expressed in its 2006 General Survey, *Labour inspection*, paragraph 203, public servant status for inspection staff is the status best suited to guaranteeing them the independence and stability necessary to the performance of their duties, and that, as public servants, labour inspectors are generally appointed on a permanent basis and can only be dismissed for serious professional misconduct. On measures to improve the conditions of service of labour inspectors, the Committee takes due note of the Government's indication regarding a Governmental Decision last amended in 2021, providing for salary supplements to labour inspectors in the amount of up to 30 per cent of their basic salary. ***Accordingly, the Committee requests the Government to provide information on the independence, continuity and stability of service of labour inspectors in comparison to public servants exercising similar functions with other government services, such as tax inspectors and the police. The Committee also requests the Government to continue to provide information on measures taken or envisaged to ensure that conditions of service of labour inspectors are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.***

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

Mozambique

Labour Inspection Convention, 1947 (No. 81) (ratification: 1977)

Article 3(2) of the Convention. Additional functions entrusted to labour inspectors. 1. *Role of labour inspectors in monitoring the working conditions of migrant workers found in an irregular situation.* Following its previous comments, the Committee notes that the Government has once again not provided information on the measures taken or envisaged to guarantee that labour inspectors ensure that employers fulfil their obligations to foreign workers in an irregular situation, as well as on measures to ensure that the functions assigned to labour inspectors regarding the verification of the contractual or residence status of foreign workers do not interfere with the main objective of labour inspectors. In this regard, the Committee notes with ***concern*** that, according to the "General Guidelines for Inspections 2017" communicated by the Government with its report, labour inspectors shall: (i) verify the existence of cases of foreign workers, with temporary residence, who remain in the national territory after the period of validity of the contract by virtue of which they entered Mozambique; and (ii) in the case of termination of the employment contract for any reason, verify whether the employer has communicated this termination to the entity that oversees the working area and the migration services of the province where the citizen has been working, through a separate document, within 15 days from the termination. The Committee further notes that: (i) section 4(3)(c) of Decree No.19/2015 approving the Organic Statute of the General Labour Inspectorate, provides that labour inspectors shall control the obligations regarding the employment of foreign workers; (ii) section 26 of Decree No. 37/2016 approving the Regulation of Mechanisms and Procedures for Employment of Citizens of Foreign

Nationality provides that the General Labour Inspectorate is responsible for supervising compliance with the provisions of this Regulation; (iii) section 27 of Decree No. 37/2016, stipulates that failure to comply with the provisions on the employment of foreign labour shall be punished by suspension and a fine equal to five to ten monthly salaries earned by the foreign worker in respect of whom the offence has been committed; and (iv) section 28 of Decree No. 37/2016, provides that, whenever the General Labour Inspectorate or its provincial delegation becomes aware of any fact that could be ground for revoking the act that allowed the employment of the foreign worker, it shall prepare a file containing, in summary, the evidence necessary for taking a decision. The Committee finally notes, from the statistical information provided by the Government in its report, that 513 foreign workers in an irregular situation were detected in 2020, whose employment relationship was subsequently suspended. ***The Committee requests once again the Government to take the necessary measures, in law and in practice, to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors, which is to ensure the protection of workers, in accordance with Article 3(2) of Convention No. 81. The Committee also requests the Government to indicate the manner in which labour inspectors ensure the enforcement of employers' obligations with regard to the statutory rights of migrant workers in an irregular situation (such as payment of outstanding wages, social security benefits or the conclusion of an employment contract).***

2. *Role of labour inspections relating to the exercise of trade union rights*. The Committee previously noted that, pursuant to section 4(5) (a) and (b) of Decree No. 45/2009, the functions of the General Labour Inspectorate include that of registering trade unions, and verifying the legality of their by-laws. The Committee recalls, as emphasized in its 2006 General Survey, *Labour inspection*, paragraph 80, that labour inspectors should only exercise such supervision in exceptional cases, such as offences or violations of the law denounced by a significant number of members of trade unions and employers' organizations. ***Noting the absence of a reply from the Government in this respect, the Committee once again requests the Government to take the necessary measures to ensure that labour inspectors are relieved from any tasks which might be perceived as interfering in the activity of trade unions' and employers' organizations and therefore be prejudicial to the authority and impartiality necessary to inspectors in their relations with employers and workers.***

3. *Role of labour inspectors in conciliating and mediating labour disputes*. The Committee previously noted that: (i) pursuant to section 4(5)(c) and (d) of Decree No. 45/2009, the functions of the General Labour Inspectorate include the provision of technical assistance concerning the process of collective bargaining and intervening in industrial conflicts; and (ii) requests to labour inspectors for conciliation and mediation have decreased following the entry into operation of the Mediation and Arbitration Centres for Labour Disputes at the provincial level. The Committee notes that the Government does not indicate whether it foresees, in view of the establishment of the Mediation and Arbitration Centres, to relieve labour inspectors from the function of mediation and conciliation. ***The Committee requests once again the Government to take the necessary measures, in law and in practice, to ensure that, in line with Article 3(2) of the Convention, additional duties assigned to labour inspectors, other than their primary duties, do not interfere with the effective discharge of the latter. It also requests the Government to provide information on any progress made in this regard.***

Articles 10, 11 and 16. Human resources and material means, including transport facilities. Coverage of workplaces by labour inspections. The Committee previously noted that: (i) the number of labour inspectors is very low in relation to the number of workplaces subject to labour inspection and the incidence of labour conflicts; (ii) difficulties in the application of the Convention relate to the availability of transport facilities and the coverage of workplaces by labour inspections in remote areas; and (iii) expenses incurred by labour inspectors when using their own vehicles are not reimbursed. The Committee notes that the Government does not provide information in this regard. It notes, however, from the statistical information provided by the Government, that labour inspectors visited 8,723 establishments (covering 131,663 workers) in 2020 compared to 10,106 establishments (covering

158,690 workers) in 2017 and 6,872 establishments (covering 183,467 workers) in 2013. ***The Committee once again requests the Government to describe the current situation of the labour inspection services in terms of the human resources and material means available, including transport facilities to enable labour inspectors to carry out inspection visits. Recalling once again that under Article 11(2) of the Convention, the competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties, the Committee requests the Government to take measures to this effect in the very near future and to provide information on the progress made in this respect.***

Articles 20 and 21. Publication and communication of an annual report on labour inspection. In its previous comment, the Committee took note of the 2013 annual report of the General Labour Inspectorate. While noting the statistical information provided by the Government on inspection visits and violations and penalties imposed, the Committee notes that the annual report on the activities of the labour inspectorate has not been communicated. ***The Committee therefore requests the Government to take the necessary measures to ensure that annual labour inspection reports are prepared, published and transmitted to the ILO, in accordance with Article 20 of the Convention, and to ensure that such reports contain information on all the subjects listed under Article 21 of the Convention.***

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

Nigeria

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

Articles 20 and 21 of the Convention. Annual labour inspection report published by the central authority. The Committee notes that no annual labour inspection report has been received for many years, and that the Government does not provide any information in this regard in its report. ***The Committee expresses the firm hope that the Government will ensure that annual reports on labour inspection are published and communicated regularly to the ILO within the time limits set out in Article 20 of the Convention, and that they contain the information required by Article 21(a)–(g), in the near future. It encourages the Government to take the necessary measures in this respect. The Committee also reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

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

North Macedonia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1991)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1991)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Article 3(1)(a) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Labour inspection activities with regard to foreign workers and the protection of foreign workers in an irregular situation. The Committee notes the Government's indication, in reply to its previous comments, that labour inspectors carry out the supervision of the implementation of the Law on Employment of Foreign Nationals (LEFN) during regular inspections in the areas of labour relations. The Committee notes that, pursuant to section 18(2) of the Law, the monitoring of its implementation shall be carried out by the State Labour Inspectorate (SLI) and pursuant to section 18(3), labour inspections related to work permits and illegal employment or

work of foreign nationals may be carried out ex officio or at the request of the Employment Service Agency (ESA). The SLI is then obliged to submit reports every six months regarding the instituted procedures and imposed misdemeanour sanctions to the ESA pursuant to section 18(4) of the LEFN. Fines can be imposed not only on an employer or a facilitator of illegal work, but also on a foreign national if she or he does not present the work permit when requested by the SLI (section 27). The Committee recalls that, pursuant to *Article 3* of Convention No. 81 and *Article 6* of Convention No. 129, the functions of the system of labour inspection shall be to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. Further, in its 2006 General Survey, *Labour inspection*, paragraph 78, the Committee indicated that any function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection, which is to protect the rights and interests of all workers and to improve their working conditions. Referring to paragraph 452 of the 2017 General Survey on certain occupational safety and health instruments, the Committee recalls that workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as the loss of their job or expulsion from the country. ***The Committee requests the Government to take specific measures to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors, which is to ensure the protection of workers in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. It requests the Government to provide information on action undertaken by the inspectorate to ensure the enforcement of the rights of foreign workers found to be in an irregular situation. It further asks the Government to provide information on the number of cases in which foreign workers found to be in an irregular situation have been granted their due rights, such as the payment of outstanding wages or social security benefits.***

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

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

Republic of Moldova

Labour Inspection Convention, 1947 (No. 81) (ratification: 1996)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1997)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the National Confederation of Trade Unions of Moldova (CNSM), received on 20 August 2021.

Article 4 of Convention No. 81 and Article 7 of Convention No. 129. Supervision and control by a central authority. Occupational safety and health (OSH). The Committee previously noted that Law No. 131 of 2012 on State Control of Entrepreneurial Activities withdrew supervisory duties in the area of OSH from the State Labour Inspectorate (SLI) and transferred it to ten other sectoral agencies. The observations of the CNSM indicated that the dispersion of inspection duties diminished the efficiency of state control, especially in the field of OSH. The Committee notes the Government's indication in its report that the normative framework for regulating the activity of the SLI was consolidated by Law No. 191 of 2020, which amended a number of labour legislations, including the Law on the SLI, the Law on State Control of Entrepreneurial Activities, the Labour Code and the Law on OSH. The Committee notes with ***satisfaction*** that, consequently, on 1 January 2021, the supervision in the field of OSH, including the investigation of occupational accidents, was transferred back from the ten sectoral agencies to the SLI.

Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 23 and 24 of Convention No. 129. Cooperation with the justice system and adequate penalties for violations of the legal provisions enforceable by labour inspectors. The Committee previously noted the Government's information concerning the number of infringement reports submitted to the Court from 2016 to 2018. The Committee also noted

the observations of the CNSM that, despite the fact that the Government report contained information on the number of infringements reported, there was no information on their outcome following their referral to the Court. The Committee notes the statistical information included in the annual reports and monthly reports of the SLI published on its website, according to which 229 and 151 minutes of contravention were submitted to the Court in 2019 and in 2020, respectively. From January to August 2021, 88 minutes of contravention were submitted to the Court and the Court issued 23 decisions sanctioning the employers with a fine and 7 decisions terminating the case. The other 58 cases are still under examination. The Committee also notes the reference to the 2020 annual report in the CNSM's observation, indicating that, in the field of OSH, 151 reports of infringements were filed, imposing fines of 1,706,700 Moldovan lei (approximately US$98,724). The CNSM states that, however, there is no information on the actual amount of fines collected following the detection of infringements. ***The Committee requests the Government to continue to provide information on the number of infringement reports submitted to the Court and their specific outcome, indicating any fine or other penalty applied and the amounts collected. The Committee requests the Government to indicate the statistics for infringements and penalties in the field of labour relations and OSH.***

Article 5(b) of Convention No. 81 and Article 13 of Convention No. 129. Collaboration of the labour inspection services with employers and workers or their representatives. The Committee previously noted the observations of the CNSM in which the union raised, in the context of the National Commission for Collective Consultations and Negotiations, the issue of monitoring in the field of OSH, and the need to eliminate the contradictions between national legislation and the provisions of Conventions Nos 81 and 129. The Committee notes the indication in the CNSM's observations that the proposals made by the CNSM in the process of adoption of Law No. 191 of 2020, regarding non-compliance with the provisions of the Convention, were not taken into account. ***The Committee once again requests the Government to provide information on the measures taken to promote effective dialogue with employers' and workers' organizations concerning labour inspection matters. It also requests the Government to provide information on the consultations undertaken in this respect in the National Commission for Collective Consultations and Negotiations, as well as the measures taken following such consultations.***

Articles 10 and 11 of Convention No. 81 and Articles 14 and 15 of Convention No. 129. Human resources and material means for labour inspection. The Committee previously noted a significant decrease in both the budget allocated for the SLI and the number of inspectors from 2017 to 2018. The Committee notes that, according to the annual inspection reports, in 2019, there were 61 employees at the SLI, including 19 at the central apparatus and 42 in territorial offices, with 37 OSH inspectors within the ten sectoral agencies. The number of inspectors remained substantially unchanged in 2020. As of March 2021, after the transfer of the OSH competences to the SLI, there were 109 employees working for the SLI, with 28 in the central apparatus and 81 in territorial offices. The Committee also notes that in the 2020 annual labour inspection report, the Government observes a shortage of staff with professional skills in the field. ***Noting the transfer of supervisory competence on OSH to the SLI in 2021, the Committee requests the Government to indicate whether the labour inspectors previously working for the sectoral agencies have now been transferred to the SLI. It also requests the Government to provide information on the number of inspectors under the SLI performing OSH inspections, and those performing inspections in the field of labour relations. Noting the absence of information on the budget allocated to the SLI, the Committee also requests the Government to provide detailed information in this regard.***

Article 12 of Convention No. 81 and Article 16 of Convention No. 129. Unannounced inspection visits. The Committee previously noted that section 19 of the Law on State Control of Entrepreneurial Activities provides for restrictive conditions for unscheduled inspections. The CNSM reiterates in its observations that this provision has in fact made unannounced inspections impossible in practice. It also indicates that there is no information on the results of the unscheduled inspections in the annual inspection reports. The Committee notes with ***regret*** that section 19 of the Law on State Control of Entrepreneurial

Activities has not been revised in the context of the 2020 amendments to labour legislations. It also notes the statistical information in this regard in the annual and monthly inspection reports, according to which, in 2019, the SLI carried out 1,963 inspection controls, of which 1,399 were planned and 564 were unscheduled. There were also 1,116 controls carried out in OSH by sectoral agencies, of which 1,005 were planned inspections and 111 unplanned visits. In 2020, the SLI carried out 1,701 inspection controls, of which 1,172 were planned and 529 unscheduled. There were also 815 OSH inspections performed by sectoral agencies, with 728 planned and 87 unscheduled. From January to August 2021, the SLI carried out 1,610 controls in both labour relations and OSH areas, with 1,245 planned and 365 unscheduled. The Committee also notes, however, that the labour inspection reports do not include broken down information on the statistics of violations detected and sanctions imposed for planned and unplanned visits, respectively. ***Noting a downward trend of unscheduled inspections, the Committee once again requests the Government to take the necessary measures to ensure that labour inspectors are empowered in line with Article 12(1)(a) and (b) of Convention No. 81 and Article 16(1)(a) and (b) of Convention No. 129, to make visits without previous notice. It requests the Government to continue providing information on the number of announced and unannounced inspections carried out by the SLI, and to indicate in detail the number of violations detected and the specific sanctions imposed through both announced and unannounced inspections.***

Articles 15(c) and 16 of Convention No. 81 and Articles 20(c) and 21 of Convention No. 129. Confidentiality concerning the fact that an inspection visit was made in consequence of the receipt of a complaint. In its previous comment, the Committee requested the Government to indicate the measures taken in order to ensure confidentiality of the fact of the complaints and the identity of the complainants, in cases of unannounced inspections resulting from a complaint, in accordance with section 19 of the Law on State Control of Entrepreneurial Activities. The Committee notes the Government's indication that section 9 of Law No. 140/2001 on the State Labour Inspectorate obliges labour inspectors to maintain the confidentiality of the source of any complaint alleging breach of the provisions of legislation and other regulations in the field of work and OSH. In addition, labour inspectors have the duty not to disclose to the employer that controls have been carried out following a complaint. The Committee also notes that, according to the Government, a motivation note shall be prepared in case of inspections without prior notice. The Government indicates that this motivation note shall include information on the need for intervention, by setting out in detail the circumstances and information underlying the conclusions and actions of the control body, possible violations suspected on the basis of information and evidence held until the initiation of control measures, and a reasonable assessment of danger and possible consequences in case of non-intervention of the control body. The Committee also notes that, according to the Government's indication, the entity to be inspected is informed about the motivation note. ***The Committee requests the Government to indicate the measures adopted in order to ensure that no intimation is given to the employer or their representative, in the motivation note or otherwise, that a visit of inspection was made in consequence of the receipt of a complaint, in accordance with Article 15(c) of Convention No. 81 and Article 20(c) of Convention No. 129. In addition, noting the absence of information on this matter, the Committee requests the Government once again to provide information on the number of unannounced inspections that resulted from a complaint, the number that resulted from an accident, and the number that were not the result of a complaint or an accident.***

Article 16 of Convention No. 81 and Article 21 of Convention No. 129. Undertaking of inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. The Committee previously noted that a number of provisions of the Law on State Control of Entrepreneurial Activities limits the circumstances in which an inspection can be undertaken. This refers in particular to the conditions set out in section 3 (inspection can be carried out only if other means are exhausted), section 4 (inspectors shall request to check documentation first before inspection visits), section 14 (control bodies are not entitled to perform a control of the same entity more than once in a

calendar year, with the exception of unannounced inspections) and section 19 (conditions for unscheduled inspections).

The Committee notes with ***regret*** that the above-mentioned provisions have not been revised in the context of the amendments to labour legislations in 2020, in order to make them less restrictive. Moreover, the Committee notes with ***deep concern*** that, according to the 2019 and 2020 annual inspection reports, the number of inspections carried out by the SLI has been decreasing, with 1,963 in 2019 and 1,701 in 2020. Similarly, the number of workers covered by inspection controls has also decreased, with 103,794 in 2019 and 81,897 in 2020. Moreover, a large number of inspection controls were merely requests for documentation (1,112 in 2019 and 1,044 in 2020), with only 851 on-site inspection visits performed in 2019 and 657 in 2020. ***The Committee once again urges the Government to take the necessary measures to ensure that the national legislation is amended in the near future to allow for the undertaking of labour inspections as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, in conformity with Article 16 of Convention No. 81 and Article 21 of Convention No. 129. The Committee also requests the Government to provide further information on the impact of the transfer of the competences on OSH to the SLI, including information on the number, type and results of inspection controls carried out, in the fields of both labour relations and OSH.***

Article 17 of Convention No. 81 and Article 22 of Convention No. 129. Prompt legal or administrative proceedings. The Committee previously noted that section 4(10) of the Law on State Control of Entrepreneurial Activities provides that inspections during the first three years of a business operation shall be of a consultative nature. Section 5(4) provides that, in such cases, in the event of minor violations, the sanctions provided for in the Administrative Offences Law or other laws may not be applied, and section 5(5) provides that "restrictive measures" may not be applied in the event of severe violations.

Noting that these provisions are still in force, the Committee notes with ***deep concern*** the absence of a reply to its three previous requests on this matter. The Committee is bound to recall once again that *Article 17* of Convention No. 81 and *Article 22* of Convention No. 129 provide that, with certain exceptions (which are not directed at new operations), persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it must be left to the discretion of labour inspectors to give a warning or advice instead of instituting or recommending proceedings. ***The Committee once again urges the Government to take prompt measures to ensure that labour inspectors are able to initiate or recommend immediate legal proceedings for both severe and minor violations during the first three years of a business's operation, and to provide information on steps taken in this regard. It urges the Government to provide information on the meaning of "restrictive measures" that are prohibited from being imposed under the Law on State Control of Entrepreneurial Activities, on the number and nature of severe and minor violations detected by inspectors in the course of inspections in enterprises in the first three years of operation, on the sanctions proposed by inspectors for severe violations, and on the penalties ultimately applied.***

Issues specifically concerning labour inspection in agriculture

Articles 9(3) and 21 of Convention No. 129. Sufficient number of inspections in agriculture and adequate training for labour inspectors in agriculture. The Committee previously noted that no OSH inspections were carried out in agriculture in 2018 by the National Agency for Food Safety (ANSA), which was the competent authority in this regard. It also noted that there was a decrease in the number of inspections by the SLI on non-OSH issues in agriculture from 2017 (458) to 2018 (363). The Committee notes that, according to the 2019 and 2020 annual inspection reports, the number of inspections on labour relations issues in agriculture continued to decrease, with 300 in 2019 and 245 controls in 2020.

Regarding compliance with OSH provisions, the ANSA carried out 315 inspections in 2019 and 215 in 2020. ***The Committee urges the Government to take the necessary measures to ensure that agricultural undertakings are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions, and to provide information on the number of inspections undertaken in agriculture by the SLI. The Committee once again requests the Government to provide information on the training provided to labour inspectors that relates specifically to their duties in the agricultural sector, particularly in the context of the transfer of competence from the ANSA to the SLI in 2021, including the number and duration of training programmes organized, the subjects covered in those programmes and the number of inspectors who participated in those programmes.***

San Marino

Labour Statistics Convention, 1985 (No. 160) (ratification: 1988)

Articles 7 and 8. Employment, underemployment and underemployment statistics. Statistics of the structure and distribution of the economically active population. The Committee welcomes the information provided by the Government in response to its previous comments, initially made in 2012. It notes that the statistical data on the labour force (previously referred to as the "economically active" population), employment, unemployment and other indicators of labour underutilization have been communicated to ILOSTAT. The latest data available is from 2019 and the official estimates are provided by the San Marino Office of economic planning, data processing and statistics. The Committee nevertheless notes that the data provided is derived from administrative data and not from labour force surveys (LFS), as no LFS have to date been carried out in San Marino. In this context, the Committee recalls that pursuant to the latest standards, including the International Conference of Labour Statisticians (ICLS) Resolution concerning statistics of work, employment and labour underutilization (resolution I), adopted by the 19th ICLS in October 2013, such statistical data should be captured through household surveys. In relation to *Article 8*, the Government notes that the statistics on the labour force on administrative records of the Office of Active Labour Policies and the Office of Economic Activities are not derived from the population census. The data is collected by the Office of Statistics on a monthly basis. The Committee notes that the Government provides definitions of employment and unemployment, and information on the methodology used for compiling the data in accordance with *Articles 7* and *8*. ***The Committee requests the Government to continue to provide updated statistical data to the Office related to the labour force, employment, unemployment and underemployment, and to provide information on measures taken to undertake a household survey, as contemplated under the Convention. In this respect, the Committee reminds the Government may avail itself of technical assistance from the Office, should it so wish. The Committee further requests the Government to provide information on any developments with regard to the implementation of the Resolution concerning statistics of work, employment and labour underutilization (resolution I), adopted by the 19th ICLS in October 2013.***

Articles 9 and 10. Current statistics of average earnings and hours of work. Statistics of time rates of wages and normal hours of work. Statistics of wage structure and distribution. The Committee notes the Government's indication that data under *Articles 9* and *10* are not currently compiled, with the exception of data under *Article 9(1)*. The Government adds that, while annual data on average earnings is available by economic activity, it is not yet broken down by sex. The Committee notes the information provided by the Government on the methodologies used to compile the statistics. The Government indicates that data on hours actually worked is not available but that, based on the availability of the administrative records, the Office of Statistics may be able to provide annual statistics of average earnings and hours actually worked, broken down by sex, in the near future. ***Noting that the annual statistics of average earnings and hours actually worked are not yet disaggregated by sex, but that the Government may be in a position to provide this information in the near future, the Committee requests the Government***

to take the necessary steps to this end and keep the ILO informed of any future developments in this field. In addition, noting that the Government's report provides no information in response to its previous point concerning the application of Article 9(2), the Committee reiterates its request that the Government ensure that statistics covered by these provisions are regularly transmitted to the Committee and to keep it informed of any progress made in this regard. In addition, noting that the Government's report provides no information in response to its previous comment on the application of Article 10, the Committee once again requests the Government to take the necessary steps to give effect to this provision and to keep it informed of any developments in this field.

Article 11. Statistics of labour cost. In response to the Committee's previous comments, the Government indicates that the Office of Statistics publishes the statistics of labour cost on an annual basis on its website. The Government points out that in relation to the manufacturing sector, the four main groups are currently included; however, it is not currently possible to provide these statistics for a greater number of groups. The methodologies established for producing the statistics on average cost and employee services are published on the National Summary Data Page. ***The Committee invites the Government to continue to provide statistical data of labour cost to the Office, as well as other methodological information.***

Article 12. Consumer price indices. The Committee notes the information provided by the Government regarding the methodology utilized to collect information on consumer price indices (CPI), which are calculated taking families and workers as references. CPI data are collected monthly through the website of the Office for Economic Planning, Data Processing and Statistics. The latest CPI data available to the ILO is from 2017. ***The Committee invites the Government to continue to provide updated statistical data and methodological information on consumer price indices to the Office.***

Article 13. Statistics of household income and expenditures. The Committee notes that detailed statistics on household expenditures are published regularly by the Office of Economic Planning, Data Processing and Statistics in the annual publication "Survey on consumption and San Marino family lifestyles". The Committee nevertheless notes that no information is available in the cited publication about the sources, concepts, definition and methodology used in collecting and compiling household income and expenditure statistics. ***The Committee invites the Government to: (i) consult the representative organizations of employers and workers on the concepts, definitions and methodology used (in accordance with Article 3); and (ii) communicate a detailed description of the sources, concepts, definition and methodology used in collecting and compiling household income and expenditure statistics (as required under Article 6).***

Article 14. Statistics of occupational injuries. The Government indicates that it collects data on occupational injuries on an administrative basis by the Institute for Social Security and relies on injured workers attending the emergency department of the state hospital. The Office of Statistics publishes data on occupational injuries in the Economic Statistics Report annually. The data come from the Health Authority and are taken from the records of the only emergency department in the country. The Committee notes that the official estimates of the Office of Economic Planning, Data Processing and Statistics, covering all branches of economic activity, last provided data on occupational injuries to the ILO in 2015. In addition, the methodological information available is incomplete, as the concepts and definitions used in the statistics have not been communicated to the ILO Department of Statistics. ***The Committee reiterates its request that the Government provide more comprehensive information about the statistical system, with particular reference to the concepts and definitions used for statistics on occupational injuries. The Committee also requests the Government to provide information on more detailed statistics as these become available.***

Article 15. Statistics of industrial disputes. ***As no data on strike and lockout (rates of days not worked by economic activity) were provided, the Committee once again invites the Government to communicate this data, in accordance with Article 5 of the Convention.***

Sierra Leone

Labour Inspection Convention, 1947 (No. 81) (ratification: 1961)

Labour law reform. In its previous comments, the Committee noted that the Government sought ILO technical advice on a draft of the Labour Act in the context of the labour law reform. The Committee notes that in 2018, the Office provided its comments to the draft Labour Act, which is intended to consolidate and revise various pieces of legislation, including the Regulation of Wages and Industrial Relations Act (1971). In its report, the Government indicates that the draft legislation is now available but does not indicate the progress made in its adoption. ***Noting that the labour law reform has been pending for many years, the Committee requests the Government to indicate the progress made towards the adoption of the new Labour Act.***

Articles 6 and 7 of the Convention. Recruitment and training of labour inspectors and independence of labour inspectors. In its previous comments, the Committee noted that no training opportunities were provided to labour inspectors in terms of technical or specialized areas. In its reply, the Government indicates that in 2015, the Ministry of Labour and Social Security with support from the ILO conducted training for Labour Inspectors, Labour Officers and Factory Inspectors on general labour administration. In its previous comment, the Committee also noted that, with respect to recruitment of labour inspection staff, one of the factors considered in recruitment is political affiliation. The Committee requested the Government to take the necessary measures to ensure that labour inspectors are recruited with sole regard to their qualifications for the performance of their duties. The Committee ***regrets*** that the Government does not address this request in its report and once again recalls that, pursuant to *Article 6* of the Convention, labour inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of improper external influences. The Committee also recalls that, pursuant to *Article 7*, they shall be recruited with sole regard to their qualifications for the performance of their duties. ***Therefore, the Committee once again requests the Government to take the necessary measures as soon as possible to ensure that labour inspectors are recruited with sole regard to their qualifications for the performance of their duties, in accordance with Article 7 of the Convention. Taking due note of the limited resources available, the Committee requests the Government to provide information on the content, frequency and duration of the training given to inspectors, as well as the number of participants.***

Article 12(1)(a). Unannounced visits and free entry into workplaces liable to inspection. In its previous comments, the Committee noted that under *Article 12* of the Convention, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice any workplace liable to inspection. It requested the Government to take the necessary measures, including in the context of the ongoing labour law reform process, to ensure that labour inspectors are empowered, in law and in practice, to enter freely and without previous notice any workplace liable to inspection. In its reply, the Government indicates that the Regulation of Wages and Industrial Relations Act, 1971, and the Factories Act, 1974 make adequate provisions for labour inspectors to enter freely and without previous notice to any workplace liable to inspection. It also indicates that similar provisions have been included in relevant draft labour legislation. ***The Committee takes note of this information and requests the Government to provide a copy of the new legislation, once adopted.***

Article 18. Adequate penalties. In its previous comments, the Committee noted that the fines established in the Factories Act, 1974 are quite low, and requested the Government to take the necessary measures to ensure the establishment of adequate penalties for the legal provisions enforceable by labour inspectors. The Government acknowledges that the existing penalties are indeed inadequate, but indicates that new penalties have been incorporated in the draft labour legislation. ***The Committee hopes that the new legislation will ensure the establishment of adequate penalties for***

breaches of the legal provisions enforceable by labour inspectors and requests the Government to provide a copy, once the new legislation is adopted.

Tajikistan

Labour Inspection Convention, 1947 (No. 81) (ratification: 2009)

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the 2021 conclusions of the Committee on the Application of Standards (Conference Committee) on the application of Convention No. 81 by Tajikistan, which urged the Government to:

- take all necessary measures to ensure that no moratorium or other restrictions of this nature on labour inspections be placed in the future;
- provide information on the developments regarding labour inspections, including on the number of inspection visits undertaken by the labour inspectors, disaggregated by type of inspections and by sectors;
- take all necessary legislative measures to ensure that labour inspectors are empowered to make visits without previous notice, and that they are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions and to guarantee the powers of the state inspectorate in line with the Convention;
- revive the functioning of the Council for the Coordination of the Activities of Inspection Bodies so as to ensure the effectiveness and the efficiency of both labour inspectorates;
- implement outcome 2.2 of the Decent Work Country Programme 2020–24, in order to increase the effectiveness of the labour inspection;
- publish reports on the work of the inspection services and transmit those reports to the ILO in line with Articles 19 and 20 of the Convention; and
- involve the social partners in implementing those recommendations.

In addition, the Conference Committee invited the Government to accept an ILO technical advisory mission within the framework of the ongoing technical assistance in the country.

In this regard, the Committee welcomes the communication from the Ministry of Labour, Migration and Employment in September 2021, indicating its readiness to receive, in the first quarter of 2022, the ILO technical advisory mission called for by the Conference Committee. ***The Committee expects that all outstanding issues will be addressed in the framework of the mission.***

Articles 3, 4, 5(b), 17 and 18 of the Convention. Operation of the labour inspection system under the supervision and control of a central authority. Duality of inspection functions assumed by state and trade union labour inspectors. The Committee previously requested the Government to clarify the relationship between the State Inspection Service for Labour, Migration and Employment (SILME) and the trade union inspectorate established by the Federation of Independent Trade Unions. It also requested information on the modalities in place to ensure effective cooperation between both inspectorates, and on the relationship between those inspectorates and the Council for the Coordination of the Activities of Inspection Bodies. In this context, the Committee notes that, according to the Government's report, the SILME is under the supervision and control of the Prosecutor General's Office of the Republic of Tajikistan, and that it has official cooperation channels established with prosecution agencies, executive government authorities, local government authorities and financial

bodies. The Committee also notes from the information provided by the Government that the Council for the Coordination of the Activities of Inspection Bodies appears to play both a coordinating role between the SILME and the trade union inspectorate, and a role akin to supervision over the SILME. For instance, pursuant to section 6 of the Law on Inspections of Economic Entities No. 1269 (Law No. 1269), as last amended in 2020, the remit of this Council includes reviewing annual inspection body reports, with an annual assessment of the effectiveness and efficiency of inspections, and ensuring that inspection bodies comply with inspection rules. The Committee further notes that, according to sections 29 and 37 of Law No. 1269 and to information provided by the Government, the SILME is required to report to multiple bodies, including the Council for the Coordination of the Activities of Inspection Bodies, and the Prosecutor General's Office. Regarding the trade union inspectorate, the Committee notes the Government's indication that the rights and obligations of trade union inspectorates are defined in the Labour Code, the Trade Unions Act and the Regulations on the Trade Union Labour Inspectorate, approved by a decision of the General Council Executive Committee of the Federation of Independent Trade Unions. The Government indicates that representatives of the Federation of Independent Trade Unions and the trade union inspectorate participate actively in initiatives of the Ministry of Labour, Migration and Employment and of the SILME relating to improved cooperation between labour inspectorates, and that these bodies regularly exchange information, including through roundtable events, seminars and conferences. The Government also refers to the role of the Council for the Coordination of the Activities of Inspection Bodies to increase the effectiveness of cooperation between both inspectorates, and indicates that the Council has met annually to coordinate the activities of the inspectorates. In this regard, the Committee notes with ***interest*** the Government's indication that measures adopted in June 2021 have allowed the Council to resume its work. ***The Committee requests the Government to provide further information on the manner in which the activities of the SILME are supervised and controlled, including on the setting and review of priorities by the Council for the Coordination of the Activities of Inspection Bodies and the role of the Prosecutor General's Office. It also requests the Government to provide further information on the manner in which the trade union inspectorate, which operates under the direction of the executive boards of national and regional trade union committees, defines its priorities of action in practice, including examples of how the trade union inspectorate coordinates its activities with those of the SILME and examples of how it operates independently of the SILME.***

Articles 6, 10 and 11. Status and conditions of service of labour inspectors. Number of labour inspectors and material means at their disposal. The Committee previously requested information on the status and conditions of service of state labour inspectors, on the sources of funding for the trade union labour inspectorate, as well as on the numbers of labour inspectors in both inspectorates, and the material means at their disposal. Regarding the SILME, the Committee takes due note of the Government's indication that labour inspectors are civil servants, whose status and conditions of service are guaranteed under the Civil Service Act, which provides them with stability of employment. The Government maintains that, in accordance with this Act, wages, wage adjustments and annual pay rises of not less than 15–20 per cent for labour inspectors are determined by presidential decree, and that effective social protection measures are guaranteed under national legislation. The Committee also notes that, according to the Government, staff turnover at the SILME is one of the lowest among state bodies. In this respect, the Committee notes that there are 60 labour inspectors in the SILME as of July 2021 (with 28 in the central office and 32 in regional offices), and that the SILME also has 33 support staff. In addition, the Committee notes the detailed information provided by the Government on the material means at the disposal of the SILME, in terms of IT and other equipment, internet access and transportation. Nevertheless, the Committee observes that, pursuant to section 37(1) of Law No. 1269, the performance of an inspection body official conducting an inspection shall be assessed based on criteria which includes feedback from the inspected economic entity regarding the inspection body official.

With regard to the trade union inspectorate, the Committee notes that pursuant to sections 1.7 and 1.8 of the Regulations on the Trade Union Inspectorate, chief inspectors are dismissed and appointed by the board of trade union bodies, and the funding of the inspectorate is provided from trade union funds and other sources not prohibited by legislation. In this respect, the Committee notes the observations of the ITUC, which refer to the decrease in the number of trade union labour inspectors in 2021 to 24 (from 28 in 2020, and 36 in 2018), and which note that information on the sources of funding for trade union inspection services is still very limited. ***The Committee requests the Government to provide its comments in respect of the observations of the ITUC. It also requests the Government to indicate how the independence of labour inspectors is ensured in practice, in respect of the requirement that the performance of an inspection body official be assessed based on criteria including feedback from economic entities. In addition, the Committee requests the Government to take measures to improve the situation with respect to the funding for and the number of trade union labour inspectors, and to provide further information on the material means at their disposal in practice.***

Articles 12 and 16. Powers of labour inspectors. 1. *Moratorium on inspections.* Following its previous comments on this matter, the Committee takes due note of the Government's indication that the moratorium on inspection has expired on 1 January 2021. The Committee notes that, according to the Government, the labour inspectorate now works according to its normal schedule, and labour inspectors decide on the frequency of inspection visits, based on the information available on the status of enterprises' compliance with labour regulations. The Committee also notes in this regard that the annual report on the work of the labour inspectorate covering the period 2020–21 (Annual Report on Labour Inspection 2020–21) provides detailed statistics on the number of inspection visits carried out by the SILME in the reporting period, disaggregated by sector. ***Taking due note of these developments, the Committee expects that no moratorium of this nature will be placed on labour inspection in the future. It requests the Government to continue to provide statistics on the number of inspection visits undertaken by the SILME, disaggregated by type of inspections (scheduled, unscheduled, additional, or follow-up) and by sectors.***

2. *Other restrictions on the powers of labour inspectors.* The Committee previously noted with concern the restrictions in Law No. 1269 on the power of inspectors, including with regard to: (i) frequency of inspections (section 22); (ii) duration of inspections (section 26); (iii) the ability of labour inspectors to undertake inspection visits without previous notice (sections 16, 19, 21 and 24); and (iv) the scope of inspections (section 25). The Committee notes with ***concern*** that the restrictions under Law No. 1269 appear to be still in force. However, according to the Government, these restrictions do not apply to trade union labour inspectors. The Government also indicates that labour inspectors in the SILME can make inspection visits without previous notice in exceptional cases, when there is information on serious violations of standards that threaten workers' lives and health, or when responding to submitted complaints, claims or enquiries, and provided that the Council for the Coordination of the Activities of Inspection Bodies is notified. The ITUC observations underline in this regard that the requirements of *Articles 12* and *16* of the Convention should apply to all labour inspectors, and that it is therefore necessary to restore the powers of state labour inspectors fully, to ensure compliance with the Convention. In this respect, the Committee notes the Government's statement that the SILME has communicated the position of its leadership to the Council for the Coordination of the Activities of Inspection Bodies regarding strict compliance with the requirements of the Convention. The Committee also welcomes the Government's indication that a protocol-resolution of the Council has assigned to the Ministry of Justice, the Committee for State Property Investment and Management, and other relevant governmental agencies, the task to consider this matter and submit the necessary proposals to harmonize the relevant legislation. In addition, the Government refers to the existence of a due diligence checklist for inspections, compiled by SILME specialists, which formalizes the wide-ranging powers of labour inspectors to conduct unscheduled, surprise, targeted and verification inspections.

With reference to its general observation of 2019 on the labour inspection Conventions, the Committee urges the Government to pursue its efforts and continue to take all the necessary measures to bring its national legislation into full conformity with Articles 12 and 16 of the Convention. It requests the Government to continue to provide information on the measures taken and the developments in this regard, and to communicate a copy of the due diligence checklist established by the SILME for inspections. In addition, the Committee requests the Government to provide statistics regarding the number of inspection visits undertaken by labour inspectors of the SILME without previous notice, as compared to inspection visits undertaken with prior notice, and similar statistics regarding inspections undertaken by trade union labour inspectors.

Article 13. Preventive measures in the event of a danger to the safety and health of workers. The Committee previously requested information on the application in practice of *Article 13* of the Convention and of inspectors' temporary suspension powers under section 30 of Law No. 1269 related to occupational safety and health (OSH). In this regard, the Committee notes that the Government does not provide information regarding the application of section 30 of Law No. 1269, but refers to the application of section 3(7) of the Regulations of the SILME, approved by Government Decision No. 299 of 3 May 2014, as amended in 2020 (SILME Regulations). Section 3(7) of the SILME Regulations provides that the SILME has the authority to: (i) suspend the activities of organizations, production sites and individual entrepreneurs in accordance with national laws, when activities jeopardize employees' lives and health and until OSH infringements are addressed; and (ii) prohibit the use of non-compliant work clothes and footwear, and personal protective equipment. The Committee notes the Government's indication that, in 2020 and the first semester of 2021, labour inspectors of the SILME have halted the activities of enterprises, production sites and sole trader industrial plants in 95 instances, until the violations had been remedied and the inspectors' regulatory requirements had been implemented. The Annual Report on Labour Inspection 2020–21 also contains statistics on the reports issued by the SILME containing instructions to remedy infringements of standards on protection of workers, in connection with plans for the construction of new industrial facilities, for the renovation of industrial facilities, and for the installation of machinery, mechanisms and other industrial equipment. The Committee notes the Government's indication that trade union labour inspectors have the right to impose a suspension of work in the event of a threat to workers' lives. Pursuant to Part II of the Regulations on the Trade Union Inspectorate, the trade union labour inspectors also have the right to issue orders for employers to eliminate detected violations of labour protection requirements, execution of which is obligatory. ***The Committee requests the Government to provide statistics regarding the application in practice of trade union labour inspectors' powers to suspend work in the event of a threat to workers' lives, and to issue orders for employers to eliminate detected violations of labour protection requirements.***

Articles 20 and 21. Obligation to publish and communicate an annual report on the work of the labour inspectorate. The Committee notes with ***interest*** that the Government has communicated the Annual Report on Labour Inspection 2020–21, which includes detailed information on the subjects covered by *Article 21(a)*, *(b)*, and *(d)–(g)* of the Convention. The Committee observes that this annual report does not appear to contain statistics of workplaces liable to inspection and the number of workers employed therein (*Article 21(c)*). ***The Committee requests the Government to take the necessary measures to ensure that annual reports on the work of the labour inspectorate continue to be published and transmitted to the ILO in accordance with Article 20 of the Convention in the future, and that they contain all the information covered by Article 21(a)–(g).***

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

Uganda

Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 4 of the Convention. Supervision and control by a central authority. In its previous comments, the Committee had requested the Government to pursue its efforts in placing again the labour inspection system under the supervision and control of a central authority, following its decentralization in 1995. In this respect, the Committee recalls the reiterated discussion of the case by the Committee on the Application of Standards (CAS) of the International Labour Conference (in 2001, 2003 and 2008) and the conclusions of the CAS emphasizing the need for the inspection system to be under the responsibility of a central authority. The Committee notes the Government's indication in its report that the Ministry of Gender, Labour and Social Development (MGLSD) plays a supervisory role, although the system of labour inspection is decentralized. The Government indicates that the MGLSD has started a process to amend the legislation and to place the inspection system under a central authority. ***The Committee urges the Government to pursue its efforts to place the labour inspection system under a central authority with a view to ensuring coherence in the functioning of the labour inspection system and to provide information on the steps taken in that regard, including a copy of any legislation adopted.***

Articles 10, 11 and 16. Resources of the labour inspection system and inspection visits. In its previous comments, the Committee had requested the Government to pursue its efforts to ensure that human and financial resources are allocated to labour inspection. The Committee notes that the Government indicates that the MGLSD has continued to ensure that human and material resources are allocated to labour inspection and that additional vehicles have been provided to the Department of Labour. However, the Committee notes the Government's indication that inadequate funding continues to represent a challenge. In addition, the Committee notes the 2016 report on the audit undertaken by the auditor-general of the Department of Occupational Safety and Health (OSH) of the MGLSD on OSH enforcement activities. The report finds that: (a) out of an estimated 1 million workplaces in the country, only 476 were inspected between 2013 and 2015 (212 in 2012–13, 125 in 2013–14, and 139 in 2014–15, based on departmental annual performance reports); (b) the MGLSD procured analytical and clinical laboratory equipment, but the OSH Department has not fully trained inspectors on the use of the equipment; and (c) enforcement of the OSH legislation has not been effective due to limited personnel and logistics. With respect to personnel issues, the Committee notes that the report indicates that out of 48 approved staff positions, only 22 are currently filled. ***The Committee notes with concern the limited human and material resources allocated to labour inspection and urges the Government to take steps to ensure that there are a sufficient number of labour inspectors provided with adequate resources, including through the filling of vacant positions, in conformity with Articles 10 and 11 of the Convention, in order to ensure that workplaces are inspected as often as is necessary for the effective application of the relevant legal provisions, as required by Article 16 of the Convention.***

Articles 20 and 21. Publication and communication of an annual report on labour inspection. In its previous comments, the Committee had noted the Government's commitment to publish and submit to the ILO an annual inspection report on the work of the labour inspection services, pursuant to section 20 of the Employment Act 2006. The Committee notes the Government's indication that a draft annual report has been compiled. However, it notes with ***concern*** that no report has been published or submitted to the ILO. ***The Committee once again requests the Government to take the necessary measures to ensure that annual reports on labour inspection are published and communicated regularly to the ILO within the time limits set out in Article 20 and that they contain the information required by Article 21(a)–(g).***

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

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

Ukraine

Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2004)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the Confederation of Free Trade Unions of Ukraine (KVPU), received on 25 August 2021. It also notes the observations of the Joint Representative Body of the Representative all-Ukraine Trade Union Associations at the national level, communicated with the Government's report, and the response of the Government thereto.

Articles 4, 6 and 7 of Convention No. 81 and Articles 7, 8 and 9 of Convention No. 129. Organization of the labour inspection system under the supervision and control of a central authority. Partial decentralization of labour inspection functions. The Committee previously noted that local authorities assumed labour inspection functions, in addition to the State Labour Service (SLS), and urged the Government to indicate the measures taken to place the inspection functions of the local authorities under the supervision and control of the SLS. In this regard, the Committee takes due note that, according to the Government's report, legislative amendments introduced in 2021, including to section 34 of the Local Government Act, exclude local government authorities from monitoring compliance with labour legislation and issuing fines for labour law violations. The Government indicates that accordingly, labour inspection is now carried out exclusively by the SLS. Nevertheless, the Committee observes that section 17 of the Local Government Act, as amended, refers to the ability of local self-government bodies in the exercise of powers to control compliance with labour and employment legislation, to carry out inspections that do not belong to measures of state supervision, at certain enterprises, institutions and organizations. ***The Committee requests the Government to indicate the nature and scope of the power of inspection envisaged under section 17 of the Local Government Act, and to provide information, including examples, of how this power of inspection is implemented in practice.***

Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Material means and human resources to achieve an adequate coverage of workplaces by labour inspection. The Committee previously noted an increase in the number of labour inspectors from 615 in 2018 to 710 in 2019, for 1,003 existing posts, and urged the Government to pursue its efforts to fill the vacant posts. In this regard, the Committee notes the Government's statement, that as at July 2021, 1,125 labour inspectors work for the SLS. Regarding its previous request for the Government to take measures to provide sufficient material resources for the SLS, the Committee notes the Government's indication that labour inspectors are provided with office equipment and have their expenses covered, in accordance with the allocation of budgetary funds. ***The Committee requests the Government to provide further information on the measures taken to provide sufficient material resources to labour inspectors, including offices, office equipment and supplies, transport facilities and reimbursement of travel expenses, at the central and local levels of the SLS. It also requests the Government to continue to indicate the number of labour inspectors employed by the SLS and the number of available posts at the SLS.***

Articles 12(1), 16, 17 and 18 of Convention No. 81 and Articles 16(1), 21, 22 and 24 of Convention No. 129. Restrictions and limitations on labour inspection. 1. *Moratorium on labour inspection.* The Committee previously noted the expiry of the moratorium on state supervision on 1 January 2019 and expressed the firm hope that no further restrictions of this nature would be placed on labour inspection in the future. In this respect, the Committee notes that, according to the Joint Representative Body of the Representative all-Ukraine Trade Union Associations at the national level, a moratorium has been imposed on planned inspections in businesses considered to be medium- or low-risk, in the context of

the COVID-19 pandemic. In response, the Government indicates that such restrictions were necessary to reduce the administrative pressure faced by those businesses, as a result of restrictions related to the COVID-19 pandemic. The Government also explains that there are no restrictions on unplanned monitoring measures, regardless of the category of risk of businesses. The Committee recalls that labour inspection is a vital public function, at the core of promoting and enforcing decent working conditions and respect for fundamental principles and rights at work, and it plays an important role in national responses to COVID-19, by monitoring compliance with protective measures aimed at reducing transmission of the virus among employees. ***While recognizing the extraordinary nature of, and particular challenges linked to, the COVID-19 pandemic, the Committee requests the Government to ensure that the interference of any COVID-19-related measures with labour inspection activities is kept to the strict minimum necessary to respect public health measures. With reference to its General Observation of 2019 on labour inspection Conventions, the Committee requests the Government to remove any other moratoria on labour inspection. The Committee also requests the Government to provide detailed statistics on the number of inspection visits carried out by the SLS, disaggregated by type of inspection, region and sector.***

2. *Other restrictions*. The Committee has previously noted for several years important restrictions on the powers of labour inspectors, contained in Act No. 877-V of 2007 on Fundamental Principles of State Supervision and Monitoring of Economic Activity (Act No. 877-V), including restrictions with regard to: (i) the free initiative of labour inspectors to undertake inspections without previous notice; and (ii) the frequency of labour inspections. It noted with concern that Ministerial Decree No. 823 of 21 August 2019 on the Procedure for State Control of Compliance with Labour Legislation, as amended in 2019 and 2020 (Decree No. 823), provides for similar restrictions. In particular, section 1 of the amended Procedures approved by Decree No. 823 requires labour inspection to be carried out in accordance with Act No. 877-V, except for measures related to detecting informal employment. In this regard, the Committee strongly urged the Government to bring the labour inspection services and national legislation into conformity with the Conventions.

The Committee notes that, according to the Joint Representative Body of the Representative all-Ukraine Trade Union Associations at the national level, the District Administrative Court of the city of Kiev has found Decree No. 823 to be invalid in its Ruling No. 640/17424/19 dated 28 April 2021. The Committee notes with ***deep concern*** that previously observed restrictions in Act No. 877-V on the powers of labour inspectors remain in place. In this respect, the Committee notes the KVPU's observations, alleging that, despite multiple amendments, sections 4, 5 and 6 of Act No. 877-V continue to restrict labour inspectors with regard to the time, scope and duration of inspections visits, their ability to undertake inspection without previous notice, and the measures they can take against violations. According to the KVPU, this leaves a significant number of problematic and important employee issues neglected and inadequately addressed. The KVPU also alleges that, despite the rising numbers of occupational accidents and cases of occupational diseases in 2020–21, requests from trade unions regarding identified violations are unanswered, delayed, or often met with refusal by the SLS, because trade union requests are not included in the exceptional grounds for unscheduled inspections under section 6 of Act No. 877-V.

The Committee recalls once again that restrictions on labour inspectors' ability to conduct inspection visits without previous notice, at any hour of the day or night, in workplaces liable to inspection; and to ensure that workplaces are inspected as often and as thoroughly as necessary to ensure effective application of legal provisions, violate the Conventions. The Committee also recalls that, under *Article 18* of Conventions No. 81 and *Article 24* of Convention No. 129, adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced. In this regard, the Committee takes due note of the Government's indication that the Ministry of Economy has developed a draft law to amend several legislative acts relating to the procedure for

labour inspection, and notes that the Government is receiving ILO technical assistance. The Government also indicates that a new draft law on fundamental principles of state monitoring was approved by the Cabinet of Ministers of Ukraine in June 2021 and submitted to Parliament. In addition, according to the Government, legislative amendments to the Labour Code have been adopted (previously, draft Law No. 1233 of 2019), reducing the size of fines provided for labour law violations in the Labour Code, and requiring labour inspectors to give warnings in cases of violations by certain legal persons and individual entrepreneurs using hired labour. The Committee observes that a number of draft laws, including draft Laws Nos 5371, 5054-1 and 5161-1, also propose changes to labour legislation which could have an impact on the application of Conventions Nos 81 and 129. ***The Committee requests the Government to provide its comments with respect to the observations of the KVPU. With reference to its general observation of 2019 on the labour inspection Conventions, the Committee strongly urges the Government to promptly take all necessary measures to bring its national legislation into conformity with the provisions of Conventions Nos 81 and 129. In particular, the Committee strongly urges the Government to ensure that any future legislative amendments and laws with an impact on labour inspection, including the draft law on the fundamental principles of state monitoring, are in full conformity with Articles 12, 16, 17 and 18 of Convention No. 81 and Articles 16, 21, 22 and 24 of Convention No. 129. It requests the Government to provide a copy of the amendments to Act No. 877-V and the new law on the fundamental principles of state monitoring, once adopted.***

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 63** *(Myanmar);* **Convention No. 81** *(Bangladesh, Barbados, Djibouti, Germany, Grenada, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Iraq, Ireland, Israel, Jamaica, Jordan, Kazakhstan, Latvia, Lebanon, Liberia, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Montenegro, Mozambique, Netherlands: Aruba, Netherlands: Curaçao, Nigeria, North Macedonia, Norway, Sao Tome and Principe, Sierra Leone, Tajikistan, Uganda, Ukraine, United Republic of Tanzania: Tanganyika);* **Convention No. 129** *(Germany, Guatemala, Hungary, Iceland, Kazakhstan, Latvia, Luxembourg, Madagascar, Malawi, Montenegro, North Macedonia, Norway, Ukraine);* **Convention No. 150** *(Belize, Latvia, Lebanon, Lesotho, Liberia, Malawi, Mali, Mauritius, Mexico, Morocco, North Macedonia, Republic of Moldova, Ukraine);* **Convention No. 160** *(Kyrgyzstan, Latvia, Netherlands, Norway, Tajikistan).*

Employment policy and promotion

Bosnia and Herzegovina

Employment Policy Convention, 1964 (No. 122) (ratification: 1993)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH) and the International Trade Union Confederation (ITUC) received on 1 September 2017. ***The Committee requests the Government to provide its comments in this respect.***

Articles 1 and 2 of the Convention. Implementation of an active employment policy. In their observations, the workers' organizations allege that the Government has failed to declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. They stress that the employment situation in both Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS) is dire, with extremely high rates of unemployment, citing a 28 per cent general unemployment rate and youth unemployment rates exceeding 60 per cent. The Committee notes the Government's indication that, pursuant to the Law on Employment Intermediation and Social Security of Unemployed Persons of the FBiH, the relevant authorities of the FBiH or Cantons are responsible for establishing measures to increase employment rates and improve the situation of employed persons. The FBiH adds that the work plan of the FBiH Employment Institute provides for the various forms of support for the promotion of employment, self-employment, preparation for entering the labour market; and professional development and training. These measures seek to integrate unemployed persons into the labour market, particularly in relation to persons belonging to hard-to-employ categories of unemployed persons. The Committee notes that section 23 of the Law gives priority to persons with disabilities in employment. With respect to the Brčko District of BiH, the Committee notes that the Law on Employment and Rights during Unemployment and the Labour Law of the Brčko District provide for professional training, preparation for employment and special protections for women, minors and persons who are not fit for work. In relation to the RS, the Committee notes that the RS Employment Strategy 2011–15 established a system for the registration of unemployed persons with the RS Employment Bureau (RSEB). The Committee notes the Government's indication that the RSEB implemented three projects providing support for employment in the RS from 2013 to 2015, through which a total of 4,522 persons were employed. In October 2016, the RS National Assembly adopted the RS Employment Strategy 2016–20, which seeks to increase employment and stimulate economic activity in RS through the implementation of thirteen operational goals and fifty specific measures. The Committee notes the Government's indication that, according to the records of the RSEB, implementation of these measures led to the employment of 34,593 persons in 2015. The Government adds that the measures set out in the RS Employment Action Plan for 2017 seek, inter alia, to structurally reform the role of the RSEB and focus its activity on employment intermediation. ***The Committee requests the Government to provide detailed updated information, including statistical data disaggregated by sex, age and administrative entity, on the impact of the policies and measures implemented to promote full, productive and freely chosen employment, including the employment promotion activities carried out under the Employment Strategy of Republika Srpska 2016–20.***

Employment trends. The FBiH reports that there were a number of positive changes in the labour market in 2016. The RS indicates that a gradual stabilization of the labour market began in 2013, adding that numerous measures taken by the RS and other stakeholders addressed the increasing unemployment rate. The Committee notes that, according to data from the FBiH Statistics Institute, 457,974 workers were employed in the FBiH in 2016. It further notes that data from the Labour Force Survey indicates that the employment rate in the FBiH stood at 30.5 per cent in 2016, while the average unemployment rate was 25.6 per cent, a reduction of 3.31 per cent in comparison with the 2015 average. The Committee notes the high unemployment rate among young persons 15–24 years of age, which decreased from 64.9 per cent in 2015 to 55.1 per cent in 2016. The Committee further notes that, according to the ILOSTAT database, the general unemployment rate for young persons was 45.8 per cent in 2017. At the end of 2016, the largest percentage of those registered as unemployed in the FBiH (44.24 per cent) were in the 30–49 age group, followed by persons under the age of 30 (32.5 per cent) and persons over the age of 50 (25.26 per cent). In

2016, 133,037 persons were removed from the records of the Cantonal employment services, 115,379 persons were registered as unemployed and 92,263 persons were placed in employment. This represents an increase of 15,671 in comparison with 2015. According to the ILOSTAT database, in 2017, the general unemployment rate was 20.5 per cent, whereas the unemployment rate for men and for women was 18.9 per cent and 23.1 per cent, respectively. ***The Committee requests the Government to continue to provide statistical data disaggregated by sex and age concerning the size and distribution of the labour force, including the size of the informal economy and employment trends in relation to employment, unemployment, and visible underemployment.***

Undeclared work. In their observations, the workers' organizations indicate that the informal economy is widespread, maintaining that the Government has not made serious efforts to tackle this issue effectively. They emphasize that nearly one-third of all persons who are employed are working in the informal economy, trapped there primarily due to poor access to the labour market, slow job creation in the formal economy and the lack of skills matching labour market demands. They add that workers in rural areas face a higher probability of remaining in informal employment in comparison with workers in other sectors. The Committee notes that, according to the RS Employment Strategy 2016–20, informality is predominately present in agriculture, making up about two-thirds of informal employment, with informal employment concentrated among the rural population. ***The Committee therefore once again requests the Government to provide detailed updated information on the measures taken or envisaged to facilitate the transition of undeclared workers in the informal economy to employment in the formal economy, with special attention to the agricultural sector and rural communities.***

Workers vulnerable to decent work deficits. The FBiH indicates that a number of gender-sensitive programmes implemented by the FBiH Employment Institute focus on specific groups of workers vulnerable to decent work deficits: women; young persons; persons with disabilities; persons belonging to the Roma community; persons over the age of 40; and the long-term unemployed. The RS reports that 2,859 persons were employed through Social Safety Nets and the Employment Support Project. In addition, 543 persons were employed in 2015 through a project to support the employment of persons over the age of 45 and 135 persons were employed through an employment support project targeting the Roma minority from 2011 to 2015. It adds that the RS Employment Action Plan for 2017 sets out a number of measures aimed at increasing the employability of persons under the age of 30, persons over the age of 50 and persons belonging to the Roma community. In their observations, the workers' organizations allege that the 2015–18 Reform Agenda fails to address the interests of women, workers in the informal economy and workers with disabilities. In addition, the workers' organizations observe that women have low participation levels in political and public affairs, noting that the gender pay gap in BiH is larger than the EU average. ***The Committee requests the Government to provide detailed updated information, including statistical data disaggregated by age and sex in the three administrative entities, on the nature and impact of measures taken to promote full, productive, freely chosen and sustainable employment for persons vulnerable to decent work deficits, including women, young persons, persons over the age of 50, informal workers, the long-term unemployed, persons with disabilities and members of the Roma community. Noting, moreover, the gender pay gap and the higher rates of unemployment for women, the Committee requests the Government to provide information on specific measures taken to promote employment for women at all levels and across all sectors, including in decision-making positions.***

Employment of young persons. The Committee notes that, according to the ILOSTAT database, the youth unemployment rate in the country stood at 45.8 per cent in 2017. The Committee notes that both FBiH and the RS took measures to promote the employment of young persons. In this regard, the RSEB implemented five projects from 2011 to 2014 to support young persons in gaining work experience, through which 3,650 persons were employed as trainees. Furthermore, the RS Employment Action Plan for 2017 contemplates the promotion of socially useful employment for youth, for which 50,000 Bosnian convertible marka (BAM) are allocated. In their observations, the workers' organizations express concerns in relation to the high rate of youth unemployment and the likelihood that they will remain in long-term unemployment and the mass exodus of young educated persons from the country seeking work elsewhere. ***The Committee requests the Government to provide updated detailed information, including disaggregated statistical data on the impact of the measures taken by the three administrative entities of the country to promote full, productive, freely chosen and lasting employment for young workers.***

Vocational education and training. The Committee notes that the FBiH Employment Institute and the Cantonal employment services are responsible for implementing the Job Preparation Programme: from Training to Employment, which provides co-financing for the training of unemployed persons to enable them to acquire professional skills tailored to the needs of employers. In respect of the RS, the Committee notes the establishment of 11 job clubs and 6 Information, Counselling and Training Centres which provided job search assistance to more than 34,376 beneficiaries from 2011 to 2015, leading to the employment of 9,172 persons. Furthermore, the RS Employment Action Plan for 2017 contemplates the development, financing and delivery of training aimed at enhancing the employability of active jobseekers, for which BAM500,000 are allocated. ***The Committee requests the Government to continue to provide information on the nature and impact of measures taken to improve vocational education and training and on their impact on the employability and competitiveness of the national labour force.***

Article 3. Consultation with the social partners. The Committee notes the Government's indication that the tripartite FBiH Economic and Social Council discusses all measures related to economic and social policy prior to their formal adoption and that the RS Employment Action Plan for 2017 was adopted after consultation with the social partners. In their observations, the workers' organizations allege that the social partners were not able to participate in the development and implementation of the 2015–18 Reform Agenda and that this lack of participation and transparency continued in relation to laws and policies adopted by regional governments in 2016. They further allege that the 2015 Labour Law undermines the strategic position of trade unions and collective agreements. ***The Committee requests the Government to provide detailed information on the nature and extent of the involvement of the social partners in the development, implementation, monitoring and review of employment policy measures and programmes in the different administrative entities.***

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

China

Employment Policy Convention, 1964 (No. 122) (ratification: 1997)

With reference to its previous comments, the Committee recalls the observations made by the International Trade Union Confederation (ITUC) regarding the application of the Convention by the Government of China, received on 16 and 28 September 2020, and the additional observations made by the ITUC, received on 6 September 2021. The Committee also notes the Government's reply received on 20 November 2020, which arrived too late to be examined in 2020, as well as the additional information in relation to the observations, provided by the Government in its report on the application of the present Convention, received on 30 August 2021. The Committee further notes elements from the Government's report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) which are also relevant to the application of this Convention.

Article 1(1) and (2)(a)–(c) of the Convention. Active policy to promote full, productive and freely chosen employment. Allegations of discrimination and forced labour in the context of the Convention. The Committee refers to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In the interest of coherence and transparency in its comments, considering both the allegations and the information in reply raise a close connection between employment policy, the free choice of employment of ethnic and religious minorities and their protection against discrimination in employment and occupation, the Committee presents the same synopsis of the information available in both comments.

In its observations of 2020 and 2021, the ITUC alleges that the Government of China has been engaging in a widespread and systematic programme involving the extensive use of forced labour of the Uyghur and other Turkic and/or Muslim minorities for agriculture and industrial activities throughout the Xinjiang Uyghur Autonomous Region (Xinjiang), in violation of the right to freely chosen employment set out in *Article 1(2)* of the Convention. The ITUC maintains that some 13 million members of the ethnic and religious minorities in Xinjiang are targeted on the basis of their ethnicity and religion

with a goal of social control and assimilation of their culture and identity. According to the ITUC, the Government refers to the programme in a context of "poverty alleviation", "vocational training", "re-education through labour" and "de-extremification".

The ITUC submits that a key feature of the programme is the use of forced or compulsory labour in or around "internment" or "re-education" camps housing some 1.8 million Uyghur and other Turkic and/or Muslim peoples in the region, as well as in or around prisons and workplaces across Xinjiang and other parts of the country.

The ITUC indicates that, beginning in 2017, the Government has expanded its internment programme significantly, with some 39 internment camps having almost tripled in size. The ITUC submits that, in 2018, Government officials began referring to the camps as "vocational education and training centres" and that in March 2019, the Governor of the Xinjiang Uyghur Autonomous Region described them as "boarding schools that provide job skills to trainees who are voluntarily admitted and allowed to leave the camps". The ITUC indicates that life in "re-education centres" or camps is characterized by extraordinary hardship, lack of freedom of movement, physical and psychological torture, compulsory vocational training and actual forced labour.

The ITUC also refers to "centralized training centres" that are no re-education camps but have similar security features (e.g. high fences, security watchtowers and barbed wire) and provide similar education programmes (legal regulations, Mandarin language courses, work discipline and military drills). The ITUC adds that the re-education camps are central to an indoctrination programme focused on separating and "cleansing" ethnic and religious minorities from their culture, beliefs, and religion. Reasons for internment may include persons having travelled abroad, applied for a passport, communicated with people abroad or prayed regularly.

The ITUC also alleges prison labour, mainly in cotton harvesting and the manufacture of textiles, apparel and footwear. It refers to research according to which, starting in 2017, the prison population of Uyghurs and other Muslim minorities increased dramatically, accounting for 21 per cent of all arrests in China in 2017. Charges typically included "terrorism", "separatism" and "religious extremism".

Finally, the ITUC alleges that at least 80,000 Uyghurs and other ethnic minorities workers were transferred from Xinjiang to factories in Eastern and Central China as part of a "labour transfer" scheme under the name "Xinjiang Aid". This scheme would allow companies to: (1) open a satellite factory in Xinjiang or (2) hire Uyghur workers for their factories located outside this region. The ITUC alleges that the workers who are forced to leave the Uyghur Region are given no choice and, if they refuse, are threatened with detention or the detention of their family. Outside Xinjiang, these workers live and work in segregation, are required to attend Mandarin classes and are prevented from practicing their culture or religion. According to the ITUC, state security officials ensure continuous physical and virtual surveillance. Workers lack of freedom of movement, remaining confined to dormitories and required to use supervised transport to and from the factory. They are subject to impossible production expectations and long working hours. The ITUC adds that, where wages are paid, they are often subject to deductions that reduce the salary to almost nothing. ITUC further adds that, without these coercively arranged transfers, Uyghurs would not find jobs outside Xinjiang, as their physical appearance would trigger police investigations.

According to the ITUC's allegations, to facilitate the implementation of these schemes, the Government offers incentives and tax exemptions to enterprises that train and employ detainees; subsidies are granted to encourage Chinese-owned companies to invest in and build factories near or within the internment camps; and compensation is provided to companies that facilitate the transfer and employment of Uyghur workers outside the Uyghur Region.

In its 2021 observations, the ITUC supplements these observations with information, including testimonies from the Xinjiang Victims Database, a publicly accessible database which as of 3 September

2021 had allegedly recorded the experience of some 35,236 ethnic minority members forcibly interned by the Government since 2017.

The Government states that the right to employment is an important part of the right to subsistence and development, which constitute basic human rights. The Government indicates that, under its leadership, Xinjiang has made great progress in safeguarding human rights and development. It adds that people of all ethnic groups voluntarily participate in employment of their own choice, and that the ITUC has ignored the progress made in economic development, poverty alleviation, improvement of people's livelihood and efforts to achieve decent work in Xinjiang.

With respect to the ITUC observations in relation to the use of forced labour, the Government emphasizes that these allegations are untrue and politically motivated.

The Government indicates that, pursuant to the Constitution, the State creates conditions for employment through various channels. The Employment Promotion Law (2007) stipulates that workers have the right to equal employment and to choose a job on their own initiative, without discrimination. Under the Vocational Education Law of 1996, citizens are entitled to receive vocational education and the State takes measures to develop vocational education in ethnic minority areas as well as remote and poor areas.

The Government indicates that residents of deeply poverty-stricken areas in southern Xinjiang have suffered insufficient employability, low employment rates, very limited incomes and long-term poverty. It states that eliminating poverty in Xinjiang has been a critical part of the national unified strategic plan to eradicate poverty by the end of 2020. The Government adds that it has eliminated absolute poverty, including in southern Xinjiang, thanks to government programmes such as the Programme for Revitalizing Border Areas and Enriching the People during the 13th Five-Year Plan Period (GUOBANFA No.50/2017) and the Three-Year Plan for Employment and Poverty Alleviation in Poverty-stricken Areas in the four prefectures of southern Xinjiang (2018–2020). The former programme had set development targets for nine provinces and autonomous regions, including Xinjiang, such as the lifting out of poverty of all rural poor and the continuous expansion of the scale of employment combining individual self-employment, market-regulated employment, government promotion of employment and entrepreneurship, and vocational training to increase the employability of workers. The latter programme laid the foundation for the XUAR government to provide dynamic, categorized and targeted assistance to people with employment difficulties and families where no one is employed, and create structured conditions for people to find jobs locally, to seek work in urban areas, or to start their own businesses.

The Committee also notes the Government's assertion in its white paper on employment and labour rights in Xinjiang (2020) that it is finding "new approaches to eradicating poverty". In its report, the Government indicates that its poverty eradication approach effectively prevents and strikes out at terrorism and extremism, and at the same time maintains social stability and improves people's lives, with its impoverished population and poverty incidence markedly reduced. The Government expresses the view that Xinjiang has put into practice the "relevant policy measures of the national government" to implement the Decent Work Country Programme for China (2016–2020), thus ensuring "that people from all ethnic groups work in a decent environment with freedom, equality, safety, and dignity". The Government further presents the view in its white paper on respecting and protecting the rights of all ethnic groups in Xinjiang that Xinjiang has provided "dynamic, categorized and targeted assistance to people with employment difficulties and zero-employment families so as to ensure that each family has at least one member in work". Workers' job preferences are fully respected, and "structured conditions" have been created for people to find jobs locally, to seek work in urban areas, or to start their own businesses. While promoting employment, Xinjiang guarantees "legitimate labour rights and interests in accordance with the law".

The Government reports that the task of relocating the poor for the purpose of poverty relief has been completed, and that the production and living conditions of poor people have been greatly improved: the poverty incidence rate in the four poverty-stricken prefectures of Xinjiang dropped from 29.1 per cent in 2014 to 0.21 per cent in 2019. Between 2014 and 2020, the total employed population in Xinjiang grew from 11.35 million to 13.56 million, representing an increase by 19.4 per cent. In the same period, an average of 2.8 million urban job opportunities were provided annually to the "surplus rural workforce".

The Government is firm in its view that it fully respects the employment wishes and training needs of Xinjiang workers, including ethnic minorities. The Xinjiang Government regularly conducts surveys of labourers' willingness to find employment and keep abreast of their needs in terms of employment location, job positions, remuneration, working conditions, living environment, development prospects and training needs. These surveys demonstrate that more urban and rural "surplus" workers hope to go to cities in northern Xinjiang or other more developed provinces and cities in other parts of the country, which offer higher wages, better working conditions and a better living environment. Ethnic minorities count on the government to provide more employment information and other public employment services to their members. The fact that ethnic minority workers go out to work is entirely voluntary, autonomous and free. According to the Government, the Three-Year Plan for southern Xinjiang explicitly refers to the "willingness for employment" and states that the wishes of individuals "who are unwilling to work due to health and other reasons" shall be fully respected, and that they will never be forced to register for training.

The Government stresses that language training for ethnic minority workers in Xinjiang is necessary to increase their language ability, and enhance their employability, and does not deprive them of the right to use their own language.

The Government also replies to the ITUC allegations that the Uyghur and other ethnic minorities in Xinjiang are not paid the applicable local minimum wage, indicating that the Labour Law of the People's Republic of China stipulates that the minimum wage system applies across the country, although minimum wage standards may vary across administrative regions. As of 1 April 2021, the minimum wage in Xinjiang is divided into four grades: 1,900 yuan, 1,700 yuan, 1,620 yuan and 1,540 yuan. The Government considers reports that the wages of some migrant workers in Xinjiang are as low as US$114 (approximately 729 yuan) per month to be groundless, stating that the overwhelming majority of this information is taken from individual interviews and lacks clear sources of data or statistical information. In addition, the Government points out that the reports do not fully clarify whether the workers concerned are working less than the statutory working hours, in which case they would be paid less. The Government states that by going out to work, the actual income of many people is much higher than the minimum wage of Xinjiang.

The Government also reports that the local government of Xinjiang has put in place labour inspection systems for protecting the rights and interests of workers and addressing their reports and complaints concerning wage arrears, failure to sign labour contracts and other infringements. The Government indicates that it will take steps to further strengthen the supervision and inspection of employer compliance with minimum wage provisions, call on employers to respect the minimum wage standards and address violations.

The Government provides detailed information on its laws, regulations and policies regarding freedom of religion; equality among the 56 ethnic groups in China and for consolidating and developing unity between and within these groups.

The Government also replies to the ITUC allegations that the restrictions on the free choice of employment are aimed at alienating ethnic and religious minorities from their religion, culture and beliefs. It reports that China adopts policies securing freedom of religious belief; manages religious affairs in accordance with the law; adheres to the principle of independence from foreign countries and

self-management; and actively guides religions to adapt to the socialist society so that religious believers may love their country and compatriots, safeguard national unity, ethnic solidarity, be subordinate to and serve the overall interests of the nation and the Chinese people. The Law of the People's Republic of China on the Administration of Activities of Overseas Non-Governmental Organizations within China prohibits overseas NGOs from illegally engaging in or sponsoring religious activities. China's Criminal Law, National Security Law, and Counter-Terrorism Law provide for the protection of citizens' freedom of religious belief. The Counter-Terrorism Law of the People's Republic of China states that China opposes all extremism that seeks to instigate hatred, incite discrimination and advocate violence by distorting religious doctrines or through other means, and forbids any discriminatory behaviour on the grounds of region, ethnicity and religion. The Regulations on Religious Affairs prohibit any organization or individual from advocating, supporting or sponsoring religious extremism, or using religion to undermine ethnic unity, divide the country, or engage in terrorist activities. According to the Government, China takes measures against the propagation and spread of religious extremism, and at the same time, carefully avoids linking violent terrorism and religious extremism with any particular ethnic group or religion.

The Committee takes due note of the ITUC allegations, the response and additional information provided by the Government and the various employment and vocational training policies as articulated in various recent "white papers" referred to by the Government in its report and other legal and policy documents referred to by United Nations human rights experts.

The Committee recalls that the Convention's objective of promoting full employment does not require ratifying States to guarantee work for all who are available for and seeking work, nor does it imply that everyone must be in employment at all times (2020 General Survey on promoting employment and decent work in a changing landscape, paragraph 54). The Convention does, however, require ratifying States to promote freedom to choose one's employment and occupation, as well as equal access to opportunities for training and general education to prepare for jobs, without discrimination on the basis of race, colour, national origin, religion or other grounds of discrimination covered under Convention No. 111 or other international labour standards such as the Vocational Rehabilitation and Employment (Disabled Persons) Convention, (No. 159).

In this context, the Committee notes that training facilities that house the Uyghur population and other Turkic and Muslim minorities separate them from the mainstream educational and vocational training, vocational guidance and placement services available to all other groups in the region throughout the country at large. Such separation may lead to active labour market policies in China being designed and implemented in a manner that generates coercion in the choice of employment and has a discriminatory effect on ethnic and religious minorities. Photographs of the facilities, equipped with guard towers and tall surrounding walls topped with barbed wire further reinforce the observation of segregation. The Committee has observed before that some workers from ethnic minorities face challenges in seeking to engage in the occupation of their choice because of indirect discrimination. For example, biased approaches towards the traditional occupations engaged in by certain ethnic groups, which are often perceived as outdated, unproductive or environmentally harmful, continue to pose serious challenges to the enjoyment of equality of opportunity and treatment in respect of occupation (general observation on Convention No. 111, 2019). The Committee addresses other aspects of the particular system for vocational training and education aimed at the de-radicalization of ethnic and religious minorities in its comment on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The Committee recalls that, while the Convention requires ratifying States to declare and pursue as a major goal an active policy designed to promote full, productive and freely chosen employment with the objective of stimulating economic growth and development and meeting manpower requirements, employment policy must also promote free choice of employment by enabling each

worker to train for employment which can subsequently be freely chosen, in accordance with *Article 1(2)(c)* of the Convention.

Article 1(2)(c) provides that the national employment policy shall aim to ensure that "there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he or she is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin". In its 2020 General Survey on promoting employment and decent work in a changing landscape, paragraphs 68–69, the Committee noted that "the objective of freely chosen employment consists of two elements. First, no person shall be compelled or forced to undertake work that has not been freely chosen or accepted or prevented from leaving work if he or she so wishes". Second, all persons should have the opportunity to acquire qualifications and to use their skills and endowments free from any discrimination. Moreover, the Committee recalls that the prevention and prohibition of compulsory labour is a condition sine qua non of freedom of choice of employment (2020 General Survey, paragraph 70).

The Committee notes the Government's statement that the ITUC observations are based on individual statements and are unsubstantiated; however, it notes that the ITUC observations also append additional sources containing statistical data; references to first-hand testimonies, testimonies of eyewitnesses, family and relatives; research papers; and photographs of vocational training and education centres.

The Committee also notes that, on 29 March 2021, a number of United Nations human rights experts (including Special Rapporteurs and thematic working groups mandated by the UN Human Rights Council) expressed serious concern with regard to the alleged detention and forced labour of Uyghur and other Turkic and/or Muslim minorities in Xinjiang. The UN experts indicate that Uyghur workers have been held in "re-education" facilities, with many also forcibly transferred to work in factories in Xinjiang. They further indicate that Uyghur workers have allegedly been forcibly employed in low-skilled, labour-intensive industries, such as agribusiness, textile and garment, automotive and technological sectors.

The Committee recognizes and welcomes the strong commitment of the Government to the eradication of poverty. However, it is the Committee's firm view that poverty eradication and the realization of the right to work to that end encompasses not only job placement and job retention but also the conditions under which the Government executes such placement and retention. The Convention does not only require the Government to pursue full employment but also to ensure that its employment policies do not entail any direct or indirect discriminatory effect in relation to recruitment, conditions of work, opportunities for training and advancement, termination, or any other employment-related conditions, including discrimination in choice of occupation.

The Committee is of the view that at the heart of the sustainable reduction of poverty lies the active enhancement of individual and collective capabilities, autonomy and agency that find their expression in the full recognition of the identity of ethnic minorities and their capability to freely and without any threat or fear choose rural or urban livelihoods and employment. The obligation under the Convention is not to guarantee job placement and retention for all individuals by any means available but to create the framework conditions for decent job creation and sustainable enterprises.

The Committee takes due note of the view expressed in the Government's report that "some forces recklessly sensationalize the so-called "forced labour" issue in Xinjiang on various occasions", adding that this is "nothing but a downright lie, a dirty trick with ulterior motives". The Committee is bound to observe, however, that the employment situation of Uyghurs and other Muslim minorities in China provides numerous indications of coercive measures many of which arise from regulatory and policy documents.

The Government's references to significant numbers of "surplus rural labour" being "relocated" to industrial and agricultural employment sites located inside and outside Xinjiang under "structured

conditions" of "labour management" in combination with a vocational training policy targeting de-radicalization of ethnic and religious minorities and at least in part carried out in high-security and high-surveillance settings raise serious concerns as to the ability of ethnic and religious minorities to exercise freely chosen employment without discrimination. Various indicators suggest the presence of a "labour transfer policy" using measures severely restricting the free choice of employment. These include government-led mobilization of rural households with local townships organizing transfers in accordance with labour export quotas; the relocation or transfer of workers under security escort; on-site management and retention of workers under strict surveillance; the threat of internment in vocational education and training centres if workers do not accept "government administration"; and the inability of placed workers to freely change employers.

The Committee urges the Government to provide detailed updated information on the measures taken or envisaged to ensure that its national employment policy effectively promotes both productive and freely chosen employment, including free choice of occupation, and effectively prevents all forms of forced or compulsory labour. In addition, the Committee requests the Government to take immediate measures to ensure that the vocational training and education programmes that form part of its poverty alleviation activities focused in the Uyghur Autonomous Region are mainstreamed and delivered in publicly accessible institutions, so that all segments of the population may benefit from these services on an equal basis, with a view to enhancing their access to full, productive and freely chosen employment and decent work. Recalling that, under the Employment Promotion Law (2007) and the Vocational Education law (1996), workers have "the right to equal employment and to choose a job of their own initiative" and to access vocational education and training, respectively, the Committee asks the Government to provide detailed information on the manner in which this right is effectively ensured, particularly for those belonging to the Uyghur minority and other Turkic and/or Muslim minorities. The Government is also requested to provide detailed information, including disaggregated statistical data, on the nature of the different vocational education and training courses offered, the types of courses in which Uyghur minorities have participated, and the numbers of participants in each course, as well as the impact of the education and training on their access to freely chosen and sustainable employment.

Article 3 of the Convention. Consultation. ***The Committee requests the Government to indicate the manner in which representatives of workers and employers organizations were consulted with respect to the design, development, implementation, monitoring and review of the active labour market measures being taken in the Uyghur Autonomous Region. In addition, and given the focus of the active labour market measures on the Uyghur and other Turkic/Muslim minorities, the Committee requests the Government to indicate the manner in which the representatives of these groups have been consulted, as required under Article 3.***

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

Comoros

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations made by the Workers Confederation of Comoros (CTC), received on 1 August 2017. ***It requests the Government to provide its comments on the matter.***

Article 1 of the Convention. Implementation of an active employment policy. Youth employment. In its previous comments, the Committee requested the Government to indicate in its next report whether the Act issuing the national employment policy had been adopted and to indicate whether specific difficulties had been encountered in achieving the objectives set out in the national Poverty Reduction and Growth Strategy Paper (PRGSP). The Committee notes with ***interest*** that the national employment policy act (PNE) was

adopted through the promulgation on 3 July 2014 of Decree No. 14-11/PR enacting Framework Act No. 14-020/AU of 21 May 2014 issuing the national employment policy. The Government indicates that this Act aims to provide a common and coherent vision of the strategic approaches for taking national action on employment, by increasing opportunities for low-income population groups to access decent work and a stable and sustainable income. The Government adds that in November 2014, with ILO support, it developed and adopted the Emergency Plan for Youth Employment (PUREJ), which is part of the process to implement the PNE. The PUREJ involves the adoption of programmes to promote youth employment which result from priority measures identified in the strategic framework of the PNE and integrated in the Strategy for Accelerated Growth and Sustainable Development (SCA2D). The Government adds that the overall objective of the PUREJ is to ensure strong employment growth in the short and medium term. In this context, the PUREJ focuses mainly on the promotion of youth employment in job-creating sectors for a period of two years, in order to contribute to the diversification of the economy, the production of goods and services and the building of social peace. The Government points out that the objective was to create 5,000 new decent and productive jobs for young persons and women by the end of 2016, through the development of skills in line with the needs of priority sectors of the Comorian economy and support for the promotion of employment and vocational integration. The Committee notes that in May 2015 the Government signed, together with the constituents and the ILO, the second-generation Decent Work Country Programme (DWCP), of which the main priority is to ensure the promotion and governance of employment. The Committee notes the observations of the CTC which indicate that the implementation of the PNE is not effective. It points out that the vocational training component, which is being conducted through a project with the European Union, is the only one being applied. In this regard, the provisions and mechanisms of the PNE have not been implemented and the text has not been disseminated to the public. The CTC also reports the dismissal of over 5,000 young persons without compensation. ***The Committee once again requests the Government to indicate whether specific difficulties have been encountered in achieving the objectives set out in the PRGSP. It requests the Government to provide more detailed information on the measures taken with a view to achieving the employment priorities established in the framework of the DWCP 2015–19, and on the impact of measures and programmes such as the PUREJ, which are aimed at increasing access to decent work for young persons. In this regard, the Committee requests the Government to indicate the number of young persons who have benefited from these programmes.***

Article 2. Collection and use of employment data. ***The Committee once again requests the Government to provide detailed information on the progress made with the collection of data on the labour market, and on the manner in which this data is taken into consideration during the formulation and implementation of the employment policy. It reminds the Government that it may avail itself of ILO technical assistance if it so wishes.***

Article 3. Participation of the social partners. ***The Committee once again requests the Government to include full information on the consultations envisaged in Article 3 of the Convention, which requires the participation of all of the persons affected, and particularly employers' and workers' representatives, in the formulation and implementation of employment policies. The Committee hopes that the Government will make every effort to take the necessary measures without delay.***

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

Djibouti

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1 of the Convention. Adoption and implementation of an active employment policy. ILO technical assistance. In response to previous comments, the Government indicates in its report that, although the strategy for the formulation of a national employment policy was commenced in April 2003, and new

structures have been established, the preparation of a national employment policy paper has still not been completed. The Committee notes that the National Employment Forum held in 2010 showed the need to develop a new employment policy adapted to labour market needs, which will have to target as a priority the reform of the vocational training system and the improvement of employment support services. The Government indicates that, out of a population of 818,159 inhabitants of working age, recent estimates place the unemployment rate at 48.4 per cent. It also indicates that, following a mission for the evaluation of technical cooperation undertaken by the ILO in March 2011, the Government reiterated its commitment to developing a Djibouti Decent Work Programme. It adds that it is still awaiting Office support for this purpose. ***The Committee requests the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies, and on the progress made in the adoption of a national policy for the achievement of full employment within the meaning of the Convention.***

Youth employment. The Government indicates that in 2012, despite a certain improvement, unemployment particularly affected young persons with higher education degrees. Moreover, although the country does not currently have a formal strategy to promote youth employment, several initiatives have been established to improve the operation of the labour market, promote entrepreneurship and provide training adapted to labour market needs. ***The Committee invites the Government to provide information on the manner in which the measures adopted have resulted in productive and lasting employment opportunities for young persons, and on the collaboration of the social partners in their implementation.***

Article 2. Collection and use of employment data. In March 2014, the Government provided the summary of the employment situation prepared by the National Employment and Skills Observatory. The number of jobs is increasing (30,118 jobs created in 2007, 35,393 in 2008 and 37,837 in 2010). ***The Committee invites the Government to indicate the measures taken to improve the labour market information system and to consolidate the mechanisms linking this system with decision-making in the field of employment policy. It also requests the Government to provide updated statistical data disaggregated by age and sex, as well as any other relevant data relating to the size and distribution of the workforce, the nature and scope of unemployment and underemployment and the respective trends.***

Article 3. Collaboration of the social partners. ***The Committee recalls the importance of the consultations required by the Convention and once again requests the Government to provide information on the measures adopted or envisaged for the consultation of the representatives of the persons affected on employment policies.***

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

Ethiopia

Private Employment Agencies Convention, 1997 (No. 181) (ratification: 1999)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 2(4) and (5) and 3 of the Convention. Prohibitions and exclusions. Legal status and conditions governing the operation of private employment agencies. In its report received in November 2018, the Government indicates that overseas employment of Ethiopians has been prohibited since 2013, pending the establishment of an appropriate legal framework and governance structure for the protection of Ethiopian workers migrating abroad. The Government reports that, with respect to the revision of the Employment Exchange Services Proclamation No. 632/2009, a new proclamation was adopted in 2016: the Overseas Employment Proclamation No. 923/2016. The Committee notes that the 2016 Proclamation explicitly provides that it replaces the 2009 Proclamation. The Government adds that Proclamation No. 923/2016 has not yet been implemented and its corresponding directive is being developed. The Committee notes the Government's indication that, with the adoption of the 2016 Proclamation, preparations are under way to lift the ban on Ethiopian overseas employment. ***The Committee requests the Government to communicate detailed updated information on the legal status of private employment agencies pending and following the lifting of the ban, as well as on the manner in which their conditions of operation are governed, as required by Article 3 of the Convention. The Committee further requests the Government to provide***

information on the implementation of the Overseas Employment Proclamation No. 923/2016 in practice, as well as information on other frameworks governing the operation of private employment agencies in a domestic as well as cross-border context. Additionally, the Government is requested to provide copies of the directive corresponding to the 2016 Proclamation once it is available, and to indicate which employers' and workers' organizations were consulted prior to the adoption of that Proclamation.

Article 7. Fees and costs. The Committee recalls its 2016 direct request regarding the Employment Exchange Services Proclamation No. 632/2009, which set out the types of fees and costs to be borne by employers and workers. The Committee notes the Government's indication that the newly adopted Overseas Employment Proclamation No. 923/2016, which revised the Employment Exchange Services Proclamation No. 632/2009, will not affect in any way the application of the Convention, including the exceptions permitted under *Article 7(2)*. The Committee notes that section 10(2) of the 2016 Proclamation provides, as did the 2009 Proclamation, that workers are responsible for covering: passport issuance fees; costs associated with the authentication of the contract of employment received from overseas and the certificate of clearance from crime; medical examination fees; vaccination fees; birth certificate issuance fees; and expenses related to the certificate of occupational competence. In respect of the medical examination provided for under section 9 of the 2016 Proclamation, the Committee draws the Government's attention to Paragraphs 3(h) and (i) and 25 of the HIV and AIDS Recommendation, 2010 (No. 200). In particular, Paragraph 25 provides that HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants. ***The Committee reiterates its request that the Government provide information on the reasons authorizing the exception, in the interest of the workers concerned, as contemplated in Article 7(2) of the Convention, to the principle that agencies should not charge fees or costs to workers, which would permit charging for the items set out under section 10(2) of the Overseas Employment Proclamation No. 923/2016, as well as information on the corresponding measures of protection. In addition, it requests the Government to indicate which employers' and workers' organizations were consulted in the interests of the migrant workers concerned.***

Article 8(1) and (2). Protection and prevention of abuses of migrant workers placed in another country. Bilateral labour agreements. In response to the Committee's previous request, the Government indicates that no cases of abusive recruiters have been reported since its imposition of the ban on overseas employment in 2013. The Committee notes, however, that the Government provides no information regarding investigations launched against abusive recruiters in accordance with section 598 of the Criminal Code concerning Ethiopian workers placed abroad prior to the imposition of the ban. With respect to bilateral labour agreements (BLAs), the Committee notes the Government's indication that negotiations between Ethiopia and migrant-receiving countries are still ongoing and that the Government can provide information on the outcome of the negotiations once the BLAs with the countries concerned are concluded. ***The Committee requests the Government to indicate the measures taken to ensure adequate procedures and mechanisms to investigate and sanction cases of abuse once the ban on overseas employment is lifted, including the sanctions envisaged. In addition, the Committee requests the Government to provide updated information on progress made in the conclusion and application of bilateral labour agreements concluded with countries receiving migrant workers from Ethiopia, with the aim of preventing abuses and fraudulent practices in the recruitment, placement and employment of Ethiopian migrant workers abroad. It further requests the Government to provide copies of such agreements.***

Articles 9, 10 and 14. Child labour. Complaint procedures and supervision. The Government indicates that, following the imposition of the ban on overseas employment, no cases of Ethiopian minors recruited in a cross-border context have been reported. ***The Committee requests the Government to indicate the measures taken or envisaged to ensure that child labour is not used or supplied by private employment agencies.***

Articles 11 and 12. Adequate protection and allocation of responsibilities. The Government indicates that Proclamation No. 923/2016 adequately ensures the protection of migrant workers in accordance with the above-mentioned Articles. It adds that the impact of the measures taken can only be observed following the implementation of the 2016 Proclamation, indicating that the model employment contract is also under revision. ***In the absence of specific information regarding the manner in which effect is given to Articles 11 and 12 of the Convention in either a domestic or cross-border context, the Committee once again requests the Government to provide updated detailed information on the nature and impact of measures taken to ensure protection for all workers in relation to each of the areas covered under Article 11, as well as the***

manner in which responsibilities are allocated between private employment agencies and user enterprises as required under Article 12 of the Convention. The Committee also once again requests the Government to provide a copy of the revised model employment contract and updated information on its effective use.

Article 13. Cooperation between the public employment service and private employment agencies. The Government indicates that information on cooperation between the public employment service and private employment agencies will become available once private employment agencies enter into full operation. ***The Committee requests the Government to provide detailed updated information in its next report on the manner in which effect is given to Article 13 of the Convention. In particular, it reiterates its request that the Government provide extracts of the reports submitted by private employment agencies to the Ministry of Labour and Social Welfare and specify the information that is made publicly available.***

Articles 10 and 14. ***The Committee reiterates its request that the Government provide updated information on the type and number of complaints received and the manner in which they were resolved, the number of workers covered by the Convention, the number and nature of infringements reported, as well as the remedies, including penalties, provided for and effectively applied in the event of violations of the Convention.***

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

India

Employment Policy Convention, 1964 (No. 122) (ratification: 1998)

Socio-economic impact of the COVID-19 pandemic. Response and recovery measures. The Committee notes the devastating effects the pandemic has had on health, lives and livelihoods in India. In this context, the Committee recalls the broad guidance provided by international labour standards. It draws the Government's attention to the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), which is a useful guide for the formulation and implementation, in consultation with the most representative organizations of employers and workers, of inclusive measures to promote full, productive and freely chosen employment opportunities and decent work as an effective response to the deep-rooted socio-economic effects of the crisis. ***The Committee invites the Government to provide updated information on the impact of the pandemic on the implementation of the employment policies and programmes adopted with a view to guaranteeing the objectives of the Convention, especially in relation to the most vulnerable population groups. It requests the Government to provide updated information on the impact of the COVID-19 pandemic on the labour market, statistical information, disaggregated by age, sex and occupational sector, on the size and distribution of the labour force, rates of employment, unemployment and under employment and the size of the informal economy.***

Articles 1 and 3 of the Convention. Formulation and implementation of a National Employment Policy. Consultation with the social partners. In its previous comments, the Committee requested information on the development of the National Employment Policy (NEP) in consultation with the social partners, as well as disaggregated data on the impact of increased budgetary allocations on employment creation. The Government reports that the drafting process for the National Employment Policy, initiated in 2013, is still under way, in consultation with stakeholders. The Government adds that discussions have been held with key stakeholders in respect of the draft NEP, as well as with the ILO Office. It indicates that a revised draft NEP is being prepared and will be shared with stakeholders before being finalized. With respect to consultations with the tripartite partners, including consultations within the Indian Labour Conference, the Government indicates that the latter is the highest-level tripartite consultative committee to advise the Government on labour-related issues. The Indian Labour Conference has held 46 sessions since its establishment in 1942, with the most recent session having taken place in 2015. The Government indicates that, during its 45th session in 2013, following consultations among the representatives of workers' and employers' organizations and Central and

State governments, the Committee on Measures to Improve Employment and Employability recommended that the National Employment Policy be finalized as a matter of priority. ***Noting that no session of the Indian Labour Conference has been held since 2015, the Committee hopes that the National Employment Policy will be adopted in the near future and reiterates its request that the Government provide a copy once it is adopted. The Committee also requests the Government to provide concrete, updated information on the nature, content and outcome of consultations held with representatives of employers' and workers' organizations concerning the formulation, updating and implementation of the National Employment Policy, as well as other active employment policies and programmes at the central and state level. The Committee further requests the Government to provide detailed updated information on the manner in which the perspectives of persons affected by the employment-related measures implemented are taken into account in the development and implementation of active employment policy measures.***

Labour market trends. The Committee previously requested the Government to provide updated disaggregated statistical data on trends in labour force participation, employment, unemployment and underemployment, as well as information on the national labour market information system and the production of timely employment data to help design more effective employment policies.

The Committee notes the information provided by the Government in respect of the annual Periodic Labour Force Surveys (PLFS) carried out by the National Sample Survey Office. It notes the detailed labour market statistics information provided by the Government in the PLFS reports on the situation and trends of labour force participation, employment and unemployment, in both the formal and informal economies, disaggregated by age, sex, skills, disadvantaged group, state and economic sector. In particular, the Committee notes that the 2018–19 PLFS report shows that the labour participation rate increased slightly from 36.9 per cent in 2017–18 to 37.7 per cent in 2018–19, while the unemployment rate decreased from 6.1 per cent to 5.8 per cent during the same period. ***The Committee requests the Government to continue to provide updated detailed information on the situation and trends of labour force participation, employment, unemployment and underemployment. The Government is further requested to indicate the manner in which the information compiled from the PLFS reports is utilized in the design and implementation of employment policies at national and provincial level.***

Article 2. Implementation of employment programmes and employment services. The Committee notes with ***interest*** the information provided by the Government regarding the implementation of various programmes as well as their impact during the reporting period, targeting young persons and workers in the informal sector. The Government reports that during the reporting period (2017–19), the Prime Minister's Employment Generation Programme (PMEGP) generated 309,043 jobs. Moreover, the National Urban Livelihoods Mission (NULM) provided assistance to 295,406 beneficiaries to establish micro enterprises. In addition, the Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU–GKY), which is part of the National Rural Livelihoods Mission and focuses on the employment of rural youth between the ages of 15 and 35 from poor families, placed a total of 271,316 participants in employment. ***The Committee requests the Government to continue to provide detailed updated information on the impact of the employment programmes being implemented throughout the country, in both urban and rural areas, including statistical information, disaggregated by sex and age, on the number of jobs generated and the number of beneficiaries placed.***

Specific groups. The Government reports on the implementation of the National Career Service (NCS) project, which provides a variety of employment related services to groups in vulnerable situations, such as career counselling, vocational guidance, as well as information on skills development courses, apprenticeships, internships and other opportunities. As of July 2019, more than 10.3 million jobseekers were registered in the NCS Portal. There are 25 NCS centres for the Scheduled Castes and Scheduled Tribes (ST/SC) operating in the different states and union territories. These centres provide persons belonging to the ST/SC with services to enhance their employability through coaching,

counselling and training programmes, including one year of computer training and of computer hardware maintenance training for interested ST/SC candidates. The Committee notes that there are 21 NCS centres that provide services to persons with disabilities, including informal skills training. In addition, a stipend is available from the NCS centres to encourage persons with disabilities to participate in training and reduce their commuting and other expenses. However, the Committee notes that, according to the concluding observations on the initial report of India by the Committee on the Rights of Persons with Disabilities (CRPD) in October 2019, only 37 per cent of persons with disabilities have access to employment, and the employment quota of 4 per cent of persons with disabilities is not sufficiently implemented (CRPD/C/IND/CO/1, paragraph 56(a) and (c)). ***The Committee requests the Government to continue to provide information on the nature and impact of services provided by NCS centres and other measures taken to promote sustainable employment and decent work for disadvantaged groups, including the number of persons placed in employment through such services and the type of employment in which they are placed.***

Employment of women. The Committee notes the information provided by the Government on legislative reform and policy initiatives undertaken to increase the participation of women in the labour market. The Maternity Benefit (Amendment) Act adopted in 2017 extended paid maternity leave from 12 weeks to 26 weeks and provides for mandatory crèche facilities in establishments with 50 or more employees. The 2019 Code on Wages prohibits gender discrimination in matters related to wages and recruitment of employees for the same work or work of a similar nature. Moreover, to enhance the employability of women, trainings are provided through a network of Women Industrial Training Institutes, National Vocational Training Institutes and Regional Vocational Training Institutes. As of July 2019, 3.1 million female jobseekers were registered in the NCS portal, with one NCS centre exclusively providing services to women with disabilities. In addition, a number of measures are being undertaken to promote women's entrepreneurship, such as the provision of collateral-free concessional loans, the formation of cooperatives through self-help groups and the creation of online marketing platform. However, the Committee notes that a significant gap persists in labour participation rates between men (50.3 per cent) and women (15.0 per cent), as reflected in the 2018–19 PLFS report. Moreover, about four times more women work as helpers in household businesses (30.9 per cent) compared with men (7.6 per cent). The Committee further notes that, in its 2019 concluding observations in relation to India, the Committee on the Rights of Persons with Disabilities (CRPD) expressed concern about the multiple and intersecting discrimination faced by women and girls with disabilities, particularly those with intellectual or psychosocial disabilities and those living in rural areas (doc. CRPD/C/IND/CO/1, October 2019, paragraph 14(a)). The CRPD observed with concern that only 1.8 per cent of women with disabilities have access to employment (doc.CRPD/C/IND/CO/1, paragraph 56(a) and (c)). ***The Committee requests the Government to strengthen its efforts to increase the active participation of women in the labour market and their access to sustainable employment, particularly for those facing multiple and intersecting discrimination. It also requests the Government to provide information on any measures taken to raise awareness of the need for men and women to share family responsibilities, with a view to facilitating women's access to the labour market. In this respect, the Government is requested to provide updated comprehensive information, including disaggregated statistical data, on the nature and impact of measures taken to promote women's access to full, productive, freely chosen and lasting employment.***

Formalization of informal workers. The Committee notes the information provided by the Government concerning the Pradhan Mantri Rojgar Protsahan Yojana Programme (PMRPY), launched in August 2016. The PMRPY provides incentives to employers for job creation and seeks to bring a large number of informal workers to the formal workforce. The PMRPY targets workers earning up to Rs15,000 per month. Under this scheme, the Government pays the employers' full contribution of 12 per cent of new employees' salary to the Employees' Provident Fund and the Employee's Pension Fund for a period of three years. As of 31 March 2019 (the deadline for registration of beneficiaries),

162,268 establishments and 12,753,284 employees had received benefits under this scheme. The Committee also notes that, according to the 2018–19 PLFS report, regular wage workers account for 23.8 per cent of the total working population compared to 22.8 per cent in 2017–18. However, it observes that there are still large numbers of workers engaged in non-regular work, including 48.2 per cent as own account workers, 9.2 per cent as helpers in family businesses and 28.3 in casual labour. ***The Committee requests the Government to indicate whether the PMRPY has continued to operate after 31 March 2019 and, if so, to provide updated information on its activities and impact. It also requests the Government to continue to provide detailed updated information on other measures taken or envisaged in this context and their impact on reducing informal employment.***

Employment programmes targeting rural areas. The Committee previously requested the Government to provide information on the impact of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), in enhancing job growth and sustainable employment in rural areas. The Government indicates that the MGNREGA provides more than one hundred days of guaranteed wage employment every financial year to each rural household whose adult members volunteer to do unskilled manual work. MGNREGA thereby provides livelihood security through a fall-back option for rural households when no better employment opportunities are available. The Committee notes the Government's indication that the MGNREGA programme generated 2.34 billion total person-days in 2017–18 and 2.68 billion total person-days in 2018–19. The Committee also notes that, according to the 2018–19 PLFS report, only 13.4 per cent of workers in rural areas are engaged in regular employment, whereas 41.8 per cent are own account workers, 16.7 per cent are helpers in household businesses and 28.6 per cent are engaged in casual labour. ***The Committee requests the Government to continue to provide detailed updated information on the implementation of the MGNREGA and its impact. It also requests the Government to provide information on any measures taken or envisaged in order to provide full, productive and sustainable employment for rural households, including through vocational education and skills development as well as other employment services.***

Madagascar

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1 and 2 of the Convention. Implementation of an active employment policy. In its previous comments, the Committee expressed the hope that the Government would soon be in a position to report progress in the formulation and implementation of an employment policy. In this regard, the Committee notes with ***interest*** the Government's indications that Act No. 2015-040 of 9 December 2015 determining the orientation of the National Employment and Vocational Training Policy (PNEFP) has been adopted and is the subject of an awareness-raising campaign. It adds that the National Plan of Action for Employment and Training (PANEF) has been replaced by the Operational Plan of Action (PAO), which contains the various policy priorities implemented by the PNEFP. The Government indicates that the objective of the PNEFP, together with the implementation of the General State Policy (PGE), the National Development Plan (PND) and the Sustainable Development Objective (ODD), is to eradicate unemployment and underemployment by 2020 through the creation of sufficient numbers of formal jobs to absorb jobseekers. The PNEFP also has the goal of establishing a relevant information system on the labour market and vocational training and of designing and introducing a harmonized system of certification and training. The Government adds that four employment fairs were organized in December 2015 and that 1,119 young school-leavers were trained and integrated into small-scale rural occupations within the context of a partnership with UNESCO. Also in relation to employment promotion, the Government reports two "Rapid Results" initiatives of the Ministry of Employment, Technical Education and Vocational Training (MEETFP), which it indicates have been fully

achieved. The first initiative focused on the matching of training and employment in 12 growth sectors. The second established a vocational training centre in the town of Andranofeno Sud with a view to employment generation. The centre provides training to around 100 students in six main areas: tourism, hotels and catering, agriculture and livestock, wood art and trades, automobile mechanics, construction and public works. The Government adds that 1,058 rural young school-leavers have been trained in 15 types of trades in several regions and that 59 persons with disabilities were trained by the National Training Centre for Persons with Disabilities (CNFPPSH) in the regions of Analanjirofo and Sava. The National Employment and Training Observatory has been transformed into the National Employment and Training Office. With regard to the upgrading of technical education and vocational training, the Government reports the rehabilitation in 2015 of five technical and vocational schools, 60 classrooms and the accreditation of 97 public and private technical establishments. The Government adds that four vocational training centres for women are now operational. ***The Committee requests the Government to continue providing information on any developments relating to the implementation of the National Employment and Vocational Training Policy, as well as on its impact on the employment rate and the reduction of unemployment, and on the transition from the informal economy to the formal economy. The Committee once again requests the Government to provide information to enable it to examine the manner in which the main components of economic policy, in such areas as monetary, budgetary, trade or regional development policies, contribute "within the framework of a coordinated economic and social policy" to the achievement of the employment objectives set out in the Convention. The Committee also requests the Government to provide updated information on the measures adopted or envisaged to create lasting employment, reduce underemployment and combat poverty, particularly for specific categories of workers, such as women, young people, persons with disabilities, rural workers and workers in the informal economy. In this regard, it requests the Government to provide further information on the types of training provided by the CNFPPSH to persons with disabilities.***

Coordination of education and training policy with employment policy. The Committee notes with ***interest*** that, under the terms of section 2 of the PNEFP, its objective is the implementation of a policy for massive job creation and the promotion of vocational training. Section 10 of the PNEFP specifies that the policy includes in particular activities for employment creation, enterprise support, labour market mediation, the direct promotion of employment for young persons, women and vulnerable categories, the promotion of decent work and the extension of social security. In section 5, it establishes the right to training and qualifications irrespective of a person's individual and social situation and educational level. The Committee further notes that section 46 calls for the creation of partnership between the State, territorial communities and technical and financial partners with a view to launching and financing employment promotion action for young persons, women and disadvantaged categories of workers. The Government indicates that the action taken for youth employment includes, on the one hand, the promotion of self-employment and traditional or informal enterprises and, on the other, support for integration into enterprises and traditional activities. The objectives of this action include support for young persons in their vocational projects and the reinforcement of financing capacities. The Ministry provides training to young persons with a view to promoting self-employment and the creation of small and medium-sized enterprises and industry. During the course of 2015 and the first half of 2016, training of this type was provided to 1,436 young persons from six regions. ***The Committee requests the Government to continue providing information on the results of the action taken to ensure the coordination of vocational education and training policy with employment policy. It once again requests the Government to indicate the results achieved through the implementation of these programmes in terms of the access of qualified young persons to lasting employment. The Committee further requests the Government to indicate the impact of the measures taken to promote the creation of small and medium-sized enterprises.***

Compilation and use of employment data. The Government indicates that the Periodic Household Survey was commenced and then replaced by the global population census in light of the State's priorities due to the significant increase in the population. However, it reports the preparation of a partnership project with the International Labour Office with a view to establishing a system of reliable databases on employment. The National Employment and Training Office will be responsible for the management of the system. The Government adds that in 2016 the MEETFP started to establish Regional Employment Services (SRIE) in Regional Departments, and that there are now SRIEs in nine Regional Departments and that they are responsible for managing the regional employment information system, which involves matching young jobseekers and enterprises. ***The Committee requests the Government to provide information on the progress achieved by the project in the establishment of a system of reliable databases on employment. It***

also requests the Government to provide further information on the impact of the SRIEs in relation to the compilation and use of employment data.

Article 3. Participation of the social partners in the formulation and implementation of policies. The Government indicates that a National Agreement on Employment and Vocational Training was concluded with the social partners in October 2015 and with enterprise groups in the five priority areas in November 2015. The Government also reports the conclusion of two other agreements including the social partners, namely the agreement on the financing of the Technical Support Team for the PNEFP and the agreement on the fund for its implementation. ***The Committee requests the Government to continue providing updated information on the consultations held with the representatives of the social partners on the subjects covered by the Convention. The Committee once again requests the Government to provide detailed information on the consultations held with the representatives of the most disadvantaged categories of the population, and particularly with the representatives of workers in rural areas and the informal economy.***

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

Romania

Employment Policy Convention, 1964 (No. 122) (ratification: 1973)

Articles 1 and 2 of the Convention. Employment trends and active labour market policies. The Committee notes the Government's indication that the overall employment rate for the active population (15–64 years) reached 66.0 per cent in the third quarter of 2020, showing an upward trend compared to 63.9 per cent in 2017. It also notes the persistently lower employment rates for women in 2017 (55.8 per cent for women compared to 71.8 per cent for men) and in the third quarter of 2020 (56.9 per cent for women compared to 74.9 per cent for men). The Committee notes that, according to ILOSTAT data, the overall unemployment rate in 2020 was 5 per cent (5.3 per cent for men and 4.7 per cent for women, respectively). The Government refers to the Human Capital Operational Program (HCOP) as an important tool for financing employment measures, structures in seven priority axes, including employment (axes 1, 2 and 3), social inclusion (axes 4 and 5), education (axis 6) and technical assistance (axis 7). The Government also indicates that Act No. 76/2002 on the unemployment insurance system and employment stimulation during the period 2016–18 was amended, with the aim of increasing employment opportunities for registered unemployed persons and jobseekers and stimulating employers to hire registered unemployed persons. The Committee notes that job subsides are provided to employers who offer employment opportunities to specific groups of workers, including new graduates, persons with disabilities, registered unemployed persons over the age of 45, long-term unemployed persons, young people in the NEET category (not in employment, education or training), youth at risk of social marginalization and unemployed single parents. ***The Committee requests the Government to continue providing updated detailed information on general employment trends, including statistical data disaggregated by sex and age. It further requests the Government to continue providing information on the impact of its employment policy measures in terms of the creation of productive employment and decent jobs, job creation, particularly for specific groups such as women, youth at risk of social marginalization, persons with disabilities, older workers and the long-term unemployed.***

Youth employment. The Committee notes that the unemployment rate of youth (15–24 years) stood at 18.3 per cent in 2017, rising to 19.2 per cent in the third quarter of 2020. Moreover, according to the 2020 European Commission Country Report for Romania (SWD (2020) 522 final), in 2018 the percentage of young people not in education, employment or training (NEET) was one of the highest in the European Union, with three times as many NEETs among the young rural resident population (15–24) compared to those living in urban areas. The Government indicates that, as part of its efforts to support the labour market integration of young persons, particularly those in the NEET category, the Ministry of

Labour and Social Justice elaborated the Youth Guarantee Implementation Plan 2017–2020. The Government also reports that it approved a draft Youth Law on 5 July 2018 which was sent to Parliament. ***The Committee requests the Government to continue providing updated detailed information, including statistical data disaggregated by age, sex and rural/urban areas on the nature and impact of the measures taken to facilitate lasting employment opportunities for young people, especially those classified as NEETs. It also requests the Government to provide information on progress made regarding the adoption of the new Youth Law, and to provide a copy once adopted.***

Roma minority. The Committee notes the Government's reference to the Strategy for the Inclusion of Romanian citizens belonging to the Roma Minority 2012–2020 as well as to axes 4 and 5 of the HCOP, which focus on reducing social exclusion. The Government indicates that the National Agency for Employment is responsible for implementing measures taken to attain the employment objectives, based on annual employment programmes. Measures taken include the provision of information on employment services in communities with large numbers of Roma, allocation of territorial budgets, job exchanges and development of collaboration with Roma representatives. The Committee notes that the Government exceeded its target of providing employment to 5,385 members of the Roma community in 2015, with 6,295 Roma being placed in employment; however, the targets set for 2016 and 2017 were not fully achieved. ***The Committee requests the Government to continue to provide updated detailed information, including statistical data disaggregated by sex and age, on the nature and impact of the measures taken to promote access to lasting employment and decent work for members of the Roma community.***

Article 3. Participation of the social partners in the formulation and implementation of policies. The Committee previously requested the Government to provide specific examples of how the social partners are effectively consulted and participate in decision making on the matters covered by the Convention. In this respect, the Committee notes the Government's reference to the development of the Youth Guarantee Implementation Plan, indicating that the social partners were consulted during this process. The Government also indicates that social partners and non-governmental organizations play an important role in the implementation of various programmes and projects related to employment, promotion of youth-related initiatives, training ventures, job placement, apprenticeship and traineeship programmes. The Committee further notes that the National Employment Program, developed each year by the National Agency for Employment since 2002, is formulated on the basis of proposals from the county employment agencies and the Bucharest Municipality Agency, taking into account the economic and social situation at the territorial level and the strategic targets in the programmatic documents adopted at national level. The Government indicates that the National Employment Program targets specific groups that encounter difficulty in accessing the labour market, such as members of the Roma community, persons with disabilities, young persons covered by the child protection system, foreigners, refugees and beneficiaries of other forms of international protection, persons who have executed custodial sentences and victims of trafficking. ***The Committee requests the Government to provide updated information on the manner in which the social partners are effectively consulted and participate in the development of the National Employment Programme each year. It also requests the Government to provide information on the measures taken or envisaged to ensure that these consultations include representatives of other segments of the economically active population, including representatives of the Roma community, persons with disabilities, women and young persons, as well as of persons working in informal economy.***

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

Uganda

Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. The Committee previously requested information on the second National Development Plan 2015/16–2019/20 (NDPII), including on the results of programmes aimed at stimulating growth and economic development, raising living standards, responding to labour force needs and addressing both unemployment and underemployment. The Government's report does not contain information on the NDPII, instead it refers to continued challenges such as the gender pay gap, lower wages in rural areas than in urban areas, and comparatively low labour productivity. The Committee notes with ***interest*** the adoption of the third National Development Plan 2020/21–2024/25 (NDPIII), whose principal goal is "Increased Household Incomes and Improved Quality of Life of Ugandans". According to the NDPIII, the proportion of the labour force in paid employment increased between 2011/12–2016/17, and enrolment in business, technical and vocational education and training increased significantly. The NDPIII nevertheless indicates that labour underutilization remains a challenge, as a large number of Ugandans are underemployed. The Committee notes that, according to the ILOSTAT database, as of 2017, the overall unemployment rate in Uganda stood at 9.8 per cent (8.4 per cent for men and 11.7 per cent for women, respectively). The labour force participation rate was 49.1 per cent in the same year, with a higher participation rate for men than for women (56.9 and 41.8 per cent, respectively). The ILOSTAT database also indicates that the composite rate of labour underutilization for 2017 stood at 30.9 per cent. In this context, the Committee notes that the five strategic objectives of the NDPIII include strengthening the private sector's capacity to drive growth and create jobs, as well as enhancing the productivity and social well-being of the population. ***Noting the continued challenges identified by the Government in its report, the Committee requests the Government to provide detailed updated information on the active labour market measures taken and the results achieved in the implementation of the NDPIII, in terms of stimulating growth and economic development, raising living standards, responding to labour force needs and addressing unemployment and underemployment. The Committee further requests the Government to provide up-to-date statistics on current trends regarding employment, unemployment and underemployment, disaggregated by sex, age, religion, economic sector and region.***

Impact of COVID-19. The Committee notes that, according to a 2020 report from the World Bank, fiscal year 2020 saw a real GDP growth of 2.9 per cent in Uganda, less than half of the 6.8 per cent recorded in fiscal year 2019, mainly due to the impact of the COVID-19 crisis. The World Bank further indicates that employment recovered following the easing of mobility restrictions, with an increase in the share of employment in agriculture, but that it had not returned to previous levels in urban areas. ***The Committee requests the Government to provide further information on the nature and impact of response and recovery measures taken in the context of the COVID-19 pandemic with a view to promoting inclusive sustainable employment and decent work. The Committee requests the Government to provide information on the challenges encountered and the lessons learned in this context.***

Promotion of youth employment. The Committee previously requested information on the measures envisaged or adopted to reduce the unemployment rates of young people as well as the proportion of young people in informal employment. In this respect, the Committee notes that, as of June 2020, according to the NDPIII, the youth unemployment rate stood at 13.3 per cent, and that it seeks to reduce this rate to 9.7 per cent unemployment by the end of the five-year period. According to the NDPIII, there is a large youth population in Uganda (78 per cent); however, a mismatch exists between the skills required by the labour market and the knowledge taught by training institutions. The Committee notes the high proportion of young people in informal employment. The NDPIII indicates that most non-farming employment is in the informal sector (91 per cent), with young people occupying

94.7 per cent of these jobs. The NDPIII envisages various new projects related to youth employment for the period 2020/21–2024/25, including the Youth Livelihood Programme Phase 2 and the Micro, Small and Medium Enterprise Nurturing for Youth Employment Project. The Committee notes the adoption of the Technical and Vocational Education and Training (TVET) Policy in 2019, which aims to reform the TVET system. The TVET Policy establishes a number of objectives, including improving the quality of the TVET system and strengthening the role of employers and business communities in TVET delivery. The Committee notes that, to promote the economic relevance of TVET, the TVET Policy calls for establishing and linking the TVET Management Information System to the Labour Market Information System as well as to promote lifelong learning opportunities for TVET. ***The Committee encourages the Government to pursue its efforts to address the issues related to youth employment identified in the NDPIII, including the skills mismatch and measures to anticipate the future needs of the labour market in the provision of TVET. It requests the Government to provide detailed information on the nature of programmes and projects implemented to promote youth employment, including in the field of TVET and in the context of the NDPIII, and their impact on access for young people to sustainable employment and decent work. In this regard, the Committee requests the Government to provide up-to-date statistics on youth employment and unemployment rates, disaggregated by sex, age, urban versus rural areas and education level, where available.***

Promotion of women's employment. In its previous comments, the Committee requested information on measures to combat persistent occupational segregation on the basis of sex and to increase the participation rate of women in the formal labour market. The Committee notes that the Uganda Women Empowerment Programme supported 43,977 women beneficiaries through 3,448 projects in the fiscal year 2017–18. The Committee nevertheless observes that the information contained in the NDPIII, also indicates that many women do not have access to arable land, and suggests that gender inequalities persist in the country, including in employment and education. The Government also provides statistics from 2016 indicating that disparities exist in the share of women and men in employment, with men accounting for most of paid employment, while women constitute the majority of the self-employed population. The Committee notes that, in its concluding observations of 12 May 2016, the Committee on the Rights of Persons with Disabilities expressed concern that women with disabilities face multiple forms of discrimination, noting the lack of measures for the development, advancement and empowerment of women and girls with disabilities and expressing concern about the few opportunities open for employment for persons with disabilities (document CRPD/C/UGA/CO/1, paragraphs 10 and 52). ***As regards discrimination against women, including with respect to access to resources, the Committee refers the Government to its comments adopted in 2020 under the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In addition, the Committee requests the Government to continue to take the necessary measures, including in the context of the NDPIII, to promote access for women to full, productive and freely chosen employment. The Committee requests the Government to provide information on the results achieved through such measures, including statistics on the participation rate of women, including women with disabilities, in the informal and formal labour market.***

Informal economy. The Committee notes that the Government refers to exclusions from social protection and other critical challenges existing in the informal sector, including gaps in social dialogue, widespread labour rights violations and decent work deficits. The Government nevertheless states that there is political commitment and will to overcome these challenges. In this regard, the Committee notes that the NDPIII includes a Private Sector Development Programme which has, as one of its key expected results, the reduction of the informal sector to 45 per cent in 2024/25. According to the NDPIII, the private sector in Uganda is dominated by about 1.1 million micro-, small and medium-sized enterprises (MSMEs), which altogether employ approximately 2.5 million people. Furthermore, most of the country's start-ups do not last more than two years, because of factors such as inadequate entrepreneurial ability and low-skilled labour. The Committee notes that, according to 2020 data from

the UN Capital Development Fund, the COVID-19 crisis is also likely to have an impact on informal workers, with an estimated 4.4 million informal sector workers losing their earning or seeing it fall below the poverty line. ***The Committee requests the Government to provide further information on the impact of COVID-19 on employment in the informal economy in Uganda, the active labour market measures taken to tackle the challenges identified, and the measures taken to extend access to justice, property rights, labour rights and business rights to informal economy workers and businesses. It also requests the Government to provide information on the nature and impact of employment programmes developed and implemented in the context of the NDPIII, including the Private Sector Development Programme.***

Article 3. Participation of the social partners. The Committee notes from section 1.4 of the NDPIII (approach and formulation process) that its strategic direction was informed by an extensive consultation process, based on background analytical work on past industrialization efforts and strategies, trends in key growth areas (agriculture, ICT, minerals, oil and gas), export and import performances, and sector priority papers, among others. The NDPIII also indicates that sector, regional, district and community level stakeholders were consulted in the formulation process, and that other stakeholders, including industrial and business owners, civil society, faith-based organizations and non-governmental organizations also participated in the process. ***The Committee requests the Government to provide further information on consultations held with employers' and workers' organizations in the formulation, implementation and monitoring of the NDPIII.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 88** *(Belize, Central African Republic, Democratic Republic of the Congo, Djibouti, Ecuador, Ethiopia, Lebanon, Madagascar, Montenegro, Mozambique, Netherlands: Aruba, Republic of Moldova)*; **Convention No. 96** *(Djibouti)*; **Convention No. 122** *(Antigua and Barbuda, Barbados, Plurinational State of Bolivia, China, Georgia, Germany, Jamaica, Jordan, Latvia, Lebanon, Lithuania, Mauritania, Morocco, Nicaragua, Papua New Guinea, Republic of Moldova, Romania, Rwanda, Saint Vincent and the Grenadines)*; **Convention No. 159** *(Ethiopia, Lebanon, Luxembourg, Madagascar, Malawi, Mauritius, Montenegro)*; **Convention No. 181** *(Fiji, Lithuania, Mongolia)*.

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 159** *(Lithuania).*

Vocational guidance and training

Direct requests

Requests regarding certain matters are being addressed directly to the following States: **Convention No. 140** *(Afghanistan, Belize, Guinea, Kenya);* **Convention No. 142** *(Afghanistan, Kenya, Lebanon, Niger).*

Employment security

Democratic Republic of the Congo

Termination of Employment Convention, 1982 (No. 158) (ratification: 1987)

Observations by the Labour Confederation of Congo (CCT). Abusive dismissals. In its previous comments, the Committee invited the Government to provide its own comments on the observations of the CCT, indicating whether the dismissal of around 40 employees of a private multinational enterprise governed by French law were based on valid reasons *(Article 4 of the Convention)* and whether the dismissed workers were entitled to severance allowances *(Article 12)*. It also requested the Government to provide information on the measures adopted to mitigate the effects of the dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). In its report, the Government indicates that section 78 of the Labour Code adopted in 2002 prohibits mass dismissals, and that the information held by the Government does not indicate that the dismissed workers did not receive severance allowances, as no complaint was noted. The Committee notes that, with regard to measures adopted to mitigate the effects of the dismissals, the Government indicates that the provisions of section 78 of the Labour Code guarantee priority hiring in the event of a resumption of activity. The Committee also notes that section 78 provides that mass dismissals on economic grounds are prohibited, "except for possible exceptions that will be determined by an order of the Minister responsible for labour and social security" and sets out the applicable procedure. ***Noting that the Government provides information of a general nature concerning the above-mentioned dismissals, the Committee requests the Government to provide information on the procedure followed in the case reported by the CCT, including copies of inspection reports, where possible. It once again requests the Government to provide specific information indicating whether the dismissals were based on valid reasons (Article 4 of the Convention) and whether the dismissed workers were entitled to severance allowances (Article 12). It also once again requests the Government to provide specific information on the measures adopted in this particular case to mitigate the effects of the dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166).***

In its previous comments, the Committee also requested the Government to provide a report containing information on the practice of the labour inspectorate and the decision of the courts on matters of principle relating to the application of *Articles 4, 5* and *7* of the Convention. It also requested it to indicate the number of appeals against termination, their outcome, the nature of the remedy awarded and the average time taken for an appeal to be decided (Parts IV and V of the report form). The Committee notes that the Government has provided inspection reports from 2014, 2015, 2016 and 2017 but that these reports do not contain information on the application of the above-mentioned Articles. ***The Committee therefore once again requests the Government to provide information on the practice of the labour inspectorate and the decision of the courts on matters of principle relating to the application of Articles 4, 5 and 7 of the Convention. It also reiterates its request to the Government to indicate the number of appeals against termination, their outcome, the nature of the remedy awarded and the average time taken for an appeal to be decided (Parts IV and V of the report form).***

Article 7. Procedure prior to, or at the time of, termination. In its previous comments, the Committee requested the Government to provide copies of collective agreements which provide for the possibility of a specific procedure to be followed prior to, or at the time of, termination, as required by the Convention, and to indicate the manner in which this provision of the Convention is given effect for workers not covered by collective agreements. The Government indicates that: (i) it ensures that collective agreements are in conformity with sections 63, 72, 73 and 75 of the Labour Code; and (ii) in addition to enterprise collective agreements, there is the national inter-occupational labour agreement,

of which it provides a copy. The Committee nevertheless notes that the copy of the latter agreement was already provided by the Government in its 2013 report and that, in this regard, it considered that the above-mentioned collective agreement did not appear to envisage the possibility of a specific procedure to be followed prior to, or at the time of, termination. The Government adds that enterprises that have not concluded collective agreements are required to adhere to the sectoral collective agreement and the procedure to be followed prior to, or at the time of, termination is provided by the implementing measures, such as Order *No.* 12/CAB.MIN/TPS/116/2005 of 26 October 2005, determining the terms of dismissal of workers. The Committee notes with ***interest*** that Act No. 16/010 of 15 July 2016, amending and supplementing Act No. 015-2002 issuing the Labour Code, with respect to section 62, provides that "when the employer envisages dismissal for grounds related to the worker's aptitude or conduct, he or she is required, before any decision is taken, to allow the person concerned to defend himself or herself against the allegations made or to provide an explanation for the grounds put forward". ***The Committee requests the Government to provide up-to-date information on the application in practice of the Labour Code with regard to the possibility offered to workers to defend themselves against the allegations against them before any dismissal measures are imposed, as well as the application of the above Order. It also once again requests the Government to provide copies of the collective agreements which provide for the procedure to be followed prior to, or at the time of, termination.***

Article 12. Severance allowance and other income protection. In its previous comments, the Committee noted that national legislation does not provide for severance allowances or other forms of income protection for dismissed workers. The Committee therefore reiterated its request to the Government to indicate the manner in which effect is given to *Article 12* of the Convention. The Committee notes the Government's indication that in order to prevent workers from being adversely affected, tax deductions are limited to 10 per cent during the notice period. However, other categories are not taxed, except for non-statutory family benefits. ***Noting, once again, the absence of specific information in the Government's report in response to the Committee's request, it urges the Government to provide detailed information indicating the manner in which effect is given to Article 12 of the Convention.***

Articles 13 and 14. Terminations for economic or similar reasons. In its previous report in 2013, the Government indicated that the Ministry of Employment, Labour and Social Welfare signed 15 orders authorizing collective terminations for economic or similar reasons, covering 701 workers in 2012–13. The Committee invited the Government to indicate whether the dismissed workers were entitled to severance allowances *(Article 12)* and to provide information on the measures taken to mitigate the effects of terminations for economic or similar reasons, as envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). ***Noting that the Government's report does not contain information in this regard, the Committee once again requests the Government to provide the information requested.***

Papua New Guinea

Termination of Employment Convention, 1982 (No. 158) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1 of the Convention. For a number of years, the Committee has requested information concerning the ongoing revision of the Industrial Relations Bill which, according to the Government's 2013 report, includes provisions on termination of employment with the objective of giving effect to the

Convention. In its reply to the Committee's previous comments, the Government indicates that the draft Industrial Relations Bill is still pending with the Department of Labour and Industrial Relations and is undergoing final technical consultations. The Government adds that the Department of Labour and Industrial Relations Technical Working Committee has carried out various consultations with national stakeholders, such as the Department Attorney General's Office, the Office of the Solicitor General, the Constitution Law Reform Commission, the Department of Personnel Management, the Department of Treasury and the Department of Planning, Trade Commerce and Industry, as well as with external technical partners, including the ILO. ***Referring to its previous comments, the Committee once again expresses the hope that the Government will take the necessary measures to ensure that the new legislation gives full effect to the provisions of the Convention. It also reiterates its request that the Government provide a detailed report to the ILO and a copy of the legislation as soon as it is enacted, so as to enable the Committee to examine its compliance with the Convention.***

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 158** *(Central African Republic, Ethiopia, Malawi, Morocco, Namibia, Saint Lucia).*

Wages

Plurinational State of Bolivia

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1977)

The Committee notes the observations of the Confederation of Private Employers of Bolivia (CEPB), received on 31 August 2021, and of the International Organisation of Employers (IOE), received on 1 September 2021. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes that, for the third consecutive year, the Conference Committee on the Application of Standards (Conference Committee) examined the application of the Convention by the Plurinational State of Bolivia. The Committee observes that the Conference Committee once again urged the Government to: (i) carry out full consultations with the social partners with regard to minimum wage setting; (ii) take into account the needs of workers and their families as well as economic factors when determining the level of the minimum wage as set out in *Article 3* of the Convention; and (iii) accept an ILO direct contacts mission before the next session of the International Labour Conference in 2022. The Conference Committee also requested the Government to avail itself, without delay, of ILO technical assistance to ensure compliance with the Convention in law and practice.

Articles 3 and 4(1) and (2) of the Convention. Elements for the determination of the level of the minimum wage and full consultations with the social partners. In its previous comments, the Committee observed that divergences persisted between the Government and the CEPB and the IOE regarding both the holding of full and good faith consultations with the representative organizations of employers and the criteria reportedly taken into consideration in determining the minimum wage. The Committee notes the Government's indication in its report that: (i) a series of mechanisms have been adopted for the direct participation of both employers and workers and meetings have been held with each of them in light of the principle of equality; (ii) these measures were not effective due to the positions adopted by the employers' representatives, which led to the Government taking the decisions concerned, taking into consideration the national situation and the economic conditions of employers and workers; (iii) the increase in the national minimum wage for each financial year is determined on the basis of prior macroeconomic analysis and taking into account inflation, the Gross Domestic Product (GDP) and other variables, which are presented and assessed in the various meetings held for that purpose, including those held by the Government with the Bolivian Central of Workers (COB), in which the claims of that organization are considered; in view of the circumstances resulting from the COVID-19 pandemic, Supreme Decree No. 4501 of 1 May 2021 provided for an increase of only 2 per cent in relation to the national minimum wage set in the 2019 financial year; and (iv) a direct contacts mission is not necessary as no difficulty is being experienced in the application of the Convention. Furthermore, the Committee notes the hope expressed by the IOE that the Plurinational State of Bolivia will make progress in the application of the Convention in accordance with the conclusions of the Conference Committee and in close consultation with the CEPB. The Committee further notes the CEPB's indication that: (i) with the adoption of Supreme Decree No. 4501 of 1 May 2021, the centralization of dialogue continued solely with workers' representatives and all prior consultation with employers' representatives was omitted; (ii) their participation was prevented in the establishment, operation and modification of the machinery for the fixing of the national minimum wage and they were not able to put forward criteria in this regard; and (iii) objective technical parameters adapted to the real situation were absolutely not taken into consideration, in particular taking into account the difficult situation experienced due to the pandemic

and its impact on economic trends and performance and on employers. Finally, the Committee notes the indication by the ITUC that: (i) while highlighting the efforts made by the Government to improve the life of workers, the Government should continue to organize consultations on the fixing of minimum wages in accordance with the Convention, enabling representative organizations to hold in-depth discussions on the machinery for fixing minimum wages, which does not mean codetermination of the minimum wage; and (ii) the increases in the minimum wage have taken fully into account economic factors. The Committee once again observes that contradictions and divergences persist between the Government and the CEPB concerning the holding of full and good faith consultations with the representative organizations of employers and on the criteria taken into account in determining the minimum wage. In this context, the Committee once again notes with ***regret*** the Government's refusal to accept a direct contacts mission to the country with a view to finding a solution to the difficulties raised in the application of the Convention and to have recourse to ILO technical assistance in this respect. The Committee considers that the direct contacts mission could contribute to finding solutions to the divergences indicated and assist in the full application of the Convention. ***The Committee firmly expects that the Government will review its position and that a mission can take place before the 110th Session of the International Labour Conference, as the Conference Committee has been requesting since 2018.***

[The Government is asked to reply in full to the present comments in 2022.]

Burundi

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), received on 28 August 2021.

Legislative developments. The Committee notes the adoption of Act No. 11 of 24 November 2020 on the revision of Decree-Law No. 1/037 of 7 July 1993 on the revision of the Labour Code of Burundi. Concerning the minimum wage-fixing machinery, the Committee notes that sections 186 and 551 of the new text largely reproduce sections 74 and 249 of the former text and that the new text specifies that the rates must be adjusted every four years and revises the penalties set out for cases of payment of remuneration below the legal minimum wage.

Article 3 of the Convention. Operation of the minimum wage-fixing machinery. In its previous comments, noting the lack of tangible progress made in activating the minimum wage-fixing machinery provided for in the Labour Code, the Committee requested the Government to take all the necessary measures to reactivate without delay the minimum wage review process, and to provide information in this regard, particularly on any decrees adopted further to this review. It also requested the Government to provide information on the minimum wages applicable by category, as fixed by collective agreements in the various branches of activity or in enterprises. The Committee notes the Government's indication in its report that a tripartite committee has been established to determine the terms of reference for an impartial study to be conducted by experts leading to a proposal for the guaranteed inter-occupational minimum wage (SMIG) in the national socio-economic context. It also notes that the COSYBU in its observations recognizes the Government's willingness to fix the rate of the updated minimum wages but asks once again that it accelerate the review process of these rates. While noting this information, the Committee is bound to observe that the SMIG has still not been adjusted since 1988 and that no information on collective bargaining with regard to minimum wages applicable by category has been provided by the Government. ***In this context, the Committee once again urges the Government to take the necessary measures to carry out without delay an adjustment of the SMIG, in the light of the outcomes of the review initiated in the above-mentioned tripartite committee. The Committee also once again requests the Government to provide information on the minimum wages applicable to***

various categories of workers, fixed by collective agreements in the various branches of activity or in enterprises.

[The Government is asked to reply in full to the present comments in 2022.]

Guinea-Bissau

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1977)

Legislative developments. The Committee notes the inclusion, in the Government's report, of a copy of the new Labour Code, adopted by the Peoples' National Assembly in July 2021. The Committee also notes that sections 153 and 154 of the copy of the new Labour Code provide, among other matters, that the minimum wage shall be payable to all workers, including rural workers, without distinction based on sex or any other grounds, in an amount fixed annually by the Government, after consultation with the social partners. The Government indicates that after its promulgation, the new Labour Code will revoke the General Labour Act No. 2/86. ***The Committee requests the Government to provide a copy of the promulgated and published version of the new Labour Code.***

Article 3 of the Convention. Operation of the minimum wage-fixing machinery. In its previous comments, noting that the latest decree fixing the minimum wage had been adopted in 1988 (Decree No. 17/88 of 4 April 1988), the Committee requested the Government to adopt the necessary measures without delay to fix the minimum wage in application of sections 110 and 114 of the General Labour Act No. 2/86, and to provide information on any examination of the matter and on consultations held with the social partners. The Committee notes the Government's indication that Decree No. 17/88 has been subject to successive amendments. The Committee also notes the Government's indication that in 2012 and 2017 the minimum wage in the public service was readjusted by government ordinance. The Committee observes, with regard to the categories included in the application of Decree No. 17/88, which exclude the public service, that the Government makes no reference to ordinances recently fixing new minimum wage rates. The Committee further notes the Government's indication that no examination on the fixing of the national minimum wage rate has been undertaken to date, but that the Prime Minister's Ordinance of 9 June 2021 established a multidisciplinary commission, including trade union representatives, to conduct an analysis of the current level of inflation and to propose a national minimum wage. ***The Committee strongly hopes that the Government will take the necessary measures, based on proposals from the above-mentioned commission, to fix an updated minimum wage as soon as possible, after consultation with the representative organizations of employers and workers, in application of the legislation in force. The Committee requests the Government to provide information in this regard.***

[The Government is asked to reply in full to the present comments in 2022.]

Mauritania

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1961)

Article 3 of the Convention. Minimum wage-fixing methods and consultation of the social partners. The Committee previously noted the information provided by the Government, in particular on the role of the National Labour, Employment and Social Security Council (CNTESS) in the adjustment of minimum wage rates, and also on the social negotiations in progress with the social partners concerning an increase in the level of the guaranteed inter-occupational minimum wage (SMIG). The Committee also noted the observations received in 2017 from the Free Confederation of Mauritanian Workers (CLTM), according to which the level of the SMIG has not changed since 2011 despite the rise in consumer prices and the Government's commitment to adjust the SMIG every two years. The Committee notes that the Government indicates once again, in its report, that it monitors the work of the CNTESS on the adjustment of minimum wage rates but without providing any details of the progress or outcome of

this work. ***The Committee once again requests the Government to take all necessary measures to ensure that the minimum wage rate review process gives rise to tangible results and to provide detailed information on this subject, including on the work of the CNTESS in this regard.***

Nigeria

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1961)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 (minimum wage) and 95 (protection of wages) together.

A. Minimum wage

Article 1 of Convention No. 26. Scope of minimum wage protection. In its previous comments, the Committee requested the Government to extend the scope of the National Minimum Wage Act to all workers in need of such protection, in the context of its next minimum wage revision. The Committee takes note that, in its report, the Government refers to the adoption of the National Minimum Wage Act 2019, which reduces the minimum size of the establishments to which the Act applies, from 50 to 25 persons (section 4). However, the Committee observes that the Act otherwise replicates the exclusions already foreseen in the previous National Minimum Wage Act. ***With reference to its latest comment under the Equal Remuneration Convention, 1951 (No. 100), the Committee requests the Government to take the necessary measures to extend the minimum wage coverage to the categories of workers currently excluded, which are in need of such protection.***

Article 4(1). System of supervision and sanctions. The Committee previously requested the Government to provide comments on the observations of the Nigeria Labour Congress (NLC) alleging that governments at the state level are reluctant to implement the law on minimum wage. In this regard, the Committee notes the Government's indication that the authorities at the state level appear not to comprehend fully the principles of the national minimum wage, and that technical assistance from the Office would be necessary to sensitise them on the provisions of the Convention. ***The Committee recalls that each Member which ratifies this Convention must take the necessary measures, by way of a system of supervision and sanctions, to ensure that the employers and workers concerned are informed of the minimum wage rates in force, and requests the Government to provide further information on how it ensures that the national minimum wage is applied at all levels.***

B. Protection of wages

Article 2 of Convention No. 95. Protection of wages of homeworkers and domestic workers. In its previous comment, the Committee noted the Government's indication that the Labour Standards Bill, which should apply to homeworkers and domestic workers, had been withdrawn from the National Assembly and was being reviewed by the stakeholders. The Committee notes that in its report, the Government indicates that, once adopted, the Labour Standards Bill will apply to domestic workers, but it does not mention homeworkers nor does it provide any additional information on measures taken to protect the wages of these categories of workers currently excluded from the Labour Act. ***The Committee requests the Government to take the necessary measures to guarantee the protection of wages of homeworkers and domestic workers, including through the adoption of the Labour Standards Bill, and to provide information in this regard.***

Articles 6 and 12(1). Workers' freedom to dispose of their wages and regular payment of wages. The Committee had previously requested the Government to revise section 35 of the Labour Act, which allows the Minister of Labour to authorize deferred payment of up to 50 per cent of workers' wages until

the completion of their contract. ***While noting the Government's indication that the Federal Ministry of Labour and Employment has not acted upon section 35 of the Labour Act in recent years, the Committee once again requests the Government to take the necessary measures to bring section 35 of the Labour Act into conformity with the Convention and to provide information in this regard.***

Article 7(2). Work stores. In response to the Committee's request for information on measures to give effect to *Article 7(2)*, the Government only indicates that this matter is covered by the Labour Standards Bill, which has not yet been adopted. ***The Committee requests the Government to take the necessary measures to ensure that, where access to stores or services other than those operated by the employer is not possible, goods are sold and services provided at fair and reasonable prices and for the benefit of the workers, in accordance with Article 7(2).***

Article 12(1). Regular payment of wages. The Committee previously noted the NLC's observations regarding issues of non-regular payment of wages in several states. In this regard, the Committee notes the Government's indication that wage arrears has become an issue of great concern for the social partners, and that it is planning to engage all relevant authorities to deliberate and find a lasting solution. ***The Committee requests the Government to continue to take the necessary measures, such as reinforcing supervision and strengthening sanctions, to address this issue, and to provide information on the progress made in this respect.***

Article 14. Information on wages before entering employment and wage statements. Following its previous comments on measures taken to give effect to *Article 14*, the Committee notes the Government's indication that, in practice, workers receive payslips each month, in both the public and private sectors. ***The Committee requests the Government to indicate the measures taken to ensure that workers are informed, in an appropriate and easily understandable manner before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed, in accordance with Article 14(a).***

Republic of Moldova

Protection of Wages Convention, 1949 (No. 95) (ratification: 1996)

Article 11 of the Convention. Wages as privileged debts in bankruptcy proceedings. In its previous comments, the Committee noted the Government's indication that draft amendments to the Insolvency Act had been prepared providing that employees' wage claims would be given a secured priority status among privileged debts. It also noted that, according to the National Confederation of Trade Unions of Moldova (CNSM)'s observations, in the event of insolvency, payment of secured debts such as loans have priority over wage claims and that, consequently, the wages of hundreds or even thousands of employees remain unpaid for years. The Committee notes that the Government's report does not include any relevant information on the above-mentioned legislative amendments or on the issues raised by the CNSM regarding the application of *Article 11* of the Convention in practice. ***In this context, the Committee requests once again the Government to provide its comments on the observations of the CNSM and to provide information on any measures taken or envisaged in law and practice to ensure that wage claims are privileged debts in insolvency proceedings. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.***

Article 12(1). Regular payment of wages. The Committee previously noted that the CNSM referred to statistical data showing important amounts of wage arrears for the period January–March 2017, with the largest debts registered in the railway transport, agriculture, trade, and construction sectors, mostly in enterprises with majority state capital. The Committee notes that the Government does not provide any relevant information in this regard. It also notes that, according to the statistics contained in the inspection reports: (i) in 2019, 56 inspection controls confirmed wage arrears of about 15 million Moldovan lei (MDL), concerning 1,106 workers; (ii) in 2020, 114 inspection controls confirmed wage arrears of about MDL 35 million, concerning 1,622 workers; and (iii) from January to August 2021,

258 inspection controls confirmed wage arears of MDL 39.4 million, concerning 3,569 workers. ***In this context, the Committee requests the Government to take the necessary measures to ensure the regular payment of wages, as required by this Article of the Convention. It also requests the Government to provide information on any progress made in this respect, as well as relevant statistics on this issue, including the violations detected, remedies applied, and sanctions imposed.***

Tajikistan

Protection of Wages Convention, 1949 (No. 95) (ratification: 1993)

Article 7(2) of the Convention. Works stores. The Committee notes that the Government's report does not contain information in response to its previous request on this issue. ***The Committee therefore requests the Government once again to provide information on the measures adopted with the object of ensuring that goods at work stores are sold, and services provided at fair and reasonable prices, or that stores established and services operated by the employer are not operated for the purpose of securing a profit, but for the benefit of the workers concerned, as required by this Article of the Convention.***

Articles 12 and 15(b). Regular payment of wages. Control of compliance. Further to its previous comments concerning wage arrears in the country, the Committee notes that the Government indicates that the total amount of arrears of wages as of 1 May 2020, including arrears from previous years, increased by 78.8 per cent compared to the same period in 2019. The Government further indicates that local government authorities have adopted decisions and that the leaders of provinces, towns and districts have adopted decrees to establish the "Executive Unit for the Elimination of Wage Arrears". Concerning enforcement activities, the Committee notes that the Government's report does not contain information in response to its previous request. ***Taking note with concern of the continued situation of wage arrears in the country and its dramatic increase in 2020, the Committee requests the Government to step up its efforts to address this issue and to provide information on the results of the measures adopted and envisaged in this regard. The Committee also requests once again the Government to provide information on the number of inspection visits undertaken to ensure compliance with the timely payment of wages by sector, the number of cases of non-compliance detected and the measures taken to settle all outstanding payments, including adequate penalties or other appropriate remedies.***

Articles 14(b) and 15(d). Wage statements and record-keeping. Further to its previous comments requesting the Government to indicate how effect is given to these provisions, the Committee notes that the Government's report is silent on this issue. ***The Committee therefore once again requests the Government to: (i) specify how it is ensured that workers are informed at the time of each payment of the particulars of their wages for the period concerned, for example by means of payslips (Article 14(b)), and (ii) indicate any legislative or administrative provisions regulating the form and manner in which payroll records must be kept, as well as the specific wage particulars to be shown in those records (Article 15(d)).***

[The Government is asked to reply in full to the present comments in 2022.]

Uganda

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1963)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 (minimum wage) and 95 (protection of wages) together.

Legislative developments. The Committee notes that, according to information provided by the ILO Country Office for the United Republic of Tanzania, Burundi, Kenya, Rwanda and Uganda, the Employment Act 2006 is currently being revised in consultation with social partners. ***The Committee requests the Government to provide information on the developments in this regard, and to provide a copy of the amended Employment Act 2006, once adopted. The Committee also hopes that its comments on the Protection of Wages Convention, 1949 (No. 95) will be taken into account in the framework of the revision of the Act, and recalls that the Government can avail itself of the technical assistance of the ILO in this regard.***

A. Minimum wage

The Committee notes with ***deep concern*** that the Government's report has not been received. It expects that the next report will contain full information on the matters raised in its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Repetition

Article 3 of Convention No. 26. Operation of the minimum wage fixing machinery. The Committee recalls that, following the discussion of this case before the Conference Committee on the Application of Standards in June 2014, it had requested the Government to provide information with regard to the announced reactivation of the Minimum Wages Advisory Board and the subsequent fixation of a new minimum wage in the country. The Committee notes that the Government indicates in its report that a Minimum Wages Advisory Board was appointed in 2015 and that it undertook a comprehensive study of the economy with a view to providing advice to the Government on the feasibility of fixing a minimum wage in the country and the form that the minimum wage should take. The Government also indicates that the report of the Board was under discussion in the Cabinet. Despite the progress made with the reactivation of the minimum wage fixing mechanism in 2015, the Committee notes with ***concern*** that the minimum wage, which was last set in 1984, has yet to be adjusted. ***It therefore requests the Government to take the necessary measures to revise the level of the minimum wage without further delay. Recalling the importance of ensuring the close involvement of employers' and workers' organizations at all stages of this process, the Committee requests the Government to provide information on the composition of the Minimum Wages Advisory Board and on the consultations undertaken with the social partners in revising the level of the minimum wage.***

B. Protection of wages

The Committee notes with ***deep concern*** that the Government's report on Convention No. 95, due since 2017, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of Convention No. 95 on the basis of the information at its disposal.

Following its examination of the information at its disposal, the Committee notes that it is still missing important information on measures giving effect to *Articles 1, 4, 7(2), 8, 10, 12(1)* and *14(a)* of Convention No. 95. The Committee is therefore bound to repeat its previous comments with regard to those *Articles*.

Article 1 of Convention No. 95. Coverage of all parts of the remuneration. The Committee notes that the definition of "wages" in section 2 of the Employment Act excludes "contributions made or to be made by the employer in respect of his or her employee's insurance, medical care, welfare, education, training, invalidity, retirement pension, post-service gratuity or severance allowance". The Committee recalls that the definition of wages for the purposes of the Convention is very broad and that it intends

to cover the benefits excluded under section 2 of the Employment Act. ***Since this Act is the main legislation implementing the Convention, the Committee requests the Government to indicate the measures taken to provide workers with the protection afforded in the Convention in relation to the elements of their remuneration which are excluded under section 2 of the Employment Act.***

Article 4. Partial payment in kind. The Committee notes that sections 41(3) and 97(2)(i) of the Employment Act address the issue of partial payment of wages in kind and provide that the Minister may adopt regulations on this matter. ***It requests the Government to indicate whether such regulations have been adopted.***

Article 7(2). Works stores. The Committee notes that section 41(4) of the Employment Act provides that an employee shall not be obliged to make use of any shops established by the employer for the use of his or her employees or services operated in connection with the undertaking. The Committee recalls that *Article 7(2)* requires that where access to other stores or services other than those operated by the employer is not possible, the competent authority shall take appropriate measures in order to ensure that goods and services are sold at a fair and reasonable price and in the interest of the workers. ***The Committee therefore requests the Government to indicate what measures are in place in order to ensure the application of this provision of the Convention.***

Articles 8 and 10. Deductions from wages and attachment of wages. The Committee notes that section 46(1) of the Employment Act provides a list of authorized deductions from wages and that section 46(3) provides that attachment of wages shall be limited to no more than two thirds of all remuneration due in respect of a specific pay period. The Committee therefore notes that, while there is an overall limit on attachment of wages, there is no such limit for deductions from wages. In this regard, the Committee recalls that, in addition to setting specific limits for each type of deduction, it is also important to establish an overall limit beyond which wages cannot be further reduced, in order to protect the income of workers in the case of multiple deductions. ***The Committee therefore requests the Government to take the necessary measures for the establishment of specific and overall limits to deductions from wages.***

Article 12(1). Regular payment of wages. With reference to its previous request concerning the issue of irregular payment of wages, the Committee notes that the Government merely repeats in its report the information previously provided. In relation to the lack of a functional Industrial Court, which had been noted in its previous comments, the Committee notes that information is available on the Court's website indicating that a number of awards have been adopted since 2015. It also notes that two judges and the registrar of the Court have participated in a training activity on international labour standards delivered by the International Training Centre of the ILO in Turin in June 2017. ***In this context, the Committee once again requests the Government to provide up-to-date information on the situation of wage arrears in the country, including data on the number of workers affected by non-payment or delayed payment of wages, the sectors concerned and the results of labour inspections on these issues, and to indicate whether the Industrial Court has been dealing with any such cases.***

Article 14(a). Information on wages before entering employment. The Committee notes that section 59 of the Employment Act provides that an employee shall receive from the employer information on wages not later than 12 weeks after the date on which employment commences. The Committee recalls that *Article 14(a)* requires effective measures to be taken in order to ensure that employees are informed of the conditions in respect of wages before they enter employment. ***The Committee therefore requests the Government to indicate which measures are in place in order to ensure full implementation of this Article of the Convention.***

[The Government is asked to reply in full to the present comments in 2022.]

Ukraine

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2006)

Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) (ratification: 2006)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Convention No. 131 (minimum wage) and Conventions Nos 95 and 173 (protection of wages) together.

The Committee notes the observations of the Confederation of Free Trade Unions of Ukraine (KVPU), received on 25 August 2021 and the observations of the Federation of Trade Unions of Ukraine (FPU), received on 2 September 2021, on the application of the Conventions. The Committee also notes the response of the Government to the 2020 observations of the KVPU and FPU on the application of Convention No. 95, received in 2020.

Legislative developments. Following its previous comments, the Committee observes an absence of information on the adoption of a new Labour Code but notes that the Government's reports refer to several draft laws introducing amendments to existing legislation in the field of labour that could have an impact on the application of the wages Conventions. In this respect, the Committee welcomes the Government's indication that it is preparing legislative amendments to strengthen the protection of workers' claims concerning the payment of wage arrears in the event of an employer's insolvency, as well as a draft law introducing protection of workers' claims with the assistance of a guarantor institution. The Committee also notes that, according to the KVPU, a number of recent legislative initiatives threaten to erode most workers' rights, including on wage matters. ***The Committee requests the Government to provide its comments in this respect. The Committee hopes that in the framework of the revision process regarding the existing legislation on wages, its comments will be considered and that the requirements of the wages Conventions will be fully met. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard. The Committee requests the Government to continue to provide information on the developments in its labour law reform, including by providing a copy of any amendments to labour legislation regulating wage issues, once adopted.***

A. Minimum wage

Article 3 of Convention No. 131. Criteria for determining the level of the minimum wage. In its previous comments, the Committee noted that in their 2019 observations, the ITUC and the KVPU indicated that the minimum wage does not adequately take into account the needs of workers and their families and the cost of living. It also noted that the KVPU added that: (i) the Government has not considered the trade unions' suggestion to introduce a system of indexation to ensure that the minimum wage would not lose its value due to the rising inflation during the year; and (ii) in setting the minimum wage, the Government does not consider the overall wage level in the country, leading to a significant gap between the minimum wage and the average wage. The Committee notes that the Government indicates in its report that national legislation provides for criteria to determine the minimum wage complying with the Convention, and includes the possibility to review the minimum wage based on inflation. The Committee also notes that the KVPU largely reiterates its previous observations. Similarly, the FPU indicates that: (i) in establishing the minimum subsistence level in the state budget, used to determine costs of living, only budgetary feasibility has been taken into consideration; (ii) the minimum wages should be higher, according to trade union calculations taking into account education, medical care, and housing costs, as well as the family component; and (iii) a

number of legislative proposals to change how the minimum subsistence level is calculated may lead to a fall in growth rates or a freezing of the minimum wage. ***The Committee requests the Government to take the necessary measures to ensure that, so far as possible and appropriate in relation to national practice and conditions, both the needs of workers and their families and economic factors are taken into consideration in determining the level of minimum wage, as provided in Article 3 of the Convention.***

Article 4(2). Full consultation with employers' and workers' organizations. In its previous comments, the Committee noted that the KVPU indicated that: (i) the negotiations on the determination of the minimum wage were not conducted in accordance with the procedure established by the applicable General Agreement; and (ii) neither the Government nor the Parliament formally heard the position of the trade unions and that consequently the minimum wage resulted from a unilateral decision of the Government. The Committee notes that, in the framework of the joint working commission's meetings to prepare proposals to establish the minimum wage for 2022, the parties could not reach a consensual proposal to be submitted to the Government for consideration. The Committee further notes that the KVPU reiterates its previous observations. ***The Committee requests the Government to provide specific and detailed information on the content and outcome of the tripartite consultations held in the framework of the next revision of the minimum wage.***

Article 5. Enforcement. The Committee previously noted that the KVPU, in its observations, indicated that proper inspections are not carried out, due to the moratorium on inspections, and due to the lack of an appropriate number of inspectors. In this respect, the Committee notes the Government's indication that both labour inspectors and specialists from the main departments for labour and social protection of the regional state administrations carry out monitoring of employers' compliance with minimum wage requirements. The Committee observes that the KVPU reiterates its previous observations concerning the lack of proper inspections and refers to the complicated procedure to authorize them. ***The Committee requests the Government to take the appropriate measures, such as adequate inspection reinforced by other necessary measures, to ensure the effective application of all provisions relating to minimum wage. It also requests the Government to provide information on the measures taken in this respect. Regarding labour inspection, the Committee refers the Government to its comments adopted in 2021 on the application of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).***

B. Protection of wages

Article 12 of Convention No. 95. Wage arrears situation in the country. For several years, the Committee examined the situation of wage arrears in the country, which is particularly prevalent in state-owned coal-mining enterprises, and it previously noted with concern the increasing amounts of wage arrears in that industry. In this regard, the Committee notes the Government's indication, in response to the KVPU and the FPU's 2020 observations, that the wage arrears situation is an urgent issue, and that measures were taken to settle wage arrears in certain coal extraction companies. The Committee also notes with ***deep concern*** that, according to the statistics provided by the Government, the amount of wage arrears in the country has still increased between 2020 and 2021. The KVPU also continues to refer to long-standing and systematic failure to settle wage arrears, as well as persistent social unrest among the workforce and multiple protests concerning non-payment of wages. The Committee will examine the application of *Article 12* in practice in relation to its three essential elements: (1) efficient control and supervision; (2) appropriate sanctions; and (3) the means to redress the injury caused, including fair compensation for the losses incurred by the delayed payment (see 2003 General Survey on the protection of wages, paragraph 368).

Regarding efficient control and supervision, the Committee notes the Government's indication, in response to the KVPU and FPU's 2020 observations, that labour inspectors monitored 451 businesses

with wage debts between January and September 2020. ***With reference to its comments adopted under Conventions Nos 81 and 129, the Committee requests the Government to continue to take the necessary measures to ensure efficient control and supervision of the regular payment of wages in the country, and to provide information on the number of workers concerned, the extent of wage arrears, as well as the results of measures taken in this regard.***

Regarding the imposition of appropriate sanctions, the Committee notes that the Government reiterates that it is preparing draft amendments to the existing legislation with a view to strengthening the protection of workers' rights to timely payment of wages. The Committee also notes the KVPU's indication that some initiatives for legislative amendments may increase the accountability of managers, increase fines threefold, and remove a loophole from current legislation which allows managers to avoid criminal liability if they manage to pay the wages prior to incurring a fine. ***The Committee requests the Government to pursue its efforts to strengthen the penalties in national legislation, including through the adoption of the above-mentioned legislative amendments, to ensure full application of the requirements of the Convention. It also requests the Government to indicate the impact of the measures taken, including the amount of penalties imposed on violators, as well as whether there has been a reduction in the number of workers suffering from arrears in the payment of their wages.***

Regarding means to redress the injury, the Committee notes the Government's indication that schedules have been approved in 452 enterprises for the payment of wage arrears, of which 40 per cent have been fully implemented. The Government further indicates that, since the beginning of 2021, as required by labour inspectors, 203 enterprises have paid wage arrears to 30,512 workers. The Government also refers to the work of temporary commissions on payment of wages, which includes the issuing of warnings to heads of enterprises regarding disciplinary punishments. The KVPU nevertheless reiterates that a large number of court rulings on the recovery of unpaid wages are not being implemented and that wage arrears are still increasing. In the view of the KVPU, the situation of wage arrears will worsen, following the entry into force of a Governmental decision, which transfers to coal-mining enterprises the responsibility of the Government to settle wage arrears for state miners. The FPU also refers to increasing levels of poverty, and alleges that the compensation mechanism provided for in the current legislation fails to compensate workers adequately for all losses in the event of wage arrears. ***The Committee requests the Government to provide its comments in this respect, and to pursue its efforts to remedy the persisting wage arrears situation. In addition, noting the Government's reference to a coal sector reform, the Committee requests the Government to indicate the impact of such reforms on wage arrears in the coal industry and, in particular, on the possible impact on existing wage arrears of the transfer of Government responsibility for the settlement of wage arrears to the mining companies.***

The practice of "envelope wages". ***In the absence of a response from the Government on this issue, the Committee once again requests the Government to provide information on the progress made regarding the elimination of the practice of "envelope wages", according to which workers are forced to agree to the undeclared payment of wages.***

Articles 5–8 of Convention No. 173. Workers' claims protected by a privilege. In previous comments, noting that section 2(4) of the Code of Bankruptcy Procedure excludes state-owned enterprises, the Committee requested the Government to indicate how workers' claims are protected in the case of state-owned enterprises. ***In the absence of additional information on this issue, the Committee once again requests the Government to clarify how workers' claims are protected in the case of state-owned enterprises, given that section 2(4) of the Code of Bankruptcy Procedure excludes state-owned enterprises from its application.***

Moreover, the Committee notes that the FPU indicates that the national legislation does not adequately guarantee recovery of wage arrears from bankrupt enterprises, where the debtor's assets

are insufficient after settlement with the charge holder. In addition, the Committee notes the observations of the KVPU indicating that, in practice, the state bodies in the field of labour and the judicial authorities do not provide support for the full protection of workers' privilege under *Article 5* of the Convention. ***The Committee requests the Government to provide its comments in respect of these observations.***

[The Government is asked to reply in full to the present comments in 2023.]

Bolivarian Republic of Venezuela

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1944)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1982)

In order to provide a comprehensive view of the issues related to the application of ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 (minimum wage) and 95 (protection of wages) together.

The Committee takes note of the observations of the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) on the application of the Convention No. 26, received on 1 September 2021. The Committee also takes note of the joint observations regarding Convention No. 26 of the Federation of University Teachers' Associations of Venezuela (FAPUV), the Federation of Higher Education Workers in Venezuela (FETRAESUV), the National Federation of Administrative Professionals and Technicians of the Universities of Venezuela (FENASIPRUV), the National Federation of Labour Unions of Higher Education Workers in Venezuela (FENASOESV) and the Unfederated Unions of University Workers, received on 7 and 19 July 2021. The Committee also notes the joint observations of the Confederation of Workers of Venezuela (CTV), the Independent Trade Union Alliance Confederation of Workers (CTASI), the Federation of University Teachers' Associations of Venezuela (FAPUV) regarding Conventions Nos 26 and 95, received on 30 August 2021. The Committee further notes the observations of the following workers' organizations regarding the application of Conventions Nos 26 and/or 95: MOV7 The Voice of Alcasa, received on 5 April 2021, the Independent Trade Union Alliance Confederation of Workers (CTASI), received on 1 September 2021 and the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), received on 8 September 2021.

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

Article 3 of Convention No. 26. Participation of the social partners in minimum wage fixing. In its previous comment the Committee took note of the conclusions contained in the report of the Commission of Inquiry regarding the allegations of approval without tripartite consultation of increases to the minimum wage, as well as the recommendations of that Commission.

The Committee notes the discussion held at the 343rd Session (November 2021) of the Governing Body on the consideration of all possible measures, including those foreseen in the ILO Constitution, required to ensure the Bolivarian Republic of Venezuela's compliance with the recommendations of the Commission of Inquiry, as well as the decision adopted in this regard. The Committee observes that the Governing Body will return to the assessment of progress made by the Government in ensuring compliance with the recommendations of the Commission of Inquiry at its 344th Session (March 2022) and will continue its consideration of all possible measures for this purpose.

With regard to its previous comments on this matter, the Committee also notes the Government's indication in its report that: (i) despite regularly addressing, two or more times a year, written communications to the various employers' and workers' organizations regarding consultations on the minimum wage, certain organizations refrain from participating in the process, while others seek to

turn the discussion towards changing the economic model rather than the minimum wage; (ii) in April and July 2021 consultations were held on fixing the minimum wage with the various employers' and workers' organizations: the July consultations were held sufficiently in advance, and pertinent information was brought to the table to allow the organizations consulted to carry out an analysis and formulate proposals; and (iii) following the holding, from 21 May to 23 June, of the large-scale meeting for national dialogue on the world of work *(Gran encuentro de diálogo nacional del mundo del trabajo),* technical round table meetings were organized, one of which concerned the methods and procedures set out in the Convention, and explored issues related to the economic and social indicators which must be part of the analysis when considering increasing wages. In this connection, the Committee again notes with ***concern*** that FEDECAMARAS and FETRAESUV, FENASIPRUV, FENASOESV, FAPUV, the CTV and the CTASI alike are in agreement that: (i) wage increases for 2021 were decided by the Government unilaterally; and (ii) the bipartite and tripartite technical round tables on methods of application of the Convention were not standing bodies providing for structured dialogue and did not operate according to the conditions recommended by the Commission of Inquiry for the holding of effective consultations (no minutes were taken of the different meetings; an agenda and work-programme were not adopted; an independent chair and secretariat were not appointed; recourse to ILO technical assistance was not taken). FEDECAMARAS adds that, following the unilaterally imposed wage increase of 1 May, although consultations were held in two meetings (July and August) between that organization and government representatives, the conditions required for effective consultations mentioned above were not respected on either occasion. The Committee again ***deplores*** the failure of the Government to fulfil its obligation to consult in respect of fixing the national minimum wage. ***The Committee urges the Government to take the necessary measures without delay, including by taking into account the recommendations of the Commission of Inquiry, to ensure full compliance with the Convention. The Committee requests the Government to provide information in that regard.***

Article 4 of Convention No. 95. Payment in kind. "Socialist cestaticket" (food voucher). In its previous comments, the Committee requested the Government to engage in dialogue without delay at the national level, involving all the employers' and workers' organizations concerned, so as to examine possible solutions that are sustainable over time, including any necessary adjustment to the "socialist cestaticket" system, to ensure full conformity with this Article of the Convention. The Committee notes that the Government restricts itself to indicating that broad dialogue is being held with the various employers' and workers' organizations, without giving details of the solutions found to resolve this issue. The Committee also notes that the FAPUV, the CTV and the CTASI have provided figures showing that the "socialist cestaticket" continues to represent a high percentage of workers' remuneration and add that, in addition to that voucher, workers receive other vouchers which, taken together, exceed the amount of the minimum wage. The Committee ***regrets*** to note that no progress has been made in seeking sustainable solutions to this matter. ***The Committee once again requests the Government to take the necessary measures without delay to engage in dialogue with the employers' and workers' organizations concerned to examine solutions that will allow full application of Article 4 of the Convention. The Committee requests the Government to provide information in this regard.***

Article 5. Electronic payment of wages. In its previous comment, the Committee noted the observations of the workers' organizations regarding the difficulties that generalized electronic payment of wages imposed on workers in certain areas of the country when seeking to obtain the amount corresponding to their wages in cash. The Committee notes the Government's indication that this situation has been resolved, however the FAPUV, the CTV and the CTASI reiterate that electronic payment of wages prevents workers, especially those in areas where there are no banking services or no electricity, from withdrawing cash from the banks or institutions to obtain the full amount of their wages. ***The Committee requests the Government to take effective measures in consultation with the social partners to address this issue and to provide information in that regard.***

Article 12. Delayed payment of wages. The Committee notes the Government's indication, in reply to its request for information regarding several cases of delayed payment of wages, particularly in respect of National Assembly workers, that the wages of those workers have been paid. The Committee notes that the FAPUV, the CTV and the CTASI indicate that the Government, through the official electronic platform known as "sistema patria", delays greatly and/or only effects partial payment of the wages of university staff. ***Recalling once again the importance of the payment of wages at regular intervals, the Committee requests the Government to provide its comments in that regard.***

[The Government is asked to reply in full to the present comments in 2022.]

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 26** *(Dominica, Lesotho, Madagascar, Mali, Sierra Leone, Zimbabwe);* **Convention No. 95** *(Dominica, Lebanon, Madagascar, Mali, Mauritius, Mexico, Netherlands: Aruba, Netherlands: Curaçao, Sierra Leone);* **Convention No. 99** *(Sierra Leone, Zimbabwe);* **Convention No. 131** *(Bulgaria, Ecuador, Lebanon, Mexico, Morocco, North Macedonia).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 26** *(Mauritius);* **Convention No. 95** *(Ecuador);* **Convention No. 99** *(Mauritius);* **Convention No. 131** *(Malaysia, Republic of Moldova).*

Working time

Equatorial Guinea

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1985)

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1985)

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1985)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 1 (hours of work in commerce and offices), 14 (weekly rest in industry) and 30 (hours of rest in commerce and offices) together.

The Committee notes with ***deep concern*** that the Government's report, due since 2008, has not been received. In the light of its urgent appeals launched to the Government in 2019 and 2020, the Committee proceeds with the examination of the application of the Conventions on the basis of the information at its disposal.

Legislative developments. The Committee notes that, according to the information available on the Government's official website, in October 2021 the full Senate approved the final text of the draft General Labour Act. ***The Committee requests the Government to provide information on the development of the situation in this regard and to provide a copy of the new General Labour Act, once adopted, as well as any relevant legislative or other information relating to the application of the Conventions.***

[The Government is asked to reply in full to the present comments in 2022.]

Haiti

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1952)

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1952)

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1952)

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1958)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 1, 14, 30 and 106 in a single comment.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 29 August 2018, the Association of Haitian Industries (ADIH), received on 31 August 2018, and the International Trade Union Confederation (ITUC), received on 1 September 2018.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)

The Committee notes the discussion which took place in the Conference Committee on the Application of Standards (Conference Committee), including with regard to the impact of the 2017 Act to organizing and regulating work over a 24-period divided into three segments of eight hours (hereinafter: Act on working time) on the application of the ratified Conventions on working time. In its conclusions, the Conference Committee asked the Government to: (i) review in consultation with the most representative employers' and workers' organizations the conformity of the Labour Code and the Act on working time, with respect to the ratified ILO Conventions on working time; (ii) strengthen the labour inspectorate and other relevant

enforcement mechanisms to ensure that workers benefit from the protection afforded by the Conventions; (iii) report to the Committee of Experts on these measures; and (iv) avail itself of technical assistance to address these matters.

The Committee notes that, at the end of the discussion in the Conference Committee, the Government recalled that the Conventions that Haiti had ratified were part of its body of domestic law under article 276-2 of the Constitution of Haiti, and took precedence over national laws in the hierarchy of standards and could be invoked without reserve before the courts. Taking note of the observations of the Committee of Experts concerning the application of the Act on working time, the Government indicated that it was planning to hold tripartite consultations to identify and overcome the main difficulties encountered in the application of the Act, and to issue orders or regulations. The Government also indicated that it was aware of the delay in finalizing the process of reforming the Labour Code. Discussions had begun at the level of the Prime Minister's Office and would be continued within a tripartite framework, in the spirit of the San José Agreement of 21 March 2018 signed by the social partners, taking into account the Office's recommendations.

Furthermore, the Committee notes that the CTSP, in its observations, expresses regret at the lack of progress on working time issues since the discussion in the Conference Committee. However, the CTSP indicates that discussions on the reform of the Labour Code have resumed. The Committee also notes that the ADIH confirms that tripartite discussions on the reform of the Labour Code resumed in August 2018. According to the ADIH, the Act on working time should be repealed and the employers' and workers' organizations should be consulted on the application of the Conventions ratified in this field. The Committee further notes that the ITUC refers to the discussion of the case during the Conference Committee and indicates in particular that: (i) the Act on working time, which liberalizes the regulations on this subject, is giving rise to serious abuses; (ii) the Act was adopted without consultation and outside the process of negotiation of a new Labour Code; and (iii) the situation is aggravated by the lack of resources for labour inspection. The ITUC refers in particular to: (i) workers in the informal economy and in domestic work who are subjected to indecent working conditions in terms of both working time and leave entitlement; (ii) security personnel and subcontracted workers in the textile sector, where there is a regrettable lack of fixed working hours and a refusal by employers to pay overtime; and (iii) workers in export processing zones who are particularly subjected to abuses. ***The Committee requests the Government to send its comments on all the above observations.***

Lastly, the Committee notes the Government's communication received on 30 October 2018 in which it informs the Committee that, further to the conclusions of the Conference Committee, it has requested ILO technical assistance to help it, inter alia, to submit the reports due, to strengthen the inspection services, to consolidate social dialogue with a view to pursuing social reforms, and to address the other matters raised by the Conference Committee. The Government also indicates that it hopes to receive this assistance before the next session of the International Labour Conference. ***The Committee hopes that this technical assistance will be made available without delay. The Committee requests the Government to provide detailed information on the results of the planned technical assistance, and also on the measures taken to ensure the effective application in law and practice of the ratified Conventions on working time.***

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

Malaysia

Sarawak

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1964)

Articles 2 and 5 of the Convention. Weekly rest entitlement. Uniformity of the weekly rest period. Compensatory rest. In its previous comment, the Committee noted with concern the absence of progress towards full application of *Article 2* of the Convention, given that the restrictive definition of the term "employee" in the Sarawak Labour Ordinance, leaves certain categories of workers without the benefit of a weekly rest day of one whole day provided for in section 105B (1) of the Sarawak Labour Ordinance. It also noted the lack of progress in the application of *Article 5*, as section 105C of the Sarawak

Labour Ordinance only provides for monetary compensation but not for compensatory rest for workers performing work on their weekly rest day. The Committee notes with ***concern*** that on both issues the Government, in its report, limits itself to indicating that it will pursue a discussion with the State Government of Sarawak to ensure that weekly rest entitlement is applicable to all workers employed in any industrial undertaking and that compensatory rest is accorded to workers performing work on their weekly rest day. ***In this context, the Committee once again requests the Government to take the necessary measures in the near future to ensure that: (i) the whole of the staff employed in industrial undertakings would be entitled to weekly rest; (ii) the period of weekly rest would, wherever possible, be granted simultaneously to the whole of the staff of each undertaking; (iii) the weekly rest would, wherever possible, be fixed so as to coincide with the days already established by the traditions or customs of the country or district; and (iv) compensatory rest is granted to workers who have to work during their weekly rest day, irrespective of any monetary compensation. The Committee also requests the Government to provide information on any progress made in this respect. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.***

Mozambique

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1977)

Articles 1 and 2 of the Convention. Scope of application. Weekly rest period. In previous comments, noting that under section 3(1)(c) and (d) and (2) of the Labour Act, work in mines and ports is governed by specific legislation and that the Labour Act applies to these workers in so far as it is compatible with their nature and characteristics, the Committee requested the Government to indicate the legislation relating to weekly rest applicable to these categories of workers. The Committee notes that, in its report, the Government indicates that Decree No. 13/2015 of 3 July 2015 approved the Mining Labour Regulations and Decree No. 46/2016 of 31 October 2016, approved the Dock Work Regulations. The Committee observes that while section 13 of the Mining Labour Regulations provides that the normal weekly rest of mine workers and oil must be of one day, the Dock Work Regulations does not seem to contain any provision on weekly rest for this category of workers.

Moreover, the Committee had previously noted that section 95(1) of the Labour Act which provides that the minimum weekly rest period is at least 20 consecutive hours, is not in conformity with *Article 2(1)* of the Convention requiring a period of weekly rest comprising at least 24 consecutive hours. ***Noting the Government's indication that the issue of the length of weekly rest is being considered in the framework of the Labour Act's revision process, the Committee requests the Government to take the necessary measures to: (i) bring the national legislation in line with the principle of 24 hours' weekly rest required by the Convention; and (ii) ensure that dock workers have the benefit, in law and in practice, of a 24 hour period of rest per week. It also requests the Government to provide information on any progress made in this regard, as well as copies of any new legislation recently adopted on this subject.***

Republic of Moldova

Forty-Hour Week Convention, 1935 (No. 47) (ratification: 1997)

Article 1 of the Convention. The principle of the 40-hour week. Averaging of hours of work. Overtime. In previous comments, the Committee noted that: (i) section 99 of the Labour Code allows the averaging of working hours over a reference period of up to one year; (ii) section 104(5) of the Labour Code provides that the maximum annual limit of overtime may be increased from 120 to 240 hours in exceptional cases with the written consent of the workers' representatives; and (iii) under section 3 of Government Decision No. 1223 of 2004, a 24-hour shift of medical personnel is permitted. Noting that these provisions may lead to excessively long working hours, the Committee requested the Government

to take all necessary action to ensure that national legislation on the principle of a 40-hour week is fully aligned with the requirements of the Convention. The Committee notes that section 3 of Government Decision No. 1223 of 2004 is repealed by Government Decision No. 294 of 2014.

On the issue of averaging, the Committee notes that no further information is provided in the Government's report regarding section 99 of the Labour Code. ***Recalling that calculating hours of work as an average over a reference period of up to one year allows for too many exceptions to normal hours of work and can result in highly variable working hours over long periods, long working days and the absence of compensation (2018 General Survey on working time instruments, paragraph 68), the Committee requests the Government to review section 99 in this regard and to provide information on any progress made in this respect.***

On the issue of overtime, the Committee notes that the Government does not provide information on section 104(5) either. It also notes that while clear daily limits (12 hours) for overtime are set by section 105(3) of the Labour Code, no weekly limit seems to be established by the national legislation. ***Recalling that these provisions authorize practices that would possibly lead to unreasonably long hours of work, in direct contradiction to the principle of progressive reduction of hours of work, the Committee requests the Government to take the measures necessary to ensure that the principle of a 40-hour week provided for by the Convention is fully applied both in law and in practice.***

Tajikistan

Forty-Hour Week Convention, 1935 (No. 47) (ratification: 1993)

Article 1 of the Convention. Forty-hour week. The Committee notes that section 78 of the 2016 Labour Code, which replicates section 71 of the 1997 Labour Code, foresees the averaging of hours of work over a reference period which may be as long as one year. ***Recalling that calculating hours of work as an average over a reference period of up to one year allows for too many exceptions to normal hours of work and can result in highly variable working hours over long periods, long working days and the absence of compensation (2018 General Survey on working time instruments, paragraph 68), the Committee requests the Government to review section 78 of the Labour Code in this regard. It also requests the Government to provide information on the usual length of the reference period determined in collective agreements and internal staff regulations, as well as concrete examples of the variations observed in the number of hours worked on a weekly basis over the corresponding reference period, in cases where averaging is applied.***

Double employment. In previous comments, the Committee had requested the Government to provide specific information on any measures adopted or envisaged to limit the total working time of workers engaged in double employment. The Committee notes that according to section 74(2)(5) and 232 of the 2016 Labour Code, the length of the working day for the workers holding two or more jobs shall not exceed by more than four hours the regular working day of eight hours. The Committee also notes that this implies a working day limit of 12 hours for workers holding two or multiple jobs. ***Noting that section 67 of the Labour Code provides that the normal working week shall not exceed 40 hours, the Committee requests the Government to indicate whether the weekly limit of 40 hours also applies to multiple jobholders.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 1** *(Lebanon, Luxembourg, Mozambique);* **Convention No. 14** *(Dominica, Lesotho, Madagascar, Mali, Mauritania, Mauritius, Mexico, Netherlands: Aruba, Netherlands: Curaçao, Netherlands: Sint Maarten, North Macedonia, Tajikistan);* **Convention No. 30** *(Lebanon, Luxembourg, Mexico, Morocco, Mozambique, Norway);* **Convention No. 47** *(Republic of Moldova, Tajikistan);* **Convention No. 52** *(Lebanon,*

Libya, Mali, Tajikistan); **Convention No. 89** *(Lebanon, Libya, Mauritania);* **Convention No. 101** *(Netherlands: Sint Maarten, Sierra Leone, United Republic of Tanzania: Tanganyika);* **Convention No. 106** *(Lebanon, Mexico, Netherlands: Aruba, Netherlands: Curaçao, Netherlands: Sint Maarten, North Macedonia, Tajikistan);* **Convention No. 132** *(Madagascar, Montenegro, North Macedonia, Republic of Moldova);* **Convention No. 153** *(Mexico);* **Convention No. 171** *(Lao People's Democratic Republic, Madagascar, Montenegro, Uruguay).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 1** *(Bolivarian Republic of Venezuela);* **Convention No. 14** *(Luxembourg, Montenegro, Norway);* **Convention No. 52** *(Mauritania);* **Convention No. 101** *(Mauritania);* **Convention No. 106** *(Latvia, Montenegro);* **Convention No. 132** *(Latvia, Norway);* **Convention No. 171** *(Luxembourg);* **Convention No. 175** *(Mauritius).*

Occupational safety and health

Belize

Radiation Protection Convention, 1960 (No. 115) (ratification: 1983)

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1999)

The Committee notes with ***deep concern*** that the Government's reports, due since 2015, have not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Conventions on the basis of the information at its disposal.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 115 (radiation protection) and 155 (OSH) together.

A. General provisions

Occupational Safety and Health Convention, 1981 (No. 155)

Articles 4, 7 and 8 of the Convention. Formulation and review of the national OSH policy. Legislation. The Committee previously noted the Government's reiterated reference to an OSH Bill developed in 2003. The Committee observes that a draft OSH Bill was introduced in 2014, but has not been adopted. In its previous comments, the Committee also noted that the National OSH Policy was approved in 2004, which set up both general and specific objectives, including the principle of prevention and the promotion and maintenance of OSH standards at all workplaces. However, the Committee notes that the 2004 Policy has not been reviewed or updated. ***The Committee requests the Government to provide information on the status of the OSH Bill, and on any new legislation adopted which relates to the application of the Convention. The Committee also requests the Government to indicate the measures taken for the review and update of the 2004 National OSH Policy, including any consultation held with social partners. Furthermore, the Committee requests the Government to provide information on any measures taken or envisaged to review the situation of OSH and the working environment in the country, either overall or in respect of particular areas, with a view to identifying major problems and effective methods for dealing with them.***

Article 5. Main spheres of action affecting OSH and the work environment. The Committee notes that the 2004 National OSH Policy provides for training and education in the field of OSH and defines the role and responsibilities of different stakeholders in this regard, putting emphasis on communication and cooperation (in accordance with *Article 5(c)* and *(d)*). The Committee notes, however, that the 2004 National OSH Policy does not address other elements required by *Article 5* of the Convention, including the design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work *(Article 5(a)*) and the relationships between the material elements of work and the persons who carry out or supervise the work (*Article 5(b)*). ***The Committee requests the Government to provide information on any measures taken or envisaged to give effect to Article 5(a) and (b) of the Convention.***

Article 11(c) and (e). Notification of occupational accidents and diseases. Production and publication of annual statistics. The Committee notes that the Social Security Board publishes annual statistical reports, including information on occupational injuries due to accidents. The Social Security's Statistical Report of 2019 contains information on the number, nature and causes of occupational injuries for 2015–19, and the sectors in which they occurred. ***The Committee requests the Government to provide information on any applicable procedures regarding the notification by employers of occupational***

accidents and diseases to the competent authority. It also requests the Government to indicate whether statistics on occupational diseases are collected and published, in addition to those on occupational accidents.

Article 11(f). Introduction of systems to examine chemical, physical and biological agents in respect of the risk to the health of workers. The Committee previously noted that, in November 2010, the Government launched the Strategic Approach to International Chemicals Management (SAICM), entailing the implementation of a chemicals management system in two phases through a multi-sectoral approach. Phase II of this project was launched in June 2012, aiming at the development of a legal and institutional framework for the management of chemicals, including market surveillance measures. ***The Committee requests the Government to provide information on any developments in chemical management, including legal and institutional initiatives taken in this regard. It also requests the Government to indicate whether there are any similar management frameworks regarding physical and biological agents.***

Article 12. Obligations of persons who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use. ***The Committee requests the Government to provide information on any measures taken or envisaged, in law and in practice, to ensure the responsibilities of those who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use with regard to the safety and security of concerned persons, as required by Article 12 of the Convention.***

Article 17. Collaboration where two or more undertakings are engaged in activities simultaneously at one workplace. ***The Committee requests the Government to provide information on any measures taken to ensure collaboration in applying the requirements of the Convention, whenever two or more undertakings are engaged in activities simultaneously at one workplace.***

Article 18. Emergencies and first aid. The Committee notes that both the Factory Act (section 12(1)(c)) and the Labour Act (section 155(b)) provide for the development of regulations on the provision of first-aid equipment. ***The Committee requests the Government to indicate whether there are any laws or regulations adopted (including under the Factory Act or the Labour Act) to provide for measures to be taken in case of emergencies and accidents, including adequate first-aid arrangements.***

Article 21. Expenditure on OSH measures. ***The Committee requests the Government to provide information on any measures taken to ensure that OSH measures do not involve any expenditure for workers.***

B. Protection against specific risks

Radiation Protection Convention, 1960 (No. 115)

Article 3(1) of the Convention. Protection measures. The Committee notes that, according to section 94 of the Labour Act, the Minister of Labour may adopt regulations regarding any operation involving the exposure of workers to ionizing radiations, to: (i) prohibit the employment of, or modify or limit the hours of employment of all persons or any class of persons in connection with any such operations; or (ii) prohibit, limit or control the use of any material or process in connection with any such operation, and may impose duties on owners, employers, employed persons and other persons, as well occupiers. In addition, while reiterating its concern at the absence of a government report, the Committee notes with ***interest*** the adoption of the Radiation Safety and Security Act in October 2020, following technical assistance from the International Agency for Atomic Energy (IAEA). It notes that the Radiation Safety and Security Act establishes the Office of Radiation Safety and Security within the Ministry responsible for the environment (the Office). Pursuant to section 42 of this Act, this Office shall prescribe requirements for radiation protection to be met before any activity or practice can be licensed, including all steps that shall be taken by the licensee for the protection and safety of workers by keeping

doses below the relevant threshold. ***The Committee requests the Government to indicate whether any regulations have been adopted by the Minister of Labour pursuant to section 94 of the Labour Act. It also requests the Government to provide detailed information on the requirements prescribed for licensees under section 42 of the Radiation Safety and Security Act, regarding the protection of workers against ionizing radiation.***

Article 3(2). Data collection. The Committee notes that, according to section 9(1)(l), (m) and (n) of the Radiation Safety and Security Act, the Office shall establish and maintain a national register of radiation sources, persons licenced to carry out activities or practices under the Act, as well as other registers as necessary. ***The Committee requests the Government to provide information on the implementation in practice of these provisions, such as the information required for the purpose of the register and the method of data collection.***

Articles 6 and 8. Determination and review of maximum permissible doses. The Committee notes that, according to section 41(2) of the Radiation Safety and Security Act, the Office shall prescribe dose limits for persons that may not be exceeded in conducting activities or practices involving, among others, the production or use of radiation sources. Section 41(3) further provides that any dose limits prescribed shall take into account the recommendations of the IAEA and the International Commission on Radiation Protection. The Committee observes that there do not seem be any dose limits prescribed by the Office following the adoption of the Radiation Safety and Security Act in October 2020. ***The Committee requests the Government to indicate the measures taken to ensure that the maximum permissible doses or amounts are determined without delay. It also requests the Government to provide information on any mechanism ensuring the review of such dose limits.***

Article 9. Warning of the presence of hazards from ionizing radiations and instructions for workers directly engaged in radiation work. ***The Committee requests the Government to provide information on any measures taken to ensure that: (i) appropriate warnings are used to indicate the presence of hazards from ionizing radiations; and (ii) adequate instructions are provided to all workers directly engaged in radiation work before and during such employment.***

Article 12. Medical examination. The Committee notes that, according to the 2004 National OSH Policy, the employer is required to make provisions for pre-employment, pre-placement and periodic medical examinations for the persons they employ, while the Ministry of Health shall work towards the establishment of an occupational health unit, which will, among other functions, provide medical assistance in this regard. ***The Committee requests the Government to provide further information on the medical examinations prescribed and provided in practice to workers directly engaged in radiation work, including examinations prior to or shortly after taking up such work, and their subsequent examinations at appropriate intervals.***

Article 13. Measures in case of irradiation or radioactive contamination. The Committee notes that Part VIII of the Radiation Safety and Security Act provides for emergency preparedness and response. However, the Committee notes that it does not contain any provisions addressing the protection of workers as required by *Article 13(a), (c)* and *(d)* of the Convention. ***The Committee requests the Government to provide information on any measures taken or envisaged, in law or in practice, in case of exposure of workers to ionizing radiations with regard to the protection of workers as required by the Convention, including appropriate medical examination of affected workers, examination of the conditions in which workers' duties are performed and any necessary remedial action.***

Article 14. Employment involving exposure to ionizing radiation contrary to medical advice. ***The Committee requests the Government to provide information on the measures taken to ensure that workers are not employed or engaged in work liable to expose them to ionizing radiations contrary to qualified medical advice, including measures for the provision of alternative employment.***

[The Government is asked to reply in full to the present comments in 2022.]

Plurinational State of Bolivia

Benzene Convention, 1971 (No. 136) (ratification: 1977)

Asbestos Convention, 1986 (No. 162) (ratification: 1990)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine the application of Conventions Nos 136 (benzene) and 162 (asbestos) together.

1. Benzene Convention, 1971 (No. 136)

Article 2 of the Convention. Substitution of benzene or of products containing it. The Committee notes that the Government, in its reply to the Committee's previous comment, once again refers in its report to general OSH standards that do not contain specific provisions that give effect to *Article 2* of the Convention. ***The Committee requests the Government to take concrete measures without delay to ensure the use of harmless or less harmful substitute products instead of benzene or products containing benzene.***

Article 6(1) and (3). Prevention of the escape of benzene vapour into the air. Measurement of the concentration of benzene. The Committee notes that the Government reiterates information relative to the fixed maximum concentration of benzene in the air in places of employment (*Article 6(2)* of the Convention), once again without referring to the Committee's request in its previous comment regarding the remaining provisions of *Article 6* of the Convention. ***The Committee requests the Government to specify: (i) whether concrete measures have been adopted or are envisaged to prevent the escape of benzene vapours in the air of places of employment in premises where benzene, or products containing benzene, are manufactured, handled or used (Article 6(1)); and (ii) whether the competent authority has issued directions on carrying out the measurement of the concentration of benzene in the air of places of employment (Article 6(3)).***

Article 7. Work processes in enclosed systems or workplaces equipped with means to ensure the removal of benzene vapour. The Committee notes that, in reply to its previous comment, the Government once again refers to Technical Safety Standard (NTS) 009/18, for the Presentation and Approval of OSH Programmes, which contains no specific provisions giving effect to *Article 7* of the Convention. ***The Committee requests the Government to take concrete measures without delay to ensure that: (i) work processes involving the use of benzene or of products containing benzene are as far as practicable carried out in an enclosed system; and (ii) where it is not practicable for work to be carried out in an enclosed system, places of work in which benzene or products containing benzene are used are equipped with effective means to ensure the removal of benzene vapour to the extent necessary for the protection of the health of the workers.***

2. Asbestos Convention, 1986 (No. 162)

Article 17(1) and (3) of the Convention. Demolition of plants or structures containing asbestos, and removal of asbestos by employers or qualified contractors. Elaboration of a work plan in consultation with the workers or their representatives. The Committee notes that, in reply to its previous comment, the Government once again refers in its report to general OSH standards, which contain no specific provisions giving effect to *Article 17(1)* and *(3)* of the Convention. ***The Committee urges the Government to take concrete measures without delay to ensure that: (i) the demolition of plants and structures and removal of asbestos provided under Article 17(1) of the Convention shall be undertaken only by employers or contractors who are recognised by the competent authority as qualified to carry out such work (Article 17(1)); and (ii) the workers or their representatives shall be consulted on the work plan to be drawn up by the employers or contractors (Article 17(3)).***

Article 20(2), (3) and (4). Records of the monitoring of the working environment. Right to request the monitoring of the working environment. With reference to its previous comment, the Committee notes that the Government once again refers to general OSH standards which contain no specific provisions giving effect to *Article 20(2), (3)* and *(4)* of the Convention. ***The Committee urges the Government to take concrete measures without delay to ensure that: (i) the records of the monitoring of the working environment and of the exposure of workers to asbestos are kept for a period prescribed by the competent authority (Article 20(2)); (ii) the workers concerned, their representatives and the inspection services have access to these records (Article 20(3)); and (iii) the workers or their representatives have the right to request the monitoring of the working environment and to appeal to the competent authority concerning the results of the monitoring (Article 20(4)).***

Furthermore, the Committee notes with ***regret*** that the Government's report contains no responses to its earlier comments, which are reiterated below.

A. Protection against specific risks

1. Benzene Convention, 1971 (No. 136)

Article 4 of the Convention. Prohibition of the use of benzene as a solvent or diluent. With reference to its previous comments, the Committee notes that the Government reiterates in its report that the use of benzene is not prohibited. ***The Committee once again requests the Government to take the necessary measures, in accordance with Article 4 of the Convention, to prohibit the use of benzene and of products containing benzene as a solvent or a dilutent, except where the process is carried out in an enclosed system or where there are other equally safe methods of work.***

2. Asbestos Convention, 1986 (No. 162)

Articles 3 and 4 of the Convention. Legislation and consultation. With reference to its previous comments, the Committee notes that the Government repeats in its report the information on the general OSH standards to which it referred previously, adding a reference to the Technical Safety Standard for the Presentation and Approval of Occupational Safety and Health Programmes (NTS-009/18), which does not contain any specific provisions on asbestos. The Committee notes with ***deep concern*** that the necessary measures have not been taken to bring the legislation into conformity with the requirements of Article 3. The Committee recalls the Resolution concerning asbestos, adopted by the 95th Session of the International Labour Conference, June 2006, which stated that the elimination of the future use of asbestos and the identification and proper management of asbestos currently in place are the most effective means to protect workers from asbestos exposure and to prevent future asbestos-related diseases and deaths. ***The Committee once again strongly urges the Government in accordance with Article 3 of the Convention, to take the necessary measures as soon as possible to: (a) prevent and control health hazards due to occupational exposure to asbestos; and (b) protect workers against such risks. It also urges the Government to take the necessary measures to consult the most representative organizations of employers and workers concerned with regard to the measures to be taken to give effect to the provisions of the Convention.***

Articles 9, 10, 11 and 12. Preventive measures by law or regulation. Prohibition of the use of crocidolite and spraying. The Committee ***regrets*** to note that the necessary measures have not been adopted to bring the legislation into conformity with the requirements of *Articles 9, 10, 11* and *12*. ***The Committee once again requests the Government to provide information on the measures adopted or envisaged to ensure the application of Articles 9 and 10 (preventive measures by law or regulation), 11 (prohibition of crocidolite) and 12 (prohibition of spraying).***

Article 15. Exposure limits. The Committee notes the Government's indication that the maximum permissible concentration of asbestos in the air in occupied areas is 5 million particles per cubic foot, in

accordance with section 20 of Presidential Decree No. 2348 of 18 January 1951, which approved the Basic Regulations on industrial health and safety. The Government also refers to Annex D of Technical Standard on Minimum Conditions for the Performance of Work in Confined Spaces (NTS-008/17) which provides in general terms that the permissible exposure limits shall be those determined by the Occupational Safety and Health Administration of the Department of Labor of the United States (OSHA) which establishes limits for air contaminants. The Government indicates that Standards 29 CFR of the OSHA contain asbestos concentration limits (0.1 fibre per cubic centimetre of air as an eight hour time-weighted average and 1.0 fibre per cubic centimetre of air as averaged over a sampling period of 30 minutes, in accordance with Standards 29 CFR, 1910.1001). In this regard, the Committee observes that section 8 of NTS-008/17 determines that employers shall include in protocols for work in confined spaces the necessary safety mechanisms for entry into the premises, including preventive measures to be adopted during work, such as continuous monitoring of air in the workplace.

With reference to its previous comments on respiratory protective equipment and special protective clothing, the Government indicates that the Technical Standard on Demolition Work (NTS-006/17) provides that, when there is evidence of the existence of materials containing asbestos fibres, the requirements set out in the adequate procedures established by the national or foreign minimum safety and health standards applicable to work involving the risk of exposure to asbestos, shall be met. The Committee notes that NTS-009/18 provides that the enterprise or labour establishment shall attach to the occupational safety and health programme documents on the provision of work clothing and personal protective equipment. The Committee notes that the Government also indicates that the Regulations of Act No. 545 on safety in construction (DS No. 2936) establish the general requirement for the contractor to provide workers with appropriate individual protective equipment in relation to the hazards of the workplace in the sector. The Committee also notes the Government's indication that, in accordance with section 6(d) of DS No. 2936, the contractor shall provide without any cost to the workers, clothing, work apparel and personal protective equipment that is appropriate in relation to the risks analysed for the workplace, and that they shall be verified, inspected and reissued regularly in light of the deterioration and/or damage caused by their use. Finally, the Committee notes that the Government has not provided information on the application of *Article 15(2)* and *(3)* of the Convention. ***The Committee requests the Government to provide information on the measures adopted or envisaged to: (a) prevent or control the release of asbestos dust into the air; (b) ensure that the exposure limits or other exposure criteria are complied with; and (c) reduce exposure to as low a level as is reasonably practicable. The Committee once again requests the Government to provide specific information on the measures taken in relation to respiratory protective equipment and special protective clothing, as provided for in Article 15(4) of the Convention.***

Article 16. Practical measures for prevention and control. The Committee notes that NTS-009/18 provides that the enterprise or establishment shall undertake, through methodology, the identification of hazards and the assessment of risks in the activities undertaken, as well as other relevant measures. Under the terms of the Technical Safety Standard in force adopted by the Ministry of Labour, Employment and Social Welfare, or in the absence of such a Standard or another reference standard applicable to national conditions, the enterprise or labour establishment shall present a specific study on contaminating chemicals in the working environment (hazardous substances). ***The Committee requests the Government to provide additional information on the specific measures adopted to ensure that employers are made responsible for the establishment and implementation of practical measures for the prevention and control of the exposure of the workers that they employ to asbestos and for their protection against the hazards due to asbestos.***

Article 21(3) and (4). Information on medical examinations. Other means of maintaining income when assignment to work involving exposure to asbestos is inadvisable. With reference to its previous comments, the Committee notes that NTS-009/18 provides that the enterprise or establishment shall indicate in the occupational safety and health programme the following information: (a) pre-recruitment

medical examinations; (b) periodic examinations of workers in line with the risks identified in the "Hazard Identification and Risk Evaluation", including the development of any occupational diseases that are detected; and (c) post-employment examinations of workers who have concluded their work in the enterprise or establishment (post-employment management). The Committee also notes section 404 of the General Act on occupational safety and health and welfare (Legislative Decree No. 16998), which provides that care shall be taken in the selection of workers that each worker is assigned to the work for which she/he is best suited from the viewpoint of her/his aptitude and physical strength. However, the Committee observes that specific measures have not been adopted to bring the legislation into conformity with the requirements set out in *Article 21*. ***The Committee once again requests the Government to provide specific information on the measures adopted or envisaged to ensure that: (a) workers are informed in an adequate and appropriate manner of the results of their medical examinations and receive individual advice concerning their health in relation to their work; and (b) when continued assignment to work involving exposure to asbestos is found to be medically inadvisable, every effort is made, consistent with national conditions and practice, to provide the workers concerned with other means of maintaining their income, in accordance with Article 21(3) and (4) of the Convention.***

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

[The Government is asked to reply in full to the present comments in 2022.]

Lebanon

Radiation Protection Convention, 1960 (No. 115) (ratification: 1977)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3(1) and 6 of the Convention. All appropriate steps to ensure the effective protection of workers, in the light of available knowledge and maximum permissible doses of ionizing radiation. 1. *Lens of the eye.* The Committee notes that table 2 of Decree No. 11802, regarding the organization of prevention, safety and professional hygiene, sets the dose limitation to the lens of the eye as 150 mSv per year. ***With reference to paragraph 32 of its 2015 general observation on the application of Convention No. 115, the Committee requests the Government to take measures to ensure that the dose limits to the lens of the eye are set as 20 mSv per year, averaged over defined periods of five years, with no single year exceeding 50 mSv per year.***

2. *Protection for pregnant and breastfeeding workers.* ***With reference to paragraph 33 of its 2015 general observation on the application of Convention No. 115, the Committee once again requests the Government to provide information on any measures to establish the maximum permissible dose for workers who are pregnant or breastfeeding.***

Articles 6(1), 7(1)–(2) and 8. Dose limits for persons between 16 and 18 years. The Committee previously requested the Government to indicate whether Decree No. 700 of 1999 had been revised with a view to setting limits for workers under the age of 18 years involved in ionizing radiation work and prohibiting the engagement of workers under the age of 16 in such work. The Committee notes the Government's indication, in response, that Decree No. 700 has been repealed and replaced by Decree No. 8987 of 2012. Decree No. 8987 provides that engaging workers under the age of 18 in activities where they are exposed to carcinogenic substances, radiations or substances that may cause infertility or birth defects is totally prohibited (section 1 and Annex 1). It also notes that section 21 of Decree No. 11802 sets general dose limits for workers over 18 years of age in the terms of table 2 of the Decree's Annex. However, the Committee notes that Annex 2 of Decree No. 8987, concerning a list of work activities which are likely to harm the health, safety or morals of workers under the age of 16 years, and are allowed for workers aged 16 and over, includes those exposing workers to atomic or ionizing radiation, provided that these workers are offered full protection of their physical, mental and moral health and that these minors receive special education or appropriate vocational training, with an exception of the works totally banned in the terms of Annex 1. With reference to its 2015 general observation on the application of Convention No. 115, the Committee recalls that for occupational exposure of apprentices aged 16 to 18 years of age who are being trained for

employment involving radiation and for exposure of students aged 16 to 18 who use sources in the course of their studies, the dose limits are: (a) an effective dose of 6 mSv in a year; (b) an equivalent dose to the lens of the eye of 20 mSv in a year; and (c) an equivalent dose to the extremities (hands and feet) or to the skin of 150 mSv in a year. ***The Committee once again requests the Government to take the necessary measures, including in the course of the ongoing labour law reform, to ensure that specific dose levels are fixed for workers between the ages of 16 and 18 engaged in radiation work.***

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

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

Lesotho

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2001)

Articles 1 and 2 of the Convention. Scope of application. Public employees. The Committee notes the Government's indication, in reply to its previous request, that the national occupational safety and health (OSH) policy adopted in 2020 will pave the way for the adoption of the OSH Act, which will ensure that public employees benefit from the protection of the provisions of the Convention. The Committee further notes the Government's reference to section 138 of the Public Service Regulations, 2008, which provides that the Head of Department shall establish and maintain a safe and healthy work environment for public officers, and that a public officer shall not engage in any activity that threatens the safety of other public officers. ***Taking due note of this information, the Committee requests the Government to continue to provide information on the measures taken or envisaged to ensure that public employees benefit from the protection of the provisions of the Convention, as well as any progress made regarding the adoption of the envisaged OSH Act. It request the Government to provide a copy of the national OSH policy and the relevant legislation, once adopted.***

Articles 13 and 19(f). Protection of workers removed from imminent and serious danger. Following its previous comment, the Committee notes the Government's statement that the Labour Code Bill 2021 will give effect to these provisions of the Convention. The Committee also notes the Government's indication in its report under Convention No. 167, that the national OSH policy includes the right of the workers to refuse to undertake any work that is not safe because of hazards existing before the commencement of the job. ***The Committee requests the Government to provide information on any progress made towards the amendment to the Labour Code and to provide a copy of the relevant legislation as soon as it has been adopted, indicating the specific provisions giving effect to these Articles of the Convention.***

Article 17. Collaboration between two or more undertakings engaged in activities simultaneously at the same workplace. The Committee notes the Government's reference, in reply to its previous request, to section 25 of the Workmen's Compensation Act of 1977, which concerns liability in case of workers employed by contractors. However, the Committee observes that *Article 17* of the Convention refers to a situation where two or more undertakings are engaged in activities simultaneously at one workplace and collaboration is required in applying the requirements of the Convention. ***The Committee requests once again the Government to take measures to ensure in law and in practice that whenever two or more undertakings engage in activities simultaneously at one workplace, they collaborate in applying the provisions regarding OSH and the working environment.***

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

Madagascar

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received on 2 June 2015, to the effect that the number of accidents notified to the National Social Security Fund (CNAPS) is very low, owing to the fact that monitoring of the application of the Convention is not undertaken officially or at regular intervals, and that there should be an official report for this kind of notification. ***The Committee requests the Government to send its comments on this matter.***

Legislation. The Committee notes the concise information supplied by the Government in reply to its previous comments, in which it expressed the hope that the adoption of implementing regulations for the Occupational Safety and Health Code would enable effect to be given to *Articles 2* and *4 of the Convention*. It notes the Government's indication that Order No. 889 of 20 May 1960 establishing general occupational safety and health measures remains in force but that it intends to revise it in order to take account of the current context, including the protection of machinery, and that the participation of a number of entities and qualified persons will be necessary for the revision process. It also notes that section 120 of the Labour Code of 2004 provides that work installations and materials are subject to compulsory safety standards and must undergo systematic inspection, maintenance and checking in order to prevent the risk of accidents. Furthermore, the Committee notes the Government's indication that the labour inspectorate is intensifying controls on machines imported into the country. ***The Committee requests the Government to take the necessary steps to ensure the revision of Order No. 889, particularly with a view to giving effect to the Convention, and to provide information on all progress made in this respect. It also requests the Government to provide information on the measures taken in the meantime to ensure the application of Articles 2 and 4 of the Convention, prohibiting the vendor, the person letting out on hire or transferring the machinery in any other manner, the exhibitor or the manufacturer, to sell, let out on hire, transfer in any other manner or exhibit machinery of which the dangerous parts specified in Article 2(3) and (4) are without appropriate guards***.

Application in practice. The Committee requests the Government to provide an appreciation of the manner in which the Convention is applied in practice, including, for example, extracts from inspection reports and, where such statistics exist, details of the number of accidents recorded in relation to the Convention, the number and nature of infringements reported, etc.

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

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1966)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received on 2 June 2015, to the effect that: (1) the national legislation should be harmonized with the Convention, while taking account of the current context; and (2) new technologies in the areas of hygiene, safety and health should be developed. ***The Committee requests the Government to send its comments on this matter.***

Legislation. The Committee notes the Government's concise report, which indicates that following the socio-political instability of recent years, the country is now embarking on a return to constitutional order and that the formulation and implementation of a general state policy is a priority for the Government. The Committee also notes that Order No. 889 of 20 May 1960 establishing general occupational safety and health measures has still not been revised and that, in view of the complex scope of application of the aforementioned Order, which should be extended to take account of new technologies, the participation of a number of entities and qualified persons will be necessary for the revision process. ***The Committee requests the Government to take the necessary steps to ensure the revision of Order No. 889, particularly***

with a view to giving effect to the Convention, and to supply information on all progress made in this respect.

Article 14 of the Convention. Provision of suitable seats for workers. The Committee notes that, under section 115 of the Labour Code of 2004, workers must be provided with all furniture necessary for their comfort during their hours of work. ***The Committee requests the Government to supply additional information on the measures taken to ensure that sufficient and suitable seats are supplied for workers and workers have the opportunity to use them.***

Article 18. Noise and vibrations. Referring to its previous comments, the Committee once again requests the Government to supply information on the steps taken to ensure that noise and vibrations likely to have harmful effects on workers shall be reduced as far as possible.

Application in practice. ***The Committee requests the Government to provide a general appreciation of the application of the Convention in practice, including, for example, information on the number and nature of infringements reported and the corresponding penalties imposed.***

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

Maximum Weight Convention, 1967 (No. 127) (ratification: 1971)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received on 2 June 2015.

Article 3 of the Convention. Establishment of maximum weight for manual transport of loads. Further to its previous comments, the Committee notes with ***satisfaction*** the information provided in the Government's report concerning the entry into force of Inter-Ministerial Order No. 50149/2009 of 8 December 2009, setting the maximum weight for the manual transport of any load by a single male adult worker at 50 kg. In this regard, the Committee notes SEKRIMA's indication that many workers are unaware of the existence of the Order and that dissemination of it is necessary. ***The Committee requests the Government to send its comments on this matter.***

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

Malawi

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2019)

Safety and Health in Agriculture Convention, 2001 (No. 184) (ratification: 2019)

Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (ratification: 2019)

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 155 (OSH), 184 (safety and health in agriculture) and 187 (promotional framework for OSH) together.

The Committee notes that the first reports of the Government for Conventions Nos 155, 184 and 187 have not been received.

The Committee notes the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), received on 30 August 2021, concerning Convention No. 184. The Committee considers it appropriate to examine the content of the observations under Conventions Nos 155 and 187 as well.

Occupational Health and Safety Convention, 1981 (No. 155) and Safety and Health in Agriculture Convention, 2001 (No. 184)

Article 16(1) of Convention No. 155, Article 3(2) of Convention No. 187 and Article 18 of Convention No. 184. Employers' obligation to ensure that workplaces are without risks to health and safety. Promotion of a safe and healthy working environment. OSH measures for women workers in agricultural undertakings. The Committee notes that, according to the observations of the IUF, a number of women working in tea plantations and macadamia nuts orchards allege that they have been subjected to gender-based violence, including rape and sexual harassment. In particular, according to the IUF, women employed under seasonal, hence precarious, contracts, are forced to submit to the demands for sexual favours of supervisors for fear of losing their employment. In light of the above, the IUF requests that the Committee invites the Government of Malawi to accept ILO technical cooperation in order to address the issue of gender-based violence and harassment in the Malawi tea plantations. The Committee recalls that *Article 16(1)* of Convention No. 155 provides that employers shall be required to ensure that the workplaces under their control are safe and without risk to health. In addition, *Article 3(2)* of Convention No. 187 requires the promotion and advancement of the right of workers to a safe and healthy working environment. The Committee also recalls that, according to *Article 18* of Convention No. 184, measures shall be taken to ensure that the special needs of women agricultural workers are taken into account in relation to their reproductive health. ***Noting with serious concern the gravity of these allegations, the Committee requests the Government to provide its comments in this respect. The Committee expresses its firm hope that the Government will consider requesting technical assistance to address the matters raised by the IUF. The Commission trusts that the requested technical assistance will be carried out with a multidisciplinary approach in order to address these issues, from the perspective of the implementation of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as well.***

[The Government is asked to reply in full to the present comments in 2022.]

Mexico

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)

Articles 4 and 7 of the Convention. Consideration of the national policy on occupational safety and health (OSH) and the working environment. With regard to its previous request for information on available statistics relating to the number of accidents in the mining sector, the Committee notes that the Government indicates in its report that, according to Mexican Social Security Institute (IMSS) statistics, between 2017 and 2020, almost 1.5 million occupational accidents were reported at national level, of which less than 1 per cent occurred in extraction and exploitation of underground resources (mining, oil and gas). The Government adds that the statistics are not disaggregated to show accidents specifically occurring in the mining sector. The Committee notes the general information on occupational accidents and diseases, available on the web page of the Secretariat of Labour and Social Welfare, according to which for the period between 2009 and 2019: (i) the number of occupational accidents shows a decreasing trend (395,024 in 2009; 422,043 in 2011; 415,660 in 2013; 425,063 in 2015; 410,266 in 2017; and 399,809 in 2019); (ii) the number of occupational diseases mainly shows a continuous increase (4,101 in 2009; 4,105 in 2011; 6,364 in 2013; 12,009 in 2015; 14,159 in 2017 and 13,309 in 2019); and (iii) the number of fatal occupational accidents is falling (1,109 in 2009; 1,221 in 2011; 982 in 2013; 1,133 in 2015; 993 in 2017; and 939 in 2019). ***In light of these statistics, the Committee requests the Government to provide information to explain the increase in the number of occupational diseases between 2009 and 2019. The Committee also requests the Government to provide information on the measures adopted or envisaged at the national level, including with respect to specific sectors (including the mining sector) to continue the periodic review of its national policy in respect of OSH, in consultation with the most representative organizations of the employers and workers, with the aim***

of preventing the accidents and diseases that can result from work. The Committee also requests the Government to continue to provide information on available statistics related to occupational accidents, occupational diseases and fatal accidents recorded, if possible disaggregated by year and by sector.

Article 9. Adequate and appropriate system of inspection. Adequate penalties. With regard to its earlier request for information on the number of inspections as well on the number and nature of reported violations in the mining sector, the Committee notes the information provided by the Government on the number of inspections undertaken in extractive mines (5,533 inspections), the number of workers included (258,272 workers) and the number and nature of the measures adopted (23,327 technical safety and health measures) in the 2016–18 period, making particular reference to coal mining (219 inspections undertaken, benefiting 5,258 workers and with 1,991 technical measures taken). ***The Committee requests the Government to continue providing information on the operation of the inspection services in relation to OSH, making particular reference to the number of inspection visits, the number and nature of infractions detected, and the number and type of measures taken (including sanctions imposed), disaggregated by year and by sector (including the mining sector).***

Article 13. Protection of workers who remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health. With regard to its previous comments regarding the abolition of the requirement, included under section 343-D of the Federal Labour Act (LFT), of prior notification of, or authorization from, the joint safety and health committee for workers to be able to exercise their right to remove themselves from danger, the Committee notes that the Government considers that the notification that the worker must give under the above-mentioned provision is not a prior requirement or condition for the exercise of their right to remove themselves from imminent danger, but a duty to inform the employer, so that the latter may take the necessary steps to reduce the risk. The Committee, however, recalls that section 343-D of the LFT expressly establishes that workers can refuse to provide his services if and when the joint safety and health committee identifies an imminent risk situation that could endanger their life, physical integrity or health. Thus, the provision cited does not provide the possibility for workers to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health, without prior identification by the joint safety and health committee that the situation is an imminent danger to workers. ***Noting that section 343-D of the LFT does not give full effect to Article 13 of the Convention, the Committee once again requests the Government to adopt the necessary measures without delay, including legislative measures, to ensure that workers who deem it necessary to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health are protected from undue consequences. It also requests the Government to provide information on the measures taken in this respect.***

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

North Macedonia

White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1991)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes that in its brief report, the Government once again refers to the Rulebook on the Minimum Health and Safety Requirements Regarding the Exposure of Workers to Chemical Substances, indicating that pursuant to section 11(2) of the Rulebook, the procedures relating to the protection of health when working with dangerous chemical substances for which there is a binding biological limit value are provided for in Annex No. 2 of the Rulebook. However, the Committee notes that despite its request, the Government has not submitted a copy of the Rulebook and its annexes and has not provided information

on measures taken to give effect to the Convention. ***Recalling that the Office is available to assist governments in bringing their national law and practice into conformity with the Conventions, the Committee requests the Government to provide detailed information in its next report on measures taken or envisaged to give full effect to each of the provisions of the Convention and to submit a copy of the abovementioned Rulebook and its annexes.***

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

Sierra Leone

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)

For a number of years, the Committee has drawn the attention of the Government to the fact that the national legislation does not contain provisions to give effect to *Part II* of the Convention (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of *Article 17* of the Convention (which applies to all sectors of economic activity), as national laws do not apply to certain branches of activity, such as sea, air or land transport, and mining.

Since 1979, in reply to the Committee's comments, the Government has indicated that a Bill to revise the 1974 Factories Act was being drafted, which would contain provisions consistent with those of the Convention, and would apply to all branches of economic activity. In its report submitted in 1986, the Government indicated that the draft Factories Bill, 1985, which contained provisions to give effect to *Part II* of the Convention, had been examined by the competent parliamentary committee and submitted to Parliament for adoption. The Committee requested the Government to indicate the stage of adoption of the Bill.

In its report, the Government indicates that the Factories Bill has not been adopted and that, in 2018, the Factory Inspectorate was renamed the Directorate of Occupational Safety and Health and that a new instrument entitled "the Occupational Safety and Health Bill" has been drafted.

The Committee requests the Government to provide information on the OSH-related duties and responsibilities of the Factory Inspectorate. It also expresses the hope that the draft Occupational Safety and Health Bill will be adopted in the near future and will contain provisions which would give effect to Part II and Article 17 of the Convention. The Committee requests the Government to provide a copy of this text, once it has been adopted.

Turkey

Radiation Protection Convention, 1960 (No. 115) (ratification: 1968)

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)

Maximum Weight Convention, 1967 (No. 127) (ratification: 1975)

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2005)

Occupational Health Services Convention, 1985 (No. 161) (ratification: 2005)

Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2015)

Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 2015)

Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (ratification: 2014)

In order to provide a comprehensive view of the issues relating to the application of ratified occupational safety and health (OSH) Conventions, the Committee considers it appropriate to examine Conventions Nos 115 (radiation protection), 119 (guarding of machinery), 127 (maximum weight), 155 (OSH), 161 (occupational health services), 167 (OSH in construction), 176 (OSH in mining) and 187 (promotional framework for OSH) together.

The Committee notes the observations of the Confederation of Public Employees' Trade Unions (KESK) on the application of Convention No. 155, received on 1 September 2021, and the response of the Government received on 19 November 2021. The Committee also notes the observations of the Turkish Confederation of Employers' Associations (TISK) on Conventions Nos 115, 119, 127, 155, 161, 167, 176, 187, received on 8 September 2021.

COVID-19 measures. The Committee notes that, in reply to its previous request, the Government indicates in its report that an advisory board, consisting of 14 experts of public health, carried out studies regarding COVID-19 in workplaces. Accordingly, 36 guides and documents related to 24 different subject areas were prepared by taking into account the opinions of the scientific advisory board. The Government also enumerates the activities conducted by the Ministry of Family, Labour and Social Services to prepare informative and guidance material on OSH, and to raise awareness of the OSH system in various sectors of the economy. The Committee notes that, according to the Government, upon notifications and complaints related to COVID-19, a total of 4,630 workplaces were examined by the Directorate of Guidance and Inspection in 2020 and 2021. In addition, between January and April 2021, the Directorate conducted 2,773 scheduled and 723 unscheduled OSH inspections. The Committee takes note of this information, which addresses its previous request.

Articles 2, 3, 4(3)(a) and 5 of Convention No. 187, Articles 4, 7 and 8 of Convention No. 155, Article 1 of Convention No. 115, Article 16 of Convention No. 119, Article 8 of Convention No. 127, Articles 2 and 4 of Convention No. 161, Article 3 of Convention No. 167 and Article 3 of Convention No. 176. Continuous improvement of OSH in consultation with the most representative organizations of employers and workers and the national tripartite advisory body. National OSH policy and programme. In its previous comment, the Committee requested the Government to provide information on the review of its National OSH Policy and Action Plan for the period 2014–18, on the formulation and adoption of a new OSH policy and on the consultations held with the most representative organizations of employers and workers in this respect. The Committee notes that, in reply to its previous comments, the Government provides information on the actions undertaken within the annual performance indicators in each of the seven objectives set out in the National Action Plan 2014–18. The Committee also notes the Government's indication that, following the amendment of section 21 of the Occupational Health and Safety Law No. 6331 (OSH Act), adopted by Decree-Law No. 703 of 2018, the National Occupational Health and

Safety Council has been removed from the text of the OSH Act and references to the "National Occupational Health and Safety Council" in this law were replaced with a "Board or Authority under the Presidency". In its observations, KESK reiterates that there were no meetings of the Council since 2018. The Government indicates, in its report and in its response to the KESK observations, that the National Occupational Health and Safety Board will be steered by the Social Policies Council of the Presidency and that regular meetings and consultations with the Presidency of the Republic of Turkey are ongoing in connection with the establishment of the chairmanship of the Board. The Committee notes with ***concern*** that the Board is not yet established and that the Government does not provide information concerning its composition and mandate regarding OSH. The Committee further notes that the Government refers to the content of the 11th Development Plan for 2019–23 and the target to increase the quality and efficiency of the services carried out in the field of OSH. The Committee also notes that, according to TISK, the Development Plan provides for the implementation of a series of measures in the field of OSH, such as training and seminars, studies on the compliance of work equipment with OSH standards, and the development of occupational standards and qualifications. However, the Committee notes that the Government does not provide information on the revision of the National OSH Policy and Action plan for 2014–18 and on progress made in the adoption of the new policy and programme. ***The Committee requests the Government to provide detailed information on the establishment, mandate and composition of the National OSH Board under the Presidency and in particular, to indicate if it includes representatives of employers' and workers' organizations. The Committee requests the Government once again to provide information on the review of its National OSH Policy and Action Plan for the period 2014–18, including the evaluation of progress made with the performance indicators. The Committee also requests the Government to provide information on the formulation and adoption of a new OSH policy and programme for the subsequent period. It requests the Government once again to provide detailed information on the consultations held with the most representative organizations of employers and workers in this respect.***

Articles 2 and 3 of Convention No. 187 and Article 4 of Convention No. 155. Prevention as the aim of the national policy on OSH. The Committee notes the information provided by the Government regarding the prevention activities in the field of OSH, such as training, seminars, projects and publication of brochures and guides, carried out particularly in the construction, mining and agricultural sectors. The Committee also notes the information provided by the Government regarding the plan to establish an occupational accidents research centre that would examine occupational accidents, carry out studies with a preventive focus and ensure that necessary protection measures are adopted in advance. The Committee welcomes the detailed statistics provided by the Government covering the number of occupational accidents, fatal occupational accidents and occupational diseases by sectors, and the distribution of occupational diseases, according to age and gender for the period 2015–19. In addition, the Government provides information on the number of occupational accidents with a breakdown by causes, economic activity and gender for the years 2019 and 2020. The Committee further notes that, according to the figures provided by the Government, the number of occupational accidents in the construction, mining and agricultural sectors had an increasing trend between 2015 and 2018, but then decreased in 2019. The Committee notes that the most common causes of accidents are falls and those related to the use of machineries. ***In the framework of a national OSH policy and plan, as mentioned above, the Committee requests the Government to continue to provide information on the actions taken and the results achieved in order to promote, in consultation with the most representative organizations of employers and workers, basic principles such as assessing occupational risks or hazards; combating occupational risks or hazards at the source; and developing a national preventative safety and health culture that includes information, consultation and training. The Committee also requests the Government to continue to provide detailed information on the number of occupational accidents, including fatal accidents, in all sectors and workplaces. It also***

requests the Government to provide information regarding occupational diseases, including data disaggregated, by sector, age group, gender and type of occupational disease.

Articles 13 and 19(f) of Convention No. 155, Article 12(1) of Convention No. 167 and Article 13(1)(e) of Convention No. 176. Right of workers to remove themselves from danger. In its previous comment, the Committee requested the Government to take the necessary measures to ensure that national legislation or regulations provide that workers shall have the right to remove themselves from danger when they have good reason to believe that there is an imminent and serious danger (or in the case of workers in mines, when circumstances arise which appear, with reasonable justification, to pose a serious danger) to their safety or health. The Committee notes that the Government reaffirms that section 13(3) of the OSH Act, adopted by Decree-Law No. 703 of 2018, provides that workers are able to leave their place of work without going through the process of authorization foreseen in section 13(1) of the OSH Act, if the danger is serious, imminent and unavoidable. The Committee recalls that *Article 13* of Convention No. 155, *Article 12(1)* of Convention No. 167 and *Article 13(1)(e)* of Convention No. 176 do not refer to a danger that is "unavoidable" and include situations where the workers have a good reason or a reasonable justification to believe that there is an imminent and serious danger. ***Therefore, the Committee urges the Government to adopt the necessary measures in order to give full effect to Articles 13 and 19(f) of Convention No. 155, Article 12(1) of Convention No. 167 and Article 13(1)(e) of Convention No. 176, by ensuring that national legislation or regulations provide that workers shall have the right to remove themselves from danger when they have a reasonable justification to believe that there is an imminent and serious danger (or in the case of workers in mines, when circumstances arise which appear, with reasonable justification, to pose a serious danger) to their safety or health.***

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

Uganda

Asbestos Convention, 1986 (No. 162) (ratification: 1990)

The Committee notes with ***deep concern*** that the Government's report, due since 2018, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 3–18 and 20–22 of the Convention. Application of the Convention in law and in practice. Following its examination of the information at its disposal, the Committee notes that important information on measures giving effect to *Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21* and *22* of the Convention has not been submitted, namely:

- specific laws or regulations for the prevention and control of, and protection of workers against, health hazards due to occupational exposure to asbestos;
- specific regulations, if any, adopted in application of the National Environment Act 2019 (pursuant to section 71 of the Act) and repealing the National Environment (Waste Management) Regulations S.I No. 52/1999; and
- the application of measures taken to prevent, control, and to protect workers against, asbestos-related health hazards in practice.

The Committee requests the Government to provide detailed information on the points listed above without delay, including copies of the relevant pieces of legislation.

[The Government is asked to reply in full to the present comments in 2022.]

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 13** *(Lao People's Democratic Republic, Latvia, Madagascar, Mali, Mauritania, Montenegro, Morocco);* **Convention No. 45** *(Lesotho, Malawi, Malaysia: Peninsular Malaysia, Mexico, Montenegro, Nigeria, Sierra Leone, United Republic of Tanzania: Tanganyika);* **Convention No. 62** *(Mauritania);* **Convention No. 115** *(Latvia, Lebanon, Luxembourg, Mexico, Norway, Turkey, Ukraine);* **Convention No. 119** *(Latvia, Malaysia, Montenegro, Morocco, North Macedonia, Republic of Moldova, Turkey);* **Convention No. 120** *(Latvia, Lebanon, Norway);* **Convention No. 127** *(Lebanon, Luxembourg, Turkey);* **Convention No. 136** *(Lebanon, Morocco, North Macedonia);* **Convention No. 139** *(Guyana, Lebanon, Montenegro, North Macedonia, Norway);* **Convention No. 148** *(Lebanon, Luxembourg, Montenegro, North Macedonia, San Marino, Zambia);* **Convention No. 155** *(Latvia, Lesotho, Luxembourg, Mali, Mauritius, Mexico, Mongolia, Montenegro, Nigeria, North Macedonia, Norway, Republic of Moldova, Turkey);* **Convention No. 161** *(Luxembourg, Mexico, Montenegro, North Macedonia, Turkey);* **Convention No. 162** *(Luxembourg, Montenegro, Morocco, North Macedonia, Norway);* **Convention No. 167** *(Plurinational State of Bolivia, Lesotho, Luxembourg, Mexico, Montenegro, Norway, Turkey);* **Convention No. 170** *(Côte d'Ivoire, Lebanon, Mexico, Norway);* **Convention No. 174** *(Lebanon, Luxembourg);* **Convention No. 176** *(Guinea, Lebanon, Luxembourg, Mongolia, Morocco, Mozambique, Norway, Turkey, Zambia);* **Convention No. 184** *(Luxembourg, Republic of Moldova);* **Convention No. 187** *(Belgium, Guinea, Malaysia, Mauritius, Montenegro, North Macedonia, Norway, Republic of Moldova, Turkey).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 13** *(Luxembourg);* **Convention No. 127** *(Republic of Moldova);* **Convention No. 136** *(Montenegro);* **Convention No. 148** *(Latvia, Norway).*

Social security

Armenia

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 2004)

The Committee notes the observations of the Confederation of Trade Unions of Armenia (CTUA), communicated with the Government's report.

Article 11 of the Convention. Compensation of industrial accidents in the event of the insolvency of the employer or insurer. Since 2013, the Committee has been drawing the Government's attention to the case of workers employed by companies liquidated after 2004 who, following the adoption of Governmental Decision No. 1094-N of 2004, had not been paid compensation in cases of industrial injuries. In its previous comments, the Committee urged the Government to provide compensation for the workers currently seeking it, and for similarly situated workers henceforth, and to provide information concerning measures taken or envisaged in this regard.

The Committee notes the reply provided by the Government, indicating that the procedure for work-related injury compensation, in case of liquidation of companies, is set out in Governmental Decision No 914-N of July 23, 2009. In such cases, the capitalization of assets of the employer or company responsible for the payment of compensation to victims of work-related injuries is undertaken in accordance with the Civil Code. The current legislation does not make provision for cases where the capitalization of assets, pursuant to the above-mentioned procedure, would not be sufficient to provide the compensation that is due to victims, which, according to the Government, does not constitute a legal gap. In this connection, the Government indicates that, in its view, the State has the discretion to choose the policy deemed most appropriate with respect to existing socio-economic conditions.

The Committee further notes the observations of the CTUA in this regard, which considers that the approach taken by the Government results in discrimination for persons injured in workplace accidents in different years. The CTUA also maintains that injured workers employed in organizations which have been liquidated since August 2004 have been deprived of the right of social protection in the event of accidents and occupational diseases at workplace, while it is the state's duty to provide equality and social justice among its citizens and secure their right of social protection.

While taking note of the Government's position, the Committee recalls that by ratifying the Convention, it has undertaken to ensure that workers who suffer personal injury due to an industrial accident, or their dependants, shall be compensated, by virtue of *Article 1* of the Convention. This obligation is related to that of *Article 11* of the Convention, which requires the State to make such provision as, having regard to national circumstances, is deemed most suitable for ensuring in all circumstances, in the event of the insolvency of the employer or insurer, the payment of compensation to workers who suffer personal injury due to industrial accidents, or, to their dependants in case of death of the worker. In this regard, the Committee underlines that the consideration of national circumstances within the meaning of *Article 11* of the Convention only refers to the choice of means that the Government may take for its implementation, and not to the objective of this provision, which consists in ensuring the comprehensive protection of employees in the event of insolvency of the employer or insurer.

In view of the above, the Committee once again urges the Government to provide, without further delay, compensation to victims of work injury who have not received compensation due to the liquidations that have taken place between 2004 and 2009 and for similarly situated workers henceforth.

The Committee further requests the Government to take the necessary measures to ensure the due and effective compensation of injured workers and their dependents in the event of the insolvency

of the employer or insurer and requests the Government to provide information on any measures taken or envisaged in this regard.

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that member States for which the Convention is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI (see GB.328/LILS/2/1). Conventions Nos 121 and 102 reflect the more modern approach to employment injury benefits. ***The Committee once again encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group and to consider ratifying Convention No. 121 or Convention No. 102 (accepting its Part VI) as the most up-to-date instruments in this subject area.***

Djibouti

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1978)

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1978)

Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37) (ratification: 1978)

Invalidity Insurance (Agriculture) Convention, 1933 (No. 38) (ratification: 1978)

The Committee notes with ***deep concern*** that the Government's reports, due since 2018, have not been received. In light of the urgent appeal launched to the Government in 2020, the Committee is proceeding with the examination of the application of the Convention on the basis of the information at its disposal.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on social security, the Committee considers it appropriate to examine Conventions Nos 19 (equality of treatment, industrial accidents), 24 (sickness insurance, industry), 37 (invalidity insurance, industry), and 38 (invalidity insurance, agriculture) together.

Article 1(1) and (2) of Convention No. 19. Equality of treatment in relation to compensation for industrial accidents. In its previous comments, the Committee noted that since the Convention was ratified in 1978, it has been drawing the Government's attention to the need to amend section 29 of Decree No. 57-245 of 1957 concerning compensation for industrial accidents and occupational diseases. This provision sets out that foreign workers injured in industrial accidents who are no longer resident in the country receive a lump sum payment instead of a periodic payment, while nationals are not subject to the same condition of residence in order to obtain a periodic payment as compensation for an industrial accident. ***In the absence of new information in this regard, the Committee once again requests the Government to take the necessary measures, without delay, to grant to the nationals of any other Member having ratified the Convention, who suffer personal injury due to industrial accidents happening in its territory, or to their dependents, the same treatment in respect of worker's compensation as it grants to its own nationals, as provided for under Article 1(1) of the Convention. The Committee particularly requests the Government to proceed with the formal amendment or repeal of section 29 of Decree No. 57-245 so as to ensure equality of treatment to foreign workers and their dependents without conditions of residence, in accordance with the terms of Article 1(2) of the Convention.***

Articles 1, 3 and 6 of Convention No. 24. Setting up a system of compulsory sickness insurance. Sickness benefits. In its previous comments, the Committee requested the Government to provide information on the introduction of a universal sickness insurance within the framework of the reform

of the system of social protection announced by the Government in 2008. It also expressed the hope that this new insurance system would cover the payment of sickness benefits to insured persons, which were currently covered by employers, contrary to the terms of *Articles 1* and *3* of the Convention. While reiterating its concern at the absence of a Government report, the Committee takes due note that Act No. 24/AN/14/7th L of 5 February 2014 establishes a universal sickness insurance system (AMU) and that Decree No. 2014-156/PR/NITRA of 21 June 2014 issues the establishment of the Universal Health Insurance Solidarity Fund. The Committee specifically notes that universal sickness insurance covers basic healthcare for the entire population living in the territory (section 2 of Act No. 24/AN/14/7th L), by "covering the costs of the services provided by the contractual providers" (section 4) in addition to the benefits covered by the compulsory sickness insurance system provided for workers and other protected groups. Nevertheless, the Committee notes that cash benefits are not covered by the above Act and that, according to the information contained in *Social Security Programs Throughout the World: Africa, 2019* of the International Social Security Association (ISSA), they remain the responsibility of the employer. The Committee recalls that under *Article 3* of the Convention, read in conjunction with *Article 1*, sickness benefits payable to an insured person unable to work by reason of the abnormal state of his or her bodily or mental health, must be financed from a system of compulsory sickness insurance and shall not be borne directly by the employer. Further, in accordance with *Article 6* of the Convention, this system, must be administered by self-governing institutions, which shall be under the administrative and financial supervision of the competent public authorities or private institutions specially approved by the competent public authority.

In the light of the foregoing, the Committee requests the Government to take the necessary measures, without further delay, to give effect to Articles 3 and 6 of the Convention by establishing compulsory insurance, under the supervision of the State, for the payment of sickness benefits to workers protected by the Convention. In addition, the Committee requests the Government to provide detailed information on the manner in which Act No. 24/AN/14/7th L and Decree No. 2014-156/PR/NITRA, as well as other legislation subsequently adopted in relation to the universal sickness insurance and the Universal Health Insurance Solidarity Fund, give effect to the Convention. The Committee also requests the Government, if current statistics allow, to provide information on the healthcare provided by the universal sickness insurance and the compulsory sickness insurance systems.

Articles 1, 4, and 5(2), of Conventions Nos 37 and 38. Establishment of a compulsory invalidity insurance system for workers generally incapacitated for work. Conditions for entitlement to a pension. In its previous comments, the Committee noted the absence of a specific branch relating to invalidity benefits within the national social security system and requested the Government to establish an invalidity insurance scheme in order to give effect to Conventions Nos 37 and 38, which required the institution of compulsory invalidity insurance. The Committee further noted that, under Act No. 154/AN/02/4th-L of 31 January 2002 codifying the operation of the Social Protection Institute and the general retirement scheme for salaried employees, workers aged 50 years and over who are affected by a permanent physical or mental impairment, were only entitled to claim an early retirement pension when they had accrued a minimum of 240 contribution months (section 60 ff). In this regard, the Committee emphasized that the fixing of a minimum age at which a person can receive invalidity benefit was in breach of *Article 4* of Conventions Nos 37 and 38, which do not permit the right to invalidity benefits to be conditional upon reaching a specific age, although a qualifying period not exceeding 60 contribution months may be imposed under *Article 5* of the above Conventions. ***In the light of the foregoing, and in the absence of information on any measures that may have been taken by the Government to remedy the gaps in implementation noted above, the Committee requests the Government to take all necessary measures, without further delay, to give full effect to Conventions Nos 37 and 38 by establishing a compulsory invalidity insurance system or introducing invalidity benefits within its national social insurance system, guaranteeing the right of workers covered by the***

Conventions to such benefits under conditions at least equivalent to those set out in Articles 1, 4 and 5 of the Conventions.

Application of the Conventions in practice. Implementation of the national social protection strategy. While reiterating its concern at the absence of a Government report, the Committee takes due note of the adoption of the National Social Protection Strategy (SNPS) 2018–2022 of the Republic of Djibouti, established by Act No. 043/AN/19/8th L of 23 June 2019, as the national reference document for all regulations on social protection (section 2). In particular, the Committee notes that some of the priority pillars set out therein relate to matters covered by the social security Conventions ratified by Djibouti, as do the objectives laid out, which are aligned to some extent with the objectives of the relevant Conventions. Thus, the first pillar of the SNPS aims to guarantee the right to food security, while the second pillar provides for income guarantee for children to improve nutrition and health. With respect to invalidity, the aim of the third pillar is to ensure an income for older persons and those who are unable to work because of disability. The overall objective of the fourth pillar of the SNPS is to guarantee minimum income support for people of working age who are unable to earn an adequate income owing to life accidents and covers outcome 3.1, which aims to guarantee a minimum income for life to those who have a permanent physical disability that prevents them from returning to paid work, including those who have suffered an industrial accident or have an occupational disease. The Committee also observes the multiple references to the ILO Social Protection Floors Recommendation, 2012 (No. 202) in the SNPS, as a reference standard for the implementation of a national social protection floor, according to the above objectives, pillars and targets, in addition to the basic guarantees contained in Recommendation No. 202 with supplementary social protection programmes. ***The Committee welcomes the adoption of the SNPS 2018–2022 and hopes that its implementation will contribute to strengthening the application of the social security Conventions ratified by Djibouti. The Committee requests the Government to keep it informed of any measures adopted or envisaged in this regard.***

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that Member States for which Convention No. 24 is in force should be encouraged to ratify the most recent Medical Care and Sickness Benefits Convention, 1969 (No. 130) or the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting Parts II and III of this instrument (see GB.328/LILS/2/1). The Member States for which Conventions Nos 37 and 38 are in force should be encouraged to ratify the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), accepting its Part II, or Convention No. 102, accepting its Part IX. Conventions Nos 102 (Parts II and III) and 130 reflect the more modern approach to medical care and sickness benefits, while Conventions Nos 102 (Parts IX) and 128 (Part II) reflect the more modern approach to invalidity benefits. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group, and to consider ratifying Convention No. 128 (accepting Part II), Convention No. 130 and/or Convention No. 102 (accepting Parts II and III, as well as IX), which are the most up-to-date instruments in these subject areas.***

Guinea

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1967)

The Committee notes with ***deep concern*** that the Government's report, which has been due since 2016, has not been received. In light of the urgent call made to the Government in 2020, the Committee is therefore proceeding with the examination of the application of the Convention on the basis of the information available.

Article 5 of the Convention. Payment of benefits abroad. In its previous comments, the Committee noted the conclusion in 2012 of the Economic Community of West African States (ECOWAS) General

Convention on Social Security, which aims to enable migrant workers who have worked in one of the 15 ECOWAS Member States to exercise their right to social security in their country of origin through the coordination of national social security systems, while noting that Cabo Verde was however the only other ECOWAS Member State that had ratified Convention No. 118. The Committee recalls that, under the terms of *Article 5(1)*, Guinea is under the obligation to guarantee the provision of old-age benefits, survivors' benefits and death grants, and employment injury pensions to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of these branches, when they are resident abroad. ***The Committee requests the Government to indicate whether, as provided in section 91 of the Social Security Code, issued by Act No. L/94/006/CTRN of 14 February 1994, the provision of the above benefits is guaranteed in practice to nationals of other States that are parties to the Convention which have accepted the same branches, when they are resident abroad. In this regard, the Committee once again requests the Government to indicate whether a procedure for the transfer of benefits abroad has been established by the National Social Security Fund and to indicate whether procedures are also envisaged in the case of residence in a third country. The Committee also once again requests the Government to indicate whether Guinea nationals who transfer their residence abroad can also receive their benefits abroad, in accordance with Article 5 of the Convention.***

Articles 6 and 10. Payment of benefits to families. With reference to the comments that it has been making for many years concerning the provision of family allowances to workers whose children are resident abroad, the Committee noted in its previous comment that, under the terms of section 94(2) of the Social Security Code, to be entitled to family benefit, dependent children must reside in the Republic of Guinea, subject to the special provisions of the international Conventions on social security of the International Labour Organization, reciprocal agreements or bilateral or multilateral agreements. The Committee recalls that, in accordance with *Article 6* of the Convention, any State which has accepted the obligations of the Convention for branch (i) of *Article 2* (family benefit), shall guarantee the grant of family allowances both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention for that branch, in respect of children who reside on the territory of any such Member, under conditions and within limits to be agreed upon by the Members concerned. *Article 10(1)* of the Convention also provides that the provisions of the Convention apply to refugees and stateless persons without any condition of reciprocity.

In the absence of updated information at its disposal on this matter, the Committee once again requests the Government to indicate whether family benefit is also provided for insured persons who are up to date with their contributions, whether they are nationals of Guinea or of States which have accepted the obligations of the Convention for branch (i) of Article 2 (family benefit), whose children are resident on the territory of one of the States that has ratified the Convention and accepted the obligations for the same branch, in accordance with Article 6 of the Convention, as well as to refugees and stateless persons without any condition of reciprocity, as provided in Article 10(1) of the Convention. The Committee also reiterates its request to the Government to provide information on the manner in which, in such cases, the lifting of the condition of residence in accordance with the above provisions of the Convention is harmonized in practice with the application of section 99(2) of the Social Security Code, which only recognizes as dependent those children who live with the insured person, and with section 101, under which the provision of family allowances is subject to an annual medical examination of the child, up to the age at which the child comes under the school medical service and the care provided to those attending educational or vocational training courses.

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

Haiti

Workmen's Compensation (Agriculture) Convention, 1921 (No. 12) (ratification: 1955)

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1955)

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1955)

Sickness Insurance (Agriculture) Convention, 1927 (No. 25) (ratification: 1955)

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1955)

While noting the difficult situation experienced by the country, the Committee notes with ***deep concern*** that the Government's reports, which have been due since 2013, have not been received. In light of the urgent appeal made to the Government in 2019, the Committee is proceeding with the examination of the application of the Conventions on the basis of the information at its disposal.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on social security, the Committee considers it appropriate to examine Conventions Nos 12 (workers' compensation, agriculture), 17 (workers' compensation, accidents), 24 (sickness insurance, industry), 25 (sickness insurance, agriculture) and 42 (revised, workers' compensation, occupational diseases) together.

Article 1 of Conventions Nos 12, 17 and 42, application in practice. Guaranteeing effective coverage and the right of workers and their dependants to compensation in the event of employment accidents and occupational diseases. In its previous comments, the Committee noted that most agricultural workers are excluded from the scope of application of social security legislation, including the Act of 28 August 1967 establishing the Employment Injury, Sickness and Maternity Insurance Office (OFATMA), due to the absence of formal agricultural enterprises. The Committee also noted difficulties in the application of the legislation, even in relation to workers in the formal economy. Moreover, the Confederation of Public and Private Sector Workers (CTSP), in its observations received in 2019, alleges that the legislation in force does not cover apprentices and that, in practice, municipal and State workers and domestic workers are not covered by employment accident insurance.

In this regard, the Committee observes that, according to the information contained in the National Social Protection and Promotion Policy (PNPPS) adopted by the Government in April 2020, employment accident and occupational disease insurance only covers the formal economy, and mainly workers in the textile and apparel industries. The Committee also notes from the PNPPS, that these industries are still characterized by a high rate of non-conformity with occupational safety and health standards (an average of 76.5 per cent), even though there is a high risk of accidents. Indeed, the last report of the OFATMA, published in 2014–15, and quoted in the PNPPS, indicates that 2,522 employment accidents were processed (2,030 men), 42 per cent of which were in the textile and apparel industries and in construction. According to the same report, employment accident benefits, paid to 1,365 persons, amounted to HTG 17.6 million. In the agricultural sector, the PNPPS reports that 94.7 per cent of the workers are paid below the minimum wage and that the work is still principally informal.

Finally, the Committee notes with ***concern*** the indications contained in the PNPPS that the OFATMA does not cover occupational diseases, as required by the law.

On the basis of the information at its disposal, the Committee is bound to conclude that the significant gaps in coverage reported previously by the Government continue to exist and that the great majority of workers in Haiti, and their dependants, are not covered by compensation in the event of employment accidents and occupational diseases, and that effect is not therefore given to *Article 1* of Conventions Nos 12, 17 and 42. However, the Committee notes that, with a view to remedying the gaps in protection, the PNPPS sets as a specific objective the protection of all men and women workers

against the risks of employment injury and economic dependence related to invalidity as a result of an employment accident, as well as cases of occupational diseases, through the extension of insurance within the framework of the reform of social security institutions. With reference to the coverage of agricultural workers, the PNPPS provides for insurance subsidies for livelihoods as a financial support mechanism for the resilience of self-employed workers and small enterprises and undertakings in the agricultural and fishing sectors.

Observing that the objectives of the PNPPS are in line with the objectives of Conventions Nos 12, 17 and 42, and that the measures envisaged will reinforce the application of Article 1 of these Conventions, the Committee requests the Government to provide information on the progress achieved in their implementation, and particularly with reference to the extension of coverage of compensation for employment accidents and occupational diseases to the workers covered by these Conventions. The Committee also requests the Government to provide information on any other measures adopted or envisaged to ensure the effective entitlement of these workers to compensation in the event of employment accidents and occupational diseases.

Articles 1, 2 and 6 of Conventions Nos 24 and 25. Establishment of a system of compulsory sickness insurance for the effective protection of workers and their families in the event of sickness. In its previous comments, the Committee noted the Government's intention to continue its efforts to progressively establish a sickness insurance branch covering the whole of the population. In this regard, the Committee emphasized the need to the Government to envisage as a priority the establishment of mechanisms to provide the population as a whole, including workers in the informal economy and their families, with access to basic health care and to a minimum income in cases where their earnings capacity is affected as a result of sickness, an employment accident or an occupational disease, and it drew attention to the relevance of the guidance provided in this regard in the Social Protection Floors Recommendation, 2012 (No. 202).

The Committee notes the information contained in the PNPPS reporting the limited coverage of social protection, with the exception of sickness insurance, with 500,000 persons being covered directly by the OFATMA. The Committee notes that, despite the existence of sickness insurance, the PNPPS indicates that the sick, and particularly the poorest, make very little use of health services because of the high cost of direct payments for health care, which are paid by users, and the prevalence of private profit-making institutions in the provision of health care and services. The Committee recalls in this respect that Conventions Nos 24 and 25 require the establishment of a system of compulsory sickness insurance (*Article 1*) for the provision of medical care and sickness benefits to all manual and non-manual workers, including apprentices, employed in industrial, commercial and agricultural undertakings, as well as homeworkers and domestic workers (*Article 2*), and medical benefit for members of their families, as appropriate (*Article 5*). *Article 6* of the Conventions adds that sickness insurance shall be administered by self-governing institutions under the administrative and financial supervision of the public authorities and shall not be carried out with a view to profit, and that private institutions must be specially approved by the public authorities.

As it emphasized in previous comments, and taking into account the situation experienced in Haiti, the Committee considers that it is still necessary for the Government to envisage as a priority the establishment of mechanisms to provide the population as a whole, including workers in the informal economy and their families, with access to basic health care and a minimum income when their earnings capacity is affected as a result of sickness, an employment accident or occupational disease, in line with the guidance contained in Recommendation No. 202. In this regard, while reiterating its concern at the absence of a Government report, the Committee takes due note that, according to the information contained in the PNPPS, health insurance is currently being set up progressively, with a view to the extension of coverage to self-employed workers in the informal economy on the basis of a subsidy which would make it possible to collect contributions from workers, in accordance with their contributory capacity.

In light of the above, the Committee requests the Government to report on the progress achieved in extending statutory and effective coverage of compulsory sickness insurance and the sickness insurance scheme to workers in Haiti and the members of their families, as appropriate, and any specific measures taken for this purpose.

Article 8, in conjunction with Articles 6, 7, 10 and 11 of Convention No. 17, and Article 6 of Conventions Nos 24 and 25. Responsibility of the State for the establishment, control and administration of the compensation scheme for employment accidents and sickness insurance. The Committee notes the allegations made by the CSTP, in its 2019 observations, according to which there are failings in the application of several Articles of Convention No. 17, due to problems related to the management and organization of the OFATMA. The CSTP indicates, more specifically, that: (i) *Article 6* of Convention No. 17 is not applied in practice due to the delays in the provision by the OFATMA of the benefits payable as from the fifth day: (ii) the additional compensation required by *Article 7* of the Convention is not paid; (iii) the supply and renewal of artificial limbs and surgical appliances, envisaged in *Article 10* of the Convention, is not implemented; and (iv) the payment of compensation to workers who are victims of accidents and their dependants is not ensured in the event of the insolvency of the employer or insurer, as required by *Article 11* of the Convention, due to the very weak system for the enforcement of the legislation. The CSTP also alleges a lack of transparency in the administration of the OFATMA. Finally, the CSTP alleges that the Board of Directors of Social Security Organizations (CAOSS), a tripartite body administering State social protection and social security institutions, is dysfunctional, which is affecting the methods of controlling employment accidents. In view of the above, the CSTP therefore emphasizes the need to deal at a higher level in a framework of social dialogue, with ILO support, with the situation of tripartite social protection and social security bodies, while carrying out actuarial studies and audits of the OFATMA and discussing once again a deep-rooted reform of the Ministry of Social Affairs and Labour (MAST). The Committee also notes the information provided by the Confederation of Haitian Workers (CTH) and the Confederation of Public and Private Sector Workers (CSTP) to the International Trade Union Confederation (ITUC), and received in 2020, indicating that, in practice, contributions are not paid to the social security system by employers or the authorities and that workers who dare to present claims are dismissed.

The Committee notes that the Decent Work Country Programme (DWCP) 2015–20, approved by the ILO tripartite constituents, should have resulted in the reform of the social security legislation, as well as an improvement in the effectiveness of the contributions system and the sound operation of the tripartite administration of social protection institutions. The Government also made a commitment in this framework to strengthen the role and technical capacities of the CAOSS, the National Office of Old-Age Insurance (ONA), the OFATMA and other key institutions with a view to the progressive extension of social protection coverage. The Committee notes that these objectives are taken up, at least in part, in the 2020 PNPPS, which indicates that the provisions of social security laws and regulations will be extended with a view to rationalizing the administration of schemes that is currently undertaken by several institutions and facilitating the transfer of the rights of contributors. The strengthening of the CAOSS is also planned alongside the reforms of the ONA and the OFATMA envisaged in the PNPPS in relation to social protection. The Committee observes that these objectives are in line with the improved application of *Article 6* of Conventions Nos 24 and 25 and *Article 8* of Convention No. 17 which establish, respectively, the responsibility of the State for the administration of sickness insurance schemes and for the adoption of the measures of supervision necessary for the effective implementation of employment accident compensation schemes.

In light of the above, the Committee expresses the firm hope that the objectives set out in the DWCP and the PNPPS in relation to the strengthening of social security and social protection institutions and their sound governance will be achieved and emphasizes the importance of social dialogue in this respect. It requests the Government to provide information on any progress achieved in this respect. In particular, the Committee requests the Government to report any measures adopted

or envisaged to improve the administration of social security bodies and institutions, the collection of contributions and in general to ensure the establishment in practice of social insurance schemes, particularly for employment accidents and occupational diseases, in conformity with Article 8 of Convention No. 17 and Article 6 of Conventions Nos 24 and 25.

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that Member States for which Conventions Nos 17 and 42 are in force should be encouraged to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI (GB.328/LILS/2/1). Member States for which Conventions Nos 24 and 25 are in force should be encouraged to ratify the Medical Care and Sickness Benefits Convention, 1969 (No. 130), and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Parts II and III. Conventions Nos 121, 102 and 130 reflect the more modern approach to employment injury benefit and medical care and sickness benefit. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group and to consider ratifying Convention No. 121 and/or Convention No. 102 (accepting the obligations in Part VI), and Convention No. 130 and/or Convention No. 102 (accepting the obligations in Parts II and III), as the most up-to-date instruments in these subject areas.***

The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in relation to the matters raised above.

Lebanon

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1977)

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1977)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on workmen's compensation, the Committee considers it appropriate to examine Convention No. 17 (accidents) and No. 19 (equality of treatment) together.

Convention No. 17. Application of the Convention in practice. In its previous comments, the Committee hoped that the Government would make every effort to complete the reforms required to guarantee the protection afforded by the Convention to injured workers. The Committee notes the information provided by the Government in its report according to which, issues in the application of the Convention were due to the delayed implementation of the Occupational Accidents and Occupational Diseases Branch, established by the Social Security Code (Decree No. 13955 of 1963) but not yet established in practice. The Committee notes with ***concern*** that compensation in case of work-related accidents is still regulated by Legislative Decree No. 136 of 1983, which it has previously found not to be in compliance with the requirements of the Convention in many respects: *Article 2* – the necessity to make the above Legislative Decree applicable to apprentices; *Article 5* – the necessity to provide in the event of employment injury that the compensation shall be paid in the form of periodical payments to the injured worker or his or her dependants, provided that it may only be paid in the form of a lump sum where there are guarantees that it will be properly utilized; *Article 6* – the payments of compensation in case of temporary incapacity from the fifth day following the accident at the latest and throughout the duration of the invalidity, that is until the worker is cured, or up to the date of the commencement of the periodical payments for permanent incapacity; *Article 7* – necessity to provide additional compensation where the worker requires the constant help of another person; *Article 8* – provision for review of the periodical payments either automatically or at the request of the beneficiary in the event of a change in the condition of the worker; and *Article 11* – making provision for guarantees in the

event of the insolvency of the insurer, inter alia. The Committee observes that, despite the comments it has been making for many years, the measures necessary to bring the national legislation into conformity with the Convention have still not been taken. ***The Committee once again requests the Government to report on measures envisaged or taken with a view to giving full effect to the Convention, including measures related to the amendment of Legislative Decree No. 136 of 1983 and the implementation of the Occupational Accidents and Occupational Diseases branch of the Social Security Code.***

Article 1(1) and (2) of Convention No. 19. Equality of treatment for survivors. In its previous comments, the Committee recalled that, for many years, it has been drawing the Government's attention to the issue of the right of survivors of foreign workers, originating from a country party to Convention No. 19, to receive a pension even if they did not reside in Lebanon at the time of the accident causing the death of their breadwinner, and hoped that the new Labour Code would guarantee this right in law and practice and would not forestall the corresponding amendment of the legislation governing compensation for employment injuries, namely section 10 of Legislative Decree No. 136 of 1983 and sections 9(3), subparagraphs (2) and (4) of the Social Security Code. The Committee notes the Government's indication that it would be necessary to amend the relevant provisions in the Social Security Code once the Occupational Accidents and Occupational Diseases Branch is enacted to give effect to the Convention. ***Recalling that the Convention guarantees equality of treatment between the dependants of nationals and those of foreign workers from a country which has ratified the Convention without any requirement as to residence and irrespective of any reciprocity condition, the Committee once again requests the Government to take necessary measures to bring the national legislation in conformity with the Convention.***

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM tripartite working group), the Governing Body has decided that member States for which Convention No. 17 is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting its Part VI (see GB.328/LILS/2/1). Conventions Nos 102 and 121 reflect the more modern approach to employment injury benefits. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM tripartite working group and to consider ratifying Conventions Nos 102 (Part VI) or 121 as the most up-to-date instruments in this subject area. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office in this regard.***

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

Mauritania

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1968)

Part XIII (Common provisions) of the Convention, Article 71(3) and Article 72(2). General responsibility of the State for the provision of benefits and the proper administration of the social security system. For many years, the Committee has raised questions regarding the application of the Convention in practice, in view of the concerns expressed by the Free Confederation of Mauritanian Workers (CLTM) and the General Confederation of Workers of Mauritania (CGTM), regarding the Government's management of the national social security system. In its previous comments, the Committee noted the various measures taken by the Government and the national authorities to counter evasion of contributions, to ensure the registration of new employers with the National Social Security Fund (CNSS) and to increase effective coverage by simplifying administrative procedures. On the basis of that information, the Committee requested the Government to report on the progress achieved in the implementation of the announced reforms, in particular, in the context of the plan of action instigated by the CNSS for 2014–2020.

The Committee notes with ***regret*** the absence of tangible progress reported by the Government in this connection. The Committee nevertheless notes that, according to the Government, the Bill modifying and replacing Act No. 67-039 of 3 February 1967 establishing a social security scheme and its

accompanying explanatory notes have been submitted to the competent technical body. The Government also indicates that the drafts of the implementing orders and decrees of the Bill have also been prepared and that they will be submitted to the technical body, following promulgation of the Act.

In light of the systematic problems related to the functioning of the social security system in Mauritania, the Committee recalls that under *Articles 71(3) and 72(2)* of the Convention, the State shall accept general responsibility for the due provision of the social security benefits provided as well as for the proper administration of the institutions and services of the social security system. As set out previously, the Committee considers that the proper administration of the social security system by the State, in conformity with the above-mentioned Articles of the Convention, must be based on a clear and precise legal framework, reliable actuarial data, supervision by the representatives of the persons protected, an effective inspection system and sufficiently dissuasive penalties. ***The Committee therefore requests the Government to take the measures required to ensure the proper administration of the national social security system and provision of benefits, in conformity with Articles 71(3) and 72(2) of the Convention, and to give full effect to the Convention in practice. The Committee also requests the Government to provide information on the results of the CNSS plan of action for 2014–2020. It further requests the Government to provide a copy of the Act modifying and replacing Act No. 67-039 of 3 February 1967 establishing a social security regime, once it has been adopted, together with its implementing decrees and orders.***

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

Mauritius

Workmen's Compensation (Agriculture) Convention, 1921 (No. 12) (ratification: 1969)

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1969)

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1969)

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on social security, the Committee considers it appropriate to examine Conventions Nos 12 (workers' compensation, agriculture), 17 (workers' compensation, accidents), and 19 (equality of treatment, accident compensation) together.

Article 1 of Convention No 12, and Article 2 of Convention No. 17, in conjunction with Articles 5, 7, 9, 10 and 11 of Convention No. 17. Scope of application of legislation on workers' compensation. For more than 40 years, the Committee has been drawing the Government's attention to the lack of compliance of the Workmen's Compensation Act (Chapter 220), 1931, applicable to certain categories of workers excluded from the National Pensions Act, 1976, with the following provisions of Convention No. 17: *Article 5* (compensation in the form of periodical payments in cases of permanent incapacity or death of the injured worker); *Article 7* (additional compensation for injured workers who must have the constant help of another person); *Article 9* (entitlement to the necessary medical and surgical aid, free of charge); *Article 10* (supply and renewal of artificial limbs and surgical appliances); and *Article 11* (guarantees in the event of the insolvency of the employer or insurer).

The Committee pointed, in particular, to the unequal treatment in coverage for work accident compensation that ensued for certain categories of workers, and notably for employees of the central government and of parastatal bodies and local authorities earning less than a prescribed amount and workers in the sugar industry. On this basis, the Committee requested the Government to conclude the merger of the Workmen's Compensation Act (Chapter 220), 1931 and the National Pensions Act, 1976, indicated by the Government as a means to give effect to the above-mentioned provisions of Convention

No. 17 since 1999, and to take other measures to bring the national legislation fully in line with Conventions Nos 12, 17 and 19 for all the categories of workers protected by the Conventions.

The Committee notes with ***interest*** the indication by the Government, in its report, that the National Pensions Act, 1976, has been amended by the Social Contribution and Social Benefit Act, No. 14 of 2021 (SCSB Act), which covers all industrial injuries and all workers who draw an income, without exceptions (sub-part III of Part III, SCSB Act). In this context, the Government points out that a merger between the Workmen's Compensation Act, 1931, and the SCSB Act, which has amended the National Pensions Act, 1976, is now being considered.

While taking due note of the adoption of the SCSB Act, the Committee observes, that, pursuant to its section 2, public sector employees are excluded from the definition of employees for the purpose of sub-part III of Part III of the SCSB Act, which regulates industrial injury benefits, and that apprentices under a contract of apprenticeship regulated by the Mauritius Institute of Training and Development Act are also excluded from coverage under sub-part III of Part III. The Committee further observes that the Workmen's Compensation Act, 1931, is still in force, which suggests that certain categories of workers continue to be subjected to an unequal treatment in case of industrial injury, and granted a lesser protection than that set out in the Conventions. In this respect, the Committee recalls that, pursuant to *Article 2* of Convention No. 17, all workers, employees and apprentices employed by any enterprise, undertaking or establishment of whatsoever nature, whether public or private who suffer personal injury due to an industrial accident, shall be granted compensation, on terms at least equal to those provided by the Convention. As for Convention No. 12, it requires, under its *Article 1*, the extension to all agricultural wage-earners of laws and regulations making provision for the compensation of workers for personal injury by accident arising out of or in the course of their employment.

In light of the above, the Committee requests the Government to provide clarifications as to the provisions of its national legislation regulating the compensation of workers excluded from the scope of protection of sub-part III of Part III (Industrial Injury Benefits) of the SCSB Act, 2021, for work-related injury. The Committee requests the Government to specify, in particular, the provisions applicable to employees of the central government, parastatal bodies and local authorities, and workers in the sugar industry.

In the event that some workers are still covered by the Workmen's Compensation Act, the Committee requests the Government to take the necessary measures to ensure that these workers and their dependents are duly compensated in cases of work-related injury, on terms at least equal to those provided by Conventions Nos 12 and 17.

Article 1(1) of Convention No. 19. Equality of treatment for non-national workers and their dependants. For many years, the Committee has been noting that non-citizen workers employed in export processing zones and who have resided less than two years in Mauritius were not considered as insured persons under the National Pensions Act, and were only entitled to work injury benefits under the Workmen's Compensation Act, 1931, which provided a lesser protection.

The Committee notes the Government's indication that non-citizen employees residing in Mauritius are covered by the SCSB Act in case of an industrial accident. The Committee notes, however, that non-citizen employees, employed by an export manufacturing enterprise who have resided in Mauritius for a continuous period of less than 2 years, are still excluded from participation in the social insurance system which ensures protection against industrial injuries, pursuant to section 2 of the SCSB Act. The Committee recalls that *Article 1(1)* of the Convention requires that a ratifying member State must grant to injured workers who are nationals of any other member State that has ratified the Convention, or to their dependants, the same treatment in respect of workmen's compensation as it grants to its own nationals.

The Committee urges the Government to take the necessary measures to ensure that non-citizen workers employed in export processing zones who have resided less than two years in the country are

granted the same treatment in industrial injury compensation as nationals and other foreign workers under the SCSB Act, 2021, in application of Article 1 of Convention No. 19.

Conclusions and recommendations of the Standards Review Mechanism. With respect to its previous comment, the Committee recalls the recommendations of the Standards Review Mechanism (SRM) Tripartite Working Group, based on which the Governing Body has decided that Member States for which Convention No. 17 is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI (see GB.328/LILS/2/1). ***Taking note of the Government's indication that due consideration would be given to ratification of most up-to-date relevant instruments, the Committee encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group, and to consider ratifying Conventions Nos 121 or 102 (Part VI) as the most up-to-date instruments in the area of employment injury benefit, and reminds the Government of the possibility to avail itself of the technical assistance of the Office in this regard.***

Mexico

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1961)

Article 28 of Part V (Old-age benefit), Articles 65 and 66 of Part XI (calculation of periodic payments) and the appended Schedule. Guarantee of the minimum level of benefit. With regard to its previous comments that the protection provided by the pension system does not provide the guarantees required under Article 65 of the Convention in respect of the minimal replacement rates for old-age pensions, the Committee notes the statistical data from the Mexican Institute of Social Security (IMSS), provided by the Government with its report. The data indicate a replacement level, between 2013 and May 2016, of between 73.6 and 74.6 per cent of beneficiaries' average previous earnings for old-age and retirement benefits provided, in accordance with the Acts on the IMSS of 1973 and 1997. The State Workers' Social Security Institute (ISSSTE) provided average pension replacement rates of 55 per cent up to 2016, with the average wage taken as 7,567.86 pesos and the average pension as 4,188.57 pesos.

While taking note of this information, the Committee considers that it does not demonstrate the capacity of the current IMSS and ISSSTE pension schemes to guarantee a minimum old-age pension corresponding to 40 per cent of previous earnings, for a standard beneficiary (as defined in the Schedule to Part XI of the Convention), after 30 years of contributions. As it has pointed out several times, the Committee recalls that the amount of the pensions provided by the IMSS and ISSSTE schemes, which following the 1997 and 2007 reforms, are compulsory individual capitalization accounts, cannot be determined in advance, but depend on the capital accumulated in the workers' individual accounts, and especially on the rate of return obtained. Therefore, as the Committee concluded previously, they do not comply with the requirements of *Article 65* of the Convention.

The Committee also notes that the IMSS pension scheme guarantees a minimum pension to workers on reaching the age of 60 years, having registered one thousand weeks of contributions, of which the amount is calculated according to the table appended to section 170 of the Social Security Act, reformed in 2020. According to the Government, by virtue of this reform, the amount of the pension guaranteed by the State to workers who do not have sufficient funds in their individual accounts has increased. Similarly, the ISSSTE pension scheme provides for a guaranteed monthly pension of 3,3034.20 pesos, updated annually in line with changes in the National Consumer Price Index (section 92 of the Act on the ISSSTE). The State guarantees this pension to affiliated workers that fulfil the age and qualifying period conditions laid down in section 89 of the Act.

The Committee recalls, once again, that the minimum guaranteed pension provided by the IMSS and ISSSTE can be assessed with reference to *Article 66* of the Convention, which requires the rate of

old-age pension to correspond to least 40 per cent of the reference wage of an ordinary adult male labourer, determined in accordance with *Article 66(4–7)*, after 30 years of contributions.

The Committee reiterates its request and firmly hopes that the Government will be able to provide, without further delay, the information necessary to demonstrate that the rate of the minimum guaranteed pensions provided by the IMSS and ISSSTE schemes comply with the requirements laid down in Article 28, in conjunction with Article 66, of the Convention. The Committee requests the Government to provide the necessary calculations to that end, following the methodology established in Article 66 of the Convention.

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

Saint Lucia

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1980)

The Committee notes with ***deep concern*** that the Government's report, due since 2016, has not been received. In light of its urgent appeal launched to the Government in 2019, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 7 of the Convention. Additional compensation for the constant help of another person. For many years, the Committee has been noting that no provision is made in national legislation for the payment of additional compensation for injured workers requiring the constant help of another person. The Committee notes with ***concern*** that the legislative texts regulating the provision of compensation in case of work accident, particularly the National Insurance Corporation Act No. 18 of 2000 and the National Insurance Regulations of 2003, have not been amended in this respect. ***Recalling that Article 7 of the Convention requires that all injured persons whose incapacity is of such nature that they need the constant help of another person be provided with additional compensation, the Committee requests the Government to take the necessary measures, without further delay, to bring the national legislation in line with Article 7 of the Convention.***

Articles 9 and 10. Medical, surgical and pharmaceutical aid, artificial limbs and surgical appliances free of charge. Since the adoption of the National Insurance Regulations of 2003, the Committee has been noting that, under its section 68(2), the compensation for medical, surgical or pharmaceutical expenses is limited to 20,000 East Caribbean dollars, whereas no such ceiling is foreseen in *Articles 9* and *10* of the Convention in case of work accident. The Committee notes with ***concern*** that the provision of section 68(2) of the National Insurance Regulations of 2003 remains the same. ***Recalling that pursuant to Articles 9 and 10 of the Convention, necessary medical, surgical and pharmaceutical aid as well as the artificial limbs and surgical appliances shall be provided free of charge to the victims of work accidents, without limitation of cost, the Committee requests the Government to take the necessary measures, without further delay, to bring the national legislation in full compliance with Articles 9 and 10 of the Convention.***

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that member States for which Convention No 17 is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting its Part VI (see GB.328/LILS/2/1). Conventions Nos 121 and 102 reflect the more modern approach to employment injury benefits. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group and to consider ratifying Convention No. 121 or Convention No. 102 (Part VI) as the most up-to-date instruments in this subject area.***

Sierra Leone

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1961)

Article 1 of the Convention. Ensuring the coverage and effective protection of workers in case of industrial accidents. The Committee observes that, pursuant to the Workmen's Compensation Ordinance of 1954 (WCO), employers are liable for the payment of compensation in respect of any personal injury by accident caused to their workers in the course of, or arising out of employment. It also observes that, since 2016, employers with more than five employees are obligated to insure their liability with private insurance carriers, according to section 22 of the Insurance Act of 2016. The Committee further observes that, while all employees are covered under the national legislation, they represent only 10.8 per cent of the labour force (*ILO, World Social Protection Database, 2021)*. The majority of workers in the country thus have no entitlement to compensation in case of work-related accidents for being in a work arrangement that does not qualify as employment under the law, or because they operate in the informal economy, which is prevalent, according to Sierra Leone's 4th National Human Development Report, 2019, published by the United Nations Development Programme (UNDP). In addition, the Committee observes from the 2018 Integrated Household Survey Report that the largest number of workers in the informal economy are located in regions highly engaged in mining and agriculture, considered particularly dangerous activities, characterized by a high rate of injury. ***Taking into account the small proportion of workers protected by law in case of work-related accidents and the specificities of the labour market, the Committee requests the Government to consider taking measures to broaden the coverage of the workers' compensation scheme, or introducing new mechanisms of protection, to ensure that all victims of work-related accidents, or their dependents in case of death, are compensated as set out in the Convention. The Committee requests the Government to provide information on any measures taken or envisaged in this respect, with a view to progressively extending the protection of workers under the Convention and recalls the possibility of availing itself of the ILO's technical assistance for this purpose.***

The Committee further requests the Government to supply statistical data, to enable it to assess the manner in which national laws and regulations respecting work accidents are applied in practice in Sierra Leone, including in particular: (i) the total number of workers, employees and apprentices employed by all enterprises, undertakings and establishments, to whom the Convention is applicable; (ii) the total amount of compensation paid in cash and the average amount of compensation paid to victims of work accidents; and (iii) the number and nature of work accidents reported and the number of work accidents in respect of which compensation was paid.

Lastly, the Committee recalls the important role of labour inspection in the application of the Convention, and requests the Government to refer to its detailed comments under the Labour Inspection Convention, 1947 (No. 81).

Article 5. Compensation in case of permanent incapacity for work or death. For more than 30 years, the Committee has been drawing the Government's attention to the fact that sections 6, 7 and 8 of the WCO, 1954 were not fully aligned with *Article 5* of the Convention, by restricting the duration of payment of compensation due in respect of a work accident and limiting its total amount, and allowing a lump sum payment (equal to 42 times the worker's monthly earnings in case of permanent incapacity for work and 56 times the deceased's monthly earnings in case of death). In its previous comments, the Committee also noted the Government's indication on the existence of a bill on worker's compensation that reflected the provisions of the Convention concerning the payment of compensation due to a work accident throughout the period of contingency, and requested the Government to provide information on it.

The Committee notes the Government's reply, in its report, that the bill on worker's compensation has not been adopted yet. The Committee further notes that, according to section 13(1)(a), (2) of the

WCO, 1954, the compensation paid in case of permanent incapacity for work or death due to a work accident shall be transferred to a court which may order that the whole or any part of the compensation to be paid to a person entitled or to be invested, applied or otherwise dealt with for his/her benefit in such a manner as the court thinks fit. The Committee recalls that, according to *Article 5* of the Convention, the compensation payable to victims of work accidents, in case of permanent incapacity or death, shall, in principle, be paid in the form of periodical payments, as long as the personal injury subsists or as long as the state of dependency exists. Nevertheless, *Article 5* of the Convention allows the compensation due to a work accident be wholly or partially paid in the form of a lump sum, if the competent authority is satisfied that it will be properly utilized. ***The Committee therefore requests the Government to provide information on the manner in which the court or any other supervisory body conducts a review of the circumstances of work accident victims, and the basis on which that body is satisfied that the compensation in case of permanent incapacity for work or death due to a work accident, when paid as a lump sum, will be properly utilized, in line with Article 5 of the Convention. The Committee also requests the Government to provide information on any progress made in the adoption of the bill on worker's compensation and to provide a copy of it, once adopted.***

Article 9. Medical, surgical, and pharmaceutical aid. (i) Effective access to medical, surgical, and pharmaceutical aid. In its 2019 General Survey, Universal social protection for human dignity, social justice and sustainable development, paragraph 239, the Committee noted the existence of significant shortages of health and social workers in Sierra Leone, which it found to be challenging to guarantee the availability of adequate essential health care of acceptable quality for the population. The Committee further observes the findings of the UNDP's National Human Development Report, 2019, according to which the health system in Sierra Leone has failed to deliver effective, safe and quality health interventions due to, particularly, a shortage of healthcare workers, high out-of-pocket payments, distance from public health facilities, and poor-quality services.

The Committee requests the Government (i) to indicate the measures in place to ensure the provision of the necessary medical, surgical and pharmaceutical aid to victims of work accidents as well as the effective access of injured workers to such aid, as required by Article 9 of the Convention and (ii) to provide information on the organization of the health services and facilities through which such aid is provided, and on the type of health providers involved in the provision of such aid.

(ii) Provision of medical, surgical, and pharmaceutical aid free of charge. The Committee observes that, by virtue of section 32 of the WCO, 1954, an employer shall defray the reasonable medical expenses incurred by a worker injured in the course of employment. The Committee further observes that, according to section 34 of the WCO, 1954, the fees and charges for medical aid to workers shall be established in accordance with a scale as may be prescribed, and that no claim for an amount in excess of a fee or charge in accordance with that scale shall lie against an employer in respect of any such medical aid. The Committee recalls that, pursuant to *Article 9* of the Convention, the cost of medical, surgical, and pharmaceutical aids recognized to be necessary in consequence of work accidents shall be defrayed either by the employer, by accident insurance institutions, or by sickness or invalidity insurance institutions.

The Committee requests the Government to provide information as regards any scale that would have been adopted for the establishment of fees and charges for medical aid, prescribed pursuant to section 34 of the WCO, 1954, together with an explanation of how these fees and charges relate to the cost of medical care and treatment provided by the country's health services. The Committee further requests the Government to indicate whether the costs of medical, surgical, and pharmaceutical aid incurred by victims of work accidents that would be in excess of the costs established by such scale(s) and therefore not assumed by the employer, are defrayed by an insurance institution, or whether they are at the charge of the injured worker.

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that member States for which Convention No. 17 is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting its Part VI (see GB.328/LILS/2/1). Conventions Nos 121 and 102 reflect the more modern approach to employment injury benefits. ***The Committee welcomes the indication by the Government that the process of ratification of Convention No. 102 is under way, and that the ratification of Convention No. 121 is being considered. The Committee requests the Government to keep it informed of any progress made in this regard, and invites the Government to take account of the relevant provisions of these Conventions when addressing the points raised above in relation to the application of Convention No. 17.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 12** *(Angola, Burundi, Dominica, Madagascar, Morocco);* **Convention No. 17** *(Angola, Burundi, Djibouti, Guinea-Bissau, Mexico, Morocco, Mozambique, Uganda);* **Convention No. 18** *(Angola, Djibouti, Mozambique);* **Convention No. 19** *(Angola, Dominica, Haiti, Lesotho, Malaysia: Peninsular Malaysia, Malaysia: Sarawak, Morocco, Nigeria, Saint Lucia);* **Convention No. 42** *(Burundi, Morocco, Solomon Islands);* **Convention No. 102** *(Barbados, Luxembourg, Mauritania, Mexico);* **Convention No. 118** *(Guinea, Mauritania, Mexico);* **Convention No. 121** *(Guinea, Netherlands: Aruba);* **Convention No. 128** *(Barbados).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 19** *(Mali).*

Maternity protection

Equatorial Guinea

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1985)

The Committee notes with ***deep concern*** that the Government's report, which has been due since 2008, has not been received. In view of the urgent appeal made to the Government in 2019, the Committee will proceed with the examination of the application of the Convention on the basis of the information available to it.

Article 6 of the Convention. Dismissal during maternity leave. Public officials. With reference to its previous comments, the Committee observes that, in the same way as the earlier provisions, new Act No. 2/2014 on State public officials, in sections 111 et seq., provides for the possibility of the dismissal of women workers for gross misconduct following the appropriate disciplinary procedure. The Committee recalls that *Article 6* of the Convention provides that it shall not be lawful for an employer to give a woman notice of dismissal during maternity leave, including any prenatal or post-natal leave to which she is entitled, or to give her notice of dismissal at such a time that the notice would expire during such absence. ***The Committee urges the Government to provide information on the measures which ensure that effect is given to Article 6 of the Convention and which establish a formal prohibition on giving a public official her notice of dismissal during her absence on maternity leave, or at a time such that the notice would expire during her absence.***

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM Tripartite Working Group), the Governing Body has decided that Member States for which Convention No. 103 is in force should be encouraged to ratify the more recent Maternity Protection Convention, 2000 (No. 183) (see GB.328/LILS/2/1). Convention No. 183 sets out the more modern approach to maternity protection. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM Tripartite Working Group and to consider ratifying Convention No. 183 as the most up-to-date instrument in this subject area.***

Latvia

Maternity Protection Convention, 2000 (No. 183) (ratification: 2009)

Article 2 of the Convention. Coverage of public employees. The Committee notes the reply provided by the Government, in its report, concerning the manner in which the Convention is applied to public sector employees. It notes, in particular, that public sector employees benefit from the same protection as private sector employees in relation to maternity and that they are covered by the same provisions in this respect, namely the Labour Law, the Law on Maternity and Sickness Insurance, 1995, and the Law on State Social Benefits, 2002. The Committee takes note of this information.

Article 4(4). Compulsory postnatal leave. In its previous comments, the Committee requested the Government to indicate whether the representative organizations of employers and workers at the national level had been consulted regarding the establishment of a compulsory postnatal leave of two weeks in the Labour Law, considering that *Article 4(4)* of the Convention required maternity leave to include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.

In reply, the Government indicates that the minimum two-week period of compulsory maternity leave was included in the Labour Law after consultation and in agreement with workers' and employers' representatives, namely the Free Trade Union Confederation of Latvia and the Employers' Confederation of Latvia. The Government further specifies that, according to section 154 of the Labour

Law, all women covered are entitled to 56 days of postnatal maternity leave, which they can use as they wish or require. The Committee takes note of this information.

Article 6(1). Suspension of maternity cash benefits in case of incapacity of the mother to care for her child. In its previous comments, the Committee noted that maternity benefits were suspended where a woman could not care for her child during a period of up to 42 days after birth due to health-related reasons, and requested the Government to indicate if during that suspension, sickness benefit was provided so as to allow the payment of maternity benefits to resume upon recovery from illness. The Committee notes the reply of the Government, indicating that, pursuant to section 6(2) of the Law on Maternity and Sickness Insurance, 1995, where the mother is incapable of caring for her child for up to 42 days following childbirth due to sickness, injury or other health-related reasons, the father or the person who is effectively taking care of the child is granted the maternity benefit for the time during which the mother is not able to care for her child. The Committee further notes that, according to the Government, in such cases maternity benefits are not suspended, as both the mother and the father, or the other person caring for the child in lieu of the parents, are entitled to the maternity benefit simultaneously. The Committee takes note of this information.

Articles 6(1) and 9. Replacement of maternity leave by sick leave in certain cases. In its previous comments, the Committee noted that, pursuant to section 5(6) of the Law on Maternity and Sickness Insurance, women who relinquish the care and upbringing of their child or abandon their child were granted sickness benefit in place of maternity cash benefit, and requested the Government to indicate if sickness benefit could be provided during the whole period of maternity leave.

The Committee notes the Government's reply, indicating that the duration of sickness or disability benefit in such cases would be linked to the health condition of the woman concerned, and is provided until she recovers. The payment of sickness benefit for the whole duration of the maternity leave period is therefore not envisaged. On this basis, the Government does not consider the right to sickness benefit to be guaranteed for a shorter period than maternity leave, and indicates that no problematic cases have been identified until now. The Committee also notes the Government's indication that, in case of a child abandonment, the entitlement to maternity benefit is transferred to the father or to the other carer, as the case may be, and notes that section 6(1) and (2) of the Law on Maternity and Sickness Insurance provides the same in cases where the mother has relinquished the care and raising of the child. Lastly, the Government specifies that in Latvia, the source of financing of sickness and maternity benefits is the same, and that these benefits come from the same fund.

While taking due note of the above, the Committee reiterates that the measure set out in section 5(6) of the Law on Maternity and Sickness Insurance in the case of a woman who relinquishes the care and upbringing of her child, or abandons her child, may have the effect of depriving the insured person of her maternity benefit entitlements and of unduly shortening her right to sickness benefits in the postnatal period. It may also lead to discrimination against women, contrary to *Article 9* of the Convention, pursuant to which maternity shall not constitute a source of discrimination in employment. ***The Committee thus requests the Government to indicate any measure taken or envisaged to ensure that the cash benefits provided to women in the above mentioned cases to allow them to recover from pregnancy, childbirth and their consequences, for up to 2 weeks, which corresponds to the mandatory postnatal leave period in Latvia do not reduce their overall sickness benefit entitlement.***

Article 6(2) and (3). Level of cash benefits. In its previous comments, the Committee requested the Government to indicate for which categories of women workers the replacement rate of 80 per cent of insurable earnings established by the national legislation for maternity benefits would be insufficient for the maintenance of the mother and child, as prescribed by *Article 6(2)* of the Convention, compared to at-risk-of-poverty level and subsistence level determined in the country, as well as to supply information on how maternity benefits paid to low wage earners are related to the poverty and subsistence levels determined in the country. The Committee notes the reply provided by the

Government, indicating that low wage earners are protected by a statutory minimum monthly wage of €500 in 2021. Consequently, the amount of the minimum maternity benefit in 2021 is €400, representing 80 per cent of the minimum wage.

The Committee observes, however, based on the latest data available in the Eurostat database, that Latvia, in 2021, is still among the countries of the European Union (EU) with the highest share of persons at risk of poverty, i.e. 26 per cent of the population. Considering that the at-risk-of-poverty threshold (set, in the EU, at 60 per cent of the national median equivalized disposable income) corresponded, in 2019, to €441 for Latvia, for a single person household, the Committee observes that a minimum maternity benefit of €400, is below the at-risk-of-poverty threshold.

In view of the above, the Committee requests the Government to indicate the measures taken to guarantee that maternity cash benefits are provided at a level ensuring that women can maintain themselves and their children in proper conditions of health and with a suitable standard of living, in accordance with Article 6(2) of the Convention. In this regard, the Committee requests the Government to provide information on any other cash benefits to which women, and in particular those at-risk of poverty, would be entitled during maternity leave, so as to ensure the application of Article 6(2) of the Convention. The Committee further requests the Government to indicate if the statutory minimum wage is applicable to women in atypical forms of dependent work, to whom the protection set out in the Convention must also be guaranteed.

Article 6(7). Medical benefits. Noting that the legislation only provided for free of charge medical care during the first 42 days following childbirth, the Committee previously requested the Government to indicate the measures it envisaged to take with a view to harmonizing national laws and regulations with *Article 6(7)* of the Convention, to ensure the provision of prenatal, childbirth and postnatal care, as well as hospitalization care when necessary, free of charge, at least during the period of maternity leave. The Committee notes with ***satisfaction*** that, pursuant to the Health Care Financing Law of 14 December 2017, women who receive health care services related to pregnancy and post-natal observation, are released from any co-payment otherwise required, and therefore receive maternity medical care services free of charge for up to seventy days after childbirth. The Committee takes note of this information.

Mali

Maternity Protection Convention, 2000 (No. 183) (ratification: 2008)

Article 2(1) of the Convention. Application of the Convention to all employed women. The Committee notes the Government's indication that, in Mali, atypical forms of dependent work generally relate to informal work, for example, in craft skills (dyeing, sewing, soap-making) and family enterprises (trade, agriculture, market gardening). The Government also indicates that, in practice, the labour inspectorate rarely intervenes in the informal economy and not at all in family enterprises, given the inadequate material and human resources.

In this regard, the Committee notes that the United Nations Committee on Economic, Social and Cultural Rights (CESCR), in its concluding observations of 2018, noted with concern that approximately 96 per cent of workers were employed in the informal sector of the economy and were not covered by labour laws or the social protection system (E/C.12/MLI/CO/1, paragraph 20). ***The Committee requests the Government to take the necessary measures to ensure that women workers in the informal economy employed in atypical forms of dependent work benefit from the protection guaranteed by the Convention, in accordance with its Article 2(1), and to provide information on the measures taken in this regard. With respect to matching human resources and material means with the needs of inspection, the Committee refers to its detailed comments under the Labour Inspection Convention, 1947 (No. 81).***

Article 8(1). Employment protection. In its previous comments, the Committee noted that section L.183 of the Labour Code prohibited the dismissal of women while they were on maternity leave, including the period of supplementary leave in case of maternity related sickness and requested the Government to extend the protection provided in this section to the period of pregnancy and nursing.

In its reply, the Government indicates that it will examine this issue in consultation with the most representative organizations of employers and workers at the forthcoming revision of the Labour Code. ***The Committee once again requests the Government to take the necessary measures to ensure employment protection against dismissal of women workers not only during maternity leave but for the entire period of pregnancy and a prescribed period after their return to work, in accordance with Article 8(1) of the Convention. The Committee requests the Government to provide information on any measures taken or envisaged in this regard.***

Article 9(1). Non-discrimination. In its previous comment, the Committee requested the Government to envisage incorporating provisions into the Labour Code explicitly recognizing maternity as prohibited grounds of discrimination; imposing the obligation to abide by these provisions on all employers; and establishing effective penalties for any cases of discrimination on the basis of maternity, in order to give full effect to *Article 9(1)* of the Convention.

In its reply, the Government indicates that it will examine this issue in consultation with the most representative organizations of employers and workers at the forthcoming revision of the Labour Code. ***The Committee expresses the firm hope that the Government will take the necessary measures to give full effect to Article 9 of the Convention.***

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 3** *(Mauritania, North Macedonia);* **Convention No. 103** *(Mongolia, Tajikistan);* **Convention No. 183** *(Luxembourg, Mali, Mauritius, Montenegro, Morocco, North Macedonia, Republic of Moldova).*

Social policy

Cameroon

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)

Article 2. Inclusion of labour clauses in public contracts. In its previous comment, the Committee requested the Government to take the necessary measures (legislative, administrative or others) for the inclusion in all public contracts to which the Convention is applicable of labour clauses consistent with the requirements of *Article 2* of the Convention and for the enforcement of such clauses in the manner prescribed by *Articles 4 and 5* of the Convention. The Committee notes with ***interest*** the Government's indication that the Public Procurement Code was revised by Decree No. 2018/366 of 20 June 2018, and that 12 out of 19 implementing texts have been finalized with the cooperation of the sectoral administrations. It also notes that three other Orders were signed on 21 October 2019 by the Minister Delegate at the Presidency in charge of public procurement. These Orders set, respectively, the nature and the thresholds of the markets reserved for crafts workers (artisans), small and medium-sized enterprises, grassroots, community-based organizations and civil society organizations and the terms of their application; thresholds for the use of private project management and the terms for exercising public project management; and ceilings for the indemnities paid by the project managers and the delegated project managers to the presidents, members and rapporteurs of the committees for monitoring and verification. The Government indicates in its report that the new Public Procurement Code incorporates the provisions of the Convention in sections 88(1), 124, 55(2)(c)–(f), 57(1)(b), 158(f) and 192. The Committee notes that section 57(1)(b) of the new Code provides that "the conditions for the performance of public contracts must include social, economic and environmental considerations, likely to promote local labour and decent work and, where appropriate, to achieve the objectives of sustainable development. This refers particularly to "the introduction into the market of clauses stipulating respect of labour standards ratified by Cameroon". In this context, the Committee refers to paragraph 117 of the 2008 General Survey concerning labour clauses in public contracts, in which it highlights that the Convention does not relate to some general eligibility criteria, or prequalification requirements, of individuals or enterprises bidding for public contracts but requires a labour clause to be expressly included in the actual contract that is finally signed by the public authority and the selected contractor. It also notes that a labour clause has to constitute an integral part of the actual contract signed by the selected contractor and that the insertion of labour clauses in tender documents, such as the general conditions or specifications, even though required under the terms of *Article 2, paragraph 4*, of the Convention, does not suffice to give effect to the basic requirement of the Convention set out in *Article 2, paragraph 1*. ***The Committee requests the Government to provide information on the content and impact of the new legislation to enable it to evaluate its compatibility with the requirements of the Convention. In addition, the Committee requests the Government to provide detailed and up-to-date information concerning the application in practice of the Convention and to provide copies of recent public contracts in which labour clauses have been inserted in conformity with the requirements of the new Public Procurement Code, particularly section 57(1)(b).***

Central African Republic

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1964)

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comments the Committee noted that Act No. 08.017 Code of 6 June 2008 issuing the Public Procurement Code contains specifications to determine the conditions under which the contract is implemented and which include general administrative clauses, as well as specific administrative clauses. The Committee requested the Government to take appropriate measures to ensure that provisions giving full effect to

Article 2 of the Convention are included in the general administrative clauses set out in the specifications. The Committee expressed the hope that, when issuing implementing decrees under the Public Procurement Code, the Government would not fail to bring the legislation into conformity with the Convention. In its report, the Government recognizes the merits of labour clauses and indicates that general conditions of labour are at the heart of common concerns and should be reflected in labour clauses when drafting national legislation on public procurement. It reiterates, however, that despite the omissions observed, the labour inspection services, in conformity with the legal provisions in force, carry out monitoring missions to enterprise directors and contractors holding public contracts, to ensure that working conditions, remuneration, the safety and health of workers above all, and the verification of the clauses provided under the employment contracts, are fully respected. In this regard, the Committee refers the Government to paragraphs 41 to 45 and 110 to 113 of the 2008 General Survey on labour clauses in public contracts, in which the Committee stresses that the applicability of national labour law to work done in the execution of public contracts is not sufficient to ensure application of the Convention. The Government indicates, however, that legislative reform has been engaged with the promulgation of Act No. 19.007 of 24 June 2019, establishing a legal framework for public–private partnerships in the Central African Republic. The main purpose of the Act is to set out the fundamental principles related to the conclusion of public–private partnership contracts and to establish the legal regime for the conclusion, execution, terms, monitoring and termination of public–private partnerships. The Committee notes that the above-mentioned law contains no provision for the insertion of labour clauses in public contracts, as required by *Article 2(1)* and *(2)* of the Convention. It also notes that the Government has not provided any information regarding measures taken or envisaged to give effect to the provisions of *Article 2* of the Convention concerning the incorporation of labour clauses in the specifications of public contracts. The Committee draws the Government's attention to the 2008 General Survey and to the practical guide on Convention No. 94, published by the Office in September 2008, which gives guidance and examples to follow when bringing the national legislation in line with the Convention. ***Noting once again that it has been commenting for several years that the Government has not given effect to the Convention, the Committee recalls that the inclusion of appropriate labour clauses in all public contracts covered by the Convention does not necessarily imply the enactment of new legislation, but may also be achieved by issuing administrative instructions or circulars. The Committee strongly expects the Government to take all necessary steps, without further ado, to bring the national legislation into full conformity with the basic requirements of the Convention. The Committee requests the Government to keep the Office informed of progress achieved and recalls once more that the Government may have recourse to ILO technical assistance in this regard, if it so wishes.***

Democratic Republic of the Congo

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2 of the Convention. Inclusion of labour clauses in public contracts. Since 2011, the Committee has been asking the Government to take all appropriate steps to ensure that provisions giving full effect to *Article 2* of the Convention are incorporated into the general administrative clauses of the specifications prescribed by section 49 of Act No. 10/010 concerning public contracts. The Government indicates that it undertakes to refer the issue to the National Labour Council. The Government also reproduces a list of laws and regulations whose purpose is to govern the organization and functioning of public contracts and procedures for the award, execution and monitoring of contracts by the State, the provinces and other public entities. In this regard, the Committee notes once again that the legislation governing public contracts does not contain any provisions for the inclusion of labour clauses in public contracts, as prescribed in *Article 2(1)* and *(2)* of the Convention. The Committee once again draws the Government's attention to the 2008 General Survey on labour clauses in public contracts and on the Practical Guide to Convention No. 94, drawn up by

the Office in September 2008, which provides guidance and examples to follow to ensure that the national legislation is in conformity with the Convention. ***Noting that the Government has not sent any information on the measures taken or contemplated to give specific effect to the essential requirements of the Convention, namely the inclusion of labour clauses in public contracts as provided for in Article 2 of the Convention, the Committee urges the Government to take all the necessary steps to guarantee the full application of the Convention, and to keep the Office informed of any progress made in this matter, including as regards the referral of the issue to the competent authorities.***

The Committee reminds the Government that it may avail itself of technical assistance from the Office in this regard.

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

Djibouti

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1978)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comment, the Committee asked the Government to take prompt steps to ensure the effective implementation of the Convention. The Committee notes once again that clause 9.1 of the General Administrative Terms and Conditions applicable to public procurement, adopted by Decree No. 2010-0084/PRE of 8 May 2010, and the exclusion provided for in section 13.1.1 of the Public Procurement Code are insufficient to give effect to the key requirements of the Convention. *Article 2* of the Convention provides for the inclusion of labour clauses in all public contracts covered by the scope of *Article 1* – drawn up after consultation of the employers' and workers' organizations – ensuring to the workers concerned conditions of remuneration and other conditions of labour which are not less favourable than those established by national laws or regulations, collective agreements or arbitration awards for work of the same character in the same sector. In its 2008 General Survey concerning labour clauses in public contracts, paragraph 45, the Committee observed that the essential purpose of the Convention is to ensure that workers employed under public contracts shall enjoy the same conditions as workers whose conditions of employment are fixed not only by national legislation but also by collective agreements or arbitration awards, and that in many cases the provisions of the national legislation respecting wages, hours of work and other conditions of employment provide merely for minimum standards which may be exceeded by collective agreements. The Committee therefore feels that the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in *Article 2* of the Convention. The Committee therefore considers that the mere fact that the legislation applies to all workers does not release the government concerned from its obligation to include labour clauses in all public contracts, in accordance with *Article 2(1)* and *(2)* of the Convention. In this context, the Committee notes that the Government has not yet taken steps to give effect to the provisions of the Convention. It also notes the request made by the Government in its report for technical assistance to ensure the effective application of the Convention. The Committee recalls once again that the Convention does not necessarily require the adoption of new legislation but may be applied by means of administrative instructions or circulars. ***The Committee expresses the hope that technical assistance from the Office will be available in the near future and requests the Government to provide information on all measures taken or contemplated to ensure the effective application of the Convention.***

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

Dominica

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 6 of the Convention. Legislation giving effect to the Convention. The Committee notes that the Government has never supplied any information of a practical nature concerning the application of the Convention. ***It would therefore be grateful if the Government would collect and transmit together with its next report up-to-date information on the average number of public contracts granted annually and the approximate number of workers engaged in their execution, extracts from inspection reports showing cases where payments have been retained, contracts have been cancelled or contractors have been excluded from public tendering for breach of the Fair Wages Rules, as well as any other particulars which would enable the Committee to have a clear understanding of the manner in which the Convention is applied in practice.***

Moreover, the Committee understands that the Government has entered into a World Bank-financed technical assistance project for growth and social protection with a view to improving, among other things, the transparent operation and the efficient management of public procurement. ***In this connection, the Committee would appreciate receiving additional information on the implementation of this project and the results obtained, in particular as regards any amendments introduced or envisaged to public procurement laws and regulations which might affect the application of the Convention.***

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

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

France

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1951)

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comments, the Committee requested the Government to continue providing information on any legislative changes that could have an impact, and on the application in practice of the Convention at the national level. The Committee notes the detailed information provided by the Government on developments in public procurement law since 2016, in particular the entry into force on 1 April 2019, of the Public Procurement Code, which brings together in a single legal corpus all rules governing public procurement contracts. It also notes the modernization of the general administrative clause specifications applicable to public procurement (CCAGs). There are now six CCAGs, approved by Orders of 30 March 2021 with simultaneous entry into force on 1 April 2021. However, with regard to the effective application of the fundamental requirements of the Convention, which consists in the inclusion of labour clauses of the type provided under *Article 2* of the Convention, the Government indicates that the essential requirement provided under *Article 2* of the Convention is met under the legislative provisions and regulations in force. In any event, these provisions require that any enterprise must comply with the labour law applicable where the contract is performed and allow a public authority, through application of the CCAG clauses, to terminate a public contract in case of violation of a worker's labour rights. Nevertheless, the Committee draws the Government's attention to paragraph 45 of its 2008 General Survey on labour clauses in public contracts, which specifies that "... the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in Article 2 of the Convention". The Committee also specified that, "as regards the content of labour clauses, the Convention provides that they should ensure to the workers

concerned wages, hours of work and other conditions of labour which are not less favourable than those established by collective agreement, arbitration award, or national laws, for work of the same character in the trade or industry concerned in the district where the work is performed. Where the conditions of labour are not regulated by any of these means in the district where the contract is executed, reference must be made to the nearest appropriate district where such means are used, or the general level of conditions of work observed in the trade or industry in which the contractor is engaged by employers whose general circumstances are similar" (paragraph 21). ***Recalling that the Convention requires that labour clauses with very specific content be expressly included in public contracts effectively signed between the public authority and the selected entrepreneur, the Committee expects the Government to take all measures necessary to bring the national legislation into full conformity with the essential requirements of the Convention without further ado. The Committee requests the Government to keep the Office informed of progress made and reminds the Government that it can, if it so wishes, avail itself of the technical assistance of the ILO in this regard.***

Morocco

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1956)

The Committee notes the observations made by the National Union of Moroccan Workers (UNTM), received on 29 August 2019, and the Government's reply in this regard, received in 2019.

Article 2 of the Convention. Inclusion of labour clauses in public contracts. In its previous comments, the Committee requested the Government to respond to the observations made by the Moroccan Labour Union (UMT), as well as those of the Democratic Confederation of Labour (CDT), received on 17 August 2017. The Committee further requested the Government to take all necessary measures without further delay to bring its national legislation into conformity with the Convention. In its report, the Government reiterates its previous comments concerning the legislation in force, namely, the two decrees No. 2.12.349 of 20 March 2013 and No. 2.14.394 of 13 May 2016 on governing public contracts and the provisions of article 519 of the Labour Code. The Committee notes, however, that these texts do not contain any reference concerning the insertion of a labour clause in public procurement contracts. It further notes that, while recognizing the efforts made by the Government to make public procurement more transparent, the UNTM observes that the law on public procurement does not provide adequate guarantees for the protection of employees, whether during or after the execution of the transaction, nor do they include provisions relating to the insertion of a social clause in public procurement contracts. In addition, the UNTM maintains that there is an incompatibility between the provisions of the Labour Code and the law on public procurement. The Committee notes the Government's two responses to the observations of the trade union centres concerning the report on the implementation of Convention No. 94, received in 2017 (UMT and CDT) and 2019 (UMT), respectively. The Committee notes in particular that the Government recognizes that there is a difference of perspective with regard to the interpretation of national regulatory provisions and their conformity with the Convention. In this regard, the Government requests ILO technical assistance in order to bring its law and practice into line with the requirements of the Convention. In this context, the Committee wishes to recall paragraph 176 of its 2008 General Survey on labour clauses in public contracts which indicates that all the provisions of the Convention are articulated around and directly linked to the "core requirement" of *Article 2, paragraph 1,* the insertion of labour clauses ensuring favourable wages and other working conditions to the workers engaged in the execution of public contracts. In addition, in paragraph 117 of the same General Survey, the Committee observes that a labour clause must constitute an integral part of the actual contract signed by the selected contractor and that the insertion of labour clauses in tender documents, such as the general conditions or specifications, even though required under the terms of *Article 2, paragraph 4,* of the Convention, does not suffice to give effect to the "basic requirement" of the Convention set out in *Article 2, paragraph 1*. ***The Committee hopes that***

the Office will be able to provide the requested technical assistance in the near future. The Committee urges the Government to take all appropriate measures without further delay (legislative, administrative or others) for the inclusion in all public contracts to which the Convention is applicable of labour clauses consistent with the requirements of Article 2 of the Convention and for the enforcement of such clauses in the manner prescribed by Articles 4 and 5 of the Convention. The Committee further requests the Government to provide updated information on progress achieved in this respect.

Sierra Leone

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1961)

Articles 2, 4 and 5 of the Convention. Contractual provisions. Inspections and sanctions. Application of the Convention in practice. For a number of years, the Committee has been requesting the Government to submit a detailed report on the state of national law and practice regarding labour clauses in public contracts in the light of public procurement reforms, including the adoption of the Public Procurement Act of 2004. The Committee notes the information provided by the Government in its report, which sets out a list of relevant laws and regulations, and refers to "the labour clauses in public procurement contracts". The Government also indicates that the national laws specifically regarding the insertion of clauses in public contracts are still in force. The Committee also notes the annexes to the report, consisting of copies of the Workmen's Compensation Act; an article concerning the Industrial Relations Act, 1971; the National Social Security and Insurance Trust Act, 2001; the National Employment Policy 2020–2024; and the Companies Act, 2009. The Committee notes, however, that the Government does not provide any description or information on the public procurement reforms, nor does it clarify its reference to "the labour clauses in public procurement contracts". The Government merely indicates that the manner in which the Convention is applied in practice is well-appreciated by the stakeholders and that the Ministry of Labour and Social Security deals with matters fairly in respect of how it treats issues emanating from contracts, be they public–private contracts or contracts between private parties. The Committee nonetheless notes the adoption of the Public Procurement Act, 2016, the Public Procurement Regulations, 2020 and the Public Procurement Manual, Second Edition, 2020, none of which contain substantive provisions regarding the obligation set out in *Article 2(1)* of the Convention to insert labour clauses in public procurement contracts that ensure "to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on: (a) by collective agreement or other recognized machinery of negotiation between organizations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned; or (b) by arbitration award; or (c) by national laws or regulations". ***Consequently, the Committee notes that the Government has not provided the requested information concerning the measures taken to give concrete effect to the main requirements of the Convention, namely the insertion of labour clauses in public contracts required under Article 2 of the Convention. The Committee requests the Government to provide detailed and updated information on the application of the Convention in practice. In particular, it requests the Government to indicate specifically whether the Administrative Regulation-Secretariat Circular No. 23 of 1946, which met the requirements of the Convention at the time of its ratification by Sierra Leone, is still in force. In addition, it reiterates its request that the Government submit a detailed report on the state of national law and practice regarding labour clauses in public contracts in the light of public procurement reforms. The Committee further requests the Government to provide examples of public contracts issued during the reporting period containing labour clauses within the meaning of the Convention, to enable the Committee to fully examine the manner in which the Convention is implemented in law and practice.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 94** *(Cyprus, Dominica, France: New Caledonia, Guyana, Netherlands: Aruba, Nigeria, Uganda);* **Convention No. 117** *(Democratic Republic of the Congo, Madagascar).*

Migrant workers

Barbados

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1967)

The Committee notes with ***deep concern*** that the Government's report, due since 2017, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 7(2) of the Convention. Free services rendered by public employment offices. In its previous comments, the Committee stressed that the requirement for migrant workers participating in the Canada–Caribbean Seasonal Agricultural Workers Programme the "Farm Labour Programme" – to remit 25 per cent of their earnings to the Government directly from Canada as mandatory savings, 5 per cent of which was retained to pay the administrative costs of the Programme, is contrary to the clear purpose of *Article 7* of the Convention, as services rendered by public employment services in connection with the recruitment, introduction and placement of migrants for employment are to be provided free of charge (2016 General Survey concerning the migrant workers instruments, paragraph 229). ***In the absence of any updated information in this respect, the Committee urges the Government:***

(i) to discontinue the practice of forcing migrant workers enrolled under the Farm Labour Programme to remit a certain percentage of their wages to cover administrative costs, and

(ii) to provide information on any steps taken, in cooperation with the workers' and employers' organizations, to review the impact of the Farm Labour Programme on the situation of Barbadian migrant workers.

Article 9. Free transfer of remittances. The Committee recalls that, requiring nationals working abroad to transfer a certain percentage of their earnings or savings to the Government is contrary to the clear intent of *Article 9* of the Convention and, in this regard, wishes to stress the importance of reducing remittance costs in the context of the debate on effective governance of international labour migration (Sustainable Development Goal 10.c of the 2030 United Nations Sustainable Development Agenda aims to reduce to less than 3 per cent the transaction costs of migrant remittances by 2030). ***In light of the above, the Committee requests the Government to take the necessary measures to ensure that migrants for employment are permitted to transfer such part of their earnings and savings as they desire, taking into account the limits allowed by national laws and regulations concerning the export and import of currencies.***

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

Spain

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1967)

The Committee notes the observations of the Trade Union Confederation of Workers' Commissions (CCOO), the General Union of Workers (UGT) and the Spanish Confederation of Employers' Organizations (CEOE), communicated with the Government's report. The Committee notes the corresponding responses of the Government.

Article 6(1)(a) and (b) of the Convention. Equal treatment regarding conditions of work and social security. The Committee takes due note that, in its report, the Government indicates that, under section 5(4) of Royal Decree No. 1620/2011 of 14 November establishing special labour regulations for domestic work, employers have the obligation to inform workers of essential elements of the contract and main conditions of work, where the contract lasts more than 4 weeks (including information on

salary, payments in cash, duration and distribution of working hours, remuneration and compensation systems, and the regime of overnight stays where applicable). In addition, the Government also refers to section 2(2) of Royal Decree No. 1659/1998 of 24 July to apply section 8(5) of the Workers' Statute dealing with information for workers on the main elements of the employment contract, which lists the information that a labour contract should contain. Also, regarding information, the Committee takes note of CCOO's observation that the Ministry on Inclusion, Social Security and Migration's website contains no specific guidance for domestic workers, as well as of the Government's reply indicating that the general information provided is applicable to domestic workers correspondingly.

Regarding effective and accessible complaints mechanisms for domestic workers, the Government indicates that the Labour Inspection is able to access private homes within the limits of the right to inviolability of the home (and, hence, requiring the owner's consent or a judicial authorization). The Committee notes with ***interest*** the Government's indication that a specific inspection campaign on domestic work was launched in 2021, which addresses informal economy by prioritizing complaints presented and includes technical assistance and sensitization on the regularization of salaries that are below minimum salary rates (and of corresponding contributions to social security schemes). The Committee also observes that the Government indicates it has taken measures to make claim forms available in different languages. The Committee takes due note that the Government also provides data on the inspections carried out in the domestic work sector for the period 2017–20, showing that: (1) the Service on Social Security and Foreigners did 1,072, 952, 956 and 669 inspections in 2017, 2018, 2019 and 2020 respectively, all of them concerning undeclared work; (2) in 2020, 161 inspections carried out by the Service of Labour Relations and 28 inspections carried out by the Occupational Safety and Health Service were originated in workers' complaints. The Committee notes, however, that such data does not indicate to what extent such claims were presented by migrant domestic workers. The Committee further notes UGT's observations that measures foreseen to monitor the implementation of Royal Decree 1620/2011, such as an impact evaluation and the creation of a group of experts, have not been undertaken.

The Committee expects that, in applying section 2(2) of Royal Decree No. 1659/1998 and section 5(4) of Royal Decree No. 1620/2011, the Government will continue to take measures so that the relevant information is provided to migrant domestic workers in a manner and language that they understand, and take other necessary and appropriate measures to monitor the implementation of Royal Decree No. 1620/2011 as soon as possible. The Committee also asks the Government:

(i) to provide information on the implementation of the 2021 labour inspection action campaign on domestic work and the results achieved, and

(ii) to continue providing statistical information on complaints filed before the Labour Inspection, courts or any other competent authority, in particular those filed by migrant domestic workers, as well as the inspections conducted and sanctions imposed.

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

Tajikistan

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 2007)

The Committee notes with ***deep concern*** that the Government's report, due since 2018, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 2, 4 and 7. Adequate and free services to assist migrants for employment. Measures to facilitate the departure, journey and arrival of migrant workers. Public Employment Service. The Committee previously requested the Government: (1) to provide information on the activities of the

Agency for Employment Abroad (established in 2014) in providing services and assistance to Tajik workers going abroad and foreign workers employed in Tajikistan; (2) to indicate whether these services are free of charge; and (3) to provide detailed information on the measures taken and arrangements made to facilitate the departure, arrival and reintegration of migrant workers. According to its website, the Agency for Employment Abroad provides qualified consulting and mediation services for the employment of Tajik citizens who have found a job abroad. It is also engaged in the organized recruitment of Tajik citizens to work in the Russian Federation and other countries; recruitment centres are opened in four cities (Dushanbe, Khujan, Khorog and Bokhtar). The Committee notes that the website provides a wealth of information to prospective migrants in English, Tajik and Russian. According to the website, the Agency works closely with all government and non-governmental agencies (Migration Service of the Ministry of Labour, Migration and Employment of Population (MoLMEP); Ministry of Education and Science; Ministry of Health and Social Protection; Embassy of Tajikistan in the Russian Federation; etc.) that provide informational support to citizens of Tajikistan who want to go abroad, who face difficulties in another country or who want to return. It refers migrants to the right governmental or non-governmental agency which can help them before, during and after their migration journey. The Agency organizes workshops on pre-departure modules in partnership with the Pre-departure orientation Centre of the Migration service or Migrant Resource Centre in Dushanbee. The Committee observes that the Government has developed a mobile application to ease migrants' access to available services and information and published a handbook on safe labour migration in the Russian Federation. It further notes that the website clearly states that all the information and service provided by the Agency are completely free of charge. The Committee notes that, in its concluding observations, the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) expressed concern: (1) at the lack of coordination, exacerbated by unclear and overlapping mandates between the various agencies within the Ministry, such as the State Migration Service, the pre-departure preparation centres, the Agency for Employment Abroad, the representation of the Ministry in the Russian Federation and the Agency for the Labour Market and Employment; (2) about the inadequate human, technical and financial resources available to the Ministry for it to effectively carry out its work, including a lack of staff with expertise on issues relating to migration; and (3) at the lack of sufficient monitoring and evaluation mechanisms to assess the impact of migration policies and programmes on the rights of migrant workers and members of their families (CMW/C/TJK/CO/2, 9 May 2019, paragraph16). In addition, the Committee observes that, according to the 2020 Asian Development Bank study "Strengthening support for labour migration in Tajikistan – assessment and recommendations" (ADB study), in practice, a majority of the migrants leave without any detailed knowledge of their destination country relying almost entirely on information from informal sources. The same study adds that staff of the Migration Services of Tajikistan are focusing most of their effort on re-entry bans in the Russian Federation issued to Tajik nationals in breach of the Russian legislation. It indicates that, according to Russian legislation, re-entry bans can be issued to foreign citizens for two reasons: when a foreign national is in breach of administrative regulations on the territory of the Russian Federation two or more times within a period of three years (e.g. for lacking registration), as well as in cases when a migrant has not left the country within thirty days after the expiry of his/her right to stay on the territory of the Russian Federation. Without knowing it, migrants can be issued re-entry bans for a period of three to five years as a result of a lack of documents or for an unpaid parking bill. Consequently, because there is no system of warning about re-entry bans, migrants leave the Russian Federation to go back to their home country and visit their relatives not aware that they will not be allowed to re-enter the Russian Federation. It is only when they want to go back to the Russian Federation that the electronic system at the border signalizes that they are not allowed to re-enter the Russian Federation and are rejected. In that regard, the Committee observes from the ADB study that, in 2019, approximatively 240,000 migrants of Tajik origin were registered on

the re-entry ban list of the Russian Federation. ***In light of the above, the Committee urges the Government:***

(i) to provide without delay accurate and free information to migrant workers and facilitate their departure, journey and reception in countries of destination, in particular to the Russian Federation;

(ii) to provide information on the specific measures taken or envisaged to ensure that its citizens going abroad are aware of the policy on re-entry restrictions in the Russian Federation, and of any negotiation in this respect with the Russian Federation (for example to remove their names from re-entry ban list);

(iii) to strengthen coordination between the different agencies under the MoLMEP regarding migration and employment to ensure that there is no overlap between their activities; and

(iv) to ensure that the MoLMEP and its agencies are provided with the adequate human, technical and financial resources for its effective functioning.

Please also provide information on any assistance and information services specifically targeting Tajik women workers going abroad.

Assistance to returning migrants workers. In its concluding observations, the CMW mentions the existence of a state programme to promote employment which resulted in the employment of 222 individuals in permanent jobs between 2018–19 and indicates that, although the National Development Strategy for 2016–2030, includes measures for the reintegration of returning migrants, the support provided to such returnees in practice is inadequate, in particular with regard to the provision of high-quality training and educational opportunities for professional development, and also regarding support for self-employment and entrepreneurship (CMW/C/TJK/CO/2, paragraph 50). In this regard, the ADB study adds that: (1) the lack of reliable data on returning migrants is a major challenge for the effectiveness of migration services; and statistical data on returning migrants are weak as the migration service centre-s have no system for recording the "clients" they serve; and (2) the challenges for returning migrants include difficulties in economic, social, and psychological reintegration. ***The Committee requests the Government to provide information on the impact of its assistance programmes for returning migrant workers and on the measures taken or envisaged to expand its returning policy in order to addressing effectively all the needs of returning migrant workers for a proper reintegration in their country of origin. Finally, the Committee asks the Government to provide statistical data, disaggregated by sex, on returning migrant workers.***

Article 3. Misleading propaganda. The Committee wishes to stress that the existence of official information services does not suffice to guarantee that migrant workers are efficiently and objectively informed, nor protected against the manoeuvres of certain intermediaries who have an interest in encouraging migration by every possible means, including the dissemination of erroneous information on the possibilities and conditions of emigration. The Convention does not define the measures governments should take to combat misleading propaganda, so it is up to them to decide the nature of such measures. The Committee notes that, in practice, measures taken by governments to combat misleading propaganda are either preventive or repressive (See General Survey on migrant workers of 1999, paragraphs 214 and 217). ***In the absence of any recent information on the measures taken to combat effectively misleading propaganda, the Committee reiterates its requests to the Government: (i) to provide information on the specific activities of the Migration Office and the Agency of Employment Abroad in this regard; and, more generally, (ii) to indicate whether the legal framework regulates, supervises and provides for sanctions in response to the dissemination of misleading information aimed at encouraging emigration or immigration.***

Article 9. Remittances. The Committee notes that, both the ADB study and the CMW concluding observations, point out that migration for work is an important livelihood option for many households in Tajikistan (a third of the country's Gross Domestic Product) due to limited job opportunities and that

the economic crisis and worldwide shutdown induced by the coronavirus disease (COVID-19) have caused international migration flows to fall, and that remittances are projected to decline significantly (by 7 per cent). The Committee notes that the Government indicated, in its report to the CMW, that: (1) amendments were made in March 2018 to instruction No. 204 concerning procedures for money transfers with a view to facilitating the receipt of remittances by individuals without the need for a bank account; and (2) the National Bank of Tajikistan has recommended that credit organizations open branch offices in remote mountainous regions to facilitate access to funds transferred from abroad. The Committee however notes the concerns of the CMW over the fact that in, February 2016, the National Bank of Tajikistan issued an order requiring all money transfers in Russian roubles by individuals without bank accounts to be issued only in the national currency of the State party, and that, owing to the unfavourable official exchange rate, recipients of remittances from the Russian Federation continue to lose money (CMW/C/TJK/CO/2, paragraph 42). ***The Committee asks the Government to indicate: (i) how the amendments made in 2018 to instruction No. 204 have facilitated concretely the receipt of remittances by migrant workers without a formal bank account; and (ii) whether the 2016 order issued by the National Bank of Tajikistan is still in force or has also been amended to facilitate the transfer of earnings and savings by migrant workers in the Russian Federation with preferential rates.***

Enforcement. ***In order to be able to undertake a comprehensive analysis of the manner in which the Convention is applied in practice, the Committee once again urges the Government to provide information, as completely as possible, in accordance with Parts III–V of the report form approved by the Governing Body. Such information should include: (i) an indication of the competent authorities entrusted with the application of the relevant laws, regulations, policies, and administrative decisions, including information on the organization and role of labour inspection; (ii) a summary of any court decisions involving questions of principles relating to the application of the Convention; and (iii) information on any practical difficulties encountered in the application of the Convention.***

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 97** *(Barbados, Belize, Dominica, Grenada, Guyana, Portugal, Serbia, Slovenia, Spain, Tajikistan);* **Convention No. 143** *(Mauritania, Portugal, San Marino, Slovenia, Sweden, Uganda).*

Seafarers

Congo

Maritime Labour Convention, 2006 (MLC, 2006) (ratification: 2014)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fourth consecutive year. As the requested report was not received, the Committee examined the application of the Convention on the basis of publicly available information.

Article I. General questions on application. Implementing measures. The Committee notes that the provisions of the Convention are mainly implemented by Act No. 30-63 of 4 July 1963 issuing the Merchant Shipping Code, amended by Act No. 63-65 of 30 December 1965; by orders and decrees of the Ministry of Transport, Civil Aviation and Merchant Shipping; and by Regulation No. 08/12-UEAC-088-CM-23 of the Central African Economic and Monetary Community (CEMAC) adopting the Community Merchant Shipping Code of 22 July 2012 (CCMM), which is directly applicable in the Congo and is one of the documents that must be carried on board ships flying the Congolese flag and foreign ships operating in Congolese territorial waters. The Committee also notes that the Labour Code does not exclude seafarers from its scope of application. Having reviewed the available information, the Committee notes the inconsistency between certain national provisions and between these and the CCMM, as well as the absence of available information on the implementation of several provisions of the Convention. The Committee underscores the need to avoid any inconsistency in the applicable provisions. It recalls that, in accordance with *Article I* of the Convention, each Member which ratifies the Convention undertakes to give full effect to its provisions in order to secure the right of all seafarers to decent employment. ***The Committee therefore requests the Government to adopt without delay the necessary measures to implement the Convention, taking into account the matters raised in the request addressed directly to the Government. It further requests the Government to provide a copy of any legislative texts or other regulatory instruments once adopted, as well as full information on the implementation of the Convention, including updated statistics on the number of seafarers who are nationals or residents of the Congo or who work on board ships flying the Congolese flag. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

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

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

Dominica

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 2004)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2022, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 2 of the Convention. Implementing legislation. The Committee notes the Government's indication that a special Tripartite Committee has been appointed to advise the Government on all matters relating to legislation and institutional changes necessary for the ratification of the Maritime Labour Convention, 2006 (MLC, 2006). It also notes that a National Action Plan has been prepared in order to formulate recommendations to the Government on matters of maritime laws and administration. While welcoming the Government's active steps towards the ratification of the MLC, 2006, the Committee is bound to observe that the Government's first report on the application of Convention No. 147 does not contain any

information on the laws or regulations and other measures giving effect to the specific requirements of the latter Convention. ***The Committee therefore requests the Government to indicate in detail how each of the Articles of the Convention is applied in national law and practice, and explain in particular in what manner the provisions of the International Maritime Act, 2002, and of the Dominica Maritime Regulations, 2002, are substantially equivalent to the Conventions mentioned in the Appendix of the Convention relating to safety standards, social security measures and shipboard conditions of employment and shipboard living arrangements, as required under Article 2 of the Convention.***

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

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

Gabon

Maritime Labour Convention, 2006 (MLC, 2006) (ratification: 2014)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fourth consecutive year. As the requested report has not been received, the Committee examined the application of the Convention on the basis of publicly available information.

Article I. General questions on application. Implementing measures. The Committee notes that the provisions of the Convention are mainly implemented through Regulation No. 08/12-UEAC-088-CM-23 of the Central African Economic and Monetary Community (CEMAC) issuing the Community Merchant Shipping Code of 22 July 2012 (hereinafter, CCMM), which is directly applicable to Gabon and is one of the documents that must be carried on board ships flying the Gabonese flag and foreign ships operating in Gabonese territorial waters. The Committee also notes that section 1 of the Labour Code does not exclude seafarers from its scope of application. The Committee notes the lack of available information on the implementation of several provisions of the Convention. It recalls that, in conformity with *Article I* of the Convention, each Member which ratifies it undertakes to give complete effect to its provisions in order to secure the right of all seafarers to decent employment. ***The Committee therefore requests the Government to adopt without delay the necessary measures to implement the Convention, taking into account the matters raised in the request addressed directly to the Government. It further requests the Government to provide a copy of any legislative texts or other regulatory instruments once adopted, as well as full information on the implementation of the Convention, including updated statistics on the number of seafarers who are nationals or residents of Gabon or who work on ships that fly the Gabonese flag. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

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

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

Maldives

Maritime Labour Convention, 2006 (MLC, 2006) (ratification: 2014)

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee recalls that in 2020, in the framework of the procedure of "urgent appeal", it examined the implementation of the Convention by the Maldives on the basis of publicly available information given that the Government had failed to submit a first report for four consecutive years. The Committee welcomes the Government's first report which was submitted during the June 2021 session of the Conference Committee on the Application of Standards (hereinafter, the Conference Committee). The Committee notes the discussion, which took place during the same session of the

Conference Committee concerning the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) by the Maldives. It notes that the Conference Committee recalled the critical importance of effective national implementation of the Convention and the need for ratifying Member States to ensure they meet their regular reporting obligations. The Conference Committee urged the Government to take all necessary measures, in consultation with the social partners, to: (i) ensure full compliance of its law and practice with the MLC, 2006; (ii) provide full information regarding the application in law and in practice of the MLC, 2006; and (iii) fully comply with its reporting obligations. The Conference Committee requested the Government to avail itself of the ILO technical assistance to effectively implement these conclusions. The Committee notes that a representative of the Government participated in a course offered by the ILO Training Centre on reporting on International Labour Standards, which led to the finalization of the report on the MLC, 2006. It further notes that, after the International Labour Conference, a number of exchanges and a follow-up meeting took place between the Office and the Government and that discussions are taking place concerning the most appropriate way to provide technical assistance. ***The Committee hopes that the Government will avail itself of the Office's technical assistance to address the numerous issues still pending towards a full implementation of the Convention.***

Article I of the Convention. General questions on application. Implementing measures. In its previous comments, the Committee requested the Government to adopt without delay the necessary measures to give effect to the provisions of the Convention. The Committee notes the Government's information that Marine Circular Number INT-2013/003 dated 20 August 2013 (hereinafter, Marine Circular INT-2013/003) seeks to implement the MLC, 2006 in the Maldives. The Committee notes that, while the Circular covers some of the matters enshrined in the MLC, 2006, it had been adopted before the ratification of the Convention for the purpose of the voluntary inspection and certification of the Maldivian-flagged ships for compliance with the MLC, 2006. The Committee recalls that under *Article I* of the Convention, each Member which ratifies the Convention undertakes to give complete effect to its provisions in the manner set out in *Article VI* in order to secure the right of all seafarers to decent employment. ***The Committee requests the Government to clarify the legal value of Marine Circular INT-2013/003 and to revise its text in view of the ratification and entry into force of the MLC, 2006 for the Maldives. The Committee further requests the Government to adopt the necessary measures to give effect to all the provisions of the Convention.***

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

[The Government is asked to reply in full to the present comments in 2024.]

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 22** *(Iraq, United Kingdom of Great Britain and Northern Ireland: Anguilla, United Kingdom of Great Britain and Northern Ireland: Jersey, Bolivarian Republic of Venezuela);* **Convention No. 23** *(Iraq, Ukraine, United Kingdom of Great Britain and Northern Ireland: Anguilla, Uruguay);* **Convention No. 55** *(Turkey, United States of America, United States of America: American Samoa, United States of America: Guam, United States of America: Puerto Rico, United States of America: United States Virgin Islands);* **Convention No. 68** *(Equatorial Guinea, Turkey);* **Convention No. 69** *(Turkey, Ukraine);* **Convention No. 71** *(Djibouti);* **Convention No. 92** *(Equatorial Guinea, Iraq, Turkey, Ukraine);* **Convention No. 108** *(Saint Lucia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, United Kingdom of Great Britain and Northern Ireland: Bermuda, United Kingdom of Great Britain and Northern Ireland: British Virgin Islands, United Kingdom of Great Britain and Northern Ireland: Gibraltar, Uruguay);* **Convention No. 133** *(Turkey, Ukraine);* **Convention No. 134** *(Turkey, Uruguay);* **Convention No. 146** *(Iraq, Turkey);* **Convention No. 147** *(Dominica, Iraq, Trinidad and Tobago, Ukraine, United States of America, United States of America: American Samoa, United States of America: Guam,*

United States of America: Northern Mariana Islands, United States of America: Puerto Rico, United States of America: United States Virgin Islands); **Convention No. 164** *(Turkey);* **Convention No. 166** *(Turkey);* **Convention No. 185** *(Congo, Tunisia, Turkmenistan, United Republic of Tanzania);* **MLC, 2006** *(Bahamas, Chile, China, Congo, Croatia, Gabon, Ghana, Honduras, India, Islamic Republic of Iran, Ireland, Jamaica, Kenya, Kiribati, Malaysia, Maldives, Mauritius, Mongolia, Montenegro, Nigeria, Republic of Korea, Romania, Saint Kitts and Nevis, Samoa, Senegal, Seychelles, Sri Lanka, Togo, Tuvalu, United Kingdom of Great Britain and Northern Ireland: Bermuda, United Kingdom of Great Britain and Northern Ireland: Gibraltar, Viet Nam).*

Fishers

Liberia

Minimum Age (Fishermen) Convention, 1959 (No. 112) (ratification: 1960)

Medical Examination (Fishermen) Convention, 1959 (No. 113) (ratification: 1960)

Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1960)

The Committee notes the Government's reports on the application of Conventions Nos 112, 113, and 114 on the fishing sector. In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on fishing, the Committee considers it appropriate to examine them together.

The Committee requested the Government to clarify whether the Liberian Maritime Law, RLM 107 and the Liberian Maritime Regulations, RLM-108 were applicable to fishers. The Committee notes with ***regret*** that the Government has not provided the clarification requested in this regard. ***Therefore, recalling that for numerous years the Government has been requested to provide information on the applicability of existing legislation to fishers, the Committee once again requests the Government to indicate the measures adopted to give full effect to the provisions of the Conventions, taking into account the points raised in previous observations.***

Impact of the COVID-19 pandemic. The Committee notes with ***deep concern*** the impact of the COVID-19 pandemic on the protection of fishers' rights as laid out in the Conventions. ***In this regard, the Committee refers to the resolution adopted by the Governing Body in its 340th Session (GB.340/Resolution) concerning maritime labour issues and COVID-19 disease, which calls on Member States to take measures to address the adverse impacts of the pandemic on fishers' rights, and requests the Government to provide information in its next report on any temporary measures adopted in this regard, their duration and their impact on fishers' rights.***

Trinidad and Tobago

Fishermen's Competency Certificates Convention, 1966 (No. 125) (ratification: 1972)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous comments.

Implementing legislation on fishers' competency certificates. The Committee had noted in its previous comment the absence of laws and regulations giving effect to the requirements of the Convention and had requested the Government to provide a copy of the Safety of Fishing Vessel Regulations which was under preparation. The Committee ***regrets*** to note the Government's indication in its report that the regulations governing all aspects of fishing vessel operations, including fishers' certificates of competency, are still being developed. ***The Committee therefore urges once again the Government to adopt the necessary measures without delay to regulate fishers' competency certificates.***

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 113** *(Uruguay);* **Convention No. 114** *(United Kingdom of Great Britain and Northern Ireland: Guernsey);* **Convention No. 125** *(Sierra Leone);* **Convention No. 126** *(Sierra Leone, Ukraine);* **Convention No. 188** *(Congo, France: New Caledonia, Portugal, Senegal, Thailand).*

Dockworkers

Congo

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1986)

The Committee notes with ***deep concern*** that the Government's report has not been received. In light of the urgent appeal made to the Government in 2019, the Committee will examine the application of the Convention on the basis of the information at its disposal.

The Committee notes first that, in addition to its failure to provide a report since 2012, the Government did not provide sufficient information in successive reports and the Committee has not therefore been able to assess the effect given to many of the provisions of the Convention. In its previous comments, the Committee drew the Government's attention to the need to reply to the questions raised on the effect given to several Articles of the Convention, and not to confine itself to providing information on the general legislative provisions applicable to enterprises. The Committee also recalled that, although the Government appeared to consider that dockworkers should be treated in the same manner as other workers and ports treated like any other enterprise, the Government is required, particularly under the terms of *Articles 4 to 7 of the Convention*, to take occupational safety and health measures that are specific to dock work. ***The Committee expects that the Government will take all the necessary measures on an urgent basis to provide full particulars on the following points.***

Article 6(1)(a) and (c). Measures to ensure the safety of dock workers. The Committee notes that, under the terms of section 132 of the Labour Code, enterprises must be maintained in a constant state of cleanliness and ensure the necessary safety and health conditions for the health of the personnel, and that they must be so organized as to ensure the safety of the workers. By virtue of subsection 5, instructions on the prevention of occupational risks shall be posted in each workplace and each worker shall be informed by the employer of these instructions at the time of recruitment. ***The Committee requests the Government to indicate the manner in which effect is given to this general provision in dock work in order to ensure that workers do not misuse or interfere without due cause with the operation of any safety device provided for their own protection or the protection of others at the workplace, and that they are able to report any situation which they have reasons to believe could present a risk and which they cannot correct themselves.***

Article 7. Consultation with employers and workers or their representatives. The Committee notes that, under the terms of section 131 of the Labour Code, a National Technical Commission for Occupational Health, Safety and Risk Prevention shall be established in the Ministry of Labour to examine matters relating to occupational safety and health and the prevention of employment risks. It notes that Decree No. 2000-29 of 17 March 2000 determines the composition and operation of this Commission. In accordance with section 2 of the Decree, the Commission is a tripartite advisory body under the authority of the Minister of Labour with the mandate to: re-examine periodically a coherent national policy on occupational safety and health in the workplace; propose any measures likely to improve occupational safety and health; and provide opinions on any related draft law or decree. ***The Committee requests the Government to provide information on the work of the National Technical Commission for Occupational Health, Safety and Risk Prevention in relation to occupational safety and health issues in dock work, as well as information on any other measures to ensure the collaboration of employers and workers or their representatives in the application of the measures giving effect to the Convention.***

Article 8. Cessation of work in workplaces that are unsafe. The Committee previously recalled that Chapter II of Order No. 9036 of 10 December 1986, to which the Government referred, contains general protective measures, whereas the Convention requires the adoption of measures specific to dock work.

The Committee urges the Government to indicate the provisions (regulations or other measures) requiring the adoption of effective protection measures (fencing, flagging or other suitable measures, including, where necessary, cessation of work) to ensure that when the workplace has become unsafe, workers are protected until it has been made safe again.

Article 12. Firefighting measures. The Committee notes that, under the terms of section 77 of Order No. 9036, heads of establishments shall take the necessary measures to control any incipient fires rapidly and effectively. However, the Committee notes that the only means envisaged to fight fires appear to be the use of extinguishers. ***The Committee requests the Government to provide information on the manner in which effect is given to section 77 of Order No. 9036 in dock work, and to specify whether other appropriate firefighting means are provided in docks, such as fixed systems, flexible hoses and fire hydrants.***

Article 14. Construction, installation, operation and maintenance of electrical equipment. The Committee previously noted the Government's indication that the application of this Article is ensured by inspections of enterprises by labour inspectors. The Committee also notes that section 133 of the Labour Code contains general provisions on the prevention of risks related to electrical equipment and installations, and more specifically on work in wells, gas and water pipes, sceptic tanks, vessels and any equipment that may contain deleterious gasses. Noting that this information is still insufficient as a basis for assessing the effect given to this Article of the Convention relating to electrical equipment and installations, the Committee draws the Government's attention to section 3.6.4 (Electrical equipment) of the ILO Code of practice on safety and health in ports (2016), which provides indications on the main elements to be taken into consideration in the installation, operation and maintenance of electrical equipment and installations in ports. ***The Committee therefore urges the Government to indicate the texts or other measures which ensure that electrical equipment and installations used in dock work are so constructed, installed, operated and maintained as to prevent danger, and to specify the standards that have been recognized by the competent authority in this regard.***

Article 17. Access to a ship's hold or cargo deck. The Committee previously noted that section 41 of Order No. 9036, cited by the Government, sets out measures for the immobilization when stopped of lifting devices mounted on wheels, such as bridge cranes, gantry cranes, hoists on monorails and derricks, and to prevent their movement under specific atmospheric conditions (wind action). Recalling that the information provided is insufficient to be able to assess the effect given to this Article of the Convention, which requires the competent authority to determine the acceptability of means of access to a ship's hold or cargo deck, the Committee draws the Government's attention to section 7.3 (Access on board ships) of the ILO Code of practice on safety and health in ports (2016), which contains indications on the main elements to be taken into consideration in determining the means of access to a ship's hold or cargo deck. ***The Committee urges the Government to indicate the texts or other measures setting out the means of access to a ship's hold or cargo deck, and to specify the manner in which the competent authority determines their acceptability.***

Article 21. Design of lifting appliances, items of loose gear and lifting devices. The Committee previously noted that sections 47 to 49 of Order No. 9036 referred to by the Government only set out protection measures for some machinery or parts of machines that can be dangerous. ***The Committee requests the Government to indicate the measures adopted or envisaged to ensure that all lifting appliances, every item of loose gear and every sling or lifting device forming an integral part of a load are designed, used and maintained in compliance with the provisions of the Convention.***

Article 35. Evacuation of injured persons. The Committee previously noted that section 147 of the Labour Code regulates the evacuation of injured persons who can be moved and who cannot to be treated by the facilities made available by the employer. ***The Committee requests the Government to indicate the measures adopted, under the terms of section 147 of the Labour Code, or by any other***

means, to ensure that adequate facilities, including trained personnel, are readily available for the provision of first aid.

Article 36(1)(d). Appropriate measures for the provision of occupational health services for workers. The Committee notes that Order No. 9033 of 10 December 1986 determines the organization and operation of the socio-health structures of enterprises installed in the country. In accordance with section 7 of the Order, socio-health personnel are responsible, among other tasks, in accordance with the laws and regulations in force, for: carrying out systematic medical examinations; ensuring the health education and information of workers; providing care to workers and their families who are ill; participating in the improvement of working conditions in the enterprise; and participating in the determination of occupational diseases. ***Recalling that, in accordance with this Article of the Convention, appropriate measures for the provision of an occupational health service for workers should be determined after consultation with the organizations of employers and workers concerned, the Committee requests the Government to indicate the manner in which employers' and workers' organizations are consulted in the organization and operation of socio-health centres, and in the activities of socio-health personnel, in enterprises engaged in dock work.***

Article 37. Safety and health committees. The Committee recalls that, under the terms of this Article of the Convention, safety and health committees shall be formed at every port where there is a significant number of workers and, as necessary, at other ports. In this regard, the Committee recalls that Order No. 9030 on safety and health committees in undertakings (10 December 1986) provides that such committees, which include the head of the undertaking or is representative, the responsible agent for safety issues, the occupational doctor, the chief of staff and the workers delegates, should be established in all industrial undertakings and enterprises. These committees would be in charge of determining and implementing the internal policy on occupational safety and health. However, the Committee had noted from the Government's previous report that the health and safety committees provided for by the law have not yet been established. ***The Committee urges the Government to provide information on any measures adopted for the establishment of safety and health committees provided for by the law in the port sector, with an indication of the manner in which the organizations of employers and workers concerned were consulted on the establishment, composition and functions of these committees.***

Article 38(1). Adequate instruction and training. The Committee notes that, in accordance with section 141-3 of the Labour Code, employers are required to ensure the information and instruction of workers and the prevention of occupational risks inherent to the occupation or activity of the enterprise. The Committee previously noted the Government's indication that the instruction and training of workers are entrusted to a specialist in this field at the enterprise level. ***The Committee urges the Government to indicate how instruction and training are ensured for workers engaged in dock work, particularly in relation to the potential risks attaching to the work and the main precautions to be taken. Furthermore, the Committee requests the Government to provide the available information on the activities of the specialists in instruction and training in enterprises engaged in dock work.***

Finally, in the absence of information on the application of the following provisions of the Convention, the Committee urges the Government to indicate any regulations or other measures adopted or envisaged to give full effect to them:

Article 9(1) and (2). Safety measures with regard to lighting and marking of dangerous obstacles.

Article 10(1) and (2). Maintenance of surfaces for traffic or stacking of goods and the safe manner of stacking goods.

Article 11(1) and (2). Width of passageways and separate passageways for pedestrians.

Article 16(1) and (2). Safe transport to or from a ship or other place by water, safe embarking and disembarking, and safe transport to or from a workplace on land.

Article 18(1)–(5). Regulations concerning hatch covers.

Article 19(1) and (2). Protection around openings on decks, closing hatchways when not in use.

Article 20(1)–(4). Safety measures when power vehicles operate in the hold; hatch covers secured against displacement; ventilation regulations; safe means of escape from bins or hoppers when dry bulk is being loaded or unloaded.

Article 22(1)–(4). Testing of lifting appliances and items of loose gear.

Article 23(1) and (2). Certification of lifting appliances.

Article 24(1) and (2). Inspection of items of loose gear and slings.

Article 25(1) and (2). Records of lifting appliances and items of loose gear.

Article 26(1)–(3). Mutual recognition by Members of arrangements for testing and examination.

Article 27(1)–(3). Marking lifting appliances with safe working loads.

Article 28. Rigging plans.

Article 29. Strength and construction of pallets for supporting loads.

Article 30. Necessary measures for the raising or lowering of loads.

Article 31(1) and (2). Lay-out and organization of work in freight container terminals.

Article 32(1)–(4). Handling, storage and stowing of dangerous substances; compliance with international regulations for the transport of dangerous substances; prevention of the exposure of workers to harmful substances or atmospheres.

Article 34(1) to (3). Protective equipment and clothing.

Article 36(1)(a), (b) and (c), (2) and (3). Medical examinations.

Article 38(2). Minimum age limit for the operation of lifting appliances.

Part V of the report form. Application of the Convention in practice. ***The Committee urges the Government to provide information on the manner in which the Convention is applied in the country and in particular information on the number of dockworkers covered by the legislation, the number and nature of the contraventions reported and the number of occupational accidents and diseases reported in dock work.***

The Committee trusts that the Government will take all the necessary measures on an urgent basis to give full effect to the Convention and that it will provide a detailed report in this regard.

[The Government is asked to reply in full to the present comments in 2023.]

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 27** *(Ukraine, Viet Nam);* **Convention No. 32** *(Sierra Leone, Tajikistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay);* **Convention No. 137** *(United Republic of Tanzania, Uruguay);* **Convention No. 152** *(Turkey, United Republic of Tanzania).*

Indigenous and tribal peoples

Honduras

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1995)

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021. It also notes the observations of the Honduran National Business Council (COHEP), received on 31 August 2021, and the Government's reply.

Follow-up to the conclusions of the Committee on the Application of Standards (110th Session of the International Labour Conference, May–June 2021)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2021, and in particular that in its conclusions it requested the Government to avail itself of ILO technical assistance and urged it to accept an ILO direct contacts mission. In this regard, the Committee notes that, in a communication dated 24 August 2021, the Government confirmed that it accepted a visit to the country by the direct contacts mission, and proposed that it take place in the first months of 2022. The Committee welcomes the willingness demonstrated by the Government in this regard, and hopes that this mission will contribute to finding solutions to the issues raised in relation to the application of the Convention.

Article 3 of the Convention. Human rights. On several occasions, both the Committee of Experts and the Conference Committee, in its conclusions in 2016 and 2021, have expressed deep concern regarding the allegations of murders, threats, forced disappearances and violence of which representatives and members of indigenous and Afro-Honduran peoples have been victims, and requested the Government to conduct, without delay, independent investigations and prosecutions in relation to these allegations, and to indicate the protection measures taken as a consequence of the crimes and threats against members of indigenous and Afro-Honduran peoples.

In its report, the Government indicates that: (1) between 2018 and 2020, the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage received 255 allegations of acts of violence and threats against members of indigenous and Afro-Honduran peoples, including 64 regarding threats, 4 concerning attempted homicide, 3 concerning homicide and 13 regarding murders; (2) at the request of the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, 15 protection measures were implemented for members and leaders of indigenous communities, and leaders of representative organizations of indigenous peoples; (3) under the National Protection System, between 2018 and February 2021, the Prevention and Context Analysis Unit developed 14 prevention plans and guarantees of non-recurrence, together with the beneficiary communities, and carried out training activities on the Protection Act for defenders of human rights, journalists, social communicators and actors in the justice system; (4) in April 2021, criminal proceedings were initiated against the suspected instigator of the murder of Berta Cáceres (former President of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), committed in 2014, while the Public Prosecutor's Office continues its investigation to identify other possible instigators involved in the murder.

The Committee observes the ITUC's allegations that environmental and human rights defenders continue to face a critical situation, with reference to the murders of indigenous leaders committed in 2018, 2019 and 2020. The ITUC refers specifically to the kidnapping and disappearance of four members of the Garifuna community in El Triunfo de la Cruz, on 18 July 2020, and the murders in December 2020 of José Adán Medina, a member of the Tolupan indigenous community, and Félix Vásquez, an environmental activist from the Lenca community for whom the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage had requested protection measures. The ITUC alleges the lack of protection measures and prevention of acts of violence against environmental and human rights

defenders, and the minimal, slow and inconsistent processes for the investigation and prosecution of the perpetrators and instigators of these acts.

The Committee also observes that, on 2 September 2020, the Inter-American Court of Human Rights issued a resolution calling for the adoption of urgent measures in the case of the disappearance of four members of the Garifuna community (the case referred to by the ITUC), and requested the Government to adopt the necessary and appropriate measures to determine the whereabouts of these persons, and to provide effective protection for the rights to life and personal integrity of community leaders from the Garifuna communities of Triunfo de la Cruz and Punta Piedra who are collectively taking action for the defence of the rights of the Garifuna people.

With regard to the proceedings against the alleged perpetrator of the murder of Berta Cáceres, the Committee duly notes that, according to the information available on the official website of the Public Prosecutor's Office, the Trial Court with national jurisdiction issued a guilty verdict against the chief executive officer of the enterprise Desarrollos Energéticos S.A. (DESA), and found that he had ordered the death of Berta Cáceres as part of a plan to remove any obstacle that interfered with the operations of DESA on the Gualcarque river, which is an ancestral territory of the Lenca indigenous people.

The Committee observes with ***deep concern*** that, according to the information provided by the ITUC and the allegations filed with the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, the members and leaders of indigenous and Afro-Honduran communities continue to face a climate of violence and their physical and psychological integrity remains under threat. The Committee hopes that, in the same way as the perpetrators, the instigators of the murder of Berta Caceres will finally be punished. The Committee recalls that for indigenous and tribal peoples to be able to assert and enjoy the rights set out in the Convention, governments must adopt appropriate measures to guarantee a climate free from violence, pressure, fear and threats of any kind. ***The Committee firmly urges the Government to continue taking all the necessary measures to: protect the life and physical and psychological integrity of indigenous and Afro-Honduran peoples, and their representatives and leaders; ensure the full and effective exercise of their human rights; and ensure that those responsible are held accountable and the perpetrators and instigators of the crimes committed against these persons, in the context of the peaceful assertion of their rights, are punished (including in the new cases reported by the ITUC). The Committee requests the Government to provide detailed information in this respect, in particular on the protection measures requested by the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, the investigations carried out following the complaints received, and the legal proceedings in process.***

Articles 6 and 7. Appropriate consultation and participation procedures. The Committee noted previously the development of a draft regulatory framework respecting the prior, free and informed consultation of indigenous peoples, and the submission by the Government of a draft Bill to the National Congress, which subsequently established a special commission to examine the Bill on consultation. The Committee requested the Government to ensure that the peoples covered by the Convention are consulted and are able to participate in an appropriate manner in the development of the regulatory framework for consultation.

The Government indicates that, due to fact that the state of emergency declared in the context of the COVID-19 pandemic remains in force throughout the country, it has not been possible to initiate the consultation process with all indigenous and Afro-Honduran peoples. However, the Committee notes the Government's reiterated indication that, with the aim of resuming the activities in the congressional commission, outreach meetings were held through video conferences with certain representatives of indigenous peoples, although not everyone could participate.

The Committee observes that the ITUC refers again to the rejection by some representatives of indigenous and Afro-Honduran peoples of the action taken by the Government in relation to the draft

Bill on prior, free and informed consultation, both concerning the 2016 outreach workshops (due to the inadequate representation of indigenous and Afro-Honduran communities) and in the context of the preparation of a new draft for submission to the Congress which was not consulted or disseminated to the communities.

The Committee considers it of the utmost importance that the regulatory framework for prior consultation is subject to a full, free and informed consultation process with all indigenous and Afro-Honduran peoples, and urges the Government to take all the necessary measures to ensure that indigenous and Afro-Honduran peoples, through their institutions, are able to participate in this consultation process in a manner that is appropriate to the circumstances and, so that they can express their opinions and have an influence on the final outcome of the process. Pending the adoption of the law, the Committee recalls the obligation of the Government to consult the peoples covered by the Convention in relation to any legislative or administrative measure that may affect them directly, and once again requests the Government to provide information on the consultation processes held and their outcomes.

Articles 20, 24 and 25. Protection of the rights of the Misquito people. The Committee previously welcomed the comprehensive approach adopted to grant comprehensive compensation to the victims of dive-fishing and their families and to improve the living and working conditions of the members of the Misquito community. Both the Committee of Experts and the Conference Committee in 2021 requested the Government to continue adopting effective measures in this respect.

The Committee notes the information provided by the Government on: (1) the adoption in October 2020 of the Occupational Safety and Health Regulations for Dive-Fishing and an action plan for its implementation. The purpose of the Regulations is to develop and apply legal, technical and administrative measures for the prevention of employment accidents and occupational diseases on fishing vessels and during work related to the activity of underwater dive-fishing; and (2) the updating of the Pluriannual Strategic Plan of the Inter-Institutional Commission for Problem Prevention and Assistance in Dive-Fishing (CIAPEB) for the period 2020–2025 and the activities carried out with the participation of the Misquito people between 2015 and 2019 for the implementation and evaluation of the plan. The Committee observes that the Strategic Plan 2020–2025 aims, inter alia, to: improve the development of human capital and social development within the Misquito population; contribute to the improvement of the livelihoods of the families of disabled divers and of active divers; improve access to justice for the Misquito population; and strengthen the capacities of local organizations and State institutions to promote respect for human rights and the rights of indigenous peoples.

The Committee observes the view of COHEP that these measures demonstrate that significant progress has been made, and that it is the responsibility of the Secretariat of Labour and Social Security, through the Labour Inspection Directorate and the other government institutions involved, to ensure strict compliance with both the regulations and the Strategic Plan, and to guarantee decent recruitment and employment conditions for Misquito divers. While the ITUC recognizes that the Government has implemented several health and compensation measures for Misquito divers, it expresses concern at the deplorable situation that they continue to face, with precarious working conditions without adequate occupational safety measures.

The Committee observes that, in its decision in the case of the *Miskito (Lemoth Morris and others) v. Honduras*, of 31 August 2021, the Inter-American Court of Human Rights approved the amicable settlement agreement reached between the parties, in which the Government and the representatives of victims agreed on comprehensive reparations for victims through a series of measures (such as restitution and satisfaction measures, financial measures, and guarantees of non-recurrence).

The Committee encourages the Government to continue taking measures to improve the working conditions of Misquito divers, including through prevention and capacity-building activities, and for the labour inspectorate to ensure the effective application of the legal framework regulating dive-

fishing. The Committee requests the Government to provide detailed information on the measures taken in the context of the implementation of the Strategic Plan 2020–2025, and particularly to improve the development of human capital and social development in the Misquito population.

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

[The Government is asked to reply in full to the present comments in 2023.]

Panama

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1971)

The Committee notes the observations of the National Confederation of United Independent Unions (CONUSI), received on 30 August 2021, as well as the Government's reply to them.

Articles 2 and 5(b) of the Convention. Coordinated and systematic programmes. Participation of indigenous peoples. In its previous comments, the Committee noted the adoption of the Plan for the Comprehensive Development of the Indigenous Peoples of Panama (PDIPIP), formulated with the participation of the representatives of the various indigenous peoples of the country, as well as the support project for the implementation of the PDIPIP. In this regard, the Committee requested the Government to provide information on the results achieved through its implementation. The Committee also noted the establishment of the National Council for the Comprehensive Development of Indigenous Peoples (CNDIPI) as an advisory body on public policies targeting indigenous peoples.

The Committee notes the Government's indication in its report that the PDIPIP seeks in the short term to respond to the urgent needs in terms of infrastructure and installations given priority by indigenous communities in the fields of health, education, water and sanitation. In the medium term, the Plan will contribute to the design and implementation of programmes to improve the quality and cultural relevance of these services, and in the long term to transforming the capacity of the Government and indigenous authorities to plan and invest in their territories. The execution of the PDIPIP is under the responsibility of several Ministries, which shall have the authorization of the traditional authorities and have to work in coordination with them. Five of the seven indigenous peoples in the country have defined their own plans of action through consultations involving indigenous women. The Committee takes due note of the activities and results achieved within the framework of the support project for the implementation of the PDIPIP between 2018 and 2020, and the information on the active participation of indigenous peoples in its execution and evaluation. It also notes the establishment of the Multisectoral Technical Working Group in the Department of Indigenous Affairs, which brings together the indigenous territories and *comarcas* in Panama and is called upon to examine broad themes such as the PDIPIP, governance in indigenous territories and other subjects of interest to indigenous populations.

The Committee also notes with ***interest*** Bill No. 316 of March 2020 establishing measures for the comprehensive development of the indigenous peoples of Panama which, according to the Government, has already been examined and received the support of the CNDIPI. In accordance with section 2 of the Bill, the Ministry of Economy and Finance shall incorporate and classify as compulsory the policies and objectives of the Government's strategic plan for indigenous peoples and establish plans for indigenous development together with the Department of Indigenous Affairs and the CNDIPI. Section 4 of the Bill also provides that the participation of indigenous peoples shall be promoted in the formulation, design, application and evaluation of development programmes that concern them.

The Committee welcomes the measures taken by the Government for the implementation of the PDIPIP and requests it to continue providing information on the progress achieved in its various policy areas and on the number of communities that have benefited. The Committee also encourages the Government to continue promoting the participation of indigenous peoples, including, as indicated by the Government, indigenous women, in the formulation, implementation and evaluation of the

development plans that concern them. In this regard, the Committee requests the Government to provide information on the manner in which indigenous peoples collaborate with the Multisectoral Technical Working Group of the Department of Indigenous Affairs. Finally, the Committee requests the Government to provide information on the progress achieved in the adoption of Bill No. 316 of March 2020 establishing measures for the comprehensive development of the indigenous peoples of Panama.

Article 11. Lands. Adjudication processes. In its previous comments, the Committee welcomed the adoption of Act No. 72 of 23 December 2008 establishing the special procedure for the adjudication of the collective ownership of lands by indigenous peoples which are not within *comarcas*, and it requested the Government to provide updated information on the collective lands adjudicated under the terms of the Act. The Committee notes the observation by the CONUSI that the Government has not made available updated information on the number of communities that have benefited from adjudication processes, and that the Bri Bri indigenous community requested the adjudication of its ancestral lands before the National Land Administration Authority (ANATI) in 2015, but that its claims were denied. The Committee recalls that in previous comments it noted that the Government had established dialogue forums to address the issue of the recognition of the collective territory of the Bri Bri people.

The Committee also notes the reference by the Government to the adoption of Decision No. DM-0612-2019 of 29 November 2019 of the Ministry of the Environment establishing the legal criterion to be applied by the Ministry of the Environment to determine the feasibility of approving the claims made by indigenous communities for the adjudication of collective lands, the boundaries of which coincide partially or totally with protected areas or State forest lands. In accordance with the Decision, requests for adjudication submitted by indigenous peoples shall be approved on condition that, on the basis of a technical report issued by the Department of Indigenous Affairs, the traditional occupation commenced prior to the creation of the respective protected areas or, in the case of State forest lands, that the occupation commenced prior to the entry into force of Act No. 1 of 1994 respecting forest law. The Decision also provides that, in the event of the existence of recognized collective lands of indigenous peoples, the boundaries of which coincide partially or totally with protected areas or State forest lands, the communities concerned shall submit a plan for the sustainable use of the natural resources and the community development of such areas for approval by the Ministry of the Environment.

The Committee requests the Government to take the necessary measures to address as soon as possible the claim for the recognition of the collective ownership by the Bri Bri indigenous community of the lands that they traditionally occupy and encourages it to continue dialogue with that community to seek a solution. The Committee also once again requests the Government to provide updated information on the number of requests for the adjudication of collective lands which have been approved under Act No. 72 of 2008, including the number of beneficiary communities as well as the number of requests that have been rejected along with the reasons for such rejection and the number of requests still under consideration. Finally, the Committee requests the Government to provide examples of plans for the sustainable use of natural resources submitted by indigenous communities under the terms of Decision No. DM-0612-2019 of 29 November 2019 of the Ministry of the Environment.

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

Peru

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1994)

The Committee notes the observations of the General Confederation of Workers of Peru (CGTP), received in 2018; the observations of the Autonomous Workers' Confederation of Peru (CATP), received in 2018 and 2019; and the observations of the International Organisation of Employers (IOE), received in 2019. The Committee notes the Government's reply to these observations. ***Lastly, the Committee***

notes the observations of the National Confederation of Private Business' Institutions (CONFIEP), received on 10 September 2021, and requests the Government to send its comments in this regard.

Article 3 of the Convention. Human rights. 1. *Events in Alto Tamaya–Saweto.* In its previous comments, the Committee deplored the murders of four indigenous trade union leaders (Edwin Chota Valera, Jorge Ríos Pérez, Leoncio Quinticima Meléndez and Francisco Pinedo) of the Asháninka indigenous community of Alto Tamaya–Saweto after reporting illegal logging in their community, events that were examined in 2016 in the report of the tripartite committee set up in the context of a representation made in 2014 alleging violation of the Convention (GB.327/INS/5/3). The Committee urged the Government to continue taking all necessary measures to determine responsibilities and punish the perpetrators of the murders, and also to investigate the reports of acts of violence and illegal logging in the above-mentioned community.

The Committee notes that the CATP states in its observations that despite the judicial proceedings instituted against the suspected perpetrators of the murders, those with primary responsibility for the crimes are still at liberty and have not been punished, also pointing out that some authorities have contributed to procedural delays in the investigations and that there are other persons who were involved in the murders who have still not been charged. The Committee also notes that, according to the CATP, it was determined in the investigations that the main motive for the crime was illegal logging within the *habilitación* (advances) system which involves forced labour practices. The Committee notes that the Government attaches to its report copies of the reports of the Public Prosecutor's Office and the judiciary in relation to the status of the criminal proceedings against the suspected perpetrators of the murders of the indigenous trade union leaders from Alto Tamaya–Saweto which occurred in 2014. It observes that, according to the 2019 report of the High Court of Justice of Ucayali, criminal proceedings had been instituted for aggravated premeditated homicide against five suspected perpetrators of the murders; these proceedings were at an intermediate stage, with the corresponding indictment due to be issued soon. Moreover, the 2019 report of the Public Prosecutor's Office indicated that not all the perpetrators of the murders had been identified but that the prosecution service was continuing investigations in order to establish the facts. The Committee notes that, in June 2021, the oral hearing took place, in which the Special Transitional Court for Annulment of Ownership within the High Court of Ucayali issued a trial order against five suspected perpetrators of the murders (the oral hearing is available on the official channel of the judiciary). At the hearing, the judge stated that so far no order for pretrial detention or any other interim measure has been issued against any of the accused. ***Recalling the seriousness of the acts committed seven years ago and the importance of preventing a climate of impunity which can affect indigenous and tribal peoples, the Committee strongly urges the Government to continue taking all necessary measures to ensure that the competent authorities proceed without delay with completing the investigations under way to enable the prosecution and conviction of the instigators and perpetrators of the murders of the trade union leaders of the Alto Tamaya–Saweto community in 2014. The Committee also requests the Government to provide information on progress made in the investigations relating to the reports of acts of violence in the context of illegal logging in the above-mentioned community.***

2. *Allegations of criminalization of social protest.* The Committee previously emphasized the need to guarantee that indigenous peoples can fully exercise, in freedom and security, the rights established by the Convention and to ensure that no force or coercion is used in violation of their human rights and fundamental freedoms. The Committee observes that the CATP and CGTP refer to the criminalization of social protest and to acts of violence against indigenous defenders, both women and men, some of whom have been prosecuted by the criminal and administrative justice system in the context of socio-environmental protests. In particular, the CATP refers to a climate of violence affecting the indigenous communities of the Amazon region of Ucayali, in the context of their territorial demands. The Committee also notes that CONFIEP: (i) expresses its utmost concern at the threats to which indigenous peoples are subjected in the context of defending their territories and the environment;

(ii) highlights the establishment in 2021 of the inter-sectoral mechanism for the protection of human rights defenders (Supreme Decree No. 004-2021-JUS), which seeks to prevent situations of risk arising as a result of their activities and to ensure their protection and access to justice; and (iii) adds that it hopes that this measure will contribute towards eradicating activities which are having a serious impact on the environment and safety of indigenous peoples.

While welcoming the adoption of the above-mentioned mechanism, the Committee observes that the social partners in the country express concern at the perpetration of acts of violence against the representatives of indigenous peoples who exercise the right to protest. The Committee recalls the importance of governments taking measures to prevent and investigate acts of violence suffered by indigenous peoples and their representatives in the context of peaceful action to defend their rights. ***The Committee therefore expects that the inter-sectoral mechanism for the protection of human rights defenders will prove effective in ensuring respect for the life, physical safety and psychological well-being of indigenous leaders, both women and men, and in creating a climate of trust, free of threats, so that they can defend their peoples' rights, including through their right to protest without having recourse to violence. The Committee requests the Government to provide information on the activities of the intersectoral mechanism in question, and on any other additional measures adopted or envisaged in this regard.***

Article 6. Consultation. The Committee notes that, in reply to its request for measures to be taken to strengthen the capacities of officials responsible for implementing consultation processes and to ensure that the peoples concerned can participate fully in those processes, the Government indicates: (1) the number of consultation processes carried out at the national level, including the number of agreements reached; (2) that the Vice-Ministry of Intercultural Affairs, through the Directorate for Prior Consultation, has coordinated training and support activities in the consultation processes; (3) that a total of 837 prior consultation agreements had been processed by 2021 by the Technical Secretariat of the Standing Multisectoral Committee for the Application of the Right to Consultation and 57 per cent of all these agreements had been finalized; (4) that one of the measures one which consultations were held was the draft Framework Act on Climate Change, as a result of which it was agreed to set up an indigenous climate platform as a forum in which indigenous peoples will be able to coordinate, exchange, manage and follow up proposals for action with regard to climate change; and (5) that between 2019 and June 2021 a total of 4,009 public officials and 9,290 members of indigenous peoples received technical assistance from the Directorate for Prior Consultation at the Ministry of Culture, and that 2,746 persons (public officials and members of indigenous peoples) were trained in the right and process of prior consultation by means of 94 workshops, both face-to-face and online.

The Committee notes with ***interest*** the ongoing progress in the implementation of consultation processes with indigenous peoples and also training activities on consultation. ***The Committee encourages the Government to continue its efforts to create the appropriate conditions to enable indigenous peoples to participate fully in consultation processes and affect the final outcome thereof, and to enable agreements to be reached on the proposed measures. The Committee requests the Government to continue providing information on the consultation processes that have been carried out, on the agreements reached and on compliance with them.***

Articles 6 and 15. Consultation. Mining projects. With regard to its request for information on established procedures to enable proper identification of indigenous peoples whose interests might be affected by mining concessions and the consultations held with the peoples concerned, the Committee notes the Government's indication that a total of 15 consultation processes have been carried out in relation to mining projects (13 on resolutions which authorize exploration activities and two on exploitation activities) and that dialogue forums have been set up with indigenous or native peoples in the context of the Standing Multisectoral Committee on Combating Illegal and Informal Mining. The Government also refers to the setting up of the Energy and Mining Sector Executive Committee for the Productive Development of the Country by means of Ministerial Resolution No. 326-2018-EF/10,

comprising several ministries and representatives of the private sector, for the purpose of identifying, promoting and proposing actions for the sustainable development of the mining, hydrocarbon and energy sectors. The above-mentioned committee referred to the need to have updated, reliable information on the existence of locations of indigenous or native peoples in the area impacted by mining projects of importance for the economic and productive development of the country. On that basis, the Ministry of Culture carried out the identification of indigenous or native peoples connected with 23 mining projects deemed to have priority status. As a result, six locations of indigenous or native peoples which had not yet been incorporated into the official Database of Indigenous or Native Peoples (BDPI) and 90 locations already incorporated in the BDPI were identified.

The Committee notes the general claim by the CATP that, in the consultations with the indigenous peoples regarding mining activities, no justification was made of the measures concerned, there was no determination of their impact and nor was any specific information on the projects in question provided in the measures, resulting in agreements of a fairly general nature which do not protect the rights of the peoples concerned. In this regard, the Government indicates that the Environmental Assessment and Inspection Agency (OEFA) carries out actions to open channels of communication with indigenous communities inhabiting the area impacted by a project subject to monitoring, promoting their participation in early environmental assessments and environmental monitoring actions. ***The Committee requests the Government to provide information on any action taken in addition to the tasks performed by the Standing Multisectoral Committee on Combating Illegal and Informal Mining and by the Energy and Mining Sector Executive Committee for the Productive Development of the Country aimed at ensuring that the peoples inhabiting the areas where it is planned to undertake mining exploration or exploitation activities are identified and consulted in order to determine to what extent their interests might be prejudiced. The Committee also requests the Government: (i) to continue providing information on the number of consultations held with representatives of the indigenous peoples concerned with regard to mining exploration or exploitation projects and the results thereof; and (ii) to ensure that the indigenous peoples consulted have the relevant information and are able to understand it fully so that full dialogue is achieved between the parties.***

Article 14. Land. National policy on titling. The Committee observes that the CATP and CGTP once again refer to the lack of public policy with regard to land titling, the inadequacy and lack of coordination of institutions responsible for the regularization of the lands of *campesino* (peasant-farming) and native communities, and the lack of legal protection of these communities with regard to the occupation and dispossession of their traditional lands by third parties. In this regard, the Committee notes the Government's indication that procedures for the recognition and titling of communities are the responsibility of regional governments, being the Ministry of Agriculture and Irrigation the lead agency for legal and physical regularization and formalization. Moreover, the Government indicates that four indigenous reserves have been officially delimited for indigenous peoples in situations of isolation or initial contact (PIACI) in the regions of Cusco, Madre de Dios, Ucayali and Loreto, with a total area of 3,967,341.56 hectares. However, the Committee once again notes the lack of detailed information on the status of land titling requests submitted by indigenous peoples who are not in a situation of isolation or initial contact. The Committee also notes that Departmental Report No. 002-2018-AMASPPI PPI, prepared by the Ombudsman's Office and referred to by the Government in its report, indicates that no significant progress has been recorded with regard to the physical and legal regularization of communal land or the recognition and titling of native and *campesino* communities because of the lack of budgets and staff allocated to regional governments for this task and because of the existence of disputes in areas awaiting recognition. In this regard, the Committee emphasized in its 2018 general observation that the recognition of traditional occupation as the source of ownership and possession rights is the cornerstone on which the land rights system established by the Convention is based. ***The Committee therefore urges the Government to take the necessary measures to implement the processes of identification, demarcation and regularization of the lands***

traditionally occupied by the peoples covered by the Convention in the different regions of the country, and once again requests the Government to send detailed information on titling processes which have been concluded or are in progress, disaggregated by regions as far as possible. The Committee also requests the Government to provide information on existing mechanisms for settling any land disputes which arise between indigenous peoples and third parties, indicating, if possible, examples of disputes which have been resolved through these mechanisms.

Titling of Shawi community lands. ***The Committee once again requests the Government to provide detailed information on the manner in which the Shawi communities have been afforded effective protection of their rights of ownership and possession with respect to the plot referred to in the 2016 tripartite committee report.***

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

[The Government is asked to reply in full to the present comments in 2023.]

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 107** *(Panama, Syrian Arab Republic);* **Convention No. 169** *(Dominica, Honduras, Peru).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 169** *(Spain).*

Specific categories of workers

Guatemala

Plantations Convention, 1958 (No. 110) (ratification: 1961)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at it 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government in 2020, as well as on the basis of the information at its disposal in 2019.

The Committee notes that the Government's report does not reply to the 2014 observations of the Trade Union of Workers of Guatemala (UNSITRAGUA) regarding: the engagement and recruitment of agricultural workers; wages; payment of overtime hours; annual paid holiday; registration with the Guatemalan Institute of Social Security (IGSS); migrant workers; health and safety conditions; housing and food; and child labour and labour inspection. ***The Committee once again requests the Government to provide its comments in this regard.***

Part II of the Convention. Engagement and recruitment and migrant workers. Articles 5–19 of the Convention. The Committee notes the adoption of the Agricultural Policy 2016–2020, which includes focal points, guidelines and actions aimed at, inter alia, commercial producers. According to the typology of producers established by the Ministry of Agriculture, Livestock and Food based on the size of the farms that they occupy and their socio-economic conditions, three per cent of agricultural producers are classed as commercial producers and occupy 65 per cent of arable land. The Committee notes that, according to the 2016 National Employment and Income Survey (ENEI) of the Guatemalan National Institute of Statistics (INE), 28.8 per cent of employment in the country is in the agricultural sector, 89.5 per cent of whom are men and 10.4 per cent are women. Furthermore, the agricultural sector has the highest percentage of persons in informal employment (36.9 per cent). The Committee observes, however, that this statistical data does not indicate which of these workers work on plantations. ***Noting that the Government does not provide information on this part of the Convention, the Committee once again requests it to provide detailed and updated information on the measures taken to give full effect to Articles 5 to 19 of the Convention, and information on the national policies adopted recently, including the Agricultural Policy 2016–2020, which cover the plantation sector, and their impact on the living and working conditions of workers in the sector.***

Part IV (Wages). Articles 24–35. The Committee notes the adoption of Government Decision No. 250-2020 of 30 December 2020, which establishes the daily minimum wage in the agricultural sector at 90.16 quetzals (approximately US$12) per day. The Committee also refers to its comments from 2019 on the application of the Forced Labour Convention, 1930 (No. 29), in which it noted that, in its 2019 annual report, the UN Office of the High Commissioner in Guatemala highlighted that several workers on plantations in the Northern Transversal Strip had reported the use of illegal contractors who charge workers to be hired, high production goals, and payment of less than the minimum wage (A/HRC/40/3/Add.1, 28 January 2019, paragraph 76). ***The Committee requests the Government to take measures to ensure that the social partners are consulted regularly on matters affecting the implementation of the Convention. The Government is also requested to provide detailed and updated information on the manner in which the representatives of the employers' and workers' organizations concerned were consulted with regard to the determination of the minimum wage in 2020, as required by Article 24 of the Convention. The Committee also requests the Government to provide information on the manner in which it ensures that workers in the plantation sector receive at least the established minimum wage, including information on the number and results of inspections conducted with regard to the payment of the minimum wage on plantations.***

Part XI (Labour inspection). Articles 71–84. In its previous comments, the Committee referred to its 2014 comments made under the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and noted the observations of workers' organizations denouncing the Government's failure to supervise compliance with labour legislation on dozens of plantations. The Committee also noted the extensive use of child labour on coffee, sugar cane, cardamom and cotton plantations, and requested the Government to provide detailed information on the specific measures taken to supervise and control the working conditions of under-aged workers on plantations. In this regard, the Committee notes that the Universal Period Review (UPR) Working Group of the UN Human Rights Council, in its 2017 report, indicated that, despite the reduction in child labour, the Committee on Economic, Social and Cultural Rights had reiterated its concern about the continuing economic exploitation of children in sectors such as agriculture (A/HRC/WG.6/28/GTM/2, paragraph 70). In this regard, the Committee observes that, according to the 2016 National Employment and Income Survey of the INE, the agricultural sector has the highest percentage of child labour (58.8 per cent) with a greater number of boys engaged than girls. The Committee further notes the statistical data provided by the Government which indicate that 1,290 labour inspections were conducted between 2018 and 2019. The Committee observes, however, that only inspections under the heading "sugar and African palm" refer, in general, to those conducted on plantations and that these related to the verification of the payment of the minimum wage, end-of-year bonuses, and annual bonuses, as well worker–employer documentation and health and safety measures. The Committee also notes that the Ministry of Labour and Social Security published, in 2017, a single protocol on procedures for the labour inspection system, which includes a procedure for the inspection and verification of the rights of agricultural workers, and which specifies the steps to be followed to conduct an inspection of an agricultural enterprise or plantation. The Committee also notes the information provided by the Government in its supplementary report regarding the measures taken with a view to mitigating the impact of the COVID-19 pandemic on the working and living conditions of workers. These measures include the adoption of Decree No. 13-2020, Act on the provision of economic relief for families from the impact of the COVID-19 pandemic, which establishes a fund for the protection of employment, and the creation of an electronic procedure for the registration, control and authorization of collective suspensions of employment contracts, by means of which employers have the authority to request the individual or collective suspension of employment contracts before the General Labour Inspectorate, and subsequently request the Ministry of the Economy to compensate the workers. The Government indicates that enterprises with an economic activity identified as the "manufacture of rubber products and agriculture" requested the suspension of the employment contracts of 69 and 168 workers, respectively. ***The Committee requests the Government to: (i) continue providing detailed statistical data on the inspections conducted on plantations, including the violations of labour laws reported, in accordance with Article 74(1)(a) of the Convention, and the penalties imposed; (ii) indicate the specific measures taken by the labour inspectorate to supervise and control the working conditions of under-aged plantation workers; (iii) provide detailed information on the impact of the single protocol on procedures for the labour inspection system on the inspections conducted on plantations, including disaggregated statistical information on inspections conducted on banana plantations. Lastly, the Committee requests the Government to supply information on the impact of the measures taken to mitigate the effects of the COVID-19 pandemic on the working and living conditions of plantation workers.***

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1995)

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee is proceeding with the examination of the application of the Convention on the basis of the supplementary information received from the Government in 2020, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations made by the Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, received on 16 October 2020, which denounce the recruitment of nursing personnel through temporary contracts for professional services to perform work of a permanent nature, and the precarious working conditions of these workers. In particular, they report that these workers do not have access to the rights established for nursing personnel in the labour legislation relating to aspects such as holidays, access to benefits of the Guatemalan Social Security Institute, healthcare, maternity leave or breastfeeding breaks. They also report that, in the context of the COVID-19 pandemic, the nursing personnel under the aforementioned contractual arrangements who were infected with the virus did not receive medical assistance, and were required to go to work despite presenting symptoms of COVID-19. In addition, they highlight that they were not provided with personal protective equipment (PPE) and were refused access to COVID-19 testing. The workers' organizations indicate that on 25 May 2020, they submitted an application for protection *(amparo)* to the Constitutional Court, which ordered the Ministry of Health to immediately adopt the necessary measures to issue PPE to all workers and to protect those workers considered to be high risk. The workers' organizations also indicate that they submitted an application for protection *(amparo)* for the misuse of temporary contracts, for health sector services to carry out labour activities, with a proven relationship of permanent dependence. The workers' organizations also denounce the initiation of dismissal proceedings as a reprisal against the workers who promoted and supported the submission for the above remedies. In addition, they denounce the significant salary differences between nursing personnel who perform the same functions but who are hired under different contractual terms or in different regions. Lastly, the workers' organizations report that in the last four years, graduates of the nursing schools in Quiche, Cobán and Guatemala Capital have not received their academic certificates, which prevents them from accessing employment. Furthermore, they report the absence of adequate and sufficient protection measures in the context of the COVID-19 pandemic, including the lack of PPE and measures to minimize the risks to which workers are exposed. ***The Committee requests the Government to provide its reply in this regard.***

COVID-19 pandemic. Measures adopted concerning public health. The Committee notes the detailed information provided by the Government in its supplementary report on the various public health measures adopted to address the effects of the COVID-19 pandemic. The Government indicates that on 16 March 2020, it issued Governmental Decree No. 5-2020 declaring a state of public disaster throughout the national territory as a result of the COVID-19 pandemic, which has subsequently been extended on several occasions. The Government indicates in its supplementary report that, in March 2020, the Plan to prevent, contain and respond to COVID-19 cases in Guatemala, developed by the Ministry of Public Health and Social Assistance (MSPAS), was approved. The measures in the Plan to be adopted to address the epidemiological threat posed by COVID-19 include ongoing training and active participation of personnel from the different levels of healthcare in the various coordination forums of the health sector and emergency response system, as well as the National Coordinating Body for Disaster Reduction (CONRED). ***The Committee invites the Government to provide up-to-date information in its following report on the impact of the pandemic on the implementation of national policies and programmes relating to nursing services and nursing personnel with a view to ensuring the objectives of the Convention.***

Article 2 of the Convention. National policy for nursing services and nursing personnel. The Committee notes the detailed information provided by the Government regarding the regulations on the nursing profession and the various studies conducted on the situation of health workers in the country, including nursing personnel. In particular, the Committee notes the reports provided by the Government regarding the evaluations carried out in 2005 and 2013 on achievement of the targets established in the National Plan for the development of human resources in health 2007–2015. The Committee also notes that the Government refers to the development of the Regional Plan of the nursing professionals' group of Central America and the Caribbean 2018–2022. Its lines of action

include: building the human resources of nursing personnel, improving the working conditions of nursing personnel and strengthening continuous and lifelong education for these workers. The Government indicates that such lines of action would be agreed upon by representatives of nursing associations and colleges affiliated with the International Council of Nurses (ICN) at a meeting to be held in Singapore in 2019. The Committee also notes the Government's indication that, within the framework of the II Central American and Caribbean Summit on "the development of nursing in Central America, a collective project to improve health" organized in October 2017, a declaration was signed by nursing personnel representatives of the participating countries. The Government indicates that the declaration includes pillars of work relating to governance, vocational internships and training for human resources, working conditions of nursing personnel, technical cooperation projects between national nursing associations, professional nursing colleges and the International Council of Nurses, the implementation of strategies to strengthen work within nursing networks, and the regulation of national policy and law on nursing. The Government adds that participants in the II Regional Summit undertook to disseminate the declaration at the national level, follow up on the agreements, strengthen union organization and carry out studies on the situation of nursing personnel. In this connection, the Government reports the development of a study by the Nursing Services Development Unit of the MSPAS on the working conditions of nursing personnel in Guatemala. This study highlights that obstacles to improving the working conditions of nursing personnel comprise the insufficient number of nursing personnel in the country owing to the lack of funding for recruitment, the heavy workload of nursing personnel who perform functions that are not part of their jobs, the lack of unified salaries for nursing personnel, the absence of ongoing occupational safety and health programmes, and salaries that are not commensurate with the qualifications and responsibilities of the position. With respect to the activities of the Inter-institutional Council, the Government refers to the establishment of the National Observatory of Human Resources in Health in 2012 and the coordination of inter-institutional actions with a view to developing proposals on plans for the training for human resources in health. Furthermore, the Committee notes the approval in 2019 of the regulations for the nursing staff of the hospital network of the MSPAS. The objectives of the regulations include standardizing the nursing staff functions according to position and academic degree, strengthening the quality of nursing care in the country's hospital network, and systematizing discussion forums for nurses for the comprehensive analysis of the development of the profession at the different levels of care. ***The Committee requests the Government to provide detailed and up-to-date information on the impact on nursing services and nursing personnel of the measures adopted within the framework of the 2018–2022 Regional Plan and the declaration adopted at the II Central American and Caribbean Summit on the development of nursing, as well as the new regulations for the nursing staff of the hospital network of the MSPAS. The Committee also requests the Government to provide up-to-date information on the consultations carried out with the employers' and workers' organizations concerned, where such organizations exist, with regard to the above-mentioned measures (Article 2(3)).***

Article 7. Occupational safety and health. The Committee notes the Government's indication that, in May 2015, measures were adopted with a view to implementing safety and health policies for health workers in compliance with the goals set out in the Regional Plan for human resources in health. The Committee notes, however, that according to the assessment on achievement of this goal conducted by the inter-institutional committee for joint actions of the academic and health sectors, the level of achievement reached only 25 per cent. The Committee also notes the detailed information provided by the Government in its supplementary report on the safety and health measures taken in the context of the COVID-19 pandemic. The Government refers, inter alia, to the approval on 14 June 2020 of Governmental Agreement No. 79 of 2020, which complements the 2014 regulations on occupational safety and health, relating to the prevention and control of the spread of COVID-19 in all workplaces in the public or private sector in the country. The Agreement sets out the implementation of occupational safety and health measures that allow for safe working conditions to minimize the risk of infection. In

this connection, it establishes a series of obligations for the employer, such as providing PPE for the prevention and control of the spread of COVID-19 in the workplace. The Government reports that in August 2020, the Department of Occupational Safety and Health carried out an initial operation in 18 private sector hospitals to monitor compliance with the obligations established in the Agreement.

In this context, the Committee recalls that nursing personnel who, given the specific characteristics of their work must be in close physical contact with their patients, are at high risk of becoming infected while treating patients with suspected or confirmed COVID-19, particularly when precautions to control the spread, including the use of PPE, are not strictly applied. In this respect, the Committee wishes to draw the Government's attention to paragraph 49 of the Nursing Personnel Recommendation, 1977 (No. 157), which sets out that: "(1) All possible steps should be taken to ensure that nursing personnel are not exposed to special risks. Where exposure to special risks is unavoidable, measures should be taken to minimize it; (2) Measures such as the provision and use of protective clothing, immunization, shorter hours, more frequent rest breaks, temporary removal from the risk or longer annual holidays should be provided for in respect to nursing personnel regularly assigned to duties involving special risks so as to reduce their exposure to these risks; and (3) In addition, nursing personnel who are exposed to special risks should receive financial compensation. ***The Committee requests the Government to indicate whether the above-mentioned measures adopted in 2015 and Governmental Agreement No. 79 of 2020 have been effective in the prevention and control of COVID in the workplace, and to provide detailed and up-to-date information on the continued application of safety measures, including: the provision of PPE and training on its proper use;, the provision of adequate breaks during shifts and limitation of excessive hours wherever possible, with a view to protecting the health and well-being of nursing personnel; and limiting, as far as possible, their risk of contracting COVID-19. In addition, it requests the Government to provide detailed and up-to-date information on the number and result of the checks carried out on compliance with Governmental Agreement No. 79 of 2020 concerning nursing personnel.***

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

Spain

Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172) (ratification: 1993)

The Committee notes the observations made by the Trade Union Confederation of Workers' Commissions (CCOO) and by the Spanish Confederation of Employers' Organizations (CEOE), included in the Government's report, and the Government's replies to them. In particular, the Committee notes the observation of the CCOO indicating an impasse in sectoral collective bargaining. The CCOO indicates that agreements covering more than 800,000 workers in the sector are blocked and progress has been impossible in the negotiation of 39 sectoral collective agreements out of a total of 53 existing agreements (at the national, regional and provincial levels). ***The Committee requests the Government to provide its comments on this matter.***

Article 4 of the Convention. Hours of work. The Committee notes the information provided by the Government concerning the measures taken relating to hours of work during the period covered by its report. The Government refers to Royal Decree-Law 6/2019, which guarantees the exercise of the "right to request adjustments to the duration and distribution of the working day, in terms of the planning of hours of work and the manner of performance, including the performance of work on a remote basis, in order to exercise the right to a work–life balance" (section 34(8) of the Workers' Statute). Royal Decree-Law 6/2019 also adds to section 12(4) of the Charter the guarantee of the absence of gender discrimination with regard to part-time contracts. It also introduces changes to section 37 of the Statute regarding leave of absence in order to ensure equal rights for men and women with respect to births, adoptions and foster care with a view to adoption or family placement. The Government also refers to

Royal Decree-Law 8/2019, which adds a new paragraph 9 to section 34 of the Workers' Statute, requiring employers to record daily hours of work. The Government adds that section 7(5) of the consolidated text of the Act on offences and penalties relating to the social order was amended to include any failure to record hours of work in the category of serious labour offences. Lastly, the Government refers to Royal Decree-Law 28/2020, which establishes the right of victims of gender violence or terrorism to perform all or part of their work remotely.

The Committee further notes the statistical information provided by the Government on the activity of the Labour and Social Security Inspectorate with regard to hours of work and overtime between 2017 and 2020, including the number of offences detected and the workers affected by them. The Committee recalls that it previously asked the Government to provide detailed, up-to-date information on the manner in which the most recent amendments to the Workers' Statute affect workers employed in hotels and restaurants. These amendments relate to the enterprise's ability, in the absence of an agreement, to distribute 10 per cent of working time unevenly throughout the year, and also relate to changes in the rules governing conditions of work for part-time workers. ***The Committee observes that the Government has not provided any specific information in this regard, and once again asks the Government to supply the requested information.***

Article 6 of the Convention. Remuneration. The Committee notes the information provided by the Government on the changes introduced with regard to remuneration. The Government indicates that the inter-occupational minimum wage was fixed for 2019 and 2020 by Royal Decrees 1462/2018 and 231/2020 and that the last Royal Decree was extended pending approval of the Royal Decree fixing the inter-occupational minimum wage for 2021 in the context of social dialogue. The Government also indicates that, through Decree-Law 6/2019, workers' right to remuneration corresponding to their work has been explicitly established in section 28 of the Workers' Statute, with a view to equal pay without gender-based discrimination. This aspect is developed in detail through Royal Decree 902/2020 concerning equal pay for men and women. The Government adds that Royal Decree-Law 19/2020, adopting additional measures relating to agriculture, science, the economy, employment, social security and taxation in order to mitigate the effects of COVID-19, includes a specific rule on administrative silence in wage guarantee proceedings as provided for in section 33 of the Workers' Statute, with a paragraph 11 added to it. It is stipulated that administrative silence shall have a positive effect on any proceedings which have not been resolved within three months.

The Committee notes the statistical information on the activities of the Labour and Social Security Inspectorate with respect to wages, payslips and severance payments in hotels and restaurants between 2017 and 2020, including the number of offences detected and the workers affected by them. In particular, the Committee notes that the number of violations rose sharply between 2017 (168 violations) compared with 2020 (272 violations), with the number of workers affected by these violations doubling between 2017 (1,437 workers) and 2020 (2,995 workers). At the same time, the Committee notes that the sanctions imposed for these violations rose significantly (from €640,051 in 2017 to €923,211.23 in 2020). It also notes the statistical information on the average wage variation agreed in the hotel sector, in enterprise agreements (1.37 per cent) and in agreements at levels higher than the enterprise (0.58 per cent). ***The Committee requests the Government to continue to provide detailed updated information, including disaggregated statistics on inspection activities in the hotel and restaurant sector, including the number of inspections conducted, the number and type of violations detected and the outcomes. In addition, the Government is requested to provide information on measures taken or envisaged to address the significant increase in the numbers of violations affecting workers in the sector.***

Article 8 of the Convention. Application of the Convention. Collective agreements concluded in the sector. The Committee notes the Government's indications regarding the collective agreements concluded in the sector between 2017 and 2020. The Government refers to the collective agreements at the national and regional levels in the hotel and catering sectors, and provides tables of agreements

at the provincial level or higher, and enterprise agreements in activities corresponding to lodging services and food and beverage services. With regard to the National Agreement for the hotel sector (ALEH), the Committee notes the Directorate-General of Labour Resolution of 11 November 2020, registering and publishing the agreements amending and extending ALEH V, with publication in Official Journal No. 307 of 23 November 2020. Under this Resolution, the ALEH Negotiating Board agreed to extend the validity of ALEH V until 31 December 2021 and to include in the text in force agreements reached under the ongoing revision and negotiation procedure, agreed between the representative parties of the state hotel sector.

The Committee requests the Government to continue providing detailed, up-to-date information on the application of the Convention in practice, including sectoral and enterprise collective agreements, extracts from inspection reports, court decisions and data on the number of workers covered by the measures that give effect to the Convention, disaggregated by sex and age, as well as the number and nature of violations reported. Noting the Government's reference to Royal Decree-Law 28/2020 in the context of improving work–life balance, the Committee requests the Government to provide information on the manner in which work–life balance is ensured for workers in the hotel and restaurant sector, including disaggregated statistical data on the number of such workers making use of Royal Decree-Law 28/2020.

Hotel housekeepers. In its previous comments, the Committee asked the Government to provide information on the application in practice of the Convention with respect to hotel housekeepers, and to provide information in reply to the allegations regarding cases of the sale and purchase of employment as hotel housekeepers. The Committee notes the Government's indication that in August 2018 the Committee on the Quality of Employment in the Hotel Sector agreed to the setting up of a working group for the preparation at state level of a "Practical guide for occupational risk assessment in the hotel sector", addressing the ergonomic and psycho-social risks to which workers in the sector are considered to be particularly exposed, with all such risks set against the necessary gender perspective. In September 2019, the National Occupational Safety and Health Institute produced the "Guide for the management and assessment of ergonomic and psycho-social risks in the hotel sector". ***The Committee once again requests the Government to provide detailed, up-to-date information on the application of the Convention in practice with respect to hotel housekeepers. In the absence of a response by the Government to its request regarding the allegations of cases of the sale and purchase of employment as hotel housekeepers, the Committee repeats its request. The Committee further requests the Government to provide information on the impact of the COVID-19 crisis on the conditions of work of hotel housekeepers, including their wages and social benefits, and the measures taken to mitigate this impact.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 149** *(Congo, France, France: French Polynesia, Guatemala, Jamaica, Slovenia, Tajikistan);* **Convention No. 172** *(Lebanon, Netherlands: Curaçao);* **Convention No. 177** *(Tajikistan);* **Convention No. 189** *(Switzerland).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 172** *(Switzerland).*

II. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)

Albania

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has not replied to its previous observations. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2019 and June 2021, that the Government of Albania will comply with its constitutional obligation to submit Conventions, Recommendations and Protocols to the competent authorities in the future. Referring to its previous observations, the Committee reiterates its request that the Government provide information on the submission to the Albanian Parliament of 26 instruments: the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted by the Conference at its 82nd Session, the Promotion of Cooperatives Recommendation, 2002 (No. 193), and the List of Occupational Diseases Recommendation, 2002 (No. 194), adopted by the Conference at its 90th Session, as well as the instruments adopted at the 78th, 84th, 86th, 89th, 92nd, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions.***

Angola

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has not provided the information requested in its previous observations. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide the information required under Article 19 of the ILO Constitution on the 19 instruments pending submission to the National Assembly. These are: the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180), adopted by the Conference at its 79th Session; the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted by the Conference at its 82nd Session; and the instruments adopted at the 86th, 91st, 92nd, 94th, 95th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions of the Conference (2003–19).***

Antigua and Barbuda

Failure to submit. The Committee notes with ***interest*** the ratification on 28 July 2021 by Antigua and Barbuda of eight Conventions: the Protocol of 2014 to the Forced Labour Convention, 1930, the Home Work Convention, 1996 (No. 177), the Private Employment Agencies Convention, 1997 (No. 181), the Safety and Health in Agriculture Convention, 2001 (No. 184), the Seafarer's Identity Documents Convention (Revised), 2003, as amended (No. 185), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Work in Fishing Convention, 2007 (No. 188) and the Domestic Workers' Convention, 2011 (No. 189). The Committee notes that the Government has not, however, provided a reply to its previous observation. It therefore recalls the information provided by the Government in April 2014 that the instruments adopted by the Conference from its 83rd to its 101st Sessions (1996–2012) were resubmitted by the Minister of Labour to the Cabinet of Antigua and

Barbuda on 11 March 2014. ***The Committee reiterates its request that the Government specify the dates on which the 14 instruments adopted by the Conference from its 83rd to its 101st Sessions were submitted to the Parliament of Antigua and Barbuda. The Committee also reiterates its request that the Government provide information on the submission to Parliament of the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, and the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session.***

Armenia

Submission. The Committee notes with ***satisfaction*** the information provided by the Government regarding the submission to the National Assembly of Armenia of the Protocol of 2014 to the Forced Labour Convention, 1930 and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) on 12 May 2016, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) on 29 April 2019, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) on 29 September 2017, and the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019 on 27 May 2020. ***The Committee commends the Government for its efforts in meeting its constitutional obligation of submission.***

Bahamas

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has again not provided information in response to its previous observation. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament). The Committee therefore firmly urges the Government to provide information on the submission to Parliament of the 26 instruments adopted by the Conference at 15 sessions held between 1997 and 2019 (85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).***

Bahrain

Serious failure to submit. The Committee notes that in a communication of 31 August 2021, the Government: (i) reiterates that it has complied with its constitutional obligations by continuously submitting the instruments adopted by the International Labour Conference to its Council of Ministers, as the competent authority; and (ii) indicates that its new mechanism for submission of the instruments adopted by the Conference requires the revision of the Constitution of Bahrain and of a number of laws which regulate this aspect and which specify the mandate and powers of the Council of Ministers and the National Assembly. The Committee also recalls that, on 22 July 2019, the Government indicated that the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), was submitted to the Council of Ministers without specifying the date of submission. The Committee once again points out that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore firmly urges the Government to provide full information on the submission to the National Assembly of the 25 instruments adopted by the Conference at 15 sessions held between 2000 and 2019 (88th Session, 89th Session, 90th Session, 91st Session, 92nd Session, 94th Session, 95th Session, 96th Session,***

99th Session, 100th Session, 101st Session, 103rd Session, 104th Session and 108th Session). Moreover, it once again reiterates its request that the Government specify the date on which Recommendation No. 205 was submitted and reminds the Government of the availability of ILO technical assistance in meeting its submission obligations.

Barbados

Submission. The Committee notes with ***satisfaction*** the information provided by the Government regarding the submission to Parliament of the Protocol of 2014 to the Forced Labour Convention, 1930, the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) on 6 October 2021. ***The Committee welcomes the progress made by the Government in complying with its constitutional obligation of submission.***

Belize

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has again provided no reply to its previous observations. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee expresses the firm hope, as did the Conference Committee in June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). ***The Committee urges the Government to provide information on the submission to the National Assembly of the 43 pending instruments adopted by the Conference at 22 sessions held between 1990 and 2019. It reminds the Government of the availability of ILO technical assistance in meeting its submission obligations.***

Plurinational State of Bolivia

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has once again not replied to its previous comments. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee notes that information has not been provided on the submission to the Plurinational Legislative Assembly of 31 instruments adopted by the Conference at 20 sessions between 1993 and 2019. ***The Committee firmly urges the Government to provide information on the submission to the Plurinational Legislative Assembly of the 31 instruments adopted by the Conference since 1993 for which submission is still pending. It once again reminds the Government that it may avail itself of ILO technical assistance if it so wishes.***

Brunei Darussalam

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has once again not replied to its previous comments. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore firmly urges the Government to provide information on the submission to the competent national authorities, within the meaning of article 19(5) and (6) of the ILO Constitution, of the 12 instruments adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2007–19). The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with***

its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Central African Republic

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has once again not replied to its previous comments. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee reiterates its request that the Government provide information on the submission to the National Assembly of the 10 instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

Chad

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has yet again not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once more requests the Government to provide information on the submission to the competent authorities of the 10 instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

Chile

Submission. The Committee notes with ***interest*** the ratification of the 2014 Protocol to the Forced Labour Convention, 1930, on 19 January 2021. The Committee further notes the information provided by the Government regarding the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, to the National Congress on 18 December 2020. ***The Committee reiterates its request that the Government provide the required information, indicating the date of submission to the National Congress of the remaining 25 instruments adopted at 16 sessions of the Conference between 1996 and 2017 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 95th (the Employment Relationship Recommendation, 2006 (No. 198)), 96th, 99th, 101st, 103rd, 104th and 106th Sessions).***

Comoros

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has again not provided the information requested in its previous observation. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It therefore firmly urges the Government to provide information on the submission to the Assembly of the Union of Comoros of the 46 instruments adopted by the Conference at the 23 sessions held between 1992 and 2019.***

Congo

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has again not replied to its previous comments. The Committee recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference in June***

2019 and June 2021, that the Government of Congo will comply with its obligations to submit Conventions, Recommendations and Protocols to the competent authorities in the future. The Committee once again reiterates its request that the Government complete the submission procedure in relation to 67 Conventions, Recommendations and Protocols, adopted by the Conference during 32 sessions from 1970 to 2019, which have not yet been submitted to the National Assembly. It reminds the Government of the availability of ILO technical assistance to meet its constitutional submission obligations.

Croatia

Submission. The Committee welcomes the information provided by the Government regarding the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session, to the Croatian Parliament on 12 April 2021. ***The Committee also firmly urges the Government to provide information on the submission to the Croatian Parliament of the remaining 22 instruments adopted by the Conference at 13 sessions held between 1998 and 2017 (86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions).***

Democratic Republic of the Congo

Serious failure to submit. The Committee notes with ***regret*** that the Government has not replied to its previous observation. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee reiterates its request that the Government provide information on the 10 instruments pending submission to Parliament adopted from the 99th Session (2010) to the 108th Session (2019) of the Conference.***

Dominica

Failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no reply to its previous comments. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore firmly urges the Government to provide information on the submission to the House of Assembly of the 43 instruments adopted by the Conference during 22 sessions held between 1993 and 2019 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions). It once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.***

El Salvador

Serious failure to submit. The Committee notes with ***regret*** that the Government has yet again not responded to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. In this context, the Committee recalls the information provided by a Government representative before the Conference Committee at its 108th Session in June 2019, indicating that the country welcomed the technical cooperation received from the ILO for the preparation of the Protocol of

Institutional Procedures for the submission of ILO instruments. The Government representative indicated that the Government would soon take the first steps for the submission of the relevant Conventions and Recommendations to the competent authority. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent national authority. The Committee firmly urges the Government to submit to the Legislative Assembly the 61 instruments adopted at the 25 sessions of the Conference held between October 1976 and June 2019. Moreover, it once again reiterates its request that the Government provide information on the submission of the remaining outstanding instruments adopted by the Conference at its 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163), 69th (Recommendation No. 167) and 90th (Recommendations Nos 193 and 194) Sessions.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Equatorial Guinea

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. Accordingly, the Committee firmly urges the Government to provide information on the submission to Parliament of the 37 instruments adopted by the Conference between 1993 and 2019. It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Eswatini

Serious failure to submit. The Committee notes that, in its communication of 25 October 2021, the Government indicates that: (i) it has availed itself of the technical assistance of the ILO to conduct sensitization workshops and a gap analysis with a view to ensuring full compliance with its outstanding constitutional obligation of submission; and (ii) the submission to Parliament of all international labour standards which have been adopted by the Conference during the 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions has been approved by the Cabinet and will be conducted shortly. The Committee once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore trusts that the submission to the House of Assembly of the 10 instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19) will be completed in the near future and requests the Government to provide information on progress made in this regard.***

Gabon

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has once again provided no reply to its previous comments. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee firmly expects that the Government will comply with its obligation to submit***

Conventions, Recommendations and Protocols to the competent authority. The Committee therefore firmly urges the Government to provide information concerning the submission to Parliament of the 27 instruments adopted at the 82nd, 83rd, 85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions of the Conference.

Gambia

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has once again provided no response to its previous comments. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request for the Government to provide information on the submission to the National Assembly of the 10 instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19). It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Grenada

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no response to its previous comments. The Committee once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***Referring to its previous observations, the Committee urges the Government to communicate the date on which the instruments adopted by the Conference between 1994 and 2006 were submitted to the Parliament of Grenada and to provide information on the decisions taken by the Parliament, if any, in relation to the instruments submitted. The Committee also urges the Government to provide information on the submission to Parliament of the 11 instruments adopted at the 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions of the Conference (2007–19). It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Guinea

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has once again provided no response to its previous comments. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore firmly urges the Government to provide information regarding the submission to the National Assembly of the 31 instruments adopted at 17 sessions held by the Conference between October 1996 and June 2019 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 101st, 103rd, 104th, 106th and 108th Sessions).***

Guinea-Bissau

Submission. The Committee notes with ***regret*** that the Government has once again provided no response to its previous comments. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore urges the Government to provide information on the submission to the Assembly of the Republic of the 21 remaining instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 108th Sessions (2001–19). It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Guyana

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has once again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide information on the submission to the Parliament of Guyana of the 10 instruments adopted by the Conference at its 96th, 99th, 101st, 103rd, 104th, 106th and 108th Sessions. It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Haiti

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). The Committee therefore firmly urges the Government to provide information with regard to the submission to the National Assembly of the following 65 instruments:***

- ***the remaining instruments from the 67th Session (Conventions Nos 154 and 155, and Recommendations Nos 163 and 164);***
- ***the instruments adopted at the 68th Session;***
- ***the remaining instruments adopted at the 75th Session (Convention No. 168, and Recommendations Nos 175 and 176); and***
- ***the instruments adopted at 26 sessions of the Conference held between 1989 and 2019.***

The Committee reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.

Hungary

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has once again not responded to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee accordingly once again reiterates its request that the Government provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

Iraq

Failure to submit. The Committee notes with ***deep regret*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. It therefore once again recalls the detailed information provided by the Government in November 2017, including the dates of submission to the Council of Representatives *(Majlis Al-Nuwaab)* of each of the instruments adopted by the Conference at its 88th, 90th, 92nd, 95th, 96th, 99th, 100th and 101st Sessions (2000–12). The Committee further recalls the Government's indication that Recommendations submitted to the Council of Representatives were not examined by the Council, but were transmitted to the Ministry of Labour and Social Affairs which, according to the Government's

indication, is the competent authority with respect to Recommendations. The Committee further recalls the information provided by the Government in March 2017, indicating that the Protocol of 2014 to the Forced Labour Convention, 1930, was submitted to the competent authority. It noted in this regard that no information was provided on the date of submission, or on whether the instrument in question was in fact submitted to the Council of Representatives *(Majlis Al-Nuwaab).* The Committee once again recalls that, by virtue of article 19(5) and (6) of the ILO Constitution, each of the Members of the Organization undertakes to submit the instruments adopted by the Conference to the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. In the 2005 memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. ***The Committee therefore once again reiterates its request that the Government provide more specific information on the submission to the Council of Representatives of the remaining 12 instruments adopted by the Conference from 2000 to 2015. The Committee also reiterates its request for the Government to provide information on the submission to the Council of Representatives of the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, and the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019). It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Kazakhstan

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has yet again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore urges the Government to provide information on the date of submission of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) to Parliament. Moreover, the Committee once again reiterates its requests for the Government to provide information on the submission to Parliament of the remaining 38 instruments adopted by the Conference between 1993 and 2019, including with respect to the date of submission of each instrument. It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Kyrgyzstan

Failure to submit. The Committee notes with ***deep regret*** that the Government has yet again failed to reply to its previous comments. The Committee therefore once more refers to the comments it has been formulating since 1994, and recalls that, under article 19 of the ILO Constitution, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in 2016, 2017, 2018, 2019 and 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee firmly urges the Government to provide information on the submission to the competent national authority of the 43 instruments adopted by the Conference at 22 sessions held from 1992 to 2019. The Committee once again reminds the Government of the availability of ILO technical assistance to assist it in overcoming this serious delay.***

Lebanon

Serious failure to submit. The Committee notes with ***regret*** that the Government has yet again provided no response to its previous comments. It recalls yet again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee recalls once more the information provided by the Government in February 2016, indicating that the Ministry of Labour had submitted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), to the Council of Ministers for consideration, and that the Council of Ministers had decided to establish a special commission to examine the Recommendation. ***The Committee once again refers to its previous comments and urges the Government indicate the date on which the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17) were submitted to the National Assembly (Majlis Al-Nuwwab), and to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Liberia

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in 2017, 2018, 2019 and 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It also once again reiterates its request that the Government provide information on the submission to the National Legislature of the 25 instruments adopted by the Conference at its 77th, 82nd, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Libya

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authorities. The Committee therefore once again reiterates its request that the Government provide information on the submission to the competent national authorities (within the meaning of article 19(5) and (6) of the ILO Constitution) of the 37 Conventions, Recommendations and Protocols adopted by the Conference at 19 sessions held between 1996 and 2019.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the

Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Malawi

Failure to submit. The Committee notes with ***regret*** that the Government has yet again provided no reply to its previous comments. It once more recalls the information provided by the Government concerning the submission to the President on 12 December 2018 of the HIV and AIDS Recommendation, 2010 (No. 200), adopted by the Conference at its 99th Session, the Domestic Workers Convention, 2011 (No. 189), adopted by the Conference at its 100th Session, the Forced Labour (Supplementary Measures) Recommendation, 2014, adopted by the Conference at its 103rd Session, and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session. In addition, the Government indicated that the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), was submitted to the competent authority. The Committee once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. While noting the Government's indication that the President is a member of the Parliament, the Committee wishes to reiterate that the obligation of submission cannot be considered to have been fulfilled until the ILO instruments adopted have reached and been submitted to the legislative body. ***The Committee therefore once again requests that the Government provide information on the submission to Parliament, and the dates of submission, of the nine instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

Malaysia

Serious failure to submit. The Committee notes that in its communication of 25 March 2021, the Government indicates that it is in the process of submitting the required instruments to the Parliament of Malaysia. In this respect, it recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It reiterates its request that the Government provide information on the submission to the Parliament of Malaysia of the 13 instruments adopted by the Conference at its 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2006–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Maldives

Serious failure to submit. The Committee notes with ***regret*** that the Government has yet again provided no response to its previous comments. The Committee recalls that the Maldives became a Member of the Organization on 15 May 2009. Subsequently, in accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions. ***The Committee once again reiterates its request that the Government provide information on the submission (indicating the dates of submission) to the People's Majlis of the***

instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).

The Committee also recalls once again that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the People's Majlis of the instruments adopted by the Conference.

Malta

Submission. The Committee notes that in a communication of 29 April 2021, the Government indicated that it was in the process of ratifying the Domestic Workers Convention, 2011 (No. 189). The Committee notes that the Government has not provided the information requested in its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in 2017, 2018, 2019 and 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. Moreover, the Committee reiterates its request that the Government provide information on the submission to the House of Representatives of the instruments adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2007–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

The Committee notes with ***interest*** the ratification of Convention No. 189 by Malta on 14 May 2021. ***The Committee requests the Government to provide information on the tripartite consultations held prior to the ratification, as required by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).***

Marshall Islands

Serious failure to submit. The Committee notes with ***regret*** that the Government has yet again provided no response to its previous comments. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee recalls that Marshall Islands became a Member of the Organization on 3 July 2007. In accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and the Protocol adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2007–19). ***The Committee once again reiterates its request that the Government provide information on the submission to Parliament of the 12 instruments adopted by the Conference between 2007 and 2019.***

The Committee recalls once more that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the ILO Constitution relating to the submission of the instruments adopted by the Conference to the competent authorities.

Mexico

Failure to submit. The Committee ***regrets*** that the Government has once again provided no reply to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once more reiterates its request that the Government provide information on the submission to the Senate of the***

Republic of the instruments adopted at the 95th, 96th, 100th, 103rd, 104th and 108th Sessions of the Conference.

Mongolia

Submission. The Committee notes with ***satisfaction*** the information provided by the Government regarding the submission to the State Great Hural of the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019 on 9 April 2021. ***The Committee commends the efforts made by the Government in meeting its constitutional obligation of submission.***

Mozambique

Submission. The Committee notes with ***regret*** that the Government has yet again not provided a response to its previous comments. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***It therefore firmly urges the Government to provide information on the submission to the Assembly of the Republic of the 33 instruments adopted by the Conference at 16 sessions held between 1996 and 2019.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

North Macedonia

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again not replied to its previous comments. The Committee recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore firmly urges the Government to provide information concerning the submission to the Assembly of the Republic (Sobranie) of 29 instruments (Conventions, Recommendations and Protocols) adopted by the Conference from October 1996 to June 2019.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Pakistan

Submission to Parliament. The Committee notes with ***satisfaction*** the Government's indication that the remaining 41 instruments adopted by the Conference at its 20 sessions held between 1994 and 2019 were submitted to Parliament on 15 November 2021. ***The Committee welcomes the progress made by the Government in complying with its constitutional obligation of submission.***

Papua New Guinea

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no response to its previous comments. It recalls once more that the constitutional

obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee firmly urges the Government to submit to the National Parliament the 25 instruments adopted by the Conference at 15 sessions held between 2000 and 2019.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Republic of Moldova

Submission. The Committee notes with ***deep concern*** that the Government has yet again provided no reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide information on the submission to Parliament of the 14 instruments adopted by the Conference at its 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd and 106th and 108th Sessions.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Rwanda

Serious failure to submit. The Committee notes with ***regret*** that the Government has yet again provided no response to its previous comments. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore firmly urges the Government to provide information on the date of submission to the National Assembly of the 38 Conventions, Recommendations and Protocols adopted by the Conference at 20 sessions held between 1993 and 2019 (80th, 82nd, 83rd, 84th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Saint Lucia

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It firmly urges the Government to provide information on the submission to Parliament of the 73 remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980***

to 2019 (66th, 67th (Convention No. 156 and Recommendations Nos 164 and 165), 68th (Convention No. 157 and Protocol of 1982), 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th (Recommendations Nos 193 and 194), 91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

The Committee notes with ***interest*** the ratification of the Occupational Safety and Health Convention, 1981 (No. 155) and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 by Saint Lucia on 14 May 2021. ***The Committee requests the Government to provide information on the tripartite consultations held prior to the ratifications, as required by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).***

Saint Vincent and the Grenadines

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again failed to reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the House of Assembly). It firmly urges the Government to provide information on the submission to the House of Assembly of the 31 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 17 sessions held from 1995 to 2019 (82nd, 83rd, 85th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Seychelles

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has once again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). It firmly urges the Government to provide the requested information on the submission to the National Assembly of the 22 instruments adopted by the Conference at 13 sessions held from 2001 to 2019.***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Sierra Leone

Failure to submit. The Committee notes with ***deep concern*** that the Government has yet again failed to reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament). The Committee therefore once again firmly urges the Government to provide information on the submission to Parliament of the instruments adopted by the Conference in October 1976 (Convention No. 146 and Recommendation No. 154, adopted at its 62nd Session), and all instruments adopted between 1977 and 2019. The Government is firmly urged to take steps without delay to submit the 95 pending instruments to Parliament.***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

The Committee notes with ***interest*** the ratification on 25 August 2021 by Sierra Leone of eight instruments: the Protocol of 2014 to the Forced Labour Convention, 1930, the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Labour Administration Convention, 1978 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), the Private Employment Agencies Convention, 1997 (No. 181), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the Domestic Workers Convention, 2011 (No. 189). ***The Committee requests the Government to provide information on the tripartite consultations held prior to the ratifications, as required by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).***

Solomon Islands

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Parliament). The Committee firmly urges the Government to take steps without delay to submit to the National Congress the 65 pending instruments adopted by the Conference between 1984 and 2019 and to provide the information required under Article 19 of the Constitution to the International Labour Office.***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Somalia

Submission. The Committee notes with ***interest*** the ratification on 8 March 2021 by Somalia of seven Conventions: the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Occupational Safety and Health

Convention, 1981 (No. 155), the Private Employment Agencies Convention, 1997 (No. 181), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and the Violence and Harassment Convention, 2019 (No. 190). The Committee nevertheless notes that the Government has not provided a reply to its previous observations. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore firmly urges the Government to take steps without delay to submit the 51 instruments adopted by the Conference between 1989 and 2019 to the competent national authority and to provide the information required under article 19 of the ILO Constitution to the International Labour Office.***

The Committee once again recalls that the Government may avail itself of the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Syrian Arab Republic

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has yet again failed to reply to its previous comments. It once again recalls the Government's indications in September 2015 that the Consultative Council for Consultation and Social Dialogue held discussions related to the submission of the instruments adopted by the Conference to the competent authorities. The Committee further notes that 41 instruments adopted by the Conference are still pending submission to the People's Council. In this context, the Committee recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2018 and June 2019 and June 2021, that the Government will provide information on the submission to the People's Council of the 41 instruments adopted by the Conference at its 66th and 69th Sessions (Recommendations Nos 167 and 168) and at its 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 85th, 86th, 90th (Recommendations Nos 193 and 194), 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions. The Committee firmly urges the Government to take steps to submit the pending instruments without delay.***

The Committee once again recalls that the Government may avail itself of the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Timor-Leste

Serious failure to submit. The Committee notes with ***regret*** that the Government has yet again not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***It therefore once again reiterates its request that the Government provide information on the submission to the National Parliament of the 10 instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th and 108th Sessions (2010–19).***

The Committee recalls once more that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Togo

The Committee notes with ***satisfaction*** the information provided by the Government regarding the submission to the National Assembly on 17 September 2019 of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), as well as the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019. ***The Committee commends the efforts made by the Government in meeting its constitutional obligation of submission.***

Tuvalu

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no response to its previous comments. It recalls that Tuvalu became a Member of the Organization on 27 May 2008. In accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and the Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19). The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee trusts that the Government will take steps to submit without delay the 10 instruments adopted by the Conference between 2010 and 2019 and provide the information required under article 19 of the ILO Constitution to the Office.***

In this context, the Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the ILO Constitution relating to the submission of the instruments adopted by the Conference to the competent authorities.

Uruguay

Submission. The Committee notes with ***satisfaction*** the information provided by the Government regarding the submission to the General Assembly of the Violence and Harassment Recommendation (No. 206) on 30 September 2019, the Employment and Decent Work for Peace and Resilience Recommendation (No. 205) on 21 October 2019, the Maritime Labour Convention (MLC, 2006) on 4 November 2019, and the Work in Fishing Convention (No. 188) and its Recommendation (No. 199) on 10 January 2020***. At the same time, the Committee once again reiterates its request that the Government specify the date on which the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (90th Session), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (95th Session), were submitted to the General Assembly.***

Vanuatu

Serious failure to submit. The Committee notes with ***deep concern*** that the Government has yet again provided no reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019 and June 2021, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament of Vanuatu). The Committee firmly urges the Government to provide information on the submission to the Parliament of Vanuatu of the 18 instruments adopted by the Conference at 12 sessions held between 2003 and 2019 (91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Yemen

Serious failure to submit. The Committee notes with ***regret*** that the Government has yet again provided no response to its previous comments. It therefore recalls the information provided to the Conference by the Government in June 2018 indicating that it was not able to submit instruments adopted by the Conference to the House of Representatives due to the ongoing conflict in Yemen. ***Noting the complex situation in the country, particularly the ongoing conflict, the Committee trusts that, when national circumstances permit, the Government will be in a position to provide information on the submission to the House of Representatives of the instruments adopted by the Conference at its 90th, 94th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions, as well as on the submission of Recommendations Nos 191, 192, 197 and 198, adopted by the Conference at its 88th, 89th and 95th Sessions.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Zambia

Serious failure to submit. Date of submission. The Committee notes with ***deep regret*** that the Government has yet again provided no reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. It once again recalls the information provided by the Government in September 2010 indicating that 12 instruments adopted by the Conference from 1996 to 2007 had been submitted to the National Assembly. ***The Committee once again reiterates its request that the Government indicate the dates on which the above-mentioned instruments were submitted to the National Assembly. It also urges the Government to provide information on any action taken by the National Assembly in relation to the submissions, as well as with respect to the prior tripartite consultations that took place with the social partners. Moreover, the Committee once again reiterates its request that the Government provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: *Afghanistan, Argentina, Austria, Bangladesh, Belarus, Benin, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, China, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Djibouti, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Georgia, Germany, Ghana, Honduras, Islamic Republic of Iran, Ireland, Jamaica, Jordan, Kenya, Lao People's Democratic Republic, Lesotho, Lithuania, Madagascar, Mali, Nepal, Nicaragua, Nigeria, Norway, Oman, Palau, Panama, Paraguay,*

Peru, Qatar, Romania, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Singapore, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Sweden, Tajikistan, Thailand, Tonga, Tunisia, Turkmenistan, Uganda, Ukraine, United Republic of Tanzania, Bolivarian Republic of Venezuela, Viet Nam, Zimbabwe.



Appendices

Appendix I. Reports requested on ratified Conventions registered as at 11 December 2021
(articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th Session (November 1977), the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

Appendix I. Reports requested on ratified Conventions

(articles 22 and 35 of the Constitution)

List of reports registered as at 11 December 2021 and of reports not received

Note: First reports are indicated in parentheses.

Afghanistan — 9 reports requested

· No reports received: Conventions Nos. 100, 105, 111, 138, 140, 141, 142, 144, 182

Albania — 15 reports requested

· 11 reports received: Conventions Nos. 6, 11, 29, 87, 98, 100, 105, 122, 135, 138, 182
· 4 reports not received: Conventions Nos. 77, 78, 185, (MLC, 2006)

Algeria — 9 reports requested

All reports received: Conventions Nos. 6, 29, 77, 78, 98, 105, 122, 138, 182

Angola — 6 reports requested

All reports received: Conventions Nos. 6, 29, 100, 105, 138, 182

Antigua and Barbuda — 12 reports requested

· No reports received: Conventions Nos. 11, 29, 87, 98, 105, 122, 135, 138, 144, 151, 154, 182

Argentina — 10 reports requested

All reports received: Conventions Nos. 29, 77, 78, 79, 90, 105, 124, 138, 182, MLC, 2006

Armenia — 6 reports requested

All reports received: Conventions Nos. 17, 29, 105, 122, 138, 182

Australia — 6 reports requested

All reports received: Conventions Nos. 10, 29, 105, 122, 123, 182

Austria — 7 reports requested

All reports received: Conventions Nos. 6, 29, 105, 122, 124, 138, 182

Azerbaijan — 10 reports requested

All reports received: Conventions Nos. 29, 77, 78, 79, 90, 105, 122, 124, 138, 182

Bahamas — 8 reports requested

· 1 report received: Convention No. MLC, 2006
· 7 reports not received: Conventions Nos. 29, 87, 105, 138, 144, 182, 185

Bahrain — 4 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182

Bangladesh — 7 reports requested

All reports received: Conventions Nos. 29, 59, 81, 90, 105, 182, MLC, 2006

Barbados — 17 reports requested

· 3 reports received: Conventions Nos. 11, 29, 81
· 14 reports not received: Conventions Nos. 87, 90, 97, 100, 102, 105, 111, 122, 128, 135, 138, 144, 172, 182

Belarus — 11 reports requested

All reports received: Conventions Nos. 29, 77, 78, 79, 87, 90, 105, 122, 124, 138, 182

Belgium — 10 reports requested

All reports received: Conventions Nos. 6, 29, 77, 87, 105, 122, 124, 138, 182, (187)

Belize — 22 reports requested

· 7 reports received: Conventions Nos. 11, 19, 105, 135, 141, 150, 151
· 15 reports not received: Conventions Nos. 29, 87, 88, 97, 98, 100, 111, 115, 138, 140, 144, 154, 155, 156, 182

Benin — 8 reports requested

All reports received: Conventions Nos. 6, 11, 29, (102), 105, 135, 138, 182

Bolivia (Plurinational State of) — 14 reports requested

· 7 reports received: Conventions Nos. 90, 105, 123, 131, 136, 162, 167
· 7 reports not received: Conventions Nos. 29, 77, 78, 122, 124, 138, 182

Bosnia and Herzegovina — 6 reports requested

· 5 reports received: Conventions Nos. 29, 90, 105, 138, 182
· 1 report not received: Convention No. 122

Botswana — 4 reports requested

· No reports received: Conventions Nos. 29, 105, 138, 182

Brazil — 8 reports requested

All reports received: Conventions Nos. 6, 29, 105, 122, 124, 138, 182, (189)

Brunei Darussalam — 2 reports requested

· 1 report received: Convention No. 182
· 1 report not received: Convention No. 138

Bulgaria — 11 reports requested

All reports received: Conventions Nos. 6, 29, 77, 78, 79, 105, 122, 124, (131), 138, 182

Burkina Faso — 6 reports requested

All reports received: Conventions Nos. 6, 29, 105, 122, 138, 182

Burundi — 6 reports requested

All reports received: Conventions Nos. 26, 29, 90, 105, 138, 182

Cabo Verde — 5 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182, MLC, 2006

Cambodia — 6 reports requested

All reports received: Conventions Nos. 29, 87, 105, 122, 138, 182

Cameroon — 9 reports requested

All reports received: Conventions Nos. 29, 87, 94, 105, 122, 138, (144), 158, 182

Canada — 7 reports requested

All reports received: Conventions Nos. 29, (81), 88, 105, 122, 138, 182

Central African Republic — 10 reports requested

· 9 reports received: Conventions Nos. 29, 88, 94, 105, 117, 122, 138, 142, 182
· 1 report not received: Convention No. 158

Chad — 6 reports requested

· No reports received: Conventions Nos. 29, 87, 105, 122, 138, 182

Chile — 9 reports requested

All reports received: Conventions Nos. 2, 29, 105, 122, 138, 140, 159, 182, (MLC, 2006)

China — 5 reports requested

All reports received: Conventions Nos. 122, 138, 159, 182, MLC, 2006

China - Hong Kong Special Administrative Region — 8 reports requested

All reports received: Conventions Nos. 2, 29, 87, 105, 122, 138, 142, 182

China - Macau Special Administrative Region — 6 reports requested

All reports received: Conventions Nos. 29, 88, 105, 122, 138, 182

Colombia — 8 reports requested

All reports received: Conventions Nos. 2, 29, 88, 98, 105, 138, 159, 182

Comoros — 7 reports requested

· No reports received: Conventions Nos. 29, 87, 98, 105, 122, 138, 182

Congo — 16 reports requested

· No reports received: Conventions Nos. 29, 81, 87, 98, 100, 105, 111, 138, 144, 149, 150, 152, 182, (185), (MLC, 2006), (188)

Cook Islands — 5 reports requested

· 4 reports received: Conventions Nos. 29, 105, (144), (182)
· 1 report not received: Convention No. (MLC, 2006)

Costa Rica — 11 reports requested

All reports received: Conventions Nos. 29, 88, 94, 96, 105, 117, 122, 138, (156), 159, 182

Côte d'Ivoire — 8 reports requested

All reports received: Conventions Nos. 29, 96, 105, 133, 138, 159, (170), 182

Croatia — 6 reports requested

All reports received: Conventions Nos. 29, 105, 122, 138, 159, 182

Cuba — 12 reports requested

All reports received: Conventions Nos. 29, 88, 94, 96, 105, 110, 122, 138, 140, 142, 159, 182

Cyprus — 10 reports requested

All reports received: Conventions Nos. 29, 88, 94, 105, 122, 138, 142, 158, 159, 182

Czechia — 11 reports requested

All reports received: Conventions Nos. 29, 88, 105, 122, 138, 140, 142, 159, 181, 182, (183)

Democratic Republic of the Congo — 9 reports requested

· No reports received: Conventions Nos. 29, 88, 94, 105, 117, 138, 144, 158, 182

Denmark — 9 reports requested

All reports received: Conventions Nos. 29, 88, 94, 105, 122, 138, 142, 159, 182

Denmark - Faroe Islands — 2 reports requested

All reports received: Conventions Nos. 29, 105

Denmark - Greenland — 4 reports requested

All reports received: Conventions Nos. 29, 105, (111), 122

Djibouti — 26 reports requested

· 1 report received: Convention No. (MLC, 2006)
· 25 reports not received: Conventions Nos. 12, 17, 18, 19, 24, 29, 37, 38, 71, 81, 87, 88, 94, 96, 98, 100, 105, 108, 111, 122, 125, 126, 138, 144, 182

Dominica — 24 reports requested

· No reports received: Conventions Nos. 11, 12, 14, 19, 22, 26, 29, 81, 87, 94, 95, 97, 98, 100, 105, 108, 111, 135, 138, 144, 147, 150, 169, 182

Dominican Republic
7 reports requested

All reports received: Conventions Nos. 29, 88, 105, 122, 138, 159, 182

Ecuador
13 reports requested

All reports received: Conventions Nos. 29, 87, 88, 95, 98, 105, 117, 122, 131, 138, 142, 159, 182

Egypt
11 reports requested

All reports received: Conventions Nos. 2, 29, 88, 94, 96, 98, 105, 138, 142, 159, 182

El Salvador
9 reports requested

All reports received: Conventions Nos. 29, 88, 105, 122, 138, 142, 144, 159, 182

Equatorial Guinea
14 reports requested

· No reports received: Conventions Nos. 1, 14, 29, 30, (68), 87, (92), 98, 100, 103, 105, 111, 138, 182

Eritrea
6 reports requested

· 3 reports received: Conventions Nos. 87, 98, (182)
· 3 reports not received: Conventions Nos. 29, 105, 138

Estonia
6 reports requested

All reports received: Conventions Nos. 2, 29, 105, 122, 138, 182

Eswatini
6 reports requested

All reports received: Conventions Nos. 29, 94, 96, 105, 138, 182

Ethiopia
10 reports requested

· No reports received: Conventions Nos. 2, 29, 88, 105, 138, 158, 159, 181, 182, (MLC, 2006)

Fiji
8 reports requested

All reports received: Conventions Nos. 29, 105, 122, 138, 142, 159, 181, 182

Finland
12 reports requested

All reports received: Conventions Nos. 29, 88, 94, 105, 122, 138, 140, 142, 158, 159, 181, 182

France
14 reports requested

All reports received: Conventions Nos. 29, 82, 88, 94, 98, 105, 122, 138, 140, 142, 158, 159, 181, 182

France - French Polynesia
8 reports requested

All reports received: Conventions Nos. 29, 82, 88, 94, 96, 105, 122, 142

France - New Caledonia
8 reports requested

All reports received: Conventions Nos. 29, 82, 88, 94, 105, 122, 142, 181

Gabon
9 reports requested

· No reports received: Conventions Nos. 11, 81, 87, 98, 135, 144, 151, 154, (MLC, 2006)

Gambia
3 reports requested

· No reports received: Conventions Nos. 87, 98, (MLC, 2006)

Georgia
4 reports requested

All reports received: Conventions Nos. 87, 98, (144), 151

Germany
8 reports requested

All reports received: Conventions Nos. 11, 81, 87, 98, 129, 135, 141, 144

Ghana — 12 reports requested

· 8 reports received: Conventions Nos. 29, 81, 87, 98, 111, 144, 149, 182
· 4 reports not received: Conventions Nos. 11, 100, 151, MLC, 2006

Greece — 9 reports requested

All reports received: Conventions Nos. 11, 81, 87, 98, 135, 141, 144, 151, 154

Grenada — 16 reports requested

· 8 reports received: Conventions Nos. 11, 12, 19, 29, 81, 87, 97, 98
· 8 reports not received: Conventions Nos. 100, 105, 111, 138, 144, 182, (MLC, 2006), (189)

Guatemala — 8 reports requested

All reports received: Conventions Nos. 11, 81, 87, 98, 129, 141, 144, 154

Guinea — 15 reports requested

· 6 reports received: Conventions Nos. 135, 144, 156, (176), (187), (189)
· 9 reports not received: Conventions Nos. 11, 81, 87, 98, 114, 118, 140, 151, (167)

Guinea - Bissau — 9 reports requested

All reports received: Conventions Nos. 6, 17, 26, 45, 81, 88, 98, 138, 182

Guyana — 21 reports requested

· 14 reports received: Conventions Nos. 87, 94, 97, 98, 100, 111, 138, 139, 140, 144, 149, 172, 182, 189
· 7 reports not received: Conventions Nos. 11, 81, 105, 129, 135, 141, 151

Haiti — 24 reports requested

· No reports received: Conventions Nos. 1, 12, 14, 17, 19, 24, 25, 29, 30, 42, 45, 77, 78, 81, 87, 90, 98, 100, 105, 106, 107, 111, 138, 182

Honduras — 7 reports requested

All reports received: Conventions Nos. 81, 87, 98, 111, 144, 169, MLC, 2006

Hungary — 9 reports requested

· No reports received: Conventions Nos. 81, 87, 98, 129, 135, 141, 144, 151, 154

Iceland — 8 reports requested

· 6 reports received: Conventions Nos. 11, 81, 87, 98, 129, 144
· 2 reports not received: Conventions Nos. (MLC, 2006), (187)

India — 5 reports requested

· No reports received: Conventions Nos. 11, 81, 141, 144, MLC, 2006

Indonesia — 4 reports requested

All reports received: Conventions Nos. 81, 87, 98, 144

Iran (Islamic Republic of) — 2 reports requested

All reports received: Conventions Nos. 111, MLC, 2006

Iraq — 14 reports requested

All reports received: Conventions Nos. 11, 22, 23, 81, (87), 92, 98, 111, 122, 135, 144, 146, 147, 172

Ireland — 6 reports requested

All reports received: Conventions Nos. 11, 81, 87, 98, 144, MLC, 2006

Israel — 5 reports requested

All reports received: Conventions Nos. 81, 87, 98, 141, 144

Italy
9 reports requested

All reports received: Conventions Nos. 11, 81, 87, 98, 129, 135, 141, 144, 151

Jamaica
6 reports requested

· 1 report received: Convention No. (189)
· 5 reports not received: Conventions Nos. 11, 81, 87, 98, 144

Japan
4 reports requested

All reports received: Conventions Nos. 81, 87, 98, 144

Jordan
5 reports requested

· 2 reports received: Conventions Nos. 81, 98
· 3 reports not received: Conventions Nos. 135, 142, 144

Kazakhstan
6 reports requested

All reports received: Conventions Nos. 81, 87, 98, 129, 135, 144

Kenya
9 reports requested

· No reports received: Conventions Nos. 11, 81, 98, 129, 135, 141, 142, 144, MLC, 2006

Kiribati
6 reports requested

· 1 report received: Convention No. 182
· 5 reports not received: Conventions Nos. 87, 98, 111, (144), MLC, 2006

Kuwait
4 reports requested

· 3 reports received: Conventions Nos. 87, 98, 144
· 1 report not received: Convention No. 81

Kyrgyzstan
9 reports requested

All reports received: Conventions Nos. 11, 81, 87, 95, 98, 124, 131, 144, 154

Lao People's Democratic Republic
4 reports requested

· 3 reports received: Conventions Nos. 13, 144, 171
· 1 report not received: Convention No. 6

Latvia
25 reports requested

All reports received: Conventions Nos. 3, 12, 13, 14, 17, 18, 19, 24, 81, 87, 98, 106, 115, 119, 120, 129, 131, 132, 144, 148, 150, 155, 160, 173, 183

Lebanon
35 reports requested

· No reports received: Conventions Nos. 1, 14, 17, 19, 29, 30, 45, 52, 81, 88, 89, 95, 98, 100, 105, 106, 111, 115, 120, 122, 127, 131, 136, 138, 139, 142, 148, 150, 159, 170, 172, 174, 176, 182, (MLC, 2006)

Lesotho
12 reports requested

· 9 reports received: Conventions Nos. 14, 19, 26, 87, 98, 144, 150, 155, 167
· 3 reports not received: Conventions Nos. 45, 81, 135

Liberia
11 reports requested

All reports received: Conventions Nos. 29, 81, 87, 98, 105, 111, 112, 113, 114, 144, 150

Libya
15 reports requested

· 13 reports received: Conventions Nos. 1, 14, 81, 87, 95, 98, 102, 103, 118, 121, 128, 130, 131
· 2 reports not received: Conventions Nos. 52, 89

Lithuania
16 reports requested

All reports received: Conventions Nos. 1, 14, 19, 24, 47, 81, 87, 98, 115, 127, 131, 144, 160, 171, 173, 183

Luxembourg
36 reports requested

· 26 reports received: Conventions Nos. 1, 3, 13, 14, 30, 81, 115, 119, 120, 127, 129, 132, 136, 139, 148, 155, 161, 162, 167, 170, 171, 174, 175, 176, 183, 184
· 10 reports not received: Conventions Nos. 12, 19, 26, 87, 98, 102, 121, 130, 150, (169)

Madagascar
34 reports requested

· No reports received: Conventions Nos. 12, 13, 14, 19, 26, 29, 81, 87, 88, 95, 98, 100, 105, 111, 117, 118, 119, 120, 122, 127, 129, 132, 138, (143), 144, (151), (154), 159, 171, 173, (181), 182, 185, (189)

Malawi
17 reports requested

· 6 reports received: Conventions Nos. 45, 87, 98, 100, 111, 144
· 11 reports not received: Conventions Nos. 12, 19, 26, 81, 89, 99, 129, 150, (155), (184), (187)

Malaysia
8 reports requested

All reports received: Conventions Nos. 81, 95, 98, 119, 131, 144, MLC, 2006, 187

Malaysia - Malaysia - Peninsular
4 reports requested

All reports received: Conventions Nos. 12, 17, 19, 45

Malaysia - Malaysia - Sarawak
3 reports requested

All reports received: Conventions Nos. 12, 14, 19

Maldives
3 reports requested

All reports received: Conventions Nos. 87, 98, (MLC, 2006)

Mali
15 reports requested

All reports received: Conventions Nos. 13, 14, 17, 18, 19, 26, 52, 81, 87, 95, 98, 144, 150, 155, 183

Malta
20 reports requested

· 14 reports received: Conventions Nos. 1, 14, 62, 81, 87, 98, 106, 119, 127, 129, 132, 136, (144), 148
· 6 reports not received: Conventions Nos. 12, 13, 19, 42, 95, 131

Marshall Islands
1 report requested

· No reports received: Convention No. (182)

Mauritania
19 reports requested

All reports received: Conventions Nos. 3, 13, 14, 17, 18, 19, 26, 52, 62, 81, 87, 89, 95, 98, 101, 102, 118, (143), (144)

Mauritius
19 reports requested

All reports received: Conventions Nos. 12, 14, 17, 19, 26, 42, 81, 87, 95, 98, 99, 144, 150, 155, 160, 175, (183), MLC, 2006, 187

Mexico
27 reports requested

All reports received: Conventions Nos. 12, 13, 14, 17, 19, 30, 42, 45, 52, 87, 95, (98), 102, 106, 115, 118, 120, 131, 144, 150, 153, 155, 160, 161, 167, 170, 173

Mongolia
8 reports requested

· 7 reports received: Conventions Nos. 87, 98, 103, 144, 155, 176, MLC, 2006
· 1 report not received: Convention No. 181

Montenegro
31 reports requested

· 25 reports received: Conventions Nos. 13, 14, 45, 81, 87, 98, 106, 119, 129, 131, 132, 136, 139, 142, 144, 148, (151), 155, 161, 162, 167, 171, 183, MLC, 2006, 187
· 6 reports not received: Conventions Nos. 12, 19, 24, 25, 102, 121

Morocco
26 reports requested

· No reports received: Conventions Nos. 12, 13, 14, 17, 19, 30, 42, 45, 52, 81, (97), 98, 99, 101, (102), 106, 119, 129, 131, 136, 144, 150, 162, 176, 183, (187)

Mozambique
13 reports requested

· 12 reports received: Conventions Nos. 1, 14, 17, 18, 30, 81, 87, 98, 105, 122, 144, (176)
· 1 report not received: Convention No. 88

Myanmar
9 reports requested

All reports received: Conventions Nos. 1, 14, 17, 19, 26, 42, 52, 63, 87

Namibia
9 reports requested

All reports received: Conventions Nos. (81), 87, 98, 111, (122), 144, 150, (151), (188)

Nepal
4 reports requested

All reports received: Conventions Nos. 14, 98, 131, 144

Netherlands
30 reports requested

· 28 reports received: Conventions Nos. 13, 14, 62, 81, 87, 95, 98, 101, 102, 106, 115, 121, 128, 129, 130, 131, 139, 144, 148, 150, 155, 160, 162, 170, 174, 175, 183, (188)
· 2 reports not received: Conventions Nos. 12, 19

Netherlands - Aruba
22 reports requested

All reports received: Conventions Nos. 14, 25, 29, 81, 87, 88, 94, 95, 101, 105, 106, 113, 114, 118, 121, 122, 131, 138, 140, 142, 144, 182

Netherlands - Caribbean Part of the Netherlands
11 reports requested

All reports received: Conventions Nos. 12, 14, 17, 25, 42, 81, 87, 95, 101, 106, 118

Netherlands - Curaçao
12 reports requested

All reports received: Conventions Nos. 12, 14, 17, 25, 42, 81, 87, 95, 101, 106, 118, 144

Netherlands - Sint Maarten
15 reports requested

· 3 reports received: Conventions Nos. 88, 94, 122
· 12 reports not received: Conventions Nos. 12, 14, 17, 25, 42, 81, 87, 95, 101, 106, 118, 144

New Zealand
15 reports requested

All reports received: Conventions Nos. 12, 14, 17, 26, 42, 47, 52, 81, 98, 99, 101, 144, 155, 160, MLC, 2006

Nicaragua
25 reports requested

All reports received: Conventions Nos. 1, 3, 12, 13, 14, 17, 18, 19, 24, 25, 30, 45, 63, 87, 88, 95, 98, 111, 115, 119, 127, 131, 136, 139, 144

Niger
18 reports requested

All reports received: Conventions Nos. 13, 14, 18, 81, 87, 95, 98, 102, 119, (122), 131, (144), 148, 150, 155, 161, (183), 187

Nigeria
16 reports requested

· 13 reports received: Conventions Nos. 26, 81, 87, 88, 94, 95, 98, 100, 111, 144, 155, 159, MLC, 2006
· 3 reports not received: Conventions Nos. 19, 45, 185

North Macedonia
30 reports requested

· No reports received: Conventions Nos. 3, 12, 13, 14, 19, 24, 25, 45, 81, 87, 98, 102, 106, 119, 121, 129, 131, 132, 136, 139, (141), 144, 148, 150, 155, 161, 162, (171), 183, 187

Norway
34 reports requested

· 32 reports received: Conventions Nos. 12, 14, 19, 26, 30, 42, 47, 81, 87, 95, 98, 102, 115, 118, 120, 128, 129, 130, 132, 139, 144, 148, 150, 155, 160, 162, 167, 168, 170, 176, 183, 187
· 2 reports not received: Conventions Nos. 13, 119

Pakistan — 4 reports requested

All reports received: Conventions Nos. 98, 100, 107, 111

Palau — 1 report requested

· No reports received: Convention No. (182)

Panama — 5 reports requested

All reports received: Conventions Nos. 100, 107, 110, 111, 189

Papua New Guinea — 7 reports requested

· 1 report received: Convention No. 138
· 6 reports not received: Conventions Nos. 29, 98, 100, 111, 122, 158

Paraguay — 5 reports requested

All reports received: Conventions Nos. 100, 111, 156, 169, 189

Peru — 5 reports requested

All reports received: Conventions Nos. 100, 111, 156, 169, (189)

Philippines — 8 reports requested

All reports received: Conventions Nos. 97, 100, 110, 111, 143, 149, (187), 189

Poland — 4 reports requested

All reports received: Conventions Nos. 100, 111, 149, (188)

Portugal — 8 reports requested

All reports received: Conventions Nos. 97, 100, 111, 143, 149, 156, (188), 189

Qatar — 1 report requested

All reports received: Convention No. 111

Republic of Korea — 3 reports requested

All reports received: Conventions Nos. 81, 135, 144

Republic of Moldova — 18 reports requested

All reports received: Conventions Nos. 47, 81, 87, 95, 98, 117, 119, 127, 129, 131, 132, 144, 150, 155, 160, 183, 184, 187

Romania — 4 reports requested

· 2 reports received: Conventions Nos. 98, (MLC, 2006)
· 2 reports not received: Conventions Nos. 100, 111

Russian Federation — 7 reports requested

All reports received: Conventions Nos. 81, 100, (102), 111, 149, 156, (167)

Rwanda — 16 reports requested

· 15 reports received: Conventions Nos. 26, 29, 42, 81, 100, 105, 111, 138, (144), (150), 154, (155), (181), 182, (187)
· 1 report not received: Convention No. 123

Saint Kitts and Nevis — 7 reports requested

· 6 reports received: Conventions Nos. 29, 100, 105, 111, 138, 182
· 1 report not received: Convention No. MLC, 2006

Saint Lucia — 17 reports requested

· No reports received: Conventions Nos. 5, 11, 12, 17, 19, 29, 87, 94, 97, 98, 100, 105, 108, 111, 154, 158, 182

Saint Vincent and the Grenadines — 7 reports requested

· 6 reports received: Conventions Nos. 100, 105, 111, 138, 144, 182
· 1 report not received: Convention No. 122

Samoa
4 reports requested

· No reports received: Conventions Nos. 100, 111, (144), MLC, 2006

San Marino
15 reports requested

· No reports received: Conventions Nos. 29, 87, 100, 105, 111, 119, 138, 142, 143, 144, 151, 156, 161, 182, (183)

Sao Tome and Principe
10 reports requested

· 5 reports received: Conventions Nos. 29, 81, 87, 98, 105
· 5 reports not received: Conventions Nos. 100, 111, 138, 182, (183)

Saudi Arabia
2 reports requested

All reports received: Conventions Nos. 100, 111

Senegal
5 reports requested

All reports received: Conventions Nos. 100, 111, 182, (MLC, 2006), (188)

Serbia
6 reports requested

· No reports received: Conventions Nos. 97, 100, 111, 143, 156, (184)

Seychelles
4 reports requested

All reports received: Conventions Nos. 100, 111, 149, MLC, 2006

Sierra Leone
20 reports requested

All reports received: Conventions Nos. 17, 19, 22, 26, 29, 32, 45, 81, 94, 95, 99, 100, 101, 105, 111, 119, 125, 126, 138, 182

Singapore
2 reports requested

· No reports received: Conventions Nos. 100, (155)

Slovakia
4 reports requested

All reports received: Conventions Nos. 100, 111, 156, (MLC, 2006)

Slovenia
6 reports requested

· No reports received: Conventions Nos. 97, 100, 111, 143, 149, 156

Solomon Islands
3 reports requested

· No reports received: Conventions Nos. 81, 100, 111

Somalia
12 reports requested

· No reports received: Conventions Nos. 17, 19, 22, 23, 29, 45, 84, 85, 94, 95, 105, 111

South Africa
3 reports requested

All reports received: Conventions Nos. 100, 111, 189

South Sudan
7 reports requested

· No reports received: Conventions Nos. 29, 98, 100, 105, 111, 138, 182

Spain
6 reports requested

All reports received: Conventions Nos. 97, 100, 111, 156, 169, 172

Sri Lanka
5 reports requested

· 3 reports received: Conventions Nos. 98, 110, (MLC, 2006)
· 2 reports not received: Conventions Nos. 100, 111

Sudan — 4 reports requested

· No reports received: Conventions Nos. 100, 111, (175), (MLC, 2006)

Suriname — 3 reports requested

· 1 report received: Convention No. (138)
· 2 reports not received: Conventions Nos. 100, 111

Sweden — 6 reports requested

All reports received: Conventions Nos. 100, 111, 143, 149, 156, (189)

Switzerland — 4 reports requested

All reports received: Conventions Nos. 100, 111, 172, 189

Syrian Arab Republic — 7 reports requested

· No reports received: Conventions Nos. 29, 100, 105, 107, 111, 138, 182

Tajikistan — 22 reports requested

· 1 report received: Convention No. 81
· 21 reports not received: Conventions Nos. 23, 27, 32, 69, 87, 92, 97, 98, 100, 103, 105, 108, 111, 113, 124, 126, 133, 134, 147, 149, 177

Thailand — 3 reports requested

All reports received: Conventions Nos. 100, 111, (188)

Timor-Leste — 2 reports requested

· No reports received: Conventions Nos. 100, 111

Togo — 3 reports requested

All reports received: Conventions Nos. 100, 111, MLC, 2006

Trinidad and Tobago — 4 reports requested

All reports received: Conventions Nos. 100, 111, 125, 147

Tunisia — 6 reports requested

· 4 reports received: Conventions Nos. 100, 111, 113, 114
· 2 reports not received: Conventions Nos. 185, (MLC, 2006)

Turkey — 22 reports requested

All reports received: Conventions Nos. 55, 68, 69, 92, 98, 100, 108, 111, 115, 119, 127, 133, 134, 146, 152, 155, 161, 164, 166, 167, 176, 187

Turkmenistan — 5 reports requested

All reports received: Conventions Nos. 100, 105, 111, (144), 185

Tuvalu — 2 reports requested

· No reports received: Conventions Nos. (182), MLC, 2006

Uganda — 16 reports requested

· No reports received: Conventions Nos. 11, 17, 26, 29, 81, 94, 95, 100, 105, 111, 123, 124, 138, 143, 162, 182

Ukraine — 19 reports requested

All reports received: Conventions Nos. 23, 27, 32, 69, 81, 92, 95, 100, 108, 111, 113, 115, 126, 129, 131, 133, 147, 150, 173

United Arab Emirates — 2 reports requested

All reports received: Conventions Nos. 100, 111

United Kingdom of Great Britain and Northern Ireland — **5 reports requested**

All reports received: Conventions Nos. 32, 100, 108, 111, (188)

United Kingdom of Great Britain and Northern Ireland - Anguilla — **4 reports requested**

All reports received: Conventions Nos. 22, 23, 58, 108

United Kingdom of Great Britain and Northern Ireland - Bermuda — **2 reports requested**

All reports received: Conventions Nos. 108, MLC, 2006

United Kingdom of Great Britain and Northern Ireland - British Virgin Islands — **2 reports requested**

· 1 report received: Convention No. (MLC, 2006)
· 1 report not received: Convention No. 108

United Kingdom of Great Britain and Northern Ireland - Falkland Island — **3 reports requested**

· 2 reports received: Conventions Nos. 32, 108
· 1 report not received: Convention No. (MLC, 2006)

United Kingdom of Great Britain and Northern Ireland - Gibraltar — **3 reports requested**

All reports received: Conventions Nos. 100, 108, MLC, 2006

United Kingdom of Great Britain and Northern Ireland - Guernsey — **6 reports requested**

All reports received: Conventions Nos. 22, 32, 56, 69, 108, 114

United Kingdom of Great Britain and Northern Ireland - Isle of Man — **3 reports requested**

All reports received: Conventions Nos. 32, 108, 126

United Kingdom of Great Britain and Northern Ireland - Jersey — **5 reports requested**

All reports received: Conventions Nos. 22, 32, 56, 69, 108

United Kingdom of Great Britain and Northern Ireland - Montserrat — **2 reports requested**

All reports received: Conventions Nos. 58, 108

United Kingdom of Great Britain and Northern Ireland - St Helena — **2 reports requested**

All reports received: Conventions Nos. 58, 108

United Republic of Tanzania — **7 reports requested**

· 2 reports received: Conventions Nos. 12, (185)
· 5 reports not received: Conventions Nos. 100, 111, 137, 152, (MLC, 2006)

United Republic of Tanzania - Tanganyika — **4 reports requested**

All reports received: Conventions Nos. 45, 81, 101, 108

United Republic of Tanzania - Zanzibar — **1 report requested**

· No reports received: Convention No. 58

United States of America — **3 reports requested**

All reports received: Conventions Nos. 55, 58, 147

United States of America - American Samoa — **3 reports requested**

All reports received: Conventions Nos. 55, 58, 147

United States of America - Guam — **3 reports requested**

All reports received: Conventions Nos. 55, 58, 147

United States of America - Northern Mariana Islands — **1 report requested**

All reports received: Convention No. 147

United States of America - Puerto Rico — **3 reports requested**

All reports received: Conventions Nos. 55, 58, 147

United States of America - United States Virgin Islands — **3 reports requested**

All reports received: Conventions Nos. 55, 58, 147

Uruguay — 13 reports requested

All reports received: Conventions Nos. 22, 23, 27, 32, 100, 108, 111, 113, 114, 133, 134, 137, (171)

Uzbekistan — 5 reports requested

All reports received: Conventions Nos. (81), 100, 111, (129), (144)

Vanuatu — 7 reports requested

· No reports received: Conventions Nos. 29, 100, 105, 111, (138), 182, 185

Venezuela (Bolivarian Republic of) — 9 reports requested

All reports received: Conventions Nos. 1, 22, 26, 27, 87, 95, 100, 111, 144

Viet Nam — 7 reports requested

· 5 reports received: Conventions Nos. (88), (98), 100, 111, MLC, 2006
· 2 reports not received: Conventions Nos. 27, (159)

Yemen — 6 reports requested

· No reports received: Conventions Nos. 19, 58, 81, 100, 111, 185

Zambia — 4 reports requested

All reports received: Conventions Nos. 100, 111, 148, 176

Zimbabwe — 6 reports requested

All reports received: Conventions Nos. 26, 87, 99, 100, 105, 111

Grand Total

A total of 1,865 reports (article 22) were requested,
of which 1,230 reports (65.95 per cent) were received.

A total of 141 reports (article 35) were requested,
of which 127 reports (90.07 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as at 11 December 2021
(article 22 of the Constitution)

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports were requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2515	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%
2010	2745	861	31.4%	1866	67.9%	2122	77.3%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals							
2012	2207	809	36.7%	1497	67.8%	1742	78.9%
2013	2176	740	34.1%	1578	72.5%	1755	80.6%
2014	2251	875	38.9%	1597	70.9%	1739	77.2%
2015	2139	829	38.8%	1482	69.3%	1617	75.6%
2016	2303	902	39.2%	1600	69.5%	1781	77.3%
2017	2083	785	37.7%	1386	66.5%	1543	74.1%
2018	1683	571	33.9%	1038	61.7%	1194	70.9%
As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals							
2019	1788	645	36.1%	1217	68.1%	ILC 2020 deferred due to the COVID-19 pandemic	
In light of the deferral of 109th Session of the Conference to June 2021 due to the COVID-19 pandemic, the Governing Body decided in March 2020 to invite Member States to provide supplementary information on reports submitted in 2019, highlighting relevant developments, if any, on the application of the provisions of Conventions under review that might have occurred in the meantime. In addition, reports were requested on the basis of a footnote adopted by the Committee requesting a report for 2020 and on the follow-up of failures to submit reports							
2020	1796	394	21.9%	712	39.6%	768	42.8%
As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals							
2021	1865	747	40.0%	1230	65.9%		

Appendix III. List of observations made by employers' and workers' organizations

	on Conventions Nos
Albania	
• Education International (EI)	138, 182
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Algeria	
• General and Autonomous Confederation of Workers in Algeria (CGATA)	87, 98
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Antigua and Barbuda	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Argentina	
• Confederation of Workers of Argentina (CTA Autonomous)	29, 182
• Confederation of Workers of Argentina (CTA Workers)	81, 87, 98, 151, 154, 155, 187
• Federation of Energy Workers of the Argentine Republic (FeTERA)	87
• General Confederation of Labour of the Argentine Republic (CGT RA)	29, 77, 78, 79, 90, 105, 124, 138, 182, MLC, 2006
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Armenia	
• Republican Union of Employers of Armenia (RUEA)	17, 29, 122, 138, 182
• Confederation of Trade Unions of Armenia (CTUA)	17, 29, 105, 122, 138, 182
Australia	
• Australian Council of Trade Unions (ACTU)	29, 122
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Austria	
• Federal Chamber of Labour (BAK)	29, 105, 122, 138
• Austrian Federal Economic Chamber (WKÖ)	122
Bahamas	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Bahrain	
• General Federation of Bahrain Trade Unions (GFBTU)	29, 111
Bangladesh	
• Bangladesh Employers' Federation (BEF)	149
• Bangladesh Seafarers Union	MLC, 2006
• International Trade Union Confederation (ITUC)	81
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Barbados	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Belarus	
• Belarusian Congress of Democratic Trade Unions (BKDP)	29, 87, 105, 122
• International Trade Union Confederation (ITUC)	87

Belgium

	on Conventions Nos
• Confederation of Christian Trade Unions (CSC); General Labour Federation of Belgium (FGTB); General Confederation of Liberal Trade Unions of Belgium (CGSLB)	98
• General Labour Federation of Belgium (FGTB); Confederation of Christian Trade Unions (CSC); General Confederation of Liberal Trade Unions of Belgium (CGSLB)	87
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

Belize

	on Conventions Nos
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

Benin

	on Conventions Nos
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

Bolivia (Plurinational State of)

	on Conventions Nos
• Confederation of Private Employers of Bolivia (CEPB)	98, 131
• International Organisation of Employers (IOE)	131
• International Trade Union Confederation (ITUC)	131

Bosnia and Herzegovina

	on Conventions Nos
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

Brazil

	on Conventions Nos
• International Trade Union Confederation (ITUC)	29, 98
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• National Confederation of Workers in Teaching Establishments (CONTEE)	98, 154
• Single Confederation of Workers (CUT)	29, 98, 105, 122, 138, 154, 182
• Single Confederation of Workers (CUT); National Federation of Women Domestic Workers (FENATRAD); International Domestic Workers Federation (IDWF)	189
• Union of retired military and their dependants, women pensioners, wives of military personnel, reserve officers TD soldiers of the Armed Forces – FFAA – (SINDMIL)	42, 95, 98, 100, 111, 154, 159, 168

Bulgaria

	on Conventions Nos
• Bulgarian Chamber of Commerce and Industry (BCCI)	131
• Confederation of Independent Trade Unions in Bulgaria (CITUB)	6, 29, 79, 105, 122, 131, 182
• Bulgarian Industrial Capital Association (BICA)	6, 29, 77, 78, 79, 105, 122, 124, 131, 138, 182
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Union for Private Economic Enterprise (UPEE)	6, 29, 77, 78, 79, 105, 122, 124, 131, 138, 182

Burundi

	on Conventions Nos
• Trade Union Confederation of Burundi (COSYBU)	26, 29, 90, 98, 105, 138, 182

Cabo Verde

	on Conventions Nos
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

Cambodia

	on Conventions Nos
• International Trade Union Confederation (ITUC)	87, 98

Cameroon

	on Conventions Nos
• General Union of Workers of Cameroon (UGTC)	87, 122, 138, 144, 158, 182

Canada

	on Conventions Nos
• Canadian Labour Congress (CLC)	29, 105
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

	on Conventions Nos
Chile	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Single Central Organization of Workers of Chile (CUT-Chile)	122
China	
• International Trade Union Confederation (ITUC)	111, 122
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
China - Hong Kong Special Administrative Region	
• International Trade Union Confederation (ITUC)	87
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Colombia	
• International Organisation of Employers (IOE)	87
• International Trade Union Confederation (ITUC)	87
• National Employers Association of Colombia (ANDI)	2, 29, 88, 98, 105, 138, 159, 182
• Single Confederation of Workers of Colombia (CUT); Confederation of Workers of Colombia (CTC); General Confederation of Labour (CGT)	2, 29, 88, 98, 105, 138, 159, 182
Congo	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Cook Islands	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Costa Rica	
• Confederation of Workers Rerum Novarum (CTRN)	29, 105, 117, 122, 182
Croatia	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Cuba	
• Independent Trade Union Association of Cuba (ASIC)	87, 98, 122
Cyprus	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Denmark	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Denmark (Faroe Islands)	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Djibouti	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Labour Union of Djibouti (UDT); General Union of Djibouti Workers (UGTD)	87, 95, 98, 144
Dominican Republic	
• Autonomous Confederation of Workers' Unions (CASC); National Confederation of Dominican Workers (CNTD); National Confederation of Trade Union Unity (CNUS)	29, 122, 138, 159, 182

	on Conventions Nos
Ecuador	
• Public Services International (PSI) in Ecuador	87, 98
Egypt	
• Center for Trade Union and Workers Services (CTUWS)	87, 98
• International Trade Union Confederation (ITUC)	87, 98
El Salvador	
• International Trade Union Confederation (ITUC)	144
• National Business Association (ANEP)	144
• Single Confederation of Salvadoran Workers (CUTS); National Trade Union Federation of Salvadoran Workers (FENASTRAS); Single Federation of Rural Workers of El Salvador (FUOCA)	144
Estonia	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Ethiopia	
• International Trade Union Confederation (ITUC)	87
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Fiji	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Finland	
• Central Organization of Finnish Trade Unions (SAK); Finnish Confederation of Professionals (STTK); Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA)	29, 88, 94, 105, 122, 140, 142, 159
• Confederation of Finnish Industries (EK)	29, 88, 105, 122, 140, 142, 158, 159
• Federation of Finnish Enterprises	29, 88, 122, 140, 158, 159
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
France	
• French Democratic Confederation of Labour (CFDT)	98, 158
• General Confederation of Labour - Force Ouvrière – Work, Employment and Vocational Training (CGT-FO-TEFP) ; National Confederation of Labour - Work, Employment and Vocational Training (CNT–TEFP); SUD Union - Labour, Social Affairs; National Union of Labour, Employment and Vocational Training (SNTEFP–CGT) ; Single National Union - Work, Employment, Training and Professional Integration SNU-TEFI (FSU)	81, 129, 188
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Movement of the Enterprises of France (MEDEF)	181
• French Confederation of Management – General Confederation of Professional and Managerial Employees (CFE-CGC)	98, 158
France (New Caledonia)	
• Social Dialogue Council - NC (CDS)	29, 82, 88, 94, 105, 122, 142, 181
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Gabon	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Gambia	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Georgia	
• Georgian Trade Unions Confederation (GTUC)	87, 98, 144, 151

	on Conventions Nos
Germany	
• Confederation of German Employers' Associations (BDA)	87, 98
• German Confederation of Trade Unions (DGB)	87, 98, 135
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Ghana	
• International Trade Union Confederation (ITUC)	182
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Greece	
• Greek General Confederation of Labour (GSEE)	29, 81, 87, 98, 100, 111, 144, 156
• Hellenic Federation of Enterprises and Industries (SEV)	87, 98, 144, 149
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Grenada	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Guatemala	
• Autonomous Popular Trade Union Movement; Global Unions of Guatemala	87, 98
• International Trade Union Confederation (ITUC)	87, 98
Guinea	
• National Union of Domestic Employees (SYNEM); National Union of Domestic Workers (SYNTRAD)	189
Honduras	
• Honduran National Business Council (COHEP)	81, 87, 98, 111, 122, 144, 169, 182, MLC, 2006
• International Trade Union Confederation (ITUC)	87, 98, 169
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Hungary	
• Forum for the Co-operation of Trade Unions (SZEF); Public Collection and Public Culture Worker's Union (KKDSZ)	98, 151, 154
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Iceland	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
India	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Indonesia	
• Confederation of Indonesian Prosperity Trade Union (KSBSI)	87, 98
• Confederation of Indonesian Trade Unions (KSPI)	87, 98
• International Trade Union Confederation (ITUC)	87, 98, 144
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Iran (Islamic Republic of)	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Iranian Merchant Mariners Syndicate (IMMS)	MLC, 2006

Iraq	on Conventions Nos
• General Federation of Iraqi Trade Unions (GFITU)	87
• International Trade Union Confederation (ITUC)	111
Ireland	**on Conventions Nos**
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Italy	**on Conventions Nos**
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Italian Confederation of Managers and Other Professionals (CIDA)	81, 135, 141
• Italian General Confederation of Labour (CGIL); Italian Confederation of Workers' Trade Unions (CISL); Italian Union of Labour (UIL)	98, 151
• Italian Union of Labour (UIL)	11, 81, 87, 98, 129, 135, 141, 151
Jamaica	**on Conventions Nos**
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Japan	**on Conventions Nos**
• Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union); Rentai Union Suginami; Rentai Workers' Union, Itabashi-ku Section; Union Rakuda (Kyoto Municipality Related Workers' Independent Union)	87, 98
• Japanese Trade Union Confederation (JTUC-RENGO)	81, 87, 98, 144
• Education International (EI)	87, 98
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Japan Pensioners' Union (JPU); National Confederation of Trade Unions (ZENROREN)	102
• Labor Union of Migrant Workers (LUM)	29
• National Confederation of Trade Unions (ZENROREN)	81, 87, 144
Jordan	**on Conventions Nos**
• International Trade Union Confederation (ITUC)	98
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Kazakhstan	**on Conventions Nos**
• International Trade Union Confederation (ITUC)	81, 87, 129
Kenya	**on Conventions Nos**
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Kiribati	**on Conventions Nos**
• International Trade Union Confederation (ITUC)	182
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Lao People's Democratic Republic	**on Conventions Nos**
• Lao Federation of Trade Unions (LFTU)	13, 144, 171
• Lao National Chamber of Commerce and Industry (LNCCI)	13, 144, 171
Latvia	**on Conventions Nos**
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Employers' Confederation of Latvia (LDDK)	3, 12, 13, 14, 17, 18, 19, 24, 81, 87, 98, 106, 115, 119, 120, 129, 131, 132, 144, 148, 150, 155, 160, 173, 183
• Free Trade Union Confederation of Latvia (FTUCL)	98, 132, 173
Lebanon	**on Conventions Nos**
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

	on Conventions Nos
Liberia	
• African Regional Organization of the International Trade Union Confederation (ITUC-Africa)	87, 98
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Lithuania	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Luxembourg	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Madagascar	
• Autonomous Trade Union of Labour Inspectors (SAIT)	81, 87, 98, 100, 129
Malawi	
• Education International (EI)	87, 98
• International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	111, 184
Malaysia	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Maldives	
• International Trade Union Confederation (ITUC)	MLC, 2006
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Maldives Trade Union Congress (MTUC)	87, 98
Mali	
• Democratic Federation of Workers of Mali (CDTM)	87, 98, 144
• National Council of Employers of Mali (CNPM)	14, 26, 52, 87, 144, 150, 155, 183
Malta	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Marshall Islands	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Mauritius	
• Confederation of Free Trade Unions ; State and Other Employees Federation	87, 98, MLC, 2006
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Mexico	
• IndustriALL Global Union (IndustriALL)	87, 98
• National Union of Workers (UNT)	87
• Authentic Workers' Confederation of the Republic of Mexico (CAT)	12, 13, 14, 17, 19, 30, 42, 45, 52, 87, 95, 98, 102, 106, 115, 118, 120, 131, 144, 150, 153, 155, 160, 161, 167, 170, 173
• Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)	45, 87, 95, 115, 131, 150, 155, 160, 161, 167, 170
• Confederation of Employers of the Mexican Republic (COPARMEX)	170
• Confederation of Workers of Mexico (CTM)	12, 13, 14, 17, 19, 30, 42, 45, 52, 87, 95, 98, 102, 106, 115, 118, 120, 131, 144, 150, 153, 155, 160, 161, 167, 170, 173
• International Confederation of Workers (CIT)	45, 87, 95, 98, 131, 150, 155, 160, 161, 167, 170
• Regional Confederation of Mexican Workers (CROM)	12, 13, 14, 17, 19, 30, 42, 45, 52, 87, 95, 98, 102, 106, 115, 118, 120, 131, 153, 160, 161, 167, 173
Mongolia	
• Education International (EI)	87, 98
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

	on Conventions Nos
Montenegro	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Union of Free Trade Unions of Montenegro (UFTUM)	87, 98, 132
Morocco	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Mozambique	
• International Organisation of Employers (IOE)	122
• International Trade Union Confederation (ITUC)	122
Myanmar	
• International Trade Union Confederation (ITUC)	87
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Namibia	
• International Trade Union Confederation (ITUC)	111
Netherlands	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Netherlands Trade Union Confederation (FNV)	29, 105
• Netherlands Trade Union Confederation (FNV); National Federation of Christian Trade Unions (CNV)	81, 87, 98, 102, 128, 130, 131, 139, 155, 162, 170, 174, 175, 183
• Netherlands Trade Union Confederation (FNV); National Federation of Christian Trade Unions (CNV); Trade Union Federation for Professionals (VCP)	121
• Dutch Fisheries Council	188
Netherlands (Caribbean Part of the Netherlands)	
• Central Dialogue St. Eustatius (CDS)	14, 81, 87, 101, 106
Netherlands (Curaçao)	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Netherlands (Sint Maarten)	
• International Organisation of Employers (IOE); Sint Maarten Hospitality & Trade Association (SHTA)	87, 88, 144
New Zealand	
• Business New Zealand	12, 14, 47, 81, 144, 155, 160, MLC, 2006
• Education International (EI)	98
• International Organisation of Employers (IOE); Business New Zealand	98
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• New Zealand Council of Trade Unions (NZCTU)	12, 14, 17, 26, 42, 47, 52, 81, 98, 101, 144, 155, 160, MLC, 2006
Nicaragua	
• International Organisation of Employers (IOE)	87, 144
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Nigeria	
• International Trade Union Confederation (ITUC)	87
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
North Macedonia	
• Confederation of Free Trade Unions of Macedonia (KSS)	87, 98
Norway	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

	on Conventions Nos
Palau	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Panama	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• National Confederation of United Independent Unions (CONUSI)	100, 107, 110, 111, 189
• National Council of Organized Workers (CONATO)	117, 144
Paraguay	
• Central Confederation of Workers Authentic (CUT-A)	169, 189
• Union of Women Domestic Workers of Paraguay – Legitimate (SINTRADOP-L); Union of Women and Men Domestic and Allied Workers of Itapúa (SINTRADI); Union of Women Workers in Domestic Service of Paraguay (SINTRADESPY)	189
Peru	
• General Confederation of Workers of Peru (CGTP); Confederation of Workers of Peru (CTP); Autonomous Workers' Confederation of Peru (CATP); Single Confederation of Workers of Peru (CUT-Perú)	100, 111, 156, 189
• General Confederation of Workers of Peru (CGTP); National Federation of Women and Men Domestic Workers of Peru (FENTTRAHOP)	189
• National Confederation of Private Business' Institutions (CONFIEP)	100, 111, 169, 189
Philippines	
• International Trade Union Confederation (ITUC)	87
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Poland	
• Independent and Self-Governing Trade Union "Solidarnosc"	100, 111, 149
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Portugal	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Confederation of Portuguese Business (CIP)	97, 100, 111, 143
• General Confederation of Portuguese Workers - National Trade Unions (CGTP-IN)	97, 100, 111, 143, 156, 189
• General Workers' Union (UGT)	149, 188
Republic of Korea	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Federation of Korean Trade Unions (FKTU)	81, 135
• Korean Confederation of Trade Unions (KCTU)	81, 135
• Korea Employers' Federation (KEF)	81, 135, 144
Republic of Moldova	
• National Confederation of Trade Unions of Moldova (CNSM)	81, 129
Romania	
• International Organisation of Employers (IOE)	98
• International Trade Union Confederation (ITUC)	98
• International Transport Workers' Federation (ITF); European Transport Workers' Federation (ETF)	87, 98
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Russian Federation	
• Confederation of Labour of Russia (KTR)	81, 100, 102, 111, 156
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Federation of Independent Trade Unions of Russia (FNPR)	102

	on Conventions Nos
Saint Kitts and Nevis	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Saint Vincent and the Grenadines	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Samoa	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Senegal	
• International Trade Union Confederation (ITUC)	182
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Serbia	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Seychelles	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Sierra Leone	
• Sierra Leone Employers Federation (SLEF)	17, 19, 26, 95, 99
Singapore	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Slovakia	
• Confederation of Trade Unions of the Slovak Republic (KOZ SR)	111, 138, 144
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Slovenia	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
South Africa	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• National Economic Development and Labour Council (NEDLAC)	111
Spain	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Trade Union Confederation of Workers' Commissions (CCOO)	97, 100, 111, 156, 169, 172
• General Union of Workers (UGT)	97, 100, 169
• Spanish Confederation of Employers' Organizations (CEOE)	97, 100, 111, 156, 172
Sri Lanka	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Sudan	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Sweden	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

	on Conventions Nos
Switzerland	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Tajikistan	
• International Trade Union Confederation (ITUC)	81
Thailand	
• International Transport Workers' Federation (ITF)	188
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• National Congress of Thai Labour (NCTL)	100,188
Togo	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Tunisia	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Turkey	
• Confederation of Public Employees' Trade Unions (KESK)	98, 111, 155
• Turkish Confederation of Employers' Associations (TISK)	98, 111, 115, 119, 127, 155, 161, 167, 176, 187
• Association of Turkish Shipowners (TAS)	55, 68, 69, 73, 92, 108, 133, 134, 146, 164, 166
• Confederation of Turkish Trade Unions (TÜRK-IS)	98, 100, 111
Turkmenistan	
• International Trade Union Confederation (ITUC)	105
Tuvalu	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Ukraine	
• Confederation of Free Trade Unions of Ukraine (KVPU)	81, 95, 100, 111, 129, 131, 173
• Federation of Trade Unions of Ukraine (FPU)	92, 95, 100, 115, 131, 133, 173
United Kingdom of Great Britain and Northern Ireland	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Trades Union Congress (TUC)	100, 111
United Kingdom of Great Britain and Northern Ireland (Bermuda)	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
United Kingdom of Great Britain and Northern Ireland (British Virgin Islands)	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
United Kingdom of Great Britain and Northern Ireland (Cayman Islands)	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas))	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006

	on Conventions Nos
United Kingdom of Great Britain and Northern Ireland (Gibraltar)	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
United Kingdom of Great Britain and Northern Ireland (Isle of Man)	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
United Republic of Tanzania	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
Uruguay	
• International Organisation of Employers (IOE); National Chamber of Commerce and Services of Uruguay (CNCS); Chamber of Industries of Uruguay (CIU)	98
Uzbekistan	
• International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	100, 111
Venezuela (Bolivarian Republic of)	
• Confederation of Workers of Venezuela (CTV); Independent Trade Union Alliance Confederation of Workers (CTASI); Federation of University Teachers' Associations of Venezuela (FAPUV)	26, 87, 95, 100, 111, 144
• Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS)	26, 87, 144
• Federation of University Teachers' Associations of Venezuela (FAPUV); Federation of Higher Education Workers of Venezuela (FETRAESUV) ; National Federation of Administrative Professionals and Technicians of the Universities of Venezuela (FENASIPRUV); National Federation of Labour Unions of Higher Education of Venezuela (FENASOESV) ; Unions of Non-federated University Workers	26, 87, 98
• Independent Trade Union Alliance Confederation of Workers (CTASI)	26, 87, 95, 111
• MOV7 The Voice of Alcasa	26, 87, 144
• Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP)	1, 26, 87, 95, 100, 111, 144
Viet Nam	
• International Transport Workers' Federation (ITF); International Chamber of Shipping (ICS)	MLC, 2006
• Vietnam Chamber of Commerce and Industry (VCCI)	98
• Viet Nam General Confederation of Labour (VGCL)	98
• Vietnam Cooperative Alliance (VCA)	98
Zimbabwe	
• International Trade Union Confederation (ITUC)	87, 105

	on Convention No.
Uruguay	
• International Organisation of Employers (IOE); National Chamber of Commerce and Services of Uruguay (CNCS); Chamber of Industries of Uruguay (CIU)	98

Appendix IV. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7 that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specific time period. Under the same provisions, the governments of Member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities.

In accordance with article 23 of the Constitution, a summary of the information communicated by Member States in accordance with article 19 is submitted to the Conference.

At its 267th Session (November 1996), the Governing Body approved new measures to rationalize and simplify proceedings. As a result, the summarized information is presented in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The following summary contains the most recent information on the submission to the competent authorities of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted at the 103rd Session of the Conference (June 2014), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted at the 104th Session of the Conference (June 2015), as well as the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session (June 2017), and the Violence and Harassment at Work Convention (No. 190), and Recommendation (No. 206), 2019, adopted at the 108th Session of the Conference.

The summarized information includes communications that were forwarded to the Director-General of the International Labour Office after the closure of the 109th Session of the Conference (June 2021) and which could not therefore be laid before the Conference at that session.

Armenia. The Government submitted to the National Assembly the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), on 12 May 2016. In addition, the Government submitted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) on 29 April 2019, and the Employment for Peace and Resilience Recommendation, 2015 (No. 205), on 29 September 2017. Subsequently, the Government submitted the Violence and Harassment at Work Convention, (No. 190) and Recommendation (No. 206), 2019 on 27 May 2020.

Australia. The Government submitted Convention No. 190 and Recommendation No. 206 to Parliament on 11 December 2020.

Austria. The Government submitted Recommendation No. 203 to the National Council of the Austrian Parliament on 3 July 2019 and the Protocol of 2014 to the Forced Labour Convention, 1930, on 12 September 2019.

Barbados. The Government submitted the Protocol of 2014 to the Forced Labour Convention, 1930, Recommendation No. 203, Recommendation No. 204 and Recommendation No. 205 to Parliament on 6 October 2021.

Chile. The Government submitted Convention No. 190 and Recommendation No. 206 to the National Congress of Chile on 18 December 2020.

Colombia. The Government submitted Convention No. 190 and Recommendation No. 206 to the Congress of the Republic on 18 March 2021.

Cook Islands. The Government submitted Convention No. 190 and Recommendation No. 206 to Parliament on 17 June 2021.

Croatia. The Government submitted Convention No. 190 and Recommendation No. 206 to Parliament on 12 April 2021.

Cuba. The Government submitted Convention No. 190 and Recommendation No. 206 to the National Assembly of the People's Power on 26 April 2021.

Czechia. The Government submitted Convention No. 190 and Recommendation No. 206 to the Chamber of Deputies of the Parliament on 11 March 2021, and to the Senate of the Parliament on 12 March 2021.

Fiji. The Government submitted the following instruments to the Parliament of the Republic of Fiji on 22 March 2021: the Protocol of 2014 to the Forced Labour Convention, 1930, Recommendation No. 203, Recommendation No. 204, Recommendation No. 205, Convention No. 190 and Recommendation No. 206.

France. The Government submitted Convention No. 190 and Recommendation No. 206 to the Parliament on 2 June 2021.

Germany. The Government submitted Recommendation No. 203 on 18 March 2019, as well as the Protocol of 2014 to the Forced Labour Convention, 1930 on 19 June 2019 to the Parliament of the Federal Republic of Germany (*Deutscher Bundestag*). In addition, the Government submitted Convention No. 190 and Recommendation No. 206 on 4 August 2021 to Parliament.

Greece. The Government submitted Recommendation No. 206 to the Hellenic Parliament on 4 June 2021.

India. The Government submitted Convention No. 190 and Recommendation No. 206 to the Parliament of India on 17 March 2021.

Italy. The Government submitted Convention No. 190 and Recommendation No. 206 to the Parliament of Italy (Chamber of Deputies and Senate) on 29 November 2019.

Mauritania. The Government submitted Recommendation No. 205, Convention No. 190 and Recommendation No. 206 to the National Assembly on 27 July 2021.

Mauritius. The Government submitted Convention No. 190 and Recommendation No. 206 to the National Assembly of Mauritius on 11 February 2021.

Mongolia. The Government submitted the following instruments to the State Great Khural on 9 April 2021: the Protocol of 2014 to the Forced Labour Convention, 1930, Recommendation No. 203, Recommendation No. 204, Recommendation No. 205, Convention No. 190 and Recommendation No. 206.

Montenegro. The Government submitted Convention No. 190 and Recommendation No. 206 to Parliament on 26 December 2019.

Netherlands. The Government submitted Convention No. 190 and Recommendation No. 206 to Parliament on 11 January 2021.

Pakistan. The Government submitted the Protocol of 2014 to the Forced Labour Convention, 1930, Recommendation No. 203, Recommendation No. 204, Recommendation No. 205, Convention No. 190 and Recommendation No. 206 to Parliament on 15 November 2021.

Philippines. The Government submitted Convention No. 190 and Recommendation No. 206 to the Congress of the Philippines on 3 December 2019.

Portugal. The Government submitted Convention No. 190 and Recommendation No. 206 to the Assembly of the Republic on 21 December 2020.

Republic of Korea. The Government submitted Convention No. 190 and Recommendation No. 206 to the National Assembly on 6 September 2021.

Serbia. The Government submitted Convention No. 190 and Recommendation No. 206 to the National Assembly on 22 June 2021.

Spain. The Government submitted Convention No. 190 to the Cortes Generales on 14 September 2021.

Togo. The Government submitted Convention No. 190 and Recommendation No. 206 to the National Assembly on 17 September 2019.

Uruguay. The Government submitted Recommendation No. 206 on 30 September 2019 and Recommendation No. 205 on 21 October 2019 to the General Assembly.

Appendix V. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities
(31st to 109th Sessions of the International Labour Conference, 1948–2021)

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.

Account has been taken of the date of admission or readmission of member States to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972), 73rd Session (June 1987), 93rd Session (June 2005), 97th Session (June 2008), 98th Session (June 2009), 102nd Session (June 2013), 105th Session (June 2016), 107th Session (June 2018) and 109th Session (June 2021).

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Afghanistan	
31-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Albania	
79-81, 82 (C176, R183), 83, 84 (C178, P147, R186), 85, 87, 88, 90 (P155), 91, 94, 95 (C187, R197)	**78, 82 (P081), 84 (C179, C180, R185, R187), 86, 89, 90 (R193, R194), 92, 95 (R198), 96, 99-101, 103, 104, 106, 108**
Algeria	
47-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Angola	
61-72, 74-78, 79 (C173), 80, 81, 82 (R183, C176), 83-85, 87-90, 96	**79 (R180), 82 (P081), 86, 91, 92, 94, 95, 99-101, 103, 104, 106, 108**
Antigua and Barbuda	
68-72, 74-82, 83 (C177), 84, 85 (C181), 87, 89 (C184), 90 (P155), 91, 94, 95 (C187), 96 (C188), 100, 103 (P029)	**83 (R184), 85 (R188), 86, 88, 89 (R192), 90 (R193, R194), 92, 95 (R197, R198), 96 (R199), 99, 101, 103 (R203), 104, 106, 108**
Argentina	
31-56, 58-72, 74-90, 92, 94-96, 99-101, 103, 108 (C190)	**91, 104, 106, 108 (R206)**
Armenia	
80-92, 94-96, 99-101, 103, 104, 106, 108	
Australia	
31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Austria	31-56, 58-72, 74-92, 94-96, 99, 101, 103	**100, 104, 106, 108**
Azerbaijan	79-92, 94-96, 99-101, 103, 104, 106, 108	
Bahamas	61-72, 74-84, 87, 91, 94	**85, 86, 88-90, 92, 95, 96, 99-101, 103, 104, 106, 108**
Bahrain	63-72, 74-87	**88-92, 94-96, 99-101, 103, 104, 106, 108**
Bangladesh	58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Barbados	51-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Belarus	37-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Belgium	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Belize	68-72, 74-76, 84, 87, 88, 94	**77-83, 85, 86, 89-92, 95, 96, 99-101, 103, 104, 106, 108**
Benin	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Bolivia (Plurinational State of)	31-56, 58-72, 74-79, 80 (C174), 81 (C175), 82 (C176), 83 (C177), 84 (C178, C179, C180), 85 (C181), 87, 88 (C183), 89 (C184), 91, 100	**80 (R181), 81 (R182), 82 (P081, R183), 83 (R184), 84 (P147, R185, R186, R187), 85 (R188), 86, 88 (R191), 89 (R192), 90, 92, 94-96, 99, 101, 103, 104, 106, 108**
Bosnia and Herzegovina	80-92, 94-96, 99-101, 103, 104, 106	**108**
Botswana	64-72, 74-92, 94-96, 99, 100	**101, 103, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Brazil	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Brunei Darussalam		**96, 99-101, 103, 104, 106, 108**
Bulgaria	31-56, 58-72, 74-92, 94-96, 99-101, 103, 106	**104, 108**
Burkina Faso	45-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 104	**103 (R203), 106, 108**
Burundi	47-56, 58-72, 74-92, 95, 96, 99-101, 103, 104, 106	**94, 108**
Cabo Verde	65-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Cambodia	53-56, 58-72, 74-92, 94-96, 99-101, 103 (R203), 104	**103 (P029), 106, 108**
Cameroon	44-56, 58-72, 74-92, 94-96, 101, 108	**99, 100, 103, 104, 106**
Canada	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Central African Republic	45-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Chad	45-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Chile	31-56, 58-72, 74-82, 84 (C178, C179, C180, P147), 87, 94, 95 (C187, R197), 100, 103 (P029), 108	**83, 84 (R185, R186, R187), 85, 86, 88-92, 95 (R198), 96, 99, 101, 103 (R203), 104, 106**
China	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Colombia	31-56, 58-72, 74-92, 94-96, 99-101, 103, 108	**104, 106**
Comoros	65-72, 74-78, 87, 103 (P029)	**79-86, 88-92, 94-96, 99-101, 103 (R203), 104, 106, 108**
Congo	45-53, 54 (C131, C132), 55, 56, 58 (C138, R146), 59, 60 (C142, R150), 61, 62, 63 (C148, C149, R157), 64-66, 67 (C154, C155, C156), 68 (C158), 71 (C160, C161), 74, 75 (C167, C168), 76, 84, 87, 91, 94, 96	**54 (R135, R136), 58 (C137, R145), 60 (C141, C143, R149, R151), 63 (R156), 67 (R163, R164, R165), 68 (C157, P110, R166), 69, 70, 71 (R170, R171), 72, 75 (R175, R176), 77-83, 85, 86, 88-90, 92, 95, 99-101, 103, 104, 106, 108**
Cook Islands	104, 106, 108	
Costa Rica	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Côte d'Ivoire	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Croatia	80-85, 87, 91, 94, 108	**86, 88-90, 92, 95, 96, 99-101, 103, 104, 106**
Cuba	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Cyprus	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Czechia	80-92, 94-96, 99-101, 103, 104, 106, 108	
Democratic Republic of the Congo	45-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Denmark	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Djibouti	64-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Dominica	68-72, 74-79, 87, 100 (C189)	**80-86, 88-92, 94-96, 99, 100 (R201), 101, 103, 104, 106, 108**
Dominican Republic	31-56, 58-72, 74-92, 94, 95, 99, 100	**96, 101, 103, 104, 106, 108**
Ecuador	31-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 104, 108 (C190)	**103 (R203), 106, 108 (R206)**
Egypt	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
El Salvador	31-56, 58-61, 63 (C149), 64, 67 (R164, R165, C155, C156), 69 (R168, C159), 71, 72, 74-81, 87, 90 (P155)	**62, 63 (R156, R157, C148), 65, 66, 67 (R163, C154), 68, 69 (R167), 70, 82-86, 88, 89, 90 (R193, R194), 91, 92, 94-96, 99-101, 103, 104, 106, 108**
Equatorial Guinea	67-72, 74-79, 84, 87	**80-83, 85, 86, 88-92, 94-96, 99-101, 103, 104, 106, 108**
Eritrea	80-92, 94-96, 99-101	**103, 104, 106, 108**
Estonia	79-92, 94-96, 99-101, 103, 104, 106, 108	
Eswatini	60-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Ethiopia	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Fiji	59-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Finland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
France	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Gabon	45-56, 58-72, 74-81, 82 (C176), 83 (C177), 84, 85 (C181), 87, 89 (C184), 91, 94	**82 (P081, R183), 83 (R184), 85 (R188), 86, 88, 89 (R192), 90, 92, 95, 96, 99-101, 103, 104, 106, 108**
Gambia	82-92, 94-96	**99-101, 103, 104, 106, 108**
Georgia	80-92, 94-96, 99-101	**103, 104, 106, 108**
Germany	34-56, 58-72, 74-76, 77 (C170, R177), 78-92, 94-96, 99-101, 103, 104, 106, 108	**77 (C171, P089, R178)**
Ghana	40-56, 58-72, 74-92, 94-96, 99-101, 104	**103, 106, 108**
Greece	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Grenada	66-72, 74-92, 94, 95, 100 (C189)	**96, 99, 100 (R201), 101, 103, 104, 106, 108**
Guatemala	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Guinea	43-56, 58-72, 74-83, 87, 95 (R197, C187), 100	**84-86, 88-92, 94, 95 (R198), 96, 99, 101, 103, 104, 106, 108**
Guinea - Bissau	63-72, 74-88, 94, 106	**89-92, 95, 96, 99-101, 103, 104, 108**
Guyana	50-56, 58-72, 74-92, 94, 95, 100	**96, 99, 101, 103, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Haiti	31-56, 58-66, 67 (C156, R165), 69-72, 74, 75 (C167), 87	**67 (C154, C155, R163, R164), 68, 75 (C168, R175, R176), 76-86, 88-92, 94-96, 99-101, 103, 104, 106, 108**
Honduras	38-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Hungary	31-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Iceland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
India	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Indonesia	33-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Iran (Islamic Republic of)	31-56, 58-72, 74-92, 94-96, 100, 101, 103, 104, 106, 108	**99**
Iraq	31-56, 58-72, 74-87, 88 (C183), 89, 90 (P155), 91, 94, 95 (C187, R197), 96 (C188), 100 (C189)	**88 (R191), 90 (R193, R194), 92, 95 (R198), 96 (R199), 99, 100 (R201), 101, 103, 104, 106, 108**
Ireland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Israel	32-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Italy	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Jamaica	47-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Japan	35-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Jordan	39-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Kazakhstan	82 (C176, R183), 87, 88, 91	**80, 81, 82 (P081), 83-86, 89, 90, 92, 94-96, 99-101, 103, 104, 106, 108**
Kenya	48-56, 58-72, 74-92, 94-96, 99-101	**103, 104, 106, 108**
Kiribati	88-92, 94-96, 99-101, 103, 104, 106, 108	
Kuwait	45-56, 58-72, 74-76, 78, 79, 80 (C174), 81-85, 87, 88, 90, 91	**77, 80 (R181), 86, 89, 92, 94-96, 99-101, 103, 104, 106, 108**
Kyrgyzstan	87, 89, 103 (P029)	**79-86, 88, 90-92, 94-96, 99-101, 103 (R203), 104, 106, 108**
Lao People's Democratic Republic	48-56, 58-72, 74-81, 82 (R183, C176), 83-92, 94-96, 99, 100, 103	**82 (P081), 101, 104, 106, 108**
Latvia	79-92, 94-96, 99-101, 103, 104, 106, 108	
Lebanon	32-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Lesotho	66-72, 74-92, 94-96, 100, 101, 103 (P029), 104	**99, 103 (R203), 106, 108**
Liberia	31-56, 58-72, 74-76, 77 (C170, C171, R177, R178), 78-81, 82 (C176, R183), 83-87, 91, 94	**77 (P089), 82 (P081), 88-90, 92, 95, 96, 99-101, 103, 104, 106, 108**
Libya	35-56, 58-72, 74-82, 87	**83-86, 88-92, 94-96, 99-101, 103, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Lithuania	79-92, 94-96, 99-101, 103, 104, 106	**108**
Luxembourg	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Madagascar	45-56, 58-72, 74-91, 94-96, 100, 103 (P029)	**92, 99, 101, 103 (R203), 104, 106, 108**
Malawi	49-56, 58-72, 74-92, 94-96, 103 (P029)	**99-101, 103 (R203), 104, 106, 108**
Malaysia	41-56, 58-72, 74-92, 94, 95 (C187, R197)	**95 (R198), 96, 99-101, 103, 104, 106, 108**
Maldives		**99-101, 103, 104, 106, 108**
Mali	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Malta	49-56, 58-72, 74-92, 94, 95, 100 (C189), 103 (P029)	**96, 99, 100 (R201), 101, 103 (R203), 104, 106, 108**
Marshall Islands		**99-101, 103, 104, 106, 108**
Mauritania	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Mauritius	53-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Mexico	31-56, 58-72, 74-92, 94, 95 (R198), 99, 100 (C189), 101, 106	**95 (C187, R197), 96, 100 (R201), 103, 104, 108**
Mongolia	52-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Montenegro	96, 99-101, 103, 104, 106, 108	
Morocco	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Mozambique	61-72, 74-82, 87, 94, 103 (P029), 104, 106	**83-86, 88-92, 95, 96, 99-101, 103 (R203), 108**
Myanmar	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Namibia	65-72, 74-92, 94-96, 99-101, 103 (P029), 104, 106, 108 (C190)	**103 (R203), 108 (R206)**
Nepal	51-56, 58-72, 74-92, 94-96, 99-101	**103, 104, 106, 108**
Netherlands	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
New Zealand	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Nicaragua	40-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Niger	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Nigeria	45-56, 58-72, 74-92, 94, 95, 100, 104	**96, 99, 101, 103, 106, 108**
North Macedonia	80-83, 85, 87, 88, 95 (C187, R197)	**84, 86, 89-92, 94, 95 (R198), 96, 99-101, 103, 104, 106, 108**
Norway	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Oman	81-92, 95 (R197, R198), 99	**94, 95 (C187), 96, 100, 101, 103, 104, 106, 108**
Pakistan	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Palau		**101, 103, 104, 106, 108**
Panama	31-56, 58-72, 74-87, 88 (R191), 89 (R192), 90 (R193, R194), 92, 94, 95 (R197, R198), 96 (R199), 99-101, 103, 104, 106	**88 (C183), 89 (C184), 90 (P155), 91, 95 (C187), 96 (C188), 108**
Papua New Guinea	61-72, 74-87	**88-92, 94-96, 99-101, 103, 104, 106, 108**
Paraguay	40-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Peru	31-56, 58-72, 74-92, 94-96, 99-101, 103 (P029)	**103 (R203), 104, 106, 108**
Philippines	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Poland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Portugal	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Qatar	58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Republic of Korea	79-92, 94-96, 99-101, 103, 104, 106, 108	
Republic of Moldova	79-91, 95 (C187, R197), 104	**92, 94, 95 (R198), 96, 99-101, 103, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Romania	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Russian Federation	37-56, 58-72, 74-88, 91, 94, 95 (C187, R197), 103, 104	**89, 90, 92, 95 (R198), 96, 99-101, 106, 108**
Rwanda	47-56, 58-72, 74-79, 81, 85, 87, 95 (C187, R197)	**80, 82-84, 86, 88-92, 94, 95 (R198), 96, 99-101, 103, 104, 106, 108**
Saint Kitts and Nevis	84, 87, 94	**83, 85, 86, 88-92, 95, 96, 99-101, 103, 104, 106, 108**
Saint Lucia	67 (C154, C155, R163), 68 (C158, R166), 87, 90 (P155)	**66, 67 (C156, R164, R165), 68 (C157, P110), 69-72, 74-86, 88, 89, 90 (R193, R194), 91, 92, 94-96, 99-101, 103, 104, 106, 108**
Saint Vincent and the Grenadines	84, 86, 87, 94	**82, 83, 85, 88-92, 95, 96, 99-101, 103, 104, 106, 108**
Samoa	94-96, 99-101, 103, 104, 106	**108**
San Marino	68-72, 74-92, 94-96, 99-101	**103, 104, 106, 108**
Sao Tome and Principe	68-72, 74-92, 94-96, 99-101	**103, 104, 106, 108**
Saudi Arabia	61-72, 74-92, 94-96, 99-101, 103 (P029)	**103 (R203), 104, 106, 108**
Senegal	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Serbia	89-92, 94-96, 99-101, 103, 104, 106, 108	
Seychelles	63-72, 74-88, 94	**89-92, 95, 96, 99-101, 103, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Sierra Leone	45-56, 58-61, 62 (C145, C147, R153, R155), 64 (C150), 67 (C155), 85 (C181), 95 (C187), 100 (C189), 103 (P029)	**62 (C146, R154), 63, 64 (C151, R158, R159), 65, 66, 67 (C154, C156, R163, R164, R165), 68-72, 74-84, 85 (R188), 86-92, 94, 95 (R197, R198), 96, 99, 100 (R201), 101, 103 (R203), 104, 106, 108**
Singapore	50-56, 58-72, 74-92, 94-96, 99-101, 104	**103, 106, 108**
Slovakia	80-92, 94-96, 99-101, 103, 104, 106, 108	
Slovenia	79-92, 94-96, 99-101, 103, 104, 106, 108	
Solomon Islands	74, 87	**70-72, 75-86, 88-92, 94-96, 99-101, 103, 104, 106, 108**
Somalia	45-56, 58-72, 74, 75, 85 (C181), 87, 95 (C187), 108 (C190)	**76-84, 85 (R188), 86, 88-92, 94, 95 (R197, R198), 96, 99-101, 103, 104, 106, 108 (R206)**
South Africa	81, 82 (C176, R183), 83-92, 94-96, 99-101	**103, 104, 106, 108**
South Sudan		**101, 103, 104, 106, 108**
Spain	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 (C190)	**108 (R206)**
Sri Lanka	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Sudan	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Suriname	61-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Sweden	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Switzerland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Syrian Arab Republic	31-56, 58-65, 67, 68, 69 (C159, R167), 71, 72, 74-76, 77 (C170, R177), 84, 87-89, 90 (P155), 94	**66, 69 (R168), 70, 77 (C171, P089, R178), 78-83, 85, 86, 90 (R193, R194), 91, 92, 95, 96, 99-101, 103, 104, 106, 108**
Tajikistan	81-92, 94-96, 99-101, 103 (P029)	**103 (R203), 104, 106, 108**
Thailand	31-56, 58-72, 74-92, 94-96, 99, 100 (R201), 101, 103, 104	**100 (C189), 106, 108**
Timor-Leste	92, 94-96	**99-101, 103, 104, 106, 108**
Togo	44-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Tonga		**106, 108**
Trinidad and Tobago	47-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Tunisia	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Turkey	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Turkmenistan	81-92, 94-96, 99-101, 103, 104, 106	**108**
Tuvalu		**99-101, 103, 104, 106, 108**
Uganda	47-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Ukraine	37-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
United Arab Emirates	58-72, 74-92, 95, 96	**94, 99-101, 103, 104, 106, 108**
United Kingdom of Great Britain and Northern Ireland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
United Republic of Tanzania	46-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
United States of America	66-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Uruguay	31-56, 58-72, 74-89, 90 (R193, R194), 91, 92, 94, 95 (R197, R198), 96, 99-101, 103, 104, 106, 108	**90 (P155), 95 (C187)**
Uzbekistan	80-92, 94-96, 99-101, 103, 104, 106, 108	
Vanuatu		**91, 92, 94-96, 99-101, 103, 104, 106, 108**
Venezuela (Bolivarian Republic of)	41-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Viet Nam	79-92, 94-96, 99-101, 103, 104	**106, 108**
Yemen	49-56, 58-72, 74-87, 88 (C183), 89 (C184), 91, 95 (C187)	**88 (R191), 89 (R192), 90, 92, 94, 95 (R197, R198), 96, 99-101, 103, 104, 106, 108**
Zambia	49-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Zimbabwe	66-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**

Appendix VI. Overall position of Member States with regard to the submission to the competent authorities of the instruments adopted by the Conference
(as at 11 December 2021)

Sessions of the ILC		Number of States in which, according to the information supplied by the Government:			Number of ILO Member States at the time of the session
		All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
All the instruments adopted between the 31st and the 53rd Sessions have been submitted to the competent authorities by Member States					
54th	(June 1970)	119	1	0	**120**
55th	(October 1970)	120	0	0	**120**
56th	(June 1971)	120	0	0	**120**
58th	(June 1973)	122	1	0	**123**
59th	(June 1974)	125	0	0	**125**
60th	(June 1975)	125	1	0	**126**
61st	(June 1976)	131	0	0	**131**
62nd	(October 1976)	129	1	1	**131**
63rd	(June 1977)	131	2	1	**134**
64th	(June 1978)	134	1	0	**135**
65th	(June 1979)	135	0	2	**137**
66th	(June 1980)	138	0	4	**142**
67th	(June 1981)	138	5	0	**143**
68th	(June 1982)	142	2	3	**147**
69th	(June 1983)	143	2	3	**148**
70th	(June 1984)	143	0	6	**149**
71st	(June 1985)	145	1	3	**149**
72nd	(June 1986)	145	0	4	**149**
74th	(October 1987)	147	0	2	**149**
75th	(June 1988)	144	2	3	**149**
76th	(June 1989)	142	0	5	**147**
77th	(June 1990)	136	3	8	**147**
78th	(June 1991)	140	0	9	**149**
79th	(June 1992)	145	1	10	**156**
80th	(June 1993)	151	2	14	**167**
81st	(June 1994)	157	1	13	**171**
82nd	(June 1995)	150	8	15	**173**
83rd	(June 1996)	151	3	20	**174**
84th	(October 1996)	156	3	15	**174**
85th	(June 1997)	150	5	19	**174**
86th	(June 1998)	145	0	29	**174**
87th	(June 1999)	173	0	1	**174**
88th	(June 2000)	146	4	25	**175**
89th	(June 2001)	140	5	30	**175**
90th	(June 2002)				

Sessions of the ILC		Number of States in which, according to the information supplied by the Government:			Number of ILO Member States at the time of the session
		All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
90th	(June 2002)	137	8	30	**175**
91st	(June 2003)	148	0	28	**176**
92nd	(June 2004)	136	0	41	**177**
94th	(February 2006)	152	0	26	**178**
95th	(June 2006)	133	17	28	**178**
96th	(June 2007)	130	3	45	**178**
99th	(June 2010)	119	0	64	**183**
100th	(June 2011)	124	7	52	**183**
101st	(June 2012)	118	0	67	**185**
103rd	(June 2014)	101	17	67	**185**
104th	(June 2015)	101	0	85	**186**
106th	(June 2017)	81	0	106	**187**
108th	(June 2019)	55	6	126	**187**

Appendix VII. Comments made by the Committee, by country

The comments referred to below have been drawn up in the form of either "observations", which are reproduced in this report, or "direct requests", which are not published but are communicated directly to the governments concerned. This table also lists acknowledgements by the Committee of responses received to direct requests.

Afghanistan	**General observation** **Observations on Conventions Nos 100, 111, 138, 182** *Direct requests on Conventions Nos 105, 111, 138, 140, 141, 142, 144, 182* *Direct request on submission*
Albania	**General observation** **Observations on Conventions Nos 87, 98, 138, 182** *Direct requests on Conventions Nos 29, 100, 105* **Observation on submission**
Algeria	**Observations on Conventions Nos 6, 29, 98, 105, 138, 182** *Direct requests on Conventions Nos 29, 77, 78, 105, 182*
Angola	**Observations on Conventions Nos 105, 182** *Direct requests on Conventions Nos 12, 17, 18, 19, 29, 100, 105, 138, 182* **Observation on submission**
Antigua and Barbuda	**General observation** **Observations on Conventions Nos 138, 144, 151** *Direct requests on Conventions Nos 87, 122, 135* **Observation on submission**
Argentina	*Direct request on submission*
Armenia	**Observations on Conventions Nos 17, 138** *Direct requests on Conventions Nos 29, 138, 182* **Observation on submission**
Austria	**Observation on Convention No. 29** *Direct request on Convention No. 29* *Direct request on submission*
Azerbaijan	**Observations on Conventions Nos 29, 105, 138** *Direct requests on Conventions Nos 77, 78, 79, 105, 124, 182* *Response received to direct requests on Conventions Nos. 90, 138*
Bahamas	*General direct request* **Observations on Conventions Nos 87, 138** *Direct requests on Conventions Nos 87, 105, 138, 144, 182, MLC* **Observation on submission**
Bahrain	**Observations on Conventions Nos 29, 105** *Direct request on Convention No. 29* **Observation on submission**
Bangladesh	**Observations on Conventions Nos 29, 59, 81, 105, 182** *Direct requests on Conventions Nos 29, 81, 105, 182* *Direct request on submission*
Barbados	*General direct request* **Observations on Conventions Nos 87, 97, 100, 111, 182** *Direct requests on Conventions Nos 29, 81, 87, 97, 100, 102, 105, 111, 122, 128, 144, 182* **Observation on submission**

Belarus	**Observation on Convention No. 87** *Direct request on submission*
Belgium	*Direct requests on Conventions Nos 29, 87, 187*
Belize	*General direct request* **Observations on Conventions Nos 87, 98, 105, 115, 155, 182** *Direct requests on Conventions Nos 29, 88, 97, 100, 105, 111, 138, 140, 144, 150, 151, 154, 156, 182* **Observation on submission**
Benin	**Observations on Conventions Nos 138, 182** *Direct requests on Conventions Nos 29, 105, 138, 182* *Direct request on submission*
Bolivia (Plurinational State of)	**Observations on Conventions Nos 29, 77, 78, 124, 131, 136, 138, 162, 182** *Direct requests on Conventions Nos 29, 122, 138, 167, 182* **Observation on submission**
Bosnia and Herzegovina	**Observations on Conventions Nos 90, 122, 138, 182** *Direct requests on Conventions Nos 29, 105, 138, 182* *Direct request on submission*
Botswana	**General observation** **Observations on Conventions Nos 105, 182** *Direct requests on Conventions Nos 29, 138, 182* *Direct request on submission*
Brazil	*Direct request on Convention No. 98* *Direct request on submission*
Brunei Darussalam	*Direct requests on Conventions Nos 138, 182* **Observation on submission**
Bulgaria	*Direct requests on Conventions Nos 29, 77, 78, 105, 124, 131* *Response received to direct requests on Conventions Nos. 6, 79* *Direct request on submission*
Burkina Faso	**Observations on Conventions Nos 29, 138, 182** *Direct requests on Conventions Nos 29, 105, 182* *Direct request on submission*
Burundi	**Observations on Conventions Nos 26, 29, 105, 138, 182** *Direct requests on Conventions Nos 12, 17, 29, 42, 105, 138, 182* *Direct request on submission*
Cabo Verde	*Direct request on submission*
Cambodia	**Observation on Convention No. 87** *Direct request on Convention No. 87* *Direct request on submission*
Cameroon	**Observations on Conventions Nos 87, 94, 105, 138, 182** *Direct requests on Conventions Nos 29, 182* *Direct request on submission*
Central African Republic	**Observations on Conventions Nos 29, 94, 138, 182** *Direct requests on Conventions Nos 29, 88, 105, 158, 182* **Observation on submission**

Chad	**General observation** **Observations on Conventions Nos 29, 87, 182** *Direct requests on Conventions Nos 29, 87, 105, 122, 138, 182* **Observation on submission**
Chile	**Observation on Convention No. 182** *Direct requests on Conventions Nos 29, 105, 138, 182, MLC* **Observation on submission**
China **Hong Kong Special Administrative Region**	**Observations on Conventions Nos 111, 122, 138, 182** *Direct requests on Conventions Nos 111, 122, 138, 182, MLC* *Direct request on submission* **Observations on Conventions Nos 87, 105** *Direct request on Convention No. 105*
Colombia	**Observations on Conventions Nos 29, 98, 138, 182** *Direct requests on Conventions Nos 29, 98, 182* *Direct request on submission*
Comoros	**Observations on Conventions Nos 98, 122, 138** *Direct requests on Conventions Nos 29, 87, 98, 105, 138, 182* **Observation on submission**
Congo	**General observation** **Observations on Conventions Nos 29, 81, 87, 100, 111, 138, 150, 152, 182, MLC** *Direct requests on Conventions Nos 29, 98, 100, 105, 111, 138, 144, 149, 182, 185, MLC, 188* **Observation on submission**
Cook Islands	*General direct request*
Costa Rica	**Observation on Convention No. 182** *Direct requests on Conventions Nos 138, 182* *Direct request on submission*
Côte d'Ivoire	**Observations on Conventions Nos 138, 182** *Direct requests on Conventions Nos 29, 105, 170, 182* *Direct request on submission*
Croatia	*Direct request on Convention No. MLC* **Observation on submission**
Cyprus	*Direct requests on Conventions Nos 29, 94* *Direct request on submission*
Czechia	*Direct request on Convention No. 144*
Democratic Republic of the Congo	**General observation** **Observations on Conventions Nos 29, 94, 105, 138, 144, 158, 182** *Direct requests on Conventions Nos 29, 88, 105, 117, 138, 182* **Observation on submission**
Djibouti	*General direct request* **Observations on Conventions Nos 19, 24, 37, 38, 87, 94, 122, 138, 144, 182** *Direct requests on Conventions Nos 17, 18, 29, 71, 81, 87, 88, 96, 98, 100, 105, 111, 138, 182* *Direct request on submission*
Dominica	**General observation** **Observations on Conventions Nos 29, 81, 87, 94, 138, 147, 150** *Direct requests on Conventions Nos 12, 14, 19, 26, 29, 94, 95, 97, 100, 105, 111, 135, 144, 147, 169, 182* **Observation on submission**

Dominican Republic	*Direct request on submission*
Ecuador	**Observations on Conventions Nos 87, 98, 182** *Direct requests on Conventions Nos 87, 88, 131, 138, 182* *Response received to a direct request on Convention No. 95* *Direct request on submission*
Egypt	**Observations on Conventions Nos 29, 98, 105, 138, 182** *Direct requests on Conventions Nos 29, 105, 138, 182* *Direct request on submission*
El Salvador	**Observation on Convention No. 144** **Observation on submission**
Equatorial Guinea	**General observation** **Observations on Conventions Nos 1, 14, 30, 87, 98, 103** *Direct requests on Conventions Nos 29, 68, 92, 100, 105, 111, 138, 182* **Observation on submission**
Eritrea	**Observations on Conventions Nos 29, 87, 98, 105, 138** *Direct requests on Conventions Nos 29, 87, 98, 105, 138, 182* *Direct request on submission*
Eswatini	**Observation on submission**
Ethiopia	*General direct request* **Observations on Conventions Nos 105, 138, 181, 182** *Direct requests on Conventions Nos 29, 88, 105, 138, 158, 159, 182* *Direct request on submission*
Fiji	**Observations on Conventions Nos 105, 182** *Direct requests on Conventions Nos 29, 105, 138, 181, 182*
Finland	*Direct request on Convention No. 29*
France	**Observation on Convention No. 94** *Direct requests on Conventions Nos 98, 149*
French Polynesia	*Direct request on Convention No. 149*
New Caledonia	*Direct requests on Conventions Nos 94, 188*
Gabon	**General observation** **Observations on Conventions Nos 87, MLC** *Direct requests on Conventions Nos 87, 98, 144, 151, MLC* **Observation on submission**
Gambia	*General direct request* **Observations on Conventions Nos 87, 98** *Direct request on Convention No. 87* **Observation on submission**
Georgia	**Observations on Conventions Nos 87, 98** *Direct request on Convention No. 122* *Direct request on submission*
Germany	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 81, 122, 129, 135* *Direct request on submission*
Ghana	**Observations on Conventions Nos 87, 98, 111, 182** *Direct requests on Conventions Nos 29, 111, 144, 182, MLC* *Direct request on submission*

Greece	**Observation on Convention No. 98** *Direct request on Convention No. 87*
Grenada	*General direct request* **Observations on Conventions Nos 81, 87, 144** *Direct requests on Conventions Nos 81, 87, 97, 100, 105, 111, 138, 182* **Observation on submission**
Guatemala	**Observations on Conventions Nos 81, 87, 98, 110, 129, 141, 149** *Direct requests on Conventions Nos 81, 87, 129, 149, 154*
Guinea	**General observation** **Observations on Conventions Nos 87, 118, 156** *Direct requests on Conventions Nos 98, 118, 121, 140, 156, 176, 187* **Observation on submission**
Guinea - Bissau	**Observations on Conventions Nos 26, 98** *Direct requests on Conventions Nos 17, 98* **Observation on submission**
Guyana	**Observations on Conventions Nos 98, 100, 111, 138** *Direct requests on Conventions Nos 87, 94, 97, 100, 111, 139, 182* **Observation on submission**
Haiti	**General observation** **Observations on Conventions Nos 1, 12, 14, 17, 24, 25, 30, 42, 77, 78, 81, 87, 98, 106, 182** *Direct requests on Conventions Nos 19, 29, 81, 100, 111, 138, 182* **Observation on submission**
Honduras	**Observations on Conventions Nos 81, 87, 98, 169** *Direct requests on Conventions Nos 81, 111, 169, MLC* *Direct request on submission*
Hungary	*General direct request* **Observations on Conventions Nos 81, 87, 98, 129** *Direct requests on Conventions Nos 81, 129, 144, 154* **Observation on submission**
Iceland	*General direct request* *Direct requests on Conventions Nos 81, 129, 144*
India	*General direct request* **Observations on Conventions Nos 81, 122** *Direct requests on Conventions Nos 81, 141, 144, MLC*
Iran (Islamic Republic of)	**Observation on Convention No. 111** *Direct request on Convention No. MLC* *Direct request on submission*
Iraq	**Observations on Conventions Nos 98, 111** *Direct requests on Conventions Nos 22, 23, 81, 87, 92, 111, 135, 146, 147* **Observation on submission**
Ireland	*Direct requests on Conventions Nos 81, 98, MLC* *Direct request on submission*
Israel	*Direct requests on Conventions Nos 81, 144* *Response received to a direct request on Convention No. 87*
Italy	**Observation on Convention No. 87** *Direct request on Convention No. 151*

Jamaica	*General direct request* **Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 81, 87, 122, 144, 149, MLC* *Direct request on submission*
Japan	**Observations on Conventions Nos 87, 98** *Direct request on Convention No. 144*
Jordan	*General direct request* **Observations on Conventions Nos 81, 98, 135** *Direct requests on Conventions Nos 81, 122, 144* *Direct request on submission*
Kazakhstan	**Observations on Conventions Nos 81, 87, 98, 129** *Direct requests on Conventions Nos 81, 129* **Observation on submission**
Kenya	*General direct request* *Direct requests on Conventions Nos 98, 140, 142, 144, MLC* *Direct request on submission*
Kiribati	*General direct request* **Observation on Convention No. 182** *Direct requests on Conventions Nos 87, 98, 182, MLC*
Kuwait	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 87, 144*
Kyrgyzstan	**Observation on Convention No. 87** *Direct requests on Conventions Nos 87, 98, 160* **Observation on submission**
Lao People's Democratic Republic	*Direct requests on Conventions Nos 13, 171* *Direct request on submission*
Latvia	**Observation on Convention No. 183** *Direct requests on Conventions Nos 13, 81, 87, 98, 115, 119, 120, 122, 129, 150, 155, 160* *Response received to direct requests on Conventions Nos. 106, 132, 148*
Lebanon	**General observation** **Observations on Conventions Nos 17, 19, 29, 81, 98, 100, 111, 115, 138, 182** *Direct requests on Conventions Nos 1, 29, 30, 52, 81, 88, 89, 95, 100, 105, 106, 111, 115, 120, 122, 127, 131, 136, 138, 139, 142, 148, 150, 159, 170, 172, 174, 176, 182* **Observation on submission**
Lesotho	**Observations on Conventions Nos 87, 98, 155** *Direct requests on Conventions Nos 14, 19, 26, 45, 87, 144, 150, 155, 167* *Direct request on submission*
Liberia	**Observations on Conventions Nos 87, 98, 112, 113, 114** *Direct requests on Conventions Nos 81, 111, 150* **Observation on submission**
Libya	*Direct requests on Conventions Nos 52, 87, 89, 98* **Observation on submission**
Lithuania	*Direct requests on Conventions Nos 87, 98, 122, 181* *Response received to a direct request on Convention No. 159* *Direct request on submission*
Luxembourg	*General direct request* *Direct requests on Conventions Nos 1, 30, 81, 87, 102, 115, 127, 129, 148, 155, 159, 161, 162, 167, 174, 176, 183, 184* *Response received to direct requests on Conventions Nos. 13, 14, 171*

Madagascar	**General observation** **Observations on Conventions Nos 81, 87, 98, 100, 105, 111, 119, 120, 122, 127, 129, 138, 144, 182** *Direct requests on Conventions Nos 12, 13, 14, 26, 29, 81, 88, 95, 100, 111, 117, 129, 132, 159, 171, 182* *Direct request on submission*
Malawi	*General direct request* **Observations on Conventions Nos 111, 155, 184, 187** *Direct requests on Conventions Nos 45, 81, 87, 98, 100, 111, 129, 150, 158, 159* **Observation on submission**
Malaysia	**Observations on Conventions Nos 81, 98** *Direct requests on Conventions Nos 81, 98, 119, 144, MLC, 187* *Response received to a direct request on Convention No. 131* **Observation on submission**
Peninsular	*Direct requests on Conventions Nos 19, 45*
Sarawak	**Observation on Convention No. 14** *Direct request on Convention No. 19*
Maldives	**Observations on Conventions Nos 87, 98, MLC** *Direct request on Convention No. MLC* **Observation on submission**
Mali	**Observations on Conventions Nos 98, 183** *Direct requests on Conventions Nos 13, 14, 26, 52, 81, 87, 95, 144, 150, 155, 183* *Response received to a direct request on Convention No. 19* *Direct request on submission*
Malta	**Observations on Conventions Nos 87, 98** **Observation on submission**
Marshall Islands	*General direct request* **Observation on submission**
Mauritania	**Observations on Conventions Nos 26, 81, 87, 102** *Direct requests on Conventions Nos 3, 13, 14, 62, 81, 89, 98, 102, 118, 122, 143, 144* *Response received to direct requests on Conventions Nos. 52, 101*
Mauritius	**Observations on Conventions Nos 12, 17, 19, 81, 87, 98** *Direct requests on Conventions Nos 14, 81, 87, 95, 144, 150, 155, 159, 183, MLC, 187* *Response received to direct requests on Conventions Nos. 26, 99, 175*
Mexico	**Observations on Conventions Nos 87, 102, 150, 155** *Direct requests on Conventions Nos 14, 17, 30, 45, 87, 95, 98, 102, 106, 115, 118, 131, 150, 153, 155, 161, 167, 170* **Observation on submission**
Mongolia	**Observations on Conventions Nos 100, 111** *Direct requests on Conventions Nos 87, 98, 100, 103, 111, 155, 176, 181, MLC* **Observation on submission**
Montenegro	**Observations on Conventions Nos 81, 87, 98, 129** *Direct requests on Conventions Nos 13, 45, 81, 88, 98, 119, 129, 132, 139, 148, 151, 155, 159, 161, 162, 167, 171, 183, MLC, 187* *Response received to direct requests on Conventions Nos. 14, 106, 136*
Morocco	*General direct request* **Observation on Convention No. 94** *Direct requests on Conventions Nos 12, 13, 17, 19, 30, 42, 98, 119, 122, 131, 136, 144, 150, 158, 162, 176, 183*

Mozambique	**Observations on Conventions Nos 14, 81, 87, 98** *Direct requests on Conventions Nos 1, 17, 18, 30, 81, 87, 88, 98, 176* **Observation on submission**
Myanmar	**Observation on Convention No. 87** *Direct request on Convention No. 63*
Namibia	**Observation on Convention No. 111** *Direct requests on Conventions Nos 111, 158*
Nepal	*Direct request on submission*
Netherlands	**Observation on Convention No. 98** *Direct requests on Conventions Nos 87, 160*
Aruba	*Direct requests on Conventions Nos 14, 29, 81, 88, 94, 95, 105, 106, 121, 182* *Response received to a direct request on Convention No. 87, 138*
Caribbean Part of the Netherlands	*Direct request on Convention No. 87*
Curaçao	*Direct requests on Conventions Nos 14, 81, 95, 106, 172*
Sint Maarten	*General direct request* **Observation on Convention No. 87** *Direct requests on Conventions Nos 14, 101, 106, 144*
New Zealand	**Observation on Convention No. 98** *Direct request on Convention No. 144*
Nicaragua	**Observations on Conventions Nos 87, 98** *Direct request on Convention No. 122* *Direct request on submission*
Niger	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 87, 142*
Nigeria	**Observations on Conventions Nos 26, 81, 87, 95, 98, 100, 111** *Direct requests on Conventions Nos 19, 45, 81, 94, 111, 155, MLC* *Direct request on submission*
North Macedonia	*General direct request* **Observations on Conventions Nos 13, 81, 87, 98, 129** *Direct requests on Conventions Nos 3, 14, 81, 106, 119, 129, 131, 132, 136, 139, 144, 148, 150, 155, 161, 162, 183, 187* **Observation on submission**
Norway	*Direct requests on Conventions Nos 30, 81, 115, 120, 129, 139, 155, 160, 162, 167, 170, 176, 187* *Response received to direct requests on Conventions Nos. 14, 132, 148* *Direct request on submission*
Oman	*Direct request on submission*
Pakistan	**Observation on Convention No. 98** **Observation on submission**
Palau	*General direct request* *Direct request on submission*
Panama	**Observation on Convention No. 107** *Direct requests on Conventions Nos 107, 111* *Direct request on submission*

Papua New Guinea	*General direct request* **Observations on Conventions Nos 98, 100, 111, 138, 158** *Direct requests on Conventions Nos 29, 111, 122, 138* **Observation on submission**
Paraguay	*Direct request on submission*
Peru	**Observations on Conventions Nos 100, 111, 169** *Direct requests on Conventions Nos 100, 111, 156, 169* *Direct request on submission*
Philippines	**Observation on Convention No. 87**
Poland	**Observation on Convention No. 111** *Direct requests on Conventions Nos 100, 111*
Portugal	**Observation on Convention No. 100** *Direct requests on Conventions Nos 97, 100, 111, 143, 156, 188*
Qatar	*Direct request on submission*
Republic of Korea	**Observation on Convention No. 135** *Direct request on Convention No. MLC*
Republic of Moldova	**Observations on Conventions Nos 47, 81, 95, 98, 129** *Direct requests on Conventions Nos 47, 87, 88, 119, 122, 132, 150, 155, 183, 184, 187* *Response received to direct requests on Conventions Nos. 127, 131* **Observation on submission**
Romania	**Observations on Conventions Nos 98, 111, 122** *Direct requests on Conventions Nos 100, 111, 122, MLC* *Direct request on submission*
Rwanda	*Direct requests on Conventions Nos 122, 154* **Observation on submission**
Saint Kitts and Nevis	*Direct request on Convention No. MLC*
Saint Lucia	**General observation** **Observations on Conventions Nos 17, 87, 98, 100** *Direct requests on Conventions Nos 5, 19, 29, 100, 108, 111, 154, 158, 182* **Observation on submission**
Saint Vincent and the Grenadines	**Observations on Conventions Nos 100, 111, 182** *Direct requests on Conventions Nos 100, 105, 111, 122, 138, 182* **Observation on submission**
Samoa	*General direct request* *Direct request on Convention No. MLC* *Direct request on submission*
San Marino	*General direct request* **Observation on Convention No. 160** *Direct requests on Conventions Nos 100, 111, 143, 148, 156* *Direct request on submission*
Sao Tome and Principe	**General observation** **Observations on Conventions Nos 98, 100, 111** *Direct requests on Conventions Nos 29, 81, 87, 100, 111, 138, 182* *Direct request on submission*

Saudi Arabia	**Observation on Convention No. 111** *Direct request on Convention No. 100, 111* *Direct request on submission*
Senegal	**Observations on Conventions Nos 100, 111, 182** *Direct requests on Conventions Nos 100, 111, 182, MLC, 188*
Serbia	*General direct request* *Direct requests on Conventions Nos 97, 156*
Seychelles	*Direct requests on Conventions Nos 100, 111, MLC* **Observation on submission**
Sierra Leone	**Observations on Conventions Nos 17, 29, 81, 94, 119, 138** *Direct requests on Conventions Nos 26, 29, 32, 45, 81, 95, 99, 100, 101, 105, 111, 125, 126, 138, 182* **Observation on submission**
Singapore	*General direct request* **Observation on Convention No. 100** *Direct request on Convention No. 100* *Direct request on submission*
Slovenia	*General direct request* **Observations on Conventions Nos 111, 156** *Direct requests on Conventions Nos 97, 100, 111, 143, 149, 156*
Solomon Islands	*General direct request* **Observation on Convention No. 182** *Direct requests on Conventions Nos 29, 42, 105, 138, 182* **Observation on submission**
Somalia	*General direct request* *Direct request on Convention No. 29* **Observation on submission**
South Africa	*Direct request on submission*
South Sudan	**General observation** *Direct requests on Conventions Nos 29, 98, 100, 105, 111, 138, 182* *Direct request on submission*
Spain	**Observations on Conventions Nos 97, 111, 156, 172** *Direct requests on Conventions Nos 97, 100, 111, 156* *Response received to a direct request on Convention No. 169*
Sri Lanka	**Observations on Conventions Nos 98, 100, 111** *Direct requests on Conventions Nos 100, 111, MLC* *Direct request on submission*
Sudan	*General direct request* *Direct requests on Conventions Nos 100, 111* *Direct request on submission*
Suriname	*General direct request* *Direct requests on Conventions Nos 100, 111, 138* *Direct request on submission*
Sweden	**Observation on Convention No. 111** *Direct requests on Conventions Nos 100, 111, 143, 156* *Direct request on submission*

Switzerland	**Observation on Convention No. 111** *Direct requests on Conventions Nos 100, 111, 189* *Response received to a direct request on Convention No. 172*
Syrian Arab Republic	**General observation** **Observations on Conventions Nos 29, 100, 105, 138, 182** *Direct requests on Conventions Nos 29, 100, 105, 107, 111, 182* **Observation on submission**
Tajikistan	*General direct request* **Observations on Conventions Nos 47, 81, 95, 97, 100, 111** *Direct requests on Conventions Nos 14, 32, 47, 52, 81, 87, 97, 98, 103, 105, 106, 111, 149, 160, 177* *Direct request on submission*
Thailand	**Observation on Convention No. 100** *Direct requests on Conventions Nos 100, 111, 188* *Direct request on submission*
Timor-Leste	*General direct request* *Direct requests on Conventions Nos 100, 111* **Observation on submission**
Togo	**Observation on Convention No. 111** *Direct requests on Conventions Nos 100, 111, MLC* **Observation on submission**
Tonga	*Direct request on submission*
Trinidad and Tobago	**Observations on Conventions Nos 100, 111, 125** *Direct requests on Conventions Nos 100, 111, 144, 147*
Tunisia	**General observation** **Observations on Conventions Nos 100, 111** *Direct requests on Conventions Nos 100, 111, 185* *Direct request on submission*
Turkey	**Observations on Conventions Nos 98, 115, 119, 127, 155, 161, 167, 176, 187** *Direct requests on Conventions Nos 55, 68, 69, 92, 108, 115, 119, 127, 133, 134, 146, 152, 155, 161, 164, 166, 167, 176, 187*
Turkmenistan	**Observation on Convention No. 105** *Direct requests on Conventions Nos 100, 105, 111, 185* *Direct request on submission*
Tuvalu	**General observation** *Direct request on Convention No. MLC* **Observation on submission**
Uganda	**General observation** **Observations on Conventions Nos 26, 81, 95, 105, 122, 138, 162, 182** *Direct requests on Conventions Nos 17, 29, 81, 94, 100, 111, 123, 124, 138, 143, 182* *Direct request on submission*
Ukraine	**Observations on Conventions Nos 81, 95, 100, 129, 131, 173** *Direct requests on Conventions Nos 23, 27, 32, 69, 81, 92, 100, 108, 111, 115, 126, 129, 133, 147, 150* *Direct request on submission*
United Arab Emirates	**Observations on Conventions Nos. 100, 111** *Direct requests on Conventions Nos 100, 111*
United Kingdom of Great Britain and Northern Ireland	**Observation on Convention No. 111** *Direct requests on Conventions Nos 32, 100, 108, 111*

Anguilla	*Direct requests on Conventions Nos 22, 23, 108*
Bermuda	*Direct requests on Conventions Nos 108, MLC*
British Virgin Islands	*Direct request on Convention No. 108*
Falkland Islands (Malvinas)	*General direct request*
Gibraltar	**Observation on Convention No. 100**
	Direct requests on Conventions Nos 100, 108, MLC
Guernsey	*Direct request on Convention No. 114*
Jersey	*Direct request on Convention No. 22*
United Republic of Tanzania	*General direct request*
	Observations on Conventions Nos 100, 111
	Direct requests on Conventions Nos 100, 111, 137, 152, 185
	Direct request on submission
United Republic of Tanzania.Tanganyika	*Direct requests on Conventions Nos 45, 81, 101*
United Republic of Tanzania.Zanzibar	*General direct request*
United States of America	*Direct requests on Conventions Nos 55, 147*
American Samoa	*Direct requests on Conventions Nos 55, 147*
Guam	*Direct requests on Conventions Nos 55, 147*
Puerto Rico	*Direct requests on Conventions Nos 55, 147*
United States Virgin Islands	*Direct requests on Conventions Nos 55, 147*
Northern Mariana Islands	*Direct request on Convention No. 147*
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Annex 12

International Labour Organization

Report III (Part A)

Application of International Labour Standards 2023

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

International Labour Conference
111th Session, 2023



Report III (Part A)

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

(articles 19, 22 and 35 of the Constitution)

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

General Report and observations concerning particular countries

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

(a) The **Reader's note** provides indications on the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference (their mandate, functioning and the institutional context in which they operate) **(Part A, pages 35–39)**.

(b) **Part I:** the **General Report** describes the manner in which the Committee of Experts undertakes its work and the extent to which Member States have fulfilled their constitutional obligations in relation to international labour standards, and it draws the attention to issues of general interest arising out of the Committee's work **(Part A, pages 41–91)**.

(c) **Part II: Observations concerning particular countries** cover the sending of reports, the application of ratified Conventions (see section I), and the obligation to submit instruments to the competent authorities (see section II) **(Part A, pages 93–981)**.

(d) **Part III: General Survey**, in which the Committee of Experts examines the state of the legislation and practice regarding a specific area covered by a given number of Conventions and Recommendations. This examination covers all Member States regardless of whether or not they have ratified the given Conventions. The General Survey is published as a separate volume (Report III(Part B)) and this year it concerns the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Maternity Protection Convention, 2000 (No. 183), the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), the Workers with Family Responsibilities Recommendation, 1981 (No. 165) and the Maternity Protection Recommendation, 2000 (No. 191) **(Part B)**.

The report of the Committee of Experts is also available at: www.ilo.org/normes.

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

★ Convention revised in whole or in part by a subsequent Convention or Protocol.
● Convention no longer open to ratification as a result of the entry into force of a revising Convention.
♦ Convention or Protocol not in force.
■ Convention withdrawn.
□ Convention abrogated.

1	**Freedom of association, collective bargaining, and industrial relations**	
	C011	Right of Association (Agriculture) Convention, 1921 (No. 11)
	C084	Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84)
	C087	**Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**
	C098	**Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**
	C135	Workers' Representatives Convention, 1971 (No. 135)
	C141	Rural Workers' Organisations Convention, 1975 (No. 141)
	C151	Labour Relations (Public Service) Convention, 1978 (No. 151)
	C154	Collective Bargaining Convention, 1981 (No. 154)
2	**Forced labour**	
	C029	**Forced Labour Convention, 1930 (No. 29)**
	C105	**Abolition of Forced Labour Convention, 1957 (No. 105)**
	P029	**Protocol of 2014 to the Forced Labour Convention, 1930**
3	**Elimination of child labour and protection of children and young persons**	
★	C005	Minimum Age (Industry) Convention, 1919 (No. 5)
★	C006	Night Work of Young Persons (Industry) Convention, 1919 (No. 6)
★	C010	Minimum Age (Agriculture) Convention, 1921 (No. 10)
□	C015	Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)
●	C033	Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)
★	C059	Minimum Age (Industry) Convention (Revised), 1937 (No. 59)
■	C060	Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)
	C077	Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)
	C078	Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)
	C079	Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)
	C090	Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)
★	C123	Minimum Age (Underground Work) Convention, 1965 (No. 123)
	C124	Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)
	C138	**Minimum Age Convention, 1973 (No. 138)**
	C182	**Worst Forms of Child Labour Convention, 1999 (No. 182)**
4	**Equality of opportunity and treatment**	
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	C111	**Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**
	C156	Workers with Family Responsibilities Convention, 1981 (No. 156)
♦	C190	Violence and Harassment Convention, 2019 (No. 190)
5	**Tripartite consultation**	
	C144	*Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*

6	**Labour administration and inspection**	
●	C063	Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)
★	C081	*Labour Inspection Convention, 1947 (No. 81)*
	C085	Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)
	C129	*Labour Inspection (Agriculture) Convention, 1969 (No. 129)*
	C150	Labour Administration Convention, 1978 (No. 150)
	C160	Labour Statistics Convention, 1985 (No. 160)
	P081	Protocol of 1995 to the Labour Inspection Convention, 1947
7	**Employment policy and promotion**	
	C002	Unemployment Convention, 1919 (No. 2)
■	C034	Fee-Charging Employment Agencies Convention, 1933 (No. 34)
	C088	Employment Service Convention, 1948 (No. 88)
●	C096	Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)
	C122	*Employment Policy Convention, 1964 (No. 122)*
	C159	Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
	C181	Private Employment Agencies Convention, 1997 (No. 181)
8	**Vocational guidance and training**	
	C140	Paid Educational Leave Convention, 1974 (No. 140)
	C142	Human Resources Development Convention, 1975 (No. 142)
9	**Employment security**	
	C158	Termination of Employment Convention, 1982 (No. 158)
10	**Wages**	
	C026	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)
★	C095	Protection of Wages Convention, 1949 (No. 95)
	C099	Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)
	C131	Minimum Wage Fixing Convention, 1970 (No. 131)
	C173	Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)
11	**Working time**	
	C001	Hours of Work (Industry) Convention, 1919 (No. 1)
□	C004	Night Work (Women) Convention, 1919 (No. 4)
	C014	Weekly Rest (Industry) Convention, 1921 (No. 14)
	C020	Night Work (Bakeries) Convention, 1925 (No. 20)
	C030	Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
■	C031	Hours of Work (Coal Mines) Convention, 1931 (No. 31)
□	C041	Night Work (Women) Convention (Revised), 1934 (No. 41)
	C043	Sheet-Glass Works Convention, 1934 (No. 43)
■	C046	Hours of Work (Coal Mines) Convention (Revised), 1935 (No. 46)
	C047	Forty-Hour Week Convention, 1935 (No. 47)
	C049	Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49)
■	C051	Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51)
●	C052	Holidays with Pay Convention, 1936 (No. 52)
■	C061	Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61)
□	C067	Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67)
★	C089	Night Work (Women) Convention (Revised), 1948 (No. 89)
★	C101	Holidays with Pay (Agriculture) Convention, 1952 (No. 101)
	C106	Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
	C132	Holidays with Pay Convention (Revised), 1970 (No. 132)
	C153	Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)
	C171	Night Work Convention, 1990 (No. 171)
	C175	Part-Time Work Convention, 1994 (No. 175)
	P089	Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948

12	**Occupational safety and health**	
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	C045	Underground Work (Women) Convention, 1935 (No. 45)
●	C062	Safety Provisions (Building) Convention, 1937 (No. 62)
	C115	Radiation Protection Convention, 1960 (No. 115)
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	C139	Occupational Cancer Convention, 1974 (No. 139)
	C148	Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)
★	C155	**Occupational Safety and Health Convention, 1981 (No. 155)**
	C161	Occupational Health Services Convention, 1985 (No. 161)
	C162	Asbestos Convention, 1986 (No. 162)
	C167	Safety and Health in Construction Convention, 1988 (No. 167)
	C170	Chemicals Convention, 1990 (No. 170)
	C174	Prevention of Major Industrial Accidents Convention, 1993 (No. 174)
	C176	Safety and Health in Mines Convention, 1995 (No. 176)
	C184	Safety and Health in Agriculture Convention, 2001 (No. 184)
	C187	**Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)**
	P155	Protocol of 2002 to the Occupational Safety and Health Convention, 1981
13	**Social security**	
★	C012	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
★	C017	Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
★	C018	Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)
	C019	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
★	C024	Sickness Insurance (Industry) Convention, 1927 (No. 24)
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●	C035	Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)
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●	C040	Survivors' Insurance (Agriculture) Convention, 1933 (No. 40)
★	C042	Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)
●	C044	Unemployment Provision Convention, 1934 (No. 44)
●	C048	Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)
★	C102	Social Security (Minimum Standards) Convention, 1952 (No. 102)
	C118	Equality of Treatment (Social Security) Convention, 1962 (No. 118)
	C121	Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)
	C128	Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
	C130	Medical Care and Sickness Benefits Convention, 1969 (No. 130)
	C157	Maintenance of Social Security Rights Convention, 1982 (No. 157)
	C168	Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)
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●	C103	Maternity Protection Convention (Revised), 1952 (No. 103)
	C183	Maternity Protection Convention, 2000 (No. 183)
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★	C082	Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82)
	C094	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
	C117	Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)

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■	C066	Migration for Employment Convention, 1939 (No. 66)
	C097	Migration for Employment Convention (Revised), 1949 (No. 97)
	C143	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

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☐	C008	Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)
☐	C009	Placing of Seamen Convention, 1920 (No. 9)
☐	C016	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
★	C022	Seamen's Articles of Agreement Convention, 1926 (No. 22)
★	C023	Repatriation of Seamen Convention, 1926 (No. 23)
☐	C053	Officers' Competency Certificates Convention, 1936 (No. 53)
■	C054	Holidays with Pay (Sea) Convention, 1936 (No. 54)
★●	C055	Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)
★●	C056	Sickness Insurance (Sea) Convention, 1936 (No. 56)
■	C057	Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
★●	C058	Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
★●	C068	Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
★●	C069	Certification of Ships' Cooks Convention, 1946 (No. 69)
★◆●	C070	Social Security (Seafarers) Convention, 1946 (No. 70)
	C071	Seafarers' Pensions Convention, 1946 (No. 71)
■	C072	Paid Vacations (Seafarers) Convention, 1946 (No. 72)
☐	C073	Medical Examination (Seafarers) Convention, 1946 (No. 73)
☐	C074	Certification of Able Seamen Convention, 1946 (No. 74)
★◆●	C075	Accommodation of Crews Convention, 1946 (No. 75)
■	C076	Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
☐	C091	Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)
★●	C092	Accommodation of Crews Convention (Revised), 1949 (No. 92)
■	C093	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)
●	C108	Seafarers' Identity Documents Convention, 1958 (No. 108)
■	C109	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)
★●	C133	Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
★●	C134	Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
☐	C145	Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
★●	C146	Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
★●	C147	Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
★●	C163	Seafarers' Welfare Convention, 1987 (No. 163)
★●	C164	Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
★●	C165	Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
★●	C166	Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
★●	C178	Labour Inspection (Seafarers) Convention, 1996 (No. 178)
■	C179	Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
■	C180	Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
	C185	Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185)
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★●	P147	Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976

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		C125	Fishermen's Competency Certificates Convention, 1966 (No. 125)
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		C188	Work in Fishing Convention, 2007 (No. 188)
19		**Dockworkers**	
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	■	C028	Protection against Accidents (Dockers) Convention, 1929 (No. 28)
	●	C032	Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)
		C137	Dock Work Convention, 1973 (No. 137)
		C152	Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)
20		**Indigenous and tribal peoples**	
	□	C050	Recruiting of Indigenous Workers Convention, 1936 (No. 50)
	□	C064	Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)
	□	C065	Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)
	□	C086	Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)
	□	C104	Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104)
	●	C107	Indigenous and Tribal Populations Convention, 1957 (No. 107)
		C169	Indigenous and Tribal Peoples Convention, 1989 (No. 169)
21		**Specific categories of workers**	
		C083	Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83)
	★	C110	Plantations Convention, 1958 (No. 110)
		C149	Nursing Personnel Convention, 1977 (No. 149)
		C172	Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
		C177	Home Work Convention, 1996 (No. 177)
		C189	Domestic Workers Convention, 2011 (No. 189)
		P110	Protocol of 1982 to the Plantations Convention, 1958
22		**Final Articles Conventions**	
		C080	Final Articles Revision Convention, 1946 (No. 80)
		C116	Final Articles Revision Convention, 1961 (No. 116)

Reader's note

Overview of the ILO supervisory mechanisms

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

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

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

Role of employers' and workers' organizations

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

In practice, representative employers' and workers' organizations may submit to their governments' observations on the reports concerning the application of international labour standards. They may, for instance, draw attention to a discrepancy in law or practice regarding the application of a ratified Convention. Furthermore, any employers' or workers' organization may submit observations on the application of international labour standards directly to the Office. The Office will then forward these to the government concerned, which will have an opportunity to respond before the observations are examined by the Committee of Experts except in exceptional circumstances. [3]

[1] For detailed information on all the supervisory procedures, see *Handbook of procedures relating to international labour Conventions and Recommendations*, International Labour Standards Department, International Labour Office, Geneva, 2019.

[2] Reports are requested every three years for the fundamental and governance Conventions, and every six years for other Conventions. At its 334th Session the Governing Body decided to expand the reporting cycle for the latter category of Conventions from five to six years (GB.334/INS/5). Reports are due for groups of Conventions according to subject matter. Following the amendment of the 1998 Declaration, the Governing Body decided to apply a three-year cycle for the fundamental Conventions on occupational safety and health as from 2024 (GB.346/INS/3/3).

[3] General Report, paras 127–136.

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

During the early years of the ILO, both the adoption of international labour standards and the regular supervisory work were undertaken within the framework of the plenary sitting of the annual International Labour Conference. However, the considerable increase in the number of ratifications of Conventions rapidly led to a similarly significant increase in the number of annual reports submitted. It soon became clear that the plenary sitting of the Conference would not be able to examine all of these reports at the same time as adopting standards and discussing other important matters. In response to this situation, the Conference in 1926 adopted a resolution [4] establishing on an annual basis a Conference Committee (subsequently named the Conference Committee on the Application of Standards) and requesting the Governing Body to appoint a technical committee (subsequently named the Committee of Experts on the Application of Conventions and Recommendations) which would be responsible for drawing up a report for the Conference. These two committees have become the two pillars of the ILO regular supervisory system.

Committee of Experts on the Application of Conventions and Recommendations

Composition

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

Work of the Committee

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

- the periodic reports under article 22 of the Constitution on the measures taken by Member States to give effect to the provisions of the Conventions to which they are parties;
- the information and reports concerning Conventions and Recommendations communicated by Member States in accordance with article 19 of the Constitution;

[4] *Record of Proceedings* of the Eighth Session of the International Labour Conference, 1926, Vol. 1, Appendix VII.

[5] Terms of reference of the Committee of Experts, Minutes of the 103rd Session of the Governing Body (1947), Appendix XII, para. 37.

– information and reports on the measures taken by Member States in accordance with article 35 of the Constitution. [6]

The task of the Committee of Experts is to indicate the extent to which each Member State's legislation and practice are in conformity with ratified Conventions and the extent to which Member States have fulfilled their obligations under the ILO Constitution in relation to standards. In carrying out this task, the Committee adheres to its principles of independence, objectivity and impartiality. [7] The comments of the Committee of Experts on the fulfilment by Member States of their standards-related obligations take the form of either observations or direct requests. Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They are reproduced in the annual report of the Committee of Experts, which is then submitted to the Conference Committee on the Application of Standards in June every year. Direct requests are not published in the report of the Committee of Experts, but are communicated directly to the government concerned and are available online. [8] In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given number of Conventions and Recommendations chosen by the Governing Body. [9] The General Survey is based on the reports submitted in accordance with articles 19 and 22 of the Constitution, and it covers all Member States regardless of whether or not they have ratified the concerned Conventions.

Report of the Committee of Experts

As a result of its work, the Committee produces an annual report. The report consists of two volumes.

The first volume (Report III (Part A)) [10] is divided into two parts:

– **Part I:** the **General Report** describes, on the one hand, the progress of the work of the Committee of Experts and specific matters relating to it that have been addressed by the Committee and, on the other hand, the extent to which Member States have fulfilled their constitutional obligations in relation to international labour standards.

– **Part II: Observations concerning particular countries** on the fulfilment of obligations in respect of the submission of reports, the application of ratified Conventions grouped by subject matter and the obligation to submit instruments to the competent authorities.

The second volume contains the **General Survey** (Report III(Part B)).

[6] Article 35 covers the application of Conventions to non-metropolitan territories.

[7] General Report, para. 33.

[8] General Report, para. 106. Observations and direct requests are accessible through the NORMLEX database available at: www.ilo.org/normes.

[9] By virtue of the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008, a system of annual recurrent discussions in the framework of the Conference has been established to enable the Organization to gain a better understanding of the situation and varying needs of its members in relation to the four strategic objectives of the ILO, namely: employment; social protection; social dialogue and tripartism; and fundamental principles and rights at work. The Governing Body considered that the recurrent reports prepared by the Office for the purposes of the Conference discussion should benefit from the information on the law and practice of Member States contained in General Surveys, as well as from the outcome of the discussions of General Surveys by the Conference Committee. In principle, the subjects of General Surveys have therefore been aligned with the four strategic objectives of the ILO. The importance of the coordination between the General Surveys and recurrent discussions was reaffirmed in the framework of the adoption of a five-year cycle of recurrent discussions by the Governing Body in November 2016.

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

Committee on the Application of Standards of the International Labour Conference

Composition

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

Work of the Committee

The Conference Committee on the Application of Standards meets annually at the Conference usually in June. Pursuant to article 10 of the Standing Orders of the Conference, the Committee shall consider:

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

The Committee is required to present its report to the plenary sitting of the Conference.

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

The Conference Committee on the Application of Standards discusses the report of the Committee of Experts, and the documents submitted by governments. The work of the Conference Committee starts with a general discussion based essentially on the General Report of the Committee of Experts. The Conference Committee then discusses the General Survey. It also examines cases of serious failure to fulfil reporting and other standards-related obligations. Finally, the Conference Committee examines a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. At the end of the discussion of each individual case, the Conference Committee adopts conclusions on the case in question.

In its report [11] submitted to the plenary sitting of the Conference for adoption, the Conference Committee on the Application of Standards may invite the Member State whose case has been discussed to accept a technical assistance mission by the International Labour Office to increase its capacity to fulfil its obligations, or may propose other types of missions. The Conference Committee may also request a government to submit additional information or address specific concerns in its next report to the Committee of Experts. The Conference Committee also draws the attention of the Conference to certain cases, such as cases of progress and cases of serious failure to comply with ratified Conventions.

[11] The report is published in the *Record of Proceedings* of the Conference. Since 2007, it has also been issued in a separate publication. See, for the last report, *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, International Labour Conference, 110th Session, Geneva, 2022.

The Committee of Experts and the Conference Committee on the Application of Standards

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



Part I. General Report

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by Member States of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 93rd Session from 28 November to 10 December 2022 [1] in a hybrid modality involving in-person participation by 16 members and online conferencing by 3 experts. The Committee has the honour to present its report to the Governing Body.

A. Composition of the Committee

2. The composition of the Committee is as follows: Mr Shinichi AGO (Japan), Ms Lia ATHANASSIOU (Greece), Ms Leila AZOURI (Lebanon), Mr James J. BRUDNEY (United States of America), Ms Graciela Josefina DIXON CATON (Panama), Mr Rachid FILALI MEKNASSI (Morocco), Mr. José HERRERA VERGARA (Colombia), Mr Benedict KANYIP (Nigeria), Mr Alain LACABARATS (France), Ms Elena E. MACHULSKAYA (Russian Federation), Ms Karon MONAGHAN (United Kingdom of Great Britain and Northern Ireland), Mr Sandile NGCOBO (South Africa), Ms Rosemary OWENS (Australia), Ms Mónica PINTO (Argentina), Mr Paul-Gérard POUGOUÉ (Cameroon), Mr Raymond RANJEVA (Madagascar), Ms Kamala SANKARAN (India), Ms Ambiga SREENEVASAN (Malaysia), Ms Deborah THOMAS-FELIX (Trinidad and Tobago) and Mr Bernd WAAS (Germany). Appendix I of the General Report contains brief biographies of all the Committee members.

3. The Committee welcomed three new members appointed by the Governing Body at its 346th Session, namely, Mr José Herrera Vergara (Colombia), Mr Benedict Kanyip (Nigeria) and Ms Ambiga Sreenevasan (Malaysia).

4. Professor Herrera Vergara holds a Master's Degree in Labour Law and Social Security from the University Colegio Mayor de Nuestra Señora del Rosario in Bogota and a Diploma in Community Health and Social Security from the Centre for Cooperative and Labour Studies for Latin America in Jerusalem (Colombia). He has written on labour law reform. Professor Herrera Vergara was Vice-President of the Iberoamerican Academy for Labour Law and Social Security from 2019 to 2022. From 1994 to 2002, he served as judge on the Colombian Supreme Court including as President (1996) and President of the Labour Chamber (1999 and 2002). He served as *Conjuez* of the Constitutional Court from 2014 to 2019 and of the Supreme Court from 2003 to 2022.

5. Judge Kanyip is President of the National Industrial Court of Nigeria (NICN), which he joined as Member in 2000 and thereafter as Judge in 2006. He referred to international best practices in labour as well as to ILO Conventions in a number of judgments. He holds an LLB Degree in Law, a Masters (LLM) Degree in Commercial Law with a thesis in company taxation, and a PhD in law with specialization in consumer protection law. Fellow of a number of institutes, including the Nigerian Institute of Legal Studies and the Chartered Institute of Taxation of Nigeria, Judge Kanyip has taught law of contract, commercial law, law of tort, tax law and consumer protection in Ahmadu Bello University, Zaria and Benue State University, Makurdi, all in Nigeria. He was a Senior Researcher Fellow at the Nigerian Institute of Advanced Legal Studies (NIALS) in Lagos and rose

[1] At its 344th Session (March 2022), the Governing Body decided to extend the annual session of the Committee of Experts to include two weeks of remote preparatory work (GB.344/LILS/4/Decision). In 2022, the period of remote preparatory work was scheduled from 14 to 25 November 2022.

to the position of Associate Research Professor of Law before joining the NICN in 2000. His research and publication straddled the areas of consumer protection, commercial law, tax law and labour law. In 2006 and 2010, he participated in the processes that led to the promulgation of the National Industrial Court Act 2006 and the Third Alteration to the 1999 Constitution of Nigeria as well as in the comprehensive reform of labour laws still ongoing and in the context of which he worked with the ILO. In 2017, he undertook the Study on Harmonization of Labour Laws in the Economic Community of West African States (ECOWAS) and served as a member of the Committee of Experts that reviewed the Draft Report.

6. Dato Ambiga Sreenevasan holds an Honorary Doctorate from the University of Exeter (2011) having graduated with a Bachelor of Laws in 1979. She was President of the Malaysian Bar Council from 2007 to 2009 and Chairperson of the Bar Council's Committee on Rights between 2010 and 2012. She was also President of the National Human Rights Society from 2014 to 2018. She is currently a member of the International Commission of Jurists and an alternate member of its Executive Committee. A well-known human rights advocate, Dato Sreenevasan has received several international awards for her work, including: the *Chevalier de la Légion d'honneur*; the 4th Commonwealth Rule of Law Award; the United Nations Malaysia award for contribution to the Sustainable Development Goals relating to human rights and governance; and the International Women of Courage Award, for her work on women's rights and religious freedom. Dato Sreenevasan practises as senior counsel in a wide array of civil, commercial and corporate litigation matters and was recognized in 2019 as a leading expert on dispute resolution in the Legal 500 Asia–Pacific guide.

7. As a result of the three appointments, the Committee functioned with a close to full composition of 19 members. One member, Ms Machulskaya, informed the Committee that she could not participate in this year's session for personal reasons.

8. This year, Ms Graciela Dixon Caton continued her mandate as Chairperson and Mr Shinichi Ago was elected as Reporter.

9. The Committee noted that this was the last year on the Committee for one of its outstanding members, Mr Ranjeva, who had completed 15 years of service. It also noted that two members, Ms Owens and Ms Monaghan, had decided to leave the Committee for personal reasons after having served for 12 and 9 years respectively. The Committee expressed its great appreciation for the outstanding manner in which Ms Monaghan, Ms Owens and Mr Ranjeva carried out their mandate during their long years of service on the Committee and particularly commends them for their technical excellence, legal expertise, independence and moral standing. The Committee also expressed its deepest appreciation to Professor Owens for the excellent way in which she fulfilled her functions as Reporter for six years (2014, 2015, 2016, 2017, 2020 and 2021).

B. Working methods

10. In order to guide the Committee's reflection on continuous improvement of its work, a Subcommittee on Working Methods was set up in 2001 with the mandate to examine the working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee so that it can perform its functions in the best and most efficient manner possible and, in so doing, assist Member States in meeting their obligations in relation to international labour standards and enhance the functioning of the supervisory system. This year, under the Chairpersonship of Mr Bernd Waas, the Subcommittee on Working Methods met for the 22nd time.

11. The Subcommittee continued its discussion on a possible further modernization of its working methods. It discussed the distinction between observations and direct requests and decided as a result, that where observations are accompanied by direct requests, the text of the latter could

be streamlined. It also decided to extend the practice of urgent appeals to reports which have not been submitted for three years or more even if no comment is pending. The list of these urgent appeals appears in this year's General Report in the table accompanying paragraph 91. Finally, the Subcommittee was briefed by the Office on certain initiatives and pilot projects under consideration in a context of further modernization of the ILO's normative action, including its supervisory mechanism. The Subcommittee noted that the Governing Body is to discuss related matters at its 349th Session (November 2023) and looks forward to the outcome of this discussion.

Information and collaboration sessions

Information session with Government representatives

12. At its previous 92nd Session, the Committee gave positive consideration to the request put forward by Government members of the Conference Committee to consider the possibility of a meeting between the Committee of Experts and Government representatives. Accordingly, an information session was organized at its 93rd Session to which all Member States were invited. A fruitful exchange took place based on questions raised by Government representatives on the following subjects:

- how to give more visibility to cases of progress;
- how to improve synergies with reports provided to other UN entities notably in the framework of the human rights mechanisms so as to streamline the reporting burden on governments and related reporting difficulties;
- how to streamline article 22 reports on similar Conventions to avoid duplication;
- the criteria for determining which organizations may be considered as employers' or workers' organizations when they submit comments under article 23, paragraph 2, of the ILO Constitution for examination by the Committee;
- any improvements in working methods in addition to the extension of the Committee's annual session by two weeks as of this year;
- follow-up given by the Committee of Experts to cases referred to it by the Committee on Freedom of Association.

Collaboration with the United Nations

13. In last year's General Report, the Committee invited the UN treaty bodies to a joint reflection over ways to strengthen synergies and complementarities drawing on each body's respective and distinct mandates in a context of a repositioned UN development system and the UN Secretary-General's initiative known as the Call to Action for Human Rights. The Committee is pleased to note that this call was positively received and led to the organization of an exchange with the Chairpersons or Vice-Chairpersons of seven human rights treaty bodies, namely, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee on Migrant Workers and Members of their Families, the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture, the Committee on Enforced Disappearances, and the Subcommittee on Prevention of Torture. The discussion centred on the current challenges faced in a world confronted with multiple interlocking crises and the opportunities for action provided by the UN Secretary-General's Call to Action for Human Rights and the repositioned UN Development System. Many participants expressed a desire to develop a closer dialogue and periodical exchanges with a view to creating synergies through joint statements and exchange of analysis in the future. They also agreed on a joint statement to mark the third anniversary of the UN Secretary General's Call to Action for Human Rights. The joint

statement will be published as an Addendum to the Committee's report upon its release on 24 February 2023.

Relations with the Conference Committee on the Application of Standards

14. A spirit of mutual respect, cooperation and responsibility has consistently prevailed over the years in the Committee's relations with the Committee on the Application of Standards of the International Labour Conference. In this context, the Chairperson of the Committee has been invited to participate in the general discussion of the Conference Committee at the 110th Session of the International Labour Conference which took place in a hybrid modality in May–June 2022 in the context of the continuing COVID-19 pandemic and parallel interlocking crises. In addition, the Chairperson of the Committee on Freedom of Association was invited once again to address the Conference Committee in order to present the Committee's Annual Report.

15. The Chairperson of the Committee of Experts invited the Employer Vice-Chairperson (Ms Sonia Regenbogen) and the Worker Vice-Chairperson (Mr Marc Leemans) to participate in a special sitting of the Committee at its present session. They both accepted this invitation. An interactive and thorough exchange of views took place on matters of common interest.

16. The Chairperson invited the two Vice-Chairpersons to have a common reflection on how to work in mutually reinforcing ways towards securing compliance with the conclusions adopted by the Conference Committee on the cases considered each year. The special sitting with the Vice-Chairpersons could serve as a forum for an exchange on this crucial aspect of making the supervisory system more effective.

17. The Employer Vice-Chairperson emphasized that the special sitting with the two Vice-Chairpersons was an established practice of critical importance for cooperation between the two Committees and for standards supervision with greater and lasting positive impact. She considered that additional opportunities should be found for deeper exchanges on specific matters and would welcome an exchange on the importance of effective and authoritative supervision. She added that the employers fully supported the goal of effective supervision for broad and effective implementation of international labour standards and looked forward to discussing ways to work constructively with the Committee of Experts in this framework.

18. The Employer Vice-Chairperson added that there was a global tripartite consensus that the Centenary Declaration should be the key framework leading to sustainable recovery from the COVID-19 pandemic by responding to the changing patterns of the world of work, protecting workers and taking into account the needs of sustainable enterprises. In a context where the new Director-General accorded high priority to modernizing the supervisory system, it was essential that all parties fully understood the needs of the tripartite constituents in their national contexts and provided them with practical and effective guidance for the implementation of international labour standards in law and in practice at the national level. The key to broad and effective implementation was to promote social dialogue and tripartism at both national and global levels.

19. Noting the low reporting levels and high number of comments, she called for practical ways to be found in order to be more impactful at the national level, produce more constructive results, modernize the supervisory system and ensure more effective supervision, emphasizing the importance of open dialogue and close cooperation of all actors involved. In her view, the Committee of Experts must ensure that its assessments are up to date, sensitive to the views of the tripartite constituents and receptive to the statements made in the Conference Committee, observations by employers' and workers' organizations under article 23(2) of the ILO Constitution and Governing Body discussions.

20. She emphasized that the Committee of Experts should take special care not to create new obligations which were not reflected in the text of Conventions. She referred to the right to strike as a clear example of how the diversity of industrial relations had led to a variety of rules and practices at the national level that were very difficult to standardize internationally. In her view, the Committee of Experts had nevertheless made detailed rules on this itself, thus disregarding ILO competences and procedures for standard-setting. She indicated her view that seeking to address the authority of these detailed rules by initiating the article 37 procedure would be tantamount to an indictment of the ILO and its supervisory system. In her view, the ILO standards system should take up this challenge itself. The Conference Committee had managed to find a modus vivendi on the right to strike and it was time for the tripartite constituents to reflect seriously on their standard-setting competence on this issue and to find a solution balancing the different interests in a tripartite process. The Office should actively facilitate an understanding on a lasting way forward on this critical issue based on dialogue.

21. She added that the Committee of Experts should also avoid limiting the flexibility provided in the text of conventions and referred to observations previously made by the Employers group on the promotion of the right to collective bargaining on the basis of article 4 of Convention No. 98. She called on the Committee of Experts to fully respect the flexibility afforded by article 4 of Convention No. 98 and the free and voluntary nature of collective bargaining in order to allow Member States to find ways of implementing the Convention in line with national circumstances and needs.

22. The Employer Vice-Chairperson also called on the Committee of Experts to focus on the application of standards for the vast percentage of the workforce in the informal economy and to take account of the needs of sustainable enterprises in its assessments especially in the context of COVID-19 recovery. She reiterated a few suggestions to improve the substance and format of the Committee's report by: (i) closely adhering to the provisions of the relevant Conventions when making comments; (ii) avoiding making requests based on Recommendations which provided only non-binding guidance; (iii) clarify the distinction between observations and direct requests, given that the latter were not subject to discussion in the CAS, or alternatively eliminate direct requests and consider other ways of requesting information from Governments; (iv) clarify the criteria for double-footnoted cases; (v) provide explanations on the selection of cases brought to the attention of the Conference Committee (double footnotes); and (vi) consider a regional balance when identifying such cases. With regard to the format of the Committee's report, she mentioned that there was room for improvement in the presentation, length and content of comments and proposed to make government reports and article 23 comments accessible online. Also, cases of progress should become more visible.

23. She concluded by emphasizing that where the two bodies reached consensual recommendations, they became mutually reinforcing leading to faster, better, and more sustainable compliance at country level. The two bodies should strive to continue in this direction towards an effective and authoritative supervisory system. She would welcome the opportunity to have a more in-depth exchange on specific subject matters as appropriate in the future.

24. The Worker Vice-Chairperson (Mr Leemans) welcomed the invitation to launch a common reflection on how to strengthen the follow-up to the conclusions of the Conference Committee. He recalled that the Committee of Experts was at the heart of the supervisory system and everyone should respect its independence, impartiality and professionalism which constituted the cornerstone of the Committee's authority and credibility. He emphasized that the Conference Committee had no mandate to control the Committee's work. Independence also meant that the Committee of Experts had full autonomy in the choice of its working methods, as the predictability of these methods lied at the basis of its moral authority and persuasiveness.

25. In his view, clarifications could always be asked in the framework of dialogue and mutual learning, without presenting demands or exerting any pressure, with a view to building a common understanding of how supervision of application and progress made, or lack thereof, could lead to the selection of, for example, a direct request instead of an observation, or one case over another for a double footnote, acknowledging that this was not an exact science.

26. The Worker Vice-Chairperson emphasized that the fact that divergent views were being expressed within the Conference Committee on some questions did not mean that there was a difference of views between the Conference Committee as a whole and the Committee of Experts. In fact, there was none. The question of interpretation of Convention No. 87 on the right to strike might be resolved through the process envisaged in article 37 of the ILO Constitution. He noted that the Employer Vice-Chairperson had brought forward in the meantime additional concerns with regard to the interpretation of Convention No. 98 both in the Conference Committee and at the present meeting. He recalled that the Committee of Experts had been exercising its mandate for more than 90 years guiding Member States and ensuring legal certainty, with a clear and specific vision on its role and function within the international supervisory system. It would be unacceptable to impose on the Committee of Experts the views of a single group on the interpretation of international labour standards.

27. With regard to the recurrent references by the Employer Vice-Chairperson to sustainable enterprises he saw two major obstacles to meeting the employer request. First, the mandate of the Committee of Experts was to supervise the application of instruments to which Member States had acceded. These instruments concerned the rights of workers, not the sustainability of enterprises. Second, there was no generally accepted definition of sustainable enterprises. While it would be useful to have a discussion on this topic at the International Labour Conference, exchanges with the Committee of Experts were not the appropriate place for doing so.

28. The Worker Vice-Chairperson welcomed the initiatives and dialogue of the Committee of Experts with the UN Human Rights Treaty Bodies which was important in order to position the ILO's mandate next to that of other entities within the UN system. He also asked for ways to make General Surveys more visible inside and outside the ILO including through presentations and dissemination of information. With regard to gender equality which was the subject of this year's General Survey, he emphasized the importance of the gender dimension at the workplace for reaching more inclusive societies.

29. He also welcomed the effective and authoritative supervision and the guidance given by the Committee of Experts on the role of international labour standards in the context of overcoming the COVID-19 crisis in the framework of the Global Call to Action including with regard to maritime labour. The crisis had a disproportionate impact on the application of international labour standards and necessitated constant supervision.

30. The Committee of Experts welcomed the comments made by the two Vice-Chairpersons recognizing the independent and complementary roles of the two Committees and the importance of building on convergence through continued interaction. With regard to its working methods, the Committee assured the Vice-Chairpersons that it was listening to the voices of the tripartite constituents and was fully prepared to play an active role in the continuous modernization of the supervisory system. The concerns expressed with regard to certain distinctions between observations and direct requests were taken very seriously. Without embracing change for the sake of change, the Committee was ready to build inroads based on the criteria of continuous reliability, predictability and transparency. While focused on improving and deepening a constructive dialogue with Governments and the social partners, the Committee was also interested in improving outreach vis-à-vis the wider public.

31. The Committee also referred to its relationship with the UN Human Rights Treaty Bodies, based on the fact labour standards served as precursors of human rights instruments since the ILO's creation more than 100 years ago, setting the rules for economic development so that it could go hand in hand with social justice and global peace. When human rights were proclaimed in the Universal Declaration of Human Rights and entrenched the UN Charter in 1945, international labour standards became an integral part of this framework and a new era opened up. The Committee of Experts functioned in ways which found their echo in the work of the Human Rights Treaty Bodies with the same ultimate purpose to promote respect for international obligations. There was much complementarity in this work and a consequent need for consistency within each entity's respective mandates. There were also hopes that enhanced synergies would open up space for higher levels of consistency. The Committee of Experts had invited the Chairpersons of the Human Rights Treaty Bodies to an exchange which was very productive and opened the way for closer collaborations, ultimately enhancing the impact of the ILO supervisory mechanism.

32. The Committee also referred to improvements introduced in this year's General Survey entitled *Achieving Gender Equality at Work* [2] which addressed different aspects of the same policy question, i.e., how to promote equality of opportunity and treatment between women and men at work and the realization of the fundamental principle of gender equality. The Committee referred in particular to the use of hyperlinks, improved visibility of conclusions and the possibility to address all Member States through the General Survey. The Committee expressed the hope that this year's General Survey would draw attention to the fundamental importance of gender equality and would meet the constituents' expectations.

C. Mandate

33. **The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO Member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by Member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for more than 90 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.**

[2] Report III (Part B), International Labour Conference, 111th Session, Geneva, 2023.

D. Application of international labour standards and the quest for social justice in the context of protracted and interlocking crises

From the COVID-19 pandemic to protracted and interlocking crises

34. While the COVID-19 pandemic and the consequent jobs crisis are still sorely felt, climate change, armed conflict, inflation, energy and food shortages have generated ripples of crises over the past year. These protracted and interlocking crises aggravate the pre-existing high levels of inequality among and within countries, putting to the test the 2030 Agenda and the credibility of the international community's pledge to deliver inclusive and sustainable growth, full, productive and freely chosen employment and decent work for all, leaving no one behind. [3] Protracted and interlocking crises affect not only economic recovery but also social cohesion, peace, stability and life on the planet.

The quest for social justice

35. The Committee welcomes the ILO Director-General's initiative to launch a Global Coalition for Social Justice based on the universal values entrenched in human rights and international labour standards and promoted through inclusive social dialogue with an inequality-reducing agenda at its core. It notes that this initiative meets the United Nations (UN) Secretary-General's "Our Common Agenda", which identifies today's growing world divide along political, economic, social and environmental lines as the chief cause of the erosion of the values of solidarity and mutual trust and calls for the renewal of the social contract between governments and their people and within societies.

36. The Committee recalls the ILO Constitution which provides that "Universal and lasting peace can be established only if it is based upon social justice". It recalls that social justice, in turn, can only be maintained by observing labour rights and realizing human rights more broadly, with a view to tackling today's multiple and interlocking crises in a human-centred, inclusive and sustained manner, leaving no one behind. [4]

37. The Committee is aware that all too often, persons in vulnerable situations are those most impacted by crises, conflicts and disasters, in particular, children and youth, women, older persons, migrant workers, those working in the informal economy, indigenous peoples, persons with disabilities and those vulnerable to intersectional discrimination. It is in difficult times that the most vulnerable need their rights to be safeguarded and their voices to be heard. The Committee emphasizes that a new social contract is urgently needed in times of protracted and interlocking crises, drawing upon the common values expressed in the ILO fundamental and governance Conventions as well as the technical standards which serve to set a level playing field in a global economy under strain.

[3] Resolution concerning inequalities and the world of work, International Labour Conference, 110th Session, December 2021, para. 16 and follow-up (GB.346/INS/5, Governing Body, 346th Session (October–November 2022)).

[4] Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

Impact of interlocking crises on the application of international labour standards

38. In its 2020 statement on the application of international labour standards in times of crisis, the Committee had underscored the limits to executive power which should apply in times of crisis. [5] The Committee notes with growing concern increasing disparities between ILO Member States in respect of civil liberties, fundamental rights and the rule of law.

39. The Committee takes due note of the Governing Body's Resolution adopted at its 344th Session [6] in which it urged the Russian Federation to meet all the obligations following from its ratification of ILO Conventions, including: the Maritime Labour Convention, 2006, as amended (MLC, 2006), in particular in relation to the repatriation of seafarers and access to medical care; the Radiation Protection Convention, 1960 (No. 115), in relation to the exposure of workers to ionizing radiations in the course of their work; and the Forced Labour Convention, 1930 (No. 29) and its accompanying Protocol of 2014. It also notes that the Governing Body encouraged the ILO Director-General to continue to monitor and take appropriate steps to safeguard the labour rights of workers and support the sustainability of enterprises in Ukraine, including in areas that are temporarily controlled by the Russian Federation, and including in nuclear power plants. [7] The Committee undertakes to follow up on this Resolution within the framework of its mandate. It recalls that the obligations arising from freely ratified standards must be observed on all sides and at all times and expresses the hope that conditions to do so in the spirit of cooperation envisaged by all standards will very soon be restored.

Freedom of association and collective bargaining

40. Freedom of association and collective bargaining, as enabling rights for the exercise of fundamental rights at work leading to a fairer distribution of wealth, face significant challenges across the world, at the same time as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) remain less ratified than the six other Conventions proclaimed as fundamental in 1998.

41. The Committee takes due note of the double special paragraph for continued failure to implement Convention No. 87 inserted in the report of the Conference Committee on the Application of Standards with regard to Belarus, [8] drawing the International Labour Conference's attention to the seriousness of the violations and calling upon the Governing Body to examine measures under article 33 of the ILO Constitution for failure to implement the recommendations of a Commission of Inquiry. The Committee notes that the Governing Body [9] will examine in March 2023 (347th Session) measures under article 33 of the ILO Constitution to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry in the light, inter alia, of the Committee's examination of this matter at its current session. It also notes that

[5] Application of International Labour Standards in times of crisis: the importance of international labour standards and effective and authoritative supervision in the context of the COVID-19 pandemic. Report III(A), International Labour Conference, 109th Session, Geneva, 2021, para. 51.

[6] GB.344/Resolution, Governing Body, 344th Session (March 2022) and GB.346/INS/14, Governing Body, 346th Session (October–November 2022).

[7] GB.346/INS/14/Decision, Governing Body, 346th Session (October–November 2022).

[8] *Records of Proceedings* Nos 4A and 4B, 110th Session of the International Labour Conference, 2022.

[9] GB.346/INS/14/Decision, Governing Body, 346th Session (October–November 2022).

the 111th Session of the International Labour Conference (2023) will further examine this matter. [10]

42. Furthermore, the Committee takes due note of the Governing Body's decision at its 344th and 345th Sessions (March and June 2022) to establish a Commission of Inquiry and appoint Commissioners under article 26 of the ILO Constitution with regard to the application of Conventions Nos 29 and 87 in Myanmar. The Committee stands ready to follow up on the Commission of Inquiry's report and recommendations as appropriate.

43. More generally, when it comes to freedom of association and civil liberties in times of crisis, the Committee recalls its long-standing statement according to which crisis situations cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity and on condition that any measures affecting their application are limited in scope and duration to what is strictly necessary to deal with the situation in question. [11] The Committee has consistently recalled, in the context of an economic crisis, the importance, as also highlighted by the CFA, of maintaining permanent and intensive dialogue with the most representative workers' and employers' organizations in particular in the process of adopting legislation, which may have an effect on workers' rights, including those intended to alleviate a serious crisis situation. [12]

44. The Committee takes note that, as indicated in the 2022 Social Dialogue Flagship Report, [13] collective bargaining has played an important role during the COVID-19 pandemic in securing decent work, guaranteeing equality of opportunity and treatment, reducing wage inequality and stabilizing labour relations. The 2022–23 Global Wage Report confirms that collective bargaining can help to achieve adequate wage adjustments during a crisis. [14]

45. The Committee emphasizes the key role of collective bargaining as a unique empowerment tool to ensure that the social partners actively participate in shaping inclusive and tailor-made solutions to the problems faced in times of crises. It notes, in this regard, the very uneven levels of collective bargaining coverage across countries highlighted in the 2022 Social Dialogue Flagship Report and underlines the importance of creating the conditions for a broader access to this fundamental right across ILO Member States.

Occupational safety and health

46. The Committee welcomes the historical decision by the 110th Session of the International Labour Conference (2022) to bring a safe and healthy working environment within the framework of fundamental principles and right at work by amending the 1998 Declaration on Fundamental Principles and Rights at Work and proclaiming two additional fundamental Conventions, namely, the Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). In the aftermath of the COVID-19 pandemic and on the eve of the adoption by the UN General Assembly of a resolution recognizing a clean, healthy and sustainable environment as a universal human right, the recent amendment to the 1998 Declaration confirms that the ILO has the normative compass to guide its constituents in navigating the defining challenges of our time. The inclusion of a safe and healthy work

[10] GB.345/INS/3/Decision, Governing Body, 345th Session (June 2022).

[11] ILO, General Survey on Freedom of Association and Collective Bargaining, 1994, para. 41.

[12] *Compilation of decisions of the Committee on Freedom of Association*, ILO, Geneva, 2018, paras 1437 and 1546.

[13] *Social Dialogue Report 2022: Collective Bargaining for an Inclusive, Sustainable and Resilient Recovery*, ILO, Geneva, 2022, p. 15.

[14] *Global Wage Report 2022–23: The Impact of COVID-19 and Inflation on Wages and Purchasing Power*, ILO, Geneva, 2022, p. 116.

environment in the fundamental principles and rights at work framework confirms once again that labour rights are human rights.

47. The Committee notes three new ratifications of these fundamental Conventions in 2022, as well as the significant number of countries that have expressed interest in ratifying these standards in the near future. It welcomes notable progress with respect to the implementation of both Convention No. 155 and No. 187, including the adoption of national occupational safety and health (OSH) policies in consultation with the social partners, the implementation of national OSH programmes resulting in a decrease in occupational accidents, and notable steps to reinforce OSH legislation. This has been accompanied by important legislative developments to implement the technical OSH Conventions related to asbestos, major hazard installations and radiation.

48. Despite these positive developments, challenges in the implementation of these fundamental Conventions remain, exacerbated by protracted crises, with certain countries reporting a growing number of occupational accidents and diseases, inactivity of national tripartite OSH consultative bodies, as well as allegations related to retaliation against workers for exercising their fundamental rights by reporting OSH issues.

Child labour and forced labour

49. The Committee is concerned to note the reversal in the fight against child labour due to the consequences of the protracted crises and myriad shocks – both natural and human-made – to which vulnerable populations, especially children, have been subjected in recent years. It welcomes the Durban Call to Action adopted at the 5th Global Conference on the Elimination of Child Labour which took place for the first time in Africa in May 2022 and joins the call for a rapid acceleration of progress on ending child labour.

50. Similarly, the Committee is alarmed by the latest Global Estimates of Modern Slavery [15] released in September 2022, according to which 28 million people were in forced labour in 2021 and another 22 million women and girls trapped in forced marriage. According to data released for the first time in the Global Estimates, state-imposed forced labour accounts for 14 per cent of forced labour estimates. The report shows a disconcerting increase in the last five years as in 2021, 10 million more people were estimated to be in modern slavery compared to 2016, and this, despite the high ratification rate of the fundamental Conventions on forced labour and child labour.

Equality and non-discrimination

51. The Committee is concerned that gender inequalities remain persistent and pervasive, as manifested in the gender pay gap and the prevalence of both vertical and horizonal occupational segregation. As highlighted in this year's General Survey on achieving gender equality at work, full equality between women and men at work cannot be achieved in a broader context of inequality. Gender equality is a fundamental component of decent work and social justice, anchored in both a rights-based and an economic efficiency approach to sustainable and inclusive development. As illustrated in the General Survey, the COVID-19 crisis exacerbated pre-existing gender inequalities and reversed previous gains, as many girls and women were forced to leave education, training and the labour market in order to shoulder most of the burden of unpaid care and domestic work. Women continue to be disproportionately represented in the hardest hit service sectors including the informal paid care economy and domestic work. While these developments impede the application of several standards including the Equal Remuneration

[15] Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, ILO, Geneva, 2022.

Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), they also have negative consequences for economic recovery.

52. Inequalities are more pronounced when multiple grounds of discrimination intersect. Women migrant domestic workers as well as indigenous women, women members of minorities and women with disabilities are particularly hard hit for example. More generally, the prolonged and interlocking crises have had a disproportionate effect on those who are vulnerable to discrimination on multiple or intersecting grounds covered by Convention No. 111, including race, colour, sex, religion, political opinion, national extraction or social origin and other ILO instruments, including Convention No. 159 and the HIV and AIDS Recommendation, 2010 (No. 200), as well as related human rights treaties. [16]

53. The Committee reiterates from its latest report (2022) its concern that "20 years after the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, people of African descent, minority communities, indigenous peoples, migrants, refugees, and displaced persons continue to confront stigmatization, discrimination and violence. Reversing their vulnerability and marginalization, exacerbated where different grounds of discrimination intersect, requires specific emphasis on repealing all discriminatory laws, including laws giving rise to discrimination in employment and occupation, as proposed in the UNSG Call to Action for Human Rights and the Common Agenda."[17]

54. The COVID-19 pandemic also led to a worrisome increase in violence and harassment, including on the basis of gender. The Committee welcomes in this regard that the examination of first reports on the application of the Violence and Harassment Convention, 2019 (No. 190) commenced at its current session following the entry into force of this important Convention.

Employment policies

55. The COVID-19 pandemic and ensuing jobs crisis had a devastating effect on economies and employment around the world, albeit with notable variations across regions, countries and economic sectors. Moreover, the crisis affected women and men differently, as a result of their different positions in the labour market and the distribution of family responsibilities. Persons belonging to disadvantaged groups who were already vulnerable to socio-economic shocks were hit the hardest, due to a number of factors. First, these workers are more likely to be concentrated in poorly remunerated jobs in the economic sectors most affected by the pandemic, such as in the care economy and the service sector more broadly. Second, they are more likely to be in informal and precarious employment, often working under part-time, temporary or casual arrangements, making them extremely vulnerable to job loss.

56. The COVID-19 crisis was particularly devastating for 2 billion workers in the informal economy who represent more than 60 per cent of the global workforce and are twice as likely to be living in poverty than formally employed workers. Given their precarious status, such workers often lack access to employment-related benefits, such as health and unemployment insurance, disability benefits and social security. Workers in the informal economy face the most serious decent work deficits, including higher exposure to OSH risks, as well as obstacles to freedom of association and the effective recognition of the right to collective bargaining. [18]

57. The Committee recalls that the development and implementation of a new generation of comprehensive, gender-responsive, inclusive and evidence-informed employment policies and

[16] GB.346/INS/5, paras 8 and 9, Governing Body, 346th Session (October–November 2022).

[17] Report III(A), ILC, 110th Session, 2022, General Report, para. 35.

[18] GB.346/INS/5, paras 9 and 17, Governing Body, 346th Session (October–November 2022).

programmes that take into account the principles of international labour standards can help to ensure a sustainable job-rich recovery from crisis. [19] Creating or restoring an enabling environment for sustainable enterprises, in particular for micro-, small and medium-sized enterprises, is also a crucial factor to stimulate employment, income generation, entrepreneurship and socio- economic recovery.

58. The Committee would like to emphasize that all workers, irrespective of employment status or sector of economic activity, fall within the scope of international labour standards except where they are explicitly excluded.

59. In this regard, the Committee welcomes the Governing Body decision to finalize an ILO strategy on decent work in supply chains for consideration at its March 2023 session and its call for a stronger link and exchange of information between the work of the supervisory mechanisms and the technical assistance and research work of the Office in order to truly benefit from the unique features of the ILO, including international labour standards and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, in the context of its action in the domain of supply chains. [20]

Social protection

60. Over the past few years, the fundamental role of social protection has been reaffirmed as the centrepiece of strategies to mitigate the impact of crises and facilitate just transitions, including to an environmentally sustainable economy, with a view to ensuring that all members of society have access to income protection and healthcare when in need, in particular the most vulnerable. According to the social protection monitor, the recent crises have resulted in a significant expansion of social protection measures, at least among countries that had fiscal space to introduce them, which the Committee has noted positively in individual comments. The Committee is concerned, however, that the most recent cost-of-living crisis might mark a reversal in this trend as it is likely to affect the fiscal space within which support is provided, at a time when support is needed the most. Moreover, the Committee is concerned that, in the context of interlocking crises, food, fuel and medication shortages prevent access to essential goods and services and to essential healthcare.

61. Against this background, the Committee welcomes the launch of the ILO campaign for the ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102) and of other up-to-date social security Conventions, which seeks to further the implementation of these standards which are central to the pursuit of universal social protection globally.

62. The Committee also notes that this year's General Survey entitled *Achieving Gender Equality at Work* also looks into the various social protection measures that the ILO standards under review call for in order to achieve true and meaningful equality between men and women in the workplace, especially the measures adopted by Member States to secure the protection of workers with family responsibilities and in case of maternity.

63. The Committee welcomes the Governing Body's decision [21] to have a General Survey in 2024 on selected social security instruments focusing on employment injury benefits, including with

[19] 2020 General Survey on promoting employment and decent work in a changing landscape; and 2021 Addendum, Report III (Part B), ILC, 109th Session, 2021; General observation on the application of the Employment Policy Convention, 1964 (No. 122) adopted by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) at its 91st Session (Nov.–Dec. 2020).

[20] GB.346/INS/6(Rev.1), Governing Body, 346th Session (October–November 2022).

[21] GB.346/LILS/2/Decision, Governing Body, 346th Session (October–November 2022).

respect to workers in agriculture. It also welcomes the Governing Body's parallel invitation to seek information from Member States on the application, in law and practice, of Conventions Nos 102 (Part VI) and 121 in respect of employment injury benefits to agricultural workers and intends to consider this question in the framework of its 2025 General Survey. Finally, given the undeniable links between the social protection of workers in agriculture and the triple planetary crisis generated by climate change, biodiversity loss and pollution, the Committee takes note of the upcoming general discussion on a just transition to a zero-carbon economy at the 111th Session of the International Labour Conference (2023) and looks forward to its outcome.

64. In this context, the Committee takes note of the UN Secretary-General's initiative to entrust to the ILO the leadership of a Global Accelerator for Jobs and Social Protection for Just Transition in 2021 – an initiative that could become one of the central programmatic avenues for the promotion of universal social protection under a Global Coalition for Social Justice.

Working conditions

65. Concerning working-time issues, the Committee is concerned that the issues identified in its 2018 General Survey on working time instruments persist and have worsened over the last five years under the influence of protracted and interlocking crises. It notes that, in some countries, flexible working-time arrangements were introduced in the midst of the pandemic without providing for clear statutory weekly and daily limits to total working hours, nor specifying the circumstances for resorting to overtime. Such flexible working-time arrangements include averaging systems with reference periods as long as one year and very high maximum daily hours of work. These arrangements potentially lead to long working hours, which are detrimental to mental and physical health as well as work–life balance. The Committee is concerned that lack of compensatory time off in case of work during weekly rest is also common in a number of countries. Moreover, practices have been reported such as non-payment for overtime and long periods of mandatory annual leave during the COVID-19 pandemic which were subsequently discounted from the following year's annual holidays with paid entitlements.

66. The Committee notes that the 2022–23 Global Wage Report estimates at six weeks of wages the average losses suffered by wage employees due to the COVID-19 crisis. It also identifies a growing gap between wages and productivity emerging since the early 1980s, as average wage growth has lagged behind average labour productivity growth in several large, developed economies. In 52 high-income countries for which data are available, real wage growth has been lower than productivity growth since 2000, and reached its widest point in 2022, in the midst of protracted and interlocking crises, with productivity growth 12.6 percentage points above wage growth. Rising inflation and cost of living have resulted in real wage growth dipping into negative figures in many countries, hitting low-income groups particularly hard. The report warns that in the absence of adequate policy responses, the near future could see a sharp erosion of the real incomes of workers and their families and an increase in inequality, threatening the economic recovery and possibly fuelling further social unrest. In this context, the Committee underlines the importance of setting robust minimum wage setting frameworks allowing for effective consultations with the social partners as provided in the Minimum Wage Fixing Convention, 1970 (No. 131) and ensuring that wages are paid in time and in full in order to sustain incomes in times of crises, in line with the Protection of Wages Convention, 1949 (No. 95).

Labour administration

67. The importance of labour administrations in ensuring an effective governance on labour matters became particularly evident during the COVID-19 pandemic. Labour administrations play a central

role in addressing inequalities in the world of work and in creating the enabling legal and policy framework to achieve social justice through decent work.

68. In this regard, the Committee welcomes the Governing's Body decision, [22] in November 2021, to have a General Survey on the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978, and invites governments, employers' and workers' organizations to provide information for the preparation of the General Survey. The General Survey will be an opportunity to provide a comprehensive overview of the impact of the COVID-19 crisis on national systems of labour administration across the world and illustrate the central role they have played in managing the immediate response to the crisis and in planning and implementing the longer-term recovery, in consultation with the social partners. The Committee also notes that the General Survey on labour administration will constitute a concrete follow-up to the Global Call to Action for a Human-centred Recovery from the COVID-19 crisis and an opportunity to take stock of and help to strengthen the capacity of public administrations and employers' and workers' organizations to participate in social dialogue as the means to develop and implement regional, national, sectoral and local recovery strategies, policies and programmes.

Labour inspection

69. As a core function of labour administration, labour inspection systems play an important role in the implementation of national labour policies, and in the provision of information and advice to employers and workers on applicable labour legislation, as well as in securing its enforcement. The COVID-19 pandemic raised awareness on the importance of compliance with labour laws, including OSH standards, for achieving decent work. However, policies to reduce public spending have in many cases affected the resources allocated to labour inspectorates. This year the Committee notes that, in a number of countries, there has been a decrease in the number of labour inspectors and in the material means allocated to labour inspectorates. In some countries, restrictions on public spending affected the conditions of service of labour inspectors, leading to temporary appointments of inspectors or delaying the adoption of regulations ensuring their stability of employment.

70. In addition, the Committee notes that while restrictions to on-site visits introduced during the pandemic have mostly been lifted, in certain cases, they resulted in a backlog of complaints and delays in their examination. On the other hand, the increased use of information technology tools due to restrictions on the ability to be physically present in workplaces, allowed for significant improvements with respect to the capacity of inspectorates to collect, analyse and publish data.

71. The Committee also notes the challenges faced by labour inspectors in ensuring the enforcement of legal provisions in a changing world of work. Rising job insecurity, increased stress at work, greater risk of harassment and violence at work, growth in the informal economy and changes to migration patterns are some of the issues that labour inspectors are confronted with in performing their duties.

72. The Committee reaffirms that labour inspection is a vital public function at the core of promoting and enforcing decent working conditions and respect for fundamental principles and rights at work, thereby contributing significantly to social cohesion. Labour inspectorates are instrumental in ensuring the respect of the rule of law and equal access to justice for all.

[22] GB.343/LILS/2/Decision, Governing Body, 343rd Session (November 2021).

Seafarers and fishers

73. The Committee has noted with deep concern the challenges and the impact that measures adopted by governments around the world to contain the spread of the COVID-19 pandemic has had on the protection of seafarers' and fishers' rights as enshrined in the Maritime Labour Convention, 2006, as amended (MLC, 2006) and the Work in Fishing Convention, 2007 (No. 188). As several of such restrictions continue to jeopardize seafarers' rights to shore leave and access to medical care, the Committee has continued to request ratifying countries to ensure that any remaining restrictions are lifted in order to guarantee full compliance with the MLC, 2006. In this regard, the Committee has indicated that it is precisely at times of crisis that the protective coverage of the MLC, 2006, assumes its full significance and needs to be most scrupulously applied. This is even more so as the Convention contains only minimum standards for the protection of seafarers' rights.

74. In this regard, the Committee acknowledges all the efforts of the Office to support the maritime industry during the pandemic, as recognized and reflected in the conclusions of the independent high-level evaluation of the ILO's response to the pandemic. [23] The evaluation highlights that the ILO's interventions to reinforce international labour standards, in collaboration with the tripartite partners and UN agencies, had a significant impact on immediate and longer-term protection of seafarers. The report recalls that the seafarers' situation was the focus of a general observation of the Committee in its December 2020 session which expressed in strong terms that Member States have breached their obligations in denying seafarers their rights to access medical attention and disembarkation rights. This general observation was welcomed by the industry and widely quoted in the press. The Committee notes that interviewed stakeholders of the Special Tripartite Committee of the MLC, 2006 (STC) were unanimously impressed with how quickly and flexibly the ILO responded to the sudden needs, through the adaptation of the supervisory mechanisms of international labour standards, convening consultative processes, and direct international facilitation efforts at the request of the social partners.

75. The current situation in Ukraine since 24 February 2022 has created new dire circumstances for seafarers. The Committee notes that 10 months after of the beginning of the crisis, 65 ships flying the flags of more than 20 countries with around 315 seafarers on board are still stranded in Ukrainian ports, unable to depart safely. Seafarers working on board ships under the Black Sea Grain Initiative are risking their lives by sailing in mined waters thereby contributing to stave off famine and stabilize food prices. The Committee acknowledges their courage and underlines the fundamental importance of preserving seafarers' rights as enshrined in the MLC, 2006.

Looking ahead: A hopeful message

76. The launching of a Global Coalition for Social Justice constitutes a message of hope for the women and men facing stark realities in times of crisis. Placing emphasis on those at risk of being left behind, the Committee will continue to monitor developments in the application of international labour standards in order to prevent and mitigate regression in the full respect of labour rights in this context. The guidance provided through the ILO supervisory machinery, which impartially monitors the fulfilment of international commitments, ensuring accountability and assessing progress with the benefit of social partner input, is crucial for all countries faced with or anticipating crises in their diverse and interlocking forms.

[23] ILO, High-level independent evaluation of ILO's COVID-19 response (2020–22), Geneva, 2022, table 8, pp. 107 and 108 (in English only).

77. The most vulnerable include not only population groups within countries, but also the least developed countries (LDCs) among others. The Committee welcomes the ILO strategy to engage in stronger multilateral coordination and cooperation, including with international financial institutions and other relevant organizations, through the Global Coalition for Social Justice. It appeals to international solidarity with a view to placing trade relations, investment incentives and development partnerships, solidly founded on respect for labour rights as human rights, at the heart of policies promoting recovery and shared prosperity, notably when it comes to LDCs. It recalls that, as emphasized in the Committee's 2020 report, in the context of the COVID-19 pandemic, "every effort should be made to prevent a downward spiral in labour conditions and pursue a virtuous cycle of recovery and development with the support of the Office and development partners fully respecting rights at work." [24]

78. The Committee trusts that the quest for a new social contract through a Global Coalition for Social Justice will rely on international labour standards and their supervision as a compass out of protracted and interlocking crises and towards sustainable development in an open global economy. It expresses the firm hope that the Coalition will mobilize a wide range of partnerships leading to concrete progress in the effective exercise of labour rights at country level. The Committee trusts that it will be able to observe such progress in the near future through its regular supervision of the application of international labour standards.

[24] Report III (Part A), ILC, 109th Session, 2021, General Report, para. 49.

II. Compliance with standards-related obligations

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

79. The Committee's principal task consists of the examination of the reports supplied by governments on Conventions that have been ratified by Member States (article 22 of the Constitution) and that have been declared applicable to non-metropolitan territories (article 35 of the Constitution).

Reporting arrangements

80. In accordance with the decision taken by the Governing Body at its 258th Session (November 1993), the reports due on ratified Conventions should be sent to the Office between **1 June and 1 September** of each year.

81. The Committee recalls that detailed reports should be sent in the case of first reports (a first report is due after ratification) or when specifically requested by the Committee of Experts or the Conference Committee. In all other cases, simplified reports are requested on a regular basis. [25]

82. The Committee also recalls that, at its 306th Session (November 2009), the Governing Body decided to increase from two to three years the regular reporting cycle for the fundamental and governance Conventions. At its 334th Session (October–November 2018) the Governing Body decided to increase the reporting cycle from five to six years for all other Conventions. In certain cases, reports may be requested outside of the regular reporting cycle. [26]

Compliance with reporting obligations

83. This year a total of 2,103 reports (1,915 reports under article 22 of the Constitution and 188 reports under article 35 of the Constitution) were requested from governments on the application of Conventions ratified by Member States, compared to 2,008 reports last year. At the end of the present session of the Committee, 1,490 reports were received by the Office, corresponding to

[25] In 1993, a distinction was made between detailed and simplified reports. As explained in the report forms, in the case of simplified reports, information need normally be given only on the following points: (a) any new legislative or other measures affecting the application of the Convention; (b) replies to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations; and (c) replies to comments by the supervisory bodies. At its 334th Session, the Governing Body adopted a new report form to facilitate reporting by governments when they are expected to provide simplified reports (GB.334/INS/5).

[26] There are several ways in which a report can be requested outside of the regular reporting cycle: (i) the Committee can place a special request in a footnote at the end of a comment for a report to be sent earlier than the year it is due according to the reporting cycle (see General Report, para. 112); (ii) an "automatic" request is sent when the government has failed to send a report in the framework of the regular reporting cycle or the report sent did not contain an answer to the Committee's comments. If a government has failed to send a report for a number of years, the case is singled out in Part II (section I) of this report and examined every year by the Conference Committee during its discussion on serious failures to fulfil reporting obligations; (iii) the Conference Committee can ask a government to submit a report to the Committee of Experts outside of the reporting cycle following the examination of an individual case and when it discusses the cases of serious failure to report; (iv) the Governing Body may ask a government to send a report to the Committee of Experts outside of the reporting cycle based on the recommendations of tripartite committees established to examine representations under article 24 of the ILO Constitution or the recommendations of Commissions of Inquiry established to examine complaints under article 26 of the ILO Constitution.

70.9 per cent of the reports requested. [27] Last year, the Office received a total of 1,357 reports, representing 67.6 per cent of reports requested. The Committee notes in particular that 45 of the 67 first reports due on the application of ratified Conventions were received by the time the Committee's session ended (last year, 65 of the 111 first reports due had been received).

84. The Committee observes that the levels of reports received after the due date of 1 September remained the same as last year. In particular, 862 reports were received by the due date of 1 September this year, representing 41.0 per cent of reports requested, compared with 841 reports received at the previous session, representing 41.9 per cent of reports requested. Out of 2,103 reports due this year, 1,241 (59.0 per cent) were received after the deadline. The Committee wishes to recall that late submission of reports disturbs the sound operation of the supervisory mechanism as the examination of a number of reports received after the deadline might be deferred due to their late arrival. The examination of some of these reports in subsequent Committee sessions prevents the experts from fully focusing on the specific thematic areas due for discussion each year and also prevents governments and the social partners from obtaining timely feedback on their reports.

85. The Committee would like to express its appreciation to the Member States which made special efforts to ensure compliance with their reporting obligations. ***It asks all Member States to make every effort to send the reports due under articles 19, 22 and 35 of the ILO Constitution, to do so within the deadlines and to submit complete answers to the Committee's requests so as to allow for a thorough examination by the Committee.***

86. The Committee recalls that ILO technical assistance is available to help Member States comply with their constitutional obligations and asks the Office to provide every support in this regard. It urges those Member States who have received Office assistance to make special efforts to ensure timely submission of their reports.

87. When examining the failure by Member States to respect their reporting obligations, the Committee adopts "general" comments (contained at the beginning of Part II (section I) of this report). It makes general observations when none of the reports due have been sent for two or more years; or when a first report has not been sent for two or more years. It makes a general direct request when, in the current year, a country has not sent the reports due, or the majority of reports due; or it has not sent a first report due.

88. Furthermore, as of 2017 the Committee gradually introduced a practice of urgent appeals according to which it may examine how a Convention is implemented in a ratifying country on the basis of information at its disposal if the Government has failed to submit a first report after ratification. As of 2018, the practice of urgent appeals was extended to all reports for which comments were pending for more than three years. In 2020, the Committee issued for the first time urgent appeals in repetitions of previous comments with an introductory text [28] informing the government that if no report is supplied in time for examination by the Committee at its next session, then the Committee may proceed with the examination of the application of the Convention on the basis of information at its disposal.

[27] Appendix I to this Report provides an indication by country of whether the reports requested (under articles 22 and 35 of the Constitution) have been registered or not by the end of the meeting of the Committee. Appendix II shows, for the reports requested under article 22 of the Constitution, for each year since 1932, the number and percentage of reports received by the prescribed date, by the date of the meeting of the Committee of Experts and by the date of the session of the International Labour Conference.

[28] The introductory text ("chapeau") now reads: The Committee notes with ***deep concern*** that the Government's report has not been received. It expects that the next report will contain full information on the matters raised in its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

89. This year, the Committee examined the following cases in the absence of a government report following an urgent appeal.

List of cases in which the application of ratified Conventions was examined at the Committee's session following an urgent appeal and in the absence of a report	
State	**Conventions Nos**
Afghanistan	100 and 111
Albania	MLC, 2006
Barbados	100 and 111
Congo	100, 105, 111 and 188
Grenada	100 and 111
Lebanon	29, 81, 100, 105, 111 and 150
Somalia	29
Uganda	105*

* A report was received that did not contain a response to the previous comments.

90. Based on the information provided in the "general" comments (Part II, section I of the report), none of the reports due have been sent for the past two or more years from the following 16 countries: **Afghanistan, Antigua and Barbuda, Chad, Comoros, Dominica, Gabon, Haiti, Lebanon, Saint Lucia, Slovenia, Somalia, Syrian Arab Republic, Timor-Leste, Tuvalu, Vanuatu** and **Yemen.** ***The Committee urges the Governments concerned to make every effort to supply the reports requested on ratified Conventions.***

91. Moreover, the Committee launches an urgent appeal to the Member States that have failed to submit a report for more than three years, drawing their attention to the fact that if the reports due are not received in time for examination by the Committee at its next session, it may proceed to examine the application of the Conventions concerned on the basis of public information at its disposal. This year, the Committee launches an urgent appeal in its repetitions of previous comments to which a reply has not been received, requesting the following countries to submit a report with replies to the Committee's comments at its next session:

Urgent appeals launched in repetitions of pending comments	
State	**Conventions Nos**
Afghanistan	140, 141, 142 and 144
Antigua and Barbuda	87, 135, 144 and 151
Barbados	87, 105, 122, 135 and 144
Belize	140 and 144
Chad	87, 105, 138 and 182
Congo	98, 144 and 149
Dominica	87, 94, 144 and 147
Equatorial Guinea	68/92, 87, 98 and 100
Grenada	105, 138, 144 and 182
Haiti	1/14/30/106
Kiribati	MLC, 2006

Urgent appeals launched in repetitions of pending comments	
State	**Conventions Nos**
Lebanon	88, 122, 138, 142, 159, 172 and 182
Papua New Guinea	29, 98, 122 and 158
Saint Lucia	87, 98, 108 and 158
South Sudan	98, 105, 138 and 182
Syrian Arab Republic	29, 105, 138 and 182
Tajikistan	103, 105 and 149
Tuvalu	MLC, 2006
Uganda	26/95, 94, 138 and 182
Vanuatu	182

92. In addition, the Committee launches an urgent appeal to the following governments to submit reports due for more than three years, in the absence of any pending comments and draws to their attention that if the reports due are not received in time for examination by the Committee at its next session, it may proceed to examine the application of the Conventions concerned on the basis of public information at its disposal.

Urgent appeals for reports on which no comments are pending	
State	**Conventions Nos**
Albania	185
Antigua and Barbuda	11, 98 and 154
Barbados	172
Dominica	11, 22, 98 and 108
Haiti	45, 90, 105 and 107
Jordan	142
Kiribati	111
Lao People's Democratic Republic	6
Lesotho	135
Saint Lucia	11, 12, 94, 97 and 105
Somalia	17, 19, 22, 23, 45, 84, 85, 94, 95, 105 and 111
Tajikistan	124
Vanuatu	29, 105 and 185
Yemen	19, 58, 81 and 185

93. In relation to first reports, the Committee notes that **9** countries have failed to supply a first report for two or more years:

State	Conventions Nos
Cook Islands	– Since 2021: MLC, 2006
Grenada	– Since 2021: MLC, 2006 and Convention No. 189
Lebanon	– Since 2021: MLC, 2006
Marshall Islands	– Since 2021: Convention No. 182
North Macedonia	– Since 2021: Conventions Nos 141 and 171
Sudan	– Since 2021: MLC, 2006
Tuvalu	– Since 2021: Convention No. 182
United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas))	– Since 2021: MLC, 2006
Vanuatu	– Since 2021: Convention No. 138

94. The Committee urges the governments concerned to make a special effort to supply the first reports due. The Committee, like the Conference Committee, emphasizes the particular importance of first reports, which provide the basis on which the Committee makes its initial assessment of the application of the specific Conventions concerned. The Committee is aware that, where no reports have been sent for some time, it is likely that administrative or other problems are at the origin of the difficulties encountered by governments in fulfilling their constitutional obligations. The COVID-19 pandemic and parallel interlocking crises have been additional factors aggravating such difficulties.

95. The Committee would like to express its appreciation to the governments which submitted three first reports this year following an urgent appeal. [29] It recalls the importance for governments to request assistance from the Office, and for such assistance to be provided rapidly, for the preparation of first reports.

96. The Committee is pleased to note that this year, all countries provided information concerning communication of reports to workers' and employers' organizations in all or the majority of their reports, thereby enabling representative organizations of employers and workers to participate fully in the supervision of the application of international labour standards in accordance with the tripartite nature of the ILO.

Replies to the comments of the Committee

97. Governments are requested to reply in their reports to the observations and direct requests made by the Committee.

98. This year, no information has been received as regards all or most of the observations and direct requests of the Committee to which a reply was requested for the following countries: **Afghanistan, Albania, Antigua and Barbuda, Argentina, Barbados, Burundi, Central African Republic, Chad, Comoros, Congo, Croatia, Dominica, El Salvador, Equatorial Guinea, Gabon, Grenada, Guyana, Haiti, Iraq, Kenya, Lao Peoples' Democratic Republic, Lebanon, Liberia, Libya, Malta, Mongolia, Montenegro, Netherlands (Aruba), North Macedonia, Papua New**

[29] Guinea (Convention No. 167), Sao Tome and Principe (Convention No. 183) and Tunisia (MLC, 2006).

Guinea, Romania, Saint Lucia, Samoa, Sao Tome and Principe, Singapore, Slovenia, Somalia, South Sudan, Syrian Arab Republic, Tajikistan, Timor-Leste, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland (Falkland Islands (Malvinas), Guernsey and Jersey), Vanuatu and **Yemen.**

99. The Committee notes with ***concern*** that the number of comments to which replies have not been received remains significantly high. The Committee underlines that the value attached by ILO constituents to the dialogue with the supervisory bodies on the application of ratified Conventions is considerably diminished by the failure of governments to fulfil their obligations in this respect. ***The Committee urges the countries concerned to provide all the information requested and recalls that they may avail themselves of the technical assistance of the Office in this regard.***

Follow-up to cases of serious failure by Member States to fulfil reporting obligations mentioned in the report of the Committee on the Application of Standards

100. As the functioning of the supervisory system is based primarily on the information provided by governments in their reports, both the Committee and the Conference Committee considered that failure by Member States to fulfil their obligations in this respect has to be given the same level of attention as non-compliance relating to the application of ratified Conventions. The two Committees have therefore decided to strengthen, with the assistance of the Office, the follow-up given to these cases of failure.

101. The Committee welcomes the fruitful collaboration that it maintains with the Conference Committee on this matter of mutual interest which is essential to the proper discharge of their respective tasks. It asks the Office to maintain the sustained technical assistance that it has been providing to Member States in this respect.

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

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

103. The Committee wishes to inform Member States that it examined all reports that were brought to its attention.

Observations and direct requests

104. First of all, the Committee considers that it is worthy of note that in 268 cases it has found, following examination of the corresponding reports, that no further comment was called for regarding the manner in which a ratified Convention had been implemented.

105. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form of either “observations”, which are reproduced in the

report of the Committee, or "direct requests", which are not published in the Committee's report, but are communicated directly to the governments concerned and are available online. [30]

106. Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They point to important discrepancies between the obligations under a Convention and the related law and/or practice of Member States. They may address the absence of measures to give effect to a Convention or to take appropriate action following the Committee's requests. They may also highlight progress, as appropriate. Direct requests allow the Committee to be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature. They can also be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which the obligations are fulfilled. Direct requests are also used to examine the first reports supplied by governments on the application of Conventions.

107. This year, the Committee made 656 observations and 1,263 direct requests. The Committee's observations appear in Part II of this report, together with, for each subject, a list of direct requests. An index of all observations and direct requests, classified by country, is provided in Appendix VII to the report.

Follow-up to the conclusions of the Committee on the Application of Standards

108. The Committee examines the follow-up to the conclusions of the Committee on the Application of Standards as this information forms an integral part of the Committee's dialogue with the governments concerned. This year, the Committee has examined the follow-up to the conclusions adopted by the Committee on the Application of Standards during the last session of the International Labour Conference (110th Session, May–June 2022) in the following cases:

List of cases in which the Committee has examined the **follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)**

State	Conventions Nos	Page
Azerbaijan	105	349
Belarus	87	114
Benin	182	427
Central African Republic	182	446
China	111	604
Ecuador	87	128
El Salvador	144	700
Fiji	105	376
Guatemala	87	143
Hungary	98	152
Iraq	98	159
Kazakhstan	87	171

[30] Observations and direct requests are accessible through the NORMLEX database, on the ILO website (www.ilo.org/normes).

List of cases in which the Committee has examined the **follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)**		
State	Conventions Nos	Page
Liberia	87	177
Malawi	111	640
Malaysia	98	183
Netherlands – Sint Maarten	87	192
Nicaragua	87	193
Nigeria	26/95	854
Solomon Islands	182	559

Follow-up of representations under article 24 of the Constitution and complaints under article 26 of the Constitution

109. In accordance with the established practice, the Committee also examines the measures taken by governments pursuant to the recommendations of tripartite committees (set up to examine representations under article 24 of the Constitution) and commissions of inquiry (set up to examine complaints under article 26 of the Constitution). The corresponding information forms an integral part of the Committee's dialogue with the governments concerned. The Committee considers it useful to indicate more clearly the cases in which it follows up on the effect given to the recommendations made under these constitutional supervisory procedures, as indicated in the following tables.

List of cases in which the Committee has examined the **measures taken by governments to give effect to the recommendations of commissions of inquiry** (complaints under article 26)	
State	Conventions Nos
Belarus	87
Bolivarian Republic of Venezuela	26, 95, 87 and 144
Zimbabwe	87 and 98

List of cases in which the Committee has examined the **measures taken by governments to give effect to the recommendations of tripartite committees** (representations under article 24)	
State	Conventions Nos
France	158
Türkiye	87

110. In addition, the Committee examined measures taken by the Government of Bangladesh in the context of Governing Body discussions on an article 26 complaint concerning alleged non-

observance of Conventions Nos 81, 87 and 98 which has not yet led to the establishment of a Commission of Inquiry.

Follow-up given to legislative aspects referred by the Committee on Freedom of Association

111. In accordance with established practice, the Committee also examines the legislative aspects referred to it by the Committee on Freedom of Association. At the latter's request, the Committee decided to indicate these cases in the following table.

List of cases in which the Committee has examined the **follow-up given to legislative aspects referred to it by the Committee on Freedom of Association**

State	Conventions Nos	Page
Brazil	98	123
Jordan	98	165
Malaysia	98	183
Pakistan	87 and 98	199 and 206
Panama	87	208
Russian Federation	87	251
Türkiye	98	295

Special notes

112. As in the past, the Committee has indicated by special notes (traditionally known as "footnotes") at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has deemed it appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2023.

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

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

– the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers' health, safety and

well-being, as well as any adverse impact, including at the international level, on workers and other categories of protected persons;

- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

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

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

117. This year, the Committee has requested governments to supply full particulars to the Conference at its next session in 2023 in the following cases:

List of the cases in which the Committee has requested governments to **supply full particulars to the Conference** at its next session in June 2023	
State	Conventions Nos
Afghanistan	111
Nicaragua	87 and 111
Cambodia	105
Lebanon	29
Nigeria	182

118. In addition, the Committee has requested a full reply to its comments outside of the reporting cycle in the following cases:

List of the cases in which the Committee has requested a **full reply to its comments outside of the reporting cycle**	
State	Conventions Nos
Albania	MLC, 2006
Argentina	MLC, 2006
Bangladesh	81, 107 and MLC, 2006
Benin	143
Brazil	MLC, 2006
Cameroon	13/45/162 and 162
Chile	1/14/30 and 103
Colombia	81/129

List of the cases in which the Committee has requested a **full reply to its comments outside of the reporting cycle**	
State	Conventions Nos
Congo	188
Côte d'Ivoire	13/45/136/155/161/170/187
Ecuador	45/119/136/139/148/162, 103 and 115/148/162
Guatemala	87
Guyana	151
Jordan	98 and 135
Kyrgyzstan	81
Libya	103
Malawi	155/184/187
Marshall Islands	MLC, 2006
Netherlands	102/121/128/130 and 121
New Zealand	MLC, 2006
Nicaragua	12/17/18/19/24/25, 144 and MLC, 2006
Russian Federation	87
South Africa	87
Sudan	98
Tunisia	87
Türkiye	87 and 98
United Kingdom of Great Britain and Northern Ireland – British Virgin Islands	MLC, 2006
United Republic of Tanzania	MLC, 2006
Uzbekistan	87
Bolivarian Republic of Venezuela	13/45/120/127/139/155, 26/95 and 155
Zambia	87

Cases of progress

119. Following its examination of the reports supplied by governments, and in accordance with its standard practice, the Committee refers in its comments to cases in which it expresses its ***satisfaction*** or ***interest*** at the progress achieved in the application of the respective Conventions. The Committee wishes to emphasize that progress by Member States is a valuable aspect of its review under the supervisory system and is cognisant of the need to continue to address these matters in its Subcommittee on working methods.

120. At its 80th and 82nd Sessions (2009 and 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

(1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same

comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.

(2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measures adopted by the government concerned.**

(3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.

(4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.

(5) If the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up measures for its practical application.

(6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

121. Since first identifying cases of satisfaction in its report in 1964, [31] the Committee has continued to follow the same general criteria. The Committee expresses ***satisfaction*** in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

– to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and

– to provide an example to other governments and social partners which have to address similar issues.

122. Details concerning these cases of progress are found in Part II of this report and cover **34** instances in which measures of this kind have been taken in **26** countries. The full list is as follows:

List of the cases in which the Committee has been able to **express its satisfaction** at certain measures taken by the Governments of the following countries

State	Conventions Nos
Algeria	87
Australia	182
Bahrain	111
Brazil	81
Cambodia	138
Colombia	162/167/170/174
Djibouti	100
Eswatini	182

[31] Report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference, para. 16.

List of the cases in which the Committee has been able to **express its satisfaction** at certain measures taken by the Governments of the following countries	
State	Conventions Nos
Ethiopia	138
Guinea	138
Hungary	98
Kiribati	87
Liberia	105
Malawi	138 and 182
Malaysia	138 and 182
Mali	138
Mauritania	182
Nepal	182
Pakistan	87
Peru	98 and 151
Poland	98
Sao Tome and Principe	138
Spain	87 and 98
Togo	87 and 98
United Kingdom of Great Britain and Northern Ireland – Montserrat	87
Uzbekistan	100

123. Thus the total number of cases in which the Committee has been led to express its ***satisfaction*** at the progress achieved following its comments has risen to **3,195** since the Committee began listing them in its report.

124. Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979.[32] In general, cases of ***interest*** cover **measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;

[32] Report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference, para. 122.

- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a state, province or territory in the framework of a federal system.

125. Details concerning the cases in question are found either in Part II of this report or in the requests addressed directly to the governments concerned, and include **229** instances in which measures of this kind have been adopted in **103** countries. The full list is as follows:

List of the cases in which the Committee has been able to **note with interest** certain measures taken by the Governments of the following countries

State	Conventions Nos
Algeria	111 and 122
Angola	107 and 144
Argentina	29
Australia	29
Austria	122
Azerbaijan	122
Bahrain	111
Bangladesh	81, 111 and MLC, 2006
Belgium	111, 122 and 156
Belize	138
Benin	81
Bosnia and Herzegovina	111
Botswana	105
Brazil	29, 97, 111 and 182
Bulgaria	111, 122 and 156
Burkina Faso	122
Cabo Verde	17/19/102/118, 29, 144, 182 and MLC, 2006
Cambodia	122 and 182
Cameroon	13
Canada	122 and 138
Chile	63, 115, 122, 140 and 159
China	111 and 159
China – Hong Kong Special Administrative Region	3 and 122
China – Macau Special Administrative Region	88 and 122

List of the cases in which the Committee has been able to **note with interest** certain measures taken by the Governments of the following countries	
State	Conventions Nos
Colombia	13/162, 88 and 111
Cook Islands	144
Costa Rica	88, 111, 120/127/148, 156 and 159
Côte d'Ivoire	3, 155/187 and 159
Cuba	88
Cyprus	81, 122, 155/187 and 159
Czechia	88, 96, 122, 159 and 181
Denmark	111, 122 and 142
Denmark – Greenland	122
Djibouti	88, 100 and 111
Dominican Republic	122 and 138
Ecuador	87, 102/121/128/130, 111, 122 and 142
Egypt	2, 111 and 159
Estonia	2
Eswatini	138
Ethiopia	158 and 182
Fiji	122 and 159
Finland	81/129, 94, 121/128/130/168 and 140
France	140, 142, 159 and 181
France – French Polynesia	82, 88, 115 and 122
France – New Caledonia	82, 122 and 142
Gambia	MLC, 2006
Georgia	144
Ghana	149 and 182
Greece	144
Guatemala	122, 144 and 182
Guinea	140, 182 and 189
Guinea-Bissau	138
Guyana	149 and 189
Honduras	144
Hungary	81/129, 122, 142 and 144
India	MLC, 2006
Iraq	122 and 172
Ireland	144 and 189
Italy	189

List of the cases in which the Committee has been able to **note with interest** certain measures taken by the Governments of the following countries	
State	Conventions Nos
Jamaica	189
Jordan	98
Kenya	98 and MLC, 2006
Kyrgyzstan	122, 144 and 159
Latvia	144 and MLC, 2006
Lithuania	115, 144 and 160
Luxembourg	158
Madagascar	151
Malawi	111, 138 and 182
Malaysia	29
Mauritania	29
Mauritius	160
Mexico	144 and 160
Morocco	162
Mozambique	144
Namibia	151
Nepal	144 and 182
Netherlands	115 and 144
New Zealand	160
Niger	81, 122 and 155/187
Nigeria	88 and 144
North Macedonia	98
Pakistan	87, 98, 100, 107 and 111
Panama	110
Paraguay	111 and 169
Peru	98
Philippines	97, 111 and 151
Poland	135 and 188
Portugal	189
Qatar	111
Republic of Korea	144
Republic of Moldova	160
Russian Federation	111
Rwanda	29, 87, 100, 105 and 144
Saint Kitts and Nevis	100

List of the cases in which the Committee has been able to **note with interest** certain measures taken by the Governments of the following countries	
State	Conventions Nos
San Marino	156
Sao Tome and Principe	138
Serbia	156
Seychelles	149
South Africa	111
Spain	98, 135 and 151
Sri Lanka	110
Turkmenistan	144
United Kingdom of Great Britain and Northern Ireland	188
Uruguay	87
Uzbekistan	100 and 144
Bolivarian Republic of Venezuela	87
Zambia	96 and 181
Zimbabwe	111

Practical application

126. As part of its assessment of the application of Conventions in practice, the Committee notes the information contained in governments' reports, such as information relating to judicial decisions, statistics and labour inspection. The supply of this information is requested in almost all report forms, as well as under the specific terms of some Conventions. In the context of the COVID-19 pandemic and the interlocking crises that followed, such information is indispensable to complete the examination of national legislation and to help the Committee identify the issues arising from real problems of application in practice. The Committee wishes to emphasize to governments the importance of submitting such information and also encourages employers' and workers' organizations to submit clear and up-to-date information on the application of Conventions in practice.

Observations made by employers' and workers' organizations

127. At each session, the Committee recalls that the contribution by employers' and workers' organizations is essential for the Committee's evaluation of the application of Conventions in national law and in practice. Member States have an obligation under article 23, paragraph 2, of the Constitution to communicate to the representative employers' and workers' organizations copies of the reports supplied under articles 19 and 22 of the Constitution. Compliance with this constitutional obligation is intended to enable organizations of employers and workers to participate fully in the supervision of the application of international labour standards. In some cases, governments transmit the observations made by employers' and workers' organizations with their reports, sometimes adding their own comments. However, in the majority of cases, observations from employers' and workers' organizations are sent directly to the Office which, in

accordance with the established practice, transmits them to the governments concerned for comment, so as to ensure respect for due process. For reasons of transparency, the record of all observations received from employers' and workers' organizations on the application of ratified Conventions since the last session of the Committee is included as Appendix III to its report. Where the Committee finds that the observations are not within the scope of the Convention or do not contain information that would add value to its examination of the application of the Convention, it will not refer to them in its comments. Otherwise, the observations received from employers' and workers' organizations may be considered in an observation or in a direct request, as appropriate.

In a reporting year

128. At its 86th Session (2015), the Committee made the following clarifications on the general approach developed over the years for the treatment of observations from employers' and workers' organizations. The Committee recalled that, **in a reporting year**, when observations from employers' and workers' organizations are not provided with the government's report, they should be received by the Office by 1 September at the latest, so as to allow the government concerned to have a reasonable time to respond, thereby enabling the Committee to examine, as appropriate, the issues raised at its session the same year. When observations are received after 1 September, they would not be examined in substance in the absence of a reply from the government, except in exceptional cases. Over the years, the Committee has identified exceptional cases as those where the allegations are sufficiently substantiated and there is an urgent need to address the situation, whether because they refer to matters of life and death or to fundamental human rights or because any delay may cause irreparable harm. In addition, observations referring to legislative proposals or draft laws may also be examined by the Committee in the absence of a reply from the government, where this may be of assistance for the country at the drafting stage.

Outside of a reporting year

129. At its 88th Session (2017), following its consideration of the Governing Body's review of the reporting cycle for technical Conventions from five to six years, the Committee indicated its willingness to consider the manner in which it might broaden the very strict criteria for breaking its cycle of review when receiving comments from workers' or employers' organizations on a specific country under article 23, paragraph 2, of the ILO Constitution and decided that inspiration in this regard could be drawn from those criteria used for "footnoting" cases and set out in paragraph 73 of that year's General Report.

130. In light of the November 2018 Governing Body decision (GB.334/INS/5) expanding the reporting cycle for technical Conventions from five to six years and expressing its understanding that the Committee would further review, clarify and, where appropriate, broaden the criteria for breaking the reporting cycle with respect to technical Conventions, the Committee proceeded with the review of the criteria mentioned above at its 89th Session (2018).

131. The Committee recalls that, **in a non-reporting year**, when employers' and workers' organizations send observations which simply repeat comments made in previous years, or refer to matters already raised by the Committee, such comments will be examined in the year when the government's report is due, in accordance with the regular reporting cycle. In this case, a report will not be requested from the government outside of that cycle.

132. Where the observations on a technical Convention meet the criteria set out in paragraph below, the Committee will request the office to issue a notification to governments that the article 23 observations received will be examined at its subsequent session with or without a response from

the government. This would ensure that governments have sufficient notice while ensuring that the examination of matters of importance are not further delayed.

133. The Committee would thus review the application of a **technical Convention** outside of a reporting year following observations submitted by employers' and workers' organizations having due regard to the following elements:

- the seriousness of the problem and its adverse impact on the application of the Convention;
- the persistence of the problem; and
- the relevance and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

134. With respect to **any Convention (fundamental, governance or technical)**, recalling its well-established practice, the Committee will examine employers' and workers' observations in a non-reporting year in the year received in the exceptional cases set out in paragraph above, even in the absence of a reply from the government concerned.

135. The Committee emphasized that the procedure set out in the paragraphs above aims at giving effect to decisions taken by the Governing Body which have extended the reporting cycle and called for safeguards in that context, to ensure that effective supervision of the application of ratified Conventions is maintained. One of these safeguards consists in giving due recognition to the possibility afforded to employers' and workers' organizations to draw the attention of the Committee to matters of particular concern arising from the application of ratified Conventions, even in a year when no report is due. The approach above also pays particular attention to the importance of providing due notice to governments, except in exceptional circumstances, and in all cases the Committee will indicate its reasons for breaking the cycle.

136. The Committee notes that since its last session, it has received 1,156 observations (compared to 757 last year), 212 of which (compared to 230 last year) were communicated by employers' organizations and 944 (compared to 527 last year) by workers' organizations. The great majority of the observations received (955 compared to 695 last year) related to the application of ratified Conventions; [33] 416 of these observations (compared to 243 last year) concerned the application of fundamental Conventions, 140 (compared to 75 last year) related to governance Conventions and 399 (compared to 377 last year) concerned the application of other Conventions. Moreover, 201 observations were received in relation to the 2022 General Survey on achieving gender equality at work. The Committee notes that 565 of the observations received this year on the application of ratified Conventions were transmitted directly to the Office. In 390 cases, the governments transmitted the observations made by employers' and workers' organizations with their reports. The Committee notes that in general the employers' and workers' organizations concerned endeavoured to gather and present information on the application of ratified Conventions in specific countries, both in law and in practice. The Committee recalls that observations of a general nature relating to certain Conventions are more appropriately addressed within the framework of the Committee's consideration of General Surveys or within other forums of the ILO.

Cases in which the need for technical assistance has been highlighted

137. The combination of the work of the supervisory bodies and the practical guidance given to Member States through development cooperation and technical assistance has always been one

[33] Appendix III to this Report.

of the key dimensions of the ILO supervisory system. The Committee notes that the progressive lifting of travel restrictions after the COVID-19 pandemic enabled the Office to follow up on a number of cases requiring technical assistance to be delivered at country level. The Committee follows up on a number of these cases in the present report, especially where they relate to the follow-up to conclusions adopted by the Conference Committee on the Application of Standards. [34] Moreover, assistance was provided by the International Training Centre of the ILO (Turin Centre) and international labour standards specialists based in the field to more than 70 countries for the preparation of article 22 reports on ratified Conventions, including the MLC, 2006.

138. The Committee notes that the ILO backstops the Trade for Decent Work (T4DW) project which currently covers 13 countries in three regions on jointly identified priority areas, including commitments in the supply chain and just transition. The support provided to these countries aims, inter alia, at strengthening reporting capacity and addressing identified compliance gaps. In addition, and always in the framework of T4DW, the Office supports constituent requests for strengthening national statistic offices as a key action to establishing a baseline for decent work.

139. The Committee welcomes the new regional focus of the International Labour Standards Academy which this year focused on Asia and the Pacific, delivering training on international labour standards to the ILO constituents, judges, law professors and other legal professionals across the region. The Committee notes the International Labour Standards Academy's important contribution to building the reporting capacities of governments, employers' and workers' organizations including in countries facing serious weaknesses in this field. The Committee also notes that in addition to the International Labour Standards Academy, the Turin Centre delivered:

- online courses to constituents on reporting in English and French as well as tailor-made training on reporting;
- international labour standards training to judges in the Americas region;
- a series of capacity-building events with a focus on promoting the ratification and legal implementation of the MLC, 2006, as well as reporting thereon;
- finally, the Committee welcomes the tripartite digital activity carried out at the global level by the Office and the Turin Centre in order to facilitate the submission of reports under article 19 of the ILO Constitution and comments by workers' and employers' organizations for the preparation of the 2024 General Survey on labour administration.

140. In addition to cases of serious failure by Member States to fulfil certain specific obligations related to reporting, the cases for which, in the Committee's view, technical assistance from the Office would be particularly useful in helping Member States to address gaps in law and in practice in the implementation of ratified Conventions, particularly in the context of the COVID-19 pandemic, are highlighted in the following table and details can be found in Part II of this report.

List of the cases in which **technical assistance** would be particularly useful in helping Member States	
State	Conventions Nos
Algeria	100
Angola	107
Azerbaijan	105
Bangladesh	100 and 107

[34] See table in paragraph 108.

List of the cases in which **technical assistance** would be particularly useful in helping Member States	
State	Conventions Nos
Belize	98
Benin	81
Cabo Verde	MLC, 2006
Cameroon	45/162 and 81
Central African Republic	142
Chile	1/14/30
China	45
Colombia	1/14/30/52/101/106
Congo	87, 111 and 188
Costa Rica	1/14/106, 45, 81/129, 96, 102 and 122
Côte d'Ivoire	96
Czechia	140
Democratic Republic of the Congo	62
Djibouti	81, 87 and MLC, 2006
Dominican Republic	88 and 122
Ecuador	45, 87, 98, 100 and 131
Egypt	63, 94 and 96
Eritrea	29 and 138
Eswatini	96
France – French Polynesia	94
Gambia	87 and 98
Greece	144
Guatemala	144
Guinea	87, 138 and 140
Guinea-Bissau	45
Guyana	81/129, 140 and 172
Honduras	144
Iraq	98 and 122
Jamaica	98
Kenya	98
Libya	102/118/121/128
Madagascar	87, 98 and 100
Malawi	111
Malaysia	98
Malaysia – Sarawak	94

List of the cases in which **technical assistance** would be particularly useful in helping Member States	
State	Conventions Nos
Mali	29
Malta	62
Mauritania	22/23 and 29
Mauritius	160
Morocco	187
Namibia	144, 150 and 188
Nepal	98
Netherlands	121
Netherlands – Curaçao	MLC, 2006
Netherlands – Sint Maarten	87 and 94
Nicaragua	12/17/18/19/24/25 and 87
Nigeria	45 and 185
Pakistan	100
Panama	87, 98, 100 and 189
Paraguay	87 and 98
Peru	87, 98 and 151
Philippines	87
Republic of Moldova	185
Rwanda	154
Saint Kitts and Nevis	98 and 138
Seychelles	151
Sierra Leone	87
Solomon Islands	182
Sri Lanka	98
Suriname	100
Togo	87
Tunisia	MLC, 2006
Turkmenistan	105
Uganda	87 and 98
Ukraine	87, 98 and 115/139/155/176
United Republic of Tanzania	63, 87 and 98
United Republic of Tanzania – Zanzibar	85
Uruguay	94, 98 and 190
Uzbekistan	81/129
Bolivarian Republic of Venezuela	45 and 87

List of the cases in which **technical assistance** would be particularly useful in helping Member States	
State	Conventions Nos
Viet Nam	98
Zambia	98

C. Reports under article 19 of the Constitution

141. The Committee recalls that the Governing Body decided that the subjects of General Surveys should be aligned with those of the annual recurrent discussions in the Conference under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008. This year, governments were requested to supply reports under article 19 of the Constitution for the General Survey on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Maternity Protection Convention, 2000 (No. 183), the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), the Workers with Family Responsibilities Recommendation, 1981 (No. 165) and the Maternity Protection Recommendation, 2000 (No. 191). [35] The General Survey entitled *Achieving Gender Equality at Work* has been prepared on the basis of a preliminary examination by a working party comprising six members of the Committee in accordance with the practice followed in previous years.

142. The Committee notes with ***regret*** that, for the past five years, none of the reports on unratified Conventions and on Recommendations requested under article 19 of the Constitution have been received from the following **20** countries: **Albania, Barbados, Belize, Brunei Darussalam, Chad, Congo, Djibouti, Dominica, Haiti, Lesotho, Liberia, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Timor-Leste, Tuvalu, Uganda** and **Yemen.**

143. The Committee once again urges governments to provide the reports requested so that its General Surveys can be as comprehensive as possible and provide a complete picture of developments relevant to the impact of COVID-19 in areas that are particularly affected by the pandemic and parallel interlocking crises.

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

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

(a) information on measures taken to submit to the competent authorities the instruments adopted by the Conference from June 1970 (54th Session) to June 2019 (108th Session) (Conventions Nos 131 to 190, Recommendations Nos 135 to 206 and Protocols); and

(b) replies to the observations and direct requests made by the Committee at its 92nd Session (November–December 2021).

[35] Report III (Part B), ILC, 111th Session, Geneva, 2023.

145. Appendix IV of Part II of the report contains a summary of the most recent information received indicating the competent national authorities to which the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, as well as the Violence and Harassment Convention (No. 190), and the Violence and Harassment Recommendation, 2019 (No. 206), adopted at the 108th Session of the Conference, were submitted and the date of submission. In addition, Appendix IV summarizes the information supplied by governments in 2022 with respect to the instruments adopted in earlier years and submitted to the competent authorities.

146. Additional statistical information is found in Appendices V and VI of Part II of the report. Appendix V, compiled based on information provided by governments, shows where each Member State stands in terms of its constitutional obligation of submission. Appendix VI shows the overall submission status of each instrument adopted since the 54th Session (June 1970) of the Conference. All instruments adopted prior to the 54th Session of the Conference have been submitted. The statistical data in Appendices V and VI are regularly updated by the competent units of the Office and can be accessed in NORMLEX.

103rd Session

147. At its 103rd Session in June 2014, the Conference adopted the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). The Committee notes that **121** governments have provided information on the submission of the Protocol of 2014 to the Forced Labour Convention, 1930, whereas **106** governments have provided information on the submission of Recommendation No. 203 to their competent national authorities. It also notes with ***interest*** that the Protocol of 2014 to the Forced Labour Convention, 1930, which entered into force on 9 November 2016, has been ratified by **59** Member States: **Antigua and Barbuda, Argentina, Australia, Austria, Bangladesh, Belgium, Bosnia and Herzegovina, Canada, Chile, Comoros, Costa Rica, Cyprus, Czechia, Côte d'Ivoire, Denmark, Djibouti, Estonia, Finland, France, Germany, Iceland, Ireland, Israel, Jamaica, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mozambique, Namibia, Netherlands, New Zealand, Niger, Norway, Panama, Peru, Poland, Portugal, Russian Federation, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Tajikistan, Thailand, United Kingdom of Great Britain and Northern Ireland, Uzbekistan** and **Zimbabwe**. ***The Committee encourages all governments to continue their efforts to submit the instruments adopted by the Conference at its 103rd Session to their legislatures and to report on any action taken with regard to these instruments.***

104th Session

148. At its 104th Session in June 2015, the Conference adopted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). The 12-month period for submission of Recommendation No. 204 to the competent authorities ended on 12 June 2016, and the 18-month period (in exceptional circumstances) ended on 12 December 2016. The Committee notes that **102** governments have provided information on the submission to the competent authorities of Recommendation No. 204. It refers in this regard to Appendix IV of Part II of the report, which contains a summary of information supplied by governments on submission, including with respect to Recommendation No. 204. ***The Committee encourages all governments to continue***

their efforts to submit Recommendation No. 204 to their legislatures and to report on any action taken with regard to this instrument.

105th and 106th Sessions

149. The Committee recalls that no instrument was adopted at the 105th Session of the Conference (May–June 2016). At its 106th Session in June 2017, the Conference adopted the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). The 12-month period for submission of Recommendation No. 205 to the competent authorities ended on 16 June 2018, and the 18-month period (in exceptional circumstances) ended on 16 December 2018. The Committee notes that **88** governments have provided information on the submission of Recommendation No. 205 to the competent national authorities. ***The Committee welcomes the information provided to date and encourages all governments to submit Recommendation No. 205 to their legislatures and to report on any action taken with regard to this instrument.***

107th and 108th Sessions

150. The Committee recalls that no instrument was adopted at the 107th Session of the Conference (May–June 2018). At its 108th Session in June 2019, the Conference adopted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, 2019 (No. 206). The 12-month period for submission of Convention No. 190 and Recommendation No. 206 to the competent authorities ended on 21 June 2020, and the 18-month period (in exceptional circumstances) ended on 21 December 2020. The Committee notes that **77** governments have provided information on the submission of Convention No. 190, whereas **66** governments have provided information on the submission of Recommendation No. 206 to their competent national authorities. It also notes with ***interest*** that Convention No. 190, which entered into force on 25 June 2021, has been ratified by **22** Member States: **Albania, Antigua and Barbuda, Argentina, Barbados, Central African Republic, Ecuador, El Salvador, Fiji, Greece, Italy, Mauritius, Mexico, Namibia, Nigeria, Panama, Peru, San Marino, Somalia, South Africa, Spain, United Kingdom of Great Britain and Northern Ireland** and **Uruguay**. ***The Committee welcomes the information provided to date and encourages all governments to submit Convention No. 190 and Recommendation No. 206 to their legislatures and to report on any action taken with regard to this instrument.***

Cases of progress

151. The Committee notes with ***interest*** the information provided by the Governments of the following countries: **Burkina Faso, Eswatini** and **Lesotho.** It welcomes the efforts made by these Governments in overcoming significant delays in submission and taking important steps toward fulfilling their constitutional obligations to submit to their legislatures the instruments adopted by the Conference over a number of years.

Special problems

152. To facilitate the work of the Conference Committee on the Application of Standards, this report only mentions those governments that have not submitted the instruments adopted by the Conference to their competent authorities for at least seven sessions. These special problems are referred to as cases of "serious failure to submit". **This time frame begins at the 99th Session (2010) and concludes at the 108th Session (2019), bearing in mind that the Conference did not adopt any Conventions or Recommendations during its 97th (2008), 98th (2009), 102nd (2013) and 107th (2018) Sessions.** Thus, this time frame was deemed long enough to warrant inviting the governments concerned to a special sitting of the Conference Committee so that they could account for delays in submission. In addition, the Committee is also providing

information in its observations concerning cases of "failure to submit", in relation to governments that have not submitted to the competent authorities the instruments adopted at the last six sessions of the Conference.

153. The Committee notes that, at the closure of its 93rd Session on 10 December 2022, the following **42** Member States (39 in 2018, 36 in 2019, 48 in 2020 and 45 in 2021) were in the category of "serious failure to submit": **Albania, Angola, Bahamas, Belize, the Plurinational State of Bolivia, Brunei Darussalam, Chad, Comoros, Congo, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Fiji, Gabon, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Hungary, Kazakhstan, Kyrgysztan, Lebanon, Liberia, Libya, Malaysia, Maldives, Marshall Islands, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Syrian Arab Republic, Timor-Leste, Tuvalu, United Arab Emirates, Vanuatu, Yemen** and **Zambia**.

154. The Committee is aware of the exceptional circumstances that have affected some of these countries for years, as a result of which some of them have been deprived of the institutions needed to fulfil their obligation to submit instruments. At the 110th Session of the Conference (June 2022), some Government delegations supplied information explaining why their countries had been unable to meet the constitutional obligation to submit Conventions, Recommendations and Protocols to their national legislatures. Further to the concerns raised by the Committee of Experts, the Conference Committee also expressed deep concern at the failure to respect this obligation. It pointed out that compliance with this constitutional obligation, which means submitting the instruments adopted by the Conference to national legislatures, is of the utmost importance in ensuring the effectiveness of the Organization's standards-related activities.

155. The above-mentioned countries have been identified in observations published in this report, and the Conventions, Recommendations and Protocols that have not been submitted are indicated in the statistical appendices. **The Committee considers it worthwhile to alert the governments concerned so as to enable them immediately, and as a matter of urgency, to take appropriate steps to bring themselves up to date and into compliance with this obligation.** The Committee recalls that governments may benefit from the measures the Office is prepared to take, upon their request, to assist them in taking the steps required for the rapid submission to their legislature of the pending instruments.

Comments of the Committee and replies from governments

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

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

158. The obligation of submission to the competent national authorities under article 19 of the ILO Constitution is one of the fundamental obligations of Member States. Unlike other multilateral treaties, where States are not required to undertake any specific action, including ratification, even if they have participated in the adoption of the instruments, the ILO Conventions have gone a step closer to international legislation, in the sense that the Constitution has made it an obligation for all Member States to give serious consideration to their implementation, including ratification, although ratification by itself is in the prerogative of a sovereign State and not required under this constitutional obligation on submission. The Committee, therefore, reiterates the importance of the reporting obligation of Member States with respect to submission to the competent national authorities under article 19 of the Constitution, differentiating itself from other ordinary treaties and making ILO Conventions stand out in the universal framework of the protection of social rights.

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

* * *

160. Lastly, the Committee would like to express its profound appreciation for the invaluable assistance rendered to it by the officials of the Office, whose expertise, competence and devotion to duty make it possible for the Committee to accomplish its complex task.

Geneva, 10 December 2022

(Signed) Graciela Josefina Dixon Caton
Chairperson

Shinichi Ago
Reporter

Appendix to the General Report

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

Mr Shinichi AGO (Japan)

Professor and Director, Kyoto Museum for World Peace, Ritsumeikan University, former Law Dean and Vice-President of Kyushu University; member of the Asian Society of International Law, the International Law Association and the International Society for Labour and Social Security Law; Former Judge of the Asian Development Bank Administrative Tribunal.

Ms Lia ATHANASSIOU (Greece)

Full Professor of Maritime and Commercial Law at the National and Kapodistrian University of Athens (Faculty of Law); Elected Member of the Deanship Council of the Faculty of Law and Director of the Postgraduate Programme on Business and Maritime Law; President of the Organizing Committee of the International Conference on Maritime Law held in Piraeus (Greece) every three years; Ph.D. from the University of Paris I-Sorbonne; authorization by the same university to supervise academic research; LL.M. Aix-Marseille III; LL.M. Paris II Assas; visiting scholar at Harvard Law School and Fulbright Scholar (2007–08); member of Legislative Committees on various commercial law issues. She has lectured and effectuated academic research in several foreign institutions in France, the United Kingdom, Italy, Malta, the United States, etc. She has published extensively on maritime, competition, industrial property, company, European and transport law (eight books and more than 60 papers and contributions in collective works in Greek, English and French); practising lawyer and arbitrator specializing in European, commercial and maritime law.

Ms Leila AZOURI (Lebanon)

Doctor of Law; Professor of Labour Law at the Faculty of Law at Sagesse University, Beirut until 2021; Director of Research at the Doctoral School of Law of the Lebanese University; Professor and former Director of the Faculty of Law of the Lebanese University until 2016; member of the Executive Bureau of the National Commission for Lebanese Women; Chairperson of the national commission responsible for the preparation of the reports submitted by the Government of Lebanon to the UN Committee on the Elimination of Discrimination against Women (CEDAW) until 2017; legal expert for the Arab Women Organization until 2017; member of the "ILO Policy Advisory Committee on Fair Migration" in the Middle East.

Mr James J. BRUDNEY (United States of America)

Professor of Law, Fordham University School of Law, New York, NY; Co-Chairperson of the Public Review Board of the United Automobile Workers Union of America (UAW); member, UAW Ethics Advisory Committee; former Visiting Fellow, Oxford University, United Kingdom; former Visiting Faculty, Harvard Law School; former Professor of Law, The Ohio State University Moritz College of Law; former Chief Counsel and Staff Director of the United States Senate Subcommittee on Labour; former attorney in private practice; and former law clerk to the United States Supreme Court.

Ms Graciela Josefina DIXON CATON (Panama)

Former President of the Supreme Court of Justice of Panama; former President of the Penal Court of Cassation and of the Chamber of General Business Matters of the Supreme Court of Panama; former President of the International Association of Women Judges; former President of the Latin American

Federation of Judges; former National Consultant for the United Nations Children's Fund (UNICEF); currently Judge of the Inter-American Development Bank Administrative Tribunal; Consulting Partner of the Panamanian Law Firm BRITTON & IGLESIAS; member of the list of Arbitrators of the Court of Arbitration of the Official Chamber of Commerce of Madrid; Arbitrator at the Center for Dispute Resolution (CESCON) of the Panamanian Chamber of Construction, as well as for the Conciliation and Arbitration Center of the Panamanian Chamber of Commerce; and legal adviser and international consultant.

Mr Rachid FILALI MEKNASSI (Morocco)

Doctor of Law; former Professor at the University Mohammed V of Rabat; former member of the Higher Council of Education, Training and Scientific Research; Professor Filali Meknassi still collaborates with numerous academic and scientific institutions in France and Canada. He was also responsible for various international cooperation projects and programmes, including the ILO project "Sustainable Development through the Global Compact" (2005–08). Since 2000, he has collaborated in the training activities of the International Training Centre of the ILO in Turin. He carries out regular advisory activities at the national and international level, and is the founder and director of several national human rights and anti-corruption NGOS. He is also the author of about 100 publications in French and Arabic, some of which have been translated into Spanish and English. He has been a member of the Committee since 2009.

Mr José Roberto HERRERA VERGARA (Colombia)

Doctor of Law; former magistrate and President of the Supreme Court of Justice; associate judge of the Constitutional Court; Vice-President of the Ibero-American Academy of Labour and Social Security Law; Emeritus and Honorary Professor at the University of Rosario; Professor of labour and social security law at the Javeriana University; former Secretary-General of the Office of the Attorney-General; Class A arbitrator in administrative law, Chamber of Commerce of Colombia; former head of the Labour Department of the Banco Cafetero; former President of the Colombian Social Security Association; member of the Commission for Truth on the Palace of Justice Holocaust.

Mr Benedict Bakwaph KANYIP, PhD (Nigeria)

President of the National Industrial Court of Nigeria; fellow, Nigerian Institute of Advanced Legal Studies (NIALS); member of the Nigerian Bar Association, International Bar Association and Nigerian Society of International Law; fellow of the Chartered Institute of Taxation of Nigeria and the Nigerian Chartered Institute of Arbitrators; member of the National Judicial Council and the Federal Judicial Service Commission; expert on consumer protection, labour law and tax law, with numerous publications on the subjects. Holder of the National Honour of Officer of the Order of the Federal Republic (OFR).

Mr Alain LACABARATS (France)

Judge at the Court of Cassation; former President of the third Civil Chamber of the Court of Cassation; former President of the Social Chamber of the Court of Cassation; former member of the Higher Council of the Judiciary; former member of the European Network of Councils for the Judiciary and the Consultative Council of European Judges (Council of Europe); former Vice-President of the Paris Regional Court; former President of the Paris Appellate Court Chamber; former lecturer at several French universities and author of many publications. Member of the ethics assistance and monitoring service of the High Council for the Judiciary.

Ms Elena E. MACHULSKAYA (Russian Federation)

Professor of Law, Department of Labour Law, Faculty of Law, Moscow State Lomonosov University; Secretary, Russian Association for Labour and Social Security Law; 2011–16 member of the

European Committee of Social Rights; member of the President's Committee of the Russian Federation on the Rights of Persons with Disabilities (non-paid basis).

Ms Karon MONAGHAN (United Kingdom of Great Britain and Northern Ireland)

Queen's Counsel; former Deputy High Court Judge (2010–19); former Judge of the Employment Tribunal (2000–08); practising lawyer with Matrix Chambers, specializing in discrimination and equality law, human rights law, European Union law, public law and employment law; Honorary Visiting Professor, Faculties of Laws, University College London.

Mr Sandile NGCOBO (South Africa)

Former Chief Justice of the Republic of South Africa; former Judge and acting Judge President of the Labour Appeal Court of South Africa; former Judge of the Supreme Court, Cape of Good Hope Provincial Division; acting Judge of the Supreme Court of Namibia; presiding officer of the Electoral Tribunal of the Independent Election Commission during the first democratic election in South Africa in 1994; visiting Professor of Law at the Harvard Law School, the University of New York Law School, and former visiting Professor of Law at the Columbia University School of Law and the Cornell Law School; former Chairperson of the South African Presidential Remuneration Review Commission of Inquiry; former attorney in law firms in South Africa and the United States.

Ms Rosemary OWENS (Australia)

Professor Emerita of Law, Adelaide Law School, The University of Adelaide; former Dame Roma Mitchell Professor of Law (2008–15); former Dean of Law (2007–11); Officer of the Order of Australia; Fellow of the Australian Academy of Law (and Director (2014–16)); former editor and currently member of the editorial board of the Australian Journal of Labour Law; member of the scientific and editorial board of the Révue de droit comparé du travail et de la sécurité sociale; member of the Australian Labour Law Association (and former member of its National Executive); International Reader for the Australian Research Council; Chairperson of the South Australian Government's Ministerial Advisory Committee on Work–Life Balance (2010–13); Chairperson and member of the Board of Management of the Working Women's Centre (SA) (1990–2014).

Ms Mónica PINTO (Argentina)

Professor Emerita, University of Buenos Aires. Member of the Institute of International Law. Lawyer and legal counsel in public international law cases, and arbitrator and member of ad hoc committees in foreign investment cases. She has appeared as a counsel and an expert before universal and regional human rights bodies and tribunals, arbitral tribunals and the International Court of Justice, where she sits as Judge ad hoc. Member of the Permanent Court of Arbitration (since 2022) and of the Permanent Review Tribunal for MERCOSUR (2021–23). Former Dean of the School of Law at the University of Buenos Aires (2010–18). Visiting Professor at the University of Columbia, Paris I & II, and the University of Rouen. She taught at the Hague Academy of International Law, and at the Inter-American and European Institutes of Human Rights. She held several mandates for the United Nations in the area of human rights. Judge and President of the Administrative Tribunals of the World Bank and the Inter-American Development Bank. Vice-President of the Advisory Committee on nominations of judges of the International Criminal Court (2013–18) and member of the Independent Expert Review of the International Criminal Court (2020). She has published five books and several articles in periodical publications in the United States of America and Europe.

Mr Paul-Gérard POUGOUÉ (Cameroon)

Professor of Law (agrégé), Professor Emeritus, Yaoundé University; guest or associate professor at several universities and at the Hague Academy of International Law; on several occasions, President of the jury for the agrégation competition (private law and criminal sciences section) of the African and Malagasy Council for Higher Education (CAMES); former member (1993–2001) of the Scientific Council

of the Agence universitaire de la Francophonie (AUF); former member (2002–12) of the Council of the International Order of Academic Palms of CAMES; member of the International Society for Labour and Social Security Law, the International Foundation for the Teaching of Business Law, the Association Henri Capitant and the Society of Comparative Law; founder and Director of the review Juridis périodique; President of the Association for the Promotion of Human Rights in Central Africa (APDHAC); Chairperson of the Scientific Board of the Labour Administration Regional African Centre (CRADAT); Chairperson of the Scientific Board of the Catholic University of Central Africa (UCAC).

Mr Raymond RANJEVA (Madagascar)

Honorary President of the Madagascar Academy (National Academy of Arts, Letters and Sciences of Madagascar); Former President (2017–21). President and Member of the African Academy of Religious, Social and Political Sciences since 2021. Member since 1974. Judge (1991–2009), Vice-President (2003–06) and Senior Judge (2006– 09) of the International Court of Justice (ICJ), and President (2005) of the Chamber formed by the ICJ to deal with the Benin/Niger frontier dispute; Bachelor's degree in Law (1965), University of Madagascar, Antananarivo; Doctorate of Law, University of Paris II; Agrégé of the Faculties of Law and Economics, Public Law and Political Science section, Paris (1972); Doctor honoris causa of the Universities of Limoges, Strasbourg and Bordeaux-Montesquieu; former Professor at the University of Madagascar (1981–91) and several other national and foreign institutions; First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegation to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties (1976–77); former first Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the Court of Arbitration of the International Chamber of Commerce; member of the Court of Arbitration for Sport; member and former Vice-President of the Institute of International Law; member of numerous national and international professional and academic societies; Curatorium of the Hague Academy of International Law; member of the Pontifical Council for Justice and Peace; President of the African Society of International Law since 2012; former Vice-Chairman of the International Law Institute (2015–17); Chairperson of the ILO Commission of Inquiry on Zimbabwe; associate of the Académie de Sciences d'Outre-mer (Paris).

Ms Kamala SANKARAN (India)

Professor, National Law School of India University, Bengaluru. Previously served as Professor, Faculty of Law, University of Delhi; Vice-Chancellor, Tamil Nadu National Law University, Tiruchirappalli and Dean, Legal Affairs, University of Delhi, Member, Task Force to Review Labour Laws, National Commission for Enterprises in the Unorganised and Informal Sector, Government of India; Fellow, Stellenbosch Institute of Advanced Study, South Africa; Visiting South Asian Research Fellow, School of Interdisciplinary Area Studies, Oxford University; Fulbright Post-Doctoral Research Scholar, Georgetown University Law Center, Washington, DC. Serves as Member, International Advisory Board, *International Journal of Comparative Labour Law and Industrial Relations*; Editorial Team, *University of Oxford Human Rights Hub Journal* and Editorial Advisory Board, *Indian Journal of Labour Economics*.

Ms Ambiga SREENEVASAN (Malaysia)

Well-known human rights advocate and recipient of several international awards; Member of the Institutional Reforms Committee of Malaysia; legal assistant and then partner, Skrine (1982–2001), one of the largest law firms in Malaysia; partner, Tommy Thomas (2001–2002); former President of the Malaysian Bar (2007–2009); former Chairperson and then Co-Chairperson of Bersih 2.0 (Coalition for Clean and Fair Elections) (2010–2013); former President of the National Human Rights Society (Hakam) (2014–2018); founded her own law firm in 2002 specializing in trademark, copyright and patent litigation; active in dispute resolution; commissioner and alternate member of the Executive Committee of the International Commission of Jurists.

Ms Deborah THOMAS-FELIX (Trinidad and Tobago)

President of the Industrial Court of Trinidad and Tobago; Judge of the International Monetary Fund Administrative Tribunal; former President of the United Nations Appeals Tribunal; former Second Vice-President of the United Nations Appeals Tribunal; former Chair of the Trinidad and Tobago Securities and Exchange Commission; former Chair of the Caribbean Group of Securities Regulators; former Deputy Chief Magistrate of the Judiciary of Trinidad and Tobago; former President of the Family Court of Saint Vincent and the Grenadines; Hubert Humphrey/Fulbright Scholar; Georgetown University Leadership Seminar Fellow and Commonwealth Institute of Judicial Education Fellow. The Author of two textbooks on Labour Law, Employment Law and Industrial Relations.

Mr Bernd WAAS (Germany)

Professor of Labour Law and Civil Law at the University of Frankfurt; Coordinator and member of the European Labour Law Network; Coordinator of this network´s study group on a Restatement of Labour Law in Europe; Coordinator of the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE); President of the German Society for Labour and Social Security Law and member of the Executive Committee of the International Society for Labour and Social Security Law (ISLSSL); member of the Advisory Committee of the Labour Law Research Network (LLRN).



Part II. Observations concerning particular countries

I. Observations concerning reports on ratified Conventions (articles 22 and 35 of the Constitution)

Observations on serious failure to report

Afghanistan

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Nine reports are now due, which should have included information in reply to the Committee's comments, including on fundamental Conventions.

On the basis of the decision of the Committee concerning the treatment of urgent appeals, the Committee decided to examine at this session the application of Conventions Nos 100 and 111 for which the reports have not been received for more than three years, based on public information at its disposal.

While taking note of the complexity of the national situation, the Committee trusts that all responsible authorities will honour their international commitments and provide information in response to the Committee's comments.

Albania

The Committee notes with ***deep concern*** that, the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006) due since 2018 has not been received. The Committee also notes that the 12 reports due on ratified Conventions, including fundamental Conventions, most of which should have included information in reply to the Committee's comments, have not been received.

On the basis of the decision of the Committee concerning the treatment of urgent appeals, the Committee decided to examine at this session the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) for which the first report has not been received for more than three years, based on public information at its disposal.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Antigua and Barbuda

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Fifteen reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

Recalling that technical assistance was provided on these issues this year by the ILO Decent Work Team for the Caribbean and the International Training Centre of the ILO, the Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Chad

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Sixteen reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Comoros

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Twenty-four reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions. The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Congo

The Committee notes with ***deep concern*** that the first report on the Work in Fishing Convention, 2007 (No. 188), due since 2018 has not been received. Only one of the 17 reports requested this year has been received. Sixteen reports are still due on ratified Conventions, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions,

On the basis of the decision of the Committee concerning the treatment of urgent appeals, the Committee decided to examine at this session the application of Conventions Nos 100, 105, 111 and 188 for which the reports have not been received for more than three years, based on public information at its disposal.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Cook Islands

The Committee notes with ***concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006) due since 2021 has not been received. Recalling that technical assistance was provided on these issues this year by the ILO Office for Pacific Island Countries, the Committee hopes that the Government will soon submit this first report in accordance with its constitutional obligation.

Dominica

The Committee notes with ***deep concern*** that, for the tenth year, the reports due on ratified Conventions have not been received. Eight reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Gabon

The Committee notes with ***concern*** that for the second year, the reports due on ratified Conventions have not been received. Sixteen reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Grenada

The Committee notes with ***concern*** that the first reports on the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006), and the Domestic Workers Convention, 2011 (No. 189) both due since 2021 have not been received. The Committee also notes that none of the reports requested this year have been received. Nine reports are now due on ratified Conventions, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

On the basis of the decision of the Committee concerning the treatment of urgent appeals, the Committee decided to examine at this session the application of Conventions Nos 100 and 111 for which the reports have not been received for more than three years, based on public information at its disposal.

The Committee hopes that the Government will soon submit these first reports on the application of the MLC, 2006 and Convention No. 189 both due since 2021, as well as the other reports due this year in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Haiti

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Eleven reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions. The Committee launches an ***urgent appeal*** to the Government to send its reports without delay and advises the Government that, even in the absence of these reports, the Committee may fully review the application of these Conventions at its next meeting on the basis of available information.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Lebanon

The Committee notes with ***deep concern*** that, for the fourth year, the reports due on ratified Conventions have not been received. Thirty-seven reports are now due including the first report on the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) due since 2021. The reports due, most of which should have included information in reply to the Committee's comments, included reports on fundamental Conventions.

On the basis of the decision of the Committee concerning the treatment of urgent appeals, the Committee decided to examine at this session the application of Conventions Nos 29, 81, 100, 105, 111 and 150 for which the reports have not been received for more than three years, based on public information at its disposal.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Marshall Islands

The Committee notes with ***concern*** that the first report on the Worst Forms of Child Labour Convention, 1999 (No. 182) due since 2021 has not been received. The Committee hopes that the Government will soon submit this first report in accordance with its constitutional obligation.

Saint Lucia

The Committee notes with ***deep concern*** that, for the ninth year, the reports due on ratified Conventions have not been received. Nine reports are now due, some of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

The Committee launches an ***urgent appeal*** to the Government to send its reports without delay and advises the Government that, even in the absence of these reports, the Committee may fully review the application of these Conventions at its next meeting on the basis of available information.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Slovenia

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Fourteen reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Somalia

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Fourteen reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

On the basis of the decision of the Committee concerning the treatment of urgent appeals, the Committee decided to examine at this session the application of Convention No. 29 for which the report has not been received for more than three years, based on public information at its disposal.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Sudan

The Committee notes with ***concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006) due since 2021 has not been received.

Recalling that technical assistance was provided on these issues this year by the ILO Decent Work Team for North Africa, the Committee hopes that the Government will soon submit this first report in accordance with its constitutional obligation.

Syrian Arab Republic

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Twelve reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

The Committee launches an ***urgent appeal*** to the Government to send its reports without delay, and advises the Government that, even in the absence of these reports, the Committee may fully review the application of these Conventions at its next meeting on the basis of available information.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Timor-Leste

The Committee notes with ***concern*** that, for the second year, the reports due on ratified Conventions have not been received. Four reports are now due on fundamental Conventions which should have included information in reply to the Committee's comments.

Recalling that technical assistance was provided on these issues this year by the ILO Decent Work Team for East and South-East Asia and the Pacific, the Committee hopes that the Government will soon submit its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Tuvalu

The Committee notes with ***deep concern*** that, for the third year, the reports due have not been received including the first report on the Worst Forms of Child Labour Convention, 1999 (No. 182) due since 2021.

The Committee launches an ***urgent appeal*** to the Government to send its report on the application of the Maritime Labour Convention, 2006, as amended, without delay and advises the Government that, even in the absence of this report, the Committee may fully review the application of this Convention at its next meeting on the basis of available information.

Recalling that technical assistance was provided on these issues this year by the International Training Centre of the ILO, the Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

United Kingdom of Great Britain and Northern Ireland

Falkland Islands (Malvinas)

The Committee notes with ***concern*** that the first report on the Maritime Labour Convention, 2006, as amended (MLC, 2006) due since 2021 has not been received. The Committee also notes that none of the reports requested this year has been received. Four reports are now due on ratified Conventions, some of which should have included information in reply to the Committee's comments, including fundamental Conventions.

The Committee hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments.

Vanuatu

The Committee notes with ***deep concern*** that, for the fourth year, the reports due on ratified Conventions have not been received. The Committee also notes that the first report on the Minimum Age Convention, 1973 (No. 138) due since 2021 has not been received. Nine reports are now due, some of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

The Committee launches an ***urgent appeal*** to the Government to send its reports without delay and advises the Government that, even in the absence of these reports, the Committee may fully review the application of these Conventions at its next meeting on the basis of available information.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Yemen

The Committee notes with ***deep concern*** that, for the third year, the reports due on ratified Conventions have not been received. Thirteen reports are now due, most of which should have included information in reply to the Committee's comments, including on fundamental Conventions.

The Committee launches an ***urgent appeal*** to the Government to send its reports without delay and advises the Government that, even in the absence of these reports, the Committee may fully review the application of these Conventions at its next meeting on the basis of available information.

The Committee firmly hopes that the Government will soon submit all its reports in accordance with its constitutional obligation and that they will respond to the Committee's comments. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: *Barbados, Burundi, Central African Republic, Croatia, Djibouti, El Salvador, Equatorial Guinea, Fiji, Iraq, Lao People's Democratic Republic, Liberia, Libya, Malawi, Malta, Mongolia, Montenegro, Netherlands: Aruba, Papua New Guinea, Romania, Samoa, Sao Tome and Principe, Singapore, South Sudan, Tajikistan, Tonga, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland: Guernsey, United Kingdom of Great Britain and Northern Ireland: Jersey.*

Freedom of association, collective bargaining, and industrial relations

Algeria

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

Previous comment

The Committee notes the information communicated by the Government in response to the 2020 observations of the General and Autonomous Confederation of Workers in Algeria (CGATA) and of the National Autonomous Union of Public Administration Personnel (SNAPAP), supported by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and Public Services International (PSI). The Committee notes that the Government provides no response regarding the closure of the CGATA headquarters in Algiers and refutes the allegations of persecution of around a hundred trade unionists. The government states that: (i) Mr Maaza Belkacem and Ms Lalia Djaddour were convicted for reasons unconnected to the exercise of their trade union rights; and (ii) no legal action was engaged against Mr Kaddour Chouicha, Coordinator of the Higher Education Teachers' Union (SESS). With regard to the observations of September 2020, from the Trade Union Confederation of Productive Workers (COSYFOP), supported by the international trade union organizations (UITA, ISP and IndustriALL Global Union), the Committee notes that the Government restricts itself to contesting the legality of the COSYFOP general assembly, on the grounds that Mr Mellal Raouf did not have the authority to convene it, and does not respond to the allegations of judicial harassment against the other COSYFOP leaders, or with regard to the closure of the headquarters of the union. ***The Committee requests the Government to provide information on the overall situation of the COSYFOP leaders mentioned by COSYFOP in its communication of 30 September 2020. Recalling the right of organizations to be able to dispose of all their fixed and moveable assets unhindered, and that they should enjoy inviolability of their premises, as corollaries of the exercise of their trade union rights, the Committee urges the Government to indicate the reasons for the closure of the COSYFOP headquarters and that of the CGATA.***

The Committee also notes the observations of the CGATA, dated 24 March 2021, according to which the Joint Council of the Civil Service and the National Arbitration Commission are not composed of real SNAPAP representatives, but of persons coming from a "clone" organization, established with the support of the Government. In this regard, the Committee notes the Government's reply, dated 27 April 2021, which essentially denies the alleged facts. The Government states that the trade union organizations freely appointed their representatives within these instances and recalls that if the SNAPAP has had an internal leadership dispute in its past, there is today only one, single SNAPAP, represented by its Secretary-General, Mr Felfoul Belkacem, and that this is confirmed by various SNAPAP congresses, the latest of which dates to January 2016. The Committee also notes the observations of the CGATA, dated 2 May 2021, denouncing the continued persecution of Mr Kaddour Chouicha, Coordinator of the SESS, persecution which is also directed against members of his family. Finally, the Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, which concern legal issues already examined by the Committee and which point to continuing, serious violations of the Convention in practice. In particular, the ITUC denounces: (i) the arrest by the gendarmerie on 19 February 2022 of Mr Faleh Hammoudi, member of the SNAPAP office and President of the Algerian League for the Defence of Human Rights (LADDH), and his sentencing under urgent proceedings by the court of the first instance in Tlemcen to three years' imprisonment and a fine; and (ii) the arrest and arbitrary detention of Mr Mourad Ghedia, Chairperson of the SNAPAP/CGATA in April

2021. The ITUC states that following a major international campaign, Mr Ghedia was released after two months and ten days of detention. The Committee notes that, in its response of 27 October 2022 to the above-mentioned allegations, the Government states that Mr Faleh Hammoudi was judged by a sovereign court and that "in light of the evidence examined in this case [Mr Hammoudi] can neither conceal nor deny his membership of a terrorist group the actions of which are directed at undermining the democratic character of Algerian society by illegal means." The Government adds that it is up to Mr Hammoudi to appeal the decision. With regard to Mr Mourad Ghedia, the Government declares that it will provide its comments once it has received the information from the administration concerned. In view of the gravity of the facts alleged, the Committee wishes to recall that the right of trade unions to freely carry out their activities is an essential element of trade union rights and that measures taken against trade union leaders or trade unionists to restrict this freedom implies a serious risk of interference in trade union activities and, where the restrictions are based on trade union grounds, they constitute a violation of freedom of association. Under these circumstances, it is for the Government to guarantee at all times that defenders of trade union rights may be able to carry out their activities without fear of retaliation and without restriction. ***The Committee urges the Government to provide its comments in response to the above observations and to communicate all information related to the above-mentioned legal procedures.***

Legislative issues

The Committee notes the adoption of Act No. 22-06 of 25 April 2022, amending and supplementing Act No. 90-14 of 2 June 1990 on the exercise of the right to organize.

Article 2 of the Convention. Right to establish trade union organizations. The Committee notes with ***satisfaction*** that Act No. 22-06 of 25 April 2022 removes the nationality requirement provided under section 6 of Act No. 90-14, now allowing non-national employers and workers to form trade union organizations and, subject to three years' residence and according to modalities established in the statutes, to become members of the executive board of a trade union (section 13 *bis* of Act No. 90-14). However, with reference to the observations from the ITUC, the Committee notes that the penalties for participating in an organization subject to dissolution have been increased (sections 60 and 61 of Act No. 90-14), which amounts to a risk of obstruction to the exercise of freedom of association, especially where the conditions for dissolution of the trade union are contested (see below, the situation of the Autonomous National Union of Electricity and Gas Workers (SNATEG)), given the recurrent complaints of "cloning" organizations and the allegations of closure of trade union headquarters mentioned above.

Article 5. Right to establish federations and confederations. The Committee notes with ***satisfaction*** that the new section 4 of Act No. 90-14 now allows trade union organizations to constitute federations, unions and confederations "whatever the occupation, branch and sector to which they belong".

Article 3. Restrictions on access to trade union office. In its previous comments, the Committee requested the Government to initiate without delay consultations with the social partners on measures to be taken to amend the requirements resulting from the application of section 2 of Act No. 90-14, so that trade union office in an enterprise or establishment is no longer restricted to persons employed by the enterprise or establishment in question, or to remove the requirement to belong to the occupation or to be an employee for at least a reasonable proportion of trade union officers. The Committee notes with ***regret*** that section 2 of Act No. 90-14 remains unchanged. The Committee recalls that it considers the requirement to belong to an enterprise or establishment in order to exercise trade union functions may infringe trade unions' freedom to formulate their rules and to freely elect their representatives. It removes from unions the possibility to elect qualified persons (such as full-time trade union officials or retirees), and deprives them of the experience of certain leaders when there are insufficient numbers of qualified persons in their own ranks. ***Consequently, the Committee requests the Government to take***

the necessary measures to ensure that the legislation complies fully with the Convention, in conformity with the principles recalled above.

Registration of trade union organizations

The Committee notes the Government's indication that the number of trade unions has increased from 117 in 2019 to 160 in 2022 and its assertion that this bears witness to the Government's wish to deal with the pending registration files, and associating stakeholders in the regularization process. In this regard, the Committee notes the Government's indication that it used every available means of reaching out to the organizations awaiting registration, but to no avail. The Committee notes that the Government repeats the following information: (i) the CGATA file does not conform to the conditions set out in Act No. 90-14, in that it is not composed of any legally established union, as required by the law, which requires any confederation to be established by a group of legally registered or established unions; (ii) the file for the establishment of the Algerian Union of Employees of the Public Administration (SAFAP) is pending due to a dispute between the founding members, to be settled out of court or by decision; (iii) regarding the registration of the Confederation of Algerian Trade Unions (CSA), the Government is waiting for the members concerned to attend the competent service of the Ministry of Labour, to update their file in line with the amendments introduced following the adoption of the Act of 25 April 2022. ***The Committee notes the follow-up information provided by the Government and requests it to continue to provide updated information on the handling of files for the registration of trade unions.***

Regarding the situation of the SNATEG, the observations of which reveal numerous obstacles to the freedom to organize its activities, the Committee recalls that the Committee on Freedom of Association, during its last examination of the case (392nd report, October 2020, case No. 3210), formulated recommendations to the Government, including: (i) to conduct an independent investigation to determine the circumstances that led to the administrative decision to dissolve the SNATEG; and (ii) to review the decision to dissolve the SNATEG without delay. The Committee notes with ***regret*** that the Government limits itself to repeating that it has provided all information relative to the voluntary dissolution of the SNATEG, including the minutes of the bailiff who noted the voluntary dissolution. The Government underscores that it cannot overrule the will of the members of the trade union to dissolve their trade union. ***The Committee is concerned at the absence of progress in this matter, and once again requests the Government to take the necessary measures to give effect to the recommendations of the Committee on Freedom of Association.***

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

Antigua and Barbuda

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 2002)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 4 and 5 of the Convention. In its previous comments, the Committee had requested the Government to take the necessary measures to grant civil servants and their organizations sufficient legal protection against anti-union discrimination and interference, and had requested the Government to provide information on cases concerning anti-union discrimination. The Committee notes the information contained in the Government's report that there are no cases to report with regard to anti-union discrimination and that the Antigua and Barbuda Constitution grants inalienable rights to citizens. ***The Committee once again***

requests the Government to take the necessary measures to grant civil servants and their organizations sufficient legal protection against anti-union discrimination and interference and requests the Government to provide information of any cases concerning anti-union discrimination (especially with respect to the procedures and sanctions imposed).

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

Bahamas

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

Previous comments: observation and direct request

The Committee recalls that for a number of years it has been requesting the Government to amend the Industrial Relations Act (IRA), and other texts, so as to bring the national legislation into conformity with the Convention. In particular, the Committee referred to the need to amend the following provisions:

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations without previous authorization.

- Section 3 of the IRA and sections 39 and 40 of the Correctional Officers (Code of Conduct) Rules, 2014, so as to ensure that prison staff enjoy all rights and guarantees under the Convention; and
- section 8(1)(a) and the First Schedule of the IRA, so as to ensure that, beyond the verification of formalities, the Registrar has no discretionary powers to refuse the registration of trade unions and employers' organizations.

Article 3. Right of workers' organizations to draw up their constitutions and rules and to elect their representatives in full freedom and to freely organize their activities and to formulate their programmes.

- Section 20(2) of the IRA, so as to ensure that trade unions can conduct ballots for election or removal of trade union officers and for amendment of the constitution of trade unions without interference from the authorities;
- section 20 (3) of the IRA, so as to ensure that trade unions can conduct strike ballot without supervision by the authorities;
- sections 73, 76(1) and 77 (1) of the IRA providing for compulsory arbitration to bring an end to a collective labour dispute and a strike, so as to not excessively restrict the right of organizations to formulate their programmes and organize their activities;
- sections 74(3), 75(3), 76(2)(b) and 77(2) of the IRA, so as to ensure that no penal sanctions may be imposed for having carried out a peaceful strike; and
- section 75, so as to allow organizations responsible for defending socio-economic and occupational interests to use strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members.

Article 5. Right to affiliate to an international federation or confederation.

- Section 39 of the IRA, so as to ensure the right of workers' and employers' organizations to affiliate with international organizations of workers and employers.

The Committee notes the Government's indication that the National Tripartite Council is continuing to review the IRA and that no amendments have yet been made to any of the above-

mentioned sections, or to article 31 of the Constitution (which, among others, defines prison services as "disciplined force" along with the police and military). The Government indicates that priority has been given to sections 20(2), 74(3), 75(3), 76(2)(b) and 77(2) of the IRA in the reviewing exercise and that it is examining the possibility of repealing section 39 of the IRA. The Committee welcomes the Government's indication that it will request ILO technical assistance to finalize any relevant pieces of legislation. ***The Committee urges the Government to take all necessary measures, in consultation with the social partners, to amend its legislation in the near future, so as to ensure its full conformity with the Convention without further delay, and requests the Government to provide information on all developments in this respect.***

Bangladesh

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

Previous comment

The Committee takes note of the Government's report of 9 September 2022 on progress made on the implementation of the road map of actions to address all outstanding issues in the complaint pending under article 26 of the ILO Constitution concerning this Convention, among others, as well as the decision adopted by the Governing Body at its 346th Session (November 2022) requesting the Government to report on further progress made to its 347th Session (March 2023) and to defer the decision on further action to that session.

The Committee notes the observations of the International Trade Union Confederation (ITUC) and of the Trade Union Committee of International Labour Standards (TU-ILS) (a committee of the workers' representatives from the National Coordination Committee for Workers' Education (NCCWE) and IndustriALL Bangladesh Council (IBC)), both received on 1 September 2022, referring to matters addressed in this comment and alleging new cases of violence and repression by police, as well as continued retaliation against workers in connection with trade union activities and surveillance of trade unionists by the authorities.

Civil liberties. The Committee has been expressing deep concern at the allegations of violence and intimidation of workers for a number of years and has urged the Government to provide information on any such specific allegations remaining and to take all necessary measures to prevent such incidents in the future and ensure that, if they occur, they are properly investigated.

The Committee notes the Government's reference to cases filed against trade unionists that remain sub-judice and the regular monitoring by the Ministry of Labour and Employment. As regards the specific allegations concerning the Jute Mills in Chittagong, the Committee notes the Government's indication that there was no incident of clash between the Jute Mill workers and Industrial police, nor were there any incidents of July 2020 where the Mills were closed by the authority. As regards the allegation of injuries to ten garment workers during a protest over non-payment of wages in Gazipur in September 2018, the Government states that the allegation does not provide any clear information regarding a specific incident, with no reference to date or factory, and in any event denies that any workers were injured during protests over non-payment of wages in Gazipur in this period. As regards the allegations of increased pressure and state surveillance of garment federations by a newly-formed unit in the Department of National Security, resulting in at least 175 trade union leaders and active members being blacklisted and 26 of them facing criminal and civil charges, the Government indicates that the Bangladesh Labour Act (BLA) leaves no scope for blacklisting trade union leaders or workers and requests particularly information on the allegations of blacklisting in order to consider any action that might be taken if a violation is found.

The Government further provides information on the training and sensitization programs that have been organized for the personnel of disputes by the Industrial Police, referring specifically to orientation courses on labour rights, labour laws, human rights and workers' federation activities. The Industrial Police has trained 1,389 of its personnel so far concerning prevention of violence, unfair labour practices and anti-union acts as part of its broader training programmes. In collaboration with the ILO, the Department of Labour (DOL) has planned a training for 90 Industrial Police personnel ranked from Superintendents of Police to Sub-Inspectors of Police in August 2022 and a training of trainers on preventing unfair labour practice, violence and harassment in September 2022. Bangladesh Police also provides regular training on these issues to its personnel across the board, while further upgrading of training curricula for Industrial Police, with added features concerning labour rights and trade union activities, is being discussed with Industrial Police and the ILO. Ministry of Labour and Employment (MOLE), Ministry of Home Affairs and Ministry of Law, Justice and Parliamentary Affairs continue to provide instructions to their subsidiary agencies regarding handling of cases, including those involving alleged acts of violence and harassment against workers. The judiciary, prosecutorial services and law enforcement agencies receive regular training on these issues as part of their mandate. Further customized training may be provided based on specific needs and with ILO's technical support. Additionally, from July 2020 to June 2022, DOL has trained about 20,000 workers, management staff, and government officials through its 4 Industrial Relations Institutes (IRIs) and 32 Labour Welfare Centres (LWCs), with nearly 45 per cent female participants. The training topics include violence, harassment, unfair labour practices and anti-union discrimination in the workplace. DOL has also taken the initiative to provide training to the security staff, managers/employers of factories, providing basic information concerning complaint management and investigations, while the Industrial Police continues to engage with employers and factory management to sensitize their respective security personnel about prevention of violence and supporting investigations in case of alleged violence and harassment. A database on training, linked to the DOL website, is being supported by the ICT service vendor and will incorporate relevant information of the trainees (segregated by name, designation, factory/ trade union, age, sex, etc.) collected from the IRIs and LWCs. Further discussions are required to explore the possibility of including information on Industrial Police training in the proposed online database. Finally, the Government indicates that both DOL and the Department of Inspection for Factories and Establishments (DIFE) are entrusted with monitoring the case proceedings and management, including for those concerning alleged acts of violence and harassment against workers. The Government adds that it continues to consider the setting up of a dedicated Cell within an appropriate Ministry/agency to ensure and monitor proper investigation of such alleged cases as part of yet another confidence-building measure.

While taking due note of the various initiatives referred to by the Government, the Committee notes with ***concern*** the ITUC allegations in its latest communication that the climate for the exercise of trade union rights and the protection of workers is getting worse. According to the ITUC, strikes are met with extreme brutality by the police, who use batons, gunshots, tear gas and sound grenades against workers, killing at least five workers and injuring dozens more in 2021 after police opened fire on a crowd of workers demanding unpaid wages and a pay rise in Chittagong. The ITUC further refers to: (i) attacks by the industrial police in Gazipur on protesting garment workers on 15 February 2022; (ii) police inflicted injuries on workers protesting sexual harassment on 1 February 2022 in the Tongi Industrial Area; (iii) the injury on 13 June 2021, following a police crackdown, of garment workers demanding their wages after the closure of a factory in the Dhaka export processing zone (DEPZ); (iv) 12 workers severely injured when police used disproportionate force to suppress protests against unpaid wages and allowances in Dhaka on 25 July 2020. According to the ITUC, these events show a pattern of police attacks against protesting workers and if unpunished will result in impunity by the police and security forces who insert themselves into the industrial relations of the country. The Committee further observes the comments of the TU-ILS that while most complaints related to the 2016

and 2018 minimum wage unrest have been settled, several cases remain pending. The TU-ILS provides a detailed list of remaining cases with relevant case numbers, adding that in some factories, personal information and photos of the workers concerned is shared claiming that they are involved in a criminal offence while the case is still pending. The TU-ILS further alleges that the industrial police are trying to take on the role of conciliator or arbitrator of labour disputes, sometimes intimidating workers to resign. Some factories have provided accommodation for the industrial police and trade union offices are under police surveillance and lists are being made of workers attending trade union meetings. As regards the establishment of 29 committees of officials from the DOL and the DIFE, which the Government previously indicated had the aim of ensuring peaceful and congenial working conditions in ready-made garment (RMG) factories, the TU-ILS alleges that, while these committees are tripartite, they are highly political and administratively controlled, mostly influenced by the police, with labour representation selectively chosen. The TU-ILS asks for detailed information on the committees, their activities and disputes resolved. As for training and awareness-raising activities for the police, the TU-ILS contends that there has been only a limited number of trainings with little result. In the view of TU-ILS, dispute resolution mechanisms are what is needed.

The Committee notes with ***concern*** the very detailed information provided by the ITUC and the TU-ILS concerning numerous allegations of new cases of violence against trade unionists carried out by the industrial police. While the Committee takes due note of the information provided by the Government concerning the previous allegations, it observes that the industrial relations climate appears to remain one of little trust with confrontation a regular attribute. The Committee must therefore once again recall that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations. ***The Committee requests the Government to review all the allegations of violence, harassment and intimidation with the TU-ILS with a view to carrying out the necessary investigations to determine those responsible, punishing the guilty parties and preventing the repetition of any such acts. The Committee requests the Government to keep it informed of all steps taken in this regard.***

Furthermore, while noting the information provided by the Government concerning the training of the industrial police, the Committee notes with ***concern*** the numerous allegations concerning the expansion of the role of industrial police at the factory level in such a way as to intimidate and impede workers in the exercise of their freedom of association guaranteed by the Convention. ***The Committee therefore encourages the Government to continue to provide all necessary training and awareness-raising to the police and other State agents to sensitize them about human and trade union rights and urges the Government to review their role, with the workers' and employers' organizations concerned, so as to ensure that issues purely concerning labour relations are relegated to the unique authority of the relevant Ministry.***

Article 2 of the Convention. Right to organize. Registration of trade unions. The Committee notes the Government's indication that it has been implementing a number of initiatives to make the registration process simple, objective, rapid and transparent. The Government refers in particular to: (i) training of DOL officials on the Standard Operating Procedures (SOPs) in November 2021 with the collaboration of the ILO; (ii) 10 DOL officials have joined a three month training programme on Labour Relations and Social Dialogue conducted by the International Training Centre of the ILO in association with the Institute of Social Welfare and Research of the University of Dhaka; (iii) a pre-application service desk was established in every office of the Registrar of Trade Union (RTU) under DOL in January 2021 to ensure smooth registration through quality applications by scrutinizing trade union registration application documents; (iv) despite the adverse effect of COVID-19, 290 trade unions were registered in 2020 and 376 in 2021, while the success rate has increased from 88.69 per cent to 92.38 per cent during the same period; (v) digitization of the trade union registration process under DOL was completed on 27 October 2021 and was made active for users on 1 April 2022. The online registration system will be regularly reviewed and updated based on stakeholder feedback. The Committee further notes the

statistics provided on registration disaggregated by year and status and the Government's indication that the Publicly Accessible Online Database was activated on 30 September 2021 on the DOL website (www.dol.gov.bd) with the assistance of the Social Dialogue and Industrial Relations Project of ILO. It provides information on 11 areas, namely status of trade union application, registration, rejection, and filing; the number of national and sector wide trade union federations, participation committees, collective bargaining agreements; and information on unfair labour practices/ anti-union discrimination as well as conciliation of labour disputes. The Government states that the database, which was presented to a tripartite consultative workshop on 7 August 2022, should enhance the transparency of the trade union registration process, and will continue to be updated with relevant information.

The Committee notes however the TU-ILS allegations that: (i) while the law enables three unions per workplace, the DOL will only register one union; (ii) after a registration application is filed, the confidential information of the workers concerned is leaked to the employers through DOL requests to the employer for different documents. The workers then become vulnerable to intimidation and harassment; (iii) there are various requirements not contained in the law that hinder registration (i.e., representation of DOL in the general meeting to sign minutes; requirement that 20 per cent of the workers attend the general meeting for the union; requirement of permission from the local police for in-house or public meetings; delays in registration of five-months and beyond; requirement to submit both offline and online); (iv) the application portal is not well maintained and usage is not simple. The ITUC for its part regrets the lack of involvement of the Bangladeshi unions in the design of the registration process. The Committee notes with ***concern*** the allegations of interference by the Government in the steps taken by workers to form organizations of their own choosing and recalls that workers' organizations must be able to draw up their constitutions and rules in full freedom without government interference. The Committee further notes the numerous concerns raised by the TU-ILS as regards hurdles to registration that are not set out in the law, and observes from the statistics provided by the Government that the number of valid applications out of the total applications (as opposed to the percentage of unions registered which is only based on valid applications) continues to remain quite low (2021: 281 out of 394; January through July 2022: 57 out of 128). ***The Committee requests the Government to indicate the types of issues found when determining invalid applications and it encourages the Government to continue to engage with the workers' organizations concerned as regards the functioning of the digitized registration process for their feedback on any obstacles encountered and consideration of measures to redress them. The Committee also encourages the Government to continue to provide comprehensive training to divisional and regional officers who, following the decentralization of the registration process, are responsible for registration of trade unions, so as to ensure that they have sufficient knowledge and capacity to handle applications for registration rapidly and efficiently, while taking steps to ensure confidentiality of workers and their identity.***

Minimum membership requirements. The Committee notes the Government's indication that the 2018 amendment to the BLA, reducing the minimum membership requirement to form a trade union and maintain its registration from 30 per cent to 20 per cent of the total number of workers employed in the establishment in which a union is formed, is being applied since its entry into force on 14 November 2018. According to the Government, while taking into account the impact of the COVID-19 pandemic, the reduction to the minimum membership requirement has resulted in an increase in the number of registration applications. (2018: 394; 2019: 943; 2020: 413; 2021: 394). The Committee recalls its previous comment that the 20 per cent threshold is still likely to be excessive, especially in large enterprises, where it constitutes a hurdle to form a union, and takes note of the indication by the TU-ILS that it has proposed the repeal of section 190(f) which allows for cancellation of a trade union if its membership falls below the minimum membership requirement, and section179(5) which limits the number of trade unions in an establishment or group of establishments to a maximum of three. The Committee notes the Government's indication in its report on the progress made with the timely

implementation of the road map that amendment proposals from the tripartite constituents have been compiled by the Tripartite Labour Law Review Committee for discussion on the compiled recommendations to be forwarded to the tripartite working group (TWG) and that the MOLE is engaged with the ILO to align the BLA with relevant international labour standards. ***The Committee expects that the Government will make progress in the near future in its tripartite review of sections 179(5) and 190(f) of the BLA with a view to reducing the minimum membership requirements to a reasonable level, at least for large enterprises, and ending the possible cancellation of trade unions that fall below minimum membership requirements, as well as addressing the limits on the number of trade unions in an establishment.***

With regard to the application of the BLA to workers in the agricultural sector through Bangladesh Labour Rule 167(4), the Committee notes the Government's indication that there has been consultation on the issue with relevant stakeholders including social partners and that the Bangladesh Labour Rules Amendment Committee has proposed a reduction for small family farms and observes from an official English version of the rule that the minimum number has been reduced to 300. ***Observing that the requirement of even 300 workers to form a union in a group of establishments in one district might still be excessive, especially for workers on small family farms, the Committee requests the Government to provide detailed information on the practical application of this requirement, including the number of unions of agricultural workers registered and the number of workers represented and establishments covered by each of these unions, and trusts that further measures will be considered to ensure that agricultural workers can exercise their right to organize without hindrance.***

Articles 2 and 3. Right to organize, elect officers and carry out activities freely. Bangladesh Labour Act. The Committee notes the Government's general indication that all amendments made in 2018 to the BLA are in force and applied from the date of enactment. A National Tripartite Consultative Council (NTCC) formed to deal with national level labour issues meets at regular intervals. The Committee ***regrets*** however that the Government has not provided any further information in relation to the numerous sections for which the Committee has requested amendment, repeal or further information. The Committee recalls that its previous comments concerned the following provisions: (i) scope of the law – restrictions on numerous sectors and workers remain, including, among others, Government workers, university teachers and domestic workers (sections 1(4), 2(49) and (65) and 175); (ii) one remaining restriction on organizing in civil aviation (section 184(1) – the provision should clarify that trade unions in civil aviation can be formed irrespective of whether they wish to affiliate with international federations or not); (iii) restrictions on organizing in groups of establishments (sections 179(5) and 183(1)); (iv) restrictions on trade union membership (sections 2(65), 175, 193 and 300); (v) interference in trade union activity, including cancellation of registration for reasons that do not justify the severity of the act (sections 192, 196(2)(b) read in conjunction with 190(1)(c), (e) and (g), 229, 291(2)–(3) and 299); (vi) interference in trade union elections (section 180(1)(a) read in conjunction with section 196(2)(d), and sections 180(b) and 317(4)(d)); (vii) interference in the right to draw up constitutions freely by providing overly detailed instructions (sections 179(1) and 188 (in addition, there seems to be a discrepancy in that section 188 gives the DOL the power to register and, under certain circumstances, refuse to register any amendments to the constitution of a trade union and its Executive Council whereas Rule 174 of the Bangladesh Labour Rules(BLR) only refers to notification of such changes to the DOL who will issue a new certificate)); (viii) excessive restrictions on the right to strike (sections 211(3)–(4) and (8) and 227(c)) accompanied by severe penalties (sections 196(2)(e), 291(2)–(3) and 294–296); and (ix) excessive preferential rights for collective bargaining agents (sections 202(24)(b), (c) and (e) and 204 (while noting the minor amendments to sections 202 and 204, the Committee notes that these amendments do not address its concerns in that they limit the scope of action of trade unions other than the collective bargaining agents). Furthermore, the Committee is still awaiting information on whether workers in small farms consisting of less than five workers can, in law and practice, group

together with other workers to form a trade union or affiliate to existing workers' organizations (section 1(4)(n) and (p) of the BLA).

The Committee further observes with ***concern*** the observations from the TU-ILS that the worker nomination to the TCC charged with reviewing the legislation was made by the Government and not by the workers organizations independently and further that the recommendations agreed by the tripartite representatives for amendment to the BLR were not endorsed, stalling the process for some time. Similarly, not all proposals agreed by tripartite representatives in 2018 for the amendment of the BLA were reflected in the final Act. Finally, the TU-ILS indicates that TCC meetings do not take place regularly and alleges that it meets merely to validate government needs. ***The Committee renews its request that the Government amend, repeal, or provide explanations as applicable regarding the provisions of the BLA identified above. In that connection, and noting the information provided by the Government concerning the ongoing review process to be carried out by the NTCC, the Committee urges the Government to take the necessary measures to ensure that the worker representation reflects the independent choice of the Bangladesh trade union movement and requests the Government to schedule regular meetings to expedite the work of the NTCC so that it may review the above provisions of the BLA and bring them fully into line with the Convention.***

Bangladesh Labour Rules. The Committee notes from the Government's progress report to the Governing Body within the framework of the section 26 complaint that the amended BLR were published through gazette notification on 1 September 2022. While the Government has not yet provided an official English version of the Rules, the Committee welcomes the amendment that appears to have been made to Rule 183 clarifying that it is not necessary to form a participation committee in companies where a union is present. It further observes that Rule 204 appears to have been amended to allow all workers to participate in a secret ballot. The Committee further notes that Rule 188, which provides for employer participation in the formation of election committees that conduct the election of worker representatives to participation committees in the absence of a union, has been amended to limit the employer representation to one, giving greater weight to the workers' representation. ***The Committee requests the Government to provide detailed information on the application of Rule 188, as well as on the results of the Government's efforts previously reported to pilot election of worker representatives to participation committees without any representation of employers.*** The Committee however notes with ***regret*** that the following rules which the Committee had previously requested the Government to address appear not to have been amended in the manner requested: (i) Rule 2(g) and (j) contains a broad definition of administrative and supervisory officers who are excluded from the definition of workers under the BLA and thus from the right to organize; (ii) Rule 85, Schedule IV, sub-rule 1(h) prohibits members of the Safety Committee from initiating or participating in an industrial dispute; (iii) Rule 169(4) limits eligibility to a trade union executive committee to permanent workers, which may adversely affect the right of workers' organizations to elect their officers freely; (iv) Rule 190 prohibits certain categories of workers from voting for worker representatives to participation committees; (v) Rule 202 contains broad restrictions on actions taken by trade unions and participation committees; (vi) Rule 350 provides for excessively broad powers of inspection by the Director of Labour; and (vii) the BLR lacks provisions providing appropriate procedures and remedies for unfair labour practice complaints. ***The Committee deeply regrets that the Government appears not to have taken advantage of the recent revision process to address the above-mentioned concerns and urges it to ensure an expedited review of these remaining issues so that the Bangladesh Labour Rules may be brought fully into conformity with the provisions of the Convention. The Committee further requests the Government to transmit the English version of the Rules.***

Right to organize in Export Processing Zones (EPZs). The Committee recalls its previous comments concerning the need to further amend the Export Processing Zone Labour Act (ELA) of February 2019 to bring it into conformity with the Convention and to issue the rules under the Act to fully ensure freedom of association and, in particular, the right to organize. The Committee takes due note of the

Government's reiteration of the favourable treatment to workers in EPZs through separate laws, rules and regulations and the important improvements made with the adoption of the ELA. The Government adds that a Tripartite Standing Committee was formed in November 2021 to work on the draft Rules for the ELA and consensus was reached on most of them. The proposed draft EPZ Labour rules, contains 15 chapters, 319 rules, 4 schedules and 106 forms, including: prevention of discrimination and conducting investigation against anti WWA activities; provisions on forming a federation; Procedure of formation of employers' association; modalities of DIFE inspection in EPZ; and prevention of misconduct to female workers covering prevention of activities against gender-based violence and harassment etc. The vetting of the proposed draft rules has been completed and the gazette notification of EPZ Labour Rules will be published very soon. The Committee notes that the EPZ Labour Rules were published on 4 October 2022. The Committee ***regrets*** however that the Government has not provided information as requested on the application in practice of the 2019 amendments, and has only indicated that an impact analysis will cover the period July 2023 to June 2025. The Committee therefore has no information available to it, in particular on the practical implications of these amendments on the number of applications for WWAs and WWA federations submitted and registered. In addition, the Committee observes that Chapter nine of EPZ Labour Rules on Workers' Welfare Association and Industrial Relations contains a number of rules setting out the role of the EPZ Executive Chairperson or Executive Director in the creation of WWAs, WWA Federations, EPZ employer associations, etc, which include a large degree of discretionary authority and opportunities to interfere in elections (i.e., Rules 172(4) (WWA), 183(1) (election management committee), 202(5) (WWA Federation), 211(5) (employers' association)) with recourse only available to the EPZ Labour Courts. ***The Committee once again requests the Government to continue to review the measures concerning the establishment of WWAs and WWA federations, in consultation with the social partners concerned, to endeavour to further reduce, to a reasonable level, the minimum membership requirements to form a WWA, especially in large establishments, as well as for federations, and to allow WWAs and federations to associate with other entities in the same Zone and outside the Zone in which they were established, including with non-EPZ workers' organizations at different levels. The Committee further requests the Government to provide detailed information on the number of applications received for the formation of WWAs, WWA Federations and employers' associations and the number registered.***

While noting from the Government's report to the Governing Body on the progress made in implementing the road map developed within the framework of the article 26 complaint that the Bangladesh Export Processing Zone Authority (BEPZA) is closely engaged with the ILO for improvement of labour standards in EPZs and has held meetings in August and September 2022 regarding amendment of the EPZ Labour Act, 2019, the Committee must reiterate its ***deep regret*** that most of the changes to the Act that it had requested have still not been addressed. As a result, many of the issues already raised in relation to the 2019 ELA continue under the unchanged EPZ Labour Rules. The Committee must therefore, once again emphasize the need to further review the ELA to ensure its conformity with the Convention regarding the following matters: (i) scope of the law – specific categories of workers continue to be excluded from the law (workers in supervisory and managerial positions – sections 2(48)) or from Chapter IX dealing with WWAs (members of the watch and ward or security staff, drivers, confidential assistants, cipher assistants, casual workers, workers employed by kitchen or food preparation contractors and workers employed in clerical posts (section 93), as well as workers in managerial positions (section 115(2)); (ii) the imposition of association monopoly at enterprise and industrial unit levels (sections 94(6), 97(5) paragraph 2, 100 and 101); (iii) detailed requirements as to the content of a WWA's constitution which go beyond formal and may thus hinder the free establishment of WWAs and constitute interference in the right to draw up constitutions freely (section 96(2)(e) and (o)); (iv) limited definition of the functions of WWA members despite the deletion of the word "mainly" from section 102(3); (v) prohibition to hold an election to the Executive Council during a period of six months (reduced from one year), if a previous election was ineffective because less than

half of the permanent workers of the enterprise cast a vote (section 103(2)–(3)); (vi) prohibition to function without registration and to collect funds for an unregistered association (section 111); (vii) interference in internal affairs by prohibiting expulsion of certain workers from a WWA (section 147); (viii) broad powers and interference of the Zone Authority in internal WWA affairs by the requirement of approval for funds from an outside source (section 96(3)), approval of any amendment in a WWA constitution and Executive Council (section 99), power to arrange elections to the Executive Council of WWAs (section 103(1)) and its approval (section 104), power to rule on the legitimacy of a transfer or termination of a WWA representative (section 121), power to determine the legitimacy of any WWA and its capacity to act as a collective bargaining agent (section 180(c)) and the monitoring of any WWA elections (section 191); (ix) interference by the authorities in internal affairs by allowing supervision of the elections to the WWA Executive Council by the Executive Director (Labour Relations) and the Inspector-General (sections 167(2)(b) and 169(2)(e)); (x) restrictions imposed on the ability to vote and on the eligibility of workers to the Executive Council (sections 103(2) and (4) and 107); (xi) legislative determination of the tenure of the Executive Council (section 105); (xii) broad definition of unfair labour practices, which also include persuasion of a worker to join a WWA during working hours or commencement of an illegal strike, and imposition of penal sanctions for their violation (sections 116(2)(a) and (f), 151(2)–(3) and 155–156); (xiii) power of the Conciliator appointed by the Zone Authority to determine the validity of a strike notice, without which a lawful strike cannot take place (section 128(2) read in conjunction with section 145(a)); (xiv) possibility to prohibit strike or lockout after 30 days or at any time if the Executive Chairman is satisfied that the continuance of the strike or lockout causes serious harm to productivity in the Zone or is prejudicial to public interest or national economy (section 131(3)–(4)); (xv) possibility of unilateral referral of a dispute to the EPZ Labour Court which could result in compulsory arbitration (sections 131(3)–(5) and 132, read in conjunction with section 144(1)); (xvi) prohibition of strike or lockout for three years in a newly established enterprise and imposition of obligatory arbitration (section 131(9)); (xvii) possibility of hiring temporary workers during a legal strike in cases where the Executive Chairman of the Zone Authority is satisfied that complete cessation of work is likely to risk causing serious damage to the machinery or installation of the industry (section 115(1)(g)); (xviii) excessive penalties, including imprisonment, for illegal strikes (sections 155 and 156); (xix) prohibition to engage in activities which are not described in the constitution as objectives of the association (section 178(1)); (xx) prohibition to maintain any linkage with any political party or organization affiliated to a political party or non-governmental organization, as well as possible cancellation of such association and prohibition to form a WWA within one year after such cancellation (section 178(2)–(3)); (xxi) cancellation of a WWA registration on grounds which do not appear to justify the severity of the sanction (sections 109(b)–(h), 178(3)); (xxii) restriction of WWA activities to the territorial limits of the enterprise thus banning any engagement with actors outside the enterprise, including for training or communication (section 102(2)) and, subject to the right to form federations under section 113, prohibition to associate or affiliate with another WWA in the same Zone, another Zone or beyond the Zone, including non-EPZ workers' organizations at all levels (section 102(4)); (xxiii) interference in internal affairs of a WWA federation – legislative determination of the duration of a federation (four years) and determination of the procedure of election and other matters by the Zone Authority (section 113); (xxiv) power of the Government to exempt any owner, group of owners, enterprise or group of enterprises, worker or group of workers from any provision of the Act, subjecting the rule of law to discretionary power (section 184); (xxv) excessive requirements to form an association of employers (section 114(1)); (xxvi) prohibition of an employer association to associate or affiliate in any manner with another association beyond the Zone (section 114(2)); (xxvii) excessive powers of interference in employers' associations' affairs (section 114(3)); and (xxviii) the possibility for the Zone Authority, with the approval of the Government, to establish regulations (section 204) which could further restrain the right of workers and their organizations to carry out legitimate trade union activities without interference. ***While taking due note that the Government intends to use the period from 2023***

to 2025 to review the impact of the ELA, the Committee is deeply concerned that an exceptionally large number of provisions still need to be repealed or substantially amended to ensure its conformity with the Convention. The Committee urges the Government to expedite the review of the ELA, in consultation with the social partners, so as to address the issues highlighted above and provide EPZ workers with all the rights guaranteed in the Convention. The Committee requests the Government to report in detail on the steps taken in this regard.

As regards section 168 of the BLA that allows the Chief Inspector and other inspectors appointed under the BLA to undertake inspections of EPZs, the Committee notes the Government's indication that pursuant to the preamble and section 3(A), 4(d), 7 (k) and 5A (2) of the BEPZA Act, BEPZA is the only appropriate authority of the Government for development, operation, management and control of EPZs and for matters connected therewith. The Government indicates that BEPZA as the central and competent authority of the Government is successfully performing its duties and responsibilities of administration and inspection in EPZs for the last four decades without any complaint from workers or investors' as well as any international platform. The Government points out nevertheless that following the ILO's request, the DIFE inspection was incorporated into the BLA and the modalities have been included in the draft EPZ Labour Rules. On 16 May 2022, a review discussion meeting was held between BEPZA and DIFE, presided over by the Minister of Law, Justice and Parliamentary Affairs, regarding a transparent and accountable mechanism of inspection. As of June 2022, DIFE has already inspected 23 factories in EPZs and found overall compliance to be satisfactory. The Committee recalls, however, that DIFE inspectors need the approval of the Executive Chairman to inspect EPZ establishments, while the Chairman retains ultimate supervision of labour standards in EPZs (sections 168(1) and 180(g)). The Committee has considered that such a requirement may hinder the independent nature and proper functioning of labour inspection. The Committee further observes that the EPZ Labour Rules issued on 4 October contain Chapter 13 concerning Administration and Inspection, including a framework for the inspection of DIFE, while Rule 290 provides that the DIFE shall submit the inspection report to the Additional Inspector General of the zones who shall direct the concerned establishment to implement the recommendations which he deems feasible. ***Referring to its more detailed comments on this point made under the Labour Inspection Convention, 1947 (No. 81), the Committee encourages the Government to continue to review the inspection framework set out in the Rules so as to ensure the necessary independence of the DIFE and to continue to provide practical information on the functioning of the DIFE in the zones, the recommendations made and those implemented, as well as statistics on the inspections conducted by the zones Labour Inspectorate. The Committee once again requests the Government to continue to take steps to ensure that unrestricted access for and jurisdiction over labour inspection activities in EPZs is provided to DIFE inspectors.***

Finally, the Committee notes the Government's indication that a Tripartite Implementation and Monitoring Committee (TIMC) has been formed by circular of 11 August 2021 and includes the following responsibilities: (1) to monitor the progress of implementation of the time-bound actions contained in the road map; and (2) to provide overall directions for the implementation of the road map. ***Noting the Government's indication that the technical assistance of both the ILO and development partners is crucial to ensure the successful implementation of the road map over a period of time, the Committee expresses the firm expectation that concrete steps will be taken to ensure timely implementation of the objectives of the road map taking into account all the above comments.***

Barbados

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it

has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) received on 10 September 2014, concerning matters examined under this comment, as well as other allegations of violations of the Convention in the law. The Committee requests the Government to provide its comments in this respect. The Committee also takes note of the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee recalls that it has been requesting the Government since 1998 to provide information on developments in the process of reviewing legislation regarding trade union recognition. The Committee notes that the Government indicates that there are no further developments in the process of reviewing legislation regarding trade union recognition, and that a number of the observations made by the ITUC refer to issues concerning trade union registration. ***Hoping that it will be able to observe progress in the near future, the Committee requests the Government to provide information on any development in the legislative review process and it recalls that the Government may avail itself of the technical assistance of the ILO in this regard.***

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

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

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1 of the Convention. Protection of workers' representatives. The Committee notes with ***satisfaction*** the adoption of a new Employment Rights Act, which includes protection from dismissal by reason of being, or being proposed to become, an officer, a shop steward, a safety and health representative, or a delegate or member of a trade union, as well as by reason of seeking office or acting as a worker's representative.

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

Belarus

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

Previous comment

The Committee takes note of the observations of the International Trade Union Confederation (ITUC), received on 15 March 2022 and 1 September 2022, referring to matters addressed in this comment. The Committee also takes note of the comments of the International Organisation of Employers (IOE) received on 25 August 2022, which reiterate the comments made in the discussion that took place in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2022 on the application of the Convention by Belarus.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

The Committee notes the discussion that took place in the Conference Committee in June 2022 concerning the application of the Convention. The Conference Committee deplored and deeply regretted the allegations of extreme violence to repress peaceful protests and assembly, and the detention, imprisonment and violent treatment of workers while in custody. The Conference Committee further deplored the escalating measures deployed to repress trade union activities, as well as the systemic destruction of independent trade unions. The Conference Committee expressed its deep concern that, 18 years after the Commission of Inquiry's report, the Government had failed to take measures to address most of the Commission's recommendations. The Conference Committee recalled the recommendations of the 2004 Commission of Inquiry noting the failure to make progress on its implementation and the need for their full and effective implementation, without further delay. The Conference Committee urged the Government to: (i) restore without delay full respect for workers' rights in respect of freedom of association; (ii) refrain from the arrest, detention, violent treatment, intimidation or harassment, including judicial harassment, of trade union leaders and members conducting lawful trade union activities; (iii) investigate without delay alleged instances of intimidation or physical violence through an independent judicial inquiry; (iv) immediately release all trade union leaders and members arrested for participating in peaceful assemblies or arrested for exercising their civil liberties pursuant to their legitimate trade union activities and drop all related charges, including for the following persons: Aliaksandr Yarashuk – a member of the Governing Body of the ILO; Siarhei Antusevich, Vice-President of the Belarus Congress of Democratic Trade Unions (BKDP); Gennadiy Fedynich, leader of the Belarusian Union of Radio and Electronics Workers (REP); Mikalai Sharakh, President of the Belarusian Free Trade Union (SPB); Aliaksandr Bukhvostov, President of the Free Trade Union of Metal Workers (SPM); and Zinaida Mikhniuk, Vice-Chairperson of the Belarusian Union of Radio and Electronics Workers (REP); (v) give access, as a matter of urgency, to visitors, including officials of the ILO, to ascertain the conditions of arrest and detention and the welfare of the above-mentioned persons; and (vi) take immediate action to implement fully the 2004 report of the Commission of Inquiry and the conclusions of the Conference Committee on the Application of Standards, including the conclusions adopted by the Committee in 2021. The Committee decided to include its conclusions in a special paragraph of the report and to mention this case as a case of continued failure to implement the Convention.

The Conference Committee also referred this matter to the Governing Body to follow up at its June 2022 session and to consider, at that time, any further measures, including those foreseen in the ILO Constitution, to secure compliance with the recommendations of the Commission of Inquiry. The Committee takes note of the decision of the Governing Body concerning the consideration of any further measures, including those foreseen in the ILO Constitution, to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry (GB.346/INS/13(Rev.1)). The Committee notes that the Governing Body at its 346th Session in November 2022: (a) deplored that no progress had been made by the Government of Belarus in implementing the recommendations of the 2004 Commission of Inquiry; (b) urged the Government to ensure full respect for freedom of association and, in particular, revoke all legislative and other measures directly or indirectly having the effect of outlawing independent trade unions or employers' organizations; (c) urged the Government to immediately release all trade union leaders and members arrested for participating in peaceful assemblies or arrested for exercising their civil liberties pursuant to their legitimate trade union activities and drop all related charges; (d) urged the Government to allow the ILO, as a matter of urgency, to ascertain the conditions of arrest and detention and the welfare of the above-mentioned

trade unionists; (e) noted that the Committee of Experts on the Application of Conventions and Recommendations will be reviewing the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in Belarus at its November–December 2022 meeting; (f) urged the Government to submit all information regarding the measures taken to implement all outstanding recommendations of the Commission of Inquiry and in respect of the more recent developments forming part of the complaint to the Committee on Freedom of Association for its examination at its March 2023 meeting; (g) requested the Director-General to submit to the Governing Body at its 347th Session (March 2023) a document detailing options for measures under article 33 of the ILO Constitution as well as other measures to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry taking account of the views expressed; and (h) decided to place on the agenda of the 111th Session (2023) of the International Labour Conference an item concerning measures under article 33 of the ILO Constitution to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry.

The Committee notes the above information with ***grave concern*** as it points to a total lack of progress in implementing the recommendations of the 2004 Commission of Inquiry and in addressing the outstanding recommendations of the ILO supervisory bodies. In this respect, the Committee recalls that in its previous comments it had expressed deep concerns regarding the situation of civil liberties in Belarus and the application of the Convention in law and in practice and had urged the Government to take a number of measures to address them. At the outset, the Committee notes with ***deep regret*** that in its report, the Government merely reiterates the information it had previously provided and considers that the Committee misunderstands and misinterprets the situation on the ground.

Civil liberties and trade union rights. The Committee recalls that in its previous comment it had noted the continued deterioration of the situation of human rights in the country following the presidential election in August 2020 and in this respect had urged the Government to: (i) investigate without delay all alleged instances of intimidation or physical violence through an independent judicial inquiry and to provide detailed information on the outcome; (ii) take measures for the release of all trade unionists who remain in detention and to drop all charges related to participation in peaceful protest action; (iii) take all the necessary measures, including legislative, if necessary, to ensure the right to a fair trial and an impartial and independent judiciary and justice administration; (iv) ensure impartial and independent judiciary and justice administration in general in order to guarantee that investigations into these grave allegations are truly independent, neutral, objective and impartial; and (v) supply copies of the relevant court decisions upholding detention and imprisonment of workers and trade unionists. The Committee notes with ***deep regret*** that the Government reiterates that: (i) the citizens referred to in the complaints made by trade union organizations as having allegedly suffered for their participation in peaceful protests and strikes were charged with disciplinary, administrative and, in certain cases, criminal offences for having committed specific illegal actions. The bringing of these citizens to justice has nothing to do with persecution for the exercise of their civil or trade union rights and freedoms; (ii) article 60 of the Constitution guarantees the protection of the rights and freedoms of all by a competent, independent and impartial judiciary. Any interference with the courts' administration of justice is prohibited and punishable by law. All trials are public. The adversarial principle and equality of parties in proceedings apply and the parties have the right to appeal; (iii) domestic law does not provide for supplying copies of court verdicts to persons with no connection to the trial. The ILO supervisory bodies can obtain the requested copies from the persons authorized to have access to verdicts.

The Committee notes that the UN High Commissioner for Human Rights indicated in her 2022 *Report on the situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath* that in response to the protests between 9 and 14 August 2020 "individuals were targeted following a consistent pattern of unnecessary or disproportionate use of force, arrests, detention (including incommunicado detention), and torture or ill-treatment, including rape and sexual and

gender-based violence, and the systematic denial of the rights to due process and to a fair trial. The failure to effectively investigate human rights violations, including allegations of torture or other ill-treatment, is a contravention of the State's obligations under international human rights law. Furthermore, OHCHR found that, besides the lack of investigation, there was an active policy to shield perpetrators and prevent accountability, reflected in the degree of reprisals, intimidation of victims and witnesses, and attacks on lawyers and human rights defenders".

The Committee recalls that the International Labour Conference 1970 resolution concerning trade union rights and their relation to civil liberties, emphasizes that the rights conferred upon workers' and employers' organizations must be based on respect for civil liberties, as their absence removes all meaning from the concept of trade union rights. The Committee considers that the failure of the Government to reply to very serious allegations of violation of civil liberties or to address the repeated specific requests of the ILO supervisory bodies, including those made by this Committee, reinforces the reality of wilful Government noncompliance with its obligations under the Convention.

The Committee notes with ***deep concern*** that while the Government fails to reply to its previous comments, new allegations of arbitrary arrest, detention, prosecution and criminal sanctions against trade union leaders and members, as well as searches conducted in their homes have been submitted by the ITUC. In this regard, the Committee notes that the ITUC denounces, as did several speakers at the Conference Committee in June 2022, the imprisonment of the following 17 unionists, all leaders and members of the BKDP and its affiliates: Aliaksandr Yarashuk; Siarhei Antusevich; Hennadzy Fiadynich; Vatslau Areshka; Mikhail Hromau; Iryna But-Husaim; Miraslau Sabchuk; Yanina Malash; Vitali Chychmarou; Vasil Berasneu; Zinaida Mikhniuk; Aliaksandr Mishuk; Ihar Povarau; Yauhen Hovar; Artsiom Zhernak; Mikalaj Sharakh; and Andrei Khanevich. The Committee ***deplores*** the Government's unwillingness to immediately release trade union leaders and members as urged by the Conference Committee above***. Accordingly, this Committee urges the Government to immediately release all trade union leaders and members arrested for participating in peaceful assemblies or for exercising their civil liberties pursuant to their legitimate trade union activities, and to drop all related charges. The Committee also urges the Government to provide detailed information concerning the situation of these trade unionists, including charges brought against them, and give access, as a matter of urgency, to visitors, including officials of the ILO, to ascertain the conditions of arrest and detention and the welfare of the above-mentioned persons. If in the meantime, any of the above trade unionists have been brought to court, the Committee urges the Government to provide information on the outcome of any proceedings undertaken against them and to communicate copies of any court decisions issued in their cases.***

Application of the Convention. The Committee recalls that the outstanding issues of the application of the Convention relate to the following concerns: (1) right to establish workers' organizations, which includes the issue of legal address and the right, in practice, to form trade unions outside the Federation of Trade Unions of Belarus (FPB); (2) the right of workers' organizations to receive and use foreign gratuitous aid (funding obtained from abroad); (3) the right, in law and in practice, to demonstrate and hold mass events; (4) the right to strike; (5) consultation with organizations of workers and employers; and (6) labour disputes resolution system. The Committee observes with ***deep regret*** the absence of information on the concrete measures taken by the Government to give effect to the Committee's previous requests aimed at addressing these concerns; instead, the Government merely reiterates the information it has previously provided.

The Committee also notes with the ***utmost concern*** the following new information provided by the Government, which attests to further deterioration in the status of freedom of association in the country. The Government indicates that following the presidential election in August 2020, the activities of certain trade unions became highly unconstructive and politicized. Instead of performing their tasks of protecting citizens' labour and socio-economic rights and interests, taking action to warn workers against participation in illegal protest actions of a political nature at their enterprises and informing

their members of the illegal nature of such actions, which in a number of cases posed a serious threat to public order and the safety of the population, representatives of the BKDP and leaders and members of its affiliated trade unions participated in destructive acts and unauthorized mass activities aimed at achieving regime change by unconstitutional means. These trade unions, according to the Government, indulged in behaviour which contradicted the Constitution and other pieces of national legislation and which focused not on their statutory tasks and objectives but on active participation in illegal activities and their popularization. In order to prevent further violations of the legislation, applications were made to the Prosecutor General and the Supreme Court to halt the activities of the BKDP and its member trade unions. At the petition of the Prosecutor General, the Supreme Court issued rulings to discontinue the activities of the Free Trade Union of Belarus (SPB), the Free Trade Union of Metalworkers (SPM), the Belarusian Independent Union of Mining, Chemical, Oil Industry, Energy, Transport, Construction and other Workers (BNP affiliate), the Radio Electronics Workers (REP) Union and the BKDP. Pursuant to the deliberations of the Court, it was established that instead of defending the labour and socio-economic rights of workers, the leaders and a number of members of these trade unions participated actively in destructive activities and mass events which violated public order, and also distributed information material with extremist content. The Supreme Court in its verdicts found violations of the Constitution, the Trade Unions Act and other national laws and regulations on matters concerning the receipt and use of foreign gratuitous aid. The Committee ***deplores*** that following these court decisions, the BKDP and its affiliate organizations at all levels have now ceased to operate in the country.

The Committee recalls that the Commission of Inquiry had requested the Government to amend Presidential Decree No. 24 (2003) on Receiving and Using Foreign Gratuitous Aid. The Committee for a number of years has been asking the Government to abolish the sanctions imposed on trade unions (liquidation of an organization) for a single violation of the Decree and to widen the scope of activities for which foreign financial assistance can be used so as to include events organized by trade unions. The Committee recalls that Decree No. 24 had been superseded by Presidential Decree No. 5 (2015) and then by Decree No. 3 of 25 May 2020, under which the foreign gratuitous aid could still not be used to organize or hold assemblies, rallies, street marches, demonstrations, pickets or strikes, or to produce or distribute campaign materials, hold seminars or carry out other forms of activities aimed at "political and mass propaganda work among the population", and that a single violation of the Regulation still bore the sanction of possible liquidation of the organization. The Committee observed that the broad expression "political and mass propaganda work among the population" when applied to trade unions may hinder the exercise of their rights as it is normal and inevitable for trade unions to take a stand on questions having political aspects that affect their socio-economic interests, as well as on purely economic or social questions.

The Committee further recalls that the Commission of Inquiry had requested the Government to amend the Law on Mass Activities, under which, a trade union that violates the procedure for organizing and holding mass events may, in the case of serious damage or substantial harm to the rights and legal interests of other citizens and organizations, be liquidated for a single violation. Following its 2021 amendment, the Law makes an organization responsible if its leaders and members of their governing bodies make public calls for organizing a mass event before permission to organize the event is granted.

Finally, the Committee recalls that it had noted with regret the Regulation on the procedure requiring payment for services provided by the internal affairs authorities in respect of protection of public order, which outlines the fees that must be paid by the organizer of a mass event in relation to maintenance of public services and the expenses of the specialized bodies (medical care and cleaning services) following such an event.

Reading these provisions alongside those forbidding the use of foreign gratuitous aid for the conduct of mass events, the Committee had considered that the capacity for carrying out mass actions would appear to be extremely limited if not non-existent in practice. The Committee therefore urged the Government to amend Decree No. 3 of 25 May 2020 on the registration and use of foreign gratuitous

aid, the Law on Mass Activities and the accompanying Regulation, and recalled that the amendments should be directed at abolishing the sanctions imposed on trade unions or trade unionists for a single violation of the respective legislation; at setting out clear grounds for the denial of requests to hold trade union mass events, bearing in mind that any such restriction should be in conformity with freedom of association principles; and at widening the scope of activities for which foreign financial assistance can be used.

In addition, the Committee had noted that the Criminal Code was amended in 2021 so as to introduce the following restrictions and associated penalties: repeated violations of the procedure for organizing and holding of mass events, including public calls therefor, are punishable by arrest, or restraint of liberty or imprisonment of up to three years (section 342-2); insult of a government official is punishable by a fine and/or restriction of liberty or imprisonment for up to three years (section 369); the penalty for "discrediting the Republic of Belarus" was increased from two to four years imprisonment with a fine (section 369-1); section 369-3 of the Criminal Code has been retitled from "violation of procedure for organizing and holding of mass events" to "public calls for the organization or conduct of an illegal meeting, rally, street procession, demonstration or picketing, or the involvement of persons in such mass events", which became an offence punishable by up to five years of imprisonment. The Committee recalls the BKDP allegation that criminal liability can be established simply for organizing peaceful assemblies and that any criticism and slogans are seen by the authorities as insults within the meaning of section 369 of the Criminal Code and that BKDP's leaders were under the threat of being prosecuted under section 369-1 of the Criminal Code for calling for a boycott of Belarusian goods and application of sanctions. The Committee expresses its ***deep concern*** that trade unionists' speaking at the International Labour Conference, engaging with the ILO, and in case of Mr Yarashuk, being a member of the ILO Governing Body, could well have been interpreted by the authorities as "discrediting the Republic of Belarus", punishable by four years of imprisonment.

The Committee notes the Government's renewed reiteration that there is no link between the established procedure for obtaining funding from abroad (foreign gratuitous aid) and *Articles 5* and *6* of the Convention. The Government once again points out that allowing external forces (in this case the trade unions of other countries and international trade union associations) to sponsor the holding of mass events in Belarus can present an opportunity to destabilize the socio-political and socio-economic situation, which in turn has an extremely negative effect on public life and citizens' wellbeing. Thus, the existing ban on receiving and using foreign gratuitous aid for the purposes of conducting political and mass propaganda work among the population is bound up with the interests of national security, and the need to exclude any possible destructive influence and pressure from external forces. The Government further reiterates that the exercise of the right of peaceful assembly is not subject to any restrictions, except those that are imposed in conformity with the law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, the protection of the rights and freedoms of others. In holding mass events, trade unions are obliged to observe public order and must not permit actions which may cause an event to lose its peaceful character and inflict serious harm on citizens, society or the State. In the Government's view, the legal penalty prescribed for organizers of mass events which cause substantial damage or harm to the interests of citizens and organizations, and also to the interests of State and society, does not constitute, and should not be interpreted as, a constraining factor on the exercise of rights to freedom of peaceful assembly by citizens and trade unions. In light of the above, the Government considers that any relaxation of responsibility for violation of the procedure for holding mass events or any lifting of restrictions on the use of foreign financial aid for the holding of political and mass propaganda work could only lead to circumstances likely to strengthen the external destructive influence on the situation in the country, which does not serve the interests of the country.

The Committee notes with ***deep regret*** that the Government has no intention of amending the legislation as requested by the Commission of Inquiry, whose recommendations the Government

accepted as per article 29(2) of the ILO Constitution nearly 20 years ago. ***The Committee therefore reiterates its previous request to amend without further delay Decree No. 3, the Law on Mass Activities and the accompanying Regulation. The Committee further requests the Government to repeal the above-mentioned provisions of the Criminal Code in order to bring them into compliance with the Government's international obligations regarding freedom of association. The Committee expects the Government to provide information on all steps taken in this regard.***

The Committee recalls that it had been requesting the Government for a number of years to amend sections 388(1), (3) and (4), 390, 392 and 393 of the Labour Code restricting the right to strike; as well as its section 42 (7), which expressly allows an employer to dismiss/terminate a labour contract with a worker who is absent from work in connection with serving an administrative penalty in the form of an administrative arrest; who forces other workers to participate in a strike or calls on other workers to stop performing work duties without sound reason; and who participates in an illegal strike or other forms of withholding labour without sound reasons. The Committee recalls the BKDP allegations that numerous trade unionists who participated in mass events and strikes organized following the August 2020 Presidential election were found guilty of administrative breaches and received corresponding penalty in the form of administrative arrest, and consequently dismissed. The Committee ***regrets*** that the Government merely reiterates its previous view that the national legislation is in conformity with the international labour instruments; that in Belarus, according to section 388 of the Labour Code, a strike constitutes a temporary and voluntary refusal by workers to perform their employment duties (fully or in part) for the purpose of settling a collective labour dispute; and that strikes of political nature are forbidden. The Committee recalls since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its lawful exercise should not result in striking workers being dismissed or discriminated against (2012 General Survey on the fundamental Conventions, paragraph 161). ***The Committee is therefore bound to urge the Government to take measures to revise the above-mentioned legislative provisions, which negatively affect the right of workers' organizations to organize their activities in full freedom, and to provide information on all measures taken or envisaged to that end.***

The Committee ***deplores*** the effect of the dissolution of the BKDP on the work of the National Council on Labour and Social Issues (NCLSI) and of the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere (the tripartite Council). With the dissolution of the BKDP, the only representation of workers' voice in these structures is now the FPB. The Committee had previously noted the publicly expressed support for that organization from State authorities at the highest level. The Conference Committee conclusions at its June 2021 session, reproduced in full in 2022, refer to support for the FPB from the President of the country, and urge the Government in the strongest terms to refrain from showing favouritism towards any particular trade union. The Committee recalls in this respect – as it has before – the importance of ensuring an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country. In these circumstances, the Committee questions the continuing legitimacy of the NCLSI and the tripartite Council.

The Committee emphasizes that pursuant to *Article 11* of the Convention, each ILO Member for which the Convention is in force shall take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize. The Committee considers that the development of free and independent organizations and their involvement in social dialogue is indispensable to enable a government to confront its social and economic problems and resolve them in the best interests of the workers and the nation. ***The Committee urges the Government to take steps to review the situation of the dissolved trade unions in this light so as to ensure that they may again function.***

The Committee recalls that in its 2004 report, the Commission of Inquiry considered that its recommendations should be implemented without further delay and that the majority of its

recommendations should be completed at the latest by 1 June 2005. The Committee ***deplores*** that 18 years later, the recent developments indicate continuing steps backward as all space for the safe existence of an independent trade union movement in Belarus has virtually disappeared. ***The Committee urges the Government to abandon its policy of destroying the independent trade union movement and silencing the free voices of workers. The Committee urges the Government to engage with the ILO with a view to fully implement all outstanding recommendations of the ILO supervisory bodies without further delay.***

Belize

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1983)

Previous comment

Article 3 of the Convention. Compulsory arbitration. In its previous comments, the Committee requested the Government to amend the Settlement of Disputes in Essential Services Act 1939 (SDESA), which empowers the authorities to refer a collective dispute to compulsory arbitration to prohibit a strike or to terminate a strike in the banking sector, civil aviation, port authority, postal services, social security scheme and the petroleum sector, i.e. services that are not essential in the strict sense of the term. The Committee notes with ***regret*** the Government's indication that the SDESA has not been amended. ***The Committee therefore reiterates its long-standing request and urges the Government to provide information on the steps taken, in consultation with the social partners, to amend the Schedule to the SDESA in order to ensure that compulsory arbitration or a prohibition on strikes is permitted only in services that are essential in the strict sense of the term – that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1983)

Previous comment

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. In its previous comments, the Committee recalled allegations by the International Trade Union Confederation (ITUC) of anti-union discrimination in the banana plantation sector and in export processing zones and requested the Government to ensure that the competent authorities take fully into account in their control and prevention activities the issue of anti-union discrimination, and that the workers in the country are fully informed of their rights regarding this issue. The Committee notes that the Government states that no acts of anti-union discrimination were denounced to the authorities in the above-mentioned sectors during the reporting period (July 2017 to June 2021). The Committee also notes the Government's indication that its Labour Department has been closely monitoring these sectors by conducting inspections of workplaces to ensure that workers are adequately protected, including against acts of anti-union discrimination in respect of their employment. ***While it welcomes the information provided regarding the conduct of labour inspections, the Committee requests the Government to take all the necessary measures to ensure that Belizean workers are fully informed of their rights with respect to anti-union discrimination. The Committee requests the Government to provide information on any developments in this regard and to continue reporting on any statistics concerning the anti-union discrimination acts reported to the authorities.***

Article 4. Promotion of collective bargaining. In its previous comments under the Collective Bargaining Convention, 1981 (No. 154), the Committee raised the need to amend section 25 of the Trade

Unions and Employers' Organizations (Registration, Recognition and Status) Act (TUEOA), which provides that the tripartite body entrusted with the certification of the representative trade unions may, before granting any certification to a trade union, include additional employees to the bargaining unit, or exclude some employees therefrom in order to render the unit more appropriate. The Committee notes that the Government states that section 25 of the TUEOA was not amended but that discussions continue at the Labour Advisory Board and the Tripartite Body regarding the TUEOA, which is likely to be amalgamated with the Trade Unions Act. ***Taking note of the above, the Committee requests the Government to take the necessary measures to ensure that objective and pre-established criteria for the certification of the representative trade unions are provided under the new legislation. The Committee requests the Government to provide information of any progress made in this regard and to provide a copy of the text once adopted.***

The Committee previously requested the Government to continue promoting social dialogue in order to bring section 27(2) of the TUEOA, which stipulates that a trade union may be certified as the bargaining agent if it is supported by at least 51 per cent of employees, into conformity with the Convention. The Committee notes that the Government states that no agreement was reached on any legislative changes in this regard, but that discussions continue at the Tripartite Body and the Labour Advisory Board regarding a proposed new Trade Union and Employers' Organizations Act which would amalgamate the Trade Unions Act and the TUEOA. The Committee recalls that the requirement of too high a percentage for representativity to be authorized to engage in collective bargaining may hamper the promotion and development of free and voluntary collective bargaining within the meaning of the Convention (2012 General Survey on the fundamental Conventions, paragraph 233). Noting the Government's indication that ten collective agreements covering a total of 1,592 workers were concluded between 2007 and 2021, the Committee considers that the very low coverage of collective agreements in the country could appear to be related to the restrictive requirements to engage in collective bargaining contained in the legislation. In this regard, the Committee also recalls that under a system of the designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members (2012 General Survey on the fundamental Conventions, paragraph 234). ***The Committee requests the Government to take the necessary measures, within the framework of the discussions concerning the proposed new Trade Union and Employers' Organizations Act, to bring its legislation into line with the Convention with respect to the representativity of bargaining agents. The Committee requests the Government to provide information on any developments in this regard and reminds it of the possibility to avail itself of ILO technical assistance.***

Promotion of collective bargaining in practice. As already mentioned above, the Committee notes that the Government reports that the ten collective agreements reached between 2007 and 2021 were concluded in the energy, public services, port, communications, banking, food and municipal sectors, and that five of these agreements, including one which was renewed, were still in force at the end of the reporting period. ***The Committee requests the Government to continue providing information on the number of collective agreements signed and in force in the country, the sectors concerned and the number of workers covered by these agreements, and to report on any measures taken to promote the full development and utilization of collective bargaining under the Convention.***

Brazil

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1952)

Previous comment

The Committee notes the observations of the National Confederation of Workers in Teaching Establishments (CONTEE), the International Trade Union Confederation (ITUC) and the Single Confederation of Workers (CUT), received respectively on 28 March, 1 and 2 September 2022, and which concern matters examined by the Committee in the present comment.

The Committee also notes the joint observations of the International Organisation of Employers (IOE) and of the National Confederation of Industry (CNI) received on 30 August 2022 and which also concern matters examined by the Committee in the present comment.

The Committee recalls that in its previous comment, it requested the Government to respond to the observations submitted in 2021 by the ITUC, the CUT and the CONTEE which contain, in particular, allegations relating to: (i) the assassination of three trade union leaders in 2020 and several cases of death threats; and (ii) increased violations of collective bargaining rights in the context of the economic crisis resulting from the COVID-19 pandemic.

In this regard, the Committee notes the Government's comments in response to the various observations submitted. Concerning the Government's response to the 2021 allegations by the CUT on the adoption of emergency measures in the context of the COVID-19 pandemic which may have violated the right to collective bargaining, through the introduction of Provisional Measure 1045/2021 (PM 1045/2021), the Committee notes the Government's indication that PM 1045/2021 is no longer in force. However, the Committee also notes from the 2022 observations made by the CUT that certain measures and provisions contained in PM 1045/2021 that were criticized in the Committee's previous comment have been reintroduced in positive law through Acts Nos 14.437/2022 and 14.370/2022. ***The Committee requests the Government to provide its comments in this respect.***

Application of the Convention and respect for civil liberties. In its previous comments, the Committee noted the ITUC's allegations relating to the assassination of three trade union leaders and trade unionists in 2020, as well as several cases of death threats against other trade union leaders and had requested the Government to provide its comments in this regard. The Committee notes with ***regret*** that the Government confines itself to indicating in a general manner that Brazilian legal system is equipped with the necessary mechanisms to prosecute and sanction possible perpetrators of acts of anti-union violence, without giving any information on the different acts to which the ITUC refers. In this regard, the Committee notes with ***deep concern*** the following allegations made by the ITUC: (i) the assassination on 28 February 2020 of Mr Paulo Silva Filho, member of the Federation of Rural Workers and Family Farmers of the State of Pará (FETAGRI-PA); (ii) the assassination on 23 July 2020 of Mr José Diaz Hamilton de Moura, President of the Union of Drivers and Goods Transport Workers, Transport Logistics and Specialized Enterprises of Belo Horizonte and the region (SIMECLODIF); (iii) the assassination on 6 November 2020 of Mr João Inácio da Silva, President of the Workers' Cooperative of Montes Belos; (iv) the death threats received in 2020, and related to their trade union activities, by Mrs Tamyres Filgueira, coordinator of the Union of Technical and Administrative Workers of the UFRGS, UFCSPA and IFRS (ASSUFRGS); Mr Aldo Lima, President of the Union of Heavy Goods Drivers of Recife and by the union leaders of the Union of Oil Workers of São José dos Campos and its region. ***Recalling that the rights contained in the Convention, in particular those relating to free and voluntary collective bargaining, can only be exercised in a climate free from violence and threats, The Committee urges the Government to ensure that the necessary measures are taken to: (i) identify and punish the perpetrators and instigators of the alleged crimes; and (ii) ensure effective protection for the trade***

union leaders whose bodily integrity is under threat. The Committee requests the Government to provide information in this regard without delay.

Article 4. Promotion of collective bargaining. Application of the provisions of Act No. 13.467 regarding collective bargaining in the context of the COVID-19 pandemic. The Committee recalls that in its previous comments it had asked the Government to make, in consultation with the representative social partners, a certain number of amendments to the provisions of Act No. 13.467 of 2017 related to collective bargaining, in particular concerning the possibility to derogate through collective bargaining a substantial number of protective provisions of the labour legislation, and those provisions allowing, for certain categories of workers, the setting aside, through individual labour contracts, of the protective clauses of collective agreements. In their 2021 observations, the ITUC, the CUT and the CONTEE expressed concern at the implementation of these provisions in the context of the economic crisis provoked by the COVID-19 pandemic, which could, in their view, result in workers being obliged to accept a steep deterioration in their conditions of work and employment. The Committee notes the Government's indications, which coincide with those of the CNI and the IOE to the effect that: (i) since the 2017 reform, the number of collective agreements concluded has remained relatively stable, going from 47,572 in 2017 to 42,303 in 2019 (-11 per cent), falling to 36,011 in 2020, as a result of the COVID-19 pandemic, and going back up to 41,951 agreements concluded in 2021; (ii) the 21 per cent fall in unionization underlined by the ITUC cannot be imputed to the 2017 reform, but is part of a long-term phenomenon also visible in numerous other countries; (iii) the primacy of collective bargaining over labour legislation (except for constitutionally protected rights) – recognized as constitutional by the Supreme Federal Court by a judgment of June 2022 – allowed the social partners to decide together on the best approaches to the crisis, according to their specific situations, and to guarantee the legal security of the agreements concluded; and (iv) the economic and social effects of the crisis were greatly reduced by the special protection measures taken by the Government.

The Committee duly notes the elements provided by the Government at the same time noting that the 2022 observations of the ITUC, CUT and the CONTEE maintain similar allegations to those of previous years. ***While reiterating its previous comments relating to the need to revise the different aspects of Act No. 13.467 cited above, in order to ensure their compliance with Article 4 of the Convention, the Committee requests the Government to continue to communicate statistics on the number of collective agreements concluded, specifying their level (enterprise or sector), the sectors concerned, and the number of workers covered. The Committee also requests the Government to provide information on the frequency of agreements that contain clauses derogating from the legislation, giving details of the nature and scope of such clauses.***

Finally, the Committee notes the elements provided by the Government regarding the other points examined by the Committee in its previous comments and concerning the application of *Articles 1 and 4* of the Convention. The Committee notes that the positions taken, and the information provided are essentially the same as those provided by the Government in its previous reports. ***The Committee, while reiterating its previous comments, will examine these matters in the framework of the regular reporting cycle and requests the Government to provide all relevant information in this regard.***

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

Chad

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the

examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019, which allege violations of the trade union rights in law and in practice, as well as the Government's response thereto, dated 11 October 2019. The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature. It also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2016, relating to: (i) the legal procedures governing the right to strike; (ii) cases of serious violations of trade union and fundamental rights; and (iii) the determination of essential services. ***The Committee requests the Government to provide its comments in this regard.***

Articles 2 and 3 of the Convention. Labour Code. In its previous comments, the Committee requested the Government to take measures to amend section 294(3) of the Labour Code, under the terms of which minors under 16 years of age may join a union, unless their father, mother or guardian objects, with a view to recognizing the trade union rights of minors who have reached the statutory minimum age to enter the labour market in accordance with the Labour Code (14 years), either as workers or apprentices, without the intervention of their parents or guardians. The Committee also drew the Government's attention to the need to take the necessary measures to amend section 307 of the Labour Code, to ensure that monitoring by the public authorities of trade union finances does not go beyond the obligation of organizations to submit periodic reports. The Committee noted the Government's indication that this provision has never been applied and that it was removed in the draft revision of the Labour Code. The Committee notes the Government's statement that the concerns of the Committee have been taken into account in the revision of the Act issuing the Labour Code, even though the latter has not yet been promulgated. ***The Committee trusts that the Labour Code will be promulgated in the near future and that it will give full effect to the provisions of the Convention on the points recalled above. It requests the Government to provide a copy of the text as adopted.***

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

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

Comoros

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Workers' Confederation of Comoros (CTC), received on 1 August 2017, relating to matters examined by the Committee in the present observation, and it requests the Government to provide its comments in this regard. The Committee notes that, in response to the observations of the CTC in 2013, the Government indicates that the trade union leaders who had been dismissed have been reinstated. ***The Committee requests the Government to provide its comments on the other matters raised by the CTC, and particularly the allegations of employer pressure against trade union leaders of the CTC, the Union of Health and Education Workers and a new trade union in a communications enterprise to persuade them to end their trade union activities.***

Articles 4 and 6 of the Convention. Promotion of collective bargaining in the private and public sectors (employees of public enterprises and public servants not engaged in the administration of the State). In its previous comments, the Committee once again regretted the absence of progress in relation to collective bargaining which, according to the CTC, was not structured and had no framework at any level, and particularly that joint bodies in the public service had still not been established. The Committee notes that the CTC in its 2017 observations makes particular reference to decrees and implementing orders covering the Higher Council of the Public Service, the Joint Commission and the Medical Commission established to provide a framework for bargaining, but which have still not been signed following their preparation in 2015, thereby opening the way for regulations and measures which are not in conformity with the law to the prejudice of employees of

the public service. ***While taking note of the request made by the Government in its report for technical assistance, the Committee urges the Government to take the necessary measures to promote collective bargaining in both the private and the public sectors (employees of public enterprises and public servants not engaged in the administration of the State). The Committee requests the Government to provide information on this subject.***

The Committee notes the adoption of the Act of 28 June 2012 repealing, amending and supplementing certain provisions of Act No. 84-108/PR issuing the Labour Code.

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

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

Djibouti

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

Previous comment

The Committee notes the Government's communication, dated 17 November 2019, in response to the allegations made in 2019 by the Labour Union of Djibouti (UDT) and the General Union of Djibouti Workers (UGTD), and by Education International (EI), concerning ongoing violations of freedom of association in Djibouti. The Committee notes, however, that the Government has not provided the information requested on the reasons why Mr Mohamed Abdou was prohibited from leaving the country and prevented from participating in the 103rd Session of the International Labour Conference (May-June 2014). Noting that the recent observations of the UDT and the UGTD no longer refer to this matter, the Committee trusts that Mr Abdou is no longer subject to such prohibitions.

Trade union situation in Djibouti. The Committee recalls that allegations of violations of freedom of association in the country are repeatedly brought before the ILO supervisory bodies and that mention is often made of the phenomenon of "clone unions" (duplication of trade union organizations, established with the Government's support). The Committee notes that the Government merely reiterates that this phenomenon of "cloning" trade union organizations does not exist in Djibouti and that the representation of the UDT and the UGTD continues to be usurped by Mr Mohamed Abdou and Mr Diraneh Hared, authors of the observations addressed to the Committee. In this respect, the Committee notes the findings of the Credentials Committee of the 110th Session of the Conference (June 2022) on a new objection concerning the appointment of the Workers' delegation. The Committee notes with ***deep concern*** the Credentials Committee's indication that confusion continues to reign over the trade union landscape in Djibouti. The Credentials Committee particularly regrets that the Government has not addressed the allegations repeated every year by the objecting organizations concerning the "cloning" of the UDT and UGTD and usurpation of their names, "other than by stating flatly that the authors of the objection had no legitimate union mandate, without any explanation as to how, in particular, Mr Mohamed Abdou might have lost the leadership of the UDT, which he undoubtedly held in the past". ***Noting the information from the Credentials Committee that the Government has stated that it accepts the terms for technical assistance from the Office to proceed with an evaluation of the situation of the trade union movement in the country, the Committee firmly urges the Government to take concrete measures to this effect in the near future, with a view to ensuring the development of free and independent trade unions in accordance with the Convention.***

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities in full freedom. The Committee once again notes with ***regret*** that the Government has not provided the information expected concerning the need to amend:

– section 5 of the Act on Associations, which requires organizations to obtain authorization prior to their establishment as trade unions; and
– section 23 of Decree No. 83-099/PR/FP of 10 September 1983, which confers upon the President of the Republic broad powers to requisition public servants.

The Committee trusts that the Government will take all measures necessary to amend the above provisions and will report on specific progress in its next report.

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

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

Previous comment

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee notes the Government's communication, in response to the allegations made in 2019 by the Labour Union of Djibouti (UDT) and the General Union of Djibouti Workers (UGTD), and by Education International (EI), concerning the persistence of anti-union discrimination in the education and rail transport sectors. The Committee notes in particular the Government's indication that decisions must be taken to discontinue criminal proceedings against the teachers who had been arrested in 2019 in the context of the case of the Baccalaureate exams, and that most of the railway workers concerned following the 2019 social conflict have been reintegrated into their posts. With regard to the transfers described as "punitive", concerning the leaders of the teachers' trade unions, the Government denies the allegations, however. ***Noting that the information brought to its knowledge does not provide a definitive reply to all the allegations presented by EI, UDT and UGTD, and recalling the obligation, under the terms of the Convention, to ensure that workers are adequately protected against anti-union discrimination, the Committee requests the Government to take the measures required to ensure full respect of Article 1 of the Convention in the above-mentioned activity sectors.***

Article 4. Right of collective bargaining in practice. The Committee notes the information provided by the Government in its report concerning the draft inter-occupational collective agreement, which was examined and approved unanimously in September 2020, by the members of the National Council for Labour, Employment and Social Security (CONTESS). ***The Committee requests the Government to provide information on any developments in this regard, and on the total number of collective agreements signed and in force in the country, the sectors concerned and the number of workers covered by these agreements.***

Dominica

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes with ***deep concern*** that the Government's report, due since 2013, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. The Committee recalls that it has been raising issues concerning the observance of the Convention in relation to certain sections of the Industrial Relations Act (Act No. 18 of 1986) concerning compulsory arbitration and

which unduly restrict the right of workers' organizations to organize their activities in full freedom and to formulate their programmes. The Government has been requested to make the following amendments to the Act: (i) exclude the banana, citrus and coconut industries as well as the port authority, from the schedule of essential services annexed to the Act, which makes it possible to stop a strike in these sectors by compulsory arbitration, and (ii) amend sections 59(1)(b) and 61(1)(c) of the Act, which empower the Minister to refer disputes to compulsory arbitration if they concerned serious issues in his or her opinion. ***Not having received any additional observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation adopted in 2011 and urges the Government to provide a full reply thereto. To this end, the Committee recalls that the Government may avail itself of the ILO's technical assistance.***

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

Ecuador

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

Previous comment
Discussion at the International Labour Conference, May–June 2022

The Committee notes the observations of the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC), received on 30 August 2022, which refer to issues that the Committee will examine in this comment. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, which refer to issues examined in this comment and allege the murder on 24 January 2022 of Mr Sandro Arteaga Quiroz, secretary of the Union of Workers of the Manabi Provincial Government, who had allegedly received death threats hours before his murder. The ITUC also alleges clashes between police and protesters in the context of a nationwide strike in October 2021 that culminated in the arrest of 37 protesters. The Committee recalls that the authorities should not resort to arrest and detention measures in cases of organization or participation in a peaceful strike. The Committee ***deplores*** the murder of Mr Arteaga Quiroz. ***Recalling that freedom of association can only be exercised in conditions in which fundamental human rights, in particular those relating to life and personal safety, are fully respected and guaranteed, the Committee strongly urges the Government to take without delay all necessary measures to determine responsibility and punish those guilty of this crime.***

The Committee also notes the joint observations of the Ecuadorian Confederation of Free Trade Unions (CEOSL), the Federation of Petroleum Workers of Ecuador (FETRAPEC), the National Federation of Education Workers (UNE) and Public Services International (PSI) in Ecuador, received on 1 September 2022, which in addition to dealing in detail with issues that the Committee addresses in this comment, allege unjustified delays in the registration of union organizations and new union officers, as well as the refusal to register union organizations for reasons not provided for in the Constitution or in the law. They also point out that the Government is seeking to table in the National Assembly a Bill on a Basic Employment Act, still in draft form, which contravenes the Committee's comments. ***The Committee requests the Government to send its comments on all the above-mentioned observations. It also requests the Government to send a copy of the Bill and to keep it informed of any further developments.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes that in the discussion that took place in the Conference Committee on the Application of Standards (hereinafter referred to as the Conference Committee) in June 2022 on the

implementation of the Convention by Ecuador, the Conference Committee noted with regret that no action had been taken to follow up on the technical assistance provided by the Office in December 2019 and also noted the long-standing issues regarding compliance with the Convention. The Conference Committee urged the Government to take action to foster an environment conducive to the full enjoyment of the right of workers and employers to freedom of association. The Conference Committee noted that both the Government and the social partners raised the importance of labour law reform and expressed the hope that the Government would seize this opportunity to bring its legislation and practice fully into line with the Convention in consultation with the social partners. The Conference Committee urged the Government to take effective and time-bound measures, in consultation with the social partners, to:

- ensure full respect for the right of workers, including public servants, to establish organizations of their own choosing, for the collective defence of their interests, including protection against administrative dissolution or suspension;
- amend legislation to ensure that the consequences of any delays in convening trade union elections are set out in the by-laws of the organizations themselves;
- resolve the registration of the National Federation of Education Workers (UNE);
- give effect to the road map presented in December 2019 by the ILO technical assistance mission; and
- initiate a process of consultation with the social partners to reform the current legislative framework in order to enhance coherence and bring all the relevant legislation into compliance with the Convention.

The Conference Committee invited the Government to avail itself of technical assistance from the Office and requested that the Government accept a direct contacts mission and submit a report to the Committee of Experts by 1 September 2022 communicating information on the application of the Convention in law and practice, in consultation with the social partners.

Application of the Convention in the private sector

Article 2 of the Convention. Excessive number of workers (30) required for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees. Possibility of creating trade union organizations by branch of activity. For several years the Committee has been drawing the Government's attention to the need to revise sections 443, 449, 452 and 459 of the Labour Code in such a way as to reduce the minimum number of members required to establish workers' associations and enterprise committees and enable the establishment of primary-level unions comprising workers from several enterprises. The Committee notes that in its report the Government does not refer to the revision of the articles relating to the number of workers required to form workers' associations and enterprise committees. The Committee notes that CEOSL, FETRAPEC, the UNE and PSI stress that the number of no less than 30 workers for the establishment of trade union organizations is disproportionate and unreasonable in view of the Ecuadorian business structure, stating that persons working in 88.1 per cent of the business sector are not able to form trade union organizations. With regard to the creation of organizations that bring together workers from several enterprises, in its previous comment, the Committee had welcomed the 2021 ruling by the Provincial Court of Justice of Pinchincha ordering the Ministry of Labour to register ASTAC as a branch union, despite the fact that it was made up of workers from several enterprises and also ordering the Ministry to regulate the registration of unions by branch of activity. The Committee notes that the Government, ASTAC and the ITUC report that although ASTAC was granted legal personality on 11 January 2022, in compliance with the ruling, the Ministry and the State Attorney General's Office filed an extraordinary protection order against the ruling for lack of adequate grounds and legal certainty and non-compliance with due process. The Committee notes that the extraordinary protection order, which has the support of

business associations, is pending a decision by the Constitutional Court. It also notes that ASTAC states that the Government has not fully complied with the ruling since, although it has applied it with respect to ASTAC, it has refused to regulate the establishment of branch unions, stating that the ruling is not applicable erga omnes or inter communis (applicable to other parties). The Commission notes with ***interest*** the registration of ASTAC as a branch union. ***Recalling that, under the terms of Articles 2 and 3 of the Convention, workers must be able, if they so wish, to establish primary-level organizations at a level higher than the enterprise, the Committee firmly hopes that the above-mentioned ruling will contribute to enabling the creation of trade union organizations by branch of activity, and also hopes that the Committee's assessment of this important development in the application of the Convention will be brought to the attention of the Constitutional Court of Justice. The Committee urges the Government to take the necessary steps, in consultation with the social partners, to revise the sections of the laws referred to above in the manner indicated and to keep it informed of developments in this respect. The Committee also requests the Government to report on the proceedings before the Constitutional Court regarding the extraordinary protection order.***

Article 3. Compulsory time limits for convening trade union elections. The Committee has been asking the Government to amend section 10(c) of the Regulations on Labour Organizations No. 0130 of 2013, which provides that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiry of their term of office, as set out in their respective union constitutions, to ensure that the consequences of any delay in holding elections shall be determined by the union constitutions themselves, subject to the observance of democratic rules. The Committee notes that the Government reports that a draft reform of the Regulations on Labour Organizations is currently being reviewed particularly with regard to section 10(c). ***Recalling that under Article 3 of the Convention, trade union elections are an internal matter for organizations, and observing that the consequences under the Regulations if the deadlines are not respected—the loss of powers and competencies for trade union committees—risk paralyzing the capacity for trade union action, the Committee firmly hopes that the draft reform will take into consideration its comments, and that the section in question will be modified along the lines indicated. The Committee requests the Government to report on any developments in this regard***.

Requirement of Ecuadorian nationality to be eligible for trade union office. The Committee recalls that, while in 2015 it had noted that section 49 of the Labour Justice Act had amended section 459(4) of the Labour Code and removed the requirement of Ecuadorian nationality to be eligible to be an officer of an enterprise committee, in its most recent comment it observed that section 49 was declared unconstitutional by a ruling of 2018 because it violated the principle of trade union independence by providing that the legislation determined how the executive bodies of the enterprise committees were constituted and who had the right to vote in their elections. The Committee notes with ***regret*** that as a result of the declaration of unconstitutionality, section 459(4) has reverted to its original wording and requires Ecuadorian nationality to be eligible to be an officer of an enterprise committee. The Committee notes the Government's indication that Ecuadorian nationality is required to be an officer of an enterprise committee, but not to be a leader or member of other forms of association. The Committee notes that enterprise committees are one of the forms that trade unions can take within an enterprise. The Committee emphasizes that under *Article 3* of the Convention all workers' and employers' organizations shall have the right to elect their representatives in full freedom and that national legislation should allow foreign workers to take up trade union office, if permitted under the organization's constitution and rules, at least after a reasonable period of residence in the host country. ***The Committee therefore urges the Government to amend section 459(4) of the Labour Code and to keep it informed of any developments in this regard.***

Elections as officers of enterprise committees of workers who are not trade union members. The Committee had previously indicated to the Government the need to amend section 459(3) of the Labour Code, which provided that the role of officer of an enterprise committee may be filled by any worker,

whether or not a union member, who stands for office. The Committee notes the Government's indication that the above-mentioned Constitutional Court ruling of 2018 also had an impact on the wording of section 459(3), and that it reverted to its original wording which does not provide for the possibility for non-unionized workers to participate in enterprise committee elections. ***Taking due note of this information, the Committee requests the Government to hold consultations with the social partners in relation to the need to review section 459(3) of the Labour Code to bring it into full compliance with the principle of trade union autonomy.***

Application of the Convention in the public sector

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and to join organizations of their own choosing. The Committee previously noted that although section 11 of the Basic Act reforming the legislation governing the public sector (Basic Reform Act), adopted in 2017, establishes the right to organize for public servants, certain categories of public employees were excluded from that right, especially those under contract for occasional services, those subject to free appointment and removal from office, and those on statutory, fixed-term contracts. Recalling that under *Articles 2* and *9* of the Convention, with the sole possible exception of members of the police and of the armed forces, all workers, including permanent or temporary public servants and those under fixed-term or occasional services contracts, have the right to establish and to join organizations of their own choosing, the Committee asked the Government to take the measures required to bring the legislation into line with the Convention. The Committee notes that, with regard to public servants under fixed-term or occasional services contracts, the Government merely reiterates that the public institutions of the State are working to ensure that public servants have their respective definitive appointments, provided that their activities are not temporary. The Committee notes with ***regret*** that no progress has been made in taking its comments into account in relation to the need to bring the legislation into line with the Convention in such a way that all workers, with the sole possible exception of the members of the police and of the armed forces, have the right to establish and to join organizations of their own choosing. ***The Committee urges the Government to take the necessary measures to bring the legislation into line with the Convention.***

Right of workers to establish organizations of their own choosing without previous authorization. Organizations of public servants other than the committees of public servants. The Committee observed that, according to the provisions of the Basic Reform Act, the committees of public servants, which must comprise 50 per cent plus one of the staff of a public institution, are responsible for defending the rights of public servants and are the only bodies that can call a strike. Underlining the fact that all organizations of public servants must be able to enjoy the various guarantees established in the Convention, the Committee requested the Government to provide information on organizations of public servants other than the committees of public servants and to indicate in detail what means they have for defending the occupational interest of their members. The Committee notes the Government's indication that public servants, when forming their organizations, have the right to draft their statutes in which they may establish any means to defend their interests, emphasizing that public servants' organizations are legal entities under private law, and therefore may establish any regulation that is not prohibited by law. The Committee notes that it is precisely the Basic Reform Act that indicates that the committees of public servants are responsible for defending the rights of public servants and are the only bodies that can call a strike. It is on this basis that the Committee requested the Government to provide information on organizations of public servants other than the committees of public servants and to indicate what means they have for defending the occupational interest of their members. ***The Committee regrets that it has not received this information and reiterates its request to the Government to provide information in this respect. Recalling that under Article 2 of the Convention, trade union pluralism must be possible in all cases, and that no organization of public servants should be deprived of the essential means for defending the occupational interests of its members, organizing its administration***

and activities, and formulating its programmes, the Committee once against requests the Government to take the necessary steps to ensure that the legislation does not restrict recognition of the right to organize to the committees of public servants as the sole form of organization.

Article 3. Right of workers' organizations and associations of public servants to organize their activities and to formulate their programmes. The Committee previously drew the Government's attention to the need to amend section 346 of the Basic Comprehensive Penal Code, which provides for a term of imprisonment of one to three years for stopping or obstructing the normal provision of a public service, so as to prevent the imposition of criminal penalties on workers engaged in a peaceful strike. The Committee notes that according to the Government, no progress has been made in this regard. The Committee ***regrets*** that no action has been taken in this respect and notes that, according to CEOSL, FETRAPEC, the UNE and PSI, the provision in question is being used to criminalize social protest. ***The Committee strongly urges the Government to take the necessary measures to ensure that section 346 of the Basic Comprehensive Penal Code is amended in the manner indicated and, until such measures are taken, to ensure that this provision is not used to criminalize social protest.***

Article 4. Dissolution of associations of public servants by the administrative authorities. The Committee previously asked the Government to take the necessary measures to ensure that Decree No. 193 of 2017, which retains engagement in party-political activities as grounds for dissolution and provides for administrative dissolution, does not apply to associations of public servants whose purpose is to defend the economic and social interests of their members. The Committee notes the Government's indication that labour and social organizations are governed by civil law and that it falls to their members to exercise the rights and obligations recognized by their statutes. The Committee notes that, according to CEOSL, FETRAPEC, the UNE and PSI, the provision of Decree No. 193 that maintained as grounds for dissolution the development of party-political activities was declared unconstitutional by a judgment issued on 27 January 2022 in which the Constitutional Court held that it was not admissible that an open and indeterminate provision could limit the right of social organizations to participate in matters of public interest and to oversee the actions of the public authorities. The Committee notes that these organizations further state that: (i) Decree No. 193 regulates only social organizations and not trade union organizations; (ii) the Labour Code and the Basic Reform Act establish that public servants' organizations can only be dissolved by judicial decision; and (iii) without prejudice to the foregoing, the Government applies the grounds for forced dissolution of social organizations to trade union organizations. ***Recalling that Article 4 of the Convention prohibits the suspension or administrative dissolution of the associations of public servants, the Committee urges the Government to ensure that the rules of Decree No. 193 are not applied to associations of public servants that have the purpose of defending the economic and social interests of their members.***

Administrative dissolution of the National Federation of Education Workers (UNE). In its last comment, having noted the registration of social organizations related to the UNE, (which was dissolved by an administrative act issued by the Under-Secretariat of Education in 2016), the Committee asked the Government to: (i) indicate whether the registration of the UNE-E with the Under-Secretariat of Education of Quito meant that the UNE had been able to resume its activities of defending the occupational interests of its members; (ii) take all necessary measures to ensure the registration of the UNE as a trade union organization with the Ministry of Labour, if the UNE so wished; and (iii) ensure the full return of the property seized as well as the removal of any other consequences resulting from the administrative dissolution of the UNE. The Committee notes that, after summarizing the events that have taken place in recent years, the Government indicates that the UNE filed several legal actions against the dissolution resolution and that, to date, although all the actions filed by the UNE have been rejected, the Constitutional Court's ruling on an extraordinary protection order is still pending, and that, with the Constitutional Court's decision, the national judicial instances will have been exhausted. The Committee notes that, according to the CEOSL, FETRAPEC, the UNE and PSI, the Government has not complied with the Committee's request in its previous comments. ***The Committee requests the***

Government to provide information on the ruling handed down by the Constitutional Court on the pending extraordinary protection order and to provide the information requested by the Committee in its previous comment.

Technical assistance. Both the Committee and the Conference Committee have noted with regret that the Government has not given follow-up to the technical assistance provided by the Office in December 2019 regarding measures to address the comments of the supervisory bodies. The Committee notes that the Government shows interest in receiving technical assistance to restart tripartite social dialogue and establish a new road map in that regard. ***The Committee expresses the firm hope that, with the technical assistance in which the Government has shown interest, social dialogue will be restarted and progress will be made in taking concrete, effective and time-bound measures, in consultation with the social partners, to bring the legislation into conformity with the Convention. Like the Conference Committee, this Committee hopes that the Government will accept a direct contacts mission and also hopes that the implementation of the measures referred to in this comment will contribute to guaranteeing greater respect for the rights enshrined in the Convention.***

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

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

Previous comment

The Committee notes the observations of the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC), received on 30 August 2022, which relate to matters examined by the Committee in the present comment. The Committee also notes the joint observations of the Ecuadorian Confederation of Free Trade Unions (CEOSL), the Federation of Petroleum Workers of Ecuador (FETRAPEC), the National Federation of Education Workers (UNE) and Public Services International (PSI) in Ecuador, received on 1 September 2022, which also relate to matters examined by the Committee in the present comment. ***The Committee requests the Government to provide its comments in relation to all the observations referred to above***.

Direct contacts mission requested by the Committee on the Application of Standards in the context of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee notes that the application of Convention No. 87 by Ecuador was examined by the Committee on the Application of Standards (CAS) at the 110th Session of the International Labour Conference in June 2022. The Committee observes that the discussions and conclusions of the CAS address matters that have a direct impact on the capacity of workers to negotiate collectively their terms and conditions of work, and therefore on the application of the present Convention. The Committee observes in this context that the CAS requested the Government in particular to: ensure full respect for the right of workers, including public servants, to establish organizations of their own choosing, for the collective defence of their interests; give effect to the road map presented in December 2019 by the ILO technical assistance mission; avail itself of technical assistance from the Office; and accept a direct contacts mission.

Technical assistance. The Committee also recalls that in its previous comment it regretted to note that the Government had not taken action to follow up the technical assistance provided by the Office in December 2019 concerning measures to respond to the comments of the ILO supervisory bodies. The Committee notes that the Government reiterates its interest in receiving technical assistance to reactivate tripartite social dialogue and develop a new road map for this purpose. ***The Committee expresses the firm hope that, as a result of the dynamic generated by the direct contacts mission requested by the CAS in relation to Convention No. 87 and with the support of the further technical assistance that the Government is interested in receiving, the Government will take specific, effective***

and time-bound measures, in consultation with the social partners, to bring the legislation into conformity with the Convention in relation to the matters indicated below.

Application of the Convention in the private sector

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. For more than a decade, the Committee has been referring to the need to include provisions in the legislation that guarantee protection against acts of anti-union discrimination at the time of access to employment. The Committee notes in this regard that the Government has confined itself to reiterating that labour regulations give an adequate level of protection and that it is not necessary to adopt further provisions in this respect. The Committee once again reminds the Government that *Article 1* of the Convention prohibits anti-union discrimination at the time of the recruitment of individual workers, so that access to employment is not made subject to the condition that workers shall not join a union or shall relinquish union membership, as well as practices such as 'blacklisting' union members to prevent them from being hired. The Committee notes that, according to the indications of the CEOSL, FETRAPEC, UNE and PSI, dismissed union leaders cannot find work and that this difficulty is experienced by any workers, whether or not they are union members, who have taken legal action against their employer, as labour claims are published on the website of the judiciary so that any employer can check whether applicants have made legal claims against previous employers before recruiting them. ***In light of the above, the Committee once again emphasizes the need for provisions expressly prohibiting acts of anti-union discrimination at the time of access to employment to be included in the legislation and requests the Government to provide information on any measures adopted in this respect.***

Article 4. Promotion of collective bargaining. The Committee recalls that, in accordance with section 221 of the Labour Code, collective labour contracts must be concluded with the enterprise committee or, if one does not exist, with the organization with the largest number of worker members, on condition that it represents over 50 per cent of the workers in the enterprise. The Committee previously urged the Government to adopt the necessary measures to amend section 221 so that, if there is no organization that represents over 50 per cent of the workers, minority trade unions can, either separately or jointly, negotiate at least on behalf of their own members. The Committee observes that the Government has confined itself to reiterating that this requirement for the negotiation of a collective contract is closely related to such principles as democracy, participation and transparency, as the benefits obtained in the collective contract apply to all workers in the enterprise or institution. The Committee once again emphasizes that, while it is acceptable for the union which represents the majority or a high percentage of workers in a bargaining unit to enjoy preferential or exclusive bargaining rights, in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members (2012 General Survey on the fundamental Conventions, paragraph 226). The Committee recalls that, even though the requirement of representativeness for signing collective agreements is fully compatible with the Convention, the level of representativeness set should not be such as to hinder the promotion and implementation of free and voluntary collective bargaining, as referred to in *Article 4* of the Convention. In this regard, the Committee recalls that in previous comments it noted the low rate of coverage of collective bargaining in the private sector. The Committee observes that, according to the information provided by the Government, between May 2021 and June 2022, a total of 37 collective contracts were concluded in the private sector. The Committee observes that the CEOSL, FETRAPEC, UNE and PSI indicate that the Government has not specified whether the figures refer to first collective contracts or revised versions of contracts that have already been concluded. ***Emphasizing the link between the low coverage of collective agreements in the country and the restrictive requirements set out in law for participation in collective bargaining, the Committee once again urges the Government, after consulting the social partners, to take the necessary measures to amend section 221 of the Labour Code as indicated above. It requests the Government to continue***

providing information on the number of collective agreements concluded and in force in the country, with an indication of the sectors covered (including the agricultural and banana sector), the number of workers covered and whether they are new or revised collective agreements.

Collective bargaining in sectors composed mainly of small enterprises. The Committee recalls that, in its comments on the application of Convention No. 87, it has been calling for many years for the modification of the following aspects of the legislation, which significantly restricts the capacity of workers to organize in unions: (i) the requirement of a minimum of 30 workers to establish unions and enterprise committees; and (ii) the prohibition on establishing first-level unions composed of workers from different enterprises. The Committee notes with ***concern*** that these restrictions on the right to organize, combined with the absence of a legal framework for collective bargaining at the sectoral level, as denounced by the ASTAC, appear to exclude any possibility for workers in small enterprises to exercise their right to collective bargaining. ***In light of the above, the Committee requests the Government to provide information on the measures adopted to promote collective bargaining in sectors composed mainly of small enterprises.***

Application of the Convention in the public sector

Articles 1, 2 and 6 of the Convention. Protection of workers in the public sector who are not engaged in the administration of the State against acts of anti-union discrimination and interference. The Committee previously observed that the Basic Act reforming the legislation governing the public sector (the Basic Reform Act) contained provisions which explicitly protected executive members of public servants' committees, and it requested the Government to take the necessary measures to ensure that the legislation applicable to the public sector includes provisions that explicitly protect the leaders of all organizations of public employees against acts of anti-union discrimination and interference, as well as provisions establishing dissuasive penalties in the event of such acts. The Committee observes the Government's reiterated indication that protection against acts of discrimination and the right to establish unions is envisaged in both the Political Constitution and section 187 of the Labour Code, and the Basic Public Service Act (LOSEP), which prohibits any act of discrimination against public servants. The Government considers that the legislative labour principles in force offer an adequate level of protection for public servants. In the same way as the Committee on Freedom of Association, when it examined Case No. 3347, the Committee once again emphasizes the importance of the legislation providing the same type of protection against possible acts of anti-union discrimination and interference for all leaders of all public servants' organizations. ***The Committee once again urges the Government to take the necessary measures to ensure that the legislation applicable to the public sector contains provisions that explicitly protect the leaders of all organizations of public servants against acts of anti-union discrimination and interference, and also provisions that establish dissuasive penalties against committing such acts. The Committee requests the Government to provide information on any measures adopted or envisaged in this regard.*** The Committee also previously noted a ruling issued in 2020 declaring unconstitutional the compulsory redundancy purchase mechanism under which the public administration, in exchange for the payment of compensation, could unilaterally terminate the employment of public servants without the need to indicate the grounds for such termination. The Committee observed that, although the ruling removed the word "compulsory" and the prohibition for persons who have been dismissed to return to work in the public sector, PSI-Ecuador alleged that the Government had not complied with the ruling in respect of the removal of the prohibition to return to work in the public sector. The Committee requested the Government to provide its comments on the matter. The Committee notes that the Government confines itself to recalling the content of the ruling, but does not refer to compliance with the ruling. The Committee also observes that the CEOSL, FETRAPEC, UNE and PSI have sent a list of leaders of associations of public servants who have been dismissed using this mechanism. ***The Committee once again requests the Government to provide its comments on compliance with the ruling.***

Articles 4 and 6. Collective bargaining for public sector workers who are not engaged in the administration of the State. The Committee observed previously that the Basic Reform Act and Ministerial Order No. MDT-2018-0010 did not recognize the right to collective bargaining of public servants and that only public sector workers governed by the Labour Code could engage in collective bargaining. The Committee also noted that the 2015 amendments to the Constitution excluding the entire public sector from the scope of collective bargaining had been annulled by the Constitutional Court in 2018 and that Ministerial Order No. 373 had been issued in 2019 to give effect to the ruling. The Committee requested the Government to ensure the full implementation of the Order and urged it to intensify its efforts to reopen an in-depth debate with the trade unions concerned with a view to establishing adequate collective bargaining machinery for all categories of employees in the public sector covered by the Convention. The Committee notes the Government's reiterated indication that, although there are no regulations on collective bargaining machinery for public servants, as this right is only conferred on workers in the sector who are covered by the Labour Code, it undertakes to promote tripartite dialogue and encourage constant discussion on matters of labour law. The Committee notes that, according to the Government, during the period between May 2021 and June 2022, a total of 78 collective agreement were concluded in the public sector. The Committee also notes the indication by the CEOSL, FETRAPEC, UNE and PSI that the Constitutional Court has not yet ruled on the appeals to find unconstitutional the Humanitarian Support Act which, as indicated by PSI-Ecuador, imposes restrictions on collective bargaining by public sector workers governed by the Labour Code. The organizations add that, although on 16 June 2022, the National Assembly approved a Bill repealing the Humanitarian Support Act almost in its entirety, the executive power vetoed the Bill on 20 July 2022. They further indicate that the Government is seeking to introduce in the National Assembly a Bill entitled the 'Basic Employment Act', which is reported to contain a provision for the elimination of collective bargaining in the public sector. The Committee notes these various elements and observes with ***concern*** that the legislation still does not recognize the right to collective bargaining of public servants, despite the fact that many of them (public sector teachers, employees in the public health system, employees in public enterprises, municipal services and decentralized bodies, etc.) are not engaged in the administration of the State and must therefore benefit from the guarantees provided by this Convention. ***Observing that the Government has not provided information on specific initiatives for the re-establishment of the rights referred to above and recalling once again that in many countries there are mechanisms that permit the harmonious coexistence of the public sector's mission to serve the public interest and the responsible exercise of collective bargaining, the Committee urges the Government, in consultation with representative organizations of workers, to take the necessary measures to establish adequate collective bargaining machinery for all the categories of public sector employees covered by the Convention. The Committee requests the Government to report any developments in this respect.***

Equatorial Guinea

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes with ***deep concern*** that the Government's report, due since 2007, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. The Committee recalls that it has been raising issues concerning the observance of the Convention in an observation. It has formulated longstanding recommendations to bring the Labour legislation into

conformity with the Convention concerning limitations that unduly restrict the right of workers to organize and to formulate their programmes, including the right to establish enterprise trade unions, the right to strike and the determination of essential services, as well as the refusal to recognize in practice a number of workers' organizations by rejecting their registration requests. ***Not having at its disposal any indication of progress on these pending matters, despite the technical assistance that the Office provided to the country on several occasions, the Committee refers to its previous observation adopted in 2020 and urges the Government to provide a full reply thereto.***

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

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

The Committee notes with ***deep concern*** that the Government's report, due since 2007, has not been received. In the light of its urgent appeal to the Government in 2020, the Committee is proceeding with the examination of the application of the Convention on the basis of the information at its disposal. The Committee recalls that it previously raised questions about compliance with the Convention in an observation. Having noted the allegations of the International Trade Union Confederation (ITUC) concerning the refusal of the authorities to recognize a number of trade unions, the Committee recalled that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention. The Committee also made recommendations to bring the labour legislation into conformity with the Convention, in particular with regard to the right to organize and to collective bargaining of workers in the public administration, and requested the Government to provide detailed information on the application of the Convention to public servants not engaged in the administration of the State. ***In the absence of any indication of progress on these pending issues, despite the technical assistance the Office has provided to the country on several occasions, the Committee refers to its previous observation adopted in 2020 and urges the Government to reply in full to these comments.***

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

Eritrea

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

Previous comment

Articles 1, 2, 4 and 6 of the Convention. Legislative issues. In its previous comments the Committee noted the following shortcomings in the currently applicable legislation:

(i) With regard to the *protection against anti-union discrimination and acts of interference,* the law does not provide for remedies in case of anti-union discrimination at recruitment and during employment, neither does it provide for reinstatement of union members other than leaders dismissed for union membership or activities. Legal compensation and sanctions against anti-union discrimination and acts of interference are inadequate.

(ii) With regard to the scope of application of the Convention, the law does not explicitly provide *domestic workers* with the rights guaranteed in the Convention. Furthermore, all *civil servants, including those not engaged in the administration of the State,* are excluded from the scope of

the Labour Proclamation and no other special law provides them with the rights guaranteed in the Convention.

With regard to protection against anti-union discrimination and acts of interference, the Committee notes that the Government reiterates its previous indication that section 691 of the Transitional Penal Code sanctions anti-union discrimination. The Committee had noted in this regard that section 691 contains a general definition of petty offences and does not particularly concern anti-union discrimination or acts of interference, which are not qualified as petty offences in any specific legal provision. With regard to domestic workers, the Committee notes that the Government reiterates that they are not out of the scope of the Labour Proclamation; that the guarantees enshrined in the Convention can be afforded to them through directives and regulations; and that the Ministry of Labour and Social Welfare has engaged in drafting the relevant regulation. With regard to civil servants not engaged in the administration of the State, the Committee notes the Government's indication that professional associations have been established and registered under articles 404 and 406 of the Transitional Civil Code, whose members are mostly civil servants. The Government cites as examples Teachers' Association, Medical Doctors' Association, Nurses' Association, Electrical Contractors' Association and Engineers' Association. The Committee notes in this regard that in accordance with the Transitional Civil Code, civil law associations do not have the same rights as labour law associations in terms of representation of the occupational interests of their members in relation to the employer and the authorities and are not entitled to participate in the process of collective bargaining. Furthermore, civil law associations are not covered by labour law guarantees such as prohibition of anti-union discrimination and non-interference. The Committee notes that despite its longstanding requests for legislative reform, the Government indicates once again that the ministerial regulation concerning domestic workers, as well as the civil service code are still in the drafting process, and it does not refer to any measure envisaged to strengthen protection against anti-union discrimination and acts of interference. ***In view of the above considerations, the Committee notes with concern that no progress is made with regard to these longstanding legislative issues. Therefore, it once again urges the Government to take all the necessary measures to enact new legislation or revise the existing law in order to (i) provide adequate protection against anti-union discrimination and acts of interference; and (ii) ensure that domestic workers and civil servants who are not engaged in the administration of the State enjoy the right to organize and collectively bargain. The Committee requests the Government to provide information on the developments in this regard.***

Articles 4, 5 and 6. Promotion of collective bargaining. Compulsory national service. In its previous comments, the Committee had noted that Eritrean nationals performing work within the national compulsory service are not covered by the Labour Proclamation provisions related to collective bargaining and that large numbers of Eritrean nationals were denied the right to collective bargaining for indefinite periods of their active lives while they were performing civilian activities as part of their indefinite compulsory national service***. The Committee once again urges the Government to take the necessary measures to ensure that Eritrean nationals are not denied the right to bargain collectively beyond the scope of the exceptions set out in Articles 5 and 6 of the Convention and to provide information on the developments in this respect.***

Promotion of collective bargaining in practice. The Committee notes the information provided by the Government on the number of registered collective agreements, according to which there are 100 collective agreements registered that cover 17,677 workers, including 10,552 men and 7,123 women. It notes that according to this information only for a small portion of the workforce in Eritrea the terms and conditions of employment are regulated by collective agreements. ***The Committee requests the Government to: (i) take action to promote free and voluntary collective bargaining and to inform on the initiatives taken in this respect; and (ii) provide updated information on the number of collective agreements concluded and in force disaggregated by the sectors concerned, the names of employers' and workers' organizations party to those agreements and the number of workers covered.***

Gabon

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In its previous comments, further to the observations of the International Trade Union Confederation (ITUC) relating to restrictions on the right to strike in the public sector on the repeatedly invoked grounds of ensuring public safety, the Committee asked the Government to provide information on the number of strikes called in the public sector as a whole, the individual sectors concerned and the number of strikes prohibited on the grounds of a possible disruption of public order. The Committee notes the Government's indication that trade unions within a number of government departments, including customs, taxation, higher education, national education, health and social affairs, have availed themselves of their right to strike. Moreover, the Government indicates that the National Congress of Education Sector Unions (CONASYSED) held its latest strike at the Martine Oulabou Public School without being removed from the premises and without the right to strike being prohibited. ***While taking note of the information provided by the Government on examples of strikes called in the public sector, the Committee requests once again that the Government provide detailed information on the number of strikes that have been called in the public sector, and the number of strikes prohibited on the grounds of a possible disruption of public order.***

Moreover, further to the observations previously received from Education International (EI), denouncing the adoption of various regulations which are making the exercise of union activities in the education sector increasingly difficult, the Committee asked the Government to indicate the measures taken in the education sector to ensure that trade unions have access to educational establishments so that they can perform their representative functions and defend their members' interests. The Committee notes with ***regret*** that there has been no reply from the Government on this matter. ***The Committee reiterates its request and expects that the Government will take all necessary steps to provide the requested information.***

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

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

Gambia

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

Previous comments: observation and direct request

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2022, which refer to matters under examination by the Committee.

*Trade union rights and civil liberties***.** In its previous comments, the Committee had noted the 2017 ITUC observations alleging the arbitrary arrests of several leaders of the Gambian National Transport Control Association (GNTCA); the death, while in detention, of Mr Sheriff Diba, one of the arrested leaders; and the imposition of a ban on the activities of the GNTCA. The Committee had requested the Government to ensure that the GNTCA was informed about the necessary procedures to obtain a review of its case, which had been discontinued before the High Court of The Gambia, and expressed its firm hope that the death of Mr Diba and the alleged arbitrary arrests would be duly investigated without delay by the Truth, Reconciliation and Reparation Commission (TRRC), an independent institution mandated to investigate human rights violations committed by the former regime. The Committee notes the Government's indication in its report that in 2020, a task force led by the Office of the Inspector General of the Police, which included representatives of the Ministry of Justice, the National Intelligence

Agency and the Gambia Armed Forces, as well as former members of the GNTCA, convened several meetings on the above-mentioned issues. The Committee further notes that the GNTCA was advised to constitute a trade union instead of an association, which led to the formation of the General Transport Union, and was also advised to approach the Victim Centres of the National Human Rights Commission. In addition, the Committee also notes the Government's indication that due to the time constraints and the volume of alleged human rights violations that the TRRC was tasked to examine, the TRRC did not investigate the death of Mr Diba, and that all pending human rights violations will be investigated and prosecuted by a Special Prosecutor's Office that will be established within the Ministry of Justice. ***The Committee expects that the Government will take all necessary measures to ensure that the death of Mr Diba and the alleged arbitrary arrests of the leaders of the GNTCA are promptly investigated by the Special Prosecutor's Office. The Committee requests the Government to provide information on all developments in this regard.***

Article 2 of the Convention. Right of workers without distinction whatsoever, to establish and join organizations of their own choosing without previous authorization. The Committee had previously noted that sections 3(2)(a), (c) and (d) of the Labour Act of 2007 exclude civil servants, prison officers and domestic workers, respectively, from its scope, and recalled the need to ensure that these three groups enjoy the right to establish and join organizations of their own choosing. The Committee notes the Government's indication that these categories of workers are not excluded from the scope of the Trade Union Bill and will therefore be allowed to form and join trade unions after its coming into force. The Committee observes that the right to join and participate in the forming of trade unions is provided to every employee under section 4(1) of the Trade Union Bill. Further observing that section 2 of the Trade Union Bill defines "employee" as "a person employed for wages or a salary", which does not encompass self-employed workers and workers without employment contracts, the Committee recalls that *Article 2* of the Convention applies not only to employees but more broadly to all workers without any distinction whatsoever. The Committee also notes the ITUC indication that no progress has been made with respect to the Trade Union Bill since the Gambian Trade Union Bureau submitted its comments and recommendations on the Bill in 2017. ***The Committee requests the Government to take the necessary steps, in consultation with the social partners, to review the Trade Union Bill so as to ensure that once adopted, all workers, including civil servants, prison officers, domestic workers, as well as self-employed workers and workers without employment contracts, enjoy the right to establish and join organizations of their own choosing, in accordance with the Convention. The Committee requests the Government to provide information on any progress made in this respect.***

Minimum membership requirement. In its previous comments, the Committee had requested the Government to lower the minimum membership requirement for the registration of a trade union currently set by section 96(4)(a) the Labour Act at 50 workers. The Committee welcomes the Government's indication that the issue of registration of trade unions will now be dealt with under the Trade Union Bill and that the minimum membership requirement will be set at seven members under section 8(2) of its draft Trade Union Regulations. The Government indicates that the Labour Bill no longer includes provisions regulating this issue. ***The Committee expects that the Labour Bill, the Trade Union Bill and the draft Trade Union Regulations will be adopted without further delay so as to ensure that the minimum membership requirement for the registration of trade unions is reduced to a level which does not hinder the establishment of organizations.***

The Committee hopes that the Labour Bill, the Trade Union Bill and the draft Trade Union Regulations will be reviewed and finalized as soon as possible in consultation with the social partners and with the technical assistance of the Office, requested by the Government, to ensure that full effect is given to the provisions of the Convention. The Committee requests the Government to provide information on all developments in this regard and to transmit copies of the laws and regulations once adopted.

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

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2022 referring to matters under examination by the Committee.

The Committee also notes that the Government indicates that the Labour Bill and the Trade Union Bill are currently being reviewed and provides copies of the two bills.

Scope of the Convention. In its previous comments, the Committee requested the Government to provide information on the adoption of the Trade Union Bill and expressed the firm expectation that the rights afforded by the Convention would be ensured for prison officers, domestic workers and civil servants not engaged in the administration of the State, whom section 3(2) of the Labour Act excludes from its scope. The Committee takes due note of the Government's indication that these categories of workers are not excluded from the scope of the Trade Union Bill, as they are not enumerated among the persons excluded by section 3 of the Bill.

The Committee observes however that section 2 of the Bill defines "trade union" as "an organized group of employees", and "employee" as "a person employed for wages or a salary", a definition that may not encompass self-employed workers and workers without employment contracts. In this regard, the Committee recalls that the Convention does not apply only to employees but more broadly to all workers, and that only the armed forces, the police and public servants engaged in the administration of the State may be excluded from the guarantees of the Convention. The Committee also notes that, according to the observations submitted by the ITUC, there has been no progress regarding the adoption of the Trade Union Bill since the Gambian Trade Union Bureau submitted its comments and recommendations on the Bill in 2017. ***The Committee requests the Government to take the necessary measures, in full consultation with the social partners, to ensure that the Trade Union Bill is revised and adopted shortly, with a view to guaranteeing that all workers, including prison officers, domestic workers, civil servants not engaged in the administration of the State, as well as self-employed workers and workers without employment contracts, enjoy the rights and guarantees set out in the Convention. The Committee requests the Government to provide information on any progress achieved in this regard.***

Article 4. Recognition of organizations for the purposes of collective bargaining. In its previous comments, recalling that the organization of a ballot for determining representativeness should be carried out by the authorities or an independent party upon a request presented by a union, the Committee requested the Government to bring section 131 of the Labour Act, which provides that an employer may organize a secret ballot to establish a sole bargaining agent, into conformity with the Convention. The Committee notes with ***regret*** that the Government states that section 169 of the Labour Bill also allows the employer to organize such a secret ballot. ***The Committee requests the Government to amend the Labour Bill so as to ensure that the determination of the representative status of trade unions for purposes of collective bargaining is conducted in accordance with a procedure that offers every guarantee of impartiality, by an independent body that enjoys the confidence of the parties.***

Threshold of representativity. In its previous comment, the Committee recalled that if no union in a specific negotiating unit meets the required threshold to be recognized as a sole bargaining agent, minority trade unions should be able to negotiate, jointly or separately, at least on behalf of their own members, and requested the Government to bring its legislation into conformity with the Convention. The Committee notes that the Government states that in the Trade Union Bill, a trade union will be recognized for purposes of collective bargaining if it represents a simple majority of the unionizable employees (section 34). Observing that the Bill does not contain any provisions regulating cases in which no union reaches that threshold, the Committee recalls once again that systems where a representative

union that fails to secure the absolute majority may be denied the possibility of bargaining, may raise problems of compatibility with the Convention. Noting additionally that the Government only informs of two concluded collective agreements, the Committee considers that the apparently very small number of existing collective agreement in the country could appear to be related to the restrictive requirements to engage in collective bargaining which are contained in the current legislation. ***The Committee requests the Government to indicate the meaning of the term "simple majority" in section 34 of the Trade Union Bill, and to amend the legislation in order to ensure that if no union reaches the required threshold to be recognized as a bargaining agent, the existing unions are given the possibility to negotiate, jointly or separately, at least on behalf of their own members.***

Promotion of collective bargaining in practice. The Committee had previously noted the information provided by the Government on two company-level collective agreements concluded in the private sector in 2014 and 2017. The Committee notes that the Government limits itself to referring again to these two agreements and stating that it will take steps to sensitize trade unions to maximise the use and benefits of collective bargaining. ***The Committee reiterates its request that the Government provide information on the concrete measures taken to promote collective bargaining in all sectors covered by the Convention, as well as on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements. The Committee further requests the Government to provide information on the actions taken to promote collective bargaining in the different sectors of the economy.***

Request for technical assistance. The Committee notes the Government's request for technical assistance from the Office to ensure that the Labour Bill and the Trade Union Bill include the ILO's recommendations and are aligned with the Convention. ***The Committee trusts that the technical assistance requested by the Government will be provided as soon as possible with a view to ensuring that, after a consultation with the social partners, the above-mentioned bills will give full effect to the provisions of the Convention. The Committee requests the Government to provide information on any evolution in this regard, as well as copies of the laws once adopted.***

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

Greece

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

Previous comment

The Committee notes the observations of the Greek General Confederation of Labour (GSEE), received on 1 September 2017, 1 November 2018 and 30 August 2019, as well as the Government replies thereto.

Articles 1(3) and 5 of the Convention. Promotion of collective bargaining in the public service. In its previous comment, the Committee requested the Government to provide information on the steps taken to promote collective bargaining for all groups of workers including the public service, extended to all matters related to working conditions and terms of employment and to indicate any reviews undertaken on the impact of the unilateral changes brought about to employment conditions over recent years. With respect to the private sector, the Committee refers to its previous comments under the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). Concerning pay-setting arrangements in the public sector, the Government indicates: (i) as of 1 January 2016, the provisions of law 4354/2015 apply. Accordingly, collective labour agreements mainly concern the granting of non-wage benefits; (ii) any collective agreement providing for granting of non-wage benefits by the general government bodies that imply expenditure exceeding €5,000 per year is co-signed by the Minister of Finance; (iii) a study on the number of workers concerned, the cost incurred and the way of covering it

is attached to each collective agreement concerning the granting of non-wage benefits, as an annex and integral part thereof; and (iv) according to the opinion no. 174/2017 of the Legal Council of the State, wage regulations included in a CBA between the administration of a state private law legal entity and its workers' trade union shall not apply if they deviate from the provisions of the Law 4354/2015. The Government indicates that no legislative changes were made concerning collective bargaining in public sector during the period between 1 June 2014 and 31 May 2021. Concerning the practice of collective bargaining in the public sector the Government indicates: (i) during the reference period collective bargaining in the public sector only concerned the employees of entities of first and second level local self-government organizations. Two CBAs were concluded in 2017 and 2018 pursuant to which an additional annual leave and reduced working hours were granted to the staff of first level organizations and one CBA was concluded in 2018 (and amended in 2019) which for the first time regulated the employment terms and conditions of the staff of the regions. The issue of trade union leave was also codified in the framework of two CBAs concluded in 2017 and 2018; (ii) trade unions representing the private law personnel of first and second level local self-government organizations concluded three CBAs with the administration in 2018. The Committee recalls that while the special characteristics of the public service may justify a certain degree of flexibility in the modalities of collective bargaining, the broad material scope of the Convention that covers terms and conditions of employment, also applies to public employees and their organizations who should therefore be, in particular able to negotiate their wages collectively. ***The Committee firmly hopes that the Government will continue its efforts to promote collective bargaining for all groups of workers, including the public service, and to progressively extend the matters covered by collective bargaining. It requests the Government to provide information on all the measures taken in this respect.***

Guatemala

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

Previous comment

The Committee notes the joint observations of the Guatemalan Autonomous Popular Trade Union Movement and the Global Unions of Guatemala, and the observations of the International Trade Union Confederation (ITUC), received on 31 August and 1 September 2022 respectively, relating to matters examined in the present comment. The Committee also notes the Government's replies to these observations.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion which took place in June 2022 in the Conference Committee on the Application of Standards (Conference Committee) concerning the application of the Convention by Guatemala. The Committee observes that the Conference Committee, after deploring and deeply regretting the persistent acts of general violence and the violence against trade union leaders and members, including murders and physical aggression, and the culture of impunity that prevails in the country, called on the Government to take steps to: (i) investigate without delay all acts and threats of violence against trade union leaders and members with a view to identifying and understanding the root causes of violence, taking into account their trade union activities as a motive, determining responsibilities and punishing the perpetrators; (ii) provide rapid and effective protection to all trade union leaders and members who are under threat by increasing the budget for such programmes and ensure that protected individuals do not personally have to bear any costs arising from those schemes; (iii) eliminate the various legislative obstacles to the free establishment of trade union organizations

and, in consultation with the social partners, resolve the handling of registration applications; (iv) ensure that judicial decisions of reinstatement in employment following anti-union dismissals are enforced without delay; (v) increase the visibility of the awareness-raising campaign on freedom of association in the media and ensure that there is no stigmatization of trade unions, their leaders and collective agreements; (vi) bring national legislation into conformity with the Convention, in consultation with the social partners; and (vii) redouble efforts to fully implement the road map adopted on 17 October 2013, in consultation with the social partners.

Lastly, the Committee invited the Government to avail itself of technical assistance from the Office to give full effect to these conclusions and asked it to submit a report on the application of the Convention to the Committee of Experts by 1 September 2022.

Follow-up by the Governing Body of the progress achieved in the implementation of the technical cooperation programme "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards"

The Committee recalls that, pursuant to its decision of November 2018 (decision GB.334/INS/9) to close the procedure concerning the complaint alleging non-observance of the Convention by Guatemala made under article 26 of the ILO Constitution, the Governing Body asked the Office in November 2020 to report annually on the ILO technical cooperation programme "Strengthening of the National Tripartite Committee on Labour Relations and Freedom of Association in Guatemala for the effective application of international labour standards" for its three-year duration (decision GB.340/INS/10).

During its October-November 2022 meeting, the Governing Body noted the joint mission of the ILO, the International Organisation of Employers (IOE) and the ITUC, undertaken in September 2022 to follow up on the technical cooperation provided by the ILO in relation to the implementation of the road map approved in 2013 by the Government, in order to discuss the matters raised in the complaint made under article 26 of the ILO Constitution. The Committee notes that the mission and the members of the National Tripartite Committee on Labour Relations and Freedom of Association (CNTRLLS) jointly identified a series of priority actions to give new impetus to the implementation of the road map.

Trade union rights and civil liberties. The Committee notes with ***regret*** that since 2005 it has been examining allegations of serious acts of violence against trade union leaders and members, including numerous murders, and the situation of impunity in this respect. The Committee notes the information provided by the Government on the status of investigations and judicial proceedings relating to the murder of 97 members of the trade union movement, indicating that: (i) 29 verdicts have so far been handed down, comprising 22 convictions (in relation to 19 murders, with three cases resulting in two convictions each), six acquittals, and one security and correctional measure; (ii) seven cases have been assigned dates for public hearings and trials; (iii) in one new case, the final report was presented to the judicial authority by the Public Prosecutor's Office; (iv) in three cases, trial proceedings are being opened; (v) criminal proceedings were dropped in seven cases in which the accused persons had died; and (vi) the other cases are still at the investigation stage. The Committee also notes the Government's indication that: (i) given that several new cases now have dates for public hearings and trials, five new judgments are expected by the end of the first half of 2023; (ii) six cases involving the deaths of trade union leaders and members which occurred in 2020 have seen significant progress in terms of investigations and proceedings; and (iii) the Public Prosecutor's Office has launched investigations into two cases of death threats against trade union leaders.

The Committee further notes the information provided by the Government on the security measures adopted for members of the trade union movement in situations of risk, namely: (i) personal security measures are in place for two union leaders; and (ii) of the 46 requests for protection for trade union members received by the Ministry of the Interior from 1 January to 27 July 2022, one has given

rise to personal security measures, 39 have generated perimeter security measures, and six are in the analysis phase. The Government also refers to Ministerial Decision No. 288-2022 issued by the Interior Ministry, which reinstates the unit for the analysis of attacks against trade union leaders and members, a forum in which the Interior Ministry and the unions can exchange information on at-risk members of the trade union movement.

The Committee further notes the Government's reference to a substantial increase in the budgets allocated to: (i) the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists, which increased from US$543,960 to US$1,288,252 in 2022; and (ii) the Personal Protection and Security Division at the Interior Ministry, which increased from US$876,616 in 2020 to US$1,239,120 in 2022. Lastly, the Government reports on the eight meetings held in 2022 by the CNTRLLS Subcommittee on the Implementation of the Road Map concerning the subject of anti-union violence.

The Committee also notes with ***deep concern*** the observations of the national and international trade union organizations denouncing: (i) the murder on 8 August 2022 of Hugo Eduardo Gamero Gonzalez, Disputes Secretary of the Santo Tomás de Castilla National Port Enterprise Workers' Union (SINEPORC); (ii) the perpetration of numerous other acts of anti-union violence such as death threats; (iii) the persistence of the situation of impunity; and (iv) the inadequate protection measures provided by the public authorities.

While noting the Government's replies regarding the investigations into these acts, the Committee once again recalls that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists, and that it is for governments to ensure that this principle is respected.

In light of the foregoing, while duly noting the continuing actions by the Government, the results reported and the difficulty involved in clearing up long-standing murder cases, the Committee once again expresses its ***deep concern*** at the allegations of a new case of murder and other acts of anti-union violence committed in 2022 and the persistence of a high degree of impunity. Indeed, the Committee notes with ***regret*** that the vast majority of the many murders of trade unionists recorded have still not resulted in convictions and that limited information on identification and punishment of the instigators of these crimes has been provided by the Government. ***While duly noting the significant increase in the budget allocated to the Office of the Special Prosecutor for Crimes against Judicial Officials and Trade Unionists reported by the Government, the Committee once again urges the Government to continue taking and intensifying as a matter of urgency all necessary measures to: (i) investigate all acts of violence against trade union leaders and members, with the aim of determining responsibility and punishing both the perpetrators and instigators of these acts, taking the victims' trade union activities fully into consideration in the investigations; and (ii) provide prompt and effective protection for all trade union leaders and members in situations of risk so as to prevent any further acts of anti-union violence. The Committee requests the Government to continue providing all relevant information in this respect.***

Articles 2 and 3 of the Convention. The Committee recalls that for many years it has been requesting the Government to take measures to:

- amend section 215(c) of the Labour Code, which requires a membership of "50 per cent plus one" of the workers in the sector to establish a sectoral trade union;
- amend sections 220 and 223 of the Labour Code, which establish the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity to be eligible for election as a trade union leader;
- amend section 241 of the Labour Code, under the terms of which strikes have to be called by a majority of the workers and not by a majority of those casting votes;

- amend section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996, which provides for the possibility of imposing compulsory arbitration in non-essential services and establishes other obstacles to the right to strike;
- amend sections 390(2) and 430 of the Penal Code and Decree No. 71-86, which establish labour, civil and criminal penalties in the event of a strike by public officials or workers in certain enterprises; and
- ensure that the various categories of public sector workers (hired under item 029 and other items of the budget) enjoy the guarantees afforded by the Convention.

The Committee recalls that in its previous comments it noted: (i) the tripartite agreement concluded in March 2018 on the amendments sought in four of the six points indicated above (relating to the requirements for election as a trade union leader, compulsory arbitration in non-essential services and other obstacles to the right to strike, penalties applicable in the event of a strike established by various legislative provisions, and the application of the guarantees of the Convention to various categories of public sector workers); and the immediate submission of this agreement to the National Congress; (ii) the tripartite agreement concluded in August 2018 on the principles that should guide reforms on the requirements for the establishment and operation of sectoral unions and on the conditions for strike ballots.

In its comments further to the closure by the Governing Body of the complaint made under article 26 of the ILO Constitution, the Committee expressed deep concern at the lack of progress on legislative reforms, noting with regret, firstly, that the content of the tripartite agreement of March 2018 had still not been incorporated in the legislation and, secondly, that no progress had been made on work to revise the legislation relating to aspects covered by the agreement on principles of August 2018. With regard to this last point, the Committee had previously noted with concern the indications by the trade unions that the combination of (i) the fact that it is impossible to create sectoral unions as a result of the requirements of section 215(c), and (ii) the fact that it is impossible in small enterprises, which account for almost all companies in Guatemala, to assemble the 20 workers required by section 216 of the Labour Code for the establishment of a union, meant that the vast majority of workers in the country did not have access to the right to join a union.

The Committee notes the Government's reference to two tripartite meetings held in 2021 and one held in July 2022 to incorporate the agreements reached in March 2018 into a Bill without there having been the necessary input from the workers to move ahead with the tripartite discussion process. The Committee also notes that the national trade union federations claim that it is impossible to move forward on the legislative reforms requested by the Committee owing to the unwillingness of the Ministry of Labour and Social Welfare (Ministry of Labour) to impinge on the different political groups represented in the National Congress, and because of this the tripartite consensus achieved has lost its way in the legislative body.

The Committee also notes the following points that emerge from the discussion in the Governing Body in November 2022 that: (i) on 21 September 2022, in the presence of the ILO-IOE-ITUC joint mission, the Subcommittee on Legislation with the extended bureau of the CNTRLLS endorsed the texts approved in March 2018 and agreed that the executive authority would submit a Bill to Congress in the very near future; (ii) by a letter of 27 October 2022, the President of the Republic brought a Bill before the National Congress containing the texts which had received tripartite approval in March 2018 and September 2022; and (iii) the priority actions identified by the mission in conjunction with the CNTRLLS provide for: lobbying by the national tripartite constituents with a view to the adoption of the aforementioned Bill; bipartite and tripartite discussions facilitated by the Office to have a consensual text for proposed reforms on sectoral trade unions and the conditions for strike ballots ready for the Governing Body session of November 2023. ***Encouraged by the specific actions agreed upon during the ILO-IOE-ITUC joint mission, the Committee firmly hopes that the Government will very soon be in a***

position to report both the adoption of the Bill brought before the National Congress on 27 October 2022 and tangible progress in the revision of the legislation relating to sectoral trade unions and the conditions for strike ballots.

Application of the Convention in practice

Registration of trade unions. The Committee notes the Government's indication that: (i) in the whole of 2021, the Ministry of Labour registered 57 trade unions, out of 58 applications received; (ii) from 1 January to 15 August 2022, a total of 17 trade unions were registered, out of 18 applications received; and (iii) steps have been taken to contract a notifying officer to accelerate registration formalities, and assistance has been sought from the Ministry of Labour of Argentina to share good practices in this respect. The Committee also notes the observations of the trade union federations, which claim that: (i) arbitrary practices and the imposition of inappropriate formalities by the Ministry of Labour persist; (ii) the Ministry of Labour reportedly gives 48 hours to employers to bring legal action against any publication of the registration of a trade union in the Official Journal. The Committee notes the Government's indication regarding this latter point that, under the case law of the Constitutional Court, the Ministry of Labour has the obligation to examine claims presented to it, including those relating to the registration of unions. Lastly, the Committee notes that the priority actions identified by the ILO-IOE-ITUC joint mission include the implementation, with support from the Office, of software for the registration of trade unions. ***In light of the foregoing, the Committee requests the Government to continue providing statistical information on registration applications and actual trade union registrations. It further requests the Government to specify whether the legislation requires the labour administration to inform the employer when it receives a request for registration by a trade union and to indicate the number of challenges against registration brought by employers, the duration of their examination and the decisions taken for their resolution.***

Awareness-raising campaign on freedom of association and collective bargaining. The Committee notes the Government's reference to the meeting of the Subcommittee on the Implementation of the Road Map held on 2 August 2022 at which: (i) the Subcommittee gave its approval to the communication models submitted by the ILO; and (ii) the Ministry of Labour indicated that it had set aside funds to display posters in the municipalities most affected by disputes in the country. The Committee also notes the Government's indication that the national trade union federations, for their part, criticize the lack of any progress in this respect. Lastly, the Committee notes that, in the context of the priority actions identified by the ILO-IOE-ITUC joint mission and the CNTRLLS, the following possibilities were raised: (i) that the Government might launch a similar initiative on freedom of association to the one recently implemented by the Ministry of Labour with a campaign on the prevention of child labour; (ii) that the Coordinating Committee for Agricultural, Commercial, Industrial and Financial Associations, in connection with the human rights policy developed by the employers, might devise and disseminate awareness-raising and information materials among its members on the employers' role regarding the exercise of freedom of association; and (iii) that the campaign might include promoting good practices with respect to collective labour relations (for example, through an annual award from the CNTRLLS). ***In light of the foregoing, the Committee expresses the firm hope that the Government will be in a position in the very near future to report specific progress on the implementation of the awareness-raising campaign.***

While expressing its concern at the persistence in law and practice of serious violations of the Convention, the Committee welcomes the fresh impetus given to the implementation of the road map through priority actions identified by the ILO-IOE-ITUC joint mission and by the members of the CNTRLLS. The Committee emphasizes that it is vitally important that the expectations generated by the identification of such actions translate into tangible progress in the application of the Convention within the specified time frames. The Committee requests the Government to provide information on the various points highlighted in the present comment.

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

[The Government is asked to reply in full to the present comments in 2023.]

Guinea

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

Previous comment

Article 3 of the Convention. Right of organizations to organize their activities and to formulate their programmes. In its previous comment, the Committee requested the Government to provide information on the work of the National Social Dialogue Council (CNDS) in resolving disagreements concerning the determination of minimum wages. The Committee also requested the Government to indicate the minimum services determined in the transport and communications services. The Committee notes the adoption of the new Decree of 31 May 2022 on the organization and functioning of the CNDS. The Committee notes that the Government indicates that it is in the process of adopting the measures necessary to render the CNDS operational and that the social partners have been requested to designate their members to allow the body to be up and running as soon as possible. According to the Government, as it is not yet operational, the CNDS has not intervened in resolving the disagreements concerning the determination of minimum wages. The Committee also notes that, according to the Government, following a number of collective disputes, minimum services have been determined at the level of certain institutions and that minimum services exist in the communication and transport sectors. ***In light of the above, the Committee once again requests the Government to provide information on the work of the CNDS, once operational, in the resolution of disagreements concerning the determination of minimum services. The Committee also once again requests the Government to provide information on the minimum services determined in the communication, transport and other sectors.***

In its previous comment, the Committee welcomed the establishment of the commission to review the Labour Code and hoped that sections 431.5 and 434.4 of the Labour Code, on minimum service in case of strikes and compulsory arbitration respectively, would be amended in conformity with the Convention. The Committee notes the Government's indication that the amendment process of the Labour Code is under way, in consultation with the social partners, and that the next step is to establish a commission which will be responsible for bringing together the different observations made regarding the inadequacies, shortcomings, legal gaps and desired rectifications in certain articles of the Labour Code. On completion of that task, a "sharing" workshop will be organized, at the latest in the month of November 2022. The Committee notes that the Government indicates that it has requested ILO technical assistance in this regard. ***The Committee requests the Government to report on all progress made in this respect and encourages the Government to continue to avail itself of the technical assistance of the Office in this connection.***

Haiti

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, which contain allegations of police repression during peaceful demonstrations and strikes, as well as obstacles to the registration of trade unions. The Committee also notes the observations of the Confederation of Public and Private Sector Workers (CTSP) and the Confederation of Haitian Workers (CTH), received on 2 November 2022, which refer to the extremely

serious and violent crisis in the country, with the repercussions this has on the exercise of trade union rights, which are already particularly compromised. ***The Committee takes note of the extent of the crisis affecting the country at all levels and hopes that the Government will be able to comment on the issues raised in the near future.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep concern*** that the Government's report, due since 2014, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. While being aware of the difficulties affecting the country, the Committee cannot but recall that it has been raising issues concerning the observance of the Convention in an observation and a direct request, including longstanding recommendations to bring the labour legislation into conformity with the Convention regarding provisions that unduly restrict: (i) the right of workers to establish and join organizations of their own choosing (minors, foreign workers, domestic workers); and (ii) the right of workers' organizations to organize their activities in full freedom and to formulate their programmes. ***Not having received any additional observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation and direct request adopted in 2020 and urges the Government to provide a full reply thereto. To this end, the Committee expects that any request for technical assistance that the Government may address to the Office will be acted upon as soon as possible.***

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

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, which contain new allegations of serious violations of freedom of association in the textile sector, such as anti-union dismissals. The Committee also notes the observations of the Confederation of Public and Private Sector Workers (CTSP) and the Confederation of Haitian Workers (CTH), received on 2 November 2022, which, in the context of the extremely serious and violent crisis in the country, denounce the blatant limitations on the right to organize and bargain collectively in practice. ***The Committee notes the extent of the crisis affecting the country at all levels and hopes that the Government will be able to comment on the issues raised in the near future.***

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep concern*** that the Government's report, which has been expected since 2014, has not been received. In light of the urgent appeal made to the Government in 2020, the Committee is proceeding with the examination of the application of the Convention on the basis of information at its disposal. While being aware of the difficulties faced by the country, the Committee recalls that it raised questions concerning the application of the Convention in an observation, which particularly concerned the need to strengthen protection against anti-union discrimination as well as the penalties provided in this regard. It recalls also that its comments concern allegations of serious violations of freedom of association in practice, especially in several enterprises in textile export processing zones, and the lack of social bargaining in the country. ***In the absence of additional observations from the social partners and having no indication at its disposal of progress made on these pending issues, the Committee refers to its previous observation of 2020 and urges the Government to provide a complete response in 2022 to the questions raised. For that purpose, the Committee expects that any request for technical assistance, in relation with Conventions ratified by the country, that the Government may wish to address to the Office will be taken up as soon as possible.***

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

Hungary

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

Previous comment

The Committee notes the observations of the workers' group of the National ILO Council at its meeting of 27 October 2021, included in the Government's report, which relate to the issues examined by the Committee below, and the Government's comments thereon.

Freedom of expression. In its previous comments, the Committee had noted with concern that sections 8 and 9 of the Labour Code (2012) prohibited workers from engaging in any conduct, including the exercise of their right to express an opinion – whether during or outside working time – that may jeopardize the employer's reputation or legitimate economic and organizational interests, and explicitly provided for the possibility to restrict workers' personal rights in this regard. The Committee considered that the above provisions impeded the freedom of expression of workers and the exercise of the mandate of trade unions and their leaders to defend the occupational interests of their members and expected that its comments would be fully taken into account in the framework of the ongoing review of the Labour Code. The Committee notes the Government's indication that in 2019, section 9 of the Labour Code was amended to implement the European Union reform on data protection. Pursuant to the amended text, "the employee's personality rights [including freedom of expression] may be limited only where the limitation is strictly necessary for a reason directly associated with the intended purpose of the employment relationship and is proportionate in order to achieve that objective. The employee shall be informed in advance in writing of the manner, conditions and expected duration of the restriction of the personality right, as well as of the circumstances justifying its necessity and proportionality". The Government points out that the amendment establishes stricter conditions for the restriction of the employees' rights, including freedom of expression set forth in Article IX (1) of the Fundamental Law. The Committee notes that the workers' group of the National ILO Council considers the amendment to section 9 (2) of the Labour Code to be only a partly sufficient response to the observation made by the Committee. The Committee also notes that the workers' group is of the view that section 8 (3) of the Labour Code refers to reputation and other legitimate interests of an employer as interests to be respected and not to be seriously violated in expressing opinion. The Committee notes the workers' group of the National ILO Council's proposal to hold consultations on necessary and proportionate limits to the constitutional right of employee's freedom of expression with involvement of experts and social partners. The Committee ***regrets*** that the Government merely indicates that the court being the competent body to interpret the conditions regulated by section 8 (1)-(3) of the Labour Code, the aggrieved party can bring appropriate claims in cases of violation of freedom of expression. ***The Committee therefore urges the Government to take all necessary measures, including legislative, in consultation with the social partners, to guarantee that sections 8 and 9 of the Labour Code do not impede the freedom of expression of workers and the exercise of the mandate of trade unions and their leaders to defend the occupational interests of their members. The Committee requests the Government to provide information on all progress achieved in this respect.***

Article 2 of the Convention. Registration of trade unions. The Committee had previously requested the Government to provide its comments on the observations of the ITUC and the workers' group of the National ILO Council concerning allegations on the stringent requirements in relation to union headquarters, the refusal of registration due to minor flaws, the imposition of the obligation of including the company's name in the official name of associations, and the difficulties created or encountered by trade unions because of the obligation to bring their by-laws in line with the Civil Code. The Committee notes with ***regret*** that the Government did not provide comments in this respect. The Committee notes that the Government reiterates the information it had previously provided on the existing legal

framework for registration, and adds that from 1 June 2017 to 31 May 2021, 1,149 trade unions were registered and eight applications were rejected (three without a call for rectification due to an incomplete application, and five after the issuance of a request for rectification because the applicant did not properly comply with the court's order within the deadline). The Committee also notes the workers' group of the National ILO Council's observation that the implementation of *Article 2* of the Convention continues to be complicated by unnecessary requirements and that trade unions may only commence operations from the effective date of the court's decision on registration. The Committee further notes that, while the Government indicates that the courts no longer require the fulfilment of all minor requirements for court registration, the workers' group of the National ILO Council points out that the relevant Act has not been amended accordingly. ***In light of the above, the Committee is obliged to request once again the Government to provide its comments on the observations of the ITUC and the workers' group of the National ILO Council.*** The Committee recalls that, although the formalities of registration allow for official recognition of workers' or employers' organizations, these formalities should not become an obstacle to the exercise of legitimate trade union activities, nor should they allow for undue discretionary power to deny or delay the establishment of such organizations. ***Accordingly, the Committee once again requests the Government to: (i) engage without delay in consultations with the most representative employers' and workers' organizations to assess the need to further simplify the registration requirements, including those relating to union headquarters; and (ii) take the necessary measures to effectively address the alleged obstacles to registration in practice, so as not to impede the right of workers to establish organizations of their own choosing. The Committee also requests the Government to continue to provide information on the number of registered organizations and the number of organizations denied or delayed registration during the reporting period, and to provide additional details on the grounds for refusal of registration so to enable the Committee to better assess the conformity of these grounds with the Convention.***

Article 3. Right of workers' organizations to organize their administration. The Committee had previously requested the Government to provide its comments on the ITUC allegations that trade union activity was severely restricted by the power of national prosecutors to control trade union activities, for instance by reviewing general and ad hoc decisions of unions, conducting inspections directly or through other state bodies, and enjoying free and unlimited access to trade union offices. The ITUC further alleged that, in the exercise of these broad capacities, prosecutors questioned several times the lawfulness of trade union operations, requested numerous documents (registration forms, membership records with original membership application forms, minutes of meetings, resolutions, etc.) and, if not satisfied with the unions' financial reporting, ordered additional reports, thereby overstepping the powers provided by the law. The Committee notes with ***regret*** that the Government did not provide its comments on these serious allegations from the ITUC. ***Recalling that acts described by the ITUC would be incompatible with the right of workers' organizations to organize their administration enshrined in Article 3 of the Convention, the Committee again requests that the Government respond to the ITUC allegations.***

Right of workers' organizations to organize their activities. The Committee had previously highlighted the need to amend the relevant laws (including the Strike Act, the Passenger Transport Services Act and the Postal Services Act), in order to ensure that the workers' organizations concerned may participate in the definition of a minimum service and that, where no agreement is possible, the matter is referred to a joint or independent body. The Committee notes the Government's indication that having dealt with difficulties caused by the COVID-19 pandemic, it plans to put on the agenda a comprehensive amendment of the Strike Act. ***The Committee urges the Government to take all necessary measures to amend without further delay the Strike Act, as well as the Passenger Transport Services Act and the Postal Services Act as per the Committee's previous comments, and to provide information on all developments in this respect.***

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2022 concerning matters examined by the Committee in the present comment. It further notes the observations of the International Organisation of Employers (IOE) received on 25 August 2022 concerning the discussions that took place at the Conference Committee on the Application of Standards with respect to the application of the Convention.

The Committee also notes: (i) the observations of the workers' group of the National ILO Council (NILOC) in relation to the Report sent by the Government in view of the discussion before the Committee on the Application of Standards; (ii) the summaries provided by the Government of the position expressed by the workers' group of the NILOC concerning the report submitted by the Government to the Committee.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussions held at the Conference Committee in June 2022 on the application of the Convention by Hungary. The Committee notes that the Conference Committee, noting with concern the significant compliance gaps in law and practice regarding the protection against anti-union discrimination, the scope of collective bargaining permitted under the law and interference in free and voluntary collective bargaining with respect to the Convention, requested the Government to: (i) review relevant labour legislation to ensure that the representativity threshold is not set in a manner that prevents workers from exercising their right to collective bargaining; (ii) ensure that union officials, union members and elected representatives enjoy effective protection, in law and practice, against any act prejudicial to them, including dismissal, based on their status or activities; (iii) ensure no undue interference in the establishment, functioning and administration of trade unions; and (iv) provide information on the average duration of both judicial proceedings and proceedings before the Equal Treatment Authority (ETA) related to anti-union discrimination.

The Committee further notes that the Conference Committee requested the Government to: (i) avail itself, without delay, of ILO technical assistance, to ensure compliance with the provisions of the Convention in law and practice; and (ii) submit a report to the Committee by 1 September 2022 on the application of the Convention.

The Committee notes that in July 2022, the Government requested the technical assistance of the Office with respect to the Convention and that a first meeting took place in August 2022 in order to exchange on the modalities of such assistance.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee recalls that it had requested the Government to ensure that trade union officials and members enjoy effective protection against anti-union discrimination and to provide information on the average duration of the related judicial and administrative proceedings. Concerning the specific protection of trade union officials, the Committee notes with ***satisfaction*** the Government's indication that, as a result of Act CLIX of 2017 the definition of employee representatives in the Labour Code now covers trade union officials, enabling them to request their reinstatement in case of unlawful dismissal.

As for trade union members other than officials, the Committee noted in its previous comment the legal provisions of the Labour Code that provide, through judicial procedure, for compensation (not exceeding the worker's 12-month absentee pay) in case of dismissal and reinstatement in case of violation of the principle of equal treatment (section 82 and 83(1)(a) of the Labour Code). The Committee

further notes the Government's indication that the trade union member may demand compensation under section 166(1) of the Labour Code if the employer caused damage to the employee in connection with the employment relationship. As for the procedure under the Equal Treatment Act in response to the Committee's previous comment, the Government indicates that the legal consequences set out in the Equal Treatment Act do not extend to reinstatement and the ETA may not provide for compensation. The ETA, however, may impose a fine of HUF50,000 to HUF6 million and order the publication of its anonymised final decision.

Concerning the Committee's request to provide information on the average duration of both judicial proceedings and proceedings before the ETA, the Committee notes that the Government only provided data for the average processing time before the ETA (66 days excluding the duration of suspension). The Committee also notes that out of the 17 cases submitted before the ETA since June 2017, 10 cases resulted with the rejection of the request and 7 with the termination of the proceedings. The Committee notes that while the reported data allows for a better understanding on the number of submissions, it does not provide sufficient information to determine the grounds on which the cases were rejected by the ETA.

The Committee takes note of the observations of the workers' group of the NILOC that the legislation lacks dissuasive sanctions and that the data provided on the cases examined by the ETA illustrate both the low number of proceedings and that in the majority of cases the ETA rejects the applications submitted by employees and trade unions. Regarding the above, the Committee wishes to recall that the existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice and if the sanctions provided for are not effective and sufficiently dissuasive. ***In view of the above, the Committee requests the Government to: (i) provide comprehensive information on the average duration of both judicial proceedings and proceedings before the ETA, together with details on remedies provided, the number of claims rejected and the grounds for any such rejections; (ii) provide information on the legal provisions under which anti-union discriminatory acts, other than dismissal, can be remedied and the way they are applied; and (iii) carry out, in consultation with the social partners, a comprehensive examination of the effectiveness of the existing protection mechanisms against anti-union discrimination. The Committee requests the Government to provide information in this regard.***

Article 2. Adequate protection against acts of interference. In its previous comment the Committee requested the Government to take steps to adopt specific legislative provisions prohibiting such acts of interference on the part of the employer and making express provision for rapid appeal procedures, coupled with effective and sufficiently dissuasive sanctions.

The Committee notes the Government's indication that in addition to the provisions of the Labour Code, the autonomy of trade unions is regulated by Act CLXXV of 2011 on the right of association and the Civil Code. The Committee notes the detailed description from the Government of the various provisions of the above laws and the indication that since Act LV of 2000 on the promulgation of the Convention forms part of the Hungarian legal system, consequently *Article 2* of the Convention should also be deemed applicable. The Committee observes however that neither Act LV of 2000 which contains the official Hungarian translation of the Convention nor the other legislative instruments mentioned by the Government include provisions that specifically prohibit and sanction the acts of interference covered by *Article 2* of the Convention. ***The Committee is therefore bound to reiterate its previous comment and request the Government to take steps to adopt specific legislative provisions prohibiting such acts of interference on the part of the employer and making express provision for rapid appeal procedures, coupled with effective and sufficiently dissuasive sanctions.***

Article 4. Promotion of collective bargaining. Representativeness requirements. The Committee notes the Government's explanation that the uniform 10 per cent threshold for conclusion of collective

agreements set by legislation was established with the goal to enhance collective negotiations and to simplify the previous conditions set regarding the ability to conclude collective agreements. The Government adds that deviation from the 10 per cent threshold would: (i) enable trade unions with fragmented support under the 10 per cent threshold to exercise the right to jointly conduct collective bargaining and conclude collective agreement; and (ii) could set aside a trade union or a confederation that alone reaches the 10 per cent threshold. The Committee notes the observations received from the workers' group of the NILOC that the law restricts the 'coalition' of trade unions for collective bargaining in cases when no trade union reaches the 10 per cent threshold**. *The Committee requests the Government, after consultation with the representative social partners, to examine the possibility of allowing for the coalition of trade unions at the workplace in cases where no trade union reaches the required representativity individually.***

Negotiation with work councils. The Committee notes the observations of the workers' group of the NILOC concerning the possibility for works councils to enter into agreement with the employer in relation to working conditions (except on remuneration). The Committee notes that according to the wording of section 268(1) of the Labour Code: "Such agreements may be concluded on the condition that the employer is not covered by a collective agreement it has concluded, or there is no trade union with entitlement to conclude a collective agreement". The Committee notes that under this provision, an employer is entitled to conclude a collective agreement with a works council even if there is a trade union organization in the company, as long as the latter does not reach the representativeness threshold set by the legislation to be able to bargain collectively. The Committee recalls that *Article 4* of the Convention refers to collective bargaining between employers or employers' organizations on the one hand and workers' organizations on the other hand, and that it considers that, in order to ensure an effective promotion of the negotiating capacities of workers' organizations, negotiations with non-union actors should only be possible in the absence of trade unions at the respective level. ***The Committee therefore requests the Government, after consulting the representative social partners, to review section 268(1) of the Labour Code accordingly.***

Material scope of collective bargaining in publicly-owned entities. In its previous comments, under the Collective Bargaining Convention, 1981 (No. 154), the Committee requested the Government to indicate which subject matters were excluded from the scope of collective bargaining in publicly-owned entities. The Committee understands that this question concern mainly public sector workers not engaged in the administration of the State that are therefore fully covered by the Convention.

The Committee notes the Government's response that sections 204–208 of the Labour Code set out the rules on employment at publicly-owned entities. These rules are mandatory and cannot be derogated neither by an individual nor by a collective agreement (section 213(f) of the Labour Code). These rules encompass: the notice period and severance payment, exceptions to working time (i.e. break from work, except for stand-by work; travel time), full daily working time shorter than general full daily working time may not be prescribed in a publicly-owned entity, except to prevent a hazard or danger to health (section 205(3) of the Labour Code). Finally, derogation from provisions of Chapters XIX-XXI of the Labour Code regulating labour relations is not permitted (section 206 of the Labour Code). Chapters XIX-XXI concern the regulation related to the establishment, functioning and dissolution of works councils and trade unions, including rules related to time allowances provided for trade union officials. The Government indicates that such rules were required by the special "legal status" and economic role of the employer in publicly-owned entities to ensure efficient management and prevention of abuse of State assets, enhanced enforcement of public interest, performance of public functions, publicity related to community objectives and to improve public opinion of companies.

The Committee recalls that workers of state-owned commercial or industrial enterprises are fully covered by the Convention. While the special characteristics of the public service, may allow for some flexibility, legislative measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention, and tripartite discussions are a particularly

appropriate method of resolving these difficulties. While taking note of the justification provided for by the Government, the Committee is of the view that the matters excluded from collective bargaining at publicly-owned entities under articles 205-206 go beyond the restrictions that are compatible with the Convention. ***The Committee therefore requests the Government to initiate discussions with the social partners in order to revise the referred restrictions of the material scope of collective bargaining in publicly-owned entities.***

Collective bargaining in practice. The Committee notes the data provided by the Government on the number of collective agreements for the period of 2012–19. While noting the observation of the workers' group of the NILOC that it is unclear from the data what the number of agreements refers to, the Committee observers that the data shows that in the private sector, in spite of a small increase in the number of collective agreements (from 942 in 2012 to 1011 in 2019), the number of workers covered decreased over the same period of time (from 442,723 to 397,650). In the public sector, both the number of agreements and the number of workers covered decreased at a higher rate (from 1,735 to 820 and from 261,401 to 193,695). In terms of data available for collective agreements covering more than one employer or institution, the data indicates a slightly upward trend in the private sector (from 81 to 84 and 204,585 to 229,477) though the data on collective agreements covering more than one institution in the public sector only refers to the agreement concluded between the State Health Care Centre in 2018, covering 56,612 employees. The Committee also notes that according to the data available at ILOSTAT, the collective bargaining coverage rate in Hungary in 2019 stood at 17.8 per cent. With respect to sectoral level collective bargaining, the Committee notes that there are currently three extended sectoral collective agreements in the construction, tourism and hospitality, and electricity industry. The Committee takes note of the information provided by the workers' group of the NILOC according to which there was a significant decline in the operation of Sectoral Dialogue Committees, partially due to the decrease in governmental support to their operation. The workers' group also indicates that recent amendments to provisions on extension of collective agreements further complicated and increased the bureaucracy of the option of extension. ***The Committee requests the Government to provide its comment on the workers' observation concerning the extension mechanism and to supply information on the rules relevant to sectoral collective bargaining, including with respect to the extension of collective agreements.***

The Committee finally requests the Government to continue providing information on the number of collective agreements signed, the sectors concerned and the share of the workforce covered by collective agreements and to also provide the same statistics, where available, for works agreements.

The Committee hopes that the technical assistance requested from the Office will contribute to the full application of the Convention both in law and in practice.

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

Indonesia

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

Previous comment

The Committee takes note of the observations of the Confederation of Indonesian Trade Unions (KSPI), the Indonesia Trade Union Prosperity (KSBSI), and the International Trade Union Confederation (ITUC), received on 31 August, 2 and 6 September 2021, respectively, referring to the issues raised by the Committee below. The Committee also notes the ITUC allegation that Law No. 11 of 2020 or the Omnibus Law on Job Creation restricts the right to strike as it grants police officers significant discretion

to imprison or fine union members for participating in or inviting others to participate in lawful strike action. The Committee understands that the Omnibus Law is undergoing a revision. ***The Committee requests the Government to provide its comments on the ITUC allegations and to provide information on the revision of the law and its regulations.***

Trade union rights and civil liberties. The Committee had previously requested the Government to engage in tripartite discussions to ensure the effective implementation of a code of conduct for workers' demonstrations and industrial actions. While noting the Government's indication that tripartite discussions on the procedures for handling lawful demonstrations and industrial actions were held, the Committee notes with ***concern*** the ITUC allegation of violence and arrests by the police in relation to a strike action by more than a million workers against the Omnibus Law. The ITUC denounces the use of water cannons and tear gas resulting in the injury of 32 members of the Federation of Indonesia Metalworkers in Bekasi; and the arrests of 183 workers in Southern Sumatra, 200 workers in Jakarta and a further ten workers for striking outside working hours. The Committee notes the Government's indication that the strike action was anarchic and disrupted public peace and order. The Government adds that it had the right to act decisively against unlawful strikes carried out in violation of national law which established the Tripartite forum as the lawful forum for the discussion of labour policy issues. ***The Committee requests the Government to provide detailed information on the outcome of the tripartite discussions and on progress made toward any agreed measures to ensure the effective implementation of a code of conduct for workers' demonstrations and industrial actions. Recalling that in cases of strikes, the authorities should only resort to the use of force in exceptional circumstances and in situations of gravity where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances, the Committee urges the Government to indicate all steps taken or envisaged to ensure the application of that principle.***

The Committee had previously expected the Government to clarify that sections 160 and 335 of the Penal Code, respectively on "instigation" and "unpleasant acts" against employers, did not apply to abstract trade union activities. The Committee notes the Government's indication that the Penal Code applies to all citizens without making any distinction between trade union and other activities. The Government adds that the Code is undergoing an amendment, taking into account the existing regulations. ***The Committee requests the Government to ensure that the amended Penal Code excludes lawful trade union activities from the scope of sections 160 and 335 of the Code. The Committee further requests the Government to provide information on all developments in this regard.***

Article 2 of the Convention. Right to organize of civil servants. The Committee had previously expressed trust that the Government would adopt the implementing regulations to give effect to the right of civil servants to form and join organizations of their own choosing. The Committee notes the Government's indication that the Trade Union Act applies to private sector workers while civil servants are covered by Law No. 5 of 2014 concerning Civil Servants. Moreover, the Constitution (Article 28 E) grants civil servants, in their capacity as citizens, the right to join any professional organization of their choosing. The Committee further notes that the Government refers to an obligation imposed on civil servants, depending on their status, to join respective professional organization of Functional Positions (JF) or KORPRI, a professional forum of which civil servants became members automatically upon their admission to service. The Committee observes that these organizations do not appear to be organizations in the sense provided for by the Convention or equivalent to organizations of workers of the private sector. ***The Committee once again requests the Government to take necessary measures to ensure the right of civil servants to form and join organizations of their own choosing, as is their right under the Convention, and to provide information on all steps taken to that end.***

Article 3. Right of workers' organizations to organize their activities. The Committee had previously requested the Government to provide information on the number of interest disputes referred to conciliation and mediations, and those referred to the industrial court without the consent of the

parties. The Committee takes due note of the Government's indication that there were 92 such cases reported between January and July 2021, with none being referred to the industrial court.

The Committee had previously invited the Government to discuss, within the framework of the National Tripartite Council, the effect of Presidential Decree No.63/2004 on the security of national vital objects (NVOs) and of the Ministry of Industry (MOI) Decree No. 466/2014, which enables companies or industrial areas to request assistance from the police and the miliary upon a disruption or threat to NVOs in their territory. The Committee notes the Government's indication that the MOI determines NVOs, and the Presidential Decree extends the application of security measures against threats to NVOs to the public, including trade unions. The Government informs that the Constitution (Article 28E) and the Trade Union Act guarantee the right to associate, negotiate, and carry out trade union activities in companies that are part of NVOs. The Government informs that it will submit a proposal to discuss the impact of laws and regulations related to NVOs in the National Tripartite Cooperation Institution. Recalling it had previously noted claims by the KSPI and KSBSI that these Decrees are used to suppress the exercise of freedom of association, including provision of examples thereof, the Committee ***regrets*** that the application of the above-mentioned Decrees has not been yet discussed with the social partners. ***The Committee urges the Government to take all necessary steps to ensure that such a discussion takes place without further delay.***

Article 4. Dissolution and suspension of organizations by the administrative authority. The Committee had previously requested the Government to indicate whether section 42 of the Trade Union Act could be used in conjunction with sections 21 and 31 to dissolve trade unions. The Committee takes due note of the Government's indication that sections 42, 21 and 31 of the Act cannot be invoked in conjunction to dissolve trade unions.

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

Previous comment

The Committee takes note of the observations of the International Trade Union Confederation (ITUC), the Indonesia Trade Union Prosperity (KSBSI) and the Confederation of Indonesian Trade Unions (KSPI) received on 6 September 2021, 1 September 2021, and 31 August 2021 respectively, and the Government's replies thereon.

The Committee notes that several of these observations refer to the impact on the application of the convention of Law No. 11 of 2020 on Job Creation (the so-called "Omnibus Law").The Committee notes in this regard: (i) the concern expressed by the KSPI that the law exposes certain categories of workers to greater risk of anti-union discrimination; and (ii) the concerns expressed by the ITUC that the "Omnibus law" would restrict the scope of collective bargaining agreements(CBAs), in particular for workers in micro and small enterprises (MSEs). The Committee notes in this respect the Government's indication that the law is in line with *Article 4* of the Convention, since the wages in MSEs are determined based on the agreement between the employer and workers, and the regulation of wages in this sector is intended to protect workers' wages considering the potentially low capacity of employers in the sector to remunerate. ***Noting that the law is undergoing revision as a result of a decision of the Constitutional Court (25 November 2021), the Committee requests the Government to examine the concerns expressed by the trade unions before the National Tripartite Council with a view to ensuring the full conformity of the revised law with the Convention. The Committee requests the Government to provide information on the ongoing revision process and to provide a copy and a translation of the law once adopted.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee previously requested the Government to provide statistics on the anti-union discrimination

complaints received and sought information on whether these complaints were brought before the courts and on any remedies or sanctions imposed. The Committee observes that the Government limits itself to informing that there were six recorded cases of anti-union discrimination between 2019 and 2020 and that it seeks clarifications from the relevant parties of such cases. The Committee notes the indication of the KSBSI denouncing instances of anti-union discrimination and interference in multiple enterprises. ***The Committee requests the Government to respond to these allegations and to provide statistics on the number of complaints of anti-union discrimination and interference filed, the number of complaints brought before the courts, as well as any remedies and sanctions imposed and the average duration of proceedings under each category***.

Article 2. Adequate protection against acts of interference. The Committee previously requested the Government to inform on the developments in reviewing section 122 of the Manpower Act, which allows the presence of employers in a voting procedure of trade unions, to ensure that interference by employers during the procedure is prohibited. The Committee notes with ***concern*** that the Government is satisfied with the provision and does not deem it necessary to amend it. The Government informs that the provision is intended to ensure that workers are not pressured during a vote because they are not members of a trade union. The government adds that the provision is useful in enterprises where the majority of the workforce are not union members and that it has not received complaints of interference by employers during voting. ***Highlighting the need to ensure adequate protection against acts of interference in practice, the Committee expects the Government to amend section 122 of the Manpower Act, so as to prohibit the presence of the employer during voting procedures. The Committee requests the Government to provide information in this respect.***

Article 4. Promotion of collective bargaining. The Committee previously requested the Government to review sections 5, 14 and 24 of Law No. 2 of 2004 or the Industrial Relations Dispute Settlement Act (IRDS Act), to ensure that compulsory arbitration during collective bargaining can only be invoked under exceptional circumstances. The Committee notes the Government's indication that it does not consider the review of the above-mentioned articles a matter of urgency since there was only one instance of a conflict of interest arising with regards to compulsory arbitration. The Committee recalls that compulsory arbitration is only acceptable (i) in essential services in the strict sense of the term; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis (2012 General Survey on the fundamental Conventions, paragraph 247). ***It therefore urges the Government to take measures to amend sections 5, 14 and 24 of the IRDS Act, to ensure that the principle of free and voluntary collective bargaining is fully respected.***

Recognition of organizations for the purposes of collective bargaining. The Committee previously requested the Government to provide statistics on the number of CBAs concluded at enterprise level and the coverage of workers by such agreements. The Government indicates that as of August 2021, there were 16,194 CBAs concluded across 34 provinces in the country and adds that statistical data collected annually, between 2016 (13,371 agreements) and 2021, has indicated an increase (21.1 per cent) in the number of collective agreements concluded. The Government informs that CBAs concluded post negotiations between the management and trade unions are registered. ***The Committee requests the Government to continue providing statistics on the number of CBAs specifying the sectors of activity concerned and the number of workers covered.***

Collective bargaining at the sectoral level. The Committee previously requested the Government to provide information on the developments concerning the pilot exercise to promote collective bargaining in Bekasi, and its impact on collective bargaining at the sectoral and regional levels. The Committee notes the Government's indication that the Directorate General of Industrial Relations and Social Security conducted several capacity building activities labelled "Training of Trainers for skills in negotiating CBAs," targeting unions and employers, aiming to improve negotiation skills and to

promote an increase in the number of CBAs. The Government states that the trainers included members of the tripartite groups from across Indonesia and that the trainings have resulted in a 21.1 per cent increase in the number of CBAs concluded between 2016 and 2021. The Government indicates that the regulations enacted would be difficult to apply or implement at the sectoral level since sectoral CBAs only pertain to general matters while specifics are governed by enterprise level CBAs. Therefore, the Government informs that its focus is to promote the creation of CBAs at the enterprise levels in order to prevent disputes in the future. The Committee considers that in practice, the issue is essentially a matter for the parties, who are in the best position to decide the most appropriate bargaining level including, if they so wish, by adopting a mixed system of framework agreements supplemented by local or enterprise level agreements (2012 General Survey on the fundamental Conventions, paragraph 222). ***Recalling that collective bargaining should be possible at all levels, the Committee requests the Government to take the necessary steps to also promote collective bargaining at the sectoral and regional levels and to provide information in this regard.***

Export processing zones (EPZs). The Committee previously requested the Government to examine within the framework of the National Tripartite Council the concerns raised by ITUC, KSBSI and KSPI regarding the alleged denial of the rights under the Convention to workers in EPZs. The Committee notes the Government's indication that there are no specific zones designated as EPZs but instead several zones, labelled differently, that produce export products. The Government states that during the tripartite consultations, it requested and is currently waiting for the information from trade unions regarding the complaints of anti-union discrimination and interference. ***The Committee requests the Government to take the necessary steps to ensure that the rights under the Convention are guaranteed for workers in all the zones, equivalent to EPZs, where export products are produced and to continue to inform it of the progress in the above-mentioned tripartite consultations. The Committee further requests the Government to provide information on the number of collective agreements in force in the referred zones, with an indication of the number of workers covered. In this regard, the Committee also requests the Government to provide information, including statistical data, on any trends observed in the coverage of the collective agreements concluded in the referred zones.***

Iraq

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2022 concerning matters examined by the Committee in the present comment. It further notes the observations of the International Organisation of Employers (IOE) received on 1 September 2022 concerning the discussions that took place at the Conference Committee on the Application of Standards with respect to the application of the Convention.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion which took place in June 2022 in the Conference Committee on the Application of Standards (the Conference Committee) concerning the application of the Convention by Iraq. The Committee observes that the Conference Committee, after noting with concern that there were significant compliance issues regarding the Convention in law and practice with respect to the protection against anti-union discrimination, the lack of trade union pluralism and the promotion of collective bargaining without interference, urged the Government to: (i) provide information on measures taken or envisaged to encourage and promote voluntary collective bargaining, the number

of collective agreements concluded and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements; (ii) prohibit acts of undue interference in the establishment, functioning and administration of trade unions and make provision for appeal procedures, coupled with effective and dissuasive sanctions; (iii) undertake legal and practical measures to ensure protection against anti-union discrimination, including through effective and expeditious access to courts, adequate compensation and the imposition of sufficiently dissuasive sanctions; and (iv) take all appropriate legal and practical measures to ensure that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind.

The Conference Committee also invited the Government to accept an ILO direct contacts mission and to submit a report to the Committee of Experts by 1 September 2022.

The Committee notes that since the discussions in the Conference Committee the Government requested ILO technical assistance with regard to the reform of the Trade Union Law and with respect to awareness-raising activities among different Government agencies and the Parliament. The Committee notes that the Office submitted the requested technical comments concerning the draft trade union law. The Committee welcomes the indications received from the Government that it stands ready to invite a direct contacts mission to visit Iraq. The Committee understands that the mission has not taken place yet due to the political situation, but that the current tentative agreement with the Office is for the direct contacts mission to visit Iraq during the first quarter of 2023.

Civil liberties. The Committee notes the conclusions of the Conference Committee concerning the need for the Government to take all appropriate legal and practical measures to ensure that trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind. Noting the information provided by the ITUC in this respect, the Committee recalls that the ILO supervisory bodies have unceasingly stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations (2012 General Survey on the fundamental Conventions, paragraphs 59–60). ***The Committee calls upon the Government to take all measures necessary to ensure that trade unions, their leaders, and their members can exercise their rights under the Convention, including collective bargaining, with full respect for their civil liberties.***

Trade union monopoly. The Committee previously recalled the need to remove any obstacles to trade union pluralism and had noted with interest the Government's indication that Government Decision No. 8750 of 2005 had been repealed. It had also requested the Government to take the necessary measures to repeal the Trade Union Organization Act No. 52 of 1987. In this respect, the Committee notes the observations from ITUC stressing the negative impact on freedom of association created by section 21 of the referred Trade Unions Act, which provides that the General Federation of Trade Unions is the supreme body for the trade unions. The Committee notes the Government's indication that a process has been initiated to amend this Act and that it submitted a request to the ILO for the provision of comments on the new draft Act. The Committee notes that the draft Act stipulates that "[t]he State shall guarantee the right to form and join trade union organizations by the workers, the employees, and the self-employed in all sectors, without any kind of discrimination" and welcomes the fact that this provision appears to be aimed at addressing the concerns raised repeatedly concerning legislative constraints on trade union plurality. ***Recalling that the capacity for workers to choose the union representing them is an important element of the principle of free and voluntary collective bargaining, the Committee hopes that any remaining obstacle to the possibility of trade union pluralism will soon be removed from the legislation***.

The Committee further notes that article 1(12) of the new draft Trade Union Act defines the most representative trade union organization as "the organization with the most membership" while article

50 stipulates that "the most representative organizations of workers and employees are determined according to rules developed through the tripartite dialogue between the government, workers' organizations and employer's organizations". With regard to the criteria to be applied to determine the representative status of organizations for the purposes of bargaining, the Committee emphasizes the importance of ensuring, in case controversy should arise, that these criteria are objective, preestablished and precise so as to avoid any opportunity for partiality or abuse (2012 General Survey on the fundamental Conventions, paragraph 228). Observing that article 1(12) solely refers to a numerical criterion, the Committee also recalls that practice shows that criteria used to determine the representativeness of organizations can be broadly divided into quantitative criteria (membership, geographical/sectoral coverage, economic importance of sector or territory) and qualitative criteria (financial/organizational independence, respect for democratic principles, legal status, and influence). For consultations at national level concerning broad social and economic policy issues and in situations of economic and political transition, it may be more important to ensure that all relevant organizations are represented and not just those organizations with the most members, so as to ensure fully informed decision-making and wide support for the process and its outcomes. On the other hand, quantitative criteria may play a more important role when determining which union can engage in enterprise-level bargaining. ***The Committee invites the Government to take into account the elements mentioned above when engaging with the social partners with a view to establishing the criteria for representativeness of trade unions and employers' organizations. The Committee requests the Government to provide information in this respect.***

Scope of the Convention. Public servants not engaged in the administration of the State. The Committee previously requested the Government to ensure that the rights in the Convention were applicable to all public servants not engaged in the administration of the State. It noted that section 3 of the Labour Code stipulates that its provisions do not apply to "public officials appointed in accordance with the Civil Service Law or a special legal text" and "members of the armed forces, the police and the internal security forces". The Committee also notes the allegations from ITUC that section 10 of the Revolutionary Council Resolution No. 115 of 1987 also prohibits the establishment of public sector unions. The Committee recalls, once again, that the Convention covers all workers and employers, and their respective organizations, in both the private and the public sectors, regardless of whether the service is essential, and that the only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State. It also recalls that under *Articles 4 and 6* of the Convention, persons who are employed in the public sector but by their functions are not directly engaged in the administration of the State (employees in public enterprises, municipal employees and those in decentralized entities, public sector teachers, transport sector personnel, etc.) should benefit from the guarantees provided for in the Convention. The Committee notes that, while the new draft Act on Trade Unions appears to extend the right to organize to all sectors, its article 3(2)(1), excludes from the scope of application of the draft law the "unions and associations established in accordance with specific legislation". ***The Committee therefore requests the Government to ensure that all public servants not engaged in the administration of the State benefit from the rights enshrined in the Convention and to specify through which pieces of legislation such rights are recognized. It also requests the Government to clarify whether Revolutionary Council Resolution No. 115 of 1987 is still in force, and, if so, ensure its contents are in line with the requirements of the Convention.***

Article 1 of the Convention. Protection against acts of anti-union discrimination. Sufficiently dissuasive sanctions. The Committee previously noted that section 11(2) of the Labour Code stipulates that whoever violates the sections relating to discrimination shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding one million dinars (approximately US$685) or by any of the two sanctions. It considered that the amount of the fine referred to above may not be adequate to deter and prevent the repetition of acts of anti-union discrimination, in particular in large enterprises. The Committee notes that Article10 of the new draft Trade Union Act prohibits any form of

discrimination against any worker or employee for his/her participation in any union activity and that articles 45–47 protect trade union members, the workers' representatives and their organizations against any violation of the provisions of the law. The Committee welcomes the fact that these draft provisions also introduce substantially more significant penalties for violations of the Act, as compared to those in the Labour Code, including penalties ranging from 5 to 10 million Iraqi dinars (approximately US$3,450 to 6,900), a requirement of reinstatement, and possible imprisonment for not less than one month and not more than six months for certain types of violations. At the same time, the Committee notes that the referred draft provisions only refer to anti-union dismissals and do not mention other acts of anti-union discrimination, including those carried out at the time of hiring and in the course of employment. In light of the ITUC allegations of the continued and widespread occurrence of acts of anti-union discrimination, the Committee also recalls, that sanctions, even when sufficiently high, will not act as a deterrent if not consistently applied by the relevant administrative or judicial authorities. ***The Committee requests the Government to adjust the relevant provisions of the new draft Trade Union Act to include a clear prohibition of all types of discriminatory measures on the ground of union membership or union activities both at the time of hiring and during employment, including exclusions from the hiring process or promotion, termination of employment, transfers, downgrading and other acts that are prejudicial to the worker. It also requests the Government to take the necessary measures to ensure that (i) the sanctions actually imposed in cases of anti-union discrimination are sufficiently dissuasive; and (ii) relevant law enforcement and judicial authorities are aware of the persistent problems concerning acts of anti-union discrimination in Iraq and understand their role in ensuring enforcement of the relevant legal provisions. In this regard, the Committee requests the Government to provide information on the sanctions imposed in practice.***

Anti-union dismissal. The Committee previously noted that section 145 of the Labour Code provides that when the penalty of dismissal has been imposed on a worker, such decision may be challenged within 30 days before the Labour Court. It also noted, however, that the Labour Code does not specify which sanctions are applicable in the event of anti-union dismissal. In this respect, the Committee welcomes the inclusion of sub-section (3) of article 45 in the new draft Trade Union Act, which contains a right of reinstatement for workers who have been dismissed due to their engagement in lawful trade union activities. ***The Committee requests the Government to ensure that the remedy of reinstatement proposed in the new draft Trade Union Act concerning dismissal as an act of anti-union discrimination will be accompanied by a retroactive compensation that will both act as a dissuasive sanction and ensure appropriate redress.***

Rapid appeal procedures. The Committee previously noted that workers may resort to the Labour Court to file a complaint when exposed to any form of discrimination in employment and occupation. In this respect, the Committee notes that sub-section (3) of article 45 in the new draft Trade Union Act includes a time frame of 15 days for reinstatement from the date of the dismissal. ***While highlighting the importance of establishing swift procedures to resolve anti-union dismissal cases in an effective manner, the Committee invites the Government to take the necessary measures to ensure that the remedies proposed in the new draft Trade Union Act concerning anti-union dismissal can be effectively applied in practice.***

Article 2. Protection against acts of interference. The Committee noted previously that the Labour Code does not contain any provisions which explicitly prohibit acts of interference. In this respect, it welcomes the inclusion of article 44 in the new draft Trade Union Act, which specifically prohibits acts of interference. As noted above concerning sanctions for acts of anti-union discrimination, the Committee considers that sanctions for acts of interference should be effective and sufficiently dissuasive. ***The Committee requests the Government to ensure that the remedies proposed in the new draft Trade Union Act concerning acts of interference can be effectively and rapidly applied in practice and are sufficiently dissuasive to prevent and sanction acts of interference.***

Article 4. Promotion of collective bargaining in law and practice. The Committee notes the information provided by the Government concerning the legislative framework in the Labour Code governing collective bargaining. It also notes, however, the Government's indication that no collective bargaining agreements have yet been concluded in the country. The Committee considers that the absence of collective bargaining agreements in Iraq suggests that serious impediments exist, either in law or practice, for the free and voluntary exercise of the right to collective bargaining. In this respect, highlighting the obligation to promote free and voluntary collective bargaining established by *Article 4* of the Convention, the Committee recalls that collective bargaining should not be hampered by the inadequacy or inappropriateness of such rules. It also draws the attention of the Government to the means to facilitate and promote collective bargaining contained in the Collective bargaining Recommendation, 1981, (No. 163) aimed at achieving the general principles set out in *Article 4* of the Convention. ***The Committee requests the Government to ensure that its legal framework allows for the free and voluntary exercise of the right to collective bargaining and to take the necessary measures to promote collective bargaining.***

Legislative consistency. The Committee has referred several times to provisions in the new draft Trade Unions Act in the present comment, as well as to provisions of the Labour Code which provide lower levels of protection than the draft Trade Union Act. ***The Committee requests the Government to ensure that any new legislative measures taken in conformity with the requirements of the Convention repeal and replace older legislative and regulatory provisions less favourable to the assertion and promotion of the right to collective bargaining.***

The Committee welcomes the Government's request of ILO technical assistance as well as the steps it has taken to bring its legislation into conformity with the Convention. It hopes that the direct contacts mission will be able to take note of tangible progress, both in law and in practice, in the application of the convention. It requests the Government to continue providing information on any progress achieved in the implementation of the different points addressed in the present comment.

Jamaica

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

Previous comment

The Committee notes the observations of the Jamaica Confederation of Trade Unions (JCTU) and the Jamaica Employers Federation (JEF) transmitted with the Government's report. The Committee also notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2022 alleging obstacles to the exercise of trade union rights in the business process outsourcing sector operating in special economic zones (SEZs). The ITUC alleges, in particular, that no trade union representation has been allowed in the more than 70 companies employing 40,000 workers in the sector.

Article 2 of the Convention. Right of workers to establish and join organizations. The Committee had previously requested the Government to take the necessary measures to amend section 6(4) of the Trade Union Act (TUA) with a view to ensuring that penalties are not imposed on workers for their membership and participation in activities of an unregistered trade union. The Committee notes the Government's indication that steps are being taken to repeal section 6(4) of the TUA, and notes the JEF's observation strongly supporting the repeal. The Committee also notes the JCTU's observations supporting the possibility of workers to establish and join organizations outside of trade unions, but such organizations should not assume the rights of registered trade unions under the TUA. ***The Committee regrets the lack of progress and urges the Government to take the necessary measures***

without further delay, in consultation with the social partners, to amend its legislation. The Committee requests the Government to inform it of developments in this regard.

Article 3. Interference in the financial administration of a trade union. The Committee had previously requested the Government to take the necessary measures to restrict the Registrar's discretionary rights to carry out inspections and request information with regard to trade union finances at any time as provided in section 16(2) of the TUA. The Committee notes the Government's indication that the matter has not yet been reviewed. The Committee further notes the JCTU's observations to the effect that the control exercised by public authorities should not be outside of the reasonable requirements of submitting periodic reports set out in section 16(1) of the TUA. The Committee also notes the JEF's observations regarding the need to reform section 16(2) of the TUA. ***Noting with regret that the Government has not undertaken any steps in this regard, the Committee urges the Government to take the necessary measures, in consultation with the social partners, to amend section 16(2) of the TUA so as to ensure that the control exercised by the public authorities over trade union finances does not exceed the obligation to submit periodic reports. The Committee requests the Government to inform it of developments in this regard.***

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

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

Previous comment

The Committee notes the observations of the Jamaica Confederation of Trade Unions (JCTU) and the Jamaica Employers Federation (JEF) transmitted with the Government's report, which deal with issues examined by the Committee in this observation.

The Committee notes the Government's response regarding the observations of the International Trade Union Confederation (ITUC) received on 1 September 2015, which denounced fixed and unreasonable procedural requirements for, and limitations on, collective bargaining. In this respect, the Committee notes the Government's indication that it: (i) is examining the issues raised and will discuss them with the social partners at the Labour Advisory Council (LAC); and (ii) will provide an update to the Committee on the progress of the discussions. ***While welcoming the discussions planned with the social partners at the LAC, and taking into consideration that these issues have already been raised by the ITUC on different occasions and that some of them have been examined by the Committee, the Committee requests the Government to provide comprehensive information regarding the outcomes of the discussions and any actions taken in this regard.***

Article 4 of the Convention. Promotion of collective bargaining. Recognition of organizations for the purposes of collective bargaining. As expressed in its previous comment, the Committee has for many years, requested the Government to amend section 5(5) of the Labour Relations and Industrial Disputes Act (LRIDA) of 1975 and section 3(1)(d) of its regulations with a view to ensuring that the thresholds required for entering into collective bargaining do not constitute an obstacle to the promotion of free and voluntary collective bargaining. The Committee notes the Government's indication that legislation has not been amended to address the Committee's observations but that the legislation will be reviewed in the 2022–23 fiscal year. The Committee also takes note of the statistics provided by the Government as of August 2021, indicating that 14 collective bargaining agreements are in force and cover a total number of 1,335 workers in the sectors of aviation, banking, catering, energy, food and beverage, financial services, and manufacturing. The Committee considers that the very low coverage of collective agreements in the country could appear to be related to the restrictive requirements to engage in collective bargaining contained in section 5(5) of the LRIDA and section 3(1)(d) of its regulations. ***Recalling that this issue has been raised since 1990, the Committee deeply regrets the lack of progress***

and urges the Government to take the necessary measures in the very near future to amend its legislation in order to: (i) ensure that if no union reaches the required threshold to be recognized as a bargaining agent, unions are given the possibility to negotiate, jointly or separately, at least on behalf of their own members; (ii) recognize the right of any organization which in a previous ballot failed to secure a sufficiently large number of votes to request a new election after a stipulated period; and (iii) recognize the right of any new organization other than the previously certified organization to demand a new ballot after a reasonable period has elapsed. The Committee requests the Government to provide information on the developments in this regard.

Promotion of collective bargaining in the public sector. The Committee takes note of the observations of the JCTU regarding the adoption of negotiation protocols that have modified the modalities of collective bargaining in Government Ministries, Agencies, Departments and Parastatals. ***The Committee requests the Government to provide further information on the implications of the new negotiation protocols in the promotion of collective bargaining in the public sector, including the number of collective agreements concluded in this sector and the number of workers covered.***

Application of the Convention in practice. ***The Committee encourages the Government to continue to provide detailed information on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements. Observing that collective bargaining can also take place through Joint Industrial Councils, which can set wages and working conditions applicable to entire industries, the Committee requests the Government to provide information on the agreements in force at the multi-employer and sectoral level. The Committee finally requests the Government to report on the measures taken, in accordance with Article 4 of the Convention, to promote collective bargaining at all levels.***

The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office.

Jordan

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1968)

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022 concerning matters examined in the present comment, including allegations concerning the persistence of anti-union measures against the Jordanian Teachers Association (JTA). ***The Committee requests the Government to provide its comments in this respect.***

The Committee also notes that the Committee on Freedom of Association drew its attention to the legislative aspects of Case No. 3337 that relate to the Convention (Report No. 397, March 2022, paragraph 478). These matters are discussed below.

Articles 1 to 6 of the Convention. Scope of application of the Convention. Foreign workers. In its previous comments, the Committee had observed that the legal incapacity of foreign workers to establish or hold office in trade unions may constitute an obstacle to the autonomous exercise of their rights recognized by the Convention and had urged the Government to take the necessary measures, including legislative measures, to facilitate the full exercise by foreign workers of the rights recognized by the Convention. The Committee notes that the Government indicates in this regard that: (i) the Labour Code restricts the right to establish trade unions to Jordanians and according to the decision No. 1 of 2020 of the Constitutional Court, the Constitution prevails over international treaties and conventions; (ii) in 2021, 44 collective agreements, and in 2022, 33 collective agreements were concluded that cover, respectively 115,332 and 183,033 Jordanian and non-Jordanian workers. Regarding the hierarchy between the

Convention and the Jordanian Labour Code, the Committee notes that the text of the above-mentioned decision of the Constitutional Court emphasizes that domestic law shall not contradict international conventions ratified by the Kingdom, a position which is in line with the fundamental principles of international law. The Committee further notes that pursuant to section 98(f) of the Labour Code, foreign workers do not have the right to establish trade unions; pursuant to article 45 of the unified constitution of the recognized sectoral trade unions of 2020 they cannot be elected to the administrative board and; pursuant to section 7(a) of the Jordanian Teachers' Association Act No. 14 of 2011 (hereafter the JTA Act) they cannot join the JTA, while according to the information communicated by the Government, in 2021 the number of foreign workers in the education sector amounted to 929 persons. Regarding the right of foreign workers to collective bargaining in practice, the Committee notes that, according to the information communicated by the Government, in 2021 foreign workers with a work permit constituted 19.5 per cent of the total workforce. It also notes the Government's indications as to the aggregate number of workers, including foreign workers, covered by CBAs concluded in 2021 and 2022. It notes in this regard that according to the World Bank report Jobs Diagnostic Jordan (2020), non-Jordanians account for almost 36 per cent of total employment. The Jordanian labour market is highly segmented along the lines of nationality, with non-Jordanians disproportionately concentrated in informal and unskilled sectors. In 2016 almost all domestic workers, 70 per cent of agricultural workers and 60 per cent of construction workers were non-Jordanian. According to the 2022 Annual Report of Better Work Jordan (hereafter BWJ Report), foreign workers also make up 75 per cent of workforce in the garment industry. The Committee notes that in practice, with the exception of the garment sector, no significant collective bargaining has taken place in any of the above-mentioned sectors where foreign workers are highly represented. Domestic work and agriculture were not included in the list of sectors covered by the 17 recognized sectoral unions until July 2022 and according to the Jordanian Federation of Independent Trade Unions, in 2008 the Government refused to recognize an independent union of agricultural workers (Committee on Freedom of Association, Case No. 3337, Report No. 393, March 2021, paragraph 518). Regarding the construction sector, the Committee notes that according to the lists of collective agreements since 2015 published on the website of the Ministry of Labour (hereafter MOL), no large-scale collective bargaining has taken place in the sector in the 2015-2022 period, and the few collective agreements that were concluded covered only specific firms with a few hundred workers covered. Regarding the garment sector, the Committee notes that according to BWJ Report, the garment sector 2019 CBA featured the most inclusive process of any CBA to-date, as worker representatives from multiple different nationalities were consulted and key issues facing workers were addressed during negotiations. Nevertheless, this process has delivered a two-tier regulation of employment conditions in which less favourable terms apply to foreign workers. For instance, the minimum wage applicable to foreign workers is lower; furthermore, the unified contract for Jordanians provides for paid maternity leave and restricts the maximum daily overtime work, while the agreement covering foreign workers does not contain such provisions. In view of the foregoing, the Committee is bound to note that in practice, only in one of the sectors where foreign workers make up most of the workforce, their conditions of work are regulated by collective agreements. Therefore, the Committee notes with ***concern*** that the legal restrictions to the freedom of association of foreign workers, in addition to the dominant union monopoly, have strongly contributed to a situation where, in many sectors, they have no access to collective bargaining, while in some others, their bargaining power is being significantly constrained in practice. The Committee notes that, in view of the foreign workers' large share in the workforce, this issue significantly affects the exercise of freedom of association and the right to collective bargaining in the whole Jordanian economy. ***In view of the above, the Committee urges the Government to: (i) repeal sections 98(f)1 of the Labour Code and 7(a) of the JTA Act; and (ii) pending legislative reform, take all the necessary measures to promote collective bargaining in the sectors where foreign workers make up most of the workforce and encourage the existing unions to adopt an inclusive approach in which foreign workers' representatives participate in the process of***

collective bargaining and their demands and concerns are effectively taken into account. The Committee requests the Government to provide detailed information on the legislative and promotional measures taken in this respect, as well as information on changes in the scope and terms of agreements as they relate to foreign workers.

Agricultural and domestic workers. The Government indicates that the Regulation on agricultural workers was adopted by the House of Representatives on 14 March 2021, following a process that involved consultation with representatives of workers and employers and civil society organizations. The Committee notes that the Regulation contains rules on various aspects of agricultural work and applies to all workers including non-Jordanians. It notes with ***interest*** that section 16 of the Regulation refers to the Labour Code all aspects of labour relations that are not covered by the regulation, including the right of agricultural workers to freedom of association and collective bargaining. The Committee further notes the Government's indication that Decision No. 2022/45 of the Minister of Labour dated 18 July 2022, amending the Decision concerning the categories of industries and economic activities in which workers are allowed to establish unions, included agricultural workers in the professions that can join the union of food industries, which is henceforth called the General Union of Water, Agriculture and Food Industries Workers.

Regarding domestic workers, the Government confirms that section 3(b) of the Labour Code excludes them from the scope of the Code, and that their rights and obligations are set out in Regulation No. 90 of 2009, amended by Regulation No. 64 of 2020. However, the Committee notes with ***concern*** the Government's indication that as the Regulation does not contain a clause referring to the provisions of the Labour Code on matters not covered by it, domestic workers remain excluded from the provisions concerning freedom of association and collective bargaining. Nevertheless, the Government indicates that the above-mentioned Decision No. 2022/45 of the MOL has added domestic workers to the professional categories covered by the Union of General Services and Free Professions, which enables them to join this union. The Government adds that there are no statistical data available as to the number of domestic workers who joined this union. It finally indicates that the owners of agencies for the recruitment and employment of non-Jordanian domestic workers have established an association. The Committee notes that the ITUC confirms in its observations the inclusion of agricultural and domestic workers in the food and services sectors by ministerial decision. The Committee notes that the Ministerial decision No. 2022/45 has enabled agricultural and domestic workers to join the designated sectoral trade unions, which only allows these workers to exercise their right to organize and collectively bargain in the very restrictive framework of the existing system of trade union monopoly, from which they were previously excluded. ***In view of the above, and while taking due note of the first step taken through the Ministerial decision No. 2022/45, the Committee urges the Government to take the necessary measures to: (i) revise the Labour code or the Regulation on domestic work with a view to expressly recognising the right of domestic workers to organize and bargain collectively; (ii) encourage and promote collective bargaining in agriculture and domestic work sectors, and; (iii) provide information on any collective agreements concluded in these two sectors, and the number of workers covered by them. The Committee requests the Government to provide information on the measures taken.***

Workers aged between 16 and 18 years. In its previous comments, the Committee had noted that minors between 16 and 18 years of age have access to employment but are prohibited from joining trade unions and had requested the Government to revise the law so that these persons can enjoy their rights under the Convention. The Government indicates in this regard that the purpose of subjecting the right to establish and join unions to the attainment of age of 18, is to protect the workers' will and that amending section 98(f) would go against Jordanian civil law provisions concerning the age of majority and the capacity to exercise civil rights. The Government further indicates that the MOL has consulted the Jordanian Chamber of Commerce on this matter, which has expressed its agreement with the current age limit. ***The Committee once again urges the Government to take the necessary measures***

to amend sections 98(e)2 and 98(f) of the Labour Code, so as to ensure that minors who have reached the legal age for admission to employment, whether as workers or trainees, are fully protected in the exercise of their rights under the Convention. It requests the Government to provide information on the measures taken or envisaged in this respect.

Education sector workers. In its previous comment, the Committee had urged the Government to guarantee the right to organize and bargain collectively in the education sector; to ensure full respect of the independence of workers' organizations in the sector; and to provide information on the outcome of court proceedings involving the JTA and on any collective agreement or accord in the education sector, including with the JTA. The Committee notes that the Government indicates that the JTA was established through the enactment of a special law, the JTA Act and that it is not subject to the provisions of the Labour Code, and the MOL plays no part in the disputes related to it. The Committee also notes that the JTA Act does not contain any provision concerning collective bargaining or resolution of collective labour disputes. It further notes that the Government indicates that the General Union of Workers in Private Education (hereafter GUWPE) last concluded a collective agreement with the Organization of private school owners in 2019; but it does not refer to any collective agreement concluded by the JTA. However, the Committee notes that GUWPE covers only the private education sector, while the membership of JTA includes mainly public sector teachers. In view of the foregoing, and the absence of a regulatory framework for collective bargaining covering the JTA, the Committee is bound to note that despite the existence of a union they can join, public sector teachers, and those private sector teachers who choose affiliation to JTA, do not appear to enjoy the right to collective bargaining in law or in practice.

Regarding the proceedings involving the JTA, the Committee notes the observation of the ITUC reporting that the Amman Court of Appeal reversed the administrative decision to dissolve JTA, nevertheless, the organization was still impeded from operating and representing teachers in the country, as none of its board members were able to resume their trade union activities. It also notes the Government's indication that the JTA executive board was once dissolved by a judicial decision and currently, a case is pending before the Court of Cassation. The Government also refers to a pending penal case concerning JTA, involving charges of incitement to hatred, disturbing the order at an educational institution, and instigating an unlawful assembly. However, the Government does not indicate who is prosecuted in this case and which concrete acts led to the charges. It also notes the ITUC's observation, reporting that on 5 October 2021, the Jordanian security forces arrested and detained fourteen leading members of the JTA, who were peacefully demonstrating on the World Teachers' Day, denouncing the crackdown on trade union rights**.** In this regard, the committee emphasizes that arrest, detention and criminal prosecution of trade union members and leaders for trade union activities is a denial of freedom of association and consequently, of the right to collective bargaining; and that the State must guarantee a climate free from violence, pressure, and threats of any kind against the leaders and members of trade union organizations. It emphasizes that it is incumbent on the competent authorities to ensure that the measures taken against trade union members and officials were not occasioned by their trade union activity. ***In view of the above considerations and recalling that the Convention covers all teachers in both private and public sectors, the Committee urges the Government to take all the necessary measures, including legislative measures, to ensure that the right to collective bargaining of the JTA and all workers in the public and private education sector is explicitly recognized in law and effectively respected in practice. The Committee further requests the Government to provide information on the identity and trade union office of the prosecuted JTA members and the concrete acts that have entailed the charges against them, with a view to ensuring that their prosecution is not occasioned by their trade union activities. It also requests the Government to provide information on the outcome of all court proceedings involving the JTA.***

Workers not included in the 17 sectors recognized by the Government. In its previous comments, the Committee had noted that the number of sectors in which trade unions can be established is set at 17 and had urged the Government to ensure that no category of workers other than the exceptions in the Convention can be excluded from the exercise of the right to organize and bargain collectively. The Government indicates that the Ministry of Labour initiated the process of amendment of the previous Decision on classification of industries and economic activities in which establishment of unions is authorized following a decision of the Labour Relations Tripartite Committee defined in section 43 of the Labour Code, and the Minister issued decision 2022/45 dated 18 July 2022 pursuant to the recommendation of the Registrar of trade unions. The Committee notes the copy of the Ministerial Decision No. 2022/45 which contains the complete updated list of the industries and economic activities included under each of the 17 sectors of activity assigned to the recognized sectoral unions. The Committee also notes the statistics provided on the number of Jordanian and non-Jordanian workers disaggregated by economic sector, which do not however correspond to the classification of sectors in Decision 2022/45. The Committee notes that the most remarkable change brought by the new classification is the addition of agriculture and domestic work under food industries and services sectors/unions. With the information at its disposal, the Committee is not in the position to evaluate to what extent Decision 2022/45 covers the whole Jordanian economy or which sectors and economic activities may be left out. However, it notes that the principle embodied in section 98(d) of the Jordanian Labour Code, which provides for the existence of a closed list of industries and economic activities in which trade unions can be established, is incompatible with the principles set out in the Convention concerning the workers covered. It notes that until July 2022, the classification had excluded such large sectors as agriculture and domestic work, and that in view of the evolving nature of the economy and the continuous coming into existence of new activities, a closed list will inevitably have the effect of excluding entire categories of workers from the right to establish and join organizations and, therefore, from exercising the right to collective bargaining. ***Recalling that the Convention covers all workers, with the only possible exceptions of the armed forces, the police and the public servants engaged in the administration of the state, the Committee urges the Government to repeal section 98(d) of the Labour Code and to take the necessary measures to ensure that workers in all sectors of the economy can exercise their right to organize and freely bargain collectively through the organization of their choosing. It requests the Government to provide information on the measures taken in this respect.***

Article 2. Adequate protection against acts of interference. In its previous comment, the Committee had requested the Government to provide information on any progress on the adoption of the amendment to section 139 of the Labour Code and the penalties for interference by employers provided in the amended law. The Government indicates that the bill amending the Labour Code is presently before the House of Representatives and that in the amended section 139, the highest fines imposed on employers in case of breach of labour law have increased from JD100 to JD1,000, which amounts to US$1,400. Recalling that the sanctions against acts of interference must be effective and sufficiently deterrent, the Committee notes that a fine of maximum JD1,000, which can neither be adjusted with inflation nor adapted on the basis of the size of the enterprise may not be sufficiently deterrent in the long term and in cases in which the interfering employer disposes of considerable financial resources. ***The Committee therefore requests the Government to revise the draft submitted to the parliament with a view to effectively strengthen the penalties for interference, so as to ensure that they are sufficiently dissuasive. It requests the Government to provide information on the measures taken in this respect.***

Articles 4 and 6. Right to collective bargaining. Trade union monopoly. In its previous comment, the Committee had recalled that the imposition of a trade union monopoly is incompatible with the principle of free and voluntary negotiation and had urged the Government to ensure that more than one trade union can be established in a sector and to permit the effective exercise of the free and voluntary negotiation. The Committee notes the Government's indication that the situation of trade union

monopoly and the refusal to register independent trade unions is based on sections 98(d) and 102(c) of the Labour Code as well as on the Decision on classification of industries and economic activities in which establishment of unions is authorized. The Government further indicates that, the refusal of the Registrar of Trade Unions and Employers' Associations to register any new trade union with the same aims and purposes as an existing trade union is to avoid rendering the sector vulnerable to fragmentation and conflict of interest. In the view of the Government, Jordanian law does not go against freedom to establish trade unions but regulates it in a way that is compatible with the provisions of the Jordanian Constitution and the United Nations Covenants on civil and political rights and economic, social and cultural rights. The Committee recalls in this regard that its function is to examine whether the requirements of Convention No. 98, ratified by the Kingdom of Jordan, are met in law and in practice; and in carrying out this work, it is guided by the standards laid down in the Convention alone. The Committee notes that according to the observations of the ITUC, no new trade union has been established since 1976. Furthermore, decision 2022/45 does not allow the establishment of any new union, but only recomposes the sectors covered by pre-established unions, by adding to them several previously excluded activities (notably, agriculture and domestic work) or by shifting an activity from the competence of one sectoral union to another.

In view of the above, recalling that the right of workers to free and voluntary collective bargaining should include the right to be represented in collective bargaining by the organization of their choice, the Committee urges the Government to take all the necessary measures to remove obstacles to trade union pluralism in law and in practice, including by repealing section 98(d) of the Labour Code and the Decision on the classification of industries and economic activities where trade unions may be established (Ministerial Decision No. 2022/45) so as to ensure that all workers can fully exercise their right to free and voluntary collective bargaining.

Collective bargaining in the public sector. In its previous comment, the Committee had trusted that the Government measures would contribute positively to the adoption of legislation or regulations explicitly recognizing the right to collective bargaining in the public sector. In this regard, the Committee notes the ITUC observation that the law still prohibits public sector workers from exercising the right to collective bargaining. ***The Committee requests the Government to provide its comments in this respect.*** The Committee notes on the other hand the Government's indication that the Labour Code (section 3) excludes public employees from its scope. Nevertheless, the Government emphasizes that all Jordanian workers, whether they work in public or private sector, have a constitutional right to organize within legal limits. The Government has also transmitted a ruling of the Constitutional Court (interpretative opinion No. 6 of 2013), stating that public sector employees including civil servants have the right to establish unions within the framework of the law, to be set by the constitutionally competent authorities, namely the Council of Ministers and the King. The Committee notes that the Constitutional Court has referred to ILO Conventions Nos 87, 98 and 151 as the international legal foundations of the right to organize in public sector and has stated that on the basis of these instruments, the establishment of an "organization of public employees" that would benefit from all the necessary facilities can be envisaged whose purpose would be to define and defend the interests of the workers in the sector. The Committee had noted in its previous comment that the Civil Service Regulation No, 9 of 2020 does not contain a framework for collective bargaining, and the Government does not indicate any legislative novelty in this regard. In view of the above, the Committee notes that in Jordan, the exercise of the right to collective bargaining in the public sector is still not possible in the absence of a legal framework that would expressly recognize this right and regulate its exercise. ***Considering that according to the information submitted by the Government, in 2021, public sector employees constituted 38.8 per cent of employed Jordanian nationals, the Committee urges the Government to take the necessary measures, for example, by revising the Civil Service Regulation No. 9 of 2020, or by extending the scope of the Labour Code, to ensure that all public sector workers not engaged in the administration of the State have an effective framework in which they may engage in collective negotiations over their***

working and employment conditions through the trade union of their choice. The Committee requests the Government to provide information on the steps taken in this regard. It further requests the Government to provide information on any existing public service trade unions besides the JTA and the regulatory texts governing their establishment and functioning.

[The Government is asked to reply in full to the present comments in 2023.]

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1979)

Previous comment

Article 2 of the Convention. Facilities for workers' representatives in the undertaking. In its previous comment, the Committee had noted that pursuant to section 107 of the Labour Code, the Tripartite Committee for Labour Affairs (TCLA) is the competent body for setting down the necessary conditions enabling trade union representatives to carry out their duties and had requested the Government to provide information on the content and outcome of the consultations held by the TCLA on this matter. The Government indicates in this regard that the Ministry of Labour nominated a committee made of representatives of the General Federation of Trade Unions, and the Jordanian Chambers of Industry and Commerce with the task of defining the principles and criteria governing the granting of time off for union activities. On 9 April 2017, this committee issued a set of recommendations to be submitted to the TCLA for decision on this matter. The TCLA has held regular meetings since then, however, the proposed principles and criteria have not yet been submitted to it for consideration and approval. The Committee notes with ***concern*** that the government does not report any progress in the application of *Article 2* of the Convention in law and in practice. It once again recalls in this regard that the Workers' Representatives Recommendation, 1971 (No. 143), lists examples of facilities to be afforded to workers' representatives, which include time off from work to attend trade union meetings, congresses, etc.; access to all workplaces in the undertaking, where necessary; access to the management of the undertaking, as may be necessary; distribution to workers of publications and other written documents of the union; access to such material facilities and information as may be necessary to carry out their duties. ***The Committee firmly hopes that the proposed principles and criteria on granting time off for union activities will be submitted to the TCLA soon and requests the Government to take all the necessary measures to ensure that an adequate regulatory framework, guaranteeing that workers' representatives are granted all the facilities enabling them to carry out their functions promptly and efficiently is submitted to tripartite consultation and approval. It requests the Government to continue providing information on any developments in this regard.***

[The Government is asked to reply in full to the present comments in 2023.]

Kazakhstan

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

Previous comment

The Committee notes the observations of the International Organisation of Employers (IOE), of the Sectoral Trade Union of Workers in the Fuel and Energy Complex (Sectoral Trade Union of TEK Workers), and of the International Trade Union Confederation (ITUC), received respectively on 25 August, 30 August and 1 September 2022, referring to the issues raised by the Committee below.

The Committee notes the report of the Direct Contacts Mission (DCM) which visited the country in May 2022 following a request to that effect made by the Committee on the Application of Standards (the Conference Committee) at its 109th Session (June 2021).

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion that took place in the Conference Committee in June 2022 concerning the application of the Convention. The Committee observes that the Conference Committee urged the Government, in consultation with the social partners, to: (i) ensure that the allegations of violence against trade union members are thoroughly investigated, notably in the case of Mr Senyavsky; (ii) allow an independent investigation of the Zhanaozen events of 2011; (iii) stop practices of judicial harassment of trade union leaders and members conducting lawful trade union activities and drop all unjustified charges, including the ban preventing trade unionists from holding any position in a public or non-governmental organization; (iv) resolve the issue of registration of KSPRK and the Industrial Union of Employees of the Fuel and Energy Sector, so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay; (v) engage with the free and independent employers' and workers' organizations to review issues concerning their registration in law and practice with a view to overcoming existing obstacles; (vi) review the composition of the permanent working group that assesses areas of concern involving the registration of trade unions, so as to ensure the full involvement of independent workers' and employers' organizations in this working group; (vii) refrain from showing preference towards a particular trade union and stop the interference in the establishment and functioning of trade union organizations; (viii) remove any existing obstacles in law and practice to the operation of free and independent employers' organizations in the country; (ix) remove any existing obstacles in law and practice to the operation of free and independent employers' and workers' organizations in the country, in particular repeal provisions in the Law on the National Chamber of Entrepreneurs (NCE) on accreditation of employers' organizations with the NCE; (x) ensure that workers' and employers' organizations are not prevented from receiving financial or other assistance by international workers' and employers' organizations, and extend the list in Ordinance No. 177 of 9 April 2018 to cover international workers' and employers' organizations, such as the ITUC and IOE; and (xi) fully implement the 2018 road map. The Conference Committee requested the Government to develop, in consultation with the social partners, a time-bound action plan in order to implement all these conclusions. In order to elaborate, implement and evaluate this action plan, it urged the Government to avail itself of technical assistance from the Office on an ongoing basis in this regard.

The Committee welcomes the Plan of Action elaborated with the participation of the social partners pursuant to the request made by the Conference Committee. ***The Committee expects that all measures to give effect to the recommendations of the ILO supervisory bodies, as outlined below, will be taken within the indicated time frames.***

The Committee recalls that, while Mr Baltabay and Ms Kharkova, former trade union leaders, have served their respective sentences (after they have been found guilty of the alleged misappropriation of funds), they remained prevented from holding a trade union office. The Committee notes the Government's indication that this restriction expires, with regard to Ms Kharkova, in November 2022, and in case of Mr Baltabay, in 2026. The Committee further notes that the DCM had discussed with the Human Right Commissioner the possibility that courts might impose an additional punishment in the form of a ban on holding a public office (including trade union leadership posts) or a prohibition to engage in "public activities" provided for by the Criminal Code. The Commissioner considered that this would appear to be in violation of basic civil liberties and human rights. The Prosecutor General's Office (PGO) explained to the DCM that the relevant sections of the Criminal Code leave it to the appreciation of the courts as to whether such an additional penalty should be imposed, the time period and conditions. The legislation did not outline any precise criteria in this respect. The PGO pointed out that the Ministry of Labour and Social Protection of the Population (MLSPP) could submit to it a legislative initiative aimed at amending the relevant sections of the Criminal Code. The Committee notes that according to the above-mentioned Plan of Action, the responsible State bodies are to submit to the PGO

working group their suggestions for the amendment of the criminal legislation before the end of 2022. ***The Committee requests the Government to provide information on all developments in this regard.***

The Committee recalls that it had previously noted that no progress has been made in investigating the assault on Mr Senyavsky, a former trade union leader, and urged the Government to investigate the matter without delay and to bring the perpetrators to justice. The Government reiterates that while the investigation has been suspended for lack of evidence, if new circumstances come to light, Mr Senyavsky will be informed. The Committee further notes that the Plan of Action provides for steps to be taken with a view to finding the perpetrators before the end of 2022. ***The Committee urges the Government to intensify its efforts in investigating the incident with a view to bringing to justice those responsible for the assault, and to report on all developments in this regard.***

The Committee notes the ITUC allegation that judicial harassment of trade union leaders continues in the country; the ITUC refers in this respect to the arrest and administrative detention in October and December 2021 of two trade union leaders, Mr Zhenis Orynaliev and Ms Saule Seidakhmetova, in connection with their participation in a strike action. ***The Committee requests the Government to provide its comments thereon.***

The Committee notes the Government's detailed reply to the Conference Committee's request to allow an independent investigation of the Zhanaozen events of 2011. The Committee understands from the information contained in the Government's report that the circumstances of those 2011 events, which the Government refers to as riots, have been investigated and that various outside observers agreed on the transparency of both pre-trial procedures and trial processes. The Government indicates that criminal proceedings against 11 defendants who had called for mass unrest were discontinued at the preliminary investigation stage due to an amnesty, and that among those organizers of riots brought to trial, 13 received prison sentences, 16 received suspended sentences, three were acquitted and five were released following amnesty. The Government further indicates that following inquiries into 16 complaints of unlawful methods of investigation, a decision was taken not to initiate any criminal proceedings. The Committee observes with ***concern*** that the Government does not reply to the statements made by several speakers during the discussions at the Conference Committee alleging the deaths of 17 strikers and injuries to more than 100 others following the extremely violent repression of strike action in Zhanaozen. The speakers, as well as the ITUC in its latest observations, alleged that the violence ended a seven-month long peaceful strike involving more than 3,000 workers demanding a wage increase. The Committee points out that it is against this background that the Conference Committee urged the Government to allow an independent investigation to take place. This Committee considers that the maintenance of a climate of impunity for the perpetrators of such violence is extremely harmful and constitutes a major obstacle to the free exercise of freedom of association in the country. ***The Committee therefore urges the Government to take all necessary steps, in consultation with the social partners, to establish an independent investigation into the 2011 events in Zhanaozen, with a view to elucidating all facts and determining responsibilities so that healing and reconciliation can begin to take place. The Committee requests the Government to inform it of all measures taken in this regard.***

Article 2 of the Convention. Right to establish organizations without previous authorization. The Committee had previously requested the Government to take all necessary steps to resolve the issue of registration of the Congress of Free Trade Unions (KSPRK) and of the affiliate organizations of the Sectoral Trade Union of TEK Workers, so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay. The Committee further requested the Government to continue engaging with the social partners to review the difficulties identified by trade unions seeking registration with a view to finding appropriate measures, including legislative, to give full effect to *Article 2* of the Convention and to ensure the right of workers to establish organizations without previous authorization. The Committee notes the Government's indication that to date (and since November

2019), no application for state registration has been submitted by the KSPRK. In this respect, the Committee notes from the DCM report that, with the exception of the Sectoral Trade Union of TEK Workers, there is no other union that the KSPRK could immediately affiliate to be granted registration at the republican level. In this connection, the Committee notes the Government's indication that applications for the registration of the affiliates of the Sectoral Trade Union of TEK Workers in Atyrau and Almaty were turned down on five and two occasions, respectively, and that the shortcomings have been explained to the unions concerned. The Government indicates that once these are addressed, the unions can re-apply for registration.

The Committee notes that the DCM raised the issue of registration of trade unions in the oil sector in all its meetings with State bodies. While the Commissioner for Human Rights alluded to the fact that the oil sector was of national security importance, other responsible Ministries, as well as the Deputy Prime Minister, indicated that the only reason for the denial of registration was failure to respect legislative requirements set out for the registration of trade unions, despite the explanations provided during a workshop organized in March 2021 to assist the union in understanding the procedures. The DCM noted, however, that the requests for registration of these trade unions were systematically refused on the basis of technicalities, which could have been easily remedied on the spot at the registration office instead of a refusal followed by another one-month long application process, and further noted that with each refusal the registering authority referred to a wholly new inconsistency with the legislation, i.e. one to which it did not refer to in its previous motivated refusal. The impossibility to register the two trade union structures precludes the Sectoral Trade Union of TEK Workers from confirming its status. The Committee notes the Government's indication that under the Plan of Action, the composition of the working group set up to consider problems encountered in the registration procedure will be reviewed. ***Expressing deep concern at this course of events, the Committee urges the Government to take additional steps to resolve the issue of registration of the affiliates of the Sectoral Trade Union of TEK Workers so as to allow them to enjoy the full autonomy and independence of a free and independent workers' organization, to fulfil their mandate and to represent their constituents without further delay. The Committee requests the Government to inform it of all developments in this regard.***

Further in this connection, the Committee notes from the DCM report that with the recent decision to establish additional regions in the country, a requirement to have affiliated organizations and/or structures in over 50 per cent of the regions/cities of regional importance/capital, as currently provided for the establishment of a sectoral trade union, appeared to be too high and needed to be reduced, in particular, when a sector or industry covers only a few regions, such as oil sector, for example. The Committee notes that according to the Sectoral Trade Union of TEK Workers, in the new circumstances, it will be more difficult, if not impossible, for it to confirm its sectoral status. The Committee notes that the national Commissioner for Human Rights considered that the Law on Trade Unions should be amended in this regard so as to represent the reality of certain sectors. ***The Committee requests the Government to amend the Law on Trade Unions accordingly so as to ensure that the establishment of sectoral trade unions is not impeded. The Committee requests the Government to inform it of all measures taken in this respect.***

The Committee further notes from the DCM report a proposal to amend the national legislation in order to simplify registration by replacing it with a notification procedure for trade unions wishing to acquire a legal personality or allowing trade unions to function without registering and thus without obtaining legal personality. The draft amendments were to be developed by the end of 2022 for adoption in the first quarter of 2023. ***Welcoming this information, the Committee requests the Government to provide information on developments in this regard, including a copy of the amendments once adopted***.

Following up on conclusions of the 2021 Committee on the Application of Standards, this Committee had previously encouraged the Government to continue reviewing the application of the

Law on the National Chamber of Entrepreneurs (NCE) in practice to ensure that its provisions on accreditation of employers' organizations with the NCE did not hinder the exercise of the right of employers' organizations to organize their administration and activities and to formulate their programmes. The Committee notes from the DCM report that the role of employers' organizations was not always understood by all State actors and needed to be clarified with a view to ensuring that participation in social dialogue, and in particular in collective bargaining, was a prerogative of employers' organizations. The DCM further noted that the accreditation system was voluntary; that the Confederation of Employers was not accredited with the NCE; and that the former did not consider that the accreditation or the lack thereof restricted its rights. The Committee notes the Government's indication that the idea of a separate law on employers' organizations is being considered as a means of improving social partnership and dialogue and enforcing employers' organizations' rights under the Convention. ***The Committee welcomes this information and requests the Government to report on all developments in this regard***.

Article 3. Right of organizations to organize their activities and to formulate their programmes. The Committee recalls that it had previously requested the Government to amend section 402 of the Criminal Code (2016), according to which an incitement to continue a strike declared illegal by the court was punishable by arrest for the duration of up to 50 days and in certain cases (substantial damage to rights and interest of citizens, mass riots, etc.) up to two years of imprisonment. ***In the absence of any further specific information in this regard, the Committee once again requests the Government to provide information on all steps taken or envisaged in order to review section 402 of the Criminal Code so as to ensure that simply calling for a strike action, even one declared illegal by the courts, does not result in detention or imprisonment.***

Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers. The Committee had previously noted the Government's reference to its Ordinance No. 177 of 9 April 2018 "On the adoption of a list of international and state organizations, foreign and Kazakhstani non-governmental organizations and funds which can provide grants", which determined 98 international organizations allowed to provide grants to physical and legal persons in Kazakhstan. The Committee trusted that the list contained in the Ordinance would be amended to include international workers' and employers' organizations. The Committee notes that as per the Plan of Action, this issue is to be examined before the end of 2022. ***The Committee expects that necessary measures will be taken without delay to ensure that workers' and employers' organizations are not prevented from receiving financial or other assistance from international workers' and employers' organizations. The Committee requests the Government to provide information on all developments in this regard.***

Lebanon

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the General Confederation of Lebanese Workers (CGTL), communicated with the Government's report. The Committee observes that the Government has not replied to the observations made by the International Trade Union Confederation (ITUC) in 2010, alleging that the law imposes a high threshold on representative organizations for engaging in collective bargaining, as well as imposing the requirement of obtaining the agreement of two-thirds of the union membership at a general meeting to validate a collective agreement. ***The Committee once again requests the Government to send its comments concerning the observations made in 2010 by the ITUC.***

With regard to the observations submitted by Education International (EI) in 2015 and 2016 concerning the situation of public and private educational staff and the wage freeze since 1996, the Committee notes that: (i) through the adoption of Decree No. 63 in 2008, teachers in the public and private sectors have had a wage increase; (ii) in 2013, following a wage increase in the private sector, public sector employees, including teachers, were granted an advance on their salary; and (iii) Act No. 26, published in the Official Gazette of 21 August 2017, also provides for a wage increase for teachers in the public and private sectors. ***The Committee requests the Government to indicate whether these wage increases are the result of collective bargaining.***

Scope of application of the Convention. Domestic workers. In its previous comments, the Committee observed that the Government had not replied to the observations made by the ITUC concerning the exclusion of domestic workers from the Labour Code. The Committee observes that "domestic workers who work for private households" are excluded from the scope of application of the Labour Code of 1946 (section 7(1)), and that the contractual relationships between domestic workers and the individuals who employ them to perform domestic work in their households are governed by the Act on obligations and contracts. Moreover, the Committee notes that, in its concluding observations of 2018, the United Nations Human Rights Committee expressed concern that migrant domestic workers are excluded from protection under domestic labour law and are subjected to abuse and exploitation under the sponsorship *(kafala)* system. It also expressed concern about the lack of effective remedies against such abuses and the existence of anti-union reprisals (CCPR/C/LBN/CO/3). ***The Committee requests the Government to provide clarification in this respect, by indicating the manner in which domestic workers and migrant domestic workers can enjoy the protection of the Convention, including the right to engage in collective bargaining through the organization of their own choosing, and to indicate whether consideration is being given to amending the above-mentioned provision of the Labour Code. The Committee also requests the Government to indicate how these rights are exercised in practice, by indicating the names of any organizations that represent domestic workers and migrant domestic workers and the number of collective agreements covering them.***

Legislative amendments

Articles 4 and 6 of the Convention. Promotion of collective bargaining. The Committee recalls that, in the comments that it has been repeating for many years, it has been emphasizing the need to revise a number of provisions of the Labour Code in force and to reword certain provisions on collective bargaining in the draft Labour Code communicated by the Government in 2004.

Excessive restrictions on the right to collective bargaining. In its previous comments, the Committee noted that section 3 of Decree No. 17386/64 required trade unions to obtain the support of at least 60 per cent of the Lebanese employees concerned in order for a collective agreement negotiation to be considered valid, and considered this threshold to be excessive. The Committee also noted that section 180 of the draft Labour Code provided for the reduction of the threshold to 50 per cent and reminded the Government that such a solution could nevertheless pose problems of compatibility with the Convention, as it would prevent a representative union without an absolute majority from being able to engage in bargaining. It therefore asked the Government to ensure that if no union represents the required percentage of workers to be declared the exclusive bargaining agent, collective bargaining rights are granted to all the unions in the unit, at least on behalf of their own members.

Right to collective bargaining in the public sector and the public service. In its previous comments, the Committee asked the Government to amend its legislation so that public sector workers not engaged in the administration of the State, governed by Decree No. 5883 of 1994, are able to enjoy the right to collective bargaining. In this regard, the Committee noted that section 131 of the draft Labour Code established that workers in the public administration, municipalities and public enterprises responsible for administering public services on behalf of the State or on their own account would have to right to engage in collective bargaining.

Compulsory arbitration. For many years, the Committee has been asking the Government to take measures so that recourse to arbitration in the three public sector enterprises governed by Decree No. 2952 of 20 October 1965 is only at the request of both parties. The Committee also requested the amendment of section 224 of the draft Labour Code, which provides that, should mediation fail, any dispute in the case of the three public sector enterprises governed by Decree No. 2952 will be settled by an arbitration board. The Committee notes with ***regret*** the Government's indication that Decree No. 2952 has been replaced by Decree

No. 13896 of 3 January 2005, and that now all investment enterprises in the private and public sectors which are responsible for managing public services on behalf of the State or on their own account must resort to compulsory arbitration should negotiations fail. The Committee recalls that compulsory arbitration is generally not compatible with the promotion of free and voluntary collective bargaining required by *Article 4* of the Convention and therefore that compulsory arbitration in the context of collective bargaining is only acceptable in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and in the event of an acute national crisis. ***Noting with regret that the Government has been merely indicating, for over a decade, that the draft Labour Code is under examination and that due account will be taken of the Committee's comments, and that the Labour Code in force continues to contain provisions that are not compatible with the Convention, the Committee urges the Government to take the necessary legislative measures to amend the Labour Code in force so as to guarantee the collective bargaining rights of workers, including domestic workers. The Committee reminds the Government that it may avail itself of technical assistance from the Office in this regard.***

Collective bargaining in practice. ***The Committee requests the Government to provide statistics on the number of collective agreements concluded and in force and to indicate the sectors and number of workers covered.***

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

Liberia

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

Previous comment

The Committee takes note of the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, referring to issues addressed by the Committee below. It also takes note of the observations of the International Organisation of Employers (IOE) received on 25 August 2022, which reiterate the comments made in the discussion that took place in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2022 on the application of the Convention by Liberia.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion that took place in the Conference Committee in June 2022 concerning the application of the Convention. The Committee notes that the Conference Committee urged the Government to: (i) ensure that all workers are able to exercise their labour rights under the Convention in an environment of respect for civil liberties, including freedom of association, freedom of expression, peaceful assembly and protest without interference and fear for their personal safety and bodily integrity; (ii) ensure that trade union leaders and members are not jailed for engaging in trade union activities and that threats against trade union leaders for their activities are fully investigated and the perpetrators duly punished; (iii) enact measures, including dissuasive sanctions, to ensure that trade unions can only be dissolved by a judicial authority, only as a last resort for serious violations of law; (iv) resolve the registration of the National Health Workers' Union of Liberia (NAHWUL) as a trade union organization without further delay and provide additional information on any pending allegations; (v) review the Decent Work Act and any other related legislation to ensure that all workers, including foreign workers, are able to exercise the right to form or join a trade union of their choice; and (vi) ensure that public sector workers enjoy the protection of the freedom of association rights under

the Convention. The Conference Committee invited the Government to avail itself of technical assistance from the Office.

The Committee had previously requested the Government to provide its comments on the observations made by the African Regional Organization of the International Trade Union Confederation (ITUC – Africa) denouncing the dissolution of a trade union by a state-owned company; the use of police force to break up peaceful strikes; and the arrest of union leaders and wrongful dismissal of workers for their participation in strike actions. The Committee notes the Government's indication that it cannot validate those observations, as the Ministry of Labour has not received a complaint from any individual or institution. The Government indicates it will provide its comments once institutional or individual complaints reach the Ministry. The Committee recalls that it is the responsibility of the Government to ensure the application of the Convention which it has ratified and in this respect, emphasizes the importance for the Government to investigate the allegations of violations of trade unions rights, including those brought by international organizations of workers to the Committee, with the view to providing the Committee with a full and accurate reply. ***The Committee urges the Government to conduct an independent investigation into the ITUC allegations without further delay and to provide information on the outcome.***

The Committee had also previously requested the Government to provide information on the allegations raised by the NAHWUL concerning the Government's failure to grant it legal recognition, as well as infringements of the right to strike. The Committee notes the Government's indication that it is currently working with the relevant stakeholders to harmonize the Decent Work Act and the Civil Servant Standing orders to ensure full legal recognition of the NAHWUL. The Government indicates it does not have any additional information to provide with regard to the other allegations raised by the NAHWUL. The Committee notes that according to the ITUC's most recent observations, while the Government has given functional acceptance to the NAHWUL, it continues to deny legal recognition. The Committee further notes the ITUC allegation of the Government's increasing intolerance of workers exercising their civil liberties and rights under the Convention. The ITUC reports, in particular, that the General Secretary of the NAHWUL alleged state surveillance of his activities and threats against his life. ***The Committee urges the Government to take all necessary measures to grant the NAHWUL full legal recognition through the harmonization of the Decent Work Act and Civil Servant Standing orders and requests the Government to provide information on all developments in this respect. The Committee further requests the Government to provide its comments on the allegations of the ITUC pertaining to the exercise of civil liberties and labour rights. In this respect, with reference to the conclusions of the Conference Committee, this Committee urges the Government to provide information on all measures taken in consultation with the social partners to ensure that: (i) all workers are able to exercise their labour rights under the Convention in an environment of respect for civil liberties, including freedom of association, freedom of expression, peaceful assembly and protest without interference and fear for their personal safety and bodily integrity; and (ii) trade union leaders and members are not jailed for engaging in trade union activities and that threats against trade union leaders for their activities are fully investigated and the perpetrators duly punished.***

Scope of application. In its previous comment, the Committee had requested the Government to provide specific information on developments regarding the creation of a framework for the harmonization of the Decent Work Act and the Civil Service Standing orders, and to detail what legal provisions ensure that public sector workers enjoy the rights set out in the Convention. The Committee notes the ITUC's allegations that a recent court ruling has decided that associations of public servants are not subject to the Decent Work Act. ***The Committee requests the Government to provide further information on all developments with regard to the creation of a framework to harmonize the Decent Work Act and the Civil Service Standing orders, and to ensure that public sector workers enjoy the rights set out in the Convention.***

The Committee had previously noted that section 1.5(c)(i) and (ii) of the Decent Work Act excludes from its scope of application, officers, members of the crew and any other persons employed or in training on vessels. The Committee had therefore requested the Government to indicate how the rights enshrined in the Convention are ensured to maritime workers, including trainees, and to indicate any laws or regulations adopted or envisaged covering this category of workers. The Committee notes with ***deep regret*** the lack of information in this respect. ***The Committee reiterates its request and expects that the Government's next report will contain information in this regard.***

Article 1 of the Convention. Right of workers, without distinction whatsoever, to establish organizations. The Committee had previously requested the Government to take any necessary measures, including through the amendment of section 45.6 of the Decent Work Act, to ensure that the right to establish organizations to defend their occupational interests is fully recognized to foreign workers both in law and in practice. The Committee notes the Government's indication that the Ministry of Labour has opened discussion with the existing foreign workers' bodies to distinguish or form a separate body for employers and employees so that their respective organizations can have the sole rights to defend their occupational interests. ***The Committee requests the Government to provide information on all developments and outcomes of the engagement with foreign workers bodies' and the Ministry of Labour.***

Article 3. Determination of essential services. The Committee had previously requested the Government to continue to provide information on any developments with regard to the designation of essential services by the National Tripartite Council and how such designation operates in practice, as well as to clarify whether the President is also bound by the definition of the notion of essential services set out in section 41.4(a) of the Decent Work Act (services the interruption of which would endanger the life, personal safety or health of the whole or any part of the population of Liberia), and to provide information on any presidential decisions concerning the designation of essential services and how such designation operates in practice. ***Noting with regret that no information has been provided by the Government in this respect, the Committee reiterates its previous request.***

Madagascar

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

Previous comment

The Committee notes the observations of the General Confederation of Workers' Unions of Madagascar (FISEMA), received on 1 September 2022, which refer to the issues examined in the present comment.

The Committee also notes the observations of the Randrana Sendikaly Alliance, received on 19 October 2022, alleging the arrest and sentencing to a 12-month prison term and a fine of 400,000 ariarys (about US$92) of Mr Zotiakobanjinina Fanja Marcel Sento, a leader of the trade union Trade unionism and life of societies (SVS Etoile), for having posted on Facebook the results of meetings held with the management of an enterprise in the textile sector in the performance of his trade union duties. ***The Committee requests the Government to provide its comments on these serious allegations.***

The Committee notes that the Government has not responded to the 2021 observations of the Autonomous Trade Union of Labour Inspectors (SAIT) alleging the violation of the right of trade unions to organize their activities in line with *Article 3* of the Convention. ***The Committee once again requests the Government to provide its comments in this regard.***

In its previous comments, the Committee noted the observations of the Christian Confederation of Malagasy Trade Unions (SEKRIMA) containing allegations of restrictions on the right to organize, and

especially the right of trade unions to organize their management and training activities, and also on the difficulties encountered in establishing trade unions. The Committee notes that the Government, in response to these allegations, indicates that freedom of association is protected under section 136 et seq. of the Labour Code and that Decree No. 2011-490 and its implementing order No. 28968-2011 provide for the promotion of trade union rights in the country. ***Recalling the Government's responsibility to ensure that the rights provided for in the Convention are respected both in law and in practice, the Committee requests the Government to provide information on the measures taken to ensure the implementation of the above-mentioned provisions in practice.***

Restrictions on trade union activities in the maritime sector. The Committee previously urged the Government to ensure that the independent inquiry being conducted into anti-union acts in the maritime sector was concluded as soon as possible. The Committee notes the Government's indication that the Ministry of Transport and Meteorology is organizing a meeting with the General Maritime Union of Madagascar (SYGMMA) with a view to ending the conflict between the union and an enterprise in the maritime sector. ***Noting the Government's brief reference to the above-mentioned inquiry, the Committee requests the Government to clarify whether the meeting with SYGMMA has been concluded and, if so, to provide detailed information on its outcome. The Committee also requests the Government to provide detailed information on the outcome of any meeting organized by the Ministry of Transport and Meteorology concerning allegations of anti-union acts in the maritime sector.***

Article 2 of the Convention. Workers governed by the Maritime Code. In its previous comments, the Committee noted that a new Maritime Code was to be adopted and requested the Government to ensure that the Code provided for the right of seafarers to establish and join trade unions. The Committee notes the Government's indications that the fundamental rights and freedoms of seafarers were taken into account in the preparation of the draft Maritime Code, which is currently in the process of adoption. ***The Committee expects that the new Maritime Code will be adopted soon and will contain specific provisions providing for the right of seafarers to form and join trade unions. The Committee requests the Government to provide information on any developments in this regard and to transmit a copy of the Maritime Code once adopted.***

Article 3. Representativeness of workers' and employers' organizations. The Committee previously noted the adoption of Decree No. 2011-490 on workers' organizations and representativeness, which provides for the holding of elections for staff delegates at the enterprise level, and requested the Government to provide information on any progress made in such elections and their impact on the determination of the employers' and workers' organizations that participate in dialogue at the national level. The Committee notes the Government's indication that it is left to the workers and employers to organize the elections for staff representatives and to forward the results to the Ministry of Labour and Social Legislation, the role of which is limited to issuing a decree confirming that representativeness has been established. In this regard, the Government indicates that the Order No. 34-2015, issued on 19 February 2015, is in a state of tacit renewal since certain factors prevent the organization of new elections. The Committee also notes that FISEMA, in its observations, alleges that in 2019, when appointing workers' representatives to the boards of directors and management committees of the National Social Insurance Fund (CNAPS), the Antananarivo Inter-Enterprise Health Organization (OSTIE) and the Inter-Enterprise Medical Association of Antananarivo (AMIT), the Ministry of Labour and Social Legislation unilaterally changed the names of the representatives who were to sit on the boards and committees. FISEMA says it has filed a complaint with the Council of State, which issued three rulings in its favour in 2021 and 2022. ***The Committee requests the Government to provide specific information on the factors that have prevented the holding of elections for staff representatives since 2015. Furthermore, recalling the importance of avoiding interference by public authorities in the determination of the representativeness of professional organizations, the Committee requests the Government to provide its comments on the serious allegations of FISEMA.***

Right of workers' organizations to organize their activities and formulate their programmes. Compulsory arbitration. The Committee previously requested the Government to amend sections 220 and 225 of the Labour Code, which provide that if mediation fails, the collective dispute is referred by the Ministry of Labour and Social Legislation to a process of arbitration and that the arbitral award ends the dispute and the strike, as well as section 228 of the Labour Code which provides for the possibility of requisitioning striking employees in the event of disruption of public order. The Committee notes with ***regret*** that the Government merely indicates that prolonged disputes and strikes cause difficulties for society, workers and the economy, and provides information about the composition and functioning of its arbitration board. The Committee recalls that compulsory arbitration in the context of a collective labour dispute and the requisition of workers in the case of a strike are only acceptable when the strike in question may be restricted, or even prohibited, namely in the case of public servants exercising authority in the name of the State, in essential services in the strict sense of the term, or in situations of acute national crisis (2012 General Survey on the fundamental Conventions, paragraphs 151 and 153). ***Recalling that the above-mentioned issues have been the subject of its comments for several years, the Committee urges the Government to take the necessary measures to amend sections 220, 225 and 228 of the Labour Code in the near future. The Committee requests the Government to provide information on any developments in this regard, and reminds it that it may avail itself of the technical assistance of the Office, if it so wishes.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)

Previous comment

The Committee notes the observations of the Randrana Sendikaly Alliance, received on 19 October 2022, which are addressed in the framework of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee also notes that the Government has not responded to the 2021 observations of the Autonomous Trade Union of Labour Inspectors (SAIT) alleging anti-union discrimination measures against its members. ***The Committee once again requests the Government to provide its comments in this respect.***

In its previous comments, the Committee noted the Government's response to the 2015 and 2017 observations of the International Trade Union Confederation (ITUC) and the Christian Confederation of Malagasy Trade Unions (SEKRIMA) alleging acts of anti-union discrimination in various sectors and, emphasizing the persistence of the alleged situation, the Committee requested the Government to continue to provide information in this regard. ***Noting with regret that the Government has not provided the requested information, the Committee reiterates its request that the Government ensure that all the events reported are the subject of investigation by the public authorities and, if acts of anti-union discrimination have been committed, they will give rise to full compensation for the damage suffered and to the imposition of penalties that constitute an effective deterrent.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee previously requested the Government to provide information on the number of cases of anti-union discrimination examined by the labour inspection services and labour courts, and on the corresponding penalties actually applied by these institutions. The Committee notes the Government's indication that the labour inspection services categorize cases of anti-union discrimination as labour relations infringements and it does not know the exact number of anti-union discrimination cases examined by the regional labour services and the labour courts. ***Recalling the fundamental importance of ensuring effective protection against anti-union discrimination, the Committee requests the Government to take the necessary measures to gather the requested information on the number of***

cases of anti-union discrimination examined by the labour inspection services and the labour courts, as well as the penalties imposed in those cases.

Articles 1, 2, 4 and 6. Public servants not engaged in the administration of the State. In its previous comments, the Committee had underlined the need to adopt formal provisions clearly recognizing the protection of all public servants and public sector employees not engaged in the administration of the State against acts of anti-union discrimination and interference and their right to bargain collectively their conditions of employment. The Committee notes the Government's indications that it is currently working on the draft General Statute on Public Servants and the draft General Statute on contractual public employees, which generally provide for equal treatment of civil servants and contractual public employees. ***The Committee expects that the above-mentioned draft legislation will be adopted in the near future and will contain provisions providing for protection against anti-union discrimination and interference and the right to collective bargaining for all civil servants and public sector employees not engaged in the administration of the State, in accordance with the Convention. The Committee requests the Government to provide information on the progress made in this respect, and recalls that it may avail itself of the technical assistance of the Office, if it so desires.***

Article 4. Promotion of collective bargaining. Collective bargaining in sectors subject to privatization. The Committee had previously noted the information provided by the Government on the situation of collective agreements in the energy sector, particularly that of the Malagasy Electricity and Water Company (JIRAMA), the revision of which is reportedly in progress, and the observations of SEKRIMA alleging that privatizations have resulted in the collective agreements in force being discarded. The Committee had therefore requested the Government to take the necessary steps to promote the full use of collective bargaining mechanisms in privatized sectors. The Committee notes that the Government merely indicates that the revision of the JIRAMA collective agreement can be transferred to the competent court. ***The Committee reiterates its request that the Government take all the necessary steps to promote the full use by the parties concerned of collective bargaining mechanisms in privatized sectors, including the energy sector, and requests the Government to provide information on any progress made in this regard.***

Collective bargaining for seafarers. In its previous comments, the Committee had noted that the Labour Code excluded maritime workers from its scope of application and had expressed the expectation that the Government would be able to report shortly the adoption of the new Maritime Code that was due in May 2018; and that the Code would recognize for these workers the rights enshrined in the Convention. The Committee notes that the Government merely indicates that it has drawn up the draft Maritime Code. The Committee also notes that, according to the Government's report on the Collective Bargaining Convention, 1981 (No. 154), a draft new Labour Code is currently pending adoption. ***Recalling that the Government has been referring to the draft Maritime Code since 2008, the Committee urges the Government to take the necessary measures to ensure, in the context of the reforms underway, that national legislation contains provisions giving full effect to the Convention in respect of maritime workers. The Committee requests the Government to provide information on any developments in this respect, as well as a copy of the draft Maritime Code and the draft new Labour Code.***

Promotion of collective bargaining in practice. The Committee previously requested the Government to provide information on collective bargaining in practice. ***Noting that the Government has not provided the requested information, the Committee once again asks the Government to provide information in the measures taken to promote collective bargaining and to indicate the number of collective agreements concluded in the country, the sectors concerned and the number of workers covered by these agreements.***

In view of the ratification by Madagascar of Convention No. 154 in 2019, the Committee expects that the Government will take concrete measures to promote collective bargaining as requested in the different sections of this comment.

Malaysia

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1961)

Previous comment

The Committee notes the observations of the National Union Bank Employees (NUBE) received on 1 September 2022 alleging the violation of trade union rights through the implementation of unilateral restructuring schemes, collective bargaining in bad faith, harassment of trade union members and denial of facilities by an enterprise in the banking sector, among other allegations. ***The Committee requests the Government to provide its comments in this respect.***

The Committee also notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2022 concerning the issues examined by the Committee, and the Government's replies thereon.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion which took place in June 2022 in the Conference Committee on the Application of Standards (the Conference Committee) concerning the application of the Convention by Malaysia. The Committee notes that the Conference Committee noted with interest the amendments to the Industrial Relations Act 1967 (IRA) and the Employment Act 1955 (Employment Act), in 2021 and 2022 respectively and the prevailing concern regarding ongoing challenges in relation to the exercise of the collective bargaining rights, trade union discrimination and interference. The Committee observes that the Conference Committee requested the Government to: (i) amend without delay national legislation, specifically the Employment Act, the Trade Unions Act 1959 (TUA), and the IRA, in consultation with the social partners, to bring these laws into conformity with the Convention; (ii) ensure that the procedure for trade union recognition is simplified and that effective protection against undue interference is adopted; (iii) ensure that migrant workers can fully participate in collective bargaining, including by enabling them to run for trade union office; (iv) enable collective bargaining machinery in the public sector to ensure that public sector workers may enjoy their right to collective bargaining; (v) ensure, in law and practice, adequate protection against anti-union discrimination, including through effective and expeditious access to courts, adequate compensation and the imposition of sufficiently dissuasive sanctions. The Conference Committee also requested the Government to: (i) submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners; and (ii) continue to avail itself of the technical assistance of the ILO.

Ongoing legislative reform. The Committee notes the Government's statement that the Employment Act was amended in 2022, and that the TUA, under the process to be amended at the Parliament, has been discussed with the social partners in 12 sessions held in August 2022. The Committee welcomes the Government's indication that it will continue working closely with the Office through the Labour Law and Industrial Relations Reform project, and the social partners, including the Malaysian Trades Union Congress (MTUC) and the Malaysian Employers Federation (MEF), to ensure adequate protection against anti-union discrimination. The Committee notes that the Government avails itself of the technical assistance of the ILO to facilitate the review of the Trade Union Act and to

contribute to achieving its full conformity with the Convention. ***The Committee requests the Government to provide information on any developments in this regard.***

Article 1 of the Convention. Adequate protection against anti-union discrimination. Effective remedies and sufficiently dissuasive sanctions. The Committee notes the Government's confirmation that section 8 of the IRA provides for procedures for non-criminal acts, while section 59 is related to semi-criminal cases. The Committee notes the Government's indication that remedies for anti-union discrimination under sections 8 and 20 of the IRA are awarded by the Industrial Court based on the facts and merits of each case, and acting on the basis of equity, good faith and the substantial merits of the case. The Committee notes the Government's indication that victims of anti-union discrimination may file complaints to the Director-General of Industrial Relations to start an inquiry, conciliate or investigate the complaints. The Committee observes that it is in the discretion of the Director-General to refer or not the complaint to the Industrial Court, without the worker having the right to access the courts directly, and there is no information regarding on what basis the decision to dismiss a complaint without referring it would be made. The Committee notes that at the discussion held at the Conference Committee, the Government indicated that the reforms to the IRA aim to enhance the existing dispute resolution system, as well as to enable any disputes arising to be resolved effectively, and expedite the procedures involved. However, the Committee notes the Government's indication regarding the duration and number of procedures on cases on anti-union discrimination that: (i) from January 2021 until April 2022, 35 cases were filed (section 8 of the IRA), and 31 have been resolved by the Industrial Relations Department with an average duration of the proceedings from three to six months; and (ii) cases referred by the Director-General of Industrial relations to the Industrial Court should be resolved within 12 months. The Committee notes with ***concern*** the ITUC's observations according to which the remedies applied in cases of anti-union discrimination are inadequate because they usually consist of compensation in lieu of reinstatement and processes can last over two years. The Committee notes with ***regret*** that the Government does not provide information on the actual number of cases and duration of the proceedings before the Industrial Court nor on the sanctions applied and measures of compensation awarded for anti-union discrimination acts. The Committee observes that the Committee on Freedom of Association also examined the issue of effective protection against acts of anti-union discrimination in its Case No. 3409 and referred the legislative aspect of this case to it (399th Report, June 2022, paragraphs 227 and 229). ***Recalling that effective protection against acts of anti-union discrimination requires rapid and impartial procedures and remedies, as well as sufficiently dissuasive sanctions, the Committee urges the Government to take the necessary measures to ensure that workers who are victims of anti-union discrimination have the right to directly lodge a complaint before the courts and that such proceedings are rapid and effective and to ensure an effective protection through reinstatement, adequate compensation, and the imposition of sufficiently dissuasive sanctions. The Committee also recalls its recommendation to consider the reversal of the burden of proof once a prima facie case is made. The Committee further requests the Government to provide detailed information on: (i) the number of complaints filed, the duration of the proceedings, the remedies, and the sanctions and measures of compensation effectively imposed for acts of anti-union discrimination in accordance with the IRA; and (ii) the criteria followed by the Director-General of Industrial Relations to determine the actions to take in the treatment of anti-union discrimination cases, including to refer or not the matter to the courts.***

Articles 2 and 4. Trade union recognition for purposes of collective bargaining. Criteria and procedure for recognition. The Committee had observed that in case of an employer's refusal to grant recognition to a union: (i) the Director-General shall ascertain the scope of membership of the trade union on the date of the claim, whether it is in accordance with the union's constitution; and (ii) by way of secret ballot, the Director-General, shall ascertain the percentage of workers, in respect of whom recognition is being sought, who indicate support for the trade union making the claim. The Committee had requested the Government to provide detailed information on the steps taken to ensure safeguards against employer

interference during the recognition process. The Committee notes with ***regret*** that no detailed information has been provided by the Government in this regard. It notes, however, the Government's indication at the Conference Committee that to safeguard against employers' interference, sections 4, 5 and 8 of the IRA, are applied. The Committee observes that the IRA entered into partial effect on January 2021 and understands from the Government's statement that several provisions including section 12A (exclusive bargaining agent) of the IRA will only enter into force upon amendment of the TUA. The Committee notes the initial Government's statement that the actual impact of the amendments on the secret balloting process for trade union recognition, has not been visible due to COVID-19 restrictions. The Committee further notes the Government's reply to the ITUC observations regarding the simplification of processes for trade union recognition, indicating that: (i) Malaysia entered the endemic phase of COVID-19 on 1 April 2022, and since then the secret ballot process has been conducted as per the amendment to the IRA; (ii) as of October 2022, 78 secret ballot processes have been conducted (78 employers and 26,521 employees involved); and, (iii) from 1 January to 31 October 2022, 261 cases have been reported regarding recognition with an average duration from one to six months for resolution (for voluntary recognition processes duration of resolution is about one month. For other cases legal intervention extends the duration of the process). The Committee notes however that the information provided does not specify the number of recognitions that were granted to trade unions. ***Taking due note of the Government's indication regarding the implementation of the recognition procedures, envisaged by the amended provisions in the IRA, and recalling that these processes should provide safeguards to prevent acts of employer interference, the Committee requests the Government to continue to provide detailed information on the application in practice of these measures, including the number of processes for trade union recognition, the duration of these processes, and the outcomes (number of recognitions granted). The Committee further requests the Government to provide detailed information on the steps taken to ensure that safeguards against employer interference are applied in the process of application of sections 4, 5 and 8 of the IRA, including the specific measures in practice and sanctions applied when these cases occur.***

Exclusive bargaining agent. The Committee notes that: (i) where more than one trade union has been accorded recognition, the exclusive bargaining agent will be determined among themselves; (ii) if there is no agreement by the workers or group of workers, the exclusive bargaining agent, the employer or trade union of employers or any trade union concerned, may make an application in writing so that the exclusive bargaining agent is ascertained by the Director-General of Industrial Relations by way of a secret ballot through the highest number of votes (section 12A of the IRA); and (iii) section 12A of the IRA is yet to be enforced and is subject to the amendment of the TUA, which is still pending. The Committee notes that the Government reiterates that a simple majority is a minimum requirement that shall be maintained, which has been also agreed by the social partners. The Committee had observed however that the IRA does not make reference to the simple majority threshold indicated by the Government for the determination of the exclusive bargaining agent. ***The Committee expresses the firm hope that the provisions related to the recognition of the exclusive bargaining agent will enter into force without delay (section 12A of the Industrial Relations Act), following the entering into force of the Trade Union Act that is still undergoing the process of amendment. The Committee requests the Government to provide information on all the developments in this regard.***

Rights of minority unions. The Committee notes with ***regret*** that the Government does not provide information on the measures taken or envisaged to ensure that, in situations, where no union is declared the exclusive bargaining agent, collective bargaining can still be exercised by the existing unions. ***The Committee is therefore bound to request once again the Government to specify the measures taken or envisaged, in light of the reforms of the Industrial Relations Act and the forthcoming amendments to the Trade Union Act, to ensure that, in situations where no union is declared the exclusive bargaining agent, all unions in the unit are able to negotiate, jointly or separately, at least on behalf of their own members.***

Duration of recognition proceedings. The Committee notes the Government's indication that the average duration of the recognition process is of four to nine months, and that the decision on recognition from the Director-General of Industrial Relations may be appealed for judicial review. In this respect, the Committee recalls that the average duration of the recognition procedure, must be "reasonable", and that an average duration of nine months is excessively long (2012 General Survey on the fundamental Conventions, paragraph 232). ***The Committee urges the Government to take the necessary measures to ensure that the duration of the recognition process is reasonable, and to provide information on the measures adopted in this respect.***

Migrant workers. The Committee welcomes the Government's indication at the Conference Committee that: (i) foreign workers are eligible to become members of a trade union and are eligible to hold office upon approval of the Minister if it is in the interest of such union; (ii) the IRA does not impose restrictions on migrant workers to engage in collective bargaining; and (iii) as of 2022 a total of 27,964 foreign workers are members of 16 registered trade unions (increasing from 2,874 workers in 2019). The Committee takes note, however, of the Government's reply to the ITUC's observations that the referred Minister's approval only acts as a security measure to make sure the election is transparent and fair. The Committee observes that this condition may hinder the right of trade unions to freely choose their representatives for collective bargaining purposes. It notes that the Committee on Freedom of Association also examined this issue and invited the Government to provide information on any legislative development in this regard to the Committee of Experts (Case No. 2637, 397th Report, March 2022, paragraph 32). ***The Committee therefore requests the Government to take, in consultation with the social partners, the necessary legislative measures to ensure that foreign workers are able to run for trade union office without prior authorization. The Committee further requests the Government to take the necessary measures to ensure the full utilization of collective bargaining by migrant workers and to provide information in this respect.***

Scope of collective bargaining. The Committee notes the Government's indication reiterating that: (i) section 13(3) (restrictions on "internal management prerogatives"– promotions, transfers, appointment of workers in case of vacancies, termination of services due to redundancy, dismissal, reinstatement and assignment or allocation of work) shall be retained to maintain industrial harmony and speed up the collective bargaining process; (ii) the provision is not compulsory as if both parties agree, they may negotiate on those subject matters; and (iii) trade unions can raise questions of a general character relating to transfers, termination of services due to redundancy, dismissal, reinstatement and assignment or allocation of work. The Committee notes with ***concern*** the ITUC's observations indicating that while workers are allowed to raise general questions, the provisions also allow employers to dismiss those questions. The Committee observes that it remains unclear how questions of a general character relating to matters that are within the scope of legislative restrictions on collective bargaining can be raised in practice. The Committee further observes that the Committee on Freedom of Association also examined the issue of raising general questions and the scope of collective bargaining and referred the legislative aspect of the case to this Committee (Case No. 3401, 397th Report, March 2022, paragraphs 499 and 502). ***The Committee therefore requests the Government, once again, to indicate the practical implications of the amendment of section 13(3) of the Industrial Relations Act on the scope of collective bargaining, in particular to clarify the meaning of the new wording – questions of a general character and the way in which these questions are raised and dealt with in practice. The Committee requests the Government to provide information on the number of collective agreements that include "internal management prerogatives" as negotiated subjects. The Committee reiterates its invitation to the Government to consider lifting the broad legislative restrictions on the scope of collective bargaining, so as to promote the right to bargain freely between the parties, without any intervention by the Government.***

Compulsory arbitration. The Committee had noted with interest that the amendments to the IRA restrict compulsory arbitration to instances generally compatible with the Convention. However, it had

also noted that the reference in section 26(2) to "any Government service" and "the service of any statutory authority", as well as the reference to a number of Government services in point 8 of the First Schedule, may go beyond what can be considered as public servants engaged in the administration of the State. Furthermore, point 10 of the First Schedule, qualifies as essential services businesses and industries connected with the defence and security of the country, while they should be afforded the full guarantees of the Convention. The Committee notes the Government's indication that the IRA amendments will be enforced after the TUA's amendment is completed. ***The Committee trusts that the amendments will enter into force without delay, once the legislative process for the Trade Union Act amendments, noted above, is completed. The Committee requests the Government to provide information on the amendments and measures taken or envisaged, in consultation with the social partners, to: (i) further delimit the categories of Government services in section 26(2) and point 8 of the First Schedule, so as to ensure that compulsory arbitration may only be imposed on those public servants engaged in the administration of the State; and (ii) remove businesses and industries mentioned in point 10 of the First Schedule from its scope of application.***

Restrictions on collective bargaining in the public sector. The Committee has for many years requested the Government to take the necessary measures to ensure for public servants not engaged in the administration of the State the right to bargain collectively over wages and remuneration and other working conditions and emphasized that simple consultations with unions of public servants not engaged in the administration of the State did not meet the requirements of *Article 4* of the Convention. The Committee notes the ITUC's observations indicating that public servants are only consulted and not integrated in processes of collective bargaining. The Committee notes the Government's indication that: (i) to ensure the welfare of public servants and collective bargaining there is engagement between employers and employees in the public sector; (ii) the Public Service Department has provided a platform through the National Joint Council (NJC) (which is inclusive of all public servants) and the Departmental Joint Council (DJC) to ensure that the welfare of public servants is heard; (iii) the NJC, as a form of joint consultation, is required to convene once a year to discuss proposals and matters on remuneration and service principles, innovation and productivity initiatives, and other amendments proposed to existing policies; and (iv) the DJC meets three times a year, and provides a means for public servants to communicate with management and express their opinions and views. The Committee observes that: (i) the Government submits the Service Circular No. 6/2020 and Service Circular No. 7/2020 (in Malay), related to the functioning of the National Joint Council and the Departmental Joint Council; (ii) the Councils appear to have a consultative status as opposed to being used as a platform for collective negotiation on issues relating to terms and conditions of employment of public servants. The Committee notes with ***regret*** that the Government does not provide information on collective bargaining and agreements concluded in the public sector. **The *Committee, therefore, requests the Government to: (i) provide further information regarding how the different Councils ensure the right to collective bargaining, and not only consultation rights, in conformity with Article 4 of the Convention; and (ii) provide information on collective bargaining undertaken in the public sector, including the number of agreements concluded and the number of workers covered by those agreements.***

Collective bargaining in practice. The Committee had requested the Government to provide statistical information in relation to collective bargaining in the country. The Committee observes with ***regret*** that the Government refers to statistical information that is not provided. The Committee also notes that the Government made reference, at the Conference Committee, to progressive efforts to enhance the procedure and process on the right to strike and collective bargaining with the social partners. The Committee observes that no specific measures are further indicated by the Government. The Committee also notes the concerns expressed by the ITUC as to the low percentage of workers covered by collective agreements (1 to 2 per cent) and the declining level of trade union density (6 per cent). The Committee notes with ***concern*** the very low coverage of collective bargaining, indicated by

the ITUC, and observes that according to public statistics available in ILOSTAT as of 2018, the collective bargaining coverage rate in Malaysia was of 0.4 per cent. The Committee considers that this very low coverage could be related to the restrictive requirements in law and practice to engage in collective bargaining discussed above. ***The Committee therefore requests the Government to take the necessary action to remove all the legal and practical obstacles to collective bargaining addressed in this comment and to take concrete measures to promote the full development and utilization of collective bargaining. The Committee further requests the Government to provide updated statistical information on the number of collective agreements concluded and in force, the sectors concerned, and the number of workers covered by these agreements, as well as on any additional measures undertaken under the Convention.***

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

Myanmar

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)

The Committee notes the decision adopted by the Governing Body at its 344th Session in March 2022, to establish a Commission of Inquiry in respect of the non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Forced Labour Convention, 1930 (No. 29) in Myanmar. In these circumstances, and in accordance with the usual practice of suspending the operation of the other supervisory mechanisms during the mandate of the Commission of Inquiry, the Committee will resume its examination of the application of the Convention by Myanmar once the Commission of Inquiry has completed its mandate.

Namibia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)

Previous comment

Article 2 of the Convention. Right to organize of prison staff. The Committee recalls that it had previously noted that section 2(2)(d) of the Labour Act excluded members of the Namibian prison service from the Labour Act's provisions unless the Prisons Service Act provided otherwise. The Committee had further noted that the Prisons Service Act did not provide for the extension of the new Labour Act's guarantees to the Namibian prison service; nor did it contain any provisions establishing their freedom of association rights. The Committee requested the Government to provide information on the legislative amendments adopted to ensure that prison staff have the right to establish and join organizations for furthering and defending their interests. The Committee notes the Government's indication that the final report of the Tripartite Task Force proposes the deletion of section 2(2)(d) of the Labour Act and that the final report would be submitted to the minister before December 2021. ***The Committee requests the Government to take all necessary steps to expedite the process for adoption of legislative amendments to ensure that the prison services enjoy the guarantees under the Convention without further delay. The Committee once again requests the Government to provide information on any progress in this regard.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1995)

Previous comment

The Committee takes note of the Government's reply to the observations of the International Trade Union Confederation (ITUC) received on 1 September 2017, alleging violations of the Convention in specific enterprises and public institutions.

Articles 1 and 4 of the Convention. Adequate protection against anti-union discrimination and promotion of collective bargaining in export processing zones (EPZs). The Committee previously requested the Government to indicate the concrete measures taken to prohibit anti-union discrimination and promote collective bargaining in EPZs and to provide statistics in this respect. The Committee notes that the Government limits itself to indicating that no complaints alleging anti-union discrimination in EPZs were referred to the Office of the Labour Commissioner (administrative authority). ***Recalling that the Convention fully applies to EPZs, the Committee requests the Government once again to take specific action to ensure the application of Articles 1 and 4 of the Convention in EPZs and to provide relevant information and statistics on any progress in this regard.***

Article 6. Rights of prison staff. The Committee, in its previous observation, expressed its expectation and firm hope that the Government would ensure that prison staff enjoy the rights enshrined in the Convention. The Committee welcomes the Government's indication that the Tripartite Task Force, responsible for the review of the Labour Act, intends, in order to ensure the conformity of the Act with the Convention, to delete section 2(d) that excludes the prison service from its scope of application. ***The Committee hopes that the proposed amendment will be adopted soon, and that it will ensure the right of prison staff to enjoy the guarantees under the Convention. The Committee requests the Government to provide information on any progress in this regard.***

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

Nepal

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)

Previous comment

Article 1 of the Convention. Adequate protection against anti-union discrimination. In its previous comments, the Committee had requested the Government to take the necessary measures to introduce in the legislation an explicit prohibition of all acts of anti-union discrimination and effective and sufficiently dissuasive sanctions in cases of violation of this prohibition. The Committee notes that the Government indicates that workers are protected against anti-union discrimination as per section 6 of the Labour Act, 2017 and section 6 of the Right to Employment Act, 2018, respectively prohibiting discriminatory treatment during employment and in relation to hiring on the grounds of religion, colour, sex, caste, tribe, origin, language or other similar grounds and that the list should be considered as non-exhaustive hence indirectly encompassing also trade union activities as one of the grounds. In addition, as per section 23(A) of the Trade Union Act, 1992, office-bearers of the working committee of trade unions at the enterprise level shall not be transferred or promoted without their consent, except in special situations. While taking due note of the elements provided by the Government, the Committee recalls that the prohibition of discrimination provided for under section 6 of the Labour Act, as well as section 6 of the Right to Employment Act and section 24 of the Constitution of 2015, do not contain an explicit prohibition of discrimination against workers by reason of their trade union membership or participation in trade union activities. ***In view of the above, the Committee once again requests the***

Government to take the necessary measures to introduce in the legislation: (i) an explicit prohibition of all prejudicial acts committed against workers by reason of their trade union membership or participation in trade union activities at the time of recruitment, during employment or at the time of dismissal (for example, transfers, demotions, refusal of training, dismissals, etc.); and (ii) effective and sufficiently dissuasive sanctions in cases of violation of this prohibition. The Committee requests the Government to provide information on any progress made thereon. It further requests the Government to provide information on the number of cases of anti-union discrimination dealt with by the competent authorities, the length of the proceedings and their final outcome.

Article 2. Adequate protection against acts of interference. In its previous comments, the Committee requested the Government to continue to provide statistics on the number of complaints on acts of interference examined and the duration of the procedures with a particular emphasis on the sanctions applied. The Committee notes that the Government, after having recalled the provisions of the Labour Act prohibiting acts of interference, indicates that during the reporting period no case of interference has been reported or brought to its attention. ***The Committee requests the Government to continue to provide information on the number of complaints, with particular emphasis on the sanctions applied in cases of acts of interference.***

Article 4. Promotion of collective bargaining. Negotiation with trade unions versus negotiation with workers' representatives. In order to fully evaluate the conformity of section 116.1 of the Labour Act with the Convention, the Committee had requested the Government to specify the conditions under which trade unions are authorized to bargain collectively and to provide information on the number of direct agreements concluded with non-unionized workers in comparison with the number of collective agreements signed with trade unions. The Committee notes that the Government indicates that section 116.1 of the Labour Act provides that any enterprise employing ten or more workers shall have a collective bargaining committee and that such a committee is comprised of: (i) a team of representatives appointed for negotiation on behalf of the elected authorized trade union of the enterprise (paragraph a); (ii) where an election for the authorized trade union could not be held or the term of the elected authorized trade union has expired, a team of representatives nominated through a mutual agreement of all the unions in the enterprise (paragraph b); or (iii) where an authorized trade union or a team of representatives could not be formed, a team of representatives supported with the signatures of more than 60 per cent of the workers working in the enterprise (paragraph c). ***Recalling that negotiation with non-union actors should only be possible in the absence of trade union organizations at the relevant level, the Committee requests the Government to provide information on how paragraphs (a), (b) and (c) of section 116.1 find application in practice. In particular, the Committee requests the Government to clarify which circumstances might impede the election of the authorized trade union and as a result the exercise of its functions to appoint the team of negotiating representatives.***

Furthermore, the Committee notes that the Government failed to provide data on collective agreements registered in the Labour Office, for the period 2018–22, with the number of workers covered. ***The Committee therefore requests the Government to provide information in this respect and to specify the number of direct agreements concluded with non-unionized workers in comparison with the number of collective agreements signed with trade unions, indicating the sectors and the number of workers covered.***

Different levels of collective bargaining. In its previous comments the Committee requested the Government to take the necessary measures to amend section 123 of the Labour Act, providing a special regulatory regime for collective bargaining in a range of specific sectors. The Committee recalls that section 123 states that "trade union associations which are active in the tea estate, carpet sector, construction business, labour provider, transportation sector or any other group of manufacturers producing similar nature of goods or service providers providing similar nature of service or business" may form a collective bargaining committee and "submit collective bargaining claims, demands to the

employers' association of the concerned group of industries". Section 123(3) additionally states that "In the case of the enterprise to which the collective agreement referred to in this section is applicable, no collective claims, Demands and agreement may be submitted and made pursuant to this Chapter". The Committee notes that no information has been provided by the Government in this respect. The Committee wishes to remind that collective bargaining should be promoted at all levels, including both at company and sectoral levels, and that, at the same time, according to the principle of free and voluntary collective bargaining, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties and, consequently, the level of negotiation should not be imposed by law. ***While welcoming the fact that the different provisions of the Labour Act envisage both collective bargaining at the enterprise and sectoral levels, the Committee invites the Government to provide information on how section 123(3) would allow for sectoral collective bargaining to be compatible with collective bargaining at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry or the regional or national levels. Furthermore, as no other reference to sectoral collective bargaining is found in the Labour Act other than the one made in section 123(1), the Committee requests the Government to provide information on the rationale behind the selection of sectors enlisted in section 123 as well as on the number of sectoral collective bargaining agreements concluded in the series of targeted sectors and in sectors others than those mentioned therein, so to assess the breadth of sectoral collective bargaining in the country.***

Compulsory arbitration. In its previous comments, the Committee requested the Government to bring the provisions under section 119 of the Labour Act relating to compulsory arbitration into full conformity with the Convention, recalling that compulsory arbitration to end a collective labour dispute is acceptable only: (i) in the public service involving public servants engaged in the administration of the State (*Article 6* of the Convention); (ii) in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population; or (iii) in case of acute national crisis. ***Noting that the Government did not provide any information in this respect, the Committee once again requests that the Government take the necessary measures to ensure that, in accordance with the Convention, compulsory arbitration can only take place in the situations mentioned above. The Committee requests the Government to provide information on any progress in this respect.***

Composition of arbitration bodies. In its previous comments, the Committee requested the Government to provide detailed information with respect to the composition of the arbitration panel (under section 119(3) of the Labour Act) and tribunal (section 120) and specifically to indicate the procedure undertaken to select the worker and employer representatives to ensure the full independence of these arbitration bodies. It also requested the Government to clarify the difference between the arbitration panel and the arbitration tribunal. The Committee notes that, in its report, the Government uses interchangeably the names of the two arbitration bodies and does not provide further information regarding the procedure undertaken to ensure their full independence. ***The Committee therefore requests the Government to provide information clarifying how the arbitration panel and tribunal differ from one another and how the procedure for selection of the members of the arbitration tribunal will be determined so as to ensure its full independence.***

The Committee reminds the Government that it may avail itself of the technical assistance of the Office with respect to all issues raised in the present observation.

Netherlands

Sint Maarten

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Previous comment

The Committee takes note of the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, which refer to matters under examination by the Committee and allege that the widespread use of temporary contracts by employers constitutes a significant limitation to the right to organize, as contract workers are not allowed to participate in referendums for the creation of trade unions. ***The Committee requests the Government to provide its comments thereon.***

The Committee further notes the observations of the Sint Maarten Employers Council (ECSM), received on 6 September 2022 and referring to matters addressed below.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2022 concerning the application of the Convention. The Committee observes that the Conference Committee urged the Government, in consultation with the social partners, to: (i) refrain from any undue interference in the exercise of freedom of association of employers and workers, including any interference through the promotion of organizations that are not freely established or chosen by workers and employers, such as the Soualiga Employer Association (SEA); (ii) consult worker and employer organizations with a view to identifying their representatives in the Socio Economic Council (SER); (iii) provide information on the outcome of the appeal challenging the appointments of the Employers' representatives to the SER; and (iv) bring national legislation into line with the Convention to ensure that all workers, including public sector workers, are able to fully exercise the rights and guarantees under the Convention. The Conference Committee also invited the Government to avail itself of technical assistance from the Office to bring the national law and practice into conformity with the Convention. Finally, the Conference Committee requested the Government to submit a report to the Committee of Experts by 1 September 2022 providing information on the application of the Convention in law and practice, in consultation with the social partners.

Article 3 of the Convention. Right of organizations to elect their representatives in full freedom. In its previous comments, the Committee had requested the Government to review the establishment of the SEA, which had been facilitated by a governmental agency, as well as its operation and its participation in the SER, and redress any interference from the public authorities in this regard. The Committee notes that the Government indicates, with respect to the appeal referred to in the Conference Committee conclusions, that the Court of Appeals issued a judgement dated 29 June 2022, in which it determined that the right to freedom of association of the ECSM had not been violated, and that both the ECSM and the SEA had been independently designated as representative employers' organizations, as the involvement of the Minister of General Affairs and the Chamber of Commerce and Industry (COCI) in the establishment of the SEA did not disqualify the latter as a representative organization. The Committee notes with ***regret*** that the Government states that as a result of this judgment, it intends to proceed with the establishment of the SEA as an umbrella employers' organization and the appointments of the employers' representatives to the SER will therefore remain effective until 30 April 2023. The Government also indicates, however, that it would be open to receiving technical assistance from the Office in this regard. The Committee once again recalls that, under the Convention, public authorities should refrain from any undue interference in the exercise of the rights of employers and

their organizations to determine the conditions for electing their representatives and to establish higher level organizations. It further recalls that the Conference Committee urged the Government to refrain from any undue interference in the exercise of freedom of association of employers and workers, including any interference through the promotion of organizations such as the SEA, which is not considered to be an independent employer organization, as it was established by the COCI, an organization with compulsory membership. In this regard, the Committee also recalls that the Conference Committee urged the Government to consult worker and employer organizations with a view to identifying their representatives in the SER. The Committee further notes with ***deep regret*** the information from the ECSM that the Government, contrary to the CAS conclusions, apparently has recognized one seat on the SER to the SEA while the other two seats are suspended and that the SER has apparently not been convened since the CAS, nor has the ECSM been consulted on matters affecting its interest, including the preparation of the Government's report. ***The Committee therefore urges the Government to take the necessary measures, in consultation with the social partners, to ensure that workers' and employers' representatives to the SER are only appointed by organizations which are freely established or chosen by workers and employers and to engage with the ECSM on matters affecting its interests. Observing that there appears to be some confusion around the basic precepts of freedom of association relative to this matter, the Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

Right of workers' organizations to organize their administration and activities. The Committee had previously requested the Government to confirm whether section 374(a), (b) and (c) of the old Penal Code of the Netherlands Antilles, which prohibited public employees, including teachers, from striking under penalty of imprisonment, had been carried over into the new Penal Code, and to specify any other legislative provisions currently governing the right to strike of civil servants. The Committee notes the Government's indication that: (i) the Penal Code was amended in 2015 to revoke certain provisions, including section 374*bis*, *ter* and *quater*, which were in violation of the Convention; (ii) the right to strike of civil servants is governed by the Constitution, the Civil Code, the National Ordinance on Collective Agreements, the National Collective Labour Dispute Ordinance and the cohesive Labour Peace Decrees, as well as article 6(4) of the European Social Charter, as the Supreme Court of the Netherlands determined that this provision was applicable in the country; and (iii) the National Ordinance on Substantive Civil Service Law was amended to allow the courts to forbid strikes which threaten public welfare or safety. The Committee further notes that the ITUC, in its observations, states that it is unclear whether section 374(a), (b) and (c) of the old Penal Code of the Netherlands Antilles has been included in the new Penal Code. ***The Committee requests the Government to specify whether public employees, such as teachers, are forbidden from striking under the new Penal Code, and to provide a copy of the new Penal Code. The Committee also requests the Government to provide detailed information on the types of circumstances in which strikes may be prohibited based on the National Ordinance on Substantive Civil Service Law.***

Nicaragua

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

Previous comment

Discussion at the International Labour Conference, May–June 2022

The Committee notes the observations of the International Organisation of Employers (IOE) received on 25 August 2022 reiterating the comments made in the discussion held in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2022 on the application of the Convention by Nicaragua. It also takes note of the observations of the International

Trade Union Confederation (ITUC) received on 1 September 2022, which concern issues that the Committee addresses in this comment.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion that took place in the Conference Committee in which the Conference Committee deplored the persistent climate of intimidation and harassment of independent workers' and employers' organizations, noted with concern the allegations of the arrest and detention of employer leaders and urged the Government, in consultation with the social partners to:

(i) immediately cease all acts of violence, threats, persecution, stigmatization, intimidation or any other form of aggression against individuals or organizations in connection with both the exercise of legitimate trade union activities and the activities of employers' organizations, and adopt measures to ensure that such acts are not repeated;

(ii) immediately release any employer or trade union member who may be imprisoned in connection with the exercise of the legitimate activities of their organizations, as is the case of Messrs Michael Healy, Álvaro Vargas Duarte, Jose Adán Aguerri, Luis Rivas and Juan Lorenzo Holmann;

(iii) promote social dialogue without further delay through the establishment of a tripartite dialogue round table, under the auspices of the ILO, that is presided over by an independent chairperson who has the trust of all sectors, that duly respects the representativeness of employers' and workers' organizations in its composition and that meets periodically; and

(iv) repeal Law No. 1040 on the regulation of foreign agents, the Special Law on Cybercrimes, and Law No. 1055 on the Defence of the Rights of the People to Independence, Sovereignty and Self-determination for Peace, which limit the exercise of freedom of association and freedom of expression.

The Conference Committee recommended that the Government avail itself of ILO technical assistance to ensure full compliance with its obligations under the Convention in law and in practice and that it accept a direct contacts mission to complete a fact-finding mission with full access related to the situation of violation of trade union rights of workers' organizations and of employers' organizations' rights as soon as possible to allow the ILO to assess the situation. It also requested the Government to submit a report to the Committee of Experts before 1 September 2022, communicating information on the application of the Convention in law and practice, in consultation with the social partners.

The Committee notes that the Government submitted a report before 1 September 2022, indicating that it responds to one of the Conference Committee's recommendations, namely the submission of a report containing information on progress achieved regarding the application of the Convention in law and practice. The Committee ***deeply regrets*** that the Government report contains no information on, nor any allusion to, the rest of the recommendations formulated by the Conference Committee. The Committee understands the absence of information in this respect to denote not only an evident failure on the part of the Government to give effect to its recommendations, but also an apparent lack of commitment to ensuring the Government's standards obligations are respected. ***The Committee therefore urges the Government, in the strongest terms, in consultation with the social partners, to take each and every one of the measures urged by the Conference Committee referenced above which concern serious and urgent matters that call for immediate action. The Committee urges the Government to report on all the measures adopted to ensure compliance with the recommendations of the Conference Committee and on all progress achieved in the application of those measures, above all in respect of the freeing of any employer or member of a trade union who may have been imprisoned in relation to the exercise of the legitimate activities of their organizations,***

such as is the case of Messrs Michael Healy, Álvaro Vargas Duarte, José Adán Aguerri, Luis Rivas and Juan Lorenzo Hollman.

The Committee notes the Government's indication in its report that since 2007 it has been working to restore and protect the rights of workers, including freedom of association, through dialogue and consensus among the tripartite actors to achieve stability and harmonious labour relations. The Committee firmly believes in the value of tripartite social dialogue and in the critical role that it can play in achieving significant progress in respect of the requests made by the Committee and the Conference Committee. The Committee recalls that in its comments to the Conference Committee, the IOE stressed the fundamental need to reconstruct a process of confidence and called on the Government to facilitate social dialogue with the presence of the ILO. ***The Committee therefore urges the Government to establish the tripartite dialogue round table recommended by the Conference Committee without further delay and avail itself of ILO technical assistance to ensure full compliance with its obligations under the Convention. The Committee also considers it vitally important that the Government should accept, at an early date, the direct contacts mission mentioned above. The Committee hopes that the Government will address the recommendations made and requests it to report on any progress made in this respect.***

Article 3 of the Convention. Right of workers' organizations to organize their activities in full freedom and to formulate their programmes. The Committee recalls that for over a decade it has been referring to the need to take steps to amend sections 389 and 390 of the Labour Code, which provide that collective disputes shall be referred to compulsory arbitration when 30 days have elapsed since the calling of the strike. The Committee notes in this regard that the Government reiterates that the country has a wide legal framework that covers industrial disputes; that it has been reinforcing resolution of conflicts through social dialogue and that, in accordance with the principle of sovereignty, any decision to amend the said sections must emanate from the Nicaraguan people. While noting what the Government indicates, the Committee recalls once again that the imposition of compulsory arbitration to end a strike, beyond the cases in which a strike may be limited or even prohibited, is contrary to the right of workers' organizations to freely organize their activities and formulate their programmes. ***In light of the above, the Committee strongly urges the Government to take the necessary measures to amend sections 389 and 390 of the Labour Code in order to ensure that compulsory arbitration is only possible in cases where strikes may be limited or even prohibited, namely in cases of conflict within the civil service relating to officials exercising authority on behalf of the State, in essential services in the strict sense of the term or in the event of an acute national crisis. The Committee requests the Government to provide information on any developments in this regard and firmly hopes that, in the context of the technical assistance mentioned above, progress towards compliance with the Convention will be achieved.***

Article 11. Protection of the right to organize. In its previous comment, the Committee took note of the Government's various initiatives aimed at promoting the right to organize. The Committee notes the Government's indication that it is continuing to strengthen the right to freedom of association and that, in 2021, 44 new trade union organizations were formed, affiliating 1,158 workers and 997 trade union organizations were updated, bringing together 65,233 workers. The Committee observes that, according to the Government, this statistical information, together with other statistical data on labour issues, is evidence that the country is giving effect to the Convention. ***While taking due note of this information and these indications, the Committee recalls that the rights conferred upon the employers' and workers' organizations protected by the Convention are void of meaning if there is no respect for fundamental freedoms, the right to protection from arbitrary detention and imprisonment and the right to a fair trial by an independent and impartial tribunal, questions referred to at the beginning of this comment. Recalling also that Article 11 of the Convention refers to the need to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to***

organize, the Committee requests the Government to report on initiatives taken to guarantee the exercise of this right for workers and employers, giving information on their results.

The Committee notes with deep concern the lack of action on the part of the Government to follow up on the conclusions of the Conference Committee, which demonstrates a lack of commitment to ensure respect for its obligations under the Convention. The Committee emphasizes in the strongest possible terms the need to immediately cease all acts of violence, threats, persecution, stigmatization, intimidation or any other form of aggression against individuals or organizations in connection with both the exercise of legitimate trade union activities and the activities of employers' organizations and to immediately release any employer or trade union member who may be imprisoned in connection with the exercise of the legitimate activities of their organizations. It further recalls the utmost need to re-establish genuine and constructive tripartite dialogue without further delay and the CAS request to repeal Law No. 1040 on the regulation of foreign agents, the Special Law on Cybercrimes, and Law No. 1055 on the Defence of the Rights of the People to Independence, Sovereignty and Self-determination for Peace, which limit the exercise of freedom of association and freedom of expression. In light of the above, the Committee considers that this case meets the criteria set out in paragraph 114 of its General Report to be asked to come before the Conference.

[The Government is asked to supply full particulars to the Conference at its 111th Session and to reply in full to the present comments in 2023.]

North Macedonia

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

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Confederation of Free Trade Unions of Macedonia (KSS), received on 1 September 2021, which allege restrictions on the right to strike in the education sector, the failure to transfer to trade unions the dues withheld by the employers, as well as pressure on workers to leave their trade unions. ***The Committee requests the Government to provide its comments thereon.***

Articles 2 and 9 of the Convention. Scope of application. In its previous comments, the Committee had noted that, pursuant to article 37 of the Constitution, the conditions for exercising the right to union organization in "administrative bodies" (in addition to the police and the armed forces) can be limited by law and requested the Government to indicate what are the "administrative bodies" referred to in the Constitution and whether, and the extent to which, the law limits the right to organize of their workers. The Committee notes the Government's indication that "administrative bodies" referred to in article 37 of the Constitution includes ministries, other state administration bodies (as independent state administration bodies or within ministries), and administrative organizations (set up for the performance of particular professional and other works requiring the application of scientific and expert methods). The Committee further notes that the Government emphasizes that freedom of association, apart from the general framework in the Constitution, is regulated by the Labour Law, which does not stipulate any limitation thereof. ***Recalling that under the Convention only the armed forces and the police may be subject to limitations concerning the enjoyment of the guarantees provided by the Convention, as well as the need to ensure conformity of national constitutional provisions with the Convention, the Committee requests the Government to take the necessary measures to amend article 37 of the Constitution to eliminate the possibility for the law to restrict the conditions for the exercise of the right to trade union organization in administrative bodies.***

Article 3. Right of organizations to freely organize their activities and to formulate their programmes. In its previous comments the Committee had noted that, under the Law on Public Enterprises and the Law on Employees in the Public Sector: (i) employees in the public sector are entitled to strike; (ii) employees in the public sector are obliged to provide minimum services taking into account the rights and interests of citizens and legal entities; and (iii) in accordance with the applicable laws and collective agreements, the head of the

respective institution determines the performance of the institutional activities of public interest that are to be maintained during a strike, the manner in which the minimum service will be carried out and the number of employees that will provide services during the strike. In this respect, the Committee recalled that the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (ii) other services in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population; (iii) in public services of fundamental importance; and (iv) to ensure the security of facilities and the maintenance of equipment. The Committee further recalled that minimum services imposed should meet at least two requirements: (i) must genuinely and exclusively be minimum services, that is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The Committee welcomes the Government's indication that it will take appropriate measures to ensure compliance with the Convention of the provisions in the Law on Public Enterprises and in the Law on Public Sector Employees. ***The Committee requests the Government to take, in consultation with representative public employee and public employer organizations, any necessary measures to ensure the determination of minimum services in public enterprises conforms with the situations described above, and to provide further information concerning such determination in practice (in particular as to the types of activities, and percentage of employees in those activities, that have been affected by a determination of minimum services, as well as the possibility for employee organizations to participate in the definition of minimum services).***

In its preceding comment the Committee had requested the Government to amend section 38(7) of the Law on Primary Education and section 25(2) of the Law on Secondary Education, which oblige the school directors to provide for the realization of educational activities by replacing the striking employees when the educational activity is interrupted due to a strike. The Committee notes the Government's indication that it started amending the articles concerned to align them with the Convention but observes that, subsequently, a new Law on Primary Education was published on 5 August 2019, including a similar provision to require the replacement of striking workers. Pursuant to section 50(7), of the new Law on Primary Education, in case of a suspension of the educational and pedagogical work due to strike action, the principal of the primary school, upon receiving a previous consent by the Mayor, and by the Minister in the case of state primary schools, shall be obliged to ensure the performance of the educational and pedagogical work by substituting the striking workers for the duration of the strike action. In this regard, the Committee must recall that teachers and the public education services may not be considered an essential service in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and that provisions allowing for the replacement of striking workers are a serious impediment to the legitimate exercise of the right to strike. ***Regretting the lack of progress in this respect, the Committee once again requests the Government to amend the Law on Primary Education and the Law on Secondary Education, so as to remove the possibility of replacing striking workers and to enable workers in the primary and secondary education sectors to effectively exercise their right to strike, as well to provide a copy of the amended legal texts once adopted.***

Legislative review. With regard to the review process of the Law on Labour Relations, the Committee notes that the Government indicates that social partners were included from the very beginning and that in the course of drafting the new law attention shall be paid to its compliance with ILO Conventions. ***The Committee expects that, in the context of the review of the Law on Labour Relations, the Government will take the necessary measures to bring its legislation into conformity with the Convention in line with the preceding comments and requests it to provide information on any developments, including a copy of the revised Law on Labour Relations once adopted.***

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

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

Previous comment

The Committee notes that the Government does not reply to the 2021 observations of the Confederation of Free Trade Unions of Macedonia (KSS) denouncing: (i) acts of anti-union discrimination, including dismissal, against trade union representatives; (ii) the non-application of collective agreements by the Ministry of Education; and (iii) the inability of the Commission for representativeness to decide on the representativeness of the KSS in the public sector. ***The Committee once again requests the Government to provide its comments in this regard.***

Article 4 of the Convention. Promotion of collective bargaining. The Committee had previously requested the Government to inform on the adoption process of a new Labour Law (Law on Labour Relations) and a special Law on Worker and Employer Organization and Collective Bargaining, which had both given rise to technical comments from the Office. The Committee notes the Government's indication that the process of preparing the new Law on Labour Relations, which has involved the social partners, will be finalised in the near future. The Government informs that it has been decided that the sections relating to the organization of workers and employers as well as collective bargaining will finally be included within the framework of the new Law on Labour Relations. ***Taking due note of these developments, the Committee requests the Government to take the necessary measures to ensure that due account is taken of the comments which were previously made by the Office and that the new Law on Labour Relations is adopted shortly. The Committee requests the Government to provide information on any progress made in this regard.***

Collective bargaining in practice. The Committee notes the information provided by the Government indicating that, in the private sector, a General Collective Agreement was concluded along with nine specific collective agreements, while in the public sector, a General Collective Agreement was concluded in addition to ten specific collective agreements. The Committee further notes that according to the data of the State Statistical Office for the first quarter of 2021, the General Collective Agreement in the private sector covers 449,822 employees, which represents 68.7 per cent of the 654,662 employees in the country, and the General Collective Agreement in the public sector covers 204,840 employees, which constitutes 31.3 per cent of the total number of employees in the country. ***Noting with interest a sharp rise in the number of workers covered by collective agreements between 2019 and 2021, the Committee requests the Government to indicate the factors that have led to this increase. The Committee also requests it to provide information on the provisions regulating the relationship between general and specific collective agreements in private and public sectors, and to continue providing information on the application of the Convention in practice, including statistical data concerning the number of collective agreements concluded in both public and private sectors and the number of workers covered.***

Pakistan

Right of Association (Agriculture) Convention, 1921 (No. 11) (ratification: 1923)

Previous comment

In its previous comment, the Committee had trusted that the Government will ensure that it, as well as all the governments of the provinces, take the necessary measures to ensure that all workers engaged in agriculture, including in small agricultural holdings which do not run an establishment or farmers working on their own or with their family, enjoy the rights afforded by the Convention in law and in practice. The Committee notes the Government's indication that: (i) the share of agriculture in

the employed labour force in Pakistan (67.24 million) amounts to 37.4 per cent; (ii) all federal and provincial Industrial Relations Acts are applicable only to formal sector workers; (iii) the Industrial Relations Act 2012 (hereafter IRA 2012) – which covers all persons employed in any establishment or industry in the Islamabad Capital Territory or carrying on business in more than one province – does not cover the agricultural workers in its ambit, however there is no restriction on agricultural workers to form a union; (iv) Sindh Industrial Relations Act, 2013 (hereafter SIRA 2013) provides expressly in its section 1(3) that the scope of the Act extends to all persons employed in any establishment or industry, "including fishing and agriculture", and Balochistan Industrial Relations Act, 2022 (hereafter BIRA 2022) provides in its section 1(4) that the Act shall apply to all workers and employers at all workplaces working or conducting business within Balochistan; (v) till date, the Government of Sindh has registered four unions of agriculture workers and two associations of landlords of agriculture farms; (vi) workers engaged in agriculture holdings which do not run an establishment or farmers working on their own or with family are out of the ambit of industrial relation laws. However, there is no restriction on agriculture workers to form a union. Further, they are allowed to form a cooperative society for promotion of their economic interests in accordance with cooperative principles, or a society established with the object of facilitating the operations of such a society and; (vii) the provinces are actively amending/promulgating the law relating to the right of association and extending its application to informal sector including the agriculture.

The Committee notes that even though IRA 2012; Punjab Industrial Relations Act, 2010 (hereafter PIRA 2010); and Khyber Pakhtunkhwa Industrial Relations Act, 2010 (hereafter KPIRA 2010) provide in their section 1(3) that they apply to "all persons employed in any establishment or industry" in the covered territory, and even though agriculture does not figure among the activities explicitly excluded from the scope of these Acts, they do not appear to cover agricultural establishments. In this regard, the Committee notes that Punjab Labour Policy 2018 advocates "initiation of dialogue with social partners to extend coverage and scope of the PIRA to the excluded categories of workers i.e., agriculture workers, domestic workers, home based workers and workers of informal sector". It further notes that although SIRA 2013 and BIRA 2022 cover agricultural establishments, they leave out the informal sector, including small agricultural holdings which do not run an establishment, or farmers working on their own or with their family. In view of the above, the Committee notes with ***concern*** that only in two provinces, Sindh and Balochistan, workers in agricultural establishments are covered by the laws setting the framework for the exercise of the right to freedom of association in Pakistan, and therefore, a large share of agricultural workers remains excluded from the scope of these laws, both at the federal and provincial levels. It further notes that in practice, only three unions of agricultural workers in one province have been established. ***Therefore, the Committee urges the Government to take adequate measures to ensure that federal and provincial Industrial Relations Acts are amended so as to expressly cover all agricultural workers, including those in the informal sector, and to enable them to enjoy the rights conferred by the Convention in law and in practice. It requests the Government to provide information on any progress achieved in this respect.***

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

Previous comment

The Committee notes the observations of the International Transport Workers' Federation (ITF) received on 2 July 2020 and the Government reply thereto. In its previous comment, the Committee had urged the Government to investigate the 2015, 2017 and 2018 ITUC allegations of violence against workers and their arrest, detention, and prosecution for trade union activities, and to ensure that sanctions are imposed on law enforcement forces. The Government responds that even though most of the sectors concerned are out of the ambit of the Ministry of Overseas Pakistanis & Human Resource

Development (hereafter MOP&HRD) as well as Labour Departments of the Provinces, the matter has been referred to the concerned quarter and information will be provided as soon as received by the Ministry. The Committee notes with ***deep regret*** that seven years after the communication of the first allegations brought up by the ITUC, which concern very serious violations of the workers' right to life and civil liberties, the Government has once again failed to report any investigation into the violent conduct of the law enforcement forces, the killing of two workers on 2 February 2016 and the alleged kidnapping of four union leaders and members on 3 February 2016 in connection with the Pakistan International Airlines (PIA) labour dispute. ***Therefore, the Committee once again urges the Government to ensure that investigations are conducted by the public authorities into the 2015, 2017 and 2018 ITUC allegations and that sanctions are imposed against law enforcement forces responsible for use of violence against workers.***

The Committee notes the adoption of the Balochistan Industrial Relations Act No. XIX of 2022 (hereafter, BIRA 2022) on 22 June 2022, which addresses several issues raised in its previous comments.

The Committee also notes that the Committee on Freedom of Association referred to it the legislative aspects of Case No. 2096 (Report No. 392, October 2020, paragraph 109). These matters are discussed below.

Articles 2–9 of the Convention. The scope of the Convention. Excluded categories of workers. In its previous comment, the Committee had noted that sections 1(3) of the Industrial Relations Act (IRA) 2012, the Balochistan Industrial Relations Act (BIRA) 2010, the Khyber-Pakhtunkhwa Industrial Relations Act (KPIRA) 2010, the Punjab Industrial Relations Act (PIRA) 2010, and the Sindh Industrial Relations Act (SIRA) 2013 excluded many categories of workers from their scope. The Government reiterates in this regard that: (i) the exceptions provided in the federal and provincial acts are specific in nature and need to be imposed only in the cases where any action may lead to a serious security breach or an irreparable loss to the public at large; and (ii) unregistered unions/associations are formed under KPIRA 2010, and workers in private security firms can form unions. The Committee notes that only in Balochistan has there been a legislative change regarding the excluded categories of workers, where the exceptions retained are the following: (a) section 1(5) of BIRA 2022 allows the Government to impose reasonable restrictions on the exercise of the right to form associations or unions in any public sector organization, in the interest of sovereignty or integrity of Pakistan, for such time as it may deem proper; (b) section 1(6) provides that the act "shall not apply to Police, Levies or any of the Defense Services of Pakistan or any services or installations exclusively connected with or incidental to armed forces of Pakistan and essential services". The Committee notes with ***interest*** that many previously excluded categories in Balochistan are now brought within the scope of the industrial relations legislation. Nevertheless, it notes that the exceptions retained in the new law are still larger than the ones authorized under the Convention:

(i) regarding section 1(5) of the BIRA 2022, the Committee recalls that the Convention contains no provisions allowing the invocation of a state of emergency to justify exemption from the obligations arising under it or any suspension of their application. Any such exemption cannot be used to justify restrictions on civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity and on condition that any measures affecting the application of the Convention are limited in scope and duration to what is strictly necessary to deal with the situation in question. The Committee notes with ***concern*** that the language of section 1(5) referring to the "interest of sovereignty and integrity of Pakistan" evokes concepts broader than a state of emergency and does not clearly indicate any limitation in time, thereby giving a too broad discretion to the government to impose restrictions on the rights guaranteed in the Convention to public sector employees. Considering that BIRA 2022 was adopted after the judgment of the High Court of Balochistan dated 24 June 2019 (C.P Nos 669/2013 & 400/2015), in which the Court

ruled that the right to form trade unions is not available to civil servants, the Committee firmly recalls that it has always considered that the right to establish and join organizations should be guaranteed for all public servants and officials, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings;

(ii) concerning the reference to "any services or installations exclusively connected with or incidental to armed forces of Pakistan" in section 1(6), the Committee recalls that the exceptions under *Article 9* of the Convention do not include civilian personnel in the armed forces, nor the civilian employees in the industrial establishments of the armed forces; and

(iii) concerning the reference to "essential services" in section 1(6), the Committee is bound to repeat its previous comments concerning the distinction between the right to establish and join a union, of which only the armed forces and the police can be deprived, and the right to strike, which may be restricted in certain categories of public servants, essential services in the strict sense of the term, and situations of acute national or local crisis. While the exercise of the right to strike of the workers in essential services can be restricted or even prohibited, their exclusion from the right to establish and join unions is an infringement of the Convention.

Regarding trade union rights of the associations of public officials and employees of publicly owned undertakings, the Committee notes the observations of the ITF denouncing the derecognition of Pakistan Airline Pilots' Association (PALPA), the sole representative organization for pilots in Pakistan, and unions representing other workers in PIA, as well as the termination of all working agreements through a notice of the employer communicated on 30 April 2020. This notice indicated that except for the Collective Bargaining Agent (CBA), no other union, society or association will be recognized as representative of all or any category of employees. In reply, the Government indicates that: (i) PALPA is neither a registered union, nor the recognized CBA under the IRA 2012, it is an association of persons registered under the Societies Registration Act (SRA) 1860; (ii) any agreement with it is a civil contract only, which can be terminated by any party; (iii) the company does not intend to stop trade union and collective bargaining activities in the establishment. The Committee recalls in this regard that as it had noted in its 2016 observation concerning the application of the Convention in Pakistan, the Government had indicated that public officials and employees of publicly owned undertakings which are excluded from the purview of the industrial relations legislation, get coverage under article 17 of the Constitution as enforced by the SRA and had referred to PALPA as an example of such associations. In view of the Government reply to the ITF observations, the Committee is bound to note that the categories of workers excluded from the industrial relations legislation cannot exercise the rights enshrined in the Convention by forming associations under the SRA. ***In view of the above, while welcoming certain legislative changes in Balochistan, the Committee urges the Government to ensure that the federal and provincial governments take the necessary measures to revise the IRA, the BIRA, the KPIRA, the PIRA and the SIRA so that all categories of workers can enjoy their rights under the Convention, the only admissible exception – which must be construed in a restrictive manner – being the police and the armed forces. It further urges the Government to ensure that the government of Balochistan takes all the necessary measures, including legislative, to guarantee that civil servants are able to form and join organizations of their own choosing freely and to engage in activities for the furtherance and defence of their members' interest. Pending legislative reform, it also urges the Government to take all the necessary measures to ensure that the associations of currently excluded categories of workers can represent the interests of their members in relation to the employer and the authorities. The Committee requests the Government to provide information on the measures taken in this respect.***

Managerial employees. The Committee notes that sections 2 of IRA, BIRA, KPIRA, PIRA and SIRA contain an excessively broad definition of the term "employer", and a correspondingly restrictive

definition of the term "worker" or "workman". The definition of "employer" includes any person responsible for management, supervision, and control of the establishment. In a department of the federal government or the government or local authority, officers and employees who belong to the superior, managerial, secretarial, directorial, supervisory or agency staff shall be deemed to fall within the category of "employers". Pursuant to IRA, PIRA and SIRA (but not KPIRA and BIRA 2022), in any other establishment, every director, manager, secretary, agent or officer or person concerned with the management is considered an employer. The term worker is defined in contrast as a person not falling within the definition of employer, who is employed – including as a supervisor or apprentice – in an establishment or industry for hire or reward.

The Committee further notes that the effect of these definitions on workers' organizations and on trade union rights of managerial staff is crystallized in sections 31(2) of the IRA and 17(2) of its provincial variants, which provide that an employer may require that a person, upon appointment or promotion to a managerial position, shall cease to be and disqualified from being a member or official of a trade union of workmen. BIRA 2022 additionally provides that the employer may impose such a requirement, provided that no promotion is effected against the will of the worker or to prejudice his/her right to trade unionism. The Government indicates in this regard that: (i) BIRA 2022 provides that managerial and administrative staff and staff of occupational groups shall have the right to form an association/organization or to join the association/organization of their own choice; (ii) the managerial employees have all those rights of association that employers have under the laws, namely that they can establish and join associations of their choice without previous authorization and establish and join federations and confederations; and (iii) the employees in managerial capacity have the status of employer as they represent employers at all legal fora, hence they cannot be treated at par with the workers. The Committee notes that the legal provisions referred to above deprive large categories of administrative, agency and managerial staff from their trade union rights as employees, because employers' associations by definition represent employers who are workers' counterparts and cannot become collective bargaining agents, undertake collective bargaining, raise an industrial dispute, give a strike notice, and have access to conciliation and voluntary arbitration proceedings. They also have a negative impact on workers' organizations by significantly reducing the number of their potential members. The Committee recalls that it has always considered that: (i) senior managerial staff may be denied the right to join the same organizations as other workers, provided that they have the right to form their own organizations to defend their interests; and (ii) where managerial staff are denied the right to join the same organizations as other workers, the category of executive and managerial staff should not be so broadly defined as to weaken the organizations of other workers by depriving them of a substantial proportion of their actual or potential membership. The Committee welcomes the change introduced by the adoption of section 3(e) of BIRA 2022, that enables managerial employees to establish their own organizations which are distinct from employers' and workers' organizations. However, it notes with ***concern*** that despite its longstanding requests, this right is not yet guaranteed for them in the federal act and provincial acts other than the BIRA. Regarding the broad terms of the definition of "employer", the Committee notes that they remain unchanged in the industrial relations legislation. ***In view of the above, the Committee urges the Government to ensure that the federal and provincial acts are revised with a view to: (i) enabling senior managerial workers to establish and join organizations that can adequately defend their occupational interests; and (ii) guaranteeing that workers' organizations are not deprived of a substantial proportion of their actual or potential membership as a result of the current legal definitions of "workmen" and "employers". It requests the Government to provide information on the measures taken in this regard.***

Export processing zones (EPZs). For many years, the Committee has been requesting the Government to take the necessary steps to ensure that the workers in EPZs can benefit from the rights enshrined in the Convention. The Committee recalls that these workers were excluded from the scope of industrial relations legislation (Industrial Relations Ordinance, 1969) pursuant to clause 7 of S.R.O

1004(1)/82, dated 10 October 1982. The Committee notes the Government's indication that the Federal Government partially withdrew S.R.O 1004(1)/82, except clause 7, through a notification dated 5 August 2022. The Government indicates that with this notification, eight labour-related laws which were not applicable to EPZs became applicable; however, the only exemption remains the Industrial Relations Ordinance, 1969. The Government adds that the EPZ (Employment and Service Condition) Rules 2009 have been finalized and workers are accordingly given rights guaranteed under the Convention, including the right to strike. Taking due note of the information submitted by the Government, the Committee also notes that no copy of the 2009 Rules is attached to the Government report. Therefore, it cannot examine the extent to which these rules guarantee the rights enshrined in the Convention. ***The Committee requests the Government to submit a copy of the final version of EPZ (Employment and Service Condition) Rules 2009. It also requests the Government to provide information on the exercise of trade union rights in the EPZs, including the trade unions registered and the number of unionized workers, as well as any instances in which trade unions have been refused registration and the reasons therefor.***

Article 2 of the Convention. Right of workers and employers to establish and join organizations of their own choosing. The Committee had previously noted that pursuant to the IRA and its provincial variants, no worker shall be entitled to be a member of more than one trade union at any one time and had requested the Government to revise the relevant legal provisions. It notes that the Government reiterates its previous indications in this regard: (i) as per section 48 of the Factories Act, adult workers shall not be employed to work in any factory on any day on which they have already been working in any other factory; (ii) the restriction of membership in more than one trade union is very restrictive but vital for healthy trade unionism; in the same establishment it would result in overlapping membership of more than one rival trade union which generally have to contest referendums against each other for determination of CBA; (iii) pursuant to a portion of Form-C of the Khyber Pakhtunkhwa Industrial Relations Rules, 1974, while the same person cannot become a member of more than one union in the same establishment/group of establishments/industry to which the trade union relates, this is possible if the establishments are different.

The Committee recalls in this regard that it is not a requirement of the Convention that workers should have the right to join more than one union relating to the same establishment. However, as mentioned in its previous comments, it considers that workers who are engaged in more than one job – in different establishments – should be allowed, to join the corresponding union of their choice, that is more than one union; and in any event workers should be able, if they so wish, to join trade unions at the national and branch level as well as the enterprise level at the same time. Compliance with this principle will not entail overlapping memberships. The Committee notes with ***satisfaction***, that section 3(a) of BIRA 2022 restricts membership in more than one trade union at any one time at the same workplace only, which brings this act in line with the above principle. ***The Committee urges the Government to take the necessary measures to ensure that IRA, KPIRA, PIRA and SIRA are also amended with a view to bringing them into conformity with the above principles. It requests the Government to provide information on the measures taken in this regard.***

Article 3. The right of workers' and employers' organizations to organize their administration and activities and to formulate their programmes. Rights of minority unions. In its previous comments, the Committee had noted that certain rights, in particular to represent workers in any proceedings and to check-off facilities, were granted only to CBAs, that is to say the most representative trade unions. The Committee notes the Government's indication that the check-off system will help minority unions in keeping proper record of subscription of their members. Concerning the provision of other rights of CBA to minority unions, the Government states that it would take away the difference between CBA and other unions but adds nevertheless that section 24(1) of BIRA 2022 provides that a trade union shall be permitted to act as a CBA on behalf of its members. The Committee further notes that section 27(1) of BIRA provides that if a CBA so requests, the employer shall provide check-off facilities to it; section 36(1)

of BIRA concerning individual grievances provides that workers may bring individual grievances to the notice of the employer through their trade union or CBA, but section 36(4) concerning proceedings before the Labour Court refers to the CBA only; and section 37(1) of the BIRA 2022 concerning negotiations relating to collective differences and disputes refers to CBA or trade union where no CBA exists, but section 37(3) concerning notice of strike refers to the CBA only. The Committee notes that it is not clear whether these BIRA provisions referring to CBA, mean the CBA on behalf of the union's own members (section 24(1)), which can be any minority union, or the CBA for the establishment, that is to say the most representative trade union (section 24(2-11)). ***It requests the Government to clarify this matter.*** The Committee ***regrets*** that despite its repeated requests, the Government does not indicate any progress concerning the rights of minority unions. The Committee is therefore bound to reiterate that the distinction between most representative and minority unions should be limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations); however, the distinction should not have the effect of depriving those trade unions that are not recognized as being among the most representative, of the essential means of defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances), of organizing their administration and activities, and formulating their programmes (including giving notice of and declaring a strike), as provided for in the Convention. ***In view of the above, the Committee once again urges the Government to take the necessary measures to ensure that federal and provincial legislation is amended as soon as possible, with a view to guaranteeing full respect for the above-mentioned principles. It requests the Government to provide information on developments in this regard.***

Right of workers' and employers' organizations to draw up their constitutions and freely elect their representatives. Banking sector. In its previous comments, the Committee had noted that section 27-B of the Banking Companies Ordinance of 1962 restricted the possibility of becoming an officer of a bank union only to employees of the bank in question under penalty of up to three years' imprisonment, and had urged the Government to amend the legislation. The Committee recalls that this longstanding issue is also the object of Case No. 2096 before the Committee on Freedom of Association, which was first examined in October 2000. The Committee notes with ***deep regret*** that the Government does not provide any information concerning developments in this regard. It is therefore bound to reiterate that provisions like section 27-B infringe the right of organizations to draw up their constitutions and to freely elect representatives by preventing qualified persons (such as full-time union officers or pensioners) from being elected and by creating a risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office. ***Therefore, the Committee once again urges the Government to take the necessary measures to amend the legislation by making it more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirements a reasonable proportion of the officers of an organization, along the lines of section 8(d) of the IRA. The Committee requests the Government to provide information on any developments in this regard.***

Right of organizations to organize their administration and to formulate their programs. The Registrar's powers of investigation, inspection, and inquiry into the affairs of a trade union. In its previous comments, the Committee had noted that the legislation conferred extensive powers of inspection, inquiry, and investigation "as he/she deems fit" to the Registrar regarding the internal affairs of unions and requested the Government to make legislative amendments to limit these powers. The Government indicates in this regard that: (i) the Registrar inspects the accounts and records of unions to avoid malpractice and ensure transparency. The purpose of inquiry into the unions' affairs is limited to unveiling certain crucial facts and figures; (ii) in the province of Sindh, in certain cases huge funds of the union were spent lavishly either by the outgoing or incoming executive but were not accounted for. The Registrar's power to check the accounts does not mean interference in the affairs of the union but is to

ensure that expenditure was made properly; and (iii) the Government of Khyber Pakhtunkhwa commits that the financial powers of the Registrar under the KPIRA might be minimized. While noting that the Government once again indicates that the purpose of the Registrars' inquiry is limited and their power does not mean interference, the Committee recalls that it considers that the wording of the relevant legislative provisions empowering the Registrar to proceed to inquiry "as he/she deems fit" is excessively broad and not compatible with the principle enshrined in *Article 3* of the Convention. The Committee notes with ***concern*** that the Government does not indicate any progress and furthermore section 15(e) of BIRA 2022 contains no change in this regard. ***It therefore once again requests the Government to ensure that the federal and provincial legislation is amended with a view to explicitly limiting the powers of financial supervision of the Registrar to the obligation of submitting annual financial reports and to verification in cases of serious grounds for believing that the actions of an organization are contrary to its rules or the law or in cases of a complaint or call for an investigation of allegations of embezzlement from a significant number of workers (2012 General Survey on the fundamental Conventions, paragraph 109).***

Right of organizations to freely elect their representatives. Disqualification criteria. In its previous comments the Committee had noted that the IRA and its provincial variants establish excessively broad disqualification criteria for being elected or holding union office and had requested the Government to amend the legislation. The Committee recalls that the following grounds for disqualifications are provided in the legislation: (i) conviction and prison sentence for two years or more, or in an offence involving moral turpitude under the Pakistan Penal Code (PPC), unless a period of five years has elapsed after the completion of the sentence (IRA section 18); (ii) conviction for heinous offence under the PPC (section 7 of the BIRA, KPIRA, PIRA and SIRA); (iii) violation of the National Industrial Relations Commission or Labour Court order to stop a strike (section 44(10) of the IRA, 59(7) BIRA, 60(7) KPIRA, 56(7) PIRA, and 57(7) SIRA; (iv) conviction for embezzlement or misappropriation of funds (7 cum 69 PIRA and 7 cum 70 of the SIRA); and (v) conviction for contravention or failure to comply with the provisions of KPIRA (7 cum 74 KPIRA). The Committee notes the following information provided by the Government in this regard: (i) the grounds for disqualification in IRA are reasonable to protect the interest of discipline and good governance at enterprise level. The offences of theft, embezzlement and moral turpitude seriously damage the relationship of trust and mutual respect between employers and workers as well as such person's ability to represent workers; (ii) the grounds for disqualification under PIRA just cover the crucial minimum requirements as they only extend to a certain specified period; (iii) the Governments of Khyber Pakhtunkhwa and Sindh will discuss the matter in the Provincial Tripartite Consultative Committee; and (iv) the Government of Balochistan has proposed to omit disqualification for embezzlement and misappropriation of funds. The Committee welcomes that in BIRA 2022, disqualification for embezzlement and misappropriation of funds is indeed removed; however disqualification for heinous offence and violation of a court order to stop a strike are maintained. Noting with ***concern*** that the Government does not report any progress concerning this and other disqualification criteria noted herein, the Committee once again emphasizes that legislation which establishes excessively broad ineligibility criteria such as by means of a long list, including acts which have no real connection with the qualities of integrity required for the exercise of trade union office, is incompatible with the Convention. The Committee considers that not every contravention of industrial relations legislation, nor every violation of a judicial order to stop a strike, nor every conviction for the range of offences alluded to necessarily constitute acts of such a nature as to be prejudicial to the performance of trade union duties. ***The Committee therefore once again urges the Government to ensure that the federal and provincial legislation is amended so as to make the grounds for disqualification more restrictive and to provide information on developments in this regard.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1952)

Previous comment

In its previous comment, in relation to the 2020 observations of the International Transport Workers' Federation, the Committee had requested the Government to ensure that pilots can exercise their right to collective bargaining through organizations that genuinely represent their interests, that the freely concluded collective agreements at the national airline company should be binding on the parties and to promote co-operation and dialogue among social partners in the aviation industry. ***Noting with regret that the Government does not provide information on any measures taken in this respect the Committee is therefore bound to reiterate its previous requests.*** The Committee had further requested the Government to respond to the International Trade Union Confederation (ITUC) allegations concerning acts of anti-union discrimination and acts of interference in trade union internal affairs that dated back to 2012 and 2015. The Government indicates in this regard that it is working to provide the right to establish and join organizations to all workers and employers and no anti-union dismissal or act of interference in union's internal affairs could be done by the employers. It further cites the provisions of the Balochistan Industrial Relations Act (BIRA) 2022 concerning the prohibition of anti-union discrimination and acts of interference by the employer. The Committee takes note of this information.

The Committee also notes that the Committee on Freedom of Association referred to it the legislative aspects of Case No. 2096 that relate to the Convention (Report No. 392, October 2020, paragraph 109). These matters are discussed below.

Articles 1-6 of the Convention. Scope of application of the Convention. The Committee notes that the Industrial Relations Act (IRA) 2012, the Khyber-Pakhtunkhwa Industrial Relations Act (KPIRA) 2010, the Punjab Industrial Relations Act (PIRA) 2010 and the Sindh Industrial Relations Act (SIRA) 2013, exclude numerous categories of workers (enumerated by the Committee in its 2022 comments on the application of Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)) from their scopes of application. The Government indicates in this regard that it is its obligation to extend the right to freedom of association to all sectors of the economy, formal and informal and further refers to the adoption of BIRA 2022, which scope of application covers "all workers and employers at all workplaces"(section 1(4)), with the exception of "the Police, Levies or any of the Defence Services of Pakistan or any services or installations exclusively connected with or incidental to armed forces of Pakistan and essential services"(section 1(5)). The Committee notes with ***interest*** the legislative change in Balochistan, which has the effect of bringing many previously excluded categories of workers within the scope of the BIRA, allowing them to enjoy their rights under the Convention. It notes however, that the BIRA still excludes "any service or installation" connected to the armed forces, as well as "essential services"; and recalls in this regard that civilian personnel in the armed forces as well as workers in essential services should enjoy the rights and guarantees enshrined in the Convention. ***In view of the foregoing, while welcoming the legislative change in Balochistan, the Committee once again urges the Government to ensure that the federal and provincial governments take the necessary measures to amend the legislation so as to ensure that all workers, with the only possible exception of the police, the armed forces and the public servants engaged in the administration of the State benefit from the rights and guarantees enshrined in the Convention. It requests the Government to provide information with respect to measures taken in this regard.***

Export processing zones (EPZs). The Committee recalls that since the adoption by the federal Government of S.R.O 1004(1)/1982 dated 10 October 1982 relating to exemption of EPZs from various labour laws, the EPZs were exempted from the application of industrial relations legislation (clause 7 of the S.R.O, referring to the applicable law at the time, namely the Industrial Relation Ordinance of 1969).

For many years, the Government kept reiterating that it was working on Export Processing Zones (Employment and Service Conditions) Rules, 2009, which would guarantee the right of EPZ workers to organize. The Government indicates in this regard that it has "partially" withdrawn S.R.O 1004(1)/1982 "except clause 7" through a notification dated 5 August 2021 and that now the only exemption to the application of labour laws in the EPZs is the Industrial Relations Ordinance. It adds that the 2009 Rules have been finalized and the workers in EPZs can enjoy the rights guaranteed under the Convention accordingly. The Committee notes however, that the Government does not provide a copy of the final version of 2009 Rules and therefore it is not in the position to evaluate whether and to what extent these Rules guarantee the rights enshrined in the Convention. ***In view of the foregoing, the Committee requests the Government to provide a copy of the final version of the Export Processing Zones (Employment and Service Conditions) Rules, 2009. It firmly hopes that the rights of EPZ workers under the convention, especially their right to collective bargaining, is duly guaranteed in law and in practice and requests the Government to provide information concerning any collective bargaining taking place in the EPZs and any collective agreements concluded there, including the names of the parties and the number of workers covered.***

Article 1 of the Convention. Protection against acts of anti-union discrimination. Banking sector. For the past 20 years, the Committee has repeatedly urged the Government to repeal section 27-B of the Banking Companies Ordinance, 1962, which imposes penal sanctions (up to 3 years imprisonment and/or fines) for the exercise of trade union activities during office hours. The Government indicates in this regard that after the promulgation of IRA 2012, almost all trade unions in banking sector are regulated under the federal law because of their trans-provincial character and despite section 27-B, unions in the banks are registered with the National Industrial Relations Commission (NIRC) and are properly working. It provides a list of unions in the banks all over the country. More precisely regarding section 27-B itself, the Government once again indicates that the Ministry is vigorously pursuing the matter with the concerned quarters for its removal. The Committee notes with ***deep concern*** that no progress is reported concerning the repealing of section 27-B, which punishes trade unionists for legitimate union activities and so constitutes a serious infringement of *Article 1* of the Convention. ***The Committee therefore urges the Government once again to repeal section 27-B of the Banking Companies Ordinance, 1962, to enable workers in the banking sector to exercise trade union activities in conformity with Article 1 of the Convention.***

Article 4 of the Convention. Collective bargaining. The Committee notes that pursuant to section 19 of the IRA and section 24(1) of the KPIRA, PIRA and SIRA, if a trade union is the only one in the establishment or group of establishments (or industry in the KPIRA, PIRA and SIRA) but it does not have at least one third of the employees as its members, no collective bargaining is possible at the given establishment or industry. In its previous comments, it had considered that these rules constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. The Government indicates in this regard that section 24(1) of BIRA 2022 has incorporated the recommendation of the Committee and reads "A trade union shall be permitted to act as a collective bargaining agent on behalf of its members". It adds that the other laws would be amended accordingly in consultation with the social partners. ***While noting with interest the change introduced in BIRA, and welcoming the Government's expression of intent to amend other federal and provincial laws likewise, the Committee expresses the firm hope that the legislation will be soon amended, with a view to ensuring that when there is no union representing the required percentage to be designated as the collective bargaining agent, collective bargaining rights are granted to the existing unions, jointly or separately, at least on behalf of their own members.***

The Committee notes that the provisions on the determination of collective bargaining units give competence in this regard to the NIRC (section 62 of the IRA), the Labour Appellate Tribunal (section 25 of the KPIRA and PIRA) or the Registrar (section 25 of the BIRA and SIRA) and that previously certified unions can lose their status of collective bargaining agents as a result of a decision in which the parties

played no part. The Committee notes with ***concern*** that BIRA 2022 reproduces this provision, and ***regrets*** that the Government does not report any measures taken to revise the law in this respect. ***The Committee therefore requests the Government to ensure that the necessary measures are taken by the federal and provincial governments to amend the legislation so that the social partners can participate in the determination or modification of the collective bargaining unit.***

In its previous comments, the Committee had requested the Government to ensure that both federal and provincial governments guarantee that the existence of elected workers' representatives directly elected to work councils is not used to undermine the position of the trade unions concerned or their representatives and to submit a copy of the Rules providing the notice and procedure for the election of workers' representatives to work councils. The Committee notes with ***regret*** that the Government has not provided any information in this respect. ***It is therefore bound to reiterate its request.***

Collective bargaining in practice. The Committee notes with ***deep regret***, that the Government has not responded to its repeated requests to provide information on the number of collective agreements concluded and in force, the sectors concerned, and the number of workers covered, as well as on any measures taken to promote collective bargaining. ***The Committee expresses the firm hope that the Government will communicate the requested information in its next report.***

Panama

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)

Previous comment

The Committee notes the observations of the National Confederation of United Independent Unions (CONUSI) received on 31 August 2022 relating to issues addressed in this comment. The Committee notes that the CONUSI's allegations with regard to compulsory arbitration and the exercise of the right to strike in the air transport sector are being examined by the Committee on Freedom of Association (Case No. 3319). The Committee notes the observations of the National Council of Organized Workers (CONATO), received on 6 September 2022, alleging the intervention of the civil authorities in the decisions of trade union organizations with regard to their administration and obstacles on the part of the Government to the establishment and granting of legal personality to trade union organizations in various sectors. The Committee notes the Government's reply, received on 6 December 2022, to the CONUSI and the CONATO observations and will examine it in the context of the next examination of the application of the Convention.

Tripartite committees. The Committee notes the information provided by the Government with regard to the functioning of the committees which form part of the Panama tripartite agreement of 2012 and benefit from ILO technical support; the Implementation Committee and the Committee for the Rapid Handling of Complaints relating to Freedom of Association and Collective Bargaining. The Committee notes the Government's comments that during the COVID-19 pandemic, such tripartite committees were used to discuss the various measures to be implemented in order to address the social and labour problems arising from the pandemic with the social partners. In this respect, the Government highlights the establishment of the tripartite dialogue forum on the economy and labour development in Panama (Decision No. 150 of 27 April 2020), which was established in May 2020 and functioned for one month with ILO technical support. The Committee notes the Government's indication with regard to the adoption of 23 consensus agreements to preserve jobs, businesses and the economic recovery. On the other hand, the Committee notes that the CONUSI alleges that no effective consensus was reached on the measures adopted at the tripartite dialogue forum of May 2020. The Committee ***regrets*** the Government's indication that as of April 2020, the work of the tripartite committees was

suspended by the pandemic and that it had not been possible to resume this work despite the attempts of the Ministry of Labour and Labour Development (MINTRADEL), because the required quorum was not reached due to the repeated absence of the CONATO. In this respect, the Committee notes that the CONATO and CONUSI have joint representation on the tripartite committees, as confirmed by the Government Procurator under section 1066 of the Labour Code, and that MINTRADEL will follow the Procurator's guidance. The Committee notes that the CONUSI states that inter-union conflicts have been engendered by the Government's policies, which have favoured trade unions other than CONUSI. The Committee recalls the potential of the two committees to play a fundamental role in achieving the implementation of the Convention. ***The Committee urges the Government, in consultation with the social partners and with the ongoing technical support of the Office, to take the necessary steps to review the applicable policies relating to representation of the different trade union organizations on the tripartite committees with a view to restarting their work in the near future and, the Committee reiterates its invitation to the various State authorities to take due account of the tripartite committees' decisions. The Committee requests the Government to provide information in this respect.***

The Committee notes the Government's indication concerning follow-up to the Memorandum of Understanding signed in 2016, relating to the Panama tripartite agreement of 2012, which establishes a timetable of activities including the establishment of a national tripartite body (Higher Labour Council), which should have been established in 2016 but which, with ongoing ILO technical support, is the topic of a bill scheduled for discussion at the July 2022 Session of the National Assembly. ***The Committee requests the Government to provide information on progress made in the establishment of this tripartite body.***

Legislative matters. The Committee recalls that for many years it has been commenting on the following matters which raise problems of conformity with the Convention:

Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations:

- the requirement that there may not be more than one association in a public institution, and that associations may have provincial or regional chapters, but not more than one chapter per province, under the terms of sections 179 and 182 of the Single Text of Act No. 9, as amended by Act No. 43 of 31 July 2009;
- the requirement of too large a membership (ten) for the establishment of an employers' organization and an even larger membership (40) for the establishment of a workers' organization at the enterprise level, under the terms of section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code), and the requirement of a high number of members (40) to establish an organization of public servants under section 182 of the Single Text of Act No. 9 (which, as indicated by the Government, has been declared unconstitutional by the Supreme Court, in a ruling of 30 December 2015); and
- the denial to public servants (non-career public servants, as well as those holding appointments governed by the Constitution and those who are elected and serving) of the right to establish unions.

Article 3. Right of organizations to elect their representatives in full freedom:

- the requirement to be of Panamanian nationality in accordance with the Constitution in order to serve on the executive board of a trade union.

Right of organizations to organize their activities and to formulate their programmes in full freedom:

- legislation interfering with the activities of employers' and workers' organizations (sections 452(2), 493(4) and 494 of the Labour Code); the obligation for non-members to pay a solidarity contribution in recognition of the benefits derived from collective bargaining (section 405 of the Labour Code); and the automatic intervention of the police in the event of a strike (section 493(1) of the Labour Code); and
- the prohibition on federations and confederations from calling strikes, the prohibition on strikes against the Government's economic and social policies and on strikes not related to an enterprise collective agreement; the authority of the Regional or General Labour Directorate to refer labour

disputes to compulsory arbitration in private transport enterprises (sections 452 and 486 of the Labour Code); and the obligation to provide minimum services with 50 per cent of the staff in the transport sector, as well as the penalty of summary dismissal of public servants for failure to maintain minimum services (sections 155 and 192 of the Single Text of 29 August 2008, as amended by Act No. 43 of 31 July 2009).

The Committee notes the information provided by the Government that it has not been possible to reform the constitutional provision on the requirement to be of Panamanian nationality in order to serve on an executive board due to the political situation in the country and the fact that the Constitution is rigid, although the Government emphasizes its interest in eliminating this constitutional provision. ***The Committee requests the Government to provide information on the measures envisaged or taken to amend this provision in the Constitution and to ensure that it is in conformity with the Convention.***

With regard to the aforementioned provisions relating to the public sector, the Committee notes with ***concern*** that, according to the information provided by the Government, it has not been possible to make progress in the National Assembly with regard to the Bill on collective labour relations in the public sector due to the opposition of some organizations, and that a new bill must be drafted and submitted for discussion. The Committee recalls that in its previous comment it had welcomed the Bill with interest and had noted the Government's representation that the Bill was based on tripartite agreement. With regard to the pending legislative matters relating to the private sector, the Committee notes the Government's indication that progress has been limited due to the existing conflict in the Implementation Committee with respect to trade union representation. The Committee also notes the Government's confidence that once the Higher Labour Council has been established and is operational, more favourable conditions in which to make progress with the adoption of the legislation and the necessary reforms will be created such that the pending legislative matters will be resolved. The Committee also notes that the Committee on Freedom of Association expressed confidence that the Government would adopt legislation to regulate the establishment, registration and functioning of public sector trade unions at the earliest opportunity in accordance with the principles of freedom of association and collective bargaining (389th Report, June 2019, Case No. 3317, paragraph 527). ***The Committee urges the Government, without delay and in consultation with the social partners, to take the necessary steps to bring its legislation on collective labour relations in the public sector, as well as those outstanding legislative matters relating to the private sector into conformity with the Convention. The Committee requests the Government to provide information on the progress achieved in this respect and reminds the Government that it may avail itself of the technical assistance of the Office.***

Application of the Convention in practice. Granting of legal personality by the administrative authority. With regard to the normalization of granting legal personality to trade unions, the Committee notes that the Government highlights that during the period from March 2014 to March 2022, MINTRADEL granted legal personality to 16 public servants' unions and 72 trade unions in the private sector. The foregoing stands in contrast with the period from July 2009 to June 2014, during which the legal personality of only 9 private sector trade unions was approved. The Committee notes the Government's indication that from May 2018 to May 2022, 22 applications for legal personality were denied due to the fact that, in general terms, they were not in accordance with the relevant legal provisions, and that three applications remained to be approved. The Government indicates that in 2022, no applications for legal personality in the public sector were denied. The Committee notes that the three applications pending approval were submitted between April, May and June 2021. The Committee recalls that under *Article 7* of the Convention, the recognition of legal personality cannot be denied to organizations that comply with the requirements established by the legislation. ***While taking due note of the overall increase in the number of legal personalities granted, the Committee requests the Government to ensure that the normalization of the process of granting legal personality applies fully to public sector as well as private sector organizations. Observing that the period of time required***

for decisions on the granting of legal personality is excessive in some cases, the Committee requests the Government to take the necessary steps to expedite these procedures and to provide information in this respect.

Compensatory guarantees. The Committee notes the Government's reply to the observations of the CONUSI and the International Transport Workers' Federation (ITF) of 2017 and 2018, with respect to the effectiveness of dispute settlement procedures, particularly as compensatory guarantees, in the Panama Canal. The Government indicates that the CONUSI and the ITF lack representativeness in the Panama Canal labour regime, since they are not trade union organizations or bargaining units recognized by the Labour Relations Board of the Panama Canal Authority, and that the Committee on Freedom of Association (Case No. 3106) examined this matter and closed the case. The Committee notes the CONUSI's indication in its observations that it is a confederation to which several trade unions representing workers in the Panama Canal belong, together with the ITF. The Committee recalls that workers deprived of the right to strike should, in practice, be afforded impartial and rapid compensatory guarantees, such as conciliation and mediation procedures leading, in the event of deadlock in negotiations, to an arbitration mechanism seen to be reliable by the parties concerned. The Committee also recalls that the Committee on Freedom of Association closed Case No. 3106 in 2018, trusting that the Government would continue to follow up the issues raised with the unions concerned to consider any relevant improvements (387th Report, October 2018, Case No. 3106, paragraph 47). ***Noting that the Government does not provide further details with regard to the effectiveness of the dispute settlement procedures established as compensatory guarantees in the Panama Canal, the Committee requests the Government to provide detailed information in this respect including the number of procedures initiated and resolved and their duration.***

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

Previous comment

The Committee notes the observations of the National Confederation of United Independent Unions (CONUSI) received on 31 August 2022, containing allegations of violations of freedom of association and collective bargaining, including non-compliance with the collective agreement signed by the Ships' Deck Officers and Pilots (UCOC) and the Panama Canal Administration, and anti-union practices, bad faith in collective bargaining, interference and persecution of trade union leaders and trade union members in enterprises in the electricity industry, in the public sector and other sectors, as well as other issues examined in this comment. The Committee also notes the observations of the National Council of Organized Workers (CONATO) received on 6 September 2022 containing allegations of obstacles to freedom of association and collective bargaining, including the prolongation of collective bargaining processes and the adoption of unilateral measures by the Government since the beginning of the COVID-19 pandemic. The Committee takes note of the Government's reply to the observations of the CONUSI and the CONATO, received on 6 December 2022, which it will take into consideration at its next examination of the application of the Convention in Panama.

The Committee notes the Government's comments and the detailed observations of CONUSI with respect to Cases Nos 3317, 3319 and 3377 which are pending before the Committee on Freedom of Association, and Case No. 3328 which was examined and closed by the Committee on Freedom of Association.

Tripartite committees. The Committee notes the Government's information regarding the functioning of the committees which form part of the Panama tripartite agreement of 2012, and which benefit from the technical assistance of the ILO: the Compliance Committee and the Committee for the Rapid Handling of Complaints relating to Freedom of Association and Collective Bargaining (the

Complaints Committee). The Committee notes the Government's comments that: (i) due to the COVID-19 pandemic, the committees' functioning has been suspended since March 2020; and (ii) due to the lack of a statutory quorum, it has not been possible to reactivate the functioning of the tripartite committees even though the Ministry of Labour and Labour Development has called meetings. In its examination of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee noted the reasons cited by the Government for the challenges to reactivating the functioning of the tripartite committees, including a dispute among trade unions. In addition, the Committee notes the observations of CONUSI, which alleges that such disputes have been generated by governmental policies that have been more favourable to other trade union organizations. ***Recalling the fundamental role that the two committees have played and should be able to continue to play in strengthening collective labour relations and achieving full application of the Convention, the Committee urges the Government to, in consultation with the social partners and with the continued technical support of the Office, take the necessary steps to review the policies applicable to the representation of the various trade union organizations on the tripartite committees with a view to reactivating their functioning in the near future. It also reiterates its invitation to the various state authorities to take duly into account the decisions of the committees in question. The Committee requests the Government to provide information in this respect.***

Article 1 of the Convention. Adequate protection against anti-union discrimination. The Committee recalls that in its previous comments it noted that a number of trade union leaders in the public sector whose reinstatement had been recommended by the Complaints Committee had yet to be reinstated. The Committee notes the Government's indication that of the 45 cases before the Complaints Committee concerning the reinstatement of trade union leaders: (i) five of them have been closed further to reinstatements and payment for lost wages; and (ii) in the remaining cases, some workers have already been reinstated or reassigned but there have been no payments for lost wages, with the exception of the workers of the Panama Fire Brigade. The Committee notes the Government's indication that: (i) the payment of lost wages is the subject of legal debate within the Government; (ii) various institutions have not provided information or have refused to follow up on the recommendations of the Complaints Committee; (iii) in some cases, the bodies are waiting for information from trade union organizations; and (iv) further progress is expected once the Higher Labour Council is established. In this respect, the Committee notes the Government's information with regard to Convention No. 87 that there are plans for the discussion in the National Assembly of a Bill on the establishment of this Council as of July 2022. ***The Committee once again requests the Government to take the necessary measures to ensure that all the trade union leaders referred to in Agreement No. 4 of the Complaints Committee are reinstated in their jobs as soon as possible and that the reinstatement complies with the terms of the Agreement.***

Articles 4 and 6. Right to collective bargaining. Pending legislative issues. The Committee was expecting the adoption, as soon as possible, of the preliminary Bill regulating collective labour relations in the public sector, harmonizing national legislation with the Convention and addressing the following pending legislative issues:

- the payment of wages for strike days attributable to the employer to be a matter for collective bargaining and not imposed by law (section 514 of the Labour Code);
- the requirement for the number of representatives of the parties in negotiation to be between two and five (section 427 of the Labour Code);
- the regulation of mechanisms for the settlement of legal disputes, and the possibility for employers to submit lists of demands and initiate a conciliation procedure; and
- the guarantee of the right to collective bargaining for public employees and public servants who are not engaged in the administration of the State.

The Committee notes with ***regret*** the information provided by the Government that it was not possible to advance in the National Assembly with the Bill on collective labour relations in the public sector owing to the political agenda of groups of legislators and the opposition of some trade union organizations, which had already been part of the consensus on the Bill, thereby making it necessary to resubmit a Bill for consideration by the National Assembly. In addition, the Committee welcomes the Government's information relating to the conclusion of the first collective agreement in the public sector (excluding those of the Panama Canal Authority) in June 2019 between the University of Panama and the National Union of Workers of the University of Panama (SINTUP), even though the legislative measures on this matter have not yet been adopted. The Committee notes that the Government trusts that once the Higher Labour Council is established and operational, more favourable conditions will be created to move forward with the adoption of necessary reforms and legislation in order to resolve the pending legislative issues. ***The Committee urges the Government to, without delay and in consultation with the social partners, take measures to harmonize the legislation with the Convention, including the adoption of legislation on collective labour relations in the public sector and the pending legislative issues relating to the Labour Code. The Committee requests the Government to provide information on the progress made in this respect and reminds it that it may avail itself of the technical assistance of the Office.***

Application of the Convention in practice. Collective bargaining in the maritime sector. The Committee previously requested the Government to report on the number of collective agreements concluded in the maritime sector. The Committee notes the Government's information that the collective agreements in question fall within the activity of "transport, storage and postage", in line with the corresponding statistical classification. The Committee notes that 280 collective agreements were concluded from March 2018 to 2022, covering a total of 180,532 workers in that period. The Committee notes that of the agreements mentioned, 33 relate to the activity of "transport, storage and postage", but that it is not possible to identify the ones that relate specifically to the maritime sector. ***In the light of the foregoing, the Committee requests the Government to continue to provide statistical information relating to the number of collective agreements concluded in the country, including the sectors of activity and the number of workers covered, and identifying those that relate specifically to the maritime sector.***

Papua New Guinea

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

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Legislative matters. In its previous comments, the Committee had noted the Government's indication that the new Industrial Relations Bill (IRB 2014) was undergoing a vetting process at the Government Executive Committee and the Central Agency and Consultative Council to harmonize it with other relevant legislation and that the revised Bill should be presented to Cabinet before November 2016 or early 2017 and consultations on the matter should be held in the national Tripartite Consultative Council. ***Noting that the last information sent by the Government through an anticipated report dates back to 5 January 2017 and that its 2018 report was not received, the Committee hopes that the Government will provide in its next report information on the outcome of these consultations and whether the IRB 2014 has been enacted.***

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee had previously requested the Government to provide information on the measures taken to ensure effective implementation of the prohibition of anti-union discrimination in practice and to provide statistics on the number of anti-union discrimination complaints brought before the competent authorities, their follow-up,

sanctions and remedies imposed. ***Noting that the Government did not provide specific information in this regard, the Committee reiterates its previous request.***

Article 4. Promotion of collective bargaining. Power of the Minister to assess collective agreements on the grounds of public interest. The Committee had previously requested the Government to take the necessary measures to bring section 50 of the Industrial Relations Bill (2011) into conformity with the principle that the approval of a collective agreement may only be refused if it has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. While observing once again that the Government does not provide a copy of the Bill, the Committee takes note of the Government's indication that section 50 of the IRB 2014 has been amended and that under the revised version the Attorney General is not entitled to appeal against the making of an award on the grounds of public interest.

Compulsory arbitration in cases where conciliation between the parties has failed. While recalling that it had noted the conformity of section 78 of the IRB 2014, as described by the Government, with the Convention, the Committee notes that the Government has still not clarified the content of section 79 of the IRB 2014. ***The Committee trusts once again that the Government, taking into account the Committee's comments, will ensure the full conformity of any revised legislation with the Convention. In this regard, the Committee encourages the Government to avail itself of the technical assistance of the Office, if it so wishes and requests it to provide detailed information on the process of revision of the Industrial Relations Bill.***

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

Paraguay

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

Previous comment

The Committee notes the observations of the Central Confederation of Workers – Authentic (CUT–A) received on 30 August 2022, which refer to matters examined in the present comment, and which mention that the Government report does not reflect a tripartite approach due to its very late receipt by the CUT–A. The Committee also notes the observations of the International Trade Union Confederation (ITUC) alleging violations of freedom of association and collective bargaining in various sectors, including the health and public sectors, received on 1 September 2022. The Committee observes that the Government has not responded to the observations of the ITUC from 2010 and 2015, in connection with the arrest of trade unionists, dismissals, anti-trade union transfers and the refusal of the Government to register certain trade union organizations. ***The Committee requests the Government to provide its comments in respect of the above-mentioned allegations and observations.***

Articles 2 and 3 of the Convention. Pending legislative issues. The Committee recalls that for many years it has been highlighting the inconsistency of certain provisions of the Labour Code with the Convention, specifically in respect of:

- the requirement of an unduly large number of workers (300) to establish a branch trade union (section 292);
- the prohibition on joining more than one union, whether at the level of the enterprise or industry, occupation or trade, or institution (section 293(c));
- the imposition of unduly demanding conditions of eligibility for office on the executive committee of a trade union (section 293(d) and 298(a));
- the requirement for trade unions to respond to all requests from the labour authorities for consultations or reports (sections 290(f) and 304(c));

– the obligation to provide a minimum service in the event of a strike in public services that are essential to the community without any requirement to consult the employers' and workers' organizations concerned (section 362); and
– the requirement that, for a strike to be called, its sole purpose must be directly and exclusively linked to the workers' occupational interests (sections 358 and 376(a)).

The Committee recalls that in its previous observation, it noted the Government's indication that it had requested ILO technical assistance and was recruiting an expert to formulate a draft bill to bring the Labour Code into line with ratified Conventions relating to freedom of association. The Committee ***regrets*** to note the Government's indication that no such bill has yet been drafted. The Committee also notes, from the observations of the CUT–A, that no progress has been made in respect of the measures adopted by the Government regarding pending legislative questions. ***The Committee urges the Government, in consultation with the social partners, to take the necessary measures to align the Labour Code with the Convention. The Committee requests the Government to report on progress made in this respect and recalls that the Government may avail itself of ILO technical assistance.***

The Committee recalls that the application of the percentages established in section 292 of the Labour Code could result in a requirement of up to 100 workers to establish a trade union in institutions of up to 500 employees and a requirement of an even higher number of members for public institutions with a large number of workers. The Committee notes the information provided by the Government that there are trade unions in all public institutions, some with one and others with more than ten unions. It also notes the Government's indication that it considers it better to maintain section 292 as it stands, in order to avoid trade union fragmentation. The Committee further notes the observations of the CUT–A, indicating the absence of consultations between the Government and the social partners on this subject. The Committee recalls that mechanisms exist to avoid trade union fragmentation and, at the same time, to safeguard the right of workers to establish organizations of their own choosing. ***In light of the above, the Committee once again requests the Government to hold consultations with the social partners with a view to ensuring that section 292 of the Labour Code does not, in effect, undermine the right of workers in the public sector to establish organizations of their choosing. The Committee requests the Government to provide information in this respect.***

The Committee welcomes the Government's indication that a technical legal team has been appointed in the Ministry of Education and Sciences to work on a proposal to amend section 38 of the Teachers' Statute, which establishes that teachers must have been registered for five years in order to qualify for trade union leave, to bring the provision into compliance with *Article 3* of the Convention. ***The Committee expects that these amendments will be completed without delay, in consultation with the social partners. The Committee requests the Government to communicate information on all progress achieved in this respect.***

Compulsory arbitration. The Committee recalls that in its previous comments it noted that sections 284 and 320 of the Code of Labour Procedure regarding referral of collective disputes to compulsory arbitration are not applied in practice, since they have been tacitly repealed by section 97 of the Constitution of the Republic of Paraguay, which establishes that arbitration shall be optional. ***Observing that the Government reports no specific progress on this subject, the Committee once again requests, in the light of the provisions of the Constitution of Paraguay and in order to avoid all possible ambiguity in interpretation, that the Government take the necessary measures to amend or repeal expressly the above-mentioned provisions of the Code of Labour Procedure.***

Registration in practice of trade unions and their executive committees. The Committee notes the Government's reply to the CUT-A observations of 2018 to the effect that the executive committee of the ESSAP – SITUE United Workers' Union was registered on 3 August 2020. The Committee notes the information provided by the Government on the number of workers affiliated to trade unions in the 2018-2020 period, in the public sector (110,881) and in the private sector (36,388). The Committee also

notes the information disaggregated by sex of members holding positions on the executive committees of trade unions from 2018 to date by sector, public (5,774 men and 2,907 women) and private (5,338 men and 1,060 women). The Committee further notes that the application of the new online registration system for trade unions did not function as foreseen, since the trade unions opted for the in-person system. The Committee notes from the statistical data provided by the Government that from 2018 to 2022, a total of 16 trade unions were provisionally registered and 107 trade unions registered their executive committees. The Committee takes due note of the measures adopted and information provided by the Government.

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

Previous comment

The Committee notes the observations of the Central Confederation of Workers Authentic (CUT-A) received on 30 August 2022, which refer to matters considered in the present comment. The Committee also notes the observations of the International Trade Union Confederation (ITUC) alleging anti-trade union dismissals, including that of the Chairperson of the National Union of Doctors and in the education sector, as well as other restrictions to freedom of association and collective bargaining in the health and public sector, received on 1 September 2022. ***The Committee requests the Government to provide its comments in this respect.***

The Committee also takes note of the information provided by the Government on the adoption of measures to address the COVID-19 pandemic, such as a rapid resolution system for labour disputes, including mediation hearings by telephone and digital means.

Articles 1 to 3 of the Convention. Pending legislative matters. The Committee recalls that, since the adoption of Act No. 213 of 1993 establishing the Labour Code, it has been highlighting the lack of compliance of various provisions of the Labour Code with the Convention. The specific issues are: (i) the absence of legal provisions affording protection to workers who are not trade union leaders against all acts of anti-union discrimination; (ii) the absence of adequate and sufficiently dissuasive penalties for non-observance of the provisions relating to the employment stability of trade union officers and mutual interference between workers' and employers' organizations; and (iii) the delays in the application of justice in relation to acts of anti-union discrimination and interference. The Committee notes with ***regret*** the Government's indication that to date no preliminary draft has yet been formulated bringing the Labour Code into conformity with the ratified Conventions on freedom of association. In this regard, the Committee notes the observations of the CUT-A indicating the absence of information regarding measures adopted by the Government to address pending legislative matters. ***Observing that the Government provides no information on any specific progress regarding measures taken to bring the Labour Code into conformity with the Convention and recalling that it has been requesting legislative reform since 1994, the Committee urges the Government, in consultation with the social partners, to take the necessary measures to ensure full conformity of the legislation and national practice with the requirements of Articles 1 to 3 of the Convention. The Committee requests the Government to keep it informed of progress made in this regard and recalls that the Government can avail itself of the technical assistance of the Office in this regard.***

Articles 1 and 6. Public servants not engaged in the administration of the State. The Committee recalls that it has been requesting the Government to take the necessary measures to guarantee adequate legislative protection against acts of anti-union discrimination for public servants and public employees covered by the Convention since 2004. The Committee notes the Government's indication that the Constitution protects all public servants from trade-union discrimination (sections 88 and 102). Equally, section 49 of Act No. 1626/2000 provides that public servants may file administrative appeals and take legal proceedings in defence of the right, without any discrimination, to equality of opportunity and

treatment in their position. The Committee also notes the adoption of Act No. 6715/2021 on administrative procedures, in force since September 2022 which: (i) regulates the procedures for administrative appeals and the procedure for sanctions; (ii) applies to all State bodies and entities with administrative functions; and (iii) includes among its objectives the respect for fundamental rights. The Committee observes that, although the administrative appeals filed by public official in defence of their rights, such as the summary administrative procedures to be followed for the dismissal of a public official protected by trade union employment stability (section 63 of Act No. 1626/2000), guarantee the rights of the public official in conformity with Act No. 6715/2021, the legal system, apart from the Constitution, does not specifically include protection against acts of anti-union discrimination for all workers in the public sector covered by the Convention, and does not provide sufficiently dissuasive penalties should those acts occur.

The Committee also notes the approval, through the adoption of Decision No. 516/2020, of the second Plan for Equality, Inclusion and Elimination of Discrimination, valid until 2024, which establishes mechanisms to address and penalise acts of discrimination occurring under the responsibility of the public institutions. The Committee further notes that the Secretariat of the Public Service (SFP) adopted the Protocol for action against workplace violence with a gender perspective (Decision SFP No. 387/2018 of 8 June 2018), which aims to prevent, provide guidance and resolve cases of workplace violence, including discrimination, in public institutions. The Committee observes that both the Plan and the Protocol define discrimination in a broad manner, without however referring explicitly to trade union affiliation or activities as a prohibited motive of discrimination. The Committee notes that the Protocol establishes different bodies, including a Standing Commission for Investigation (CPI), which is mandated to issue recommendations to the SFP and to take preventive action. The Committee observes that although the CPI may issue recommendations, including in respect of applicable penalties (verbal warnings, mandatory trainings, summary administrative procedures against the person responsible), those penalties are not sufficiently dissuasive, and could in practice fail to provide adequate protection against acts of anti-union discrimination.

The Committee also recalls that in its previous comment it requested the Government to supply information regarding the complaints of acts of anti-union discrimination made to the Transparency and Anti-Corruption Directorate under the action protocol and assistance guidelines for cases of labour discrimination and harassment in the public service (SFP Decision No. 415/16 of 30 May 2016). The Committee notes the observations of the CUT-A indicating the absence of measures adopted by the Government in respect of the Committee's earlier comments.

In light of the above, the Committee requests the Government to provide detailed information on the application of the Protocol for action against workplace violence with a gender perspective and the Plan for Equality, Inclusion and the Elimination of Discrimination with regard to the complaints concerning acts of anti-union discrimination against public servants and officials covered by the Convention, including the number of investigations undertaken and the penalties issued, as well as on other measures adopted in this respect. Observing that the Government provides no information in this connection, the Committee once again requests the Government to provide information regarding the complaints concerning acts of anti-union discrimination made to the Transparency and Anti-Corruption Directorate.

Observing with concern that the legislation applicable to public employees still fails to explicitly prohibit the acts of anti-trade union discrimination included in the Convention and that it has not received detailed information on the effectiveness of the multiple existing general mechanisms, the Committee urges the Government to take the necessary measures, in consultation with the social partners, to adopt legislative provisions that expressly prohibit anti-union discrimination in the public sector and establish mechanisms that guarantee all public sector workers covered by the Convention effective protection against acts of anti-union discrimination, including accessible, rapid and impartial

proceedings and sufficiently dissuasive remedies, and penalties. The Committee requests the Government to provide information in this respect.

Article 4. Promotion of collective bargaining in practice. Further to its previous comments, the Committee notes the Government's indication that the Ministry of Labour, Employment and Social Security (MTESS): (i) in 2021, through the Citizens' Channel (Canal Ciudadano), provided interactive training on collective bargaining; and (ii) launched an electronic procedure to facilitate the approval and registration of collective agreements. The Committee observes that four meetings of the Tripartite Consultative Council (CCT) were held, respectively in 2018, 2019, 2020 and 2021, noting in general terms that the 2018 meeting dealt with social dialogue and freedom of association. The Committee notes the statistics provided regarding the number of collective agreements registered in various sectors: six in 2017; three in 2018; eighteen in 2019; four in 2020; and four in 2022. ***The Committee invites the Government to continue to provide information on the activities of the CCT, in particular on the measures that are adopted, or are subject to dialogue, to encourage and promote collective bargaining. Observing on the one hand, that the statistics provided by the Government show a limited number of collective agreements negotiated, and on the other hand, that no details are included on how many agreements are in force, or the number of workers covered by agreements, the Committee requests the Government to continue providing information in this respect, specifying the sectors and the number of workers covered by collective agreements. Finally, the Committee requests the Government to continue providing information regarding the measures adopted in conformity with Article 4 of the Convention, to promote collective bargaining at all levels.***

Peru

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), Autonomous Workers' Confederation of Peru (CATP), Coordination of Trade Union Confederations of Peru (which groups together the General Confederation of Workers of Peru, the Single Confederation of Workers of Peru, the CATP and the Confederation of Workers of Peru) received on 1 September 2022, which relate to matters examined by the Committee in the present comment, as well as allegations of anti-union persecution against trade union leaders and members. The Committee further notes the observations of the National Confederation of Private Business Institutions (CONFIEP), received on 1 September 2022 and relating to matters examined by the Committee in the present comment. The Committee notes the Government's response to all the observations received. The Committee notes the Government's response to the observations of the ITUC of 2017 and the CATP of 2018.

Legislative developments. The Committee notes that Presidential Decree No. 014-2022-TR, published on 24 July 2022, amends the Regulations of the Collective Labour Relations Act (LRTC) and observes, among other aspects, that the Decree:

- explicitly recognizes the right of workers to the direct membership of federations and confederations (section 4);
- explicitly recognizes the right to establish unions of "enterprise groups" and "production chains or subcontracting networks" (section 4);
- facilitates the collection of trade union contributions by federations and confederations by only requiring the accreditation of the respective membership, which shall be provided by the higher-level organization receiving the contribution (section 16-A);

- removes section 63 of the Regulations, which established a requirement not set out in the Act for the calling of strikes for the defence of labour rights (the presentation of the judicial ruling that has been accepted or become final);
- establishes the explicit prohibition for employers to replace, directly or indirectly, striking workers, and any act that impedes or obstructs the exercise of the right to strike;
- simplifies the documentary requirements for the administrative procedure of the notification of strikes, replacing the requirement to submit a legalized copy of the proceedings of the assembly in which the strike was decided upon, by the submission of a simple copy; and
- makes explicit reference to the administrative procedure for the notification of strikes, with the indication that it is an administrative procedure subject to prior assessment and is assumed to be approved if no objections are raised.

The Committee observes that the trade union confederations consider that the Decree can contribute to alleviating the serious situation with regard to trade union rights in the country and indicate, among other aspects, that the explicit recognition of the right to establish unions of enterprise groups, production chains and subcontracting networks can be particularly important for outsourced workers. The Committee also notes that the CONFIEP: (i) indicates that the Decree should have been subject to consultation in the National Labour and Employment Promotion Council (CNTPE) in accordance with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); and (ii) considers that the amendment of the LRCT Regulations by the Presidential Decree will affect relations between workers and employers in the private and public sectors and public enterprises since, among other aspects, it broadens the forms of trade union organization, makes the procedures more flexible for the establishment of a trade union organization and provides that employers cannot unilaterally extend the scope of the collective agreement to workers who are not covered by its scope of application, thereby necessarily promoting trade union membership. The Committee notes in this regard the Government's indication that, far from affecting the balance in collective relations between employers and workers, the Presidential Decree has its origins in the identification of the current worrying situation with regard to freedom of association in the country. The Government emphasizes in this respect that in 2021 the unionization rate at the national level was a mere 5 per cent and that over the past decade the number of unionized workers has grown more slowly than the number of non-unionized workers. The Government adds that, although the CNTPE, which is tripartite in composition, agreed in May 2022 to prepare a statement to reaffirm and reinforce social and labour dialogue, in the month of July 2022 the employers' organizations notified the suspension of their participation in the CNTPE, indicating that the approval of the statement on social dialogue referred to above had been impeded by the adoption of Presidential Decree No. 014-2022-TR. ***Recalling the crucial importance of social dialogue and consultation with organizations of employers and workers for the preparation and development of legislation on collective labour relations, the Committee expresses the firm hope that the Government will ensure that such consultations are held. The Committee hopes that the concerns relating to the Presidential Decree will be duly addressed through tripartite social dialogue in the CNTPE and that any issues impeding the functioning of the CNTPE will be rapidly resolved. It requests the Government to keep it informed in this respect. The Committee also expresses the hope that the implementation of the Presidential Decree which, according to the Government, has its origins in concerns at the situation of freedom of association in the country, will contribute to ensuring the full enjoyment and exercise of the rights set out in the Convention and requests the Government to provide information on the impact of the Decree`s application.***

Article 2 of the Convention. Right of all workers, without distinction whatsoever, to establish and join organizations. For several years, the Committee has been indicating to the Government the need to revise Act No. 28518, its Regulations and the General Education Act in order to ensure the explicit recognition of freedom of association in training schemes. The Committee notes the Government's

indication that on 13 April 2022, Ministerial Decision No. 092-2022-TR provided for the pre-publication of the preliminary draft of the Labour Code drawn up by the Ministry of Labour and Employment Promotion (MTPE), which defines in section 75 the arrangements for vocational training, such as special types of employment contracts, recognizing the labour element of such contracts. The Government indicates that it received comments and suggestions concerning the preliminary draft text from the public until June 2022, which were shared with the workers' and employers' representatives participating in the CNTPE. The Committee observes the indications by the trade union confederations that: (i) up to now there has been no initiative to amend Act No. 28518; (ii) the generic recognition in the Constitution of trade union rights does not on its own empower persons engaged in training schemes to exercise those rights; and (iii) section 76 of the preliminary draft indicates that vocational training arrangements are not covered by general labour regulations, which means that the preliminary draft text retains the characteristic of the current legislation of failing to offer specific recognition of the trade union rights of persons engaged under vocational training schemes. ***The Committee hopes that the preliminary draft of the Labour Code will be the subject of extensive tripartite consultation and that, during this process of dialogue, consideration will also be given to the adoption of specific measures to revise the legislation so as to set out the explicit recognition of the right to freedom of association of workers engaged under vocational training schemes. The Committee requests the Government to provide information on any progress achieved in this regard.***

In previous comments, the Committee requested the Government to revise the relevant provisions of the legislation to secure the exercise of the right to organize, in law and practice, of judges and prosecutors, and of employees in positions of trust and leadership in the public administration. The Committee requested the Government to provide information on any developments in this regard. The Committee notes with ***regret*** the Government's indication that it has noted the request for information which will be provided shortly. The Committee recalls that *Article 2* of the Convention guarantees the basic right to establish and join organizations of their own choosing to all workers without distinction whatsoever, including all public servants, irrespective of the nature of their functions, and that the only limitations permitted by the Convention are for members of the armed forces and the police. However, the Committee has indicated that senior public officials may be barred from joining trade unions provided they are entitled to establish their own organizations to defend their interests (2013 General Survey on collective bargaining in the public service, paragraphs 43 et seq., and 2012 General Survey on the fundamental Conventions, paragraph 66). ***The Committee urges the Government to take the necessary measures to revise the relevant provisions of the legislation in order to secure the right to organize, in law and practice, of judges and prosecutors, and of employees in positions of trust or leadership in the public administration. The Committee requests the Government to provide information on any developments in this regard.***

Article 3. Right of organizations to organize their activities and formulate their programmes. Holding a strike ballot. In previous comments, the Committee noted that, under section 40 of Act No. 30057, the Civil Service Act, section 62, as amended, of the Regulations of the Consolidated Single Text of the Collective Labour Relations Act (the TUO of the LRCT), provides that the decision to call a strike must be adopted in the manner set out in the statutes, provided that the decision is taken by at least the majority of the voting members present in the assembly, and that this provision is applicable, by extension, to strikes in the public administration. The Committee notes that, although the trade union confederations indicate that Act No. 31188, the State Sector Collective Bargaining Act, published on 2 May 2021, repealed section 40 of the Civil Service Act, the Government indicates that subsection 13(2)(e) of Act No. 31188 provides that workers may call strikes in accordance with the provisions of the TUO of the LRCT.

Determining the unlawfulness of strikes. In its previous comment, the Committee observed that the Civil Service Support Commission was competent to decide whether a strike is inappropriate or unlawful and, as it had yet to be established, the Committee requested the Government to take the necessary

measures to ensure that the competence to determine the lawfulness of strikes, in both the private and public sectors, does not lie with the Government, but rather with an independent body that has the trust of the parties. The Committee notes the Government's indication that, while the body that is competent for determining the appropriate nature of a strike in the private sector is the Administrative Labour Authority, which issues its decision with independence, impartiality and in accordance with the law, the preliminary draft of the Labour Code proposes that, at the request of the employer or employers affected by the measures, the judicial authority shall determine the lawfulness or unlawful nature of a strike. With regard to the public sector, the Government recalls that, in accordance with the Tenth Supplementary Transitional Provision of the Regulations of the Civil Service Act, the Administrative Labour Authority shall assume the functions of the Civil Service Support Commission until the latter is established. The Committee observes that the trade union confederations consider that the fact that the Administrative Labour Authority continues to determine the lawful nature of strikes in both the private and the public sectors (in view of the persistent failure to establish the Civil Service Support Commission with guarantees of its real impartiality) bears witness to the reluctance of the State to bring the legislation into conformity with the provisions of the Convention and they indicate that 100 per cent of strikes in 2020 were found to be unlawful by the Administrative Labour Authority. ***The Committee urges the Government to take the necessary measures to ensure that the authority to determine the lawful nature of strikes in the private sector does not lie with the labour administration, but rather with an independent body that has the trust of the parties. The Committee hopes that the proposed amendment contained in the preliminary draft of the Labour Code will be the subject of extensive tripartite consultations, and requests the Government to keep it informed of any developments in this regard. Observing with concern the indications of the trade union confederations, the Committee expresses the firm hope that the Civil Service Support Commission will be established without further ado and that it will be a genuinely independent body. The Committee requests the Government to provide information on any progress in this regard.***

Definition of minimum services in essential public services. The Committee previously observed that the Consolidated Single Text of the Collective Labour Relations Act provided that the Civil Service Support Commission would be the competent body to determine the minimum services required during strikes affecting essential services, and it trusted that the Civil Service Support Commission would be established in the near future. The Committee notes the Government's indication that section 435 of the preliminary draft of the Labour Code provides that, in the event of disagreement, the matter shall be referred to an independent technical body for the determination of the minimum service and that the decision shall be binding. The Committee notes that, in addition to reiterating that the Civil Service Support Commission has still not been set up, the trade union confederations indicate that section 68 of the Regulations of the Collective Labour Relations Act, as amended by Presidential Decree No. 014-2022-TR, provides that, while the Administrative Labour Authority may avail itself of the support of an independent body to resolve any disagreement concerning minimum services in essential public services, the Administrative Labour Authority shall resolve the matter on the basis of the report of the independent body. ***While taking due note of the modifications introduced by Presidential Decree No. 014-2022-TR, the Committee recalls that disagreements between the parties on the number and functions of workers should not only be examined, but also resolved by an independent body. The Committee reiterates the need for the Civil Service Support Commission to be established without delay and requests the Government to provide information on any developments in this respect.***

Right of trade unions to hold meetings and to access workplaces. The Committee previously requested the Government to revise the final provisions of Presidential Decree No. 017-2007-ED, which defines as serious offences by head teachers and deputy head teachers in schools the acts of providing school premises for trade union meetings and allowing political and/or union advocacy in educational institutions, in order to enable head teachers of schools to determine with the trade unions arrangements for access to workplaces that do not jeopardize their efficient operation. The Committee

notes the Government's indication that the Ministry of Education is carrying out an assessment of the legislation in relation to this matter as a basis for determining the need to amend or repeal certain provisions of the Regulations of Act No. 28988 declaring regular basic education to be an essential public service, as approved by Presidential Decree No. 17-2007-ED. ***The Committee takes due note of these indications and requests the Government to provide information on any developments in relation to the revision of the final provisions of the above Presidential Decree so that head teachers in schools can agree with the trade unions concerned on an arrangement for access to workplaces that does not jeopardize their effective operation.***

The Committee reminds the Government that it may have recourse to ILO technical assistance in relation to the matters raised in this comment.

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

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

Previous comment

The Committee notes the observations of the Autonomous Workers' Confederation of Peru (CATP), the International Trade Union Confederation (ITUC) and the Coordination of Trade Union Confederations of Peru (which groups together the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers of Peru (CUT-Peru), the CATP and the Confederation of Workers of Peru (CTP)), and the National Confederation of Private Business Institutions (CONFIEP), received on 1 September 2022, which relate to matters examined by the Committee in the present comment. The Committee notes the Government's response to all these observations. It also notes the Government's response to the CATP's observations of 2018.

Legislative developments. The Committee notes that Presidential Decree No. 014-2022-TR, published on 24 July 2022, amended the Regulations of the Collective Labour Relations Act (LRTC) and observes that, among other measures, the Decree:

- indicates that the protection of trade union rights also includes delegates of trade union chapters and the leaders of unions, federations and confederations, or representatives nominated by the latter, and the parties may agree through a collective agreement to extend the protection of trade union rights to other workers or increase their period of protection. Trade union representatives on social dialogue bodies are also covered by the protection of trade union rights (section 12).
- includes section 23-A specifying the scope of the judicial dissolution of a trade union due to the loss of the minimum number of members, with the indication that, for the calculation of the number of members, unionized workers who have been dismissed or whose dismissal has not yet been approved by the courts or who have denounced acts of anti-union discrimination to the labour inspection services are still taken into account.
- indicates that employers are not empowered to extend unilaterally the effects of the collective agreement to workers not covered by its scope of application (section 28).
- provides that, in the event of the dissolution of the trade union, the operative clauses of the collective agreement shall continue to apply (section 30).
- introduces section 33-A into the Regulations of the LRCT, with the indication that in the event of disagreement on the level of collective bargaining, alternative dispute resolution machinery may be used.

– specifies the scope of the right to information of trade unions for collective bargaining, and establishes the minimum level of information that shall be provided and the period within which the employer shall provide it (section 38).
– introduces section 40-A, setting out the minimum content of the requirement to negotiate in good faith provided for in section 54 of the LRCT.
– amends section 59 of the Regulations, to provide that a judicial appeal against an arbitration award does not suspend its application, unless so decided by the courts.
– amends section 61-A of the Regulations on the conditions governing compulsory arbitration.

The Committee notes that the trade union confederations consider that the Decree can contribute to mitigating the serious situation with regard to trade union rights. The Committee notes that the CONFIEP: (i) indicates that the Decree should have been referred for consultation to the National Labour and Employment Promotion Council (CNTPE), in accordance with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); and (ii) considers that the amendments to the Regulations of the LRCT will have an impact on labour relations between workers and employers. The CONFIEP indicates that "the list of information that shall be provided by the employer affects the protection of the personal data of workers; that collective bargaining by branch of activity is being promoted (required): trade unions are exclusively able to seek compulsory arbitration and it is provided that employers may not unilaterally extend the effects of the collective agreement to workers not included within its scope of application, thereby necessarily promoting trade union membership".

The Committee notes the Government's indication that, far from affecting the balance of industrial relations between employers and workers, the Presidential Decree has its origins in the observation of the worrying current situation of freedom of association in the country. The Government emphasizes that, in 2021, the unionization rate at the national level was a mere 5 per cent and that 4.42 per cent of workers in the formal private sector were covered by collective bargaining that year. The Government adds that in 2021, only 429 lists of claims were put forward, thereby maintaining the tendency for their number to decrease which commenced in the 1990s. The Government indicates that the number of claims that were resolved fell from 1,762 in 1990 to 186 in 2021. The Government further indicates that, although in May 2022 the CNTPE, with its tripartite composition, agreed to formulate a statement reaffirming and calling for the strengthening of social and labour dialogue, in July 2022 the employers' organizations indicated that they were suspending their participation in the CNTPE claiming that the approval of the statement had been prevented by the adoption of Presidential Decree No. 014-2022-TR. ***Recalling the crucial importance of social dialogue and consultations with employers' and workers' organizations for the preparation and formulation of legislation on collective labour relations, the Committee firmly hopes that the Government will ensure that substantive tripartite consultations are held on legislative initiatives of this type. The Committee also hopes that any concerns relating to the Presidential Decree will be duly examined within the framework of tripartite social dialogue in the CNTPE and that any obstacles preventing the functioning of that body will be resolved rapidly. It requests the Government to provide information in this regard.***

Article 1 of the Convention. Adequate protection against anti-union discrimination. The Committee previously observed with concern that, despite the implementation of the Act on Labour Procedure of 2010, the duration of court proceedings relating to infringements of trade union rights had increased considerably, and it requested the Government to take measures to ensure that such proceedings are carried out swiftly and to provide information on their duration, and on the penalties imposed in cases of anti-union discrimination. The Committee notes with ***regret*** that the Government has not provided information on the duration of such proceedings and observes the claims by the trade union confederations that: (i) the Act on Labour Procedure is still not given effect throughout the national territory and the duration of labour proceedings continues to be very long, particularly when rulings are appealed, which is a strategy that is often used by employers; and (ii) complaints against trade union

representatives are a recurrent anti-union practice which create a climate of intimidation, as there is no appropriate administrative or judicial mechanism that protects members and leaders against anti-union practices.

The Committee notes that, according to the Government's report, during the period between 2017 and 2021, the National Superintendence of Labour Inspection (SUNAFIL) generated 2,886 inspection orders in relation to complaints concerning collective agreements and trade union membership and resolved 2,350 of them, with 964 resulting in a violation report and 1386 in a report. In this regard, the trade union confederations indicate that this information does not reveal the extent to which inspections identified violations of trade union rights in the inspection orders issued, whether they have the result of the effective restoration of trade union rights and whether the penalties were executed. They add that issues relating to trade union rights account for fewer than 2 per cent of all the matters on which inspections are carried out over a year and that in March 2021 the Labour Inspection Court of the SUNAFIL started to be operational, with the function of resolving appeals for the review of punishment procedures and that it is issuing decisions that do not contribute to the protection of trade union rights.

The Committee also observes that Presidential Decree No. 014-2022-TR provides that trade union protection also covers the delegates of trade union chapters and the leaders of unions, federations and confederations, or representatives nominated by them and that the parties may agree through collective agreements to extend the right to trade union protection to other workers or increase the duration of protection and include within such protection trade union representatives on social dialogue bodies. The Presidential Decree also provides that, for the calculation of the minimum number of members, unionized workers whose dismissals have not yet been confirmed by the courts or who have submitted complaints of anti-union acts to the labour inspection services will continue to be taken into account. The Committee notes the Government's indication that this prevents the use of unjustified anti-union dismissals as a strategy for persecuting trade union leaders and dissolving trade unions. The Government adds that a proposed preliminary draft of the Labour Code, prepared at the beginning of 2022 by the Ministry of Labour and Employment Promotion and shared through the CNTPE, adopts the same approach as the Presidential Decree. ***The Committee takes due note of this information, and particularly the aspects of Presidential Decree No. 014-2022-TR that are intended to reinforce protection against acts of anti-union discrimination. The Committee once again requests the Government to provide information on the length of labour proceedings relating to infringements of the right to freedom of association and collective bargaining and to take the necessary measures to ensure that they are carried out swiftly. It also requests the Government to provide detailed and updated information on the penalties imposed in cases of anti-union discrimination and any action adopted in this regard. Recalling that the labour inspection services contribute to ensuring the application of the Convention, the Committee requests the Government to take the necessary measures for the concerns set out above to be duly examined through social dialogue in the CNTPE, which should also assess the effectiveness of the system of protection against acts of anti-union discrimination and the impact of the application of Presidential Decree No. 014-2022-TR in this regard. The Committee requests the Government to report on these discussions and their outcome. The Committee also requests the Government to keep providing information about any progress made with regard to the preliminary draft of the Labour Code.***

Workers with fixed-term contracts in the private sector. The Committee previously requested the Government to provide information on any measures taken by the labour inspection services to ensure the effective protection of workers with fixed-term contracts against the potential non-renewal of their contracts for anti-union reasons. It also invited the Government to use the tripartite forum of the CNTPE to examine this issue and the possibility of amending the provisions of the Act on the Promotion of Non-Traditional Exports, which allow for the recurrent use of short-term contracts. The Committee notes the Government's indication that the proposed preliminary draft of the Labour Code seeks to harmonize

the labour legislation and reduce the use of fixed-term contracts and that it proposes the possibility of concluding contracts of different types with the same worker, provided that in total they do not exceed a maximum period of two years. The Committee observes the indication by the trade union confederations that: (i) the non-renewal of contracts tends to be used as a reprisal for trade union membership and engagement in trade union activities; (ii) in the area covered by the Act on the Promotion of Non-Traditional Exports, contracts can be renewed without any limits; (iii) in 2021, 91.2 per cent of new contracts in the country were for fixed-term jobs; and (iv) the legislation does not provide any type of protection for workers against the failure to renew temporary contracts as a reprisal against union membership and engagement in union activities. The Committee recalls that, when examining cases relating to this issue (in particular Cases Nos 3065, 3066 and 3170), the Committee on Freedom of Association has recalled that fixed-term employment contracts should not be used deliberately for anti-union purposes and that in certain circumstances the employment of workers with the successive renewal of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights. ***Taking into account the indications relating to the high percentage of fixed-term contracts and the concerns expressed above, the Committee requests the Government to submit the issue of the protection of workers with fixed-term contracts against anti-union discrimination for thorough tripartite consultation in the CNTPE with a view to the identification of specific measures in this regard. Recalling that in the cases examined by the Committee on Freedom of Association, the Government referred to the possibility of revising the provisions of the Act on the Promotion of Non-Traditional Exports which allow the recurrent use of short-term contracts, the Committee once again invites the Government to include this issue in tripartite consultations and the current process of reforming the labour legislation. The Committee requests the Government to provide information on these discussions and their outcome.***

Workers with fixed-term contracts in the public sector. Having noted the allegations of the mass dismissal of workers employed under administrative service contracts, the Committee previously requested the Government to engage in dialogue with public sector trade unions on the subject of the protection of these workers against anti-union discrimination. The Committee notes the information provided by the Government that: (i) Act No. 31131 containing provisions to eradicate discrimination in public sector scheme, published on 9 March 2021, prohibits administrative service contracts and provides that workers covered by such contracts are to be engaged under the system set out in Legislative Decree No. 728 (the Labour Productivity and Competitivity Act) and Legislative Decree No. 276 (the Basic Act on the administrative career and remuneration in the public sector); (ii) workers recruited as from 10 December 2021 who were covered by administrative service contracts benefit from permanent contracts, on condition that they have participated in a public competition for a permanent position, although personnel may be engaged under administrative service contracts for a fixed period if they are engaged as replacements or in transitional positions; and (iii) there are various unions covering this group of workers and public employees covered by administrative service contracts were represented in the negotiations relating to Act No. 31188. The Committee observes the indication by the trade union confederations that: (i) although Act No. 31131 establishes that administrative service contracts are for an indefinite period, a new form of temporary and irregular contract is being increasingly used known as third party contracts; and (ii) in 2020, over 127,000 persons were engaged through the hiring of services and in the majority of cases these were labour relations covered by apparent third party contracts under which the workers could not exercise their trade union rights as the reprisal would be the non-renewal of their contracts. ***While welcoming the legislative measures adopted in relation to administrative service contracts, and noting the concerns expressed above, the Committee requests the Government to submit the issue of protection against anti-union discrimination of workers who do not have permanent contracts for thorough consultation with the representative trade unions in the public sector. It requests the Government to report on these discussions and their outcome.***

Article 4. Promotion of collective bargaining. Workers in training schemes. In its previous comment, the Committee noted that the Government was engaged in the adoption of an Act on specific public sector pre-vocational and vocational practices and that it was revising the content of Act No. 28518 with a view to explicitly recognizing the right to collective bargaining of workers in training schemes. The Committee notes the Government's indication that the preliminary draft text of the Labour Code prepared by the Ministry of Labour and Employment Promotion defines vocational training schemes in section 75 as special types of labour contracts, thereby recognizing them as labour contracts, which presupposes the possibility for workers engaged in vocational training schemes to have the right to establish trade unions and engage in collective bargaining. The Committee observes the indication by the trade union confederations that: (i) up to now, no initiative has been seen to amend Act No. 28518; (ii) the general recognition in the Constitution of trade union rights does not on its own entitle persons covered by training schemes to exercise such rights; and (iii) section 76 of the preliminary draft text referred to above provides that labour training schemes are not subject to general labour regulations, or in other words the preliminary draft maintains the approach adopted in the current legislation of not explicitly recognizing the trade union rights of workers in training schemes. ***The Committee hopes that the preliminary draft text of the Labour Code will be the subject of thorough tripartite consultation and that, within the context of this dialogue process consideration will also be given to the revision of the legislation to give explicit recognition to the collective rights of workers in training schemes. The Committee requests the Government to report any progress in this regard.***

Promotion of collective bargaining at all levels. The Committee recalls that the issue of the right of the parties to determine freely the level of negotiation has been the subject of its attention for many years and has given rise to a series of cases before the Committee on Freedom of Association. The Committee observed previously that, under the terms of section 45 of the LRCT, in the event of disagreement between the parties and where a collective agreement does not exist, the legislation gave precedence to negotiation at the enterprise level, and it requested the Government to engage in consultations with the representative organizations of workers and employers on the amendments necessary to ensure that the level of collective bargaining and the mechanism for the settlement of disputes relating to the level at which collective bargaining must take place are determined freely by the parties concerned. The Committee notes with ***interest*** the indication by the Government that Act No. 31110 on the Agricultural Labour System and Incentives for the Agricultural and Irrigation Sector, Agricultural Exports and Agro-Industry, which entered into force on 1 January 2021, removed that last indent of the first paragraph of section 45 of the Regulations of the LRCT, which provided that, in the absence of agreement on the level of negotiation, it would take place at the enterprise level. The Committee observes that the amended version of section 45 provides that, in the event of disagreement concerning the level of negotiation, the matter shall be resolved through the use of alternative dispute resolution machinery. The Committee notes the indication by the trade union confederations that the second subsection of section 45 has not been amended and that it provides that, once the level of negotiation has been determined, it may only be changed with the agreement of the parties, with no alternative machinery being envisaged to resolve any disagreement concerning the modification of the level of negotiation. The trade union confederations understand this as impeding collective bargaining at levels other than the enterprise level. The Committee notes the Government's clarification that the amendment covers both the first and second subsections of section 45, which means that, in the event of disagreement on the level of bargaining, either in relation to new collective bargaining or if there is already an agreement at some level, the disagreement may be resolved through the use of alternative dispute resolution machinery. ***The Committee requests the Government to provide information on the impact of the amendment to section 45 of the Regulations of the LRCT on collective bargaining. The Committee hopes that the Government will ensure that the autonomy of the parties prevails in the determination of the level of bargaining.***

The Committee also observes that Act No. 31110 promotes in the agricultural and agricultural export sector the collective right to collective bargaining, particularly at levels higher than the enterprise level, as workers in agriculture and agricultural exports experience difficulties in the effective exercise of this right due to the discontinuous and seasonal nature of their activities (section 8). Recalling the need to guarantee that collective bargaining can be carried out at any level, whether at the level of the enterprise, multiple-enterprises, the sectoral or national level, and noting the statistical data provided by the Government, as referred to above, according to which there is very low coverage of collective bargaining in the country, the Committee notes with ***interest*** that legislative measures have also been adopted to promote collective bargaining at levels higher than the enterprise level. ***The Committee requests the Government to report the specific measures taken to promote collective bargaining at all levels, including higher than the enterprise level, and to provide information on the results.***

Recourse to arbitration (arbitaje potestativo) in the event of disagreement on the level of bargaining and in relation to other situations. The Committee observed in previous comments that the LRCT and its Regulations provide for the possibility for any of the parties to collective bargaining to have recourse to arbitration (*arbitraje potestativo)* in the event that: (i) during a first negotiation, agreement is not reached on its level or content (where at least six direct negotiation or conciliation meetings have been held and three months have elapsed since the beginning of the negotiations); or (ii) where during the course of bargaining acts of bad faith are noted which have the effect of delaying, hindering or preventing the achievement of agreement. The Committee observes that Presidential Decree No. 014-2022-TR introduces certain amendments to the Regulations concerning the possibility of having recourse to arbitration (*arbitraje potestativo)*: (i) it provides that this possibility is only available to workers' representatives; (ii) the conditions for initiating arbitration (*arbitraje potestativo)* in the first circumstances envisaged by the Regulations (a first negotiation, in which the parties do not reach agreement on the level or content of the negotiations) are not cumulative, but rather alternatives (since at least six direct negotiation or conciliation meetings must have been held, or three months must have elapsed since the beginning of the negotiations); and (iii) in relation to point (i), it is specified that the acts of bad faith in the negotiations which may give access to arbitration (*arbitraje potestativo)* are those committed by the employer.

The Committee notes the indication by CONFIEP that the Presidential Decree exclusively allows workers' organizations to request compulsory arbitration and omits the principal option of arbitration that is voluntary for the parties. The CONFIEP considers that establishing the compulsory nature of arbitration has the result of collective bargaining processes becoming a formal step, as there is an incentive to go to arbitration (*arbitraje potestativo)* so that the arbitration board awards better economic benefits to the workers, without giving importance to the fact that in some cases the financial situation of the enterprise would not permit this. The Committee notes the Government's indication in this respect that: (i) section 62 of the LRCT provides that workers may either call a strike or have recourse to arbitration; and (ii) arbitration (*arbitraje potestativo)* when initiated by the employer runs the potential risk of affecting the right to strike, as there could be situations in which strikes called by workers and arbitration (*arbitraje potestativo)* initiated by the employer may run in parallel, thereby undermining recourse to strike action.

The Committee recalls that it has considered that compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis. The Committee also recalls that, while arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, it can envisage an exception in the case of provisions allowing workers' organizations to initiate such a

procedure for the conclusion of a first collective agreement. As experience shows that first collective agreements are often one of the most difficult steps in establishing sound industrial relations, these types of provisions may be considered to constitute machinery and procedures intended to promote collective bargaining (2012 General Survey on the fundamental Conventions, paragraphs 247 and 250). ***Observing that, in a context of the very low coverage of collective bargaining, Presidential Decree No. 014-2022-TR has made certain of the conditions more flexible for workers to be able to have recourse to arbitration, in the case of a first negotiation or where bad faith has been demonstrated by the employer, the Committee requests the Government to: (i) provide full information on the application of these new provisions so that the Committee can assess their impact on the free and voluntary nature of collective bargaining and its effective promotion; and (ii) engage in thorough dialogue with the representative social partners in the country on the application of these provisions and on any other measures envisaged in this regard.***

The Committee notes that section 28 of Presidential Decree No. 014-2022-TR provides that the employer may not unilaterally extend the effects of the collective agreement to workers not covered by its scope of application. The Committee observes that the CONFIEP considers that this section is intended to punish non-unionized workers by promoting the necessity of trade union membership. The Committee notes the Government's indication that this view disregards section 9 of the LRCT, which provides that: "In relation to collective bargaining, the union which has in its membership the absolute majority of workers in the area covered shall represent all of those workers, even if they are not members. Where several unions exist in the same area, unions which jointly have over half the workers as members may jointly represent all the workers. In such cases, the unions shall determine the manner in which they exercise such representation, either pro rata in proportion to the number of members or entrusted to one of the unions. If there is no agreement, each union shall solely represent its own members." The Committee notes these indications. The Committee recalls that systems under which the collective agreements concluded by the representative organization only apply to the signatories and their members (and not to all workers), and the opposite practice under which all the workers in a bargaining unit are covered, are compatible with the principles of the Convention (2012 General Survey on the fundamental Conventions, paragraph 225). The Committee further observes that the amendment introduced by Presidential Decree No. 014-2022-TR does not appear to preclude the parties from being able to decide themselves on the extension of the effects of the collective agreement to include workers who are not members of the union that negotiated the agreement.

Articles 4 and 6. Promotion of collective bargaining. Public sector workers. The Committee previously indicated to the Government the need to revise the Civil Service Act of 2013 and all relevant legislation, so that public sector employees who are not engaged in the administration of the State can exercise their right to collectively negotiate wages and economic matters. The Committee notes the publication on 2 May 2021 of Act No. 31188 on collective bargaining in the State sector, which establishes rules for the exercise of the right to collective bargaining in the public sector and provides that bargaining may cover all types of working and employment conditions, including remuneration and other conditions of work with an economic impact, as well as any aspect respecting relations between employers and workers, and relations between employers' and workers' organizations. The Committee observes that the Act repeals various provisions of the Civil Service Act, including sections 42, 43 and 44, which completely excluded the determination of wages and economic matters from collective bargaining throughout the public sector. The Committee notes that, according to the information provided by the Government: (i) Presidential Decree No. 008-2022-PCM was published on 20 January 2022 approving guidance for the implementation of the Act; (ii) the Act on the budget for the public sector for the 2022 financial year admits the financial increase agreed collectively; and (iii) the Centralized Collective Agreement 2022-23 was concluded on 30 June 2022, including very important benefits for all State workers (with the exception of public servants on special career paths in health and education, who will engage in decentralized sectoral bargaining). The Committee notes with ***satisfaction*** the conclusion of

the Centralized Collective Agreement. The Committee notes the indication by the workers' confederations that, although the Act constitutes progress in the recognition and effectiveness of the economic negotiation of all types of terms and conditions of employment for public employees, difficulties have been reported in its application. ***The Committee requests the Government to take the necessary measures to ensure that the Act and its respective Presidential Decree are implemented in such a manner as to contribute to ensuring the full and complete exercise by trade union organizations of State workers of the rights recognized therein and set out in the Convention. It requests the Government to provide information on the impact of their application. The Committee also refers to its comments in relation to the Labour Relations (Public Service) Convention, 1978 (No. 151).***

The Committee firmly hopes that the action taken by the Government to give effect to the Convention will be preceded by thorough consultations with the social partners. The Committee recalls that ILO technical assistance is available to the Government.

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1980)

Previous comment

The Committee notes the observations of the Coordination of Trade Union Federations of Peru (which brings together the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers of Peru (CUT-Perú), the Autonomous Workers' Confederation of Peru (CATP) and the Confederation of Workers of Peru (CTP)), received on 1 September 2022, which concern issues that the Committee examines in this comment. The Committee notes the Government's reply in this respect.

Article 7 of the Convention. Participation of public employees' organizations in the determination of their terms and conditions of employment. Having noted with concern that the Civil Service Act No. 30057 (LCS) of 2013 contained provisions that excluded any machinery for participation, including collective bargaining, in the determination of matters relating to wages or with financial implications throughout the public sector, the Committee requested the Government to take the necessary measures to bring the legislation into conformity with the Convention, in order to ensure the existence, with regard to officials engaged in the administration of the State, of machinery for participation in the determination of their terms and conditions of employment, including remuneration and other subjects with financial implications. The Committee notes the Government's indication that Act No. 31188 on collective bargaining in the public sector was published on 2 May 2021, which seeks to regulate the exercise of the right to collective bargaining of trade union organizations of state workers, and which includes all public employees engaged in the administration of the State. The Committee notes with ***satisfaction*** the adoption of the Act and observes that it:

- establishes rules for the exercise of the right to collective bargaining in the public sector, and indicates that bargaining may comprise all types of work and employment conditions, including remuneration and other work conditions with financial implications, and any aspect relating to relations between employers and workers, and relations between employers' and workers' organizations; and
- repeals various sections of the LCS, including sections 42, 43 and 44, which completely excluded collective bargaining in the determination of matters relating to wages or with financial implications throughout the public sector.

The Committee notes the Government's indication that: (i) Supreme Decree No. 008-2022-PCM approving guidelines for the implementation of Act No. 31188, was published on 20 January 2022; (ii) the Act on the public sector budget for the fiscal year 2022 recognizes the financial increase agreed collectively; and (iii) a centralized collective agreement for 2022-23 was signed on 30 June 2022, which established significant agreements in favour of all state workers (with the exception of public servants on special career paths in health and education, who will bargain at the decentralized level within the

sectors). The Committee noted with satisfaction the signing of this collective agreement in its comment on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The Committee notes the indication of the trade union confederations that: (i) while the Act represents progress in the recognition and effectiveness of the financial negotiation of all types of employment conditions for public employees, difficulties relating to its application have been reported; (ii) even though the Act gives broad recognition to the right to collective bargaining, the Supreme Decree contains provisions that may affect collective bargaining, such as the possibility for employers to reject a list of demands if they consider that a trade union is not representative; (iii) public entities face the challenge of adopting effective measures to implement the Act, and, in this regard, the implementation of a national register of trade union membership to verify representativity remains pending; and (iv) the National Civil Service Authority (SERVIR) has issued binding decisions that contain a restrictive interpretation of the Act. The Committee notes the Government's indication that, through its Executive Board, SERVIR aims to create and implement a space for trade union dialogue, to continuously and effectively address the demands of trade union organizations, by directing support and assistance to entities through the provision of creative and flexible solutions that bridge existing gaps and address labour demands, thus guaranteeing the optimization of services and products provided to the public. ***The Committee strongly encourages the Government to implement, within SERVIR, a space for dialogue in which the aforementioned concerns can be addressed, including the implementation of a reliable mechanism to verify trade union representativeness in collective bargaining. The Committee requests the Government to take the necessary measures to ensure that both the Act and the Supreme Decree are implemented in a manner that effectively guarantees, for all public employees engaged in the administration of the State who are covered by the Act, the full enjoyment and exercise of the rights recognized in these instruments and enshrined in the Convention. The Committee requests the Government to provide information on the impact of their application. The Committee also reminds the Government that the technical assistance of the Office is at its disposal.***

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

Philippines

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, referring to matters addressed below and alleging continued and serious violations of workers' civil liberties and freedom of association rights. ***The Committee requests the Government to provide its reply thereto.***

Tripartite road map to implement the 2019 Conference Committee conclusions and achieve full compliance with the Convention. High-level tripartite mission. The Committee recalls from its previous comments that in June 2019, the Conference Committee on the Application of Standards (Conference Committee) requested a high-level tripartite mission to the country, which, until early 2022, could not take place due to the COVID-19 pandemic. In the meantime, a virtual exchange was organized by the Office between the Government, national social partners and designated representatives from the workers' and employers' groups of the Conference Committee in order to clarify any outstanding confusion in respect of the Conference Committee's conclusions and to assist the Government and the social partners to take effective action for their implementation. In these circumstances, and in light of the conclusions of the virtual exchange transmitted by the ITUC, the Committee called on the Government to elaborate a plan of action, in consultation with the social partners, detailing progressive

steps to be taken to implement the conclusions of the 2019 Conference Committee and to achieve full compliance with the Convention.

The Committee notes the Government's indication in this respect that it has consistently conveyed its readiness to accept an in-person high-level tripartite mission to the country and that such a mission was scheduled for May-June 2022 but did not take place due to a change in political administration following the May 2022 presidential elections. The Government, however, confirms its availability to receive a mission in January-February 2023 and informs that, in the meantime, it has scheduled to undertake activities to implement some of the recommendations of the virtual exchange, including capacity-building of regional tripartite monitoring bodies (RTMBs), development of a tripartite road map on the promotion of freedom of association and civil liberties, and review of the Guidelines on the conduct of stakeholders relative to the exercise of workers' rights and activities, all of which will be pursued through the institutionalized tripartite processes. The Government adds that the tripartite road map will take into account the recommendations of the 2021 virtual exchange report, as well as the 2019 Conference Committee conclusions, and will focus on efforts to ensure prompt and effective investigation of allegations of killings and assaults against trade unionists, strengthen tripartite monitoring bodies, further operationalize the Administrative Order No. 35 Inter-Agency Committee (IAC) and ensure effective protection of labour rights in ecozones. ***Taking due note of the measures and initiatives undertaken, but also noting the concerns raised by the ITUC that no progress has yet been achieved to implement the conclusions of the 2019 Conference Committee, the Committee calls on the Government to rapidly and genuinely engage with the social partners in order to elaborate a constructive tripartite road map detailing progressive steps to be taken to implement the conclusions of the 2019 Conference Committee and to achieve full compliance with the Convention. The Committee looks forward to receiving the road map, as well as the reviewed Guidelines on the conduct of stakeholders, and expects both instruments to significantly contribute to addressing in a meaningful manner the long-standing concerns of serious violations of civil liberties in the exercise of freedom of association rights. The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard. The Committee also expects that the high-level tripartite mission requested by the 2019 Conference Committee will be able to visit the country in the first quarter of 2023, as suggested by the Government, and will be allowed to meet freely with a broad range of interlocuters.***

Civil liberties and trade union rights

In its previous comments, the Committee had received repeated allegations of serious violations of basic civil liberties in the exercise of trade union rights submitted by the ITUC in 2019, 2020 and 2021, Education International (EI) in 2019 and jointly by EI, the Alliance of Concerned Teachers (ACT) and the National Alliance of Teachers and Office Workers (SMP-NATOW) in 2020. The Government had previously replied to some of these incidents and the Committee had, on several occasions, requested it to ensure that these allegations are duly investigated, and perpetrators punished to effectively prevent and combat impunity.

The Committee first notes the Government's general update in this regard, informing about legal and administrative remedies and institutions available to persons or groups who allege that their civil liberties have been violated, as well as about other measures undertaken by the Government to address such allegations. The Committee notes, in particular, that the Government points to the active role of the Department of Labour and Employment (DOLE), informing that DOLE focal points in the 16 RTMBs assist aggrieved parties to access legal remedies available in cases of intimidation, harassment and red-tagging, including through securing affidavits and endorsing them to the appropriate office for verification and possible filing to entities with jurisdiction. The DOLE also sends communications to the armed forces, the police and companies, calling on them to ensure protection and promotion of workers' rights to freedom of association, and its regional offices should act as intermediaries between

the parties in the monitoring mechanisms, so as to limit any threat or intimidation of the complainants, an initiative accepted by the armed forces. Furthermore, to address the concern that most of the arrests previously denounced by the unions were made by virtue of search warrants from Manila and Quezon City courts, which were implemented in areas outside their regions, the Supreme Court issued an Administrative Matter, expressly limiting the power to issue search warrants within the bounds of one's territorial jurisdiction, which has been met with positive response by labour groups. The Government adds that the previously mentioned Senate Bill No. 2121 (defining and penalizing the crime of red-tagging) was filed in March 2021 but was not enacted and may be refiled in the 19th Congress. ***The Committee takes due note of the above information and appreciates the described measures and initiatives, which it trusts will, together with the tripartite road map, contribute to ensuring full respect for civil liberties in the exercise of trade union rights. The Committee strongly encourages the Government to continue to take concrete measures in this regard and requests it to provide information on the progress made in the adoption of Senate Bill No. 2121.***

The Committee further notes that the Government also provides updates on the concrete investigative and other actions undertaken to address some of the specific allegations previously reported by trade unions. In particular, the Committee notes the Government's detailed information in relation to the allegations of extra-judicial killings of eight trade unionists in the education sector reported by EI, ACT and SMP-NATOW in 2020, indicating that three cases are pending before the courts, in one case the suspect is deceased and four cases are under investigation, the motive for the killings not yet ascertained. The Committee also duly notes the Government's reporting on the status of monitoring or investigations initiated by various domestic mechanisms, including the Commission on Human Rights, the National Bureau of Investigation, a special investigation task group and the Administrative Order No. 35 special investigating teams, into the killings of 13 trade unionists, 17 cases of red-tagging and harassment, and 12 cases of forced disaffiliation alleged by the ITUC in 2021 and observes that for some incidents murder charges were filed against several policemen. The Committee welcomes the detailed observations and the measures taken to investigate these incidents and bring the perpetrators to justice. The Committee observes, however, that out of the 17 instances of arrests of unionists that were denounced by the ITUC, only two were released while the others have criminal cases pending against them. The Committee also observes that the Government does not provide updated information on the status of investigations into the other serious allegations previously reported, in particular many of those alleged by the ITUC and EI in 2019 and 2020 and some of the incidents submitted jointly by EI, ACT and SMP-NATOW in 2020, all of which are detailed in the Committee's previous comments, and concern specific incidents of killings, attempted killings, death threats, profiling, surveillance, violent strike dispersal and military and police raids on union offices. ***In view of the above and having regard to the seriousness of the denounced incidents, the Committee expects the Government to continue to take measures to ensure that all allegations of killings, red-tagging, harassment and other serious forms of violence against trade unionists previously reported by the ITUC, EI, ACT and SMP-NATOW are properly investigated and lead to concrete results, so as to establish the facts, including any links between the violence and trade union activities, determine culpability, punish the perpetrators and contribute to preventing and combating impunity. The Committee requests the Government to continue to provide information on the measures taken in this respect and on the progress in investigations.***

New allegations of violence and intimidation. The Committee notes that in its latest communication, the ITUC raises concerns about persistent violations against workers and their representatives and points to two illustrative incidents. In particular, the ITUC alleges that in November 2021, persons claiming to be members of the Quezon City Police Department entered the offices of the Center of United and Progressive Workers (SENTRO) and later the Trade Union Confederation of the Philippines (TUCP) without justification, repeatedly inquiring about SENTRO's office, other unions present and their activities, as well as about the Nagkaisa Labour Coalition. In another incident in December 2021, the

police brutally repressed a strike in a pasta-making company, using water cannons and truncheons, and 44 workers were arrested and charged with illegal assembly, disobedience and causing "alarm and scandal"; they were later released pending further investigation. According to the ITUC, the climate of pressure, fear and extreme physical violence gravely undermines the ability of workers to exercise the rights protected by the Convention, and the persistence of these violations, as well as the failure of State entities to seriously address the situation, continue to expose workers engaging in trade union activities to imminent danger and irreparable harm and requires immediate intervention. ***Noting these allegations with concern, the Committee requests the Government to provide its observations thereon and to ensure that the incidents are adequately addressed, including through investigation, that any unionists detained in relation to the legitimate exercise of trade union activities are released and that the criminal system is not used to repress freedom of association rights.***

Pending cases of alleged killings of trade union leaders. For several years, the Committee has been requesting the Government to ensure that the investigations into the killings of trade unionists Rolando Pango, Florencio "Bong" Romano and Victoriano Embang are completed to shed full light on the facts and the circumstances in which such actions occurred and, to the extent possible, determine responsibilities, punish the perpetrators and prevent the repetition of similar events. The Committee notes from the Government's information that the cases continue to be monitored by the regular process of criminal investigation and prosecution but observes that no apparent progress was made in the case of Rolando Pango (a murder case dismissed in 2015 for lack of probable cause) and Victoriano Embang (a murder case filed in 2015 with the two accused remaining at large). In the case of Florencio "Bong" Romano, the Government informs of police interviews and continuing investigation to identify the perpetrator. ***Observing with regret that despite continued monitoring and investigation reported by the Government, no substantial progress appears to have been achieved in bringing the perpetrators to justice or clarifying the circumstances of these incidents, the Committee urges the Government to step up its efforts in this regard and emphasizes that investigations into killings of trade unionists should yield concrete results, so as to determine reliably the facts, the motives and the persons responsible.***

Measures to combat impunity. Monitoring mechanisms. In its previous comment, the Committee expressed trust that the review of the operational guidelines of the monitoring mechanisms would be completed without delay and would contribute to ensuring their full operationalization and requested the Government to continue to take measures to ensure effective and timely monitoring and investigation of all pending labour-related cases. The Committee notes the Government's indication that both the review of the operational guidelines of the RTMBs and consultations on the possibility of creating mechanisms specifically for the purpose of monitoring freedom of association cases are part of the mid-term goals incorporated in the proposed tripartite road map and are expected to be completed by December 2023. The Government also reports on progress made in the collection of information and investigation in the 43 cases of killings of unionists reported by workers' representatives at the 2019 Conference Committee, out of which 19 are being investigated, 18 are pending in court, three were dismissed, in one case the suspect died and in two cases the relatives filed affidavits of disinterest. An additional 12 incidents submitted by ACT Teachers Partylist, Nagkaisa Labour Coalition and other labour groups are, according to the Government, also being addressed, with four cases pending in court, six cases under investigation, in one case the suspect died and in one the relatives issued affidavits of disinterest. ***Taking due note of the above, the Committee strongly encourages the Government to fully engage with the social partners in the review of the operational guidelines of the monitoring mechanisms, including in the framework of the mentioned tripartite road map, and requests that the Government continue to take all necessary measures to further strengthen these mechanisms, including allocating sufficient resources, staff and security to personnel, in order to ensure their full operationalization and to allow for effective and timely monitoring and investigation of all pending labour-related cases of extra-judicial killings and other violations against***

trade union leaders and members. The Committee also requests the Government to continue to provide updates on the progress made by these mechanisms in ensuring the collection of the necessary information to bring the pending cases of violence against trade unionists to the courts.

Measures to combat impunity. Training and Guidelines on the conduct of stakeholders. The Committee notes the information provided by the Government on several ongoing projects and training activities, including a project for various government agencies and sectoral partners on ensuring safe and decent work by improving the state of freedom of association in ecozones, which aims to strengthen social dialogue and labour relations laws, processes and institutions, as well as to build the capacity of government agencies on international labour standards, including the core Conventions on freedom of association and collective bargaining. The Government further informs that the 2011 and 2012 Guidelines governing the conduct of concerned agencies relative to the exercise of trade union rights and activities are being harmonized into a new set of guidelines, which will govern the conduct of government stakeholders but also workers and employers in the private sector, and will emphasize that all requests for police or military assistance during labour disputes, including in economic zones, should be processed through and coordinated with the DOLE. The Government indicates that these guidelines have been presented to the social partners, and are the subject of ongoing deliberations, and are expected to be finalized by the end of 2022. ***Welcoming the above initiatives, the Committee encourages the Government to continue to promote comprehensive training activities among government agencies, with a solid focus on international labour standards of freedom of association and collective bargaining, with a view to increasing awareness of the concerned State officials on these matters and improving their capacity to address and investigate alleged violations of human and trade union rights, thus ultimately contributing to combating impunity. The Committee looks forward to receiving the revised Guidelines on the conduct of stakeholders relative to the exercise of trade union rights and trusts that they will constitute a useful tool in preventing and addressing violations of civil liberties in this context. Further noting the Government's willingness to receive ILO technical assistance on a number of specific points, including on identifying gaps in the exercise of freedom of association, the Committee trusts that the Office will be in a position to provide any relevant technical assistance requested by the Government on these issues.***

Measures to combat impunity. Pending legislative matters. The Committee previously requested the Government to provide information on any developments in relation to the pending legislative matters referred to it by the Committee on Freedom of Association, in particular: (i) the adoption of a Bill concerning enforced and involuntary disappearances; and (ii) the previously announced review by the Supreme Court and the Commission on Human Rights of the witness protection programme on the writ of amparo adopted in 2007, as well as of the application of the Anti-Torture Act No. 9745 and of Act No. 9851 on crimes against international humanitarian law, genocide and other crimes against humanity. The Committee notes the Government's indication that since House Resolution No. 392 was filed in October 2019 (calling for justice for the victims and urging the House Committee on Human Rights to investigate, in aid of legislation, the state of enforced disappearances in the country), no further action was taken by the Congress. It also informs that House Resolution No. 45 (directing the Committees on Justice and Human Rights to jointly conduct an inquiry into the implementation of the Anti-Enforced or Involuntary Disappearance Act of 2012) was filed in Congress and is pending the first reading. ***The Committee takes due note of the above and encourages the Government to continue to support legislative efforts that could have a positive impact on the exercise of civil liberties and trade union rights in the country.***

Anti-Terrorism Act. In its previous comment, in view of the concerns expressed by the ITUC, the Committee requested the Government to take any necessary measures to ensure that the Anti-Terrorism Act, 2020 does not have the effect of restricting legitimate trade union activities. The Committee notes the Government's indication that the Act has been submitted to judicial scrutiny so as to determine whether or not it is inconsistent with the constitution and that in its judgment from

December 2021, the Supreme Court declared that the law was not, as a whole, unconstitutional but nullified two of its provisions. In particular, the Committee observes from the text of the judgment that the Supreme Court considered as unconstitutional a part of the *proviso* in section 4 which allows for an overly vague interpretation of what constitutes terrorism and the second paragraph of section 25, allowing the Anti-Terrorist Council appointed by the President to adopt requests by other jurisdictions or supranational organizations to designate individuals, groups of persons, organizations or associations as terrorist. The Committee understands that following the Supreme Court decision, terrorism as defined in section 4 does not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, and welcomes this development. The Government adds that in April 2022, the Supreme Court denied appeals to reverse its decision upholding the constitutionality of the law as a whole but clarifies that the decision does not preclude subsequent challenges on other provisions if an actual case or controversy arises. ***The Committee trusts that, in line with the above developments, the Government will ensure that the Anti-Terrorism Act or its implementation, do not have the effect of restricting legitimate trade union activities and related civil liberties.***

Legislative issues

Labour Code. In its previous comments, the Committee had been noting the numerous amendment bills pending before Congress over many years and in various forms with a view to bringing the national legislation into conformity with the Convention. ***Noting the Government's indication that no recent amendments have been made on the pending matters, even though a number of measures had been filed with the Senate and the House of Representatives over the years, the Committee reiterates all of its previous comments and requests in this respect, and expects concrete measures to be taken to pursue the revision of the Labour Code without additional delay so as to bring the national legislation into conformity with the Convention.***

The Committee further reiterates its comments contained in the 2020 request addressed directly to the Government.

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

Previous comment

The Committee previously requested the Government to provide detailed information on the allegations raised by the International Trade Union Confederation (ITUC) in its 2018 observations, which concern alleged union busting practices, blacklisting and anti-union dismissals and suspensions in three companies. ***Regretting the absence of information in this regard, the Committee requests the Government to provide its observations on these allegations and, should this not yet be the case, to take the necessary measures to address them without delay.***

Article 4 of the Convention. Categories of workers covered by collective bargaining. In its previous comments relating to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee noted the Government's indication that under section 253 of the Labour Code, only employees (workers covered by an employer-employee relationship) may join trade unions for purposes of collective bargaining, whereas ambulant, intermittent, itinerant, self-employed and rural workers, as well as those without any definite employer may only form labour organizations for their mutual aid and protection. The Committee had also previously noted such restrictions on other categories of workers, including workers in managerial positions or with access to confidential information (section 255 of the Labour Code), firefighters, prison guards and certain other public sector workers authorized to carry firearms (Rule II, section 2 of the Amended Rules and Regulations

Governing the Exercise of the Right of Government Employees to Organize). The Government provides similar information in its latest report, pointing, in particular, to Department Order No. 40, 2003, as amended, which sets out the distinction between labour organizations established for collective bargaining (trade unions) and labour organizations organized for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining (workers' associations, including in the informal economy). The Committee understands from the above that certain categories of workers may only form and join associations for purposes other than collective bargaining and are therefore not able to fully benefit from the guarantees of the Convention in terms of collective bargaining. The Committee wishes to recall in this regard that, with the exception of organizations representing categories of workers which may be excluded from the scope of the Convention (the armed forces, the police and public servants engaged in the administration of the State), recognition of the right to collective bargaining is general in scope and all other organizations of workers in the public and private sectors must benefit from it, including prison staff, fire service personnel, self-employed and temporary workers, outsourced or contract workers, non-resident workers, part-time workers, agricultural workers and domestic and migrant workers. ***In line with the above and with its previous comments under Convention No. 87 and recalling that a number of legislative reforms addressing the right to organize of the above-mentioned categories of workers have been pending in Congress for many years, the Committee firmly expects the Government to take the necessary measures to ensure that all workers covered by this Convention, with the only possible exception of the armed forces, the police, and public servants engaged in the administration of the State (Article 6), can effectively benefit from the rights enshrined in the Convention, including the right to collective bargaining. The Committee further invites the Government to initiate a dialogue with the social partners concerned to identify the appropriate adjustments to be made to the collective bargaining mechanisms in order to facilitate their application to the various categories of self-employed and non-standard workers mentioned above.***

Content of collective bargaining in the public sector. In its previous comments, the Committee recalled that under section 13 of Executive Order No. 180, only terms and conditions not otherwise fixed by law may be negotiated between public sector employees' organizations and the government authorities and requested the Government to take the necessary legislative or other measures to expand the subjects covered by collective bargaining, so as to ensure that public sector employees not engaged in the administration of the State fully enjoy the right to negotiate their terms and conditions of employment, including wages, benefits and allowances, and working time. The Committee previously observed that two bills aimed at establishing a Civil Service Code were pending in Congress and that, following ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), the Government would develop a labour relations framework in the public sector that is aligned with that Convention. The Committee notes the Government's observations that the mentioned bills were not yet enacted into law and that three bills with the same subject-matter were filed in the 19th Congress – Senate Bill No. 587 and House Bills Nos 550 and 1513. The Committee understands from the above that no substantial progress appears to have been achieved in expanding the subjects covered by collective bargaining for public sector employees not engaged in the administration of the State and wishes to recall that *Article 4* of the Convention calls for measures to be taken to promote machinery for voluntary negotiation on terms and conditions of employment for all workers, including those in the public service, with the exception only of those who are engaged in the administration of the State, and that the negotiable terms and conditions of work include wages, benefits and allowances, and working time. ***In line with the above and with its comments under Convention No. 151, the Committee requests the Government to take the necessary measures, including in the context of developing a labour relations framework aligned with Convention No. 151, to ensure that all workers covered by this Convention, including public sector employees not engaged in the administration of the State (teachers, health-care workers, etc.), will be able to negotiate their terms and conditions of employment, including with***

respect to wages, benefits and allowances, and working time. The Committee requests the Government to provide information on any developments in this respect.

Requirements for negotiation and adoption of collective bargaining agreements in the electricity sector. In its previous comments, the Committee noted the observations from the Center of United and Progressive Workers (SENTRO) denouncing the Philippine National Electrification Administration (NEA) policies for directing electric cooperatives to have their bargaining agreements ratified by entities other than those provided for in the law. The Committee notes the Government's clarification in this regard that the issues that gave rise to the complaint by SENTRO evolved around the NEA Memorandum No. 2014-003, instituting Multi-Sectoral Electrification Advisory Council (MSEAC) representatives as part of a consultative panel for the review and negotiation of proposed collective bargaining and collective negotiation agreements in each electric cooperative. The Government informs that the Associated Labour Unions-Trade Union Congress of the Philippines (ALU-TUCP) challenged the Memorandum at the Court of Appeals, alleging that it was contrary to the law on collective bargaining. The Appeals Court, however, considered, in its October 2015 ruling, that the Memorandum was not contrary to the law as it aimed at strengthening harmonious relations between employers and member-consumers and at promoting their well-being through increased transparency and a consultative approach. The Court of Appeals also considered that the rules of the Memorandum do not stifle collective bargaining as they only deal with prior or subsequent activities – the matters subject to review and negotiation by the consultative panel only refer to proposed collective bargaining provisions and not those already agreed upon. In addition, this allows the participants to be aware of the broader picture in which negotiations take place. The Committee notes the Government's indication that in July 2017, the Supreme Court denied with finality the petition for review on certiorari filed by the union and that these issues are thus deemed judicially resolved. The Government further informs that, like in other sectors and industries, the entry into force of collective agreements in the electricity sector does not require prior approval of labour administration authorities.

While taking due note of the above, the Committee observes from the text of Memorandum No. 2014-003 that, according to the NEA, some unions did not heed its advice to have more reasonable economic and non-economic demands in negotiations so as to avoid financial difficulties affecting the delivery of electric service, and that there was therefore a need to strengthen harmonious relationships, promote the well-being of employees and the welfare of member-consumers, and to that effect, transparency requiring consultation and involvement of other sectors and stakeholders was necessary. The Memorandum thus requires the participation of MSEAC representatives in a consultative panel for the review and negotiation of proposed provisions of collective bargaining agreements, which are later ratified by a plurality of votes of the General Membership Assembly, after the management has thoroughly analysed whether they offer a balanced welfare for both employees and member-consumers and overall financial standing of the electric corporation.

While it did not receive specific information on the exact composition of the MSEAC and the consultative panel, the Committee understands from the above that Memorandum No. 2014-003 seems to expand the practice of collective bargaining in electric corporations beyond the parties, that is, the relevant trade unions and the electric corporations, as employers, by providing for the express involvement of a multi-sectoral consultative panel for review and negotiation of proposed collective agreements, as well as for the approval of collective agreements by the corporation's general assembly of members. Although it was not provided with information on the exact involvement of the panel in negotiations, the Committee wishes to underline that provisions requiring agreements to be negotiated with the involvement of third parties may raise problems of compatibility with the Convention, as such third-party involvement considerably alters the bipartite nature of the negotiating process and may not be conducive to promoting voluntary collective bargaining within the meaning of *Article 4* of the Convention. The Committee recalls in this regard that, the Convention tends essentially to promote bipartite negotiation of terms and conditions of employment, namely between employers and

employers' organizations, on the one hand, and workers' organizations, on the other, so that the parties enjoy full autonomy in determining the content of any agreements concluded. Furthermore, such agreements should not be subject to prior approval by entities other than the parties concerned. ***In line with the above, the Committee requests the Government to provide further information on the composition of the consultative panel and the manner of its involvement in negotiations of collective bargaining agreements in the electricity sector. It further calls on the Government to consider reviewing Memorandum No. 2014-003 and its implementation, together with the social partners, so as to ensure that employees of electric corporations may fully exercise their rights under the Convention. The Committee also requests the Government to report on the number of collective agreements concluded and in force in the electricity sector and the number of workers covered by these agreements, as well as on any other measures taken to encourage and promote voluntary and good-faith collective bargaining in the sector.***

Collective bargaining in practice. The Committee notes the Government's observations on the number of collective agreements registered for the past six years and notes that the Government points to a trend in registration of collective agreements that is consistent with the number of agreements that expire over the same period. The Government indicates, in particular, that, in 2020, the number of collective agreements registered that year declined from 263 to 175, covering more than 60,000 workers, which is associated with the restrictions imposed due to the COVID-19 pandemic. However, in 2021, the number of registered collective agreements increased again to 319, covering about 63,000 workers, and during the period from 1 January to May 2022, 162 collective agreements were registered covering around 39,000 workers. In this respect, the Committee also notes with ***concern*** that according to ILOSTAT, only 1.4 per cent of employees in the country are covered by collective agreements. ***The Committee therefore requests the Government to take all the necessary legal and practical measures to promote the full development and utilization of collective bargaining under the Convention, including those mentioned in the present comment, and to provide information in this respect. The Committee furthers requests the Government to continue to report on the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements.***

Rural Workers' Organisations Convention, 1975 (No. 141) (ratification: 1979)

Previous comment

Articles 3 and 5 of the Convention. Freedom to elect representatives. Obstacles to the functioning of rural workers' organizations. The Committee recalls that in view of the difficulties for rural workers' organizations in assembling their members scattered around the country in a great number of islands, it had expressed the firm hope that section 250(c) (requirement to hold elections of officers in the local or national union directly and by secret ballot) and that the penalty of cancellation of union registration or officer expulsion in violation of this direct voting requirement of the Labor Code would be amended (section 250). The Committee notes that the Government reiterates that Department Order No. 40-F-03 of 2008 is the implementing rules and regulations of Republic Act No. 9481 of 2007, which amended the Labor Code regarding grounds for cancellation of union registration (article 247, previously 239) to limit it to misrepresentation, fraud, and voluntary dissolution by the members. The Committee notes the Government's indication that the penalty related to the cancellation of the trade union registration is deemed repealed and inoperative even without further legislation. The Committee observes that while the Labor Code provides for the application of the favourability principle (section 4), the fact that the Labor Code still contains the provision setting out explicitly, in its section 250, a penalty of cancelation in violation of the direct voting requirement, may lead to issues of ambiguity in interpretation between sections 247 and 250 of the Labor Code. Recalling that the penalty of officer expulsion in violation of section 250(c) of the Labor Code is incompatible with the principles of freedom of association set out in

Article 3 of the Convention, the Committee notes with ***concern*** that the Government does not provide information regarding any measures taken or envisaged to amend or repeal this provision from section 250 of the Labor Code. Regarding the requirement of direct election, the Committee notes the Government's indication that the right of workers to directly elect their trade union leaders is a rule, but, exceptionally, voting through a representative is also possible if provided for in the trade union's constitution and by-laws. The Committee welcomes the Government's indication that the Department of Labor and Employment is devising a procedure, through tripartite consultations, to use technology to enable online voting and the operationalization of this initiative will be part of the discussions related to the review and update of Department Order No. 40-F-03, which is expected to be completed in the first quarter of 2023. ***The Committee requests the Government to take all the necessary measures, in consultation with the social partners, to amend section 250 of the Labor Code to ensure its full conformity with the Convention. The Committee requests the Government to provide information on any progress on this matter and on the envisaged review of the Department Order No. 40-F-03 and, once adopted, to provide a copy of the reviewed regulations.***

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 2017)

Previous comment

Article 1 of the Convention. Scope of application. While noting Executive Order No. 180 of 1987 (EO 180) (right of all Government employees to form, join or assist employees' organizations of their own choosing), and article IX(B) section 2(6) of the Constitution and Supreme Court judgements (right of temporary employees to self-organization and protection against arbitrary dismissals), the Committee had observed that there is no domestic law, rule, or policy pertaining to the right to organize of temporary public employees. The Committee notes the Government's indication that House Bills Nos 2621 and 2846, noted in the Committee's previous comment, were not enacted into law. ***The Committee requests the Government to provide information on the measures taken or envisaged, including legislative measures, so that temporary public employees, in line with the provisions set out in the Constitution, enjoy the rights and guarantees of the Convention***.

The Committee had observed that under EO 180 and the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize, 2004 (Implementing Rules and Regulations (IRR) of EO 180), several other categories of workers, whose functions do not justify their exclusion from the application of the Convention, were subject to limitations: firefighters and prison and other personnel who, by the nature of their functions, are authorized to carry firearms, are also excluded from this right (except when there is express written approval from the management). The Committee notes with ***interest*** that the Public Sector Labor-Management Council (PSLMC) Resolution No. 4, s. 2021 (October 2021) clarifies section 15 of the EO 180, and provides that: (i) the exclusion from this right to members of the Armed Forces of the Philippines (AFP) and Philippine National Police (PNP) is not applicable to the civilian and non-uniformed employee's association in the AFP and PNP; and (ii) these employees are accorded the right to organize and shall, upon accreditation, collectively negotiate terms and conditions of employment that are not fixed by law. The Committee observes, however, that the Government does not provide information regarding the right to organize and bargain collectively of other categories of workers, such as firefighters and prison guards, and that in previous comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee had noted the Government's indication that these categories of workers may exercise the right to freedom of association but not to the extent of forming, joining or assisting labour organizations for purposes of collective bargaining. The Committee therefore refers to its comments regarding the application of *Article 2* of Convention No. 87 and *Article 4* of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Registration requirements for trade unions in the public sector. Legislative issues. In its previous comments under Convention No. 87, the Committee had requested the Government to inform of the progress made in amending the IRR of EO 180 with regard to the registration requirement for trade unions in the public sector. The Committee notes the Government's indication that from 2017 to 2019 the number of newly registered public sector unions increased (100 in 2017 to 133 in 2019), and that, while the increase was disrupted by the COVID-19 pandemic, it expects to continue increasing. The Committee welcomes the Government's indication that: (i) House Bills No. 550 and 1513, both titled an "Act Strengthening the Constitutional Rights of Government Employees to Self-Organization, Collective Bargaining and Negotiation and Peaceful Concerted Activities and Use of Voluntary Modes of Dispute Settlement" were filed before the House of Representatives on 30 June and 7 July 2022, respectively; (ii) Bill No. 587, with the same title as the House Bills, was filed before the Senate on 14 July 2022; and (iii) these Bills seek to operationalize the Convention and will be discussed by the Congress (which formally opened sessions on 25 July 2022). The Committee observes that the Government does not provide details about the current or foreseen impact of these proposals (and others mentioned in past years by the Government such as the review of the Amended IRR) on the registration threshold for public servants' organizations (a 10 per cent signature support requirement, which has been considered overly stringent by the Center for United and Progressive Workers (SENTRO)). ***In light of the above, the Committee, requests once again the Government to provide further updates on the progress made in the legislative reform concerning the right to organize of public sector employees and to indicate any impact of these reforms on the threshold for registration of public employees' organizations.***

Article 6. Facilities to be afforded to public employees' organizations. The Committee had requested the Government to indicate in more detail the nature of facilities that are afforded to the representatives of recognized public workers' organizations to enable them to carry out their functions promptly and efficiently. The Committee notes the Government's indication that: (i) a survey conducted in 2018 showed that 540 out of 1,073 Collective National Agreements (CNAs) include agency fees (75 per cent) and union time-off (64 per cent); (ii) the PSLMC passed Resolution No. 2, s. 2022 providing for the Guidelines on the Use of Time-Off by Public Sector Employees' Organizations (Annex C), ensuring that members are guaranteed their right to attend activities of their organization without loss of pay; (iii) most unions with signed CNAs are able to negotiate for union office and support facilities; and (iv) unions are also represented in procurement committees and promotion and selection boards, subject to applicable regulations. The Committee observes that the Government does not indicate whether the CNAs mentioned in the referred survey and the other information provided regarding facilities apply to the public sector only or gather information from both the public and private sectors. Regarding the above mentioned Bills (Nos 550 and 1513) to implement the Convention, the Committee notes the Government's indication that: (i) the Bills were filed by representatives of labour and consultations have only been held with the labour sector; and (ii) the National Tripartite Industrial Peace Council (NTIPC) may be used as a venue for further consultation. The Committee observes that the Government does not provide further information on the content of these Bills with respect to the facilities afforded to the representatives of recognized public workers' organizations. The Committee recalls that the most important facilities are the granting of time off for workers' representatives without loss of pay or benefits, the collection of trade union dues, access to the workplace and prompt access to management. The Committee further recalls that it is desirable for consultations to be held prior to the adoption of legislation on facilities so that the measures adopted are sustainable and not contingent on successive changes of government or administration. ***The Committee therefore requests the Government to provide information on all the facilities that are envisaged in the above legislation and that have been agreed in public sector CNAs to representatives of public employees' organizations to enable them to carry out their functions promptly and efficiently (including, granting of time off for workers' representatives without loss of pay or benefits, the collection of trade union dues, prompt access to the management and the workplace and availability of premises). The Committee trusts that***

such legislation will address this issue, following consultations with the representative organizations concerned, and requests the Government to provide a copy of the legislation once adopted.

Article 7. Participation of organizations of public employees in the determination of terms and conditions of employment of their members. The Committee had noted that the requirement of the absolute majority in a bargaining unit to obtain the status of sole and exclusive collective negotiating agent may give rise to problems every time that no union secures the absolute majority support, thus preventing collective bargaining (sections 9–12 of EO 180, Rule I, section 1(a) of IRR on EO 180)). The Committee requested the Government to indicate whether in case no union in a specific bargaining unit meets the majority requirement, the existing unions are able to negotiate, jointly or separately, at least on behalf of their own members. The Committee notes the Government's reply to this request, indicating that only unions with status of sole and exclusive negotiating agent can conclude a CNA with their employer. The Committee observes that the referred majority requirement can significantly limit the access of public employees to collective bargaining. ***The Committee therefore requests the Government to indicate how the right of public employees to participate through their organizations in the determination of their terms and conditions of employment set by article 7 of the Convention is applied in the public services where no organization reaches the referred threshold.***

The Committee notes the information provided by the Government regarding the number of accredited employees' organizations as of June 2022 (1,299) and that 753 concluded and registered a CNA with the Civil Service Commission. The Committee also notes the Government's indication that the number of organizations of public workers that have obtained the status of exclusive negotiating agent has increased from 148 in 2019 to 180 in 2020 and 275 in 2021. ***Observing that only public employee's organizations with the status of exclusive negotiating agents can conclude a CNA, the Committee requests the Government to provide information clarifying the updated number of CNAs concluded in the public sector.***

The Committee had noted that according to the legislation, terms and conditions of employment not fixed by law may be the subject of negotiation (increases in salary, allowances, travel expenses, and other benefits that are specifically provided by law cannot be negotiated). The Committee had noted the Government's information on the existence of different mechanisms – the PSLMC, the NTIPC, the Regional Tripartite Industrial Peace Councils (RTIPCs) and the Industry Tripartite Councils (ITCs), which, according to the Government, ensure that the interests of workers in Government services are fully represented in the decision and policy-making processes. The Committee notes the Government's indication that no new mechanisms have been put in place so that public sector employees' organizations can negotiate or participate in the determination of terms and conditions of their employment. The Committee observes that the Government does not provide information on: (i) how the existing mechanisms allow public servant organizations to negotiate or participate in the determination of terms and conditions of their employment, in line with *Article 7* of the Convention, without limitation of subjects; and (ii) the status of the public sector labour relations road map consistent with the principles of the Convention. ***The Committee therefore requests the Government to provide information on the manner in which the existing mechanisms allow public servant organizations to negotiate or participate in the determination of terms and conditions of their employment, in line with Article 7 of the Convention, without limitation of subjects (including salary, allowances and travel expenses). Recalling its comments on the application of Article 4 of Convention No. 98 with respect to the public servants not engaged in the administration of the State, the Committee requests the Government to provide information on the progress related to the development of a labour relations framework aligned with Convention No. 151.***

Article 8. Settlement of disputes. The Committee had noted that the PSLMC, due to its composition of only Government representatives, does not appear to constitute an independent and impartial means of solving disputes arising in connection with the determination of terms and conditions of employment, as provided for in *Article 8* of the Convention. The Committee notes, that the Government reiterates that

the Civil Service Commission may conciliate or mediate a dispute before is sent to the PSLMC for resolution. The Committee notes, once again, that the Government does not provide information regarding the possibility for representatives of public servants' organizations to vote in the discussions and deliberations of the PSLMC. The Committee notes the Government's indication that there is no other independent and impartial means of solving disputes arising in connection with the determination of terms and conditions of employment, as provided for in *Article 8* of the Convention. The Committee further notes the Government's indication that negotiating parties can submit proposals to the Congress and other authorities to improve the terms and conditions of their employment. ***The Committee therefore requests the Government to take all the necessary measures to ensure that independent and impartial machinery is established so that disputes arising in connection with the determination of terms and conditions of employment in the public service can be referred to such mechanisms, which should benefit from the confidence of the parties. The Committee requests the Government to provide information on any developments in this regard.***

Tribunal decisions. The Committee takes note of the information provided by the Government regarding five court decisions issued by the Supreme Court of the Philippines, between 1991 and 2021, relating to the application of the Convention, including one related to the power of the Department of Budget and Management to issue rules in relation to compensation as a result of collective negotiations between government employees' organizations and their employers (Dreneu vs. Abad, G.F. No. 204152). ***The Committee requests the Government to indicate the implications of this decision, regarding terms and condition of employment of public employees, and to continue to provide information on court decisions relating to questions of principle regarding the application of the Convention.***

Poland

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC) and of the Independent and Self-Governing Trade Union (NSZZ) "Solidarność", received on 1 September 2022, as well as the observations of the All-Poland Alliance of Trade Unions (OPZZ), transmitted with the Government's report, referring to the issues examined by the Committee below. ***The Committee takes note of the Government's reply to the observations received and requests it to provide its comments in relation to the ITUC's alleged violations of unions' rights in organizing strike referendums and social elections.***

Articles 2 and 9 of the Convention. *Right of workers, without distinction whatsoever, to establish and join trade unions*. In its previous comments, the Committee had noted the allegations made by the NSZZ "Solidarność" that the Act on Universal Defence prohibited soldiers of the territorial defence forces, who were at the same time private sector employees, to establish and join trade unions in the private sector. In this respect, the Committee notes the information provided by the Government that the Act in question was repealed and replaced by the Act of 11 March 2022 on the Defence of the Homeland. In particular, the Committee takes due note that pursuant to section 328(5) of the Act, soldiers who are not professional soldiers are prohibited to establish and join trade unions, or take part in the activities of trade unions of which they were members at the time of their appointment to service, and that pursuant to section 328(6), this prohibition does not apply to soldiers of territorial defence serving on a rotational basis, except where trade union activities are related to the performance of their military service.

Article 3. Right of organizations to elect their representatives in full freedom, to organize their activities, and to formulate their programmes. Civil service. The Committee had previously referred to the need to amend section 78(6) of the Act on Civil Service, which prohibits members of the civil service occupying senior positions to exercise trade union functions. In this respect, the Committee notes the Government's expressed intention to address this issue in consultation with the social partners on the occasion of the amendment of the Act. The Committee had also requested the Government to amend section 78(3) of the same Act, which forbids civil servants to participate in strikes or actions of protest interfering with the normal functioning of the office, and trusted that the Government would consider establishing a procedure for determining which public servants enumerated in section 19(3) of the Law on Collective Labour Disputes and in section 2 of the Act on the Civil Service were exercising authority in the name of the State and for whom the right to strike could therefore be restricted. Recalling that it had previously welcomed the Government's indication that a draft law dealing with the right of public employees to strike was submitted to the Council of Ministers, the Committee notes with ***regret*** the Government's indication that at present, there are no legislative initiatives to amend section 78(3) of the Act on Civil Service. ***Recalling that for a number of years it has been commenting on the discrepancies between section 78(3) and (6) of the Act on Civil Service Act and the Convention, the Committee urges the Government to take all necessary steps to expedite the process of amendment of this Act, so as to ensure that civil servants may exercise their trade union functions at all levels and that the right to strike is granted to all public servants, with the possible exception of public servants exercising authority in the name of the State. It requests the Government to provide information on all progress made in this regard.***

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

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

Previous comment

The Committee notes the observations of the National Commission of the Independent and Self-Governing Trade Union "Solidarność" (NSZZ "Solidarność"), received on 1 September 2022, which mostly relate to issues examined by the Committee in the present comment. The Committee also notes the observations of the International Trade Union Federation (ITUC), received on 1 September 2022 alleging violations of workers' rights under the Convention, including anti-union dismissal, unfair treatment of trade unionists, and the prevention of unions from organizing social elections. ***The Committee requests the Government to provide its comments in this regard.***

The Committee further notes that the Government replies to the observations of the ITUC, which were received on 1 September 2018 and referred to a series of anti-union discrimination acts, including the dismissal of more than 20 "Solidarność" representatives. The Committee notes that the Government provides information in this regard, indicating in particular that in several cases the employees were reinstated. The Committee also takes note of the Government's comments in reply to previous observations of NSZZ "Solidarność", the All Poland Alliance of Trade Unions (OPZZ) and the ITUC.

Article 1 of the Convention. Protection against anti-union discrimination. Legal proceedings applicable to reinstatements. The Committee had previously noted that the victims of anti-union dismissals could request reinstatement, but that the court proceedings could take up to two years. It had also noted the Government's intention to consider amending the Code of Civil Procedure (CCP) in this regard. The Committee welcomes the Government's indication that section 477^2 (2) of the CCP was amended, so that the court, at the employee's request, may decide to impose on the employer the obligation to continue the employment of the employee until the final conclusion of the proceedings. The Government adds that consideration was also given to the NSZZ "Solidarność" proposal to make additional amendments

to the CCP, but the Ministry of Justice did not recommend any further amendments in this regard. The Committee notes the allegations of the NSZZ "Solidarność" that additional legislative changes to the procedural regulations contained in the CCP are needed if the persons who, by virtue of section 32 of the Act on Trade Unions, enjoy special protection under the Act on Trade Unions due to their trade union status or activities are to be efficiently protected against anti-union discrimination. ***In order to evaluate the effectiveness of the protection granted by the referred provisions, the Committee requests the Government to provide detailed information on the practical application of sections 32 of the Act on Trade Unions and 477[2] (2) of the Code of Civil Procedure.***

Effective sanctions and compensation to prevent anti-union discrimination. The Committee had previously requested the Government to take the necessary measures to raise the level of fines applicable to anti-union discrimination acts as well as to increase the amount of compensation in cases of anti-union dismissal. The Committee notes with ***regret*** that the Government merely reiterates the information that currently there are no legislative initiatives in this regard. ***The Committee urges the Government to take all necessary steps to expedite the process for the revision of the respective provisions, in consultation with social partners, so as to bring the legislation into conformity with the requirements of the Convention by increasing the level of fines applicable to anti-union discrimination acts as well as by increasing the amount of compensation in cases of anti-union dismissal. It requests the Government to provide information on all progress made in this regard.***

Number of sanctions imposed. The Committee had previously requested the Government to provide statistics on the number of sanctions imposed under the amended section 35(1) of the Act on Trade Unions, and to provide information on how the burden of proof is managed by the tribunals when applying this section. The Committee notes the information provided by the Government on the number of complaints for discrimination based on trade union membership, as registered with the National Labour Inspectorate from July 2018 to June 2022: 15 in the second half of 2018, 55 in 2019, 40 in 2020, 57 in 2021, and 26 in first half of 2022 up to 20 June. The Committee also notes the statistics based on the number of persons validly sentenced pursuant to article 35(1) of the Act on Trade Unions in 2015-2019, which included two persons sanctioned, one in 2017 and one in 2019. The Committee also notes additional statistics provided by the Government related to a second set of persons sentenced for crimes prosecuted by the prosecutor. ***The Committee requests the Government to continue providing information on the number of sanctions imposed under the amended section 35(1) of the Act on Trade Unions, and in particular to clarify which type of offences and anti-union acts the second set of statistics refers to. Furthermore, noting that the Government has not provided information on how the burden of proof is managed by the tribunals when applying section 35(1), the Committee once again requests the Government to provide information in this regard.***

Compensation available to "persons working for money". In its previous comments relating to the protection against anti-union discrimination of "persons working for money" that are now covered by the Act on Trade Unions, the Committee had requested the Government, to specify: (i) whether the consequences of an anti-union termination of the contractual relationship of a "person working for money" are limited to or go beyond financial compensation; (ii)"on which basis and according to which modalities the compensation amounting to six months' salary for "persons working for money", who are trade union representatives and who would be subject to anti-union discrimination, is calculated. The Committee notes that the Government indicates that as a result of the amendment to the Act on Trade Unions, the special safeguards provided for in section 32(1) of this Act also apply to workers other than employees, and that in case of a breach by an employer of these safeguards, trade union activists who are not employees are entitled to a pecuniary compensation (due irrespective of the amount of the damage suffered). The Government further indicates that, pursuant to section 32(1)[4], when determining the amount of the remuneration referred to in section 32(1)[3], the average monthly remuneration for the period of six months preceding the date of termination of the legal relationship, giving notice or a unilateral change to such legal relationship is taken into account, and if a worker, other than an

employee, has been working for a period of less than six months – the average monthly remuneration for the entire period of their employment. The Government however indicates that a trade union activist who is not an employee is not entitled to claim reinstatement but may be entitled to damages or redress in excess of the compensation amount, provided that a trade union activist proves in court proceedings all conditions legitimizing liability for damages. ***While welcoming the amendments to the Act on Trade Unions, in particular new sections 32(1)[3] and 32(1)[4], that provide for the special safeguards under section 32(1) of this Act to apply to workers other than employees, the Committee invites the Government to engage in consultations with the social partners so as to consider the possibility that the consequences of an anti-union termination of the contractual relationship of a "person working for money" are not limited to financial compensation. It also requests the Government to provide information with regard to the application of sections 32(1)[3] and 32(1)[4] of the Act on Trade Unions in practice and provide the statistics of the respective cases in this regard.***

Article 4. Promotion of collective bargaining. The Committee had previously requested the Government to indicate the extent to which conditions of work, including pay, of "persons working for money" can be subject to collective bargaining. It notes with ***satisfaction*** the Government's indication that due to the amendments made to the Act on Trade Unions, all the rules related to working conditions and remuneration of "persons working for money" that are subject to negotiations leading to signing a collective agreement, are the same as the rules previously applied to employees. According to the Government, every aspect of the work and remuneration of a worker may be subject to arrangements when negotiating a collective labour agreement, provided that they do not go below the conditions already established by applicable labour law. ***The Committee requests the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned and the number of "persons working for money" covered by these agreements, as well as any additional measures undertaken to promote the full development and utilization of collective bargaining under the Convention.***

Portugal

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

Previous comment

The Committee notes the observations of the Confederation of Portuguese Industry (CIP) and of the General Workers' Union (UGT), transmitted with the Government's report and referring to matters under examination by the Committee.

The Committee further notes that in its observations on the application of Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the UGT alleges acts of anti-union discrimination, harassment and intimidation in the industry and service sectors. ***The Committee requests the Government to provide its comments thereon.***

Article 4 of the Convention. Promotion of collective bargaining. Extension of collective agreements. In its previous comments, the Committee requested the Government to provide information on the application of the new regime for the extension of collective agreements, which was established under the Medium-Term Tripartite Agreement of 2017. The Committee notes that the Government reports that the number of extension ordinances issued significantly increased in the years following the publication of Decision No. 82/2017, decreased in 2020 due to the low number of collective agreements concluded in the context of the COVID-19 pandemic, and slightly increased again in 2021. It notes the Government's indication that although Portugal's trade union membership rate is about 16 per cent, the coverage rate of the collective agreements in force is close to 80 per cent as a result of the issuance of extension ordinances. In this regard, the Committee notes that the statistical data provided by the

Government show a slight decrease in the coverage rate of collective agreements in recent years, as it went from 78.3 per cent in 2017 to 76.6 per cent in 2020. ***The Committee requests the Government to continue providing information on the application of the new extension regime, as well as updated statistical data on the overall coverage of collective agreements in the country.***

Conditions for the expiry of collective agreements. The Committee had previously noted the observations of the General Confederation of Portuguese Workers – National Trade Unions (CGTP-IN) alleging that sections 501 and 502 of the Labour Code, which provide that clauses preventing the expiry of a collective agreement unless it is replaced shall lapse three years after the end of the agreement, contravene the principle of free and voluntary collective bargaining. It also noted the opposite view expressed by the CIP and encouraged the Government to continue promoting social dialogue to endeavour to come up with solutions accepted by the most representative social partners. The Committee notes the Government's indication that the Agreement on Combating Job Insecurity, Reducing Labour Market Segmentation and Promoting More Active Collective Bargaining, which was signed at a meeting of the Standing Committee on Social Dialogue (CPCS) of the Economic and Social Council (CES) on 18 June 2018, included requirements aimed at preventing gaps arising from the expiry of collective agreements, and that sections 500 to 502 of the Labour Code were amended accordingly on 4 September 2019 (Act N0 93/2019). The Committee observes that although certain changes were made to sections 501 and 502, the provision that was denounced by the CGTP-IN and described above remains in force. The Committee also notes that the CIP, in its observations, alleges that Act No. 11/2021 of 9 March 2021 provides for the extension of the time periods for the after-effect of collective bargaining agreements for a period of 24 months (until 10 March 2023). The Committee notes that according to the CIP, the Act encourages inaction and stagnation, and constitutes a barrier to the adoption of new collective agreements. ***The Committee requests the Government to provide its comments in this regard. Encouraged by the fact that the issue of the after-effect of collective agreements has given rise to active tripartite dialogue leading to the adoption of Act No. 93/2019, the Committee requests the Government to continue this tripartite dialogue with regard to the matters raised by the CGTP-IN and the CIP within the framework of the CPCS.***

Compulsory arbitration. In its previous comments, the Committee requested the Government to inform on any new cases involving the application sections 508(1)(c) and 509 of the Labour Code, which allow the Labour Minister to take a reasoned decision to have recourse to compulsory arbitration. It notes that the Government reports that no decision to have recourse to compulsory arbitral under section 508(1)(c) was made during the reporting period. ***The Committee requests the Government to continue to provide information on any new case involving the application of the above-mentioned provisions.***

Representativeness of organizations. The Committee had previously requested the Government to determine and lay down objective, precise and predetermined criteria to evaluate the representativeness and independence of employers' and workers' organizations forming part of the CES and the CPCS, and to amend section 9 of Act No. 108/91, which designates by name the trade union organizations that are to form part of the CES. It had noted the Government's indication that it would consult with the social partners on these matters with a view to identifying basic guidelines jointly for a tripartite agreement. The Committee notes with ***regret*** that the Government does not provide any new information in this regard. ***The Committee once again requests the Government to take the necessary measures, in consultation with the social partners, to establish objective, precise and predetermined criteria to evaluate the representativeness and independence of employers' and workers' organizations forming part of the CES and the CPCS, and to amend the legislation accordingly. The Committee requests the Government to provide information on any progress achieved in this regard.***

Romania

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the Government's reply to the comments submitted by: (i) the International Trade Union Confederation (ITUC); and (ii) the Block of National Trade Unions (BNS); Confederation of Democratic Trade Unions of Romania (CSDR); and the National Trade Union Confederation (CNS "CARTEL ALFA"), referring to matters examined in this observation.

Article 2 of the Convention. Right of workers to establish and join organizations of their own choosing. Threshold requirements. The Committee notes that in its 2018 observations, the ITUC pointed out that section 3(2) of the Social Dialogue Act (SDA) imposes a minimum requirement of 15 founding members of the same company to set up a union. It further notes that according to the ITUC, this constitutes an insurmountable barrier in a country where the majority of employers are small and medium-sized enterprises, given that 92.5 per cent of all enterprises in Romania employ less than 15 workers and therefore this requirement denies over 1 million workers (42 per cent of the employees) the right to unionize. The Committee notes that in its observations, the CNS "CARTEL ALFA", the BNS and the CSDR raised similar concerns regarding the minimum membership requirements. Noting that the Government does not provide observations in this regard, the Committee recalls that, while it has found that the establishment of a minimum membership requirement in itself is not incompatible with the Convention, it has always been of the view that the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. It also considers that this criterion should be assessed in relation to the level at which the organization is to be established (for example, at the industry or enterprise level) and the size of the enterprise (see the 2012 General Survey on the fundamental Conventions, paragraph 89). ***The Committee requests the Government, in full consultation with the most representative workers and employers' organizations, to review the minimum membership criteria taking into consideration the high prevalence of small and medium-sized enterprises in the country so as to ensure the right of all workers to form and join the organizations of their own choosing. The Committee requests the Government to provide information on progress made in this respect.***

Scope of the Convention. Retired workers. The Committee had recalled that legislation should not prevent dismissed workers and retirees from joining trade unions, if they so wish, particularly when they have participated in the activity represented by the union. The Committee takes due note of the Government's information that the legislation does not prohibit the maintenance of the membership, or election in the union leadership, in case of dismissal or retirement since the trade union organization and its relations with its members are established by the trade union's statutes according to section 32 of Law No. 62/2011.

Non-standard forms of work. The Committee notes that in its 2018 observations, the ITUC points out that pursuant to section 3(1) of the SDA, day labourers, self-employed workers and workers engaged in atypical employment relationships, which constitute an estimated 25.5 per cent of the total employed population in Romania, are excluded from the scope of the SDA and therefore cannot exercise their trade union rights. ***Recalling that all workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization, the Committee requests the Government to provide its comments thereon. It further invites the Government, in consultation with the social partners, to consider any necessary measures to ensure that workers engaged in non-standard forms of work can benefit from the trade union rights enshrined in the Convention.***

Article 3. Right of workers' organizations to organize their administration, as well as their activities. In its previous comments, the Committee had requested the Government to take measures to: (i) delete or amend section 2(2) of the SDA, according to which workers organizations shall not carry out political activities; and (ii) delete or amend section 26(2) of the SDA, in order to avoid excessive control of trade union finances (powers afforded to state administrative bodies to control the economic and financial activity and payment of debts to the state budget). ***Noting from the Government's report that no progress has been achieved, the***

Committee requests the Government to take measures to delete or amend the above-mentioned sections of the SDA, so as to bring them into line with the Convention.

With respect to the consultations undertaken at the National Tripartite Council for Social Dialogue with a view to amend the SDA, the Committee is addressing these issues in the context of the observations on Convention No. 98.

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

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1958)

Previous comment

The Committee notes the observations of the International Trade Union Confederation(ITUC) received on 1 September 2022 concerning, on the one hand, the matters examined by the Committee in its previous comments and, on the other, allegations of anti-union dismissals. ***The Committee requests the Government to provide its comments in this regard.***

The Committee notes that, according to publicly available information, on 23 November 2022 the Chamber of Deputies adopted a reform of the Social Dialogue Act (SDA) of 2011, which was transmitted to the President of the Republic for promulgation. The Committee notes in this respect that: (i) it has made comments since 2012 on the need to revise the SDA; (ii) the technical advisory mission carried out in May 2022 following the 2021 conclusions of the Conference Committee on the Application of Standards (the Conference Committee) was informed of the ongoing reform process and exchanged views on it with the national tripartite constituents; and (iii) at the request of the Government, the draft reform was the subject of technical comments by the Office in October 2022. ***The Committee welcomes the fact that the Government has availed itself of the technical assistance of the Office in the ongoing legislative reform and requests the Government to provide a copy of the law as soon as it is promulgated. The Committee hopes that its content will take into account the comments it made on the SDA.***

The Committee notes that the Government's report has not been received and is therefore bound to repeat its previous comments***. Observing that the technical advisory mission covered the various aspects examined by the Committee and the Conference Committee with regard to the application of the Convention, the Committee invites the Government to take into account the points raised by the mission in the preparation of its next report.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 109th Session, June 2021)

The Committee notes the discussion which took place in June 2021 in the Conference Committee on the Application of Standards (the Conference Committee) concerning the application of the Convention by Romania. The Committee observes that the Conference Committee, after noting that there were significant compliance issues regarding the Convention in law and practice with respect to the protection against anti-union discrimination and the promotion of collective bargaining, requested the Government to: (i) ensure adequate protection against acts of anti-union discrimination in law and practice in compliance with the Convention; (ii) collect detailed information on the number of cases of anti-union discrimination and employer interference brought to the various competent authorities; the average duration of the relevant proceedings and their outcome; how the burden of proof is applied in such cases affecting trade union officers as well as the sanctions and remedies applied in such cases; (iii) ensure, in law and practice, that collective bargaining with the representatives of non-unionized

workers only takes place where there are no trade unions in place at the respective level; and (iv) amend the law so as to enable collective bargaining for public servants not engaged in the administration of the State in line with the Convention. The Conference Committee also requested the Government to: (i) provide information on all of the above points to the Committee of Experts before its next session in 2021; and (ii) accept an ILO technical advisory mission before the next International Labour Conference.

The Committee observes that in its report the Government essentially reiterates the information already provided to the Conference Committee.

Articles 1, 2 and 3 of the Convention. Effective protection against acts of anti-union discrimination and interference. In its previous comments, the Committee requested the Government to: (i) take measures to amend the legislation in order to guarantee that acts of anti-union discrimination are subject to specific and dissuasive sanctions; (ii) indicate how the burden of proof is placed in cases of allegations of anti-union discrimination affecting trade union officers; (iii) provide detailed statistical information on the number of cases of anti-union discrimination and employer interference brought to the various competent authorities, the average duration of the relevant proceedings and their outcome, as well as the sanctions and remedies applied in such cases; and (iv) ensure that anti-union practices, and in particular preventive measures, would be subject to tripartite discussions. The Committee notes that the Government indicates that, following consultations with the social partners, the Labour Code was amended in 2020 by Law 151/2020 to ensure a proper recognition of harassment, intimidation and victimization of employees and their representatives, including in the exercise of legitimate trade union rights and activities, with dissuasive sanctions applied effectively. It indicates that: (i) section 5, paragraph 2 of the Labour Code, as amended, explicitly prohibits direct or indirect discrimination based on membership or trade union activity; (ii) section 59(a) of the Labour Code was amended to explicitly prohibit dismissal based on trade union affiliation or activity; and (iii) section 260(1)(r) of the Labour Code, as amended, provides that non-compliance with the provisions of section 5, paragraphs (2)–(9), and of section 59(a) is sanctioned with fines between 1,000 LEI and 20,000 LEI (equivalent to US$229 and US$4,575 respectively). Regarding the burden of proof in cases of union discrimination against union leaders, the Government indicates that, as provided for in section 272 of the Labour Code, the burden of proof with regard to labour disputes rests with the employer. The Committee notes that in the ITUC's view, section 260 of the Labour Code does not permit verification of the extent to which the legislation is effective and sufficiently dissuasive. The Committee also takes note of the Government's indication that no fines were applied for violations of the law related to union membership or activity between January 2020 and April 2021. The Committee finally notes that, at the discussion held at the Conference Committee, the Government indicated that the Ministry of Justice manages the courts databases and that data is collected with a particular nomenclature that did not allow the Government to identify the type of statistical information requested by the Committee.

The Committee takes note of the information provided by the Government. As regards sanctions, the Committee recalls the importance of legislation prohibiting acts of anti-union discrimination to be accompanied by dissuasive sanctions and rapid and effective procedures. In this respect, the Committee considers that the amount of the fines established in the Labour Code might not be sufficiently dissuasive, particularly for large enterprises. The Committee also recalls that, with respect to anti-union dismissals the reinstatement with retroactive compensation constitutes, in the absence of preventive measures, the most effective remedy. The Committee finally recalls the importance of statistical information for the Government to fulfil its obligation to prevent, monitor and sanction acts of anti-union discrimination. ***Based on the above, the Committee requests the Government to: (i) take measures, after consultation with the representative social partners, to strengthen the existing sanctions in cases of anti-union discrimination in order to ensure their effectiveness and dissuasiveness, particularly for large enterprises; (ii) indicate whether reinstatement is an available remedy in cases of dismissal based on trade union affiliation or activity; and (iii) gather and communicate information on the number of cases of anti-union discrimination and employer***

interference brought to the various competent authorities, the average duration of the relevant proceedings and their outcome, as well as the sanctions and remedies applied in such cases. As mentioned in its previous comments, the Committee further requests the Government to ensure that anti-union practices, and in particular preventive measures in this respect, will be subject to tripartite discussions.

Article 4. Promotion of collective bargaining. The Committee notes that Case No. 3323 concerning, inter alia, allegations of shortcomings and gaps in the national legislation with respect to collective bargaining was examined by the Committee on Freedom of Association (CFA) (393rd Report, March 2021). The Committee notes that the CFA referred to it the legislative aspects of the case, related to issues that have been the subject of comments by this Committee since the adoption of the Social Dialogue Act (SDA) in 2011.

Collective bargaining at the company level. In its previous comments, against the background of a sharp decline in collective bargaining coverage in the country following the adoption of the SDA, the Committee noted that a number of aspects of the SDA and its implementation raised issues of compatibility with the Convention. The Committee noted in particular the high representativeness threshold required to negotiate at company level (50 per cent plus one of the workers of the company) and the fact that the SDA allowed elected workers' representatives to bargain collectively for the totality of workers of the company. In its last comment, while noting the Government's indication that, following a 2016 amendment to section 134.2 of the law, negotiation with elected workers' representatives was now only possible in the absence of a trade union, the Committee had noted with concern the statistical data provided by the ITUC according to which 86 per cent of all collective agreements signed were by elected workers' representatives and only 14 per cent by trade unions. On that basis, the Committee had requested the Government to amend the threshold applicable to negotiations at the company level so as to effectively promote collective bargaining, to clarify whether the negotiating powers granted to the elected workers' representatives existed only when there is no trade union and to provide its comments on the statistics provided by the ITUC.

As regards the representativeness thresholds established by the legislation with respect to collective bargaining at the company level, the Committee notes that, in its replies to the CFA, the Government clarified that voluntary bargaining is not conditioned by the representativity of the organizations since minority unions have the right to bargain collectively based on mutual recognition and can conclude collective agreements applicable to members of the signatory parties. The Committee notes the ITUC observations in this respect, according to which, while the Government states that nothing prevents trade unions from negotiating for their members at the company level, given their lack of representativeness, the agreements reached have no erga omnes effect. With regard to the impact of negotiations conducted by elected workers' representatives on the right to collective bargaining recognized by the Convention to trade unions, the Committee notes that the Government refers to a draft revision of the SDA currently being adopted but does not comment on the ITUC's observations that the vast majority of company collective agreements were still signed by elected workers' representatives to the detriment of trade unions. The Committee notes in this respect that, in its 2021 observations, the ITUC adds that: (i) while the Government states that collective bargaining through elected representatives is only possible in companies that do not have a representative union, the fact that the required representativeness threshold is 50 per cent plus one means in practice that in the majority of companies it is the elected representatives who negotiate instead of the unions who do not reach that threshold; (ii) elected representatives have concluded over 92 per cent of collective agreements in the private sector; and (iii) the procedure for electing representatives does not allow trade unions to present lists when they are affiliated to a federation at the branch level.

The Committee recalls that, under the terms of the Convention, collective bargaining with non-union actors should only be possible when there are no trade unions at the respective level. The Committee also recalls that, by virtue of *Article 4* of the Convention, the Government has the obligation

to effectively promote free and voluntary collective bargaining in a manner appropriate to national conditions. ***Expressing its concern at the persistent indications of a very low level of bargaining coverage and noting the recommendations of the Committee on Freedom of Association in Case No. 3323, the Committee requests the Government to take the necessary measures to promote collective bargaining between workers' and employers' organizations and to ensure that the existence of elected workers' representatives is not used to undermine the position of the workers' organizations concerned. In this regard, the Committee specifically requests the Government to: (i) specify how the mutual recognition between an employer and a minority trade union mentioned by the Government takes place in practice; (ii) provide information on the number of collective agreements concluded at the enterprise level, indicating those concluded by minority trade unions on behalf of their own members; (iii) clarify whether, under section 134(2) of the SDA, the negotiating powers granted to the elected workers' representatives exist only when there is no trade union at the respective level; and (iv) take the necessary measures to ensure that agreements concluded with elected representatives prior to the 2016 amendment to the SDA do not have the effect of continuing to undermine the position of trade unions.***

Collective bargaining at the sectoral and national levels. The Committee recalls that in its previous comments, it had taken note of the information from both the Government and the trade unions concerning the drastic decrease in the number of sectoral collective agreements following the changes introduced by the SDA. The Committee had therefore requested the Government to take the necessary measures to amend the representativeness thresholds so as to effectively promote collective bargaining at all levels. The Committee notes the absence of specific information from the Government in this respect. Taking due note of the conclusions and recommendations of the CFA in Case No. 3323, the Committee recalls once again that collective bargaining should be possible at all levels and that the Government has an obligation to ensure effective promotion of collective bargaining in a manner appropriate to national conditions. ***The Committee therefore reiterates its request to the Government to revise, in consultation with the representative social partners, the relevant thresholds and conditions in order to ensure that collective bargaining is effectively possible at all levels, including the sectoral and national levels. The Committee further requests the Government to provide information on the evolution of the number of collective agreements signed at the different levels above the enterprise level, as well as on the overall coverage of collective bargaining in the country.***

Russian Federation

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

Previous comment

The Committee notes the observations of the Confederation of Labour of the Russian Federation (KTR), communicated with the Government's report and referring to the issues raised by the Committee below, as well as the Government's reply thereon.

The Committee notes that the Committee on Freedom of Association (CFA) drew to its attention the legislative aspects of Case No. 3313 [see 396th Report, October 2021, paragraphs 529–595]. The Committee notes, in particular, the conclusions and recommendations of the CFA with regard to: (1) the right of trade unions to express opinions and (2) the application to trade unions of the legislative provisions regulating non-commercial organizations performing functions of a foreign agent.

Freedom of expression. With regard to a situation where a union's publications criticizing the State's policy were declared as being contrary to the law and the union's statutes, the CFA recalled that the right to express opinions through the press or otherwise is an essential aspect of trade union rights and the full exercise of trade union rights calls for a free flow of information, opinions and ideas within the

limits of propriety and non-violence. The CFA further recalled that freedom of expression which should be enjoyed by trade unions and their leaders should also be guaranteed when they wish to criticize the government's economic and social policy. The CFA requested the Government to take all necessary measures to ensure that the right of trade unions to express opinions, including those criticizing the Government's economic and social policies is duly protected in law and in practice. ***The Committee requests the Government to indicate all steps taken in this respect.***

Foreign agents. Furthermore, and with reference to Case No. 3313, this Committee notes that by virtue of the Law on Non-Commercial Organizations, trade unions must register as organizations performing the functions of a "foreign agent" if they receive funding from foreign sources and that such status entails certain additional obligations imposed on a trade union under sections 24 and 32 of the Law. The Committee further notes that section 32 provides for scheduled (once a year) and unscheduled inspections of non-commercial organizations performing the functions of a foreign agent. The Committee notes that the reasons for unscheduled inspections include the receipt of information from the state authorities, local self-government authorities, citizens or organizations on: (i) a violation of law or its own by-laws by a non-commercial organization performing the functions of a foreign agent; (ii) non-registration as a foreign agent; and (iii) participation in events carried out by a foreign or international non-governmental organization whose activities have been declared undesirable on the territory of the Russian Federation. If during an investigation it appears necessary to obtain documents and/or information through inter-agency information exchange, to undertake complex and/or lengthy research or special expert analyses and investigations, the time limit for carrying out the investigation may be extended to 45 working days. The Committee considers that legislation which seriously hampers activities of a trade union or an employers' organization on the grounds that they accept financial assistance from an international organization of workers or employers to which they are affiliated infringes the principles concerning the right to affiliate with international organizations. The Committee also notes that pursuant to section 32 of the Law, an authorized body can prohibit a non-commercial organization performing the functions of a foreign agent from implementing a programme (or part thereof). Failure to execute that decision entails the liquidation of the organization by a court. The Committee notes heavy penalties set out by the Code of Administrative Offences in connection to the failure to register as a non-commercial organization performing the functions of a foreign agent, and also for production or distribution of materials (including through the mass media and/or the Internet), without indicating that these materials were produced, distributed or sent by a non-commercial organization acting as a foreign agent. In light of the above, the Committee, like the CFA, considers that it is difficult to reconcile the additional bureaucratic burdens imposed on trade unions receiving financial assistance from abroad (including from an international trade union to which they are affiliated), as well as various hefty penalties that can be imposed on the organizations, their leaders and members, with the right of trade unions to organize their administration, to freely organize their activities and to formulate their programmes as well as with the right to benefit from international affiliation. The Committee recalls that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. The discretionary right of the authorities to carry out inspections and request information at any time entails a serious danger of interference in the internal administration of trade unions. ***The Committee therefore urges the Government to take the necessary steps to find an appropriate solution through social dialogue in order to ensure that the regulations on non-commercial organizations performing the functions of a foreign agent are compatible with the rights of trade unions, and employers' organizations, under the Convention. The Committee requests the Government to provide information on all measures taken in this respect.***

The Committee notes with ***utmost concern***, from the Kremlin website (www.kremlin.ru), the entry into force, on 1 December 2022, of the Law on Control of Activities of Persons Under Foreign Influence. The Committee notes that pursuant to the new legislation, foreign influence is defined as a support (financial and/or other) provided by, among others, international and foreign organizations, and that

non-compliance with the requirements of the law, which are now more stringent than those described above, entails a dissolution of the organization in question. The Committee notes that while employers' organizations are explicitly excluded from its scope, trade unions are not. ***The Committee urges the Government to take all necessary steps to exclude trade unions and their organizations from the scope of application of the new Law and to inform the Committee of all measures taken in this respect.***

The Committee notes, from the Official Internet Portal of Legal Information, the entry into force, on 5 December 2022, of the related legislation, the Law on Amendments to Certain Legislative Acts of the Russian Federation, which amends, among several other pieces of legislation, Federal Law No. 54-FZ of 19 June 2004 (as amended on 30 December 2020) on Meetings, Rallies, Demonstrations, Marches and Pickets. The Committee notes with ***deep concern*** that the amendment not only restricts areas where a public event can take place to the extent that the organization of demonstrations, marches, pickets might become virtually impossible, but also forbids the organization of such events by foreign agents. ***The Committee requests the Government to provide information on these developments.***

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities. The Committee had previously invited the Government to review, in consultation with the social partners, various categories of the State and municipal civil service with a view to identifying those that may fall outside of the narrowly interpreted category of public servants exercising authority in the name of the State. The Committee notes that the Government reiterates its explanation on the classification of civil service positions in the national legislation set out in section 9 of the Law on State Civil Servants, and indicates that all civil servants covered by that legislation exercise authority in the name of the State. The Committee notes that the KTR reiterates its opinion that far from all civil servants covered by the Law are "officials exercising authority in the name of the State". The Committee questions to what extent "support specialists" (clerical, documentation, IT, accounting, etc. specialists), for example, exercise authority in the name of the State. The Committee recalls that too broad a definition of the concept of civil servant may result in a very wide restriction or even a prohibition of the right to strike for these workers. The Committee welcomes the Government's indication that it is prepared to conduct, where necessary, consultations with social partners regarding possible improvements. ***The Committee reiterates its request and expects the Government to inform it of the outcome of the review, in consultation with the social partners, of various categories of the State and municipal civil service with a view to identifying those that may fall outside of this narrowly interpreted category and whose right to strike should be guaranteed***.

With regard to its previous request to take the necessary measures to amend section 26(2) of the Law on Federal Rail Transport so as to ensure the right to strike of railway workers, the Committee notes the Government's indication that it believes there is no need to amend the legislation on the rail transport, as section 413 of the Labour Code provides that the right to strike may be restricted by federal law. The Government indicates that temporary work stoppages by certain categories of railway workers may pose a threat to the defence of the country and state security, as well as human life and health, and it is therefore reasonable to restrict their right to strike. The Committee reiterates that railway transport does not constitute an essential service in the strict sense of the term where strikes can be prohibited and that instead, a negotiated minimum service could be established in this public service of fundamental importance. ***The Committee reiterates its previous request and expects the Government to take the necessary measures, in consultation with the social partners, to amend section 26(2) of the Law on Federal Rail Transport so as to bring it into full conformity with the Convention. The Committee again requests the Government to provide information on measures taken or envisaged in this respect.***

[The Government is asked to reply in full to the present comments in 2023.]

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

Previous comment

The Committee notes the observations of the Confederation of Labour of the Russian Federation (KTR) communicated with the Government's report and referring to the issues examined by the Committee below, as well as the Government's reply thereon.

Articles 1, 2 and 3 of the Convention. Adequate protection against acts of anti-union discrimination and interference. In its previous comment, the Committee had requested the Government to provide information on the developments regarding the implementation of the proposals by the KTR and the Federation of Independent Trade Unions of Russia (FNPR), pertaining to anti-union discrimination, which the Government and employers' representatives had agreed to examine in the framework of the Russian Tripartite Commission for the Regulation of Social and Labour Relations (RTK). The Committee notes the Government's indication that it believes the cooperation between the relevant federal authorities and the social partners, within the framework of the working group established under the Ministry of Labour to develop proposals to improve the current regulatory legal framework and law enforcement procedure is effective. The COVID-19 pandemic has affected the frequency and format of the working group meetings and the last in-person meeting was held in July 2022. The Government indicates that the issue of discrimination is one of the key subjects of discussion put on the agenda by trade unions. The Committee notes the KTR allegation that the existing mechanisms are inefficient and ineffective in addressing cases of anti-union discrimination. The Committee notes that the Government disagrees with the KTR in this regard. ***The Committee deeply regrets that over 11 years after the above-mentioned proposals were made, there has been no concrete outcome in their implementation and urges the Government to strengthen its efforts to examine and implement the proposals pertaining to anti-union discrimination without further delay, as well as to inform the Committee of all developments.***

Article 4. Parties to collective bargaining. The Committee had requested the Government to amend section 31 of the Labour Code, which provides that when an enterprise trade union represents less than half of the workers in that enterprise, other non-unionized representatives could represent workers' interests, so as to ensure that only in the absence of trade unions at the enterprise, can the authorization to bargain collectively be conferred on other representatives elected by workers. The Committee notes that the Government reiterates its previous explanation of the procedure for the election of a representative body. The Committee further notes that while the Government considers that the legislation in force is balanced and aims at protecting workers' interests and therefore, its amendment would be contrary to workers' interests, it would welcome receiving information on best international practice of trade unions representing the rights and interests of workers. The Committee notes with ***regret*** the KTR's allegation that nothing has been done by the Government to address this long-standing request of the ILO supervisory bodies. ***While welcoming the Government's request for information on best practices, the Committee urges the Government to engage with the social partners in order to review the legislation so as to clearly establish that it is only in the event where there are no trade unions at the workplace that an authorization to bargain collectively could be conferred to other representative bodies. The Committee requests the Government to provide information on any progress made in this respect.***

Promotion of collective bargaining in practice. The Committee notes the KTR's allegation that there are no available statistics on the number of collective agreements concluded and workers covered by such agreements, especially at the regional level. The Committee further notes the KTR allegation of insufficient penalties that can be imposed on employers for not respecting collective agreements. The Committee notes the Government's indication that it is preparing a new draft Code of Administrative

Offences, which has been discussed twice during the working group of the RTK with the participation of the KTR and that the consultations with the social partners will continue in this regard. ***The Committee requests the Government to provide information on the measures taken to promote collective bargaining across the different sectors of the economy and the number of collective agreements concluded and in force, the sectors concerned and the number of workers covered by these agreements***.

Rwanda

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1988)

Previous comment

Articles 2 and 3 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing and right of organizations to organize their activities and to formulate their programmes. Civil servants. The Committee notes with ***interest*** the Government's indication that, according to article 49 of Law No. 017/2020 of October 2020 establishing the general statute governing public servants, a public servant may establish or join a trade union of his or her choice in accordance with the relevant legislation. The Committee also notes that according to articles 3 and 4 of the Law, a public institution may request to be governed by a special statute, established by a Prime Minister's Order. While the special statute is limited to certain modalities laid out in article 4, the Committee notes that the competent authorities may allow these modalities to include any other additional element, except for the salary and benefits. ***The Committee requests the Government to indicate whether special statutes have been established regarding any specific category of public servants and if they contain specific limitations. The Committee further requests the Government to take the necessary measures, in consultation with the social partners, to amend article 4, so as to ensure that the establishment of a special statute does not deprive public servants of their rights under the Convention.***

Right to elect representatives freely. Time limits for registration. Judicial record. The Committee notes that according to Ministerial Order No. 02/MIFOTRA/22 of August 2022, the time frame to process the application for the registration of a trade union or an employers' organization has been reduced from 90 days to 60 days. The Committee considers, however, that this still represents a lengthy registration procedure which may constitute a serious obstacle to the establishment of organizations without prior authorization, as set forth under *Article 2* of the Convention. ***The Committee therefore requests the Government to consider revising Ministerial Order No. 02/MIFOTRA/22 of August 2022 regarding registration of trade unions and employers' organizations with a view to further reducing the registration period such that it does not amount to a requirement of "previous authorization," and to provide information on all developments in this regard.***

The Committee recalls that it had previously requested the Government to amend section 3(5) of Ministerial Order No. 11 of September 2010, according to which, an occupational organization of employers or workers, in order to be registered, has to be able to prove that its representatives have never been convicted of offences with sentences of imprisonment equal to or over six months. The Committee notes that the Government reiterates that a person who leads others is required to prove his or her integrity and that a person who committed a crime punishable for at least six months is no longer a person with integrity. The Committee recalls once again that the conviction for an act which, by its nature, does not call into question the integrity of the person and implies no real risk for the performance of trade union duties should not constitute grounds for exclusion from trade union office. ***The Committee therefore requests once again that the Government take the necessary measures, in consultation with the social partners, to amend section 3(5) of Ministerial Order No. 11, in line with the above.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1988)

Previous comment

Articles 1 and 2 of the Convention. Adequate protection against anti-union discrimination and interference. In its previous comments, the Committee had noted with regret that the new Labour Code (Law No. 66/2018 of 30 August 2018) did not contain, beyond the dismissal of trade union representatives, specific provisions prohibiting and punishing acts of anti-union discrimination and interference and was therefore less protective than the repealed legislation. The Committee notes the Government's indication that law No. 68/2018 of August 2018 determining offences and penalties in general provides, in its article 284, that any person vested with public authority or responsible for a public service mission who orders or personally performs an act which violates an individual freedom, except when provided for by the law, commits an offence and is liable to imprisonment for three to five years. The Committee observes that, in addition to being very generic with respect to the type of offences covered, the scope of application of this provision is limited with respect to the authors of the offences as it does not apply to most private employers. In these circumstances, the Committee recalls, that in order to ensure full compliance with the Convention, the legislation must also target private employers and provide explicit protection against all acts of anti-union discrimination and interference. ***The Committee therefore requests the Government to take the necessary measures to ensure that the legislation in force targets private employers and provides adequate and explicit protection against all acts of anti-union discrimination and interference, including the imposition of effective and sufficiently dissuasive sanctions. The Committee requests the Government to provide information in its next report on any progress made in this regard.***

Article 4. Promotion of collective bargaining. The Committee takes due note of Ministerial Order No. 001/19.20 of March 2020 relating to Labour Inspection provided by the Government. The Committee notes that if a labour inspector fails to settle a collective labour dispute, the inspector refers the dispute to the Minister of labour who then submits it to the National Labour Council (article 15), which issues special regulations determining the modalities for the establishment of the arbitration committee and its functioning (article 17). The National Labour Council, after receiving the collective labour dispute from the Minister in charge of Labour, sets up an arbitration committee to settle the collective labour dispute (article 18). ***While recalling that recourse to compulsory arbitration was removed by the new labour Code, the Committee requests the Government to provide information on the special regulations determining the modalities for the establishment of the arbitration board and its functioning, in order to ensure that the rules applicable to the settlement of collective disputes, through the National Labour Council, are fully in line with the principle of free and voluntary collective bargaining established by the Convention.***

Referring to its previous comments under the Collective Bargaining Convention, 1981 (No. 154), the Committee recalls that, according to article 3 of Law No. 66/2018 of August 2018 regulating Labour, a "collective agreement" means a written agreement relating to employment conditions or any other mutual interests between employees' organizations or employees' representatives where there are no such employees' organizations on the one hand, and one or more employers or employers' organizations, on the other hand. In view of the Committee, such a definition could be too restrictive and exclude certain categories of workers. The Committee notes the Government' statement that, according to article 32 of the Constitution of Rwanda, trade unions and employers' associations have the right to engage in collective bargaining and may enter into general or specific agreements regulating their working relations. The Constitution recognizes these rights to all categories of trade unions and employer's associations and does not make any distinction based on the status of employees. While taking note of this information, the Committee wishes to recall that the recognition

of the right to collective bargaining is wide-ranging in scope and should for instance include the self-employed. The Committee further notes that, according to article 2 of Law No. 66/2018, collective bargaining applies to self-employed workers, but only with regard to occupational health and safety. ***The Committee therefore requests the Government to provide information on how the right to collective bargaining is recognized to all categories of workers, irrespective of their contractual status and irrespective of the subject covered by collective bargaining***.

With respect to the extension procedure of collective agreements applicable to at least two thirds (2/3) of the number of employees or employers representing the category of profession (according to article 95 of the new Labour Code), the Committee notes the Government's indication that its applicability depends on the organizations themselves and that, so far, some collective agreements are in place, but not yet extended. ***The Committee requests the Government to keep providing information on the application in practice of article 95 of the new Labour Code.***

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

Saint Kitts and Nevis

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

Previous comment

The Committee notes that in its report on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) the Government indicates that the draft of the new Labour Code is in its second phase but has not yet been adopted, mainly due to the COVID-19 pandemic, and that it expects it to enter into force by the end of 2023.

Legislation. Articles 1, 2 and 4 of the Convention. The Committee recalls that in its previous comment it had requested the Government to take the necessary action to ensure that the legislation: (i) provides adequate protection against all acts of anti-union discrimination at the time of recruitment and throughout the course of employment with the application of dissuasive sanctions; (ii) contains specific provisions explicitly providing for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference; and (iii) explicitly recognizes and regulates the right to bargain collectively. The Committee notes the Government's indication that it has issued a cabinet submission to the Competent authority to address the concerns raised by the Committee. ***Highlighting the importance of the current drafting of the new Labour Code the Committee once again requests the Government to take the necessary measures to ensure the adoption of a labour legislation that is in full conformity with the Convention. The Committee requests the Government to provide information on any development in this respect and recalls that it may avail itself of the technical assistance of the Office.***

Promotion of collective bargaining in practice. The Committee notes that the Government indicates that the most recent collective bargaining agreement between a major contributor to the manufacturing industry and the St. Kitts and Nevis Workers Union was concluded as of April 2022 and that between 100 and 150 workers will be concerned by the terms of this agreement. ***The Committee requests the Government to continue to provide information on the number of collective agreements concluded and in force, the sectors concerned, and the number of workers covered by these agreements. The Committee further requests the Government to provide information on the specific measures taken to promote collective bargaining throughout the different sectors of the economy.***

Saint Lucia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1980)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep concern*** that the Government's report, due since 2015, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of whatever information is at its disposal. The Committee recalls that it has been raising issues concerning the observance of the Convention in an observation and a direct request, with longstanding requests for information on the application of the rights guaranteed by the Convention with respect to fire service personnel, prison staff and public servants. ***Not having received any additional observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation and direct request adopted in 2020 and urges the Government to provide a full reply thereto. To this end, the Committee recalls that the Government may avail itself of the ILO's technical assistance.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1980)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep concern*** that the Government's report, due since 2015, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal. The Committee recalls that it has been raising questions concerning compliance with the Convention in an observation, including a longstanding request for the Government to ensure that national legislation expressly recognizes the right to collective bargaining of prison staff and fire service personnel. ***Not having received any observations from the social partners, nor having at its disposal any indication of progress on these pending matters, the Committee refers to its previous observation adopted in 2020, and urges the Government to provide a full reply thereto. To this end, the Committee recalls that the Government can avail itself of the technical assistance of the ILO.***

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

Saint Vincent and the Grenadines

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

Previous comment

Articles 2 and 3 of the Convention. In its previous comment, the Committee referred to the need to amend sections 11(3) and 25 of the Trade Union Act (TUA), so as to eliminate the discretionary authority of the Registrar in respect of the registration of trade unions and to limit the powers of the Registrar to conduct investigations into the accounts of trade unions. The Committee notes the Government's indication that following a series of consultations with the social partners, the revised Labour Relations Bill (LRB) is before the Cabinet. According to the Government, the revised Bill addresses the above-mentioned issues and once enacted, will repeal the TUA. The Committee welcomes draft sections 16 and 19 of the LRB, which would repeal the discretionary authority of the Registrar regarding registration

of organizations and limit the power of the Registrar to receiving an organization's annual return. ***The Committee requests the Government to provide information on all developments regarding the adoption of the LRB, which it expects to be in full conformity with the Convention, and to provide a copy of the Act once adopted.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)

Previous comment

The Committee notes the Government's indication that following a series of consultations with the social partners, a revised Labour Relations Bill (LRB) is before the Cabinet. According to the Government, the revised Bill, once enacted, will repeal the Trade Unions Act, 1950.

Scope of the Convention. The Government takes note that the LRB excludes from its scope of application workers who do not have an employment contract (section 2(1)). ***Recalling that, with the only possible exceptions set in Articles 5 and 6 of the Convention (armed forces, police and public servants engaged in the administration of the State), the Convention covers all workers, the Committee requests the Government to amend the bill to ensure that the legislation is applicable to all workers irrespective of their contractual status, including independent and outsourced workers and workers without employment contract.***

Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference. In its previous comment, the Committee expressed its hope that the revision of the LRB would lead to the adoption of a legislation providing protection for workers' and employers' organizations against acts of interference by each other, protection against acts of anti-union discrimination, as well as encouraging collective bargaining in the public and private sectors.

The Committee welcomes sections 7 and 8 of the Bill which respectively pertain to the protection against acts of anti-union discrimination and the protection against acts of interference by employers. The Committee notes that both sections mention sanctions in the event of a violation of those protections. ***Welcoming both sections of the revised LRB, the Committee requests the Government to provide information on whether the anti-union nature of dismissal or any other act by the employer also result in the reinstatement of the worker in the conditions of work or employment applicable prior to the anti-union act.***

Article 4. Promotion of collective bargaining. The Committee welcomes Parts III and IV of the Bill which highlight the duty of parties to negotiate in good faith, as well as the enforceability of collective agreements. The Committee notes that, pursuant to section 27(1), a trade union claiming to have the majority of union members in good standing (members who have complied with all their obligations with regard to their union) belonging to a bargaining unit may submit an application to the Tripartite Body to obtain certification as the exclusive bargaining agent of the bargaining unit. It further notes the absence of a provision regulating the case that no organization holds the necessary majority to be certified as the exclusive bargaining agent of the bargaining unit. ***The Committee requests the Government to provide information on collective bargaining rights of minority unions where no union meets the requirements to become the exclusive bargaining agent.***

Promotion of collective bargaining in practice. ***The Committee requests the Government to provide information on the actions taken to promote collective bargaining both in the public and private sectors. The Committee further requests the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned, and the number of workers covered by these agreements.***

The Committee expects that the LRB will soon be adopted and that the present comments will be taken into account so that it gives full effect to the Convention. The Committee requests the Government to provide information on any progress made in this regard.

Sao Tome and Principe

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1992)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Adequate protection against anti-union discrimination and interference. In its previous comments, the Committee requested the Government to take the necessary measures so as to ensure that its legislation imposes sufficiently effective and dissuasive sanctions against acts of anti-union discrimination and interference. The Committee notes the Government's indication that the new Labour Code adopted in 2019 has not introduced any changes in this respect but that it continues to contain a number of specific provisions that give application to *Articles 1* and *2* of the Convention. The Committee notes in this respect that the legislation in force: (i) comprehensively prohibits acts of anti-union discrimination and interference; (ii) contains rules for adjusting the burden of proof to facilitate the determination of the existence of anti-union discrimination; (iii) establishes enhanced protection for trade union representatives and candidates for the post of representatives against acts of anti-union discrimination; (iv) provides for the reinstatement of workers in the event of unlawful dismissal; and (v) establishes fines and a sanction of imprisonment in the event of acts of anti-union interference. The Committee takes due note of these elements. It continues however to observe that the provisions of the Labour Code do not provide for specific sanctions for acts of anti-union discrimination affecting workers who are not trade union representatives or candidates for the post of representatives. ***The Committee therefore requests the Government to take the necessary measures to ensure that the legislation provides for effective and dissuasive sanctions against acts of anti-union discrimination that apply to all workers covered by the Convention. The Committee requests the Government to provide information on any progress made in this regard in its next report.***

Article 4. Promotion of collective bargaining. Absence of a legal framework for the exercise of the right to collective bargaining and absence of collective bargaining in practice. The Committee previously expressed concern at the absence of collective agreements in the country, highlighting that the absence of a legal framework could hamper the exercise of the right to collective bargaining. The Committee notes that while the Government states that its legislation still does not provide a legal framework for collective bargaining, it acknowledges the need to facilitate the collective bargaining process in the country in order to reverse the current situation and indicates that meetings of the National Council of Social Concertation have taken place. ***The Committee once again requests the Government to take all the necessary measures, both in law and practice, to encourage and promote the development and utilization of collective bargaining, and requests it to provide information on the concrete steps taken in this regard.***

The Committee reiterates that the technical assistance of the Office is available to the Government in relation to the various matters raised in this observation.

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

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 2005)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***regret*** that the Government's report does not provide any response to the questions the Committee has raised in the comments it has been making for many years on the implementation of several essential provisions of the Convention. ***The Committee is, therefore, bound to reiterate them and urges the Government to take all the measures required on each of the following points.***

Article 4 of the Convention. Adequate protection against acts of anti-union discrimination. The Committee previously noted the Government's indication that there is no legislation establishing penalties for acts of anti-union discrimination. ***The Committee once again requests the Government to take the necessary measures for the adoption of legislative provisions imposing sufficiently effective and dissuasive sanctions for acts of anti-union discrimination.***

Article 5. Adequate protection against acts of interference. The Committee previously noted that the legislation does not establish sanctions for acts of interference. ***The Committee once again requests the Government to take the necessary measures to adopt legal provisions imposing sufficiently effective and dissuasive sanctions for acts of interference against trade union organizations of public employees.***

Article 8. Settlement of collective disputes. The Committee previously noted that section 11 of the Act on Strikes provides for compulsory arbitration, but that the legislation does not establish any mechanism for mediation or conciliation in the event of a dispute between the parties. The Committee noted the Government's indication that matters relating to the mediation of disputes in the public administration fall within the remit of the Directorate of the Public Administration and not the Labour Directorate. ***The Committee once again requests the Government to provide additional information on the settlement of collective disputes in the public administration, and in particular to indicate whether the Act referred to above applies to employees of the public administration, and to provide detailed information on the mediation mechanisms that are under the responsibility of the Directorate of the Public Administration.***

Recalling that it may request the technical assistance of the Office, the Committee trusts that the Government will adopt the necessary measures in the near future.

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

Collective Bargaining Convention, 1981 (No. 154) (ratification: 2005)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 5 of the Convention. Collective bargaining in the public administration. The Committee notes the Government's indication in its report that collective bargaining does not apply to the public service. ***The Committee requests the Government to indicate the obstacles preventing the application of collective bargaining to public servants and to take all measures at its disposal to make possible and promote collective bargaining in the public service with a view to giving effect to Article 5 of the Convention.***

Legal framework for the exercise of collective bargaining. The Committee notes that, in the context of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Government indicates that the Bill establishing the legal framework for collective bargaining has still not been adopted. ***The Committee requests the Government to inform it of the ongoing legislative process and it firmly hopes that all appropriate measures will be taken for the adoption of the necessary regulation to promote collective bargaining.***

Article 6. Mediation. The Committee notes the Government's indication that the Labour Directorate of the Ministry of Employment and Social Affairs only acts as a mediator in disputes between employers and workers in the private sector.

Article 7. Consultation and negotiation with employers' and workers' organizations. The Committee reminded the Government in previous comments that, under the terms of the Convention, consultation and negotiation with the most representative organizations of workers and employers has to be promoted during the process of determining the rules for collective bargaining procedures. ***The Committee once again requests the Government to take measures for this purpose.***

Application in practice. The Committee previously noted the Government's indication that there are currently no collective agreements in the country in view of its geographical size. ***The Committee expresses concern in this regard and once again invites the Government to have recourse to ILO technical assistance to resolve this important problem.***

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

Senegal

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

Previous comment

The Committee notes the observations of the National Confederation of Workers of Senegal (CNTS) and the National Federation of Independent Trade Unions of Senegal (UNSAS), received in August 2022, relating to matters already addressed by the Committee.

Bringing the legislation into conformity with the Convention. While taking note of the information concerning the Labour Code reform process and ILO technical assistance in this regard, the Committee once again notes with ***deep regret*** that the Government has not reported any progress in bringing the legislation into conformity with the Convention and has only reiterated that the Committee's recommendations will be taken into account in the ongoing reform. ***Consequently, the Committee is bound to recall most of its recommendations and trusts that the reform under way will, in the near future, give full effect to the provisions of the Convention.***

Article 2 of the Convention. Trade union rights of minors. ***The Committee urges the Government to report on any progress made in amending section 11 of the Labour Code to allow minors to freely join trade unions, once they have reached the minimum age for access to employment, as provided for in the Labour Code.***

Articles 2, 5 and 6. Right of workers to establish organizations of their own choosing without previous authorization. ***The Committee urges the Government to take without delay measures to repeal the legislative provisions that restrict the freedom of workers to establish organizations of their own choosing (provisions of Act No. 76-28 of 6 April 1976, incorporated in section L.8 of the Labour Code), and particularly the provisions concerning the morality and aptitude of trade union leaders or those which grant de facto to the authorities the discretionary power of previous authorization, which is contrary to the Convention.***

Article 3. Right of trade union organizations to exercise their activities in full freedom and to formulate their programmes. Requisitioning in the event of a strike. ***The Committee urges the Government to take the necessary measures to ensure that the implementing Decree of section L.276 of the Labour Code authorizes the requisitioning of workers only to ensure the operation of essential services in the strict sense of the term.***

Occupation of workplaces in the event of a strike. ***The Committee urges the Government to take the necessary measures to limit the restrictions provided for in section L.276 of the Labour Code to ensure that they only apply in cases when strikes cease to be peaceful or when respect for the freedom to work of non-strikers and the right of the management to enter the premises of the enterprise are hindered.***

Article 4. Dissolution by administrative authority. ***The Committee urges the Government to take the necessary measures to amend the legislation such that the dissolution of seditious organizations, provided for by Act No. 65-40 of 22 May 1965 on associations, may in no event be applied to professional organizations.***

Trade union rights of customs workers. Referring to the recommendations of the Committee on Freedom of Association in case No. 3209 (384th Report, March 2018), ***the Committee once again requests the Government to indicate the measures taken or envisaged to amend section 8 of Act No. 69-64***

(the Customs Staff Regulations Act) in order to remove any obstacles to the exercise of trade union rights.

Serbia

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

Previous comment

The Committee notes the observations of the Confederation of Autonomous Trade Unions of Serbia (CATUS), transmitted with the Government's report and alleging difficulties in establishing trade union organizations in practice due to complex and lengthy procedures. ***The Committee requests the Government to provide its comments in this regard.***

Article 2 of the Convention. Right of employers to establish and join organizations of their own choosing without previous authorization. The Committee recalls that for a number of years it has been commenting upon the need to amend section 216 of the Labour Act, which provides that employers' associations may be established by employers that employ no less than 5 per cent of the total number of employees in a certain branch, group, subgroup, line of business or territory of a certain territorial unit, in order to establish a reasonable minimum membership requirement. In this respect, the Committee had noted the Government's indication that the Committee's comments on section 216 would be taken into consideration in the course of the amendment of the Labour Act. The Committee ***regrets*** that the Government merely reiterates the information it had previously provided, specifically that the Ministry of Labour, Employment, Veterans and Social Affairs has the intention of amending the Labour Act in the context of further harmonization of the legislation with the EU acquis and international standards of the ILO. ***The Committee urges the Government to take all necessary steps to expedite the process for amendment of the Act, in consultation with social partners, so as to lower the requirement relating to the minimum number of employees for the establishment of employers' organizations. It requests the Government to provide information on all progress made in this regard.***

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

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

Previous comment

The Committee notes the observations of the Confederation of Autonomous Trade Unions of Serbia (CATUS) and the Serbian Association of Employers, transmitted with the Government's report, on the application of the Convention in practice. The Committee notes that in addition, the CATUS alleges that certain collective agreements, in particular those concluded with the State as an employer, reduce the legal rights of workers. ***The Committee requests the Government to provide its comments in this regard.***

The Committee notes the Government's comments in reply to the observations of the International Trade Union Confederation (ITUC), the Trade Union Confederation "Nezavisnost", and the CATUS, received in 2018 and alleging in particular anti-union discrimination and violations of good faith collective bargaining in practice. The Committee notes the Government replies concerning the applicable legislation, but observes that it does not provide information with regard to the specific allegations raised in the respective observations. ***The Committee requests the Government to provide its comments in this regard.***

Furthermore, the Committee notes with ***regret*** that the Government did not provide a reply to previous observations from the following workers' and employers' organizations: (i) CATUS and the Trade Union of Judiciary Employees of Serbia (TUJES) (2013); (ii) the International Organisation of Employers (IOE) and the Serbian Association of Employers (SAE) (2013); (iii) the Union of Employers of Serbia (UES) (2012 and 2014); (iv) the ITUC (2015); (v) Nezavisnost (2012); and the Confederation of Free Trade Unions (2012). ***The Committee urges the Government to provide its comments to the mentioned outstanding social partners' observations and trusts that it will show greater cooperation in the future.***

Article 1 of the Convention. Protection against anti-union discrimination in practice. In its previous comments, the Committee had requested the Government to provide further details on the anti-union discrimination cases handled by the Commissioner for the Protection of Equality, as well as information on the labour inspection and judicial proceedings related to anti-union discrimination cases, their average duration and outcomes. The Committee notes that the Government indicates the Commissioner's records related to anti-union discrimination cases: (i) from June 2021 to June 2022, trade union membership or activity was invoked as grounds for discrimination in four cases of which one case is still ongoing while the proceedings of the other three cases were suspended in accordance with the conditions set by the law; (ii) since the establishment of the Office of the Commissioner in May 2010, discrimination based on trade union membership or membership of other organizations is the third most frequent allegation of discrimination in employment and occupation, after discrimination based on gender and on marital and family status; (iii) in those cases where anti-union discrimination has been established, the Commissioner has recommended the employer to take all the necessary measures in order to eliminate the consequences of the discriminatory behaviour; and (iv) the Commissioner has also initiated 22 strategic lawsuits on behalf of discriminated persons but none of these cases involved trade union membership as grounds for discrimination. The Government adds that the Commissioner's obligation to keep the records on discrimination cases pursuant to the 2021 amendments to the Law on the Prohibition of Discrimination will also include in the near future the relevant court decisions. The Committee takes note of this detailed information. It observes, however, that, despite the frequency of the allegations of anti-union discrimination reported by the Government, it has not been informed of any cases where specific sanctions have been imposed in this respect. The Committee recalls in this regard the need, in order to ensure an effective protection against anti-union discrimination, to provide for dissuasive sanctions through effective and rapid procedures. ***In order to be able to evaluate the effectiveness of the different mechanisms available in case of anti-union discrimination, the Committees therefore urges once again the Government to: (i) provide specific information on labour inspection and judicial proceedings related to anti-union discrimination cases, their average duration and outcomes; and (ii) to continue providing information on anti-union discrimination cases handled by the Commissioner including details on the final outcomes of the referred cases.***

Article 4. Promotion of collective bargaining. Representativeness of workers' and employers' organizations. The Committee had previously requested the Government to indicate whether the amended section 229 of the Labour Act had improved the operation and efficiency of the Representativeness Board when dealing with requests to grant representativeness and whether the Government was developing any further amendments to the Labour Act in this regard. The Committee notes that according to the Government, the criteria for determining the representativeness of trade unions and employers' associations are clearly defined in sections 218–237 of the Labour Act, and the amended section 229 of the Act improves the work of the Board as the decision-making is no longer made by consensus of all Board members but by a majority of votes. The Committee further recalls that the amendments to section 229 provide for the Minister of Labour to decide on a request for representativeness without the Board's approval if the latter fails to submit a proposal to the Minister within 30 days from the date of the request. It recalls in this respect that the determination of the representative status of organizations for the purposes of bargaining should be carried out in accordance with a procedure that offers every guarantee of impartiality, by an independent body that

enjoys the confidence of the parties, and without political interference. ***Reiterating that methods for the determination of the most representative organizations should be based on objective, pre-established and precise criteria, the Committee requests once again the Government to indicate whether the amendments to section 229 of the Labour Act have improved the Representativeness Board's operation and efficiency when dealing with requests to grant representativeness, and to provide in particular specific information about: (i) how section 229, as amended, is applied in practice; (ii) the number of cases and more details on the cases in which the Minister has decided on the requests for representativeness without the Board's approval; (iii) whether any further amendments to the Labour Act are being developed in this regard.***

Percentage required for collective bargaining. The Committee had previously referred to the need to amend section 222 of the Labour Act, with a view to lifting the 10 per cent requirement for employers' organizations to be entitled to engage in collective bargaining. The Committee notes with ***regret*** that the Government in its report merely recalls the content of section 222 and provides no further information in this regard. ***Recalling that for a number of years it has been commenting on the discrepancies between section 222 of the Labour Act and the Convention, the Committee urges the Government to take all necessary steps to expedite the process for amendment of this Act, in consultation with social partners, so as to bring the legislation into conformity with the requirements of the Convention by lowering the above-mentioned percentage. It requests the Government to provide information on all progress made in this regard.***

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

Workers' Representatives Convention, 1971 (No. 135) (ratification: 2000)

Previous comment

The Committee notes the observations of the Confederation of Autonomous Trade Unions of Serbia (CATUS), transmitted with the Government's report and alleging inadequate protection of trade union representatives. ***The Committee requests the Government to provide its comments in this regard.***

The Committee notes that the Government did not provide a reply to previous observations from the CATUS of 18 November 2014, alleging violations of the Convention in practice, and the reduced protection of the workers' representatives due to the expiry of the 2008 General Collective Agreement. ***The Committee once again requests the Government to provide its comments in this regard.***

Article 6. Collective agreements giving effect to the Convention. The Committee had previously requested the Government to indicate which legal mechanism was used to repeal the 2008 General Collective Agreement and the reasons for this action. The Committee notes the Government's indication that the General Collective Agreement was concluded by the representative association of employers (the Union of Employers of Serbia) and the representative trade unions, established for the territory of the Republic of Serbia (namely, the CATUS and the Trade Union Confederation "Nezavisnost"), for a period of three years, and that upon the expiration of this term, the agreement has ceased to apply. The Government adds that, pursuant to the Labour Law, the Government is not a participant in concluding a general collective agreement. ***The Committee requests the Government to provide information on the effects of the expiry of the 2008 General Collective Agreement on the implementation of the Convention, including whether the facilities for workers' representatives under this Agreement have been maintained, and if this is not the case, to indicate how appropriate facilities in undertakings are afforded to workers' representatives in order to enable them to carry out their functions promptly and efficiently.***

Seychelles

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

Previous comment

The Committee notes the observations of the Association of Seychelles Employers (ASE) and the Seychelles Chamber of Commerce and Industry (SCCI), communicated with the Government's report, as well as the Government's statement pertaining to the status of the review of the Industrial Relations Act (IRA) set out below.

In its previous comment, the Committee had requested the Government to provide information on the developments regarding the review of the IRA, particularly the amendments of its following provisions:

- section 9(1), so as to repeal the Registrar 's discretionary power to refuse registration;
- section 52(1)(a)(iv), so as to reduce the majority required to declare a strike to a simple majority;
- section 52(1)(a)(iii), so as to consider shortening the length of the cooling-off period;
- section 52(4), so as to ensure that the responsibility for declaring a strike illegal does not lie with the government authorities, but with an independent body which has the confidence of the parties involved; and
- section 56(1), which imposes penalties of up to six months of imprisonment for organizing or participating in a strike declared unlawful.

The Committee notes the Government's indications that a report with the recommendations for amendments developed by an ILO consultant in 2021 is currently under review by the Ministry of Employment and Social Affairs. According to the Government, the report contains recommendations: to repeal section 9; to provide that the strike ballot "shall be successful where it obtains the support of a majority of the workers in the bargaining unit concerned by the labour dispute"; to amend section 56(1) so as to limit the penalty to solely a monetary fine, as opposed to a monetary fine combined with imprisonment; and to set up a Commission for Conciliation and Mediation which will have statutory powers to create a deadlock breaking mechanism and prevent strike action. No recommendation has been made regarding the authority to declare a strike unlawful. The Government indicates that it is yet to finalize its position on the proposals. While taking due note of the work carried out with the technical assistance of the ILO, the Committee recalls that it has been requesting the Government to amend the IRA for a number of years. ***It therefore urges the Government to take all necessary steps to expedite the legislative review, in consultation with the social partners, and to take into account the Committee's previous comments, including its expectation that the amendment of section 52(1)(a)(iv) will continue to ensure that account is taken only of votes cast, as well as its comments on provisions apparently not mentioned in the consultant's report. The Committee requests the Government to provide information on the developments in this regard.***

The Committee notes the Government's indication that while the 45 days cooling-off period is not preceded by compulsory prior mediation or conciliation procedure and begins at the time of the reporting of the dispute to the Minister, in its view, it is possible to further shorten it to 30 days, in consultation with the social partners. ***Recalling that the period of advance notice should not be an additional obstacle to bargaining, the Committee requests the Government to provide information of developments in this respect.***

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

Previous comment

The Committee notes the observations of the Association of Seychelles Employers (ASE) – Seychelles Chamber of Commerce and Industry (SCCI) communicated with the Government's report.

Articles 2, 4 and 6 of the Convention. Pending legislative matters. The Committee recalls that for many years it has been requesting the Government to take measures to amend several provisions of the Industrial Relations Act (IRA) in order to: (i) provide for an effective protection against acts of interference by employers or their organizations in workers' organizations; and (ii) ensure that recourse to compulsory arbitration in cases where the parties do not reach an agreement through collective bargaining is permissible only in relation to public servants engaged in the administration of the State, essential services in the strict sense of the term and acute national crises. The Committee notes the Government's indication that: (i) an ILO consultant was mandated to undertake the review of the IRA; (ii) as a result, a draft report with recommendations was submitted to the Ministry of Employment and Social Affairs (MESA) and to the ILO in 2021; (iii) the report is currently reviewed by the MESA; and (iv) once the review of the report is completed, the MESA will meet with stakeholders for validation. ***The Committee hopes that the legislation will soon be amended in order to bring it into full conformity with the Convention. The Committee requests the Government to provide information in this respect.***

Promotion of collective bargaining in practice. ***The Committee requests the Government to provide information on: (i) the measures taken to promote collective bargaining across the different sectors of the economy; and (ii) the number of collective agreements concluded and in force, the sectors concerned, and the number of workers covered by these agreements.***

Sierra Leone

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1961)

Previous comment

The Committee observes with ***regret*** that the Government's report does not address its previous comment, initially made in 2013, on the allegations of the International Trade Union Confederation (ITUC) concerning restrictions to collective bargaining in the mining sector. ***The Committee is therefore bound to reiterate its previous request for comments in this regard.***

The Committee previously expressed its hope that the Government, availing its assistance, would give full effect to the Convention by reviewing the labour legislation in consultations with its social partners. The Committee, in this regard, notes the Government's indication that the review has resulted in the development of a draft Employment Bill, 2022, and that the draft Industrial Relations and Trade Union Bill, 2022 (IR Bill) was elaborated post review of the Regulation of Wages and Industrial Relations Act No.18 of 1971.

Scope of application of the Convention. Fire force and correctional service personnel. The Committee observes that while the draft IR Bill does not explicitly exclude members of the fire force or correctional service personnel, the scope of the Employment Bill covers only civilian workers of either category. The Committee recalls that, with the sole exceptions set out in its articles 5 and 6, the rights and safeguards set out in the Convention apply to all workers, including fire service personnel and prison staff (2012 General Survey on the fundamental Conventions, paragraph 209). ***The Committee requests the Government to indicate any other regulation that would grant to the non-civilian members of the fire force and the correctional services the rights recognized by the Employment Bill that give application***

to the Convention and to ensure that these categories of workers are in a position to fully benefit from all its provisions.

Workers with supervisory responsibilities. The Committee previously requested the Government to take measures to ensure that workers with supervisory responsibilities could bargain collectively. The Committee welcomes the Government's indication that the draft IR Bill includes within its scope, those with supervisory responsibilities (section 2(1)).

Other categories of workers. The Committee observes however that section 2(4) of the draft IR Bill allows the Minister, after consultations with the Joint Consultative Committee (section 13), to exempt any person or class of persons or any trade, industry or undertaking with terms and conditions of employment governed by special arrangements, from the coverage of the legislation. ***Recalling once again the very broad scope of the Convention, the Committee requests the Government to review section 2(4) of the draft IR Bill so as to ensure that all workers, with the only possible exception of the armed forces, the police and the public servants engaged in the administration are effectively covered by the legislation that gives application to the different provisions of the Convention.***

Articles 1 and 2 of the Convention. The Committee previously requested the Government to take the necessary action to adopt specific legislative provisions, including effective and dissuasive sanctions against acts of anti-union discrimination and interference. The Committee welcomes the inclusion of provisions prohibiting and sanctioning acts of anti-union discrimination in the draft Employment Bill. ***The Committee however requests the Government to take the necessary steps to ensure that the future legislation also includes provisions that provide effective protection against acts of interference in accordance with Article 2 of the Convention.***

Article 4. Promotion of collective bargaining. The Committee observes that section 37 of the draft IR Bill lays down the provision for the issuance of collective bargaining certificates by the Government. ***The Committee requests the Government to provide details regarding the objective criteria and procedures for the determination of a union's eligibility to hold a collective bargaining certificate under the draft IR Bill.***

Collective bargaining in practice. The Committee previously requested the Government for information on the measures taken to promote collective bargaining, with detailed statistics on collective agreements concluded. ***While noting the Government's indication that the Ministry of Labour and Social Security: (i) issues collective bargaining certificates to registered trade unions; and (ii) publishes collective bargaining agreements reached between employers and workers, the Committee reiterates its request for information on the number of collective agreements in force, the sectors concerned, and the number of workers covered, in addition to any measures undertaken to promote the development of collective bargaining.***

The Committee requests the Government to provide information on the adoption of the two bills mentioned above and hopes that the consideration of the present comments will contribute to ensure the full conformity of the legislation with the Convention.

Slovenia

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1992)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 2 and 3 of the Convention. Protection against acts of interference. In its previous comments, the Committee had requested the Government to take the necessary measures to ensure that national legislation contained specific provisions prohibiting acts of interference by employers or their organizations in the establishment, functioning and administration of workers' organizations, and providing effective and

sufficiently dissuasive sanctions against such acts. The Committee notes that, in addition to reiterating that trade union activities are already generally protected by the Constitution of the Republic of Slovenia and that adequate judicial protection and sanctions against anti-union interference are set out in the Employment Relationship Act in sections 217 and 218, the Government indicates that violation of trade union rights is defined as a criminal offence in paragraph two of article 200 of the Criminal Code which stipulates that whoever breaches regulations and general acts by preventing employees or hindering them from exercising free association and carrying out union activities, or obstructs the implementation of union rights, or takes over a trade union shall be punished by a fine or sentenced to imprisonment for not more than one year. ***The Committee takes due note of the content of article 200 of the Criminal Code and requests the Government to indicate which circumstances fall within the definition of "takes over a trade union" and to provide information of its application in practice.***

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

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

Solomon Islands

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2012)

Previous comment

Articles 1 and 2 of the Convention. Legislative matters. In its previous comments, the Committee drew the Government's attention to a series of legal provisions which were not in conformity with the Convention and needed to be amended in order to:

- make the Trade Unions Act (TUA) applicable to all workers irrespective of the nature of their contract, including independent and outsourced workers and workers without an employment contract, as well as to prison staff and fire services (section 2 et seq. of the TUA);
- ensure that the fine imposable upon an employer who discriminates against a worker at the stage of recruitment for reasons of union membership or activities (section 60(3) of the TUA) is sufficiently dissuasive;
- adopt provisions which: (i) provide adequate protection to workers, in particular to trade union officers and representatives, against anti-union discrimination in the course of employment, such as transfer, relocation and withdrawal of benefits; (ii) explicitly prohibit dismissal for reasons of trade union membership or activities; and (iii) set up rapid and impartial procedures as well as sufficiently effective and dissuasive sanctions against such acts; and
- adopt provisions providing for full and adequate protection of workers' and employers' organizations against any acts of interference against each other, setting up rapid and impartial procedures as well as sufficiently effective and dissuasive sanctions against such acts.

The Committee notes with ***regret*** the Government's lack of reply with respect to the issues highlighted in its previous comments. ***In the absence of further substantial information, the Committee firmly expects that the Government will take the necessary legislative measures, in consultation with the social partners, to bring the provisions of the TUA into full conformity with the Convention. The Committee requests the Government to provide information on any measures taken in this regard.***

In its previous comments, the Committee also requested the Government to provide further details on:

- the role of labour inspection and other bodies empowered to examine complaints against anti-union discrimination and against allegations of interference of employers in workers' organizations, especially concerning their accessibility, rapidity and independence;
- the rule granting reversal of burden of proof for cases of anti-union discrimination other than dismissal;
- the sanctions provided for in case of interference by employers in workers' organizations and for anti-union discrimination unrelated to recruitment;
- legislative provisions and all other measures whose objective is to regulate and promote collective voluntary negotiation among the social partners; the possible powers of public authorities in this regard, as well as the number of collective agreements concluded, specifying the sectors and the number of workers covered; and
- legislative provisions and all other measures regulating the procedure for recognition of trade unions in collective bargaining, in particular the criteria for the designation of bargaining agents, threshold of representativity required, type and duration of recognition procedure, rights of minority unions, the possibility of forming groups of trade unions for bargaining purposes, and collective bargaining rights of employers' organizations, including the role, if any, of the Chamber of Commerce.

Regretting the absence of any new information in this regard, the Committee urges the Government to provide information on these matters.

Article 4. Collective bargaining in practice. The Committee notes the Government's indication that the Solomon Islands Council of Trade Unions has signed almost 60 collective agreements with 60 employers across the country and that those collective agreements only cover members, which must consist of 50 per cent or more of the total workers**.** While taking due note of this information, the Committee recalls that a threshold of 50 per cent or more of the total workers to be able to bargain collectively, can be excessive. ***The Committee refers to its request above with regard to the procedure for recognition of trade unions and requests the Government to take into consideration that, when the threshold is not reached, the existing unions should be given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members.***

The Committee further requests the Government to: (i) provide information on the measures taken to promote collective bargaining across the different sectors of the economy; and (ii) continue providing information on the number of collective agreements concluded and in force, the sectors concerned, and the number of workers covered by these agreements.

Somalia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2014)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee takes note of the Government's first report on the application of the Convention. It notes with ***interest*** the Government's indication that a draft Labour Code (the content of which is examined in the direct request accompanying this observation), was developed in collaboration with the ILO to revise the 1972 Labour Code, and that all tripartite partners were involved in the process. It further notes that this draft Labour Code and a draft Civil Service Law are currently pending approval by the Parliament. ***The Committee requests the Government to inform on the adoption process of the draft Labour Code and the draft Civil Service Law and to transmit copies of the laws once adopted.***

The Committee also notes the observations of the Federation of Somali Trade Unions (FESTU), received on 1 October 2020, alleging violations of the right to organize, including the right to strike, at an

airport management company, as well as pressures and threats by the police against trade union officials. ***The Committee requests the Government to provide its comments in this respect.***

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

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

South Africa

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)

Previous comment

The Committee takes note of the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, referring to the matters addressed below.

Trade union rights and civil liberties. Allegations of violent repression of strike actions and arrests of striking workers. The Committee had previously requested the Government to reply to the 2015 ITUC observations, pertaining to the arrest of 100 community health striking workers in July 2014 and the killing, in January 2014, of a union steward of the Association of Mineworkers and Construction Union (AMCU) and to communicate the results of the investigation regarding the death of that union steward. The Committee notes the Government's indication that the observation has been communicated to the Independent Police Investigative Directorate (IPID), which has yet to respond to the denunciations. The Government indicates that it will submit the IPID report as soon as it becomes available. ***Considering the years that have passed since the submission of the ITUC observations, the Committee firmly urges the Government to take all necessary measures with a view to expediting the process of investigation and requests the Government to inform it of the findings.***

The Committee notes that in its most recent observations, the ITUC alleges that strike actions in South Africa are often met with intimidation and anti-union dismissals with violence and arrests and refers in this respect to the assassination of a campaigner and organizer for the National Union of Metalworkers of South Africa (NUMSA), in August 2021 whilst NUMSA officials were engaging in conciliation at the Commission for Conciliation, Mediation and Arbitration (CCMA), and the killing of a member of the NUMSA in October 2021, during a protest march for a salary increase in the metal and engineering sector. According to the ITUC, the NUMSA alleges that some of its members have been attacked by the police and private security companies, and in some instances, have even been shot at, causing injuries. The ITUC further alleges that members of the South African Commercial Catering and Allied Workers Union (SACCAWU) were facing increased intimidation by their employer during protests, in particular through the use of legal notices, unpaid leaves to self-isolate for allegedly violating COVID-19 safety rules, and text messages telling workers they had been replaced. The Committee also takes note of the alleged violence, such as threats, the use of rubber bullets and petrol bomb attacks against striking dairy workers, members of the General Industries Workers Union of South Africa (GIWUSA). The Committee also notes the alleged suspension of four members of the National Emancipated and Allied Workers Union of South Africa (NEAWUSA) following a month-long strike. ***The Committee requests the Government to provide detailed comments on these serious allegations of violation of trade union rights and civil liberties.***

The Committee notes with ***regret*** that the Government did not reply to its previous request to send copies of the Accord on Collective Bargaining and Industrial Action, the Code of Good Practice on Collective Bargaining, Industrial Action and Picketing, and Picketing Regulations, and the Labour Relations Act, as amended, and to provide detailed information on the implementation of the recommendations of the Judicial Commission of Inquiry into the events at Marikana Mine in Rustenburg.

The Committee reiterates its previous request and expects the Government to transmit full particulars with its next report.

Articles 2 and 3 of the Convention. Rights of vulnerable workers to be effectively represented by their organizations. The Committee ***regrets*** that the Government did not provide a copy of the research report on the impact of the amendments of the Labour Relations Act on trade unionization of temporary employees, and also did not provide information on any developments regarding the Government's interventions to address difficulties in the exercise of the right to organize by farmworkers, including on the ITUC's 2015 observations alleging difficulties for farmworkers to engage in legally protected industrial action. ***The Committee reiterates its previous request and expects the Government to transmit full particulars in this respect with its next report.***

[The Government is asked to reply in full to the present comments in 2023].

Spain

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1972)

The Committee notes the observations of the General Union of Workers (UGT), the Spanish Confederation of Employers' Organizations (CEOE) and the Spanish Confederation of Small and Medium-Sized Enterprises (CEPYME), provided by the Government and the Government's comments in this respect.

Article 2 of the Convention. Appropriate facilities. The Committee notes the adoption of Act No. 12/2021 amending the consolidated text of the Workers' Charter to guarantee the labour rights of persons engaged in delivery work through a digital platform (28 September 2021). The Committee notes with ***interest*** that the amendment to section 64 of the Charter guarantees the right to information and consultation of workers' representatives, recognizing the right of the enterprise committee to be informed of the rules and specifications on which the algorithms or artificial intelligence systems are based that affect decision-making that could have an impact on working conditions, and accessing and retaining employment, including profiling (new paragraph 4(d)). Inasmuch as it may facilitate the collective representation of workers in the sector, the Committee also welcomes the presumption of the existence of an employment relationship for workers engaged in the delivery or distribution of any kind of product or merchandise, when the enterprise exercises its powers of organization, administration and supervision by means of the algorithmic management of the service or working conditions through a digital platform (section 8(1)).

The Committee also notes the Government's indication regarding the adoption of Act No. 10/2021 on remote work (9 July 2021), which refers to regular work (performed over a period of three months for a minimum of 30 per cent of the working day or a proportional percentage depending on the length of the contract), section 19 of which seeks to guarantee the collective rights of persons who engage in remote work with a view to ensuring collective bargaining. The Committee notes with ***interest*** that the Act establishes facilities for workers' representatives, such as access to the communications and email addresses used in the enterprise, a virtual bulletin board and a clear line of communication between workers and their representatives. It also seeks to guarantee that workers can effectively participate in the activities organized or held by their representatives, including by exercising their voting rights in the elections of their legal representatives. ***The Committee requests the Government to provide information on the application in practice of these two Acts.***

Application of the Convention in practice. Court decisions. The Committee notes the information provided by the Government with respect to the various court decisions handed down in relation to the application of the Convention. The Committee notes in particular those that confirm the right to information of trade union delegates and workers' representatives.

Sri Lanka

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1995)

Previous comment

The Committee had previously requested the Government to provide its comments on the observations of the International Trade Union Confederation (ITUC) according to which, several peaceful strikes were violently suppressed by the police and the army in 2016 and 2017, leaving many workers injured, and alleging incidences of intimidation and threats of physical attacks, in particular against workers in Free Trade Zones (FTZs). It had further requested the Government to take measures to ensure that the use of excessive violence in trying to control demonstrations was prohibited, that arrests were made only where serious violence or other criminal acts have been committed, and that the police were called in a strike situation only where there was a genuine and imminent threat to public order. While noting the information describing in detail the legislative framework, which, according to the Government, provides for sufficient protection of fundamental rights, the Committee ***regrets*** the lack of comments on the 2016 and 2017 events described by the ITUC and the measures taken to prevent repetition of such acts by the police. ***The Committee therefore urges the Government to provide comments on the ITUC allegations as well as information on concrete steps taken in consultation with the social partners to ensure that the use of excessive violence in demonstrations is prohibited; that arrests are made only where serious violence or other criminal acts have been committed; and that the police are called in a strike situation only upon a genuine and imminent threat to public order.***

The Committee had previously requested the Government to provide information on the progress made in reforming the National Labour Advisory Council (NLAC), in particular with regard to its handling of the issue of application of the Convention to workers in the FTZs. While noting the information provided by the Government on the reform of the NLAC, which would appear to be limited to adding representatives of trade unions, employers' organizations and Government agencies, the Committee ***regrets*** that no information has been provided regarding the consideration by the NLAC of the issue of application of the Convention to workers in the FTZs. ***The Committee therefore urges the Government to indicate all measures taken to extend the protection of the Convention to workers in FTZs.***

Article 2 of the Convention. Minimum age for trade union membership. In its previous observation, noting that the minimum age for admission to employment was 14 years and that the minimum age for trade union membership was 16 years (section 31 of the Trade Unions Ordinance), the Committee expressed the hope that the relevant provision would be amended to ensure that the minimum age for employment is the same as that for trade union membership. The Committee welcomes the Government's indication that the minimum age for working was increased from 14 to 16 years in January 2021 and that several legislative acts have been amended to reflect this new situation. The Government indicates that discussions on the amendment of section 31 of the Trade Unions Ordinance have commenced between the Department of Labour and the social partners. ***The Committee requests the Government to provide information on developments in this respect.***

Articles 2 and 5. Right of public servants' organizations to establish and join federations and confederations. The Committee had previously requested the Government to amend section 21 of the Trade Unions Ordinance so as to ensure that trade unions in the public sector may join federations of their own choosing, and that first-level organizations of public employees may cover more than one ministry or department in the public service. The Committee notes with ***regret*** that the Government reaffirms its previous position that there is no restriction on trade union membership for public sector workers other than staff officers. The Government explains that the current framework is conditioned by the need to strike a balance between aspirations of the trade union movement and politically

motivated actions. The Committee once again emphasizes the need to ensure that organizations of government staff officers may join federations and confederations of their own choosing, including those which also group together organizations of workers from the private sector, and that first-level organizations of public employees may cover more than one ministry or department in the public service. ***The Committee therefore urges the Government to take the necessary measures to amend section 21 of the Trade Unions Ordinance without further delay and to inform it of all developments in this regard.***

Article 3. Dispute settlement machinery in the public sector. The Committee had previously expressed the hope that an appropriate mechanism for dispute prevention and settlement in the public sector would be developed soon. The Committee ***regrets*** that the Government makes no reference to the work on the mechanism for dispute prevention and settlement in the public sector that it previously carried out with the support of the Ministry of Public Administration and technical assistance from the ILO, and simply indicates that many venues exist for public sector workers to settle their disputes and seek remedies. ***The Committee therefore urges the Government to provide detailed information on the mechanisms for dispute prevention and settlement in the public sector.***

Compulsory Arbitration. The Committee had previously requested the Government to take measures to amend section 4 (1) and (2) of the Industrial Disputes Act to ensure that recourse to compulsory arbitration to bring an end to a collective labour dispute and a strike was admissible only when the strike in question may be restricted, or even prohibited. The Committee notes the Government's indication that the right to strike has been denied only upon ensuring fair treatment by way of compulsory arbitration. The Committee once again recalls that recourse to compulsory arbitration to bring an end to a collective labour dispute or a strike is permissible only: (i) if the dispute involves public servants exercising authority in the name of the State; (ii) in conflicts in essential services in the strict sense of the term; or (iii) in situations of acute national or local crisis. ***The Committee therefore urges the Government to take the necessary measures to amend section 4(1) and (2) of the Industrial Disputes Act in order to guarantee respect for this principle and to inform it of progress in this regard.***

Article 4. Dissolution of Organizations by the Administrative Authority. The Committee had previously requested the Government to ensure that no withdrawal or cancellation of trade union membership by the administrative authority may take effect until a final judicial decision is handed down. The Committee takes due note of the Government's indication that no decision to withdraw or cancel the registration of trade unions could be enforced until a final decision by the judiciary as it would amount to contempt of court by law.

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

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

Previous comment

The Committee notes with ***regret*** the absence of reply from the Government regarding the observations of the International Trade Union Confederation (ITUC) received on 1 September 2019, alleging anti-union dismissals in a company during the pendency of arbitration proceedings and denouncing that anti-union discrimination and union-busting remain a major problem in the country**.** ***The Committee is therefore bound to reiterate its request and urges the Government to provide its comments to the ITUC observations.***

Article 1. Adequate protection against acts of anti-union discrimination. Effective and expeditious procedures. In its previous comments, Committee urged the Government to take the necessary measures to amend the Industrial Disputes Act to grant trade unions the right to bring anti-union

discrimination cases directly before the courts. The Committee takes note of the Government's indication that the courts examined a total of 9 discrimination cases (unfair labour practices) in the last five years that are still pending before them. The Government adds that it adopted an administrative measure, intended to protect workers, to transfer all complaints related to anti-union discrimination to the "Special Investigation Division" of the Department of Labour. The Committee notes with ***concern*** that, despite the time that has elapsed, none of the referred cases submitted to the court in the last five years have yet resulted in a decision. The Committee also observes that the Government remains silent on the request to allow trade unions direct recourse to courts in anti-discrimination cases. ***The Committee therefore urges the Government once again to amend the Industrial Disputes Act to grant Trade Unions the right to bring anti-union discrimination cases directly before courts and to ensure that these cases are subject to swift and responsive judicial proceedings. The Committee requests the Government to provide information in this respect.***

Article 4. Promotion of collective bargaining. Export processing zones (EPZs). The Committee previously requested the Government to provide information on the measures taken to ensure that employees' councils do not undermine trade unions. The Committee also requested the Government to continue to promote collective bargaining in EPZs and provide statistics in this regard, particularly on the clothing and textile sectors. The Committee notes the Government's indication that the Industrial Disputes Act allows trade unions, not employees' councils, to collectively bargain and establish collective agreements with the employer. The Government further states that section 10.3.2 of the Sri Lanka Board of Investment (BOI) Manual: (i) grants the BOI the authority to cancel employees' councils that undermine trade unions; and (ii) provides that in organizations with both functioning trade unions and employees' councils, only the former has the right to collective bargaining. The Government adds that: (i) five worker facilitation centres were established and are operational in Katunayake, Biyagama, Koggala and Wathupitiwala Export Processing Zones and in Kandy Industrial Park for trade union officials and members to meet privately and freely; (ii) BOI enterprises operating both within and outside EPZs must observe the principles in the Labour Standards and Employment Relations Manual which enumerates the right to collective bargaining and other facilities offered to trade union representatives of BOI enterprises. The Committee also takes note of the statistics provided by the Government with respect to EPZs, indicating that: (i) there are 14 EPZs in total as of 30 April,2022 with 275 enterprises employing 147,683 workers; (ii) there are 107 operational employees' councils and 40 trade unions (of which 19 enjoy check-off facilities); (iii) as of 30 April 2022, 5 collective agreements were concluded by trade unions covering 2098 workers (1.4 per cent of the EPZs workers) from 5 enterprises (1.2 per cent of the enterprises); and (iv) the number of employees in the clothing and textile sectors total 88,480 as of 31 March 2022. The Committee takes due note of these elements and, in particular, of the BOI's authority to cancel employees' councils that undermine trade unions and of the creation of five workers' facilitation centres. However, the Committee observes once again that the number of employees' councils in operation in EPZs are significantly higher than the number of trade unions and that there is no substantial increase in the number of collective agreements concluded. With regards to the clothing and textile sectors, the Committee observes that the Government does not specify the number of collective agreements concluded by trade unions; and the workers covered by them. ***Based on the above, the Committee requests the Government to intensify its efforts to promote collective bargaining in EPZs, including by establishing worker facilitation centres in all EPZs. The Committee further requests the Government to provide information on: (i) instances that section 10.3.2 of the BOI Manual was successfully invoked, with relief consequently granted to the unions concerned; (ii) the number of collective agreements concluded in entities having both employees' councils and trade unions; and (iii) the number of collective agreements concluded in the EPZs, with detailed sector specific information, particularly on the clothing and textile sector, including the number of workers covered by them in each sector in comparison with the total number of workers in the respective sectors.***

Representativeness requirements for collective bargaining. For many years, the Committee has requested the Government to take the necessary measures to review section 32(A) (g) of the Industrial Disputes Act so as to ensure that the membership requirement imposed on a union to bargain collectively does not undermine the effective access to this right. The Government reiterates in this regard that there is no bar on trade unions that fail to individually meet the requirement for representativeness prescribed by section 32(A)(g) of the Industrial Disputes Act, which sets the threshold at 40 per cent, to involve in the collective bargaining process by federating with other minority trade unions. While taking due note of this element, the Committee recalls that the threshold for representativeness should be designated to facilitate and promote the development of free and voluntary collective bargaining. In this respect, it considers that the very low number and coverage of collective agreements previously noted in its comments on EPZs could appear to be related to the restrictive representativeness requirement, prescribed by the Industrial Disputes Act, to engage in collective bargaining. ***The Committee therefore emphasises the need to ensure that the absence of unions that meet the requirements for representativeness to be designated as a bargaining agent, does not impede the right of the existing unions to negotiate, either jointly or at least on behalf of their own members. The Committee requests once again the Government to take the necessary action to review section 32(A)(g) of the Industrial Disputes Act accordingly. The Committee additionally requests information regarding the total number of collective agreements concluded in the country as a whole, the sectors and the number of workers concerned.***

Article 6. Right to collective bargaining for public service workers not engaged in the administration of the State. Having observed that section 49 of the Industrial Disputes Act does not apply to State and Government employees and that existing Government structures did not require a collective bargaining system for public sector unions, the Committee previously requested the Government to take measures to guarantee public servants not engaged in the administration of the state the right to collective bargaining. The Committee notes the Government's indication that public servants not involved in the administration of the state are not barred from entering into collective agreements and that there are existing collective agreements in public enterprises which cover such public servants. While taking note of these elements the Committee recalls that the public employees not engaged in the administration of the State and who are therefore covered by the Convention not only includes employees in public enterprises but also other categories such as, for instance, municipal employees and those in decentralized entities, public sector teachers, public hospital workers etc. ***The Committee once again requests the Government to take the necessary measures, including of a legislative nature, to recognize for all public servants not engaged in the administration of the state the right to collective bargaining, and to provide information on all progress made in this respect. The Committee also requests the Government to provide information on the number of collective agreements covering public enterprises.***

Request for technical assistance. The Committee welcomes the request for technical assistance by the Government to the Office in relation to following up on the observations and recommendations formulated by the ILO supervisory bodies. ***While being aware of the recent difficulties faced by the country, the Committee hopes that the technical cooperation will help address all pending comments and contribute to fostering a sound industrial relations system that will in turn contribute to address the mentioned challenges in a peaceful manner.***

Sudan

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

Previous comment

The Committee welcomes the ratification by Sudan of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) on 17 March 2021. The Committee notes at the same time with ***concern*** the public announcement made on 28 November 2022 by the Head of the Transitional Sovereignty Council concerning: (i) the suspension of the activities of all workers' and employers' organizations; and (ii) the decision to establish a committee headed by the general registrar of work organizations aimed at forming new steering committees for trade unions and employers organizations as well, to prepare for elections and general assemblies. ***The Committee urges the Government to refrain from any interference with regard to the functioning of the workers' and employers' organizations and to guarantee the necessary civil liberties so that they can freely exercise their activities, including through free and voluntary collective bargaining. The Committee requests the Government to provide full information on the measures taken to ensure full respect for the right to organize and collective bargaining.***

Article 4 of the Convention. Compulsory arbitration. In its previous comments, the Committee, noting that a draft Labour Code was in the final stages of revision, requested the Government to ensure that compulsory arbitration, which is currently allowed by section 112 of the Labour Code of 1997, would only be imposed in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term and acute national crises. The Committee notes the Government's indication that the Labour Code of 1997 was revised and submitted to the Council of Ministers in 2021, and that it is currently being assessed by a consultative committee on labour standards which includes employers and workers. ***Taking due note of these developments, the Committee requests the Government to take the necessary measures, in consultation with the social partners, to ensure that the revised Labour Code is adopted shortly and only allows the imposition of compulsory arbitration in the above-mentioned cases. The Committee requests the Government to provide information on any progress achieved in this regard.***

Collective bargaining in practice. The Committee had previously requested the Government to provide statistical information on collective bargaining in practice. It notes with ***regret*** that the Government merely states that it does not have any data. ***The Committee once again requests the Government to provide information, including statistics, on the number of collective agreements concluded in the country since 2017, as well as the sectors concerned and the number of workers covered by these agreements.***

Trade union rights in export processing zones (EPZs). In its previous comments, the Committee had requested the Government to provide information on the application of trade union rights in EPZs. ***Noting that the Government does not transmit the information requested, the Committee reiterates its request that it provide specific information on the application of trade union rights in EPZs, including the number of unions and collective agreements, as well as copies of the pertinent labour inspection reports.***

Trade Unions Act. The Committee had previously observed that various provisions of the Trade Unions Act of 2010 are not consistent with the principles of freedom of association (for example, the imposition of trade union monopoly at federation level; the ban on joining more than one trade union organization; the need for approval from the national federation in order for federations or unions to join a local, regional or international federation; and interference in the finances of organizations) and invited the Government to bring the Act into line with such principles. ***Regretting that the Government***

does not provide any information in this regard and highlighting the recent ratification of Convention No. 87, the Committee urges the Government to take the necessary measures, in full consultation with the social partners, to bring the Trade Unions Act of 2010 into conformity with the principles of freedom of association so as to promote the full development and utilization of collective bargaining machinery, in accordance with Article 4 of the Convention.

Reiterating its concern about the 28 November 2022 public announcement concerning the freezing of the activities of all workers and employers' organizations, the Committee further urges the Government to ensure that, pending the revision of the Trade Union Act, all the conditions required for the application of the Convention are fully respected in practice.

[The Government is asked to reply in full to the present comments in 2023.]

Sweden

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

Previous comment

Legislative developments. Posting of workers. In its previous comment, the Committee had requested the Government to provide information on the application in practice of the Posting of Workers Act, 2017. The Committee notes detailed information provided by the Government and refers in this respect to its comments on the application of Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Other developments. In its previous comment, the Committee requested the Government to provide details on the proposals made by the inquiry appointed to review the exercise of the right to industrial action as well as on the bill drafted by the social partners to address the issues in relation to the exercise of the right to strike. The Committee takes due note of the Government's indication that following the inquiry, the Ministry of Employment decided to proceed with the proposal submitted by the social partners and submitted a bill entitled "Extended obligation to keep the peace in workplaces where there is a collective agreement and in the event of legal disputes" to the Parliament. The Bill was adopted and the amendments to the Act on Co-Determination in the Workplace, which set forth conditions under which the right to industrial action against an employer bound by a collective agreement could be exercised, entered into force on 1 August 2019. ***The Committee notes the adoption and entering into force of this new law and requests the Government to provide information on developments under the 2019 amendments, including any situations in which the right to industrial action was exercised and situations in which it was not.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1950)

Previous comment

Article 4 of the Convention. Promotion of collective bargaining. Legislative developments. Posting of workers. In its previous comment, the Committee requested the Government to provide information on the application in practice of the Posting of Workers Act (1999:678), in particular through statistics on collective agreements concluded with foreign employers and on foreign employers that became bound by collective agreements through membership of an employers' organization.

The Committee notes the Government's indication that there are neither public statistics on the number of collective agreements concluded by foreign employers for posted workers nor statistics on the number of foreign employers that became bound by collective agreements through membership of

an employers' organization but that, nevertheless, several recent reports show that the recent legislative developments concerning the posted workers have the intended effect in practice, notably in the construction sector. The Committee notes that the Government indicates in particular that: (i) according to a report from the Swedish Institute for European Policy Studies focusing on posting of workers in the construction sector, both Swedish trade unions and employers' organizations stated that posting employers voluntarily sign customary collective agreements, as opposed to posting collective agreements with limited legal effects, and that trade union representatives mentioned they have no difficulties identifying posting employers and to negotiate collective agreements for posted workers; and (ii) the Byggmarknadskommissionen, a commission conducted and funded by parties in the construction sector, analysed the existing legislative framework regarding posting workers and, after having given some consideration to the possibility to enforce a mechanism for the extension of collective agreements in the construction sector, the commission assessed that no amendments were needed to the existing regulatory framework for posted workers.

The Committee further notes that the Posting of Workers Act was amended three times during the reporting period. The Committee notes in particular that section 16, introduced in 2020, allows for trade unions to take industrial action to negotiate collective agreements for posted temporary agency workers. ***Welcoming the application of the Posting of Workers Act to posted temporary agency workers, the Committee requests the Government to continue providing information on the application in practice of this Act in the different sectors of the labour market and to provide any statistics in this regard.***

Switzerland

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

Previous comment

The Committee notes the observations of the Swiss Federation of Trade Unions (USS), received on 31 August 2022, which relate to matters examined in the context of the present comment.

Articles 1 and 3 of the Convention. Adequate protection against anti-union dismissals. The Committee recalls that it has been asking the Government for many years to take steps to strengthen the protection provided at national level against anti-union dismissals. The Committee notes the Government's indications that: (i) in June 2019, Switzerland launched an external, independent mediation process on the question of protection of trade unionists in the event of unfair dismissal, in order to find a compromise solution acceptable to everyone; (ii) the mediator, chosen by the social partners, is an experienced lawyer who is leading the mediation in a completely independent manner; (iii) the Government is providing technical and scientific support to the mediator but is not a party in the mediation process; (iv) the mediation is being financed by the State Secretariat for the Economy (SECO); and (v) the mediation has been delayed because of the situation resulting from the COVID-19 pandemic but is still in progress.

In its previous observation, the Committee noted that the respective positions of the social partners had not changed: on the one hand, the employers' representatives do not wish to adopt more severe penalties for unfair dismissals; on the other hand, the workers' representatives are calling for the solution of reinstatement to be retained or at least for the maximum amount of compensation for anti-union dismissal, established by law as the equivalent of six months' wages, to be increased to 12 months' wages. The Committee notes, according to the information provided by the USS, that a study undertaken by the University of St. Gallen (HSG) shows that compensation in the majority of cases corresponds to three to four months' wages, even for flagrant violations of freedom of association. According to the USS, that amounts to an invitation for employers to engage in unfair dismissals since

they have little or nothing to fear in financial terms. The USS adds that a statutory minimum amount should be fixed for compensation, with no ceiling imposed on the latter, so that the level of compensation can be determined by the judge according to the economic power of the employer concerned. The USS also recalls that reintegration remains a crucial issue.

The Committee notes with ***regret*** that there has been no significant change in this matter, while recognizing the Government's efforts to continue to promote social dialogue in order to reach a solution. In these circumstances, the Committee is bound to recall that: (i) even though the Convention does not require States to incorporate provisions on reinstatement into their legislation, reinstatement constitutes the most effective remedy against acts of anti-union discrimination; and (ii) when, on the other hand, a country opts for a system of compensation for anti-union dismissal, the compensation should fulfil certain conditions and in particular: (i) be higher than that prescribed for other kinds of dismissal, with a view to the effective dissuasion of this type of dismissal; and (ii) be adapted in accordance with the size of the enterprise concerned (2012 General Survey on the fundamental Conventions, paragraphs 182–185). Noting that the Government's efforts to promote an agreement between the social partners on this question have now extended over many years, the Committee emphasizes that if it is not possible to reach a consensus, the Government should take the decisions that are necessary to ensure observance of the international labour conventions which it has ratified. ***While hoping that the mediation process under way will enable an agreement to be reached, the Committee requests the Government to take the necessary steps to ensure full conformity with the Convention in law and practice as regards protection against anti-union dismissal. The Committee requests the Government to provide information on progress made in this regard.***

Article 4. Promotion of collective bargaining. The Committee notes the statistics available from the Federal Statistics Office on the collective agreements signed and the number of employees covered (as of 1 July 2021, a total of 44 legally binding national collective agreements covering 1,050,657 workers, as well as 40 extended cantonal collective agreements covering 50,331 workers). ***The Committee requests the Government to continue providing up-to-date statistical information on the number of collective agreements by sector and the number of workers covered.***

Syrian Arab Republic

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

> The Committee notes that in its reply to the 2012 observations of the International Trade Union Confederation (ITUC) alleging the use of police and paramilitary force in dealing with protests, deaths, arrests and imprisonment of political and human rights activists, the Government indicates that: (i) the ILO has no constitutional mandate to interfere in countries' internal political affairs, rather its mandate is to examine allegations of economic nature or dealing with working conditions; (ii) the matter raised by the ITUC is being discussed by the Human Rights Council since 2011; (iii) the Government categorically refutes the use of violence against its citizens; the protests, killings and acts of vandalism were carried out by armed terrorist groups in order to destabilize the country; and (iv) the right to strike is provided for in article 44 of the Constitution (2012), which specifies that citizens have the right to assemble, to peacefully demonstrate and to strike. The Committee recalls that freedom of association is a principle with implications that go well beyond the mere framework of labour law. It further recalls that the ILO supervisory bodies have unceasingly stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations (see the 2012 General Survey on the fundamental Conventions, paragraph 59). ***The Committee expects the Government to ensure respect for this principle.***

Article 2 of the Convention. Scope of application. The Committee had previously requested the Government to indicate whether independent workers, civil servants, agricultural workers, domestic workers and similar categories, casual workers and part-time workers whose hours of work do not exceed two hours per day enjoy the rights provided for in the Convention. The Committee notes the Government's indication that by virtue of section 5(b) of the Labour Act No. 17 of 2010, domestic workers and similar categories, workers in charity associations and organizations, casual workers and part-time workers (workers whose hours of work do not exceed two hours per day) shall be subjected to the provisions of their employment contracts, which may not, under any circumstances, prescribe fewer entitlements than those prescribed by the Labour Act, including the provisions of the Law on Trade Union Organizations. The Committee considers, however, that the right to organize of the abovementioned categories of workers excluded from the scope of application of the Labour Act should be explicitly protected in law. Therefore, the Committee requests the Government to take measures, in consultation with social partners, to adopt the necessary legislative provisions so as to ensure that these categories of workers enjoy the rights provided for in the Convention. The Committee further notes that agricultural workers and agriculture work relationships, including collective bargaining, are governed by Agricultural Relations Law No. 56 of 2004, that domestic workers are governed by Law No. 201 of 2010, and that civil servants are governed by Basic Law on State Employees No. 50 of 2004. ***The Committee requests the Government to indicate specific legislative provisions that regulate particular aspects of freedom of association rights of civil servants, agricultural workers, and domestic as well as independent workers, and to provide a copy thereof.***

Trade union monopoly. For several years, the Committee has been referring to the need for the Government to amend or repeal the legislative provisions which establish a trade union monopoly (sections 3, 4, 5 and 7 of Legislative Decree No. 84; sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 3, amending Legislative Decree No. 84; section 2 of Legislative Decree No. 250 of 1969; and sections 26–31 of Act No. 21 of 1974). The Committee takes note of the Government's indication that workers have the right to establish independent trade unions if the union is affiliated to the General Federation of Trade Unions in Syria (GFTU). According to the Government, the application of trade union pluralism in several countries weakened trade unions and diminished workers' rights. Observing that all workers' organizations must belong to the GFTU and that any attempt to form a trade union must be subject to the consent of this Federation, the Committee considers that although it is generally to the advantage of workers and employers to avoid a proliferation of competing organizations, the right of workers to be able to establish organizations of their own choosing, as set out in Article 2of the Convention, implies that trade union diversity must remain possible in all cases. The Committee considers that it is important for workers to be able to change trade unions or to establish a new union for reasons of independence, effectiveness or ideological choice. Consequently, trade union unity imposed directly or indirectly by law is contrary to the Convention (General Survey 2012, op. cit., paragraph 92). ***The Committee reiterates its previous request and expects that all necessary measures will be taken by the Government, in full consultations with the social partners, so as to bring the national legislation into conformity with Article 2 of the Convention. It requests the Government to inform it of any progress made in this regard.***

Article 3. Financial administration of organizations. The Committee recalls that its previous comments related to the need to amend section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, so as to lift the power of the Minister to set the conditions and procedures for the investment of trade union funds in financial services and industrial sectors. The Committee notes the Government's indication that, in accordance with the rights afforded to them by the Constitution, the GFTU and other unions are financially independent and have the right to conclude agreements and labour contracts in accordance with section 17 of the Law on Trade Union Organizations and the right to dispose of their funds and income in accordance with their internal regulations and decisions. ***Noting with regret the absence of any new development in this regard, the Committee expects the Government to undertake, as soon as possible, the revision of section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, in full consultations with the social partners. It also requests the Government to provide information on the measures taken or envisaged in this regard.***

Right of organizations to elect their representatives in full freedom. The Committee had previously requested the Government to provide specific information on the measures taken or contemplated to repeal or amend section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84 which determines the composition of the GFTU Congress and its presiding officers. The Committee has stated on multiple

occasions that it should be up to trade union constitutions and rules to establish the composition and presiding officers of trade union congresses. ***Noting with regret the absence of any new development in this regard, the Committee expects that the Government will take the necessary measures, as soon as possible, in order to amend or repeal the above-mentioned provision in consultation with the social partners so as to ensure that organizations are able to elect their representatives in full freedom. It requests the Government to provide information on the measures taken or envisaged in this respect.***

Right of organizations to formulate their programmes and organize their activities. In its previous comments, the Committee had requested that the Government take the necessary measures to amend legislative provisions that restrict the right to strike by imposing heavy sanctions including imprisonment (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949, issuing the Penal Code). The Committee had further observed that no reference was made to the possibility for workers to exercise their right to strike in the chapter on collective labour disputes of the Labour Act. The Committee notes the Government's indication that section 67 of the Labour Act provides protection against dismissals of unionized workers for taking part in trade-union activities. ***Recalling that in the past, the Government had indicated that the GFTU was working to modify the Labour Act to ensure coherence with articles of the Constitution granting workers the right to strike, the Committee expects that the law will be amended so as to bring it into line with the Convention and requests the Government to provide information in this regard. While noting the Government's indication that the agricultural sector is now governed by Law No. 56 of 2004, the Committee also requests the Government to indicate whether workers of this sector enjoy the right to strike and identify the relevant legislative provisions.***

While acknowledging the complexity of the situation prevailing on the ground due to the presence of armed groups and armed conflict in the country, the Committee trusts that the Government will make all efforts to bring its law and practice into conformity with the Convention.

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

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Scope of the Convention. The Committee had previously requested the Government to specify and provide details concerning the legislative provisions affording to the following categories of workers the rights enshrined in the Convention: independent workers, civil servants, domestic servants and similar categories, workers in charity associations and organizations, casual workers and part-time workers whose hours of work do not exceed two hours per day. The Committee notes the Government's indication that: (i) pursuant to section 5(b) of the Labour Act No. 17 of 2010, domestic workers and similar categories, workers in charity associations and organizations, casual workers and part-time workers shall be subjected to the provisions of their employment contracts, which may not, under any circumstances, prescribe fewer entitlements than those prescribed by the Labour Act, including the provisions of the Law on Trade Union Organizations; and (ii) civil servants are governed by the Basic Law on State Employees No. 50 of 2004. ***Noting that section 5(b) of the Labour Act excludes several categories of workers from its scope of application and exclusively refers to the content of their individual contracts of employment, the Committee requests the Government to specify the legislative provision recognizing the right to collective bargaining. The Committee further requests the Government to indicate legislative provisions regulating the right of collective bargaining for civil servants not engaged in the administration of the State. It further requests the Government to indicate whether independent workers enjoy the rights afforded by the Convention and to specify the relevant legislative provisions.***

Articles 1 and 2 of the Convention. Adequate protection against acts of interference. In its previous comments, noting that the Labour Act of 2010 does not expressly prohibit acts of interference on the part of the employers' or workers' organizations in each other's affairs, the Committee had requested the Government to take measures with a view to adopting clear and precise provisions prohibiting acts of interference, accompanied by sufficiently dissuasive sanctions. While observing that the Government does not provide specific information in this regard, the Committee recalls that under the terms of *Article 2* of the

Convention, workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. Acts of interference are deemed to include acts which are designed to promote the establishment of workers' organizations under the domination of an employer or an employers' organization, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers and employers' organizations (see 2012 General Survey on the fundamental Conventions, paragraph 194). ***The Committee therefore requests the Government to take the necessary measures to ensure that the legislation explicitly prohibits all of the acts covered by Article 2 of the Convention and that it provides for sufficiently dissuasive penalties in this respect.***

Article 4. Promotion of collective bargaining. The Committee had previously noted that section 187(c) of the Labour Act grants an excessive power to the Ministry to object and refuse to register a collective agreement on any grounds that it deems appropriate during a 30-day period after filing the collective agreement and therefore requested the Government to amend the provision in order to fully guarantee the principle of free and voluntary collective bargaining established in the Convention. Additionally, it pointed out that pursuant to section 214 of the Labour Act, if mediation fails, either party may file a request to initiate dispute settlement through arbitration and accordingly recalled that compulsory arbitration is only acceptable in relation to public servants engaged in the administration in the State, essential services in the strict sense of the term, and acute national crises. The Committee observes that the Government merely states that all laws and subsequent amendments on the Labour Act were adopted in full consultation with social partners, and reiterates that section 187(c) of the Labour Act aims to ensure that collective agreements are in conformity with the abovementioned Act. ***The Committee once again requests the Government to take the necessary measures to ensure that sections 187(c) and 214 of the Labour Act are brought into conformity with the Convention.***

Arbitration bodies. The Committee previously requested the Government to take measures to amend section 215 of the Labour Act so as to ensure that the composition of the tribunal is balanced and has the confidence of the parties in the arbitration mechanism. ***Noting with regret the absence of any new development in this regard, the Committee expects that the Government will undertake, as soon as possible, the amendment of the abovementioned provision.***

Application of the Convention in practice. In its previous comments, the Committee requested the Government to indicate the measures taken to promote and encourage the greater development and utilization of procedures of voluntary negotiations between employers or employers' organizations and workers' organizations. ***While taking note that the Labour Act refers in its section 178 to collective bargaining and social dialogue, the Committee requests the Government to indicate, in practice, the measures taken or envisaged to promote and encourage the greater development and utilization of procedures of voluntary negotiations between employers or employers' organizations and workers' organizations to regulate the terms and conditions working through collective bargaining. It also requests the Government to provide information on the number of existing collective agreements, the sectors concerned and the numbers of workers covered by those.***

While acknowledging the complexity of the situation prevailing on the ground due to the presence of armed groups and armed conflict in the country, the Committee trusts that the Government will make all efforts to bring its law and practice into conformity with the Convention.

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

Togo

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

Previous comment

The Committee notes the adoption of Act No. 2120-012 of 18 June 2021 issuing the Labour Code. In this regard, the Committee notes the joint observations of the Synergy of Workers of Togo (STT) and

the National Union of Independent Workers of Togo (UNSIT), received on 31 October 2022. ***The Committee requests the Government to provide its comments in this respect.***

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations. Trade union rights of minors. The Committee notes with ***satisfaction*** that the provisions of section 12 of the Labour Code of 2006 have been repealed, thereby removing any obstacle to the exercise of the trade union rights of minors who have access to the labour market.

Length of the registration procedure. However, the Committee notes that, with reference to section 13 of the new Labour Code, the authorities have 90 days to complete the registration of a union. ***Recalling that a long registration procedure constitutes a serious obstacle to the establishment of organizations without previous authorization, contrary to Article 2 of the Convention, the Committee requests the Government to take the necessary measures, in consultation with the social partners, to amend section 13 of the Labour Code.***

Article 3. Right of organizations to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and to formulate their programmes. Limitations on access to trade union office. The Committee notes that, in accordance with section 14(1) of the new Labour Code, the members with responsibility for the administration and direction of an occupational union of workers shall be active in the enterprise or establishment covered or in the branch or sector concerned. In the view of the Committee, such provisions infringe the right of organizations to draw up their constitutions and to elect their representatives in full freedom by preventing qualified persons (such as full-time officers or pensioners) from being elected (2012 General Survey on the fundamental Conventions, paragraph 102). ***The Committee requests the Government to make the legislative provisions more flexible, for example, by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of the organization.*** The Committee also notes that, in accordance with section 14(3) of the new Labour Code, "persons may not exercise responsibility for the administration or direction of a union who have received a conviction involving loss of civic rights or a conviction to a correctional penalty, with the exception of: (a) convictions for offences involving imprudence, unless they have also taken flight in that context; and (b) convictions for misdemeanours for which the penalty is not subject to proof of bad faith and which only involve liability to a fine, with the exception of misdemeanours qualified as offences by company laws." The Committee wishes to recall that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to prejudice the performance of trade union duties should not constitute grounds for disqualification from trade union office (2012 General Survey on the fundamental Conventions, paragraph 106). ***The Committee therefore requests the Government to take the necessary measures, in consultation with the social partners, to amend section 14 of the Labour Code in line with the above comments.***

The Committee finally notes that, under the terms of section 15 of the new Labour Code, "the bodies responsible for the administration and direction of the union shall be renewed at least once every five years by the general assembly or the congress". The Committee wishes to recall in this regard that such provisions which regulate in detail the alternation in the leadership of certain workers' or employers' organizations are incompatible with the Convention as they amount to interference by the public authorities in trade union affairs. ***The Committee requests the Government to take the necessary measures, in consultation with the social partners, to repeal section 15 of the Labour Code, in line with the above comment.***

Exercise of the right to strike. In its previous comments, the Committee requested the Government to amend section 275 of the Labour Code, which required the parties, during the course of a strike, to continue negotiations under the authority of a person designated by the Minister of Labour. The Committee notes with ***satisfaction*** the Government's indication that section 275 has been revised in

order to permit the parties to a dispute to choose the procedure for the settlement of the dispute. Section 329 of the new Labour Code has accordingly removed the requirement to continue negotiations under the authority of a person designated by the Minister of Labour. It provides that "during the course of the strike, the parties shall be under the obligation to continue negotiations – The parties may, by common agreement, have recourse to a mediator."

However, the Committee observes that provisions such as those of section 322, under the terms of which the right to strike shall be exercised under conditions of duration and according to procedures that are compatible with the intrinsic requirements of the activity of the enterprise or establishment, and section 331(b), which prohibits any strike action from being pursued at the workplace, at its perimeter or within its immediate vicinity, all constitute limitations on the exercise of the right to strike. ***The Committee therefore requests the Government to take the necessary measures to amend sections 322 and 331 of the Labour Code.***

Essential services. The Committee notes the Government's indication that the issue of the determination of essential services in the event of a strike has been regulated by section 327 of the new Labour Code, and particularly subsections 3 and 4: "Services shall be considered essential the partial or total interruption of which is likely to seriously prejudice the peace, security, public order or public finances, or endanger the life or health of the whole or part of the population. Services shall also be essential which relate to security, health, education, justice, prison administration, energy, water, State financial institutions, banks and financial establishments, air and maritime transport, and communications, with the exception of private radio and television stations."

In this regard, while recalling that States may restrict or prohibit the right to strike of public servants exercising authority in the name of the State, for example in the field of justice or fiscal administration, as referred to by the legislator, the Committee observes that services such as those relating to security, education, banks and financial establishments, as well as air and maritime transport, cannot be considered essential within the strict sense of the term, that is their interruption would not endanger the life, personal safety or health of the whole or part of the population. The Committee nevertheless emphasizes that, in order to prevent irreversible or disproportionate harm to the professional interests of the parties to a dispute, the authorities could establish a system of a negotiated minimum service in the event of a strike in these services. It also recalls that such a service should genuinely and exclusively be a minimum service, that is one which is limited to the operations that are strictly necessary to meet the basic needs of the population or the minimum requirements of the services, while maintaining the effectiveness of the pressure brought to bear. Moreover, as this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able to participate in defining such a service, along with employers and the public authorities (2012 General Survey on the fundamental Conventions, paragraphs 131, and 137). ***The Committee therefore requests the Government to take the necessary measures to amend section 327 of the Labour Code so as to adjust the definition of essential services and provide, where appropriate, for a minimum negotiated service in the event of strikes in such services, in accordance with the principles recalled above.***

Application of the Convention in export processing zones. The Committee notes the general information provided by the Government concerning the application of the rights guaranteed by the Convention in export processing zones, as well as the data on the conciliation of individual and collective disputes.

The Committee recalls that the Government may avail itself of technical assistance of the Office in order to ensure the full conformity of the provisions of the new Labour Code with the Convention.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1983)

Previous comment

The Committee notes the adoption of Act No. 2120-012 of 18 June 2021 issuing the Labour Code. The Committee also notes the joint observations of the Synergy of Workers of Togo (STT) and the National Federation of Independent Unions of Togo (UNSIT), received on 31 October 2022, in which they allege, in particular, the absence of consultation of trade unions in the process of the formulation and adoption of the Labour Code. ***The Committee requests the Government to provide its comments in this regard.***

Article 4 of the Convention. Compulsory arbitration. With reference to its previous comments on the need to amend section 260 of the Labour Code of 2006, the Committee notes with ***satisfaction*** that, under the terms of section 313 of the new Labour Code, only the parties concerned, and no longer the Minister of Labour, may decide in agreement to have recourse to a single arbitrator or an arbitration board in the event of the failure of conciliation.

Promotion of collective bargaining in practice. The Committee notes the information on the collective agreements in force, of which there are 14, with the most recent, which was concluded in December 2020, covering the pharmaceutical sector. ***The Committee requests the Government to continue providing information on the number of collective agreements concluded and in force in the country, and on the sectors concerned and the number of workers covered.***

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

Trinidad and Tobago

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

Previous comment

Articles 2, 3 and 4 of the Convention. Trade Unions Acts (TUA). In its previous comments the Committee had requested the Government to take the necessary measures to amend sections 10 and 18(1)(d) of the TUA, relating to trade union registration and cancelation thereof, as well as sections 16(4) and 33 of the TUA, concerning financial supervision of trade unions and the administration of their funds so as to bring these sections into full conformity with the Convention. The Committee notes the Government's indication that, following stakeholder consultations and tripartite meetings held in 2019 and after disruptions in the operations of the Ministry of Labour due to the COVID-19 pandemic, a draft policy paper for the amendment of the TUA was submitted to Cabinet in June 2021. The Government indicates that the International Trade Union Confederation's comments as well as this Committee's comments were utilized to develop the said paper, which aims at giving effect to the Convention. ***Noting that no developments appear to have taken place since the draft policy paper was submitted to Cabinet in June 2021, the Committee strongly encourages the Government to take the necessary steps so that the TUA is amended without further delay and requests it to provide a copy of the legislation once adopted.***

Article 3. Right of organizations to organize their activities freely and to formulate their programmes. Industrial Relations Act (IRA). In its previous comments, the Committee had requested the Government to take the necessary measures to amend sections 59(4)(a), 61(d), 65, 67 and 69 of the IRA concerning the majority required for a strike, recourse to the courts to end a strike, and the prohibition of industrial action so as to bring these sections into full conformity with the Convention. The Committee takes note of the Government's indication that the draft policy paper for the amendment of the IRA submitted to

Cabinet in January 2017 was later revised to incorporate the recommendations of the National Tripartite Advisory Council and re-submitted to Cabinet for its consideration in May 2021. ***Regretting that no developments appear to have taken place since then, the Committee urges the Government to take the necessary steps so that the IRA is amended without any further delay and requests it to provide a copy of the legislation once adopted.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)

Previous comment

The Committee notes the Government's reply to the 2019 observations of the International Trade Union Confederation. ***The Committee requests the Government to provide statistics on the number and nature of complaints of anti-union discrimination, in particular dismissals, filed to the competent authorities, their follow-up and outcome as well as statistics on applications made to the court for such industrial relations offences.***

Workers covered by the Convention. In its previous comments the Committee referred to the need to amend section 2(3) of the Industrial Relations Act (IRA) which excluded certain categories of workers from its scope of application. The Committee notes the Government's indication that a revised draft policy paper for the amendment of the IRA, developed with the social partners and submitted to Cabinet for its consideration in May 2021, recommends extending the scope of workers and include teachers, Central Bank employees and domestic workers, now excluded by virtue of section 2(3) of the IRA. ***Duly noting these elements, the Committee hopes that the amendment will also include the apprentices and persons in enterprises with policy and other managerial responsibilities, also excluded by virtue of section 2(3) of the IRA. Noting that no developments appear to have taken place since the draft policy paper was submitted to Cabinet in May 2021, the Committee strongly encourages the Government to take the necessary steps so that the IRA is amended without further delay and requests it to provide a copy of it once adopted.***

Article 4 of the Convention. Promotion of collective bargaining. For several years the Committee has been referring to the need to amend section 34 of the IRA, which provides that in order to be recognized as a collective bargaining agent, a trade union should represent 50 per cent of the workers in the bargaining unit. The Committee notes the Government's indication that a non-recognized majority union was able to negotiate collectively on behalf of workers with a few companies in the oil and gas sector and that, given the success of the agreements, the union eventually gained recognition. The Government also indicates that the above-mentioned revised draft policy paper for the amendment of the IRA, submitted to Cabinet in May 2021, aims at ensuring that employers and workers can function effectively in the industrial relations system. The Committee observes, however, that the Government does not indicate that the revised draft policy paper for the amendment of the IRA proposes any amendments to section 34. ***Noting that the review of the IRA is still under way, the Committee expects that the Government will take the necessary measures to ensure that this provision is amended so that, if no union in a specific negotiating unit meets the required threshold of representativeness to be able to negotiate on behalf of all workers, minority trade unions are able to negotiate, jointly or separately, at least on behalf of their own members. The Committee requests the Government to indicate any progress made in this respect.***

Articles 4 and 6 of the Convention. Representativeness for the purposes of collective bargaining in the public sector. For several years the Committee has been referring to the need to amend section 24(3) of the Civil Service Act (CSA), which affords a privileged position to already registered associations, without providing objective and pre-established criteria for determining the most representative association in the civil service. The Committee notes the Government's indication that the amendment of the CSA

would require significant consultation with relevant stakeholders. ***Recalling that decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria so as to avoid any opportunities for partiality or abuse, the Committee expresses its firm expectation that the necessary measures will be taken so that section 24(3) of the CSA is modified accordingly. The Committee requests the Government to indicate any developments in this regard.***

Application of the Convention in practice. ***The Committee requests the Government to provide statistics as to the number of collective agreements concluded, specifying the sectors concerned, their level and scope, as well as the number of enterprises and workers covered.***

Tunisia

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, which contain allegations of interference in trade union activities concerning: (i) the annulment by the Tunis Court of First Instance in December 2021 of the decision of the National Council of the General Federation of Tunisian Workers (UGTT) to convene an extraordinary non-elective congress, and (ii) infringements of the right to strike in the public broadcasting sector, with the large-scale deployment of police forces and the conduct of interrogations. The Committee notes the Government's reply, dated 28 October 2022, which states in this respect that the UGTT has appealed against the decision of the court of first instance, and that the police forces were deployed solely to ensure the maintenance of public order. The Committee also notes the Government's reply to the observations made by the ITUC in 2018 concerning allegations of intimidation and threats against the UGTT. The Committee notes the Government's indication that it has not officially received any complaints in this regard from the UGTT, nor have such allegations been raised in meetings with its members, during collective bargaining or in meetings of the National Social Dialogue Council (CNDS). In view of the above, the Committee recalls the obligation under the Convention for States to ensure that trade union leaders and members can conduct their activities without hindrance in a climate free from violence, pressure and threats of any kind. ***With reference to the annulment of the extraordinary non-elective Congress of the UGTT, the Committee requests the Government to provide the judgment of the Court of Appeal as soon as it is available.***

Articles 2 and 3 of the Convention. Legislative amendments. The Committee notes with ***deep regret*** that the Government has not reported any progress in bringing the legislation into conformity with the Convention and that it only repeats the explanations already supplied in response to the Committee's long-standing recommendations. ***The Committee is bound to recall below its main recommendations and once again urges the Government to take all the necessary measures to give full effect to the provisions of the Convention:***

- ***Right of workers, without distinction whatsoever, to establish and join organizations. The Committee urges the Government to take the necessary measures to amend section 242 of the Labour Code to ensure that minors who have reached the statutory minimum age for admission to employment (16 years under section 53 of the Labour Code) are able to exercise their trade union rights without authorization from their parent or guardian.***
- ***Right of organizations to elect their representatives in full freedom. The Committee urges the Government to take the necessary measures to amend section 251 of the Labour Code to allow foreign workers access to the functions of trade union leadership, at least after a reasonable period of residence in the host country.***

– ***Right of workers' organizations to organize their activities and formulate their programmes. The Committee urges the Government to take the necessary measures to amend the following sections of the Labour Code concerning restrictions on the exercise of the right to strike: section 376bis (approval of the central workers' confederation before declaring a strike); section 376ter (compulsory indication of the duration of the strike in the strike notification); and sections 387 and 388 (possibility of imposing penalties in the event of an unlawful strike). With regard to section 381ter of the Labour Code (determination of the list of essential services by decree), the Committee once again requests the Government to indicate whether the decree provided for by this section has been adopted.***

Right of workers' organizations to organize their activities and formulate their programmes without interference from the public authorities. The Committee notes the adoption of the decree of 26 September 2018 establishing criteria for trade union representativeness at the national level, which include: (i) the number of union members up to the end of 2017; (ii) the date of the last electoral congress of the trade union organization; (iii) the number of sectoral structures of the trade union organization and the nature of its activity; and (iv) the number of local and regional structures of the organization concerned. The Committee notes the Government's indication that, pursuant to this decree, the minister for social affairs has designated the following organizations as the most representative at national level for the appointment of members of the CNDS, namely: the UGTT for workers' organizations; the Tunisian Confederation of Industry, Commerce and Handicrafts (UTICA), for employers' organizations in the non-agricultural sector; and the Tunisian Federation of Agriculture and Fisheries (UTAP), for employers' organizations in the agricultural sector. ***Observing that trade union representativeness was determined by taking into account the number of members at the end of 2017, the Committee requests the Government to specify in its next report the frequency and mechanism for measuring trade union membership for the purpose of appointing members of the CNDS. In addition, the Committee, like the Committee on Freedom of Association in Case No. 2994 (400th Report, November 2022, paragraph 70) requests the Government to engage in inclusive consultations with all workers' and employers' organizations concerned to ensure that the determination of representative organizations at sectoral and enterprise level are also based on clear, pre-established and objective criteria. The Committee requests the Government to provide information on all measures taken in this regard.***

[The Government is asked to reply in full to the present comments in 2023.]

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, which contain allegations of violations of the right to collective bargaining, a Circular (No. 20) from the Head of State having been sent in December 2021 to all ministries and government institutions to prohibit any person from negotiating with the trade unions without the prior authorization of the Head of Government. In this regard, the Committee notes the Government's reply, dated 28 October 2022, according to which the objective of Circular No. 20, which requires prior authorization from the President of the Government before launching negotiations with the trade unions, is linked to the examination of requests from the unions in order to check their conformity with the legal provisions and the extent of their financial impact on the budget of the State. However, the Government adds that an agreement was reached at a meeting held by the Presidency on 14 September 2022 on salary increases for civil servants and other public sector employees and on the amendment of Circular No. 20, in order, firstly, to guarantee the right to free collective bargaining and, secondly, to ensure coordination between the various conflicting interests. ***In order to ensure full***

observance of the Convention, the Committee requests the Government to provide a copy of the revised Circular and information on its implementation in practice. The Committee also notes with ***regret*** that the Government has still not provided its comments on the 2014 observations of the ITUC regarding the non-observance of collective agreements in two specific cases (remuneration of refuse workers; biscuit-making sector). More than six years after the occurrences, the Government merely indicates that the information requested will be sent once the data has been obtained from the administrative departments concerned. ***The Committee trusts that the Government will show greater cooperation in the future and will provide information on the remedies found in these two cases.***

Article 4 of the Convention. Promotion of collective bargaining. With regard to the question raised in its previous comments concerning the refusal of approval or the cancellation of a collective agreement under sections 38–41 of the Labour Code, the Committee notes the Government's indication that this is an eventuality which is not substantiated in practice. While duly noting this information, the Committee recalls that any provision authorizing in general terms the approval or cancellation of collective agreements by the authorities represent a risk of not being compatible with the Convention. ***The Committee therefore requests the Government to take the necessary steps, in consultation with the social partners, to revise the above-mentioned provisions in order to ensure the full conformity of the national legislation with Article 4 of the Convention.***

Right to collective bargaining in practice. The Committee notes the Government's indication that there are 54 sectoral collective agreements in force, covering some 1.5 million workers. ***The Committee requests the Government to: (i) continue providing information on the number of agreements and accords concluded in the country and the number of workers covered; and (ii) provide information on the steps taken to promote collective bargaining in the various sectors of the economy.***

Türkiye

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

Previous comment

The Committee notes the observations of the Confederation of Public Employees' Trade Unions (KESK), received on 31 August 2022; as well as those of the International Trade Union Confederation (ITUC), and the Confederation of Progressive Trade Unions of Türkiye (DİSK) received on 1 September 2022 which concern questions examined in this comment, and the Government's reply thereto**.** The Committee also notes the observations of Turkish Confederation of Employers' Associations (TISK) communicated with the Government's report.

Civil liberties. In its previous comment, the Committee had requested the Government to provide its detailed comments on the lengthy and serious allegations of violations of civil liberties and trade union rights that date back to 2016. The Committee notes that the Government reiterates its previous general indications citing a number of constitutional and legal provisions guaranteeing freedom of association and, in particular, section 118 of the Penal Code concerning the offence of forcing someone to join or leave a union or to prevent the activities of a union; and indicates that there are both administrative and penal sanctions against those who violate these provisions which aim to protect trade union activities from all kinds of violence, pressure and a threatening environment. The Government also once again refers to the constitutional and statutory framework governing the freedom of assembly in Türkiye, indicating that everyone has the right to hold unarmed and peaceful meetings and demonstrations without prior authorization – however, with prior notification to administrative authorities – and that this right shall be restricted only by law on grounds of national security, public order, prevention of commission of crime, protection of public health and public morals, or the rights and freedoms of others. Act No. 2911 on Meetings and Demonstrations and the relevant

Regulation set the legal framework for exercising this right. In this framework, meetings and demonstrations can be organized in determined places, with notification made to the administrative authorities in order to ensure that the necessary security measures are taken. Security measures are planned and implemented regardless of the affiliation of the organizers, with a view to protecting the life and property of the organizers and other citizens. The Government indicates that all kinds of peaceful meetings and demonstrations take place in a safe and free environment, but when some trade union members transgress the law, destroy public and private property and seek to impose their own rules during the meetings and demonstrations, then security forces are obliged to intervene to preserve public order and safety. The Government adds that for the latest May Day, celebrations were held by all trade unions and confederations all around the country. According to the Government, the rate of intervention in demonstrations and meetings has decreased from 3.2 per cent in 2015 to 0.6 per cent in 2021 and the number of persons subjected to judicial and administrative proceedings in the same period decreased from 11,330 to 2,640 persons. The Government finally adds that since the enactment of Act No. 6356 and the substantial amendment of Act No. 4688, the rate of unionization has steadily increased, reaching 72.36 per cent in the public sector and 14.32 per cent in the private sector. There are currently seven trade unions' confederations and 12 public servants' trade unions' confederations. Taking due note of this information, the Committee notes with ***deep regret*** that the Government does not provide any concrete information in response to the many specific and very serious allegations of violations of civil liberties made by the social partners in the past years. The Committee notes that in their latest observations, the KESK, the DİSK and the ITUC denounce more cases of arrest, detention and prosecution of trade unionists including the imprisonment of six KESK members and executives, among them Mr Mehmet Ali Köseoğlu, secretary of Collective Bargaining Agreement and legal affairs of Yapi-Yol-Sen, a KESK affiliate, arrested on 3 June 2022 and still held in pre-trial detention, without being informed of the charges against him or having a trial date; and the arrest in Ankara of eight leaders of the Trade Union of Employees in Public Health and Social Services (SES) on unspecified charges on 25 May 2021. The Committee notes the Government's indication that there is no information in the records of the Ministry of Labour regarding these cases. The Committee recalls that the alleged instances of denial of freedom of assembly and demonstration include: an absolute ban on all forms of public gatherings in the city of Van, declared on 21 November 2016 and regularly extended since by the Governor's office; a Government ban on May Day celebrations in Istanbul Taksim square; the arrest of 212 demonstrators in Istanbul for attempting to hold a May Day protest in defiance of the coronavirus lockdown rules, including members of several DİSK affiliates; intervention of security forces in the awareness raising action of KESK women leaders on the occasion of the International day for the elimination of violence against women on 22 November 2021; a ban on a public gathering of KESK and other union representatives in Antalya, planned to express views on the annual budget that was being discussed in Parliament, on 12 December 2021; use of tear gas and physical force to disperse a gathering of KESK leaders and members to protest low wages in front of the Turkish Statistical Institute on 1 July 2022; intervention with tear gas and violence in the demonstration organized by KESK women representatives to protest against the withdrawal of Türkiye from the Council of Europe's Istanbul convention on violence against women in Ankara on 26 July 2022; and violent police intervention in the sit-in organized inside Farlplas Automotive factory on 31 January 2022 to protest against the dismissal of nearly 150 workers. The police went to seek protesting workers on the rooftop of the factory, where it arrested them with violence, using pepper gas, risking their fall from the roof, using foul language against women, dragging them on the ground by the hair and breaking their bones. Reportedly 106 workers and union members and two officers of the DGD-SEN union were arrested by the police and released after giving their statements. ***The Committee urges the Government to provide detailed comments on these serious allegations of violations of civil liberties.***

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

The Committee notes that in March 2021, the Governing Body approved the report of the tripartite committee set up to examine the representation submitted by the Action Workers' Union Confederation (Aksiyon-Is) under article 24 of the ILO Constitution (GB.341/INS/13/5). The Committee notes that the tripartite committee issued conclusions and made recommendations in relation to: (i) dissolution of trade unions pursuant to the Decree-Law No. 667; (ii) the situation of workers who suffered from reprisals and retaliatory acts for their membership in the dissolved unions; and (iii) the situation of the imprisoned leaders and members of the dissolved unions. The Committee will examine measures taken by the Government in respect of the recommendation of the tripartite committee below.

The Committee recalls that the tripartite committee found that the workers dismissed for membership in dissolved unions were punished for having exercised their right to join organizations of their own choosing guaranteed by *Article 2* of the Convention without any possibility of review of their individual situation. The Inquiry Commission, which is mandated to examine the applications of workers dismissed under the state of emergency decrees, did not review the legality of the closure of the relevant trade union or any of the individual's own activities; membership in a closed union was considered sufficient ground to reject an application against dismissal. The tripartite committee found that this amounted to a denial of the right of dismissed workers to an effective remedy. Concerning the allegation of imprisonment of the chairperson of Aksiyon-Is and the Chairpersons of PAK MADEN IS, PAK TEKSIL IS, PAK EGITIM IS, PAK TASIMA IS, PAK SAGLIK IS, and PAK HIZMET IS, as well as many members of administrative committees, the tripartite committee stressed the importance of the right to freedom and security of person and freedom from arbitrary arrest and detention, as well as the right to a fair trial by an independent and impartial tribunal, in accordance with the provisions of the Universal Declaration of Human Rights. The tripartite committee urged the Government to ensure that a full, independent and impartial review be made with regard to all those workers who suffered from reprisals and retaliatory acts for their membership in the dissolved unions, in order to determine whether, independently of their membership in such unions, they had carried out any unlawful activity that would justify their dismissal. The tripartite committee also expected that the imprisoned trade unionists receive a swift and impartial trial and requested the Government to submit copies of the relevant judgments to this Committee. The Committee notes the following information provided by the Government on the review mechanism of the Inquiry Commission: (i) the Inquiry Commission on the State of Emergency initiates its investigations on the ground that the member concerned has a membership, affiliation, connection or contact with terrorist organizations, or structures/entities, or groups established by the National Security Council as engaging in activities against the national security of the State; (ii) the investigations on the applicants from the confederations and trade unions which were closed by the decree laws are ongoing; (iii) as an effective remedy, the Commission delivers individualized and reasoned decisions after speedy and extensive examination; it is aimed that all application files whose examination process are ongoing will be concluded during the Commission's mandate period.

The Committee ***deeply regrets*** that the Government does not refer to any measures taken to address the concerns and recommendations of the tripartite committee regarding the denial of the rights of members and leaders of dissolved unions to an effective remedy and a fair trial. The Committee further ***deeply regrets*** that the Government does not provide any information on the situation of imprisoned union leaders. ***In view of the foregoing, the Committee urges the Government to take all necessary measures to implement the recommendations of the tripartite committee and to ensure that the right to an effective remedy and to a fair trial of the members and leaders of dissolved unions is duly respected. The Committee requests the Government to provide information thereon.***

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Senior public employees, magistrates and prison staff. The Committee recalls that for a number of years it has been requesting the Government to amend section 15 of Act No. 4688 which excludes senior public employees, magistrates, and prison staff from the right to organize. The Committee notes that in the Government's view, section 15 was designed in line with legal regulations, judicial decisions, and ILO Conventions. The Committee recalls in this regard that it has always considered that: (i) to bar senior public officials from the right to join trade unions which represent other workers in the public sector is not necessarily incompatible with freedom of association on the condition that they should be entitled to establish their own organizations to defend their interests; and (ii) while the exclusion of the armed forces and the police from the right to organize is not contrary to the Convention, the same cannot be said for prison staff.

Locum workers (teachers, nurses, midwives, etc), public servants working without a contract of employment and pensioners. The Committee had previously requested the Government to provide its comments on the observations of MEMUR-SEN concerning the need to ensure freedom of association for these categories of workers. The Government indicates in this regard that: (i) only public servants as defined in section 3 of Act No. 4688 on Public Servants' Trade Unions and Collective Agreement can join trade unions established within the scope of the Act and locum workers cannot be employed under any cadre or position as specified in section three; and (ii) retired public servants cannot establish or join public servants' unions, as sections 6 and 14 of Act No. 4688 restrict these rights to active public servants. According to the Government, they have, however, formed several associations that can bring the issues concerning them to the attention of the Government. The Committee recalls in this respect that: (i) with regard to the right to establish and join organizations, the Convention does not allow any distinction based on whether the employees are engaged on a permanent or temporary basis, or with regard to their contractual status or the lack thereof; and (ii) legislation should not prevent former workers and retirees from joining trade unions, if they so wish, particularly when they have participated in the activity represented by the union.

The Committee requests the Government to take necessary measures to review the legislation with a view to ensuring that senior public employees, magistrates and prison staff, locum workers, public servants working without a contract of employment and retirees can enjoy and exercise their right to establish and join organizations. The Committee requests the Government to provide information thereon.

Article 3. Right of workers' organizations to organize their activities and formulate their programmes. Suspension and prohibition of strikes. The Committee recalls that section 63(1) of Act No. 6356 provides that a lawful strike or lockout that had been called or commenced may be suspended by the President of the Republic for 60 days by a decree if it is prejudicial to public health or national security and that if an agreement is not reached during the suspension period, the dispute would be submitted to compulsory arbitration. For a number of years, the Committee has been requesting the Government to ensure that section 63 of Act No. 6356 is not applied in a manner so as to infringe on the right of workers' organizations to organize their activities free from government interference. While observing that in a decision dated 22 October 2014, the Constitutional Court ruled that the prohibition of strikes and lockouts in banking services and municipal transport services under section 62(1) was unconstitutional, the Committee noted that pursuant to a Decree with power of law (KHK) No. 678, the Council of Ministers can postpone strikes in local transportation companies and banking institutions for 60 days. The Government indicates in this regard that the decision of the President to postpone a strike is taken within its context and its rationale is clearly stated in the decision, hence this authority is exercised within clearly stated boundaries. Furthermore, pursuant to article 125 of the Constitution, this decision is subject to judicial review as an administrative decision. The Government indicates that 14 strikes have been postponed since 2012 and in the regular reporting period only one postponement decision was accepted, which resulted in the agreement of the parties and the signing of a CBA. The Committee

further notes the observation of the DİSK, indicating that between 2015-2019, nine strikes concerning 235 workplaces and 169,705 workers were postponed with a cabinet decree. ***Recalling that strikes can be suspended only in essential services in the strict sense of the term, for public servants exercising authority in the name of the State or in the event of an acute national crisis, the Committee once again requests the Government to ensure that these principles are taken into consideration in the application of section 63 of Act No. 6356 and KHK No. 678.***

The State Supervisory Council. The Committee had previously requested the Government to provide information on any investigations or audits of trade unions undertaken by the Council, pursuant to Decree No. 5 or article 108 of the Constitution, and their results including any sanctions assessed**.** The Committee notes the Government's indication that the Constitutional Court annulled the phrase "may apply a measure or" in section 6(ç) of the Presidential Decree No. 5, which provided that the State Supervisory Council may apply a measure of removal from duty or propose the application of this measure to the competent authorities for officials of all levels and ranks who are deemed inconvenient to remain on duty in terms of the requirements of public service. The Government explains that following that decision, the State Supervisory Council no longer has the authority to dismiss or suspend any trade union official but can only propose the application of these measures to the competent authorities, which, in the case of trade unions, refers to the trade union's own supervisory bodies and disciplinary committees. The Committee takes due note of the Government's indication that the Council has not carried out any investigation or audit against any trade union.

Article 4. Dissolution of trade unions. The Committee notes the conclusions of the tripartite committee referred to above about the situation of trade unions dissolved pursuant to Decree-Law No. 667. The tripartite committee noted that these unions were dissolved by the executive branch of the Government, while under *Article 4* of the Convention, any dissolution of workers' or employers' organizations can only be carried out by the judicial authorities, which alone can guarantee the rights of defence. The tripartite committee further noted that while according to the Government, the representatives of these unions had failed to file applications with the Inquiry Commission mandated to examine their cases, the dissolved organizations had a limited capacity to present their claims due to the imprisonment of their leaders and members and seizure of their funds pursuant to the state of emergency Decree-Laws. The tripartite committee noted that as the time for filing an application challenging the closure of the unions has elapsed, it would now appear impossible to bring the dissolution of trade unions before a normal judicial procedure and added that the Government itself does not provide any explanation or details concerning the actions of the trade unions justifying their dissolution other than a declaration set out in Decree-Law No. 667 indicating that they were connected to FETÖ/PDY. The tripartite committee therefore urged the Government to take the necessary measures to ensure that the dissolution of trade unions pursuant to Decree-Law No. 667 is reviewed through the normal judicial procedures, which should also enable those unions to be able to be fully represented to defend their case. The Committee ***regrets*** that the Government merely indicates in this respect that two confederations and ten trade unions dissolved due to their connections to the FETO terrorist organization have applied to the Inquiry Commission and their cases are pending. ***Recalling that the dissolution and suspension of trade unions constitute extreme forms of interference by the authorities in the activities of organizations, and that Article 4 of the Convention prohibits the imposition of such measures by administrative authority, the Committee urges the Government to take all necessary measures to comply with the recommendation of the tripartite committee and to provide detailed information thereon. The Committee further requests the Government to provide information on the outcome of the cases concerning dissolved unions and confederations that are pending before the Inquiry Commission as well as on the number and outcome of any appeals against the negative decisions of the Inquiry Commission.***

[The Government is asked to reply in full to the present comments in 2023.]

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1952)

Previous comment

The Committee notes the observations of the Confederation of Public Employees' Trade Unions (KESK), received on 31 August 2022; as well as those of the International Trade Union Confederation (ITUC), and the Confederation of Progressive Trade Unions of Türkiye (DİSK) received on 1 September 2022 which concern issues examined in this comment, and the Government's reply thereto. The Committee also notes the observations of Turkish Confederation of Employers' Associations (TISK) communicated with the Government's report.

The Committee further notes that the Committee on Freedom of Association drew its attention to the legislative aspects of Case No. 3410 (Report No. 399, June 2022, paragraph 352). These matters are discussed below.

Articles 1-6 of the Convention. Scope of the Convention. Prison staff. The Committee had noted in its previous comments that the prison staff did not enjoy the right to organize, even though they were covered by the collective agreements concluded in the public service like all other public servants. The Government indicates in this regard that: (i) the relevant provisions of the ratified freedom of association and collective bargaining conventions were taken into account while drafting Act No. 4688; (ii) section 15 excepts those working in strategically important organizations and in positions that use the power of State police and intelligence, including prison staff, from the right to join and form a union and; (iii) this provision has been drafted considering that there will be no compensation for the disruptions in these public services carried out by security, justice and high-level public servants. The Committee notes with ***concern*** that despite its longstanding comments under Conventions Nos 87 and 98, the Government does not report any progress concerning the recognition of the right of prison staff to organize. It recalls in this regard that under the terms of Convention No. 98, prison staff have the right of collective bargaining, which includes the right to be represented in negotiations by the organization of their choosing. Noting the Government's indication concerning eventual "disruption" in services carried out by the categories of workers excluded under section 15, the Committee recalls that the right to establish and join organizations and to bargain collectively through the organization of one's choice, should be distinguished from the right to strike. ***The Committee urges the Government to take the necessary measures, including through revising section 15 of Act No. 4688, to guarantee that the prison staff can be effectively represented by the organizations of their own choosing in collective bargaining. It requests the Government to provide information with respect to any developments in this regard.***

Locum workers and public servants working without a written contract. In its previous comment, the Committee had noted that these categories of workers are excluded from the scope of Act No. 4688 and had requested the Government to provide detailed information on their freedom of association and collective bargaining rights. The Government indicates that article 51 of the Constitution recognizes the right to unionize as a constitutional right to workers, employers and public servants. Public servants are defined in section 3(a) of Act No. 4688 and persons working as a fill-in at the public institutions (locum workers) cannot be employed in any cadre or position as specified in section 3(a), and therefore cannot be members of the unions established within the scope of Act No. 4688. Noting the Government's indications, and considering that locum work arrangements concern inter alia workers in public education and health sectors such as teachers, midwives and nurses, the Committee recalls that under *Articles 5(1) and 6* of the Convention, only "members of the armed forces and the police" and "public servants engaged in the administration of the State" can be excepted from the guarantees enshrined in the Convention and the contractual status of public sector employees, or the lack thereof, should not affect their enjoyment of their rights under the Convention. ***The Committee requests the Government to take the necessary measures, including legislative measures, to ensure that these categories of***

workers can exercise their right to organize and collective bargaining, either by allowing them to join organizations formed under Act No. 4688 or by providing a framework within which they can create their own organizations. It further requests the Government to provide information on any measures taken in this respect.

Articles 1, 2 and 3 of the Convention. Massive dismissals in the public sector under the state of emergency decrees. In its previous comments the Committee had noted that following the 2016 coup attempt, a high number of trade union members and officials were suspended and dismissed under the state of emergency and that an Inquiry Commission was established to review applications against the measures taken in that context, whose decisions were appealable before administrative courts. The Committee had requested the Government to provide information on the number of applications received from trade unionists and the number and outcome of appeals against the negative decisions of the Inquiry Commission concerning them and to respond to the allegations concerning cases of dismissal of members of the Education and Science Workers Union of Türkiye (EĞİTİM SEN). The Government indicates in this regard that: (i) the dismissal of public servants, which may include some trade union representatives by the state of emergency decrees is grounded in their membership, affiliation or connection to terrorist organizations; (ii) decisions by the Inquiry Commission can be appealed before nine branches of Ankara administrative courts that are specifically authorized by the Council of Judges and Prosecutors; (iii) as of 27 May 2022, the Commission had received 127,130 applications and issued decisions on 124,235, therefore the number of applications where examination is still pending amounts to 2,985. Within 33 months since the beginning of the Commission's activity, 87 per cent of the applications were examined; (iv) the number of rejected applications amounts to 106,970 and the number of admitted ones to 17,265. Among the admitted applications, 61 concerned the opening of organizations that were shut down including associations; (v) there is no statistical information on the number of trade union representatives affected by the state of emergency decrees or those who have submitted applications to the courts. However, two confederations and ten trade unions dissolved due to their connection to the FETO terrorist organization have applied to the Inquiry Commission and their cases are still pending; (vi) according to the figures contained in the observation of Education International, the admittance rate for reinstatement of EĞİTİM SEN members is much higher than the average rate (38.5 per cent and 11.5 per cent respectively), which shows that there is no discrimination against EĞİTİM SEN members. The Committee further notes KESK's observations in this regard, reporting that: (i) in total, 4,267 KESK members from all public sectors were dismissed under the state of emergency decrees; (ii) more than five years after the dismissals, some of the applications of dismissed KESK members and officials are still pending before the Inquiry Commission. The organization alleges that the delay in examining their applications is deliberate and adds that the complete procedure including appeal may take up to ten years; (iii) KESK members who had signed the petition calling for an end to fighting in East and Southeast Anatolia six months before the attempted coup, and who were later dismissed under state of emergency decrees, won a case before the Constitutional Court on 26 July 2019. The Court underlined that no sanction can be imposed on these academics for having signed the petition, however, the Inquiry Commission did not take this judgment into consideration; (iv) there are no legal grounds for accusing KESK members of connection with terrorist organizations or any other organizations carrying out activities against national security. The dismissals took place arbitrarily and the employees were not informed of accusations and could not defend themselves. They still cannot avail themselves of any transparent mechanism to challenge the so-called evidence against them; and (v) even though the state of emergency is lifted, governors and ministries continued to use the provisional section 35 of the Emergency Decree Law No. 375, dismissing 21 teacher members of EĞİTİM SEN from Diyarbakir on 29 November 2021. The Committee notes with ***deep regret***, that once again, despite the Committee's repeated requests, the Government does not provide information on the number of cases concerning trade unionists before the Inquiry Commission and administrative courts or the outcome of these cases.

In this context, the Committee notes with ***concern*** the KESK observations concerning the delay in the examination of applications of unionists by the Inquiry Commission and the problems indicated concerning defence rights, examination of evidence and burden of proof. The Committee recalls in this regard that adequate protection against anti-union discrimination requires procedures that are effective and rapid, ensuring without delay independent, expeditious and in-depth investigations into the allegations. In view of the Government's emphasis on stating that the dismissals and suspensions are based on presumed connection with terrorist organizations, and the KESK's allegation that there is no transparent mechanism through which public officers can challenge the evidence against them, the Committee firmly recalls that in procedures concerning alleged anti-union discrimination, placing on workers the burden of proving that the act in question occurred as a result of anti-union discrimination may constitute an insurmountable obstacle to establishing liability and ensuring an appropriate remedy. ***In view of the foregoing, the Committee once again expresses its firm hope that the Inquiry Commission and the administrative courts that review its decisions shall carefully and expeditiously examine the grounds for the dismissal of trade union members and officials in the public sector and order reinstatement of the trade unionists dismissed for anti-union grounds. The Committee also requests the Government to provide information on how the evidence is examined and the burden of proof applied in cases concerning trade unionists before the Inquiry Commission and administrative courts. It also once again urges the Government to provide detailed and specific information on the number and outcome of applications concerning trade union members and officers before the Inquiry Commission, as well as the number and outcome of appeals against negative decisions on those applications. Finally, the Committee requests the Government to provide its comments with respect to the allegation of continued use of state of emergency powers to dismiss union members.***

Article 1. Inadequate protection against anti-union dismissals. Private sector. The Committee notes that Case No. 3410 before the Committee on Freedom of Association (CFA) partly concerns the question of inadequateness of the legal remedies provided to victims of anti-union dismissals in private sector. It notes that the legal provisions in question are section 21(1) of the Labour Act (Act No. 4857) and section 25(5) of the Law on Trade Unions and Collective Labour Agreements (Act No. 6356). The Committee notes that section 21(1) of Act No. 4857 provides:

> If the court or the arbitrator concludes that the termination is unjustified … the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer.

Section 25(5) of Act No. 6356 provides:

> Where it has been determined that the contract of employment has been terminated for reasons of trade union activities, union compensation shall be ordered independent of the requirement of application of the worker and the employer's granting or refusing him permission to restart work in accordance with article 21 of the Law No. 4857. However, in case the worker is not allowed to start work, the compensation specified in the first paragraph of Article 21 of this Law No. 4857 shall not apply. Non-application to a court pursuant to the aforementioned provisions of the Law No. 4857 shall not be an obstacle for the worker to claim union compensation separately.

The Committee further notes the Government's indication in its reply to the CFA case complainants, confirming that the national legislation does not contain provisions on absolute reinstatement to work, and instead stipulates the right of the employer to choose whether to rehire the employee or to pay an additional compensation; furthermore, according to the Government under civil law no employer should be forced to recruit a worker. The Committee also notes the observations of the DİSK in relation to this matter, indicating that the inability of the courts to order the employer to reinstate dismissed workers makes it easier for some employers to get rid of the union at the workplace by simply dismissing all active union members. The DİSK also refers to the ruling of the European Court of Human Rights in *Tek Gida İs Sendikasi* v. *Türkiye* where the court inferred from an employer's refusal

to reinstate dismissed employees and the award of insufficient compensation to deter the employer from any future wrongful dismissals, that the national law, as applied by the courts, did not impose sufficiently deterrent penalties on the employer, which, according to the Court had by carrying out large-scale wrongful dismissals, negated the applicant union's right. The Committee further notes the allegations of the ITUC, indicating that trade unionists in Türkiye live under the constant threat of retaliation, any attempt to form unions being deterred by the dismissal of union organizers. Both ITUC and DİSK refer to numerous cases of anti-union dismissals across different sectors in their observations. The Committee recalls that in its previous comments as well, it had noted numerous allegations of anti-union discrimination, especially dismissals, in practice. In view of the recurrent indications as to the frequent occurrence of anti-union dismissals, the Committee is bound to note that the available legal remedies and sanctions against anti-union dismissals do not seem to have a strong deterrent effect. The Committee notes in this regard that pursuant to the current law: (i) judicial authorities can in no circumstances impose an order of reinstatement on the private sector employer; (ii) section 25(4) of Act No. 6356 fixes a minimum amount for "union compensation" in case of acts of anti-union discrimination other than dismissal, which is the worker's annual wage, but in cases of anti-union dismissal, neither a minimum amount nor a cap is fixed in the law. The issue seems to be left to the discretion of the judicial authority; and (iii) the Government does not refer to any other existent penalty or sanction for anti-union dismissals, and section 78 of Act No. 6356 containing its penal provisions is silent about anti-union discrimination. The Committee recalls in this regard, that it has always considered that reinstatement should at least be included among the range of measures that can be ordered by the judicial authorities in the event of anti-union discrimination; and that the effectiveness of legal provisions prohibiting acts of anti-union discrimination depends also on the sanctions provided, which should be effective and sufficiently dissuasive; and that the purpose of compensation must be to compensate fully, both in financial and occupational terms, the prejudice suffered. ***In view of the foregoing, the Committee urges the Government to take all the necessary measures to revise the legislation, with a view to ensuring the provision of an adequate protection against anti-union dismissals in the private sector. Pending legislative reform, the Committee firmly hopes that the judicial authorities will consider the above principles while they exercise their discretion in the determination of the amount of "union compensation". The Committee requests the Government to provide information on any developments in this regard.***

Anti-union discrimination in the public sector. The Committee notes the observations of the KESK, once again denouncing numerous cases of anti-union discrimination against members and officials of its affiliates, including 35 transfers, 6 suspensions and 7 cases of administrative disciplinary measures including blocking promotions and a reprimand. According to the observations, the workers have appealed against several of these measures, where the cases are still pending. The Committee also notes the Government's comments on these allegations, indicating that: (i) public servants have the right to lodge complaints or initiate proceedings against the acts of their superiors or public organizations; (ii) the KESK does not provide any plausible grounds that can establish the existence of anti-union discrimination and; (iii) all the public institutions cited in the KESK 2021 observations informed the Ministry of Labour and Social Security (MOL&SS) that the personnel transfers were necessitated by the requirements of the service. The Government makes the following indications concerning protection against anti-union discrimination in the public sector: (i) section 18 of the Law on Public Servants' Trade Unions and Collective Agreement (Act No. 4688) prohibits anti-union discrimination against public servants including dismissals and transfers; (ii) prime ministry circulars introduce measures to combat mobbing in both public and private workplaces and establish a helpline; (iii) the Ombudsman Institution has the power to investigate anti-union discrimination in the public sector, undertake inspections and draft yearly reports that it can publish and present to the parliament, but has no authority to impose administrative fines. The Committee recalls that it has always emphasized the need to adopt formal provisions clearly recognizing the protection of all public servants

and public sector employees not engaged in the administration of the State (including those who are not trade union officers) against acts of anti-union discrimination, and to provide for effective and sufficiently dissuasive sanctions against those responsible for such acts. The Committee notes that apart from reference to section 118 of the penal code, which concerns the offence of coercion in relation to trade union membership and activities, the Government does not indicate sanctions that can eventually be imposed against the perpetrators of anti-union discrimination in the public sector, or to any compensation that may be awarded to the victims. ***Therefore, the Committee requests the Government to indicate whether the law allows sanctioning those responsible for anti-union discrimination in the public sector and whether compensation can be awarded to victims. If there are no such provisions in law, the Committee urges the Government to take the necessary measures in full consultation with social partners, to ensure that the law is amended with a view to ensuring an adequate protection against anti-union discrimination in the public sector. It requests the Government to provide information on any developments in this respect.***

Collection of data on anti-union discrimination in private and public sectors. The Committee recalls that following up on the recommendations of the June 2013 Committee on the Application of Standards of the International Labour Conference, which requested the Government to establish a system for collecting data on anti-union discrimination in both private and public sectors, it has been requesting the Government to provide information on the measures taken to that end. The Committee notes with ***regret*** that the Government does not report any progress in this regard. ***The Committee once again stresses the need to take concrete steps towards establishing the system for collecting such information and expects the Government to provide in its next report information on developments and progress in this respect.***

Article 4. Promotion of collective bargaining. Cross-sector bargaining. In its previous comments, the Committee had noted that while cross-sector bargaining resulting in "public collective labour agreement framework protocols" was possible in the public sector, this was not the case in the private sector. The Committee had requested the Government to consider, in consultation with the social partners, the amendment of section 34 of Act No. 6356 to ensure that it did not restrict the possibility of the parties in the private sector to engage in cross-sector regional or national agreements should they so desire. The Committee notes that the Government reiterates that the existent system is a product of a long and well-established industrial relations system in Türkiye and that it does not prevent parties wishing to enter into agreements at the regional and national level and adds that the MOL&SS is ready to take into consideration the amendment proposals to be made jointly by the social partners regarding section 34 if the social partners reach consensus on such changes. The Committee further notes the observation of the TISK in this regard, indicating that section 34 has long been applied as such and in their discussions prior to the adoption of Act No. 6356, the social partners reached a consensus on preserving the existing system. ***The Committee requests the Government to consider taking the necessary measures to initiate a new consultation process with the social partners, with a view to amending section 34 of Act No. 6356 in order to ensure that the parties in the private sector wishing to engage in cross-sector regional or national agreements can do so without impairment. It requests the Government to provide information on the steps taken in this regard.***

Requirements for becoming a bargaining agent. *Private sector. Triple threshold requirement.* In its previous comments the Committee had noted that section 41(1) of Act No. 6356 set out the following requirement for becoming a collective bargaining agent: the union should represent at least 1 per cent of the workers engaged in a given branch of activities and more than 50 per cent of workers employed in the workplace and 40 per cent of workers of the enterprise to be covered by the collective agreement. The Committee recalls that this issue was also brought up in the framework of CFA Case No. 3021. The Committee had requested the Government to continue monitoring the impact of the perpetuation of the branch 1 per cent threshold requirement on the trade union movement and the national collective bargaining machinery as a whole and to provide information in this respect. The Government indicates

in this regard that as of July 2022, there were 218 trade unions in Türkiye, 60 of which, including five independent unions, passed the 1 per cent threshold required for collective bargaining. There were seven Confederations with 105 affiliate unions, including 55 unions that pass the 1 per cent threshold. Union membership rate in private sector has progressed from 10.56 per cent in January 2015, when the sector threshold was lowered to 1 per cent, to 14.32 per cent in January 2022. The Government adds that the MOL&SS is ready to take into consideration the amendment proposals to be made jointly by the social partners regarding section 41(1) if the social partners reach consensus on such changes. The Committee also notes the TISK observation indicating that granting bargaining rights to unions that are not authorized in the current legislation will disrupt the current labour peace, as trade union rivalry often prevents unions from acting together and this may hamper the conclusion of Collective Bargaining Agreements(CBAs). The Committee further notes that the DISK indicates in this regard that minority unions should have the right to represent at least their members. The Committee notes that according to the information submitted by the Government, only 27.5 per cent of all Turkish unions pass the 1 per cent threshold, the rate being 52.4 per cent among the affiliates of the big confederations, but only 4.4 per cent among independent unions. It further notes that the lowering of the branch threshold in 2015 has had a positive impact on the unionization rate. The Committee trusts that the removal of the branch threshold will have a similarly positive impact on the rate of unionization as well as on the capacity of unions, especially independent unions, to use the collective bargaining machinery. ***The Committee therefore requests the Government to take the necessary measures to initiate the consultation process with the social partners, with a view to amending section 41(1) of Act No. 6356 so as to ensure that more workers' organizations can engage in collective bargaining with the employers. It requests the Government to provide information on the steps taken in this regard.***

Determination of the most representative union and rights of minority unions. Regarding the workplace and enterprise representativeness thresholds, the Committee had noted in its previous comments that section 42(3) of Act No. 6356, provides that if it was determined that there exists no trade union which meets the conditions for authorization to bargain collectively, such information is notified to the party which made the application for the determination of competence. It had further noted that section 45(1) stipulates that an agreement concluded without an authorization document is null and void. While noting the "one agreement for one workplace or business" principle adopted by the Turkish legislation, the Committee had recalled that under a system of designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, all unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. The Committee highlighted that by allowing for the joint bargaining of minority unions, the law could adopt an approach more favourable to the development of collective bargaining without compromising the "one agreement for one workplace or business" principle. The Committee notes with ***regret*** that the Government does not provide information on any developments in this respect. ***The Committee once again requests the Government to take the necessary measures to amend the legislation, in consultation with the social partners, so as to ensure that if no union represented the required percentage of workers to be declared the exclusive bargaining agent, all unions in the unit, jointly or separately, should be able to engage in collective bargaining, at least on behalf of their own members. It requests the Government to provide information on all measures taken or envisaged in this regard.***

Judicial challenges to collective bargaining agent certification. The Committee notes the observations of the DİSK indicating that employers have the right to challenge the union majority certificate issued by the MOL, and pending the judicial proceedings, which might take 6-7 years, the collective bargaining process remains on hold. The DİSK refers to the case of one of its affiliates, Birleşik Metal-İş Union, which was involved in 98 court cases of this type between 2012–20. According to the DİSK, at the end of such proceedings, very often the union has already lost its majority at the workplace. The Committee further notes that according to the DİSK observations, disputes about determination of branch of activity of the

workplace may also lead to lengthy court proceedings that impede collective bargaining. ***Noting the potentially negative impact that the proliferation of lengthy court proceedings can have on the development of collective bargaining, the Committee requests the Government to provide its comments on the issues raised by the DİSK.***

Articles 4 and 6. Collective bargaining rights of public servants not engaged in the administration of the State. Material scope of collective bargaining. The Committee had noted in its previous comments that section 28 of Act No. 4688, as amended in 2012, restricted the scope of collective agreements to "social and financial rights" only, thereby excluding issues such as working time, promotion and career as well as disciplinary sanctions and had requested the Government to remove these restrictions on the material scope of bargaining in the public sector. The Committee notes with ***regret*** that the Government does not indicate any new developments in this respect. It is therefore bound to once again recall that while the Convention is compatible with systems requiring competent authorities' approval of certain labour conditions or financial clauses of collective agreements concerning the public sector, public servants who are not engaged in the administration of the State should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment and that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention. ***Bearing in mind the compatibility with the Convention of the special bargaining modalities in the public sector as mentioned above, the Committee again requests the Government to take the necessary measures to ensure the removal of restrictions on matters subject to collective bargaining so that the material scope of collective bargaining rights of public servants not engaged in the administration of the State is in full conformity with the Convention.***

Collective bargaining in the public sector. Participation of most representative branch unions. The Committee recalls that in its previous comment, it had noted that pursuant to section 29 of Act No. 4688, the Public Employers' Delegation (PED) and Public Servants' Unions Delegation (PSUD) are parties to the collective agreements concluded in the public service. Even though the most representative unions in the branch are represented in PSUD and take part in bargaining within branch-specific technical committees, their role within PSUD is restricted in that they are not entitled to make proposals for collective agreements, in particular where their demands are qualified as general or related to more than one service branch. The Government indicates in this respect that the collective agreement proposals for each service branch are determined separately by the competent trade unions in each branch and these proposals are then discussed in the technical committees established for each branch of service separately. These committees' works are conducted independently of each other and the conclusion of an agreement in one branch does not necessarily mean that others are under obligation to conclude one too. The Committee notes that the Government's indications do not refer to any new developments concerning the role of representative branch unions within the PSUD. ***It is therefore bound to once again request the Government to ensure that Act No. 4688 and its application in practice enable the most representative unions in each branch to make proposals for collective agreements including on issues that may concern more than one service branch, as regards public servants not engaged in the administration of the State. The Committee requests the Government to indicate all developments in in this respect.***

Public employee arbitration board. In its previous comment, the Committee had noted that in case of failure of negotiations in the public sector, the chair of PED (the Minister of Labour) on behalf of public administration and the chair of PSUD on behalf of public employees, can apply to the Public Employee Arbitration Board. The Board decisions were final and had the same effect and force as the collective agreement. The Committee had requested the Government to take the necessary measures for restructuring the membership of the Public Employee Arbitration Board or the method of appointment of its members so as to more clearly show its independence and impartiality and to win the confidence of the parties. The Government indicates in this regard, that the chair of the board is designated by the President from among the Presidents, Vice-Presidents or Heads of Departments of the Court of

Cassation, the Council of State (Supreme Court for Administrative Courts) and Supreme Court of Public Accounts. According to the Government, these high courts and their judges are not connected hierarchically to the executive power and have judicial independence. Furthermore, other Board members do not represent the relevant confederation or the public employer but decide on behalf of the whole country. The Committee notes however, that the President of the Republic designates not only the chair, but seven out of eleven members of the board. It also notes the observation of the KESK, indicating that this means that most of the board members are designated by the Government. The Committee notes in this respect that as the Government is also the employer in the public sector, it is therefore a party to the negotiations on which the Board will pronounce itself. ***The Committee therefore once again requests the Government to consider reviewing, in consultation with the social partners, the method of appointment of the Board members so as to more clearly show its independence and impartiality and to win the confidence of the parties.***

[The Government is asked to reply in full to the present comments in 2023.]

Turkmenistan

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, referring to the issues examined by the Committee below and questioning the independence of the trade union movement in the country. ***The Committee requests the Government to provide its comments thereon as well as on the 2018 observations of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations alleging grave violations of civil liberties and of the Convention in practice.***

The Committee notes the Law on Industrialists and Entrepreneurs of 2019 and will examine its conformity with the Convention once its translation becomes available.

Article 3 of the Convention. Right of organizations to organize their administration, without interference by the public authorities. The Committee had previously noted that pursuant to section 27(3) of the Law on Public Associations, insofar as it applies to employers' organizations, public associations must, upon a request from the Ministry of Justice, submit copies of decisions taken by their governing bodies and officers, as well as reports about their operations. A similar provision is contained in section 16(2) of the Law on Trade Unions. The Committee had requested the Government to amend these provisions as they give the authorities powers of control that go beyond those acceptable under the Convention. The Committee ***regrets*** that the Government's reply, while extensive, is limited to general statements regarding the prohibition on the authorities to interfere in the activities of public associations and to indicating merely that such interference is permitted only in cases that are specifically prescribed by the respective laws. The Committee once again recalls that the supervision of workers' and employers' organizations should be limited to the obligation of submitting periodic financial reports or, if there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe the principles of freedom of association), such verification should be limited to exceptional cases, for example, in order to investigate a complaint, or if there have been allegations of embezzlement, and should not take the form of permanent control by the authorities. Both the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity. ***The Committee therefore urges the Government to take all necessary steps to amend section 16(2) of the Law on Trade Unions and 27(3) of the Law on Public Associations, in so far as it applies to employers' organizations, so as to***

ensure the application of the principles set forth above. The Committee requests the Government to provide information on all progress made in this respect.

Right to strike. In its previous comments, the Committee had noted that the provisions of the Labour Code concerning collective labour disputes did not refer to the right to strike; that according to the Government, collective labour disputes were resolved through mediation or in case of a failure, in courts; and that the parties could not refuse to participate in dispute resolution procedures. The Committee considered in this respect that while strike action was not an end in itself, it was an essential means available to workers and their organizations to protect their interests. The Committee further considered that insofar as compulsory arbitration, including through judicial proceedings, prevents strike action, it was contrary to the right of trade unions to organize freely their activities and could only be justified in the public service for public servants exercising authority in the name of the State or in essential services in the strict sense of the term, that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee had requested the Government to take the necessary measures, in consultation with the social partners, in order to ensure the application of this principle in law and in practice. The Committee notes with ***regret*** that the Government did not provide any information on this matter. ***The Committee is therefore bound to reiterate its previous request. The Committee expects the Government to provide information on all steps taken or envisaged in this respect.***

Uganda (ratification: 2005)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2005)

Previous comment

The Committee had previously noted the Government's commitment to implement as a matter of urgency the Committee's recommendation to discuss with the social partners the application and impact of the Public Order Management Act, according to which, organizers of public meetings who fail to comply with the Act's requirements commit an act of disobedience of statutory duty, punishable with imprisonment under the Penal Code. ***The Committee notes with regret the Government's indication that there have been no developments in this regard. The Committee reiterates its previous request and urges the Government to provide information in this regard.***

Articles 2 and 3 of the Convention. Legislative matters. The Committee had requested the Government to take measures to amend or repeal the following provisions of the Labour Unions Act of 2006 (LUA):

- Section 18 (process of registration of a labour union shall be completed within 90 days from the date of application). The Committee had requested the Government to take the necessary measures to amend this section to shorten the time frame for registration of a trade union.
- Section 23(1) (interdiction or suspension of union officers by the Registrar). The Committee had requested the Government to take steps to amend section 23(1) of the LUA to ensure that the Registrar may only remove or suspend trade union officers after conclusion of judicial proceedings and only for reasons, such as an internal decision of the trade union, in line with *Article 3* of the Convention.
- Section 31(1) (eligibility condition of being employed in the relevant occupation). The Committee recalls that the measures to amend this section may include introducing flexibility either by admitting as candidates for union office persons who have previously been employed in that occupation, or by exempting from that requirement a reasonable proportion of the officers of an organization.

– Section 33 (excessive regulation by the Registrar of an organization's annual general meeting; contravention subject to sanction under section 23(1)).

The Committee takes note of the Government's indication that it is still in the process of amending the Act and that the Bill which provides for amendment of sections 18, 23(1), 31(1) and repeal of section 33 is pending at the top Policy Management level. ***Recalling that the review process of the LUA has been ongoing for several years, the Committee expects that it will be amended without further delay, in consultation with the social partners. The Committee requests the Government to provide information on all developments in this regard, and to provide a copy of the amended LUA when adopted.***

The Committee recalls that it had requested the Government to amend section 29(2) of the Labour Disputes (Arbitration and Settlement) Act of 2006 (LDASA) to ensure that the responsibility for declaring a strike illegal does not lie with the Government, but with an independent body that has the confidence of the parties involved. The Committee had also requested the Government to provide information regarding the harmonization of the list of essential services in the LDASA (Schedule 2) with that in the 2008 Public Service Act (Negotiating, Consultative and Disputes Settlement Machinery). The Committee notes with ***concern*** the Government's indication that while the LDASA was amended in 2020, section 29(2) and Schedule 2 of the LDASA were not. The Government indicates that it will consider addressing these matters through other policy arrangements. ***The Committee urges the Government to take all the necessary measures in consultation with the social partners to amend section 29(2) in line with its previous request and to harmonize the list of essential services in Schedule 2 of the LDASA, irrespective of other policy arrangements that may be adopted. The Committee requests the Government to provide information on any developments in this regard, including on any other policy arrangements adopted, and to provide a copy of the revised LDASA.***

Application of the Convention in practice. The Committee notes the Government's indication regarding the challenges of applying the Convention in the informal sector of the economy, due to the instability of enterprises in this sector and the small number of workers usually employed by each enterprise, as well as the casual nature of work. The Committee recalls that pursuant to *Article 11*, each Member State for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize. ***The Committee requests the Government to indicate measures taken or envisaged in consultation with the social partners in this regard and recalls that it may avail itself of the technical assistance of the Office.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)

Previous comment

The Committee had requested the Government to provide detailed comments on the allegations of anti-union discrimination practices, in response to the observations made by the International Trade Union Confederation and the National Organization of Trade Unions of Uganda in 2014 and 2012 respectively. ***The Committee notes with regret the absence of reply from the Government. It trusts that the Government will show greater cooperation in the future and urges the Government to provide its comments to the referred observations.***

Article 4 of the Convention. Promotion of collective bargaining. The Committee had noted the Government's indication that the Labour Unions Act No. 7 of 2006 (LUA) was under review, and had requested the Government to take the necessary measures to ensure that the revised legislation recognizes the right of trade union federations and confederations to engage in collective bargaining (section 7 of the LUA). The Committee notes the Government's indication that this process is still ongoing, and the Committee's observation on this matter is one of the areas for amendment. ***Recalling***

that the review process of the LUA has been ongoing for some years, the Committee expects that it will be amended without delay, following consultations with the social partners, to ensure its conformity with the Convention. The Committee requests the Government to provide information on any developments in this regard.

Compulsory arbitration. The Committee has, for many years, requested the Government to amend sections 5(1) and (3), and 27 of the Labour Disputes (Arbitration and Settlement) Act of 2006 (LDASA) with a view to ensuring that arbitration may only be imposed in the case of disputes in the public service involving public servants engaged in the administration of the State (*Article 6* of the Convention), or in essential services in the strict sense of the term (namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population), or in the case of acute national crisis. The Committee notes with ***concern*** the Government's indication that the LDASA was amended in 2020 but that section 5 (1) and (3) and 27 were not amended in the process, despite the Government's previous indication that consultations were held with the social partners to amend these provisions. The Committee notes the Government's indication that it will consider addressing the matter through other policy arrangements. ***The Committee urges the Government to, in consultation with the social partners, take all the necessary measures to amend sections 5(1) and (3), and 27 of the LDASA, irrespective of other policy arrangements that may be adopted by the Government, to ensure that arbitration in situations other than those mentioned above can take place only at the request of both parties involved in the dispute and that the applicable legislation is fully in line with the Convention. The Committee requests the Government to provide information on any developments in this regard, including any other policy arrangements adopted.***

Articles 4 and 6. Promotion of collective bargaining for public servants not engaged in the administration of the State. The Committee had requested the Government to provide information on the outcome of the negotiation between the Council, composed of ten Public Service Labour Unions, which concluded a collective bargaining discussion for salary increase for the period of five years, starting from the financial year of 2018–19. ***Observing that the Government does not provide information on the outcome of this negotiation, the Committee once again requests the Government to provide it.***

Application of the Convention in practice. The Committee notes the Government's indication with respect to the challenges for implementation and enforcement of the existing legislation on freedom of association in informal enterprises, due to the low number of workers, the casual nature of their work, and the instability of enterprises, which leads to obstacles to unionization. The Committee observes that this situation also results in challenges to collective bargaining. ***The Committee requests the Government to provide information on the measures taken to promote collective bargaining for workers in the informal sector and recalls that it may avail itself of the technical assistance of the Office. The Committee also requests the Government to provide detailed information on the number of collective agreements concluded and in force, in all sectors of the economy, and the number of workers covered by these agreements.***

Ukraine

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

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022, denouncing the introduction in Parliament of draft Law No. 6420 on the Legal Regime of Property of All-Union Public Associations (Organizations) of the Former USSR (dated December 2021) and Draft Law No. 6421 on Moratorium on Alienation of Property of All-Union Public

Associations (Organizations) of the Former USSR. The ITUC considers the revival of the two draft pieces of legislation in a time of war to be opportunistic and contrary to the Government's international commitments. The Committee notes the Government's indication that the two draft laws were developed to establish the legal basis for determining the ownership of property which, as of 1991, was in the possession or use of all-union public organizations of the former USSR, with a view to returning such property to state ownership. The Committee notes that the Committee on Freedom of Association has been called upon to examine the issue of trade union property on two occasions, in Case No. 2890 and more recently, in Case No. 3341 where it had noted the creation of a working group to discuss possible ways to regulate the issue and invited the Government to engage in consultations with the trade union organizations to find a mutually agreeable solution (see Report No. 392, October 2020, para. 966). ***Noting the ITUC allegation that the two draft laws were presented unilaterally without meaningful consultations with trade unions, the Committee requests the Government to take necessary measures to review draft Laws Nos 6420 and 6421 in full consultation with the most representative workers' organizations with a view to finding a mutually agreeable solution. The Committee requests the Government to inform it of all developments in this regard.***

The Committee also notes the joint observations of the Federation of Trade Unions of Ukraine (FPU) and the Confederation of Free Trade Unions (KVPU), received on 6 October 2022, alleging that Law No. 2136-IX of 15 March 2022 on Organization of Labour Relations Under Martial Law was adopted without prior consultation with the social partners and that it restricts the exercise of the right to organize. ***While taking account of the exceptional nature of the legislation, the Committee trusts that the Law will be declared null and void once the state of emergency / martial law regime is lifted***.

The Committee further notes that according to the FPU and the KVPU, the following draft laws were introduced in Parliament without prior consultation with the social partners: draft Law on Labour; draft Law No. 2332 of 29 October 2019 on Amendments to Certain Legislative Acts Concerning the Procedure for Determining the Representativeness of Trade Union and Employer Organizations in Social Dialogue Bodies; draft Law No. 2682 of 27 December 2019 on Strikes and Lockouts; draft Law No. 2681 of 27 December 2019 on Amendments to Certain Legislative Acts of Ukraine (on Some Matters of the Trade Unions Activity); and draft Law No. 7025 of 4 February 2022 on Self-Regulatory Organizations. According to the FPU and the KVPU, these laws, if adopted, would violate the Convention by (i) restricting the rights of workers to establish organizations of their choosing and without previous authorization, imposing state control over trade unions, and (ii) restricting the right of trade unions to organize their administration and activities and to formulate their programmes in general, and the right to strike in particular. The Committee notes the above allegations with ***concern*** and recalls that all States have the obligation to respect fully the commitments undertaken by ratification of ILO Conventions. The Committee notes the Government's indication in reply to the ITUC above-mentioned observations that the Ministry of Economy is ready for a comprehensive dialogue which would facilitate a full understanding of the spirit and provisions of international labour legislation as well as their implementation in Ukraine. The Committee notes the Government's communication received on 8 December 2022 containing comments on the FPU and the KVPU allegations. The Committee will examine the Government's reply at its next session. ***The Committee urges the Government to engage with the social partners in respect of the draft legislation affecting their interests and rights with a view to bringing the legislation into conformity with the Convention prior to any further consideration by Parliament. The Committee recalls that the Government may avail itself of technical assistance from the Office in this respect.***

The Committee notes the extremely difficult situation in the country since 24 February 2022. In the absence of a report from the Government on the application of the Convention, the Committee recalls that it had previously requested the Government:

- to continue taking the necessary steps in order to ensure the right of judges to establish organizations of their own choosing to further and defend the interests of their members and to inform of all progress made in this regard;
- to take the necessary measures to amend section 19 of the Law on the procedure for settlement of collective labour disputes so as to ensure that if the national legislation requires a vote before a strike can be held, account is taken only of the votes cast and the majority is fixed at a reasonable level;
- to clarify which categories of civil servants exercise authority in the name of the State and whether some or all civil servants are prohibited from exercising the right to strike, and to amend section 10(5) of the Law on Civil Service so as to ensure that the right to strike in the public service may be restricted or prohibited only for public servants exercising authority in the name of the State; and
- to provide information on the practical application of section 293 of the Criminal Code, which provides that organized group actions that seriously disturb public order, or significantly disrupt operations of public transport, any enterprise, institution or organization and active participation therein, are punishable by a fine of up to 50 monthly minimum wages or imprisonment for a term of up to six months, in respect of industrial actions.

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

United Kingdom of Great Britain and Northern Ireland

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

Previous comment

The Committee notes the observations made by the Trades Union Confederation (TUC), received on 31 August 2022, which refer to the issues examined by the Committee below.

The Committee had previously requested the Government to comment on the allegations relating to police surveillance of trade unions and trade unionists submitted by the TUC in 2018. The Committee notes the Government's indications that the exercise of covert investigatory powers under the Investigatory Powers Act, 2016 (IPA) and the Regulation of Investigatory Powers Act, 2000 (RIPA) are subject to numerous stringent safeguards and robust independent oversight, and are carried out only if they are necessary for specific statutory grounds, proportionate to the outcome sought, and the information required cannot be reasonably obtained through less intrusive means. The Government points out that it would therefore never be necessary and proportionate to use investigatory powers merely to interfere with legitimate trade union activity. The Government adds that the RIPA grants victims of improper exercise of covert investigatory powers recourse to the Investigatory Powers Tribunal (IPT) for redress. The Government further informs that there is an Investigatory Powers Commissioner who exercises independent oversight over investigatory powers and has the mandate to audit, inspect and report the use of such powers by the authorities. The Committee notes the Government's indication that an Undercover Policing Inquiry was established in 2015 to inquire into and report on undercover police operations conducted in England and Wales since 1968 and their effects upon individuals in particular and the public in general. A number of trades unions and trades unions members have been granted core participant status in the Inquiry***. The Committee expects that the inquiry will be concluded in the very near future and requests the Government to provide information on any conclusions arrived at in relation to the above-mentioned allegations.***

Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes. In its previous comment, the Committee had requested the Government to provide information on the measures taken to facilitate electronic balloting (e-balloting) for industrial action ballots. The Committee notes both the TUC's and the Government's indications that the review of e-balloting conducted in 2017 resulted in certain recommendations, including pilots of e-balloting in non-statutory areas as a first step. According to the Government, round table consultations on the recommendations were held both with experts and with trade unions. The Government indicates that details will be provided after the finalization of its consideration of the recommendations. ***The Committee trusts that this work will be finalized without further delay and that the Government will provide information thereon in its next report.***

The Committee had also requested the Government to review section 3 of the Trade Union Act, 2016 with the social partners to ensure that the requirement of support by 40 per cent of all workers for strike ballot did not apply to the education and transport sectors. The Committee notes the Government's indication that the Act, including the ballot thresholds, will be reviewed with the social partners in the future. The TUC indicates that the imposition of the ballot threshold of 40 per cent to the two above-mentioned sectors imposes a requirement of 80 per cent voting support if only 50 per cent of the members vote and poses a significant barrier to union members exercising their right to strike. ***The Committee urges the Government to review section 3 of the Trade Union Act with the social partners without further delay in order to ensure that the support of 40 per cent of all workers is not required for a strike ballot in the education and transport services.***

In its previous comment, the Committee had requested the Government to provide information on the practice of notifying the police of the identity of activists; the details of any complaints regarding the handling of this information or its impact on lawful industrial action; and information on the blacklisting of individuals engaged in lawful picketing. The Committee notes the Government's indication that the Trade Union Act, including provisions on picketing requirements, will be reviewed in the future, and the Government will take into consideration the comments of the Committee. The Government indicates that it does not have any information on the blacklisting of individuals engaged in lawful picketing but adds that claims against blacklisting could be pursued before the Employment Tribunal within three months of the commission of the offence, or longer at the discretion of the Tribunal. The Government adds that the usage of personal data is protected by the Data Protection Act, 2018, with breaches of the Act being investigated by the Information Commissioners Office. The Committee takes note of the TUC allegation that additional restrictions are being planned. ***The Committee once again requests the Government to provide information on the application of this notification in practice, including any complaints made in relation to the handling of this information or its impact on lawful industrial action, and any information on the blacklisting of individuals engaged in lawful picketing. It also requests the Government to provide information on the additional restrictions planned, if any.***

The Committee had further requested the Government to review the impact of sections 16–20 of the Trade Union Act with the social partners to ensure that the expansion of the role of the Certification officer does not interfere with the rights of workers' and employers' organizations under *Article 3* of the Convention. The Committee notes the Government's indication that the Certification officer reforms were implemented in April 2022, after engaging with the social partners in June and July 2021, in addition to the 2017 consultations on the levy. The Government indicates that no consultation was needed in relation to the proposed new investigatory powers since these were contained in the Trade Union Act. While noting the Government's indication that the new legislation would bring the powers of the Certification Officer in line with other regulators and provide confidence both to union members and the wider public, the Committee notes the TUC's indication that the changes would render trade unions vulnerable to interference by non-members including hostile employers or campaign groups, particularly during legitimate industrial disputes. The TUC adds that the consultation in 2017 was a

general consultation inviting input from the general public and not a specific review with the social partners. The Committee notes the TUC's concerns that the changes obstruct and hinder trade unions in their core functions, since they grant the Certification Officer undue discretion in exercising the powers while the threshold for the exercise of the powers is extremely low and their scope is uncertain. The changes vest in the Certification Officer the power to act upon a third-party complaint, which, according to the TUC, could create a risk of interference in the functioning of trade unions; and to demand documents with sensitive information which are protected by data protection laws. The TUC further indicates that the changes allow unduly high financial penalties to be imposed for statutory breaches, and that there is no ceiling imposed on the newly introduced levy which requires unions to cover the majority of the costs of the Certification Officer. ***The Committee requests the Government to provide its comments on the TUC observations, as well as detailed information on the reform implemented with regard to the Certification Officer's new investigatory powers, financial penalties that may be imposed, the amount of any penalties that have been imposed since April 2022, and the ceiling on the levy introduced.***

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

Jersey

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes. In its previous comments, the Committee had requested the Government to provide information on any developments concerning the review of the Employment Relations Law (ERL) and codes of practice, in particular, the provisions regulating the exercise of the right to strike (right to secondary action and social and economic protests – see section 20(3) of the ERL and Code 2; picketing – Code 2; compulsory arbitration – sections 22 and 24 of the ERL and Code 3; essential services – Code 2; and conditions for protected industrial action and the application by the courts of sections 3 and 20(2) of the ERL and Code 3). The Committee notes the Government's indication that the ERL continues to achieve its purpose in supporting a non-adversarial dispute resolution system having been developed following significant public consultation, and as demonstrated by Jersey's very good industrial relations record. The Government indicates that according to the Jersey Advisory and Conciliation Service (JACS), both workers' organizations and employers continue to find that the ERL and the codes of practice provide an effective framework in a format that is accessible and easily understood, the success of which had been demonstrated by parties actively pursuing early mediation to resolve matters and by the absence of industrial actions. The Government further recalls that following a political decision to focus on the preparation of new legislation to protect against discrimination all efforts were concentrated on this issue. This legislation is now in force and was further complemented in 2018. While the Government is satisfied with the progress made in this respect, it regrets that it has not been possible to undertake a review of the ERL during this period.

The Committee notes the Government's indication that a review of the ERL is expected to be undertaken when resources allow for it, subject to the position of the new Minister for Social Security, appointed in June 2018. The Government assures that this legislative review will take into account the Committee's comments. ***In these circumstances, the Committee reiterates its request and trusts that the Government will soon be able to report progress concerning the review of the ERL and its codes of practice.***

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

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comments, the Committee had noted that pursuant to sections 77B and 77C of the Employment (Amendment No. 4) (Jersey) Law, 2009, while the Tribunal can issue an order of reinstatement in the post or a similar post, it does not have the power to compensate an employee for financial losses such as arrears of pay for the period between the dismissal and the order for reinstatement. The Committee had invited the Government to pursue dialogue with the social partners in order to ensure that in cases of anti-union dismissals, workers reinstated by order of the judicial authority would be granted full compensation for loss of pay. The Committee notes that the Government states once again that: (i) since the Employment Law came into force in 2005 there have been no Tribunal complaints of anti-union dismissal, therefore no orders for reinstatement resulting from anti-union dismissal have been issued; and (ii) the review of the award-making powers of the Employment and Discrimination Tribunal could be envisaged in the future. The Committee reiterates that in cases of reinstatement following an anti-union dismissal, remedies for loss of wages for the period that elapses between dismissal and the reinstatement, as well as compensation for the prejudice suffered, with a view to ensuring that all of these measures taken together constitute a sufficiently dissuasive sanction, as "adequate protection" under *Article 1(1)* of the Convention. The Committee recalls that sanctions against acts of anti-union discrimination must be to compensate fully, both in financial and in occupational terms, the prejudice suffered (see 2012 General Survey on the fundamental Conventions, paragraph 193). ***The Committee therefore requests once again the Government to enter into dialogue with the social partners in order to ensure that in cases of anti-union dismissals, workers reinstated by order of a judicial decision may be granted full compensation for loss of pay. The Committee requests the Government to provide information of any developments in this regard.***

Article 2. Adequate protection against acts of interference. In its previous comments, the Committee had noted that there were no specific provisions protecting against acts of interference in the Employment (Jersey) Law (EL) or the Employment Relation Law (ERL), but that it was the Minister's intention via the ERL to prohibit employers from "buying out" employees' rights in respect of union activities by inducing employees not to join a workers' organization, or to relinquish membership of such an organization. While noting the Government's indications on the focus given for now to the preparation of a new legislation to provide protection against several grounds of discrimination, the Committee notes with ***regret*** that there have been no further developments to date with respect to the protection against acts of interference. ***The Committee therefore requests once again the Government to take, after consulting the social partners, the necessary measures to introduce provisions prohibiting acts of interference by employers or their organizations in the establishment, functioning or administration of workers' organizations and vice versa as well as provisions ensuring rapid procedures and sufficiently dissuasive sanctions against such acts. The Committee requests the Government to provide information of any developments in this regard.***

Article 4. Promotion of collective bargaining. Legislative matters. In its previous comments, the Committee had requested the Government to take the necessary action to amend Code of practice 1 with respect to the recognition of trade unions in order to guarantee the right to collective bargaining when no union represents the majority of employees in a bargaining unit. The Committee notes with ***regret*** the Government's indication that, to date, there have been no further developments in this respect. ***Recalling that the determination of the threshold of representativeness to designate an exclusive agent for the purpose of negotiating collective agreements applicable to all workers in a sector or establishment is compatible with the Convention in so far as the required conditions do not constitute an obstacle to the promotion of free and voluntary collective bargaining in practice, the Committee requests the Government to take, after consulting the social partners, the necessary measures to ensure that if no union reaches the required threshold to be recognized as a bargaining agent, unions should be given the possibility to negotiate, jointly or separately, at least on behalf of their own members. The Committee requests the Government to provide information of any developments in this regard.***

Promotion of collective bargaining in practice. ***The Committee requests the Government to provide information on the number of collective agreements concluded and in force in the country, the sectors concerned and the number of workers covered by these agreements.***

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

St. Helena

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

Previous comment

Article 4 of the Convention. Legislative measures to promote collective bargaining in the private sector. The Committee in its previous comment observed that the Employment Rights Ordinance does not contain specific provisions regulating collective bargaining and requested the Government to adopt legislative measures to promote collective bargaining in the private sector. The Committee observes that though the Government takes note of this, it does not provide information in this regard. ***The Committee therefore requests the Government once again to take concrete measures to promote collective bargaining in the private sector in accordance with Article 4 of the Convention and to provide information in this respect.***

Articles 4 and 6. Collective bargaining in the public sector. The Committee in its previous comment noted the indication of the Government that the right to collective bargaining of public servants not engaged in the administration of the State was recognized through the establishment of the Employee Representative Committee (ERC). It requested the Government to provide information on the ongoing processes and related outcomes in this regard. The Committee notes the Government's indication that the St Helena Public Service (SHPS) Leadership Team meets the St Helena Public Service Employment Rights Committee (SHPSERC) every quarter to discuss issues related to the Terms and Conditions of public servants in a 'Partnership Forum'(PF) and that the SHPSERC successfully negotiated improvements to the Compassionate Leave and Redundancy policies. The Government adds that negotiations are ongoing to improve other policies relating to the terms and conditions of public service employees, including the review of the disciplinary, grievance, capability, and probation policies. The Committee observes that PF Guidelines indicate that the Government has agreed with the SHPERC on the key areas in which it will negotiate, including terms and conditions of employment relating to all employees within grades A to H. ***The Committee welcomes this information and requests the Government to continue providing details about the processes and outcomes of collective bargaining in the public sector.***

Promotion of collective bargaining in practice. ***The Committee encourages the Government to continue to provide information on the measures taken, in accordance with Article 4 of the Convention, to promote collective bargaining in different sectors of the economy. The Committee also requests the Government to provide statistics on the number of collective agreements concluded and in force, the sectors concerned, and the number of workers covered by these agreements.***

United Republic of Tanzania

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

Previous comment

Articles 2 and 3 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations without previous authorization. Right of organizations to organize their activities and to formulate their programmes freely. In its previous comment, the Committee trusted that the Government would bring its legislation into conformity with the Convention and in this respect referred to the following issues:

- the need to amend section 2(1)(iii) of the Employment and Labour Relations Act (No. 6 of 2004) (ELRA) so as to ensure that prison guards enjoy the right to establish and join organizations of their own choosing;
- the need to amend section 2(1)(iv) of the ELRA so as to clearly indicate that only the military members of the national service are excluded from the scope of the Act;
- the need to amend section 76(3)(a) which prohibits picketing in support of a strike or in opposition to a lawful lockout;
- the need to amend section 26(2) of the Public Service (Negotiating Machinery) Act (No. 19 of 2003) to align it with the relevant provisions of the ELRA which also applies to workers in the public service; and
- the need to ensure that any service designated as essential by the Essential Services Committee pursuant to section 77 of the ELRA is based on the strict definition of the term.

The Committee notes the Government's general indication that efforts will be made in consultation with social partners and the technical support of the ILO to study the best possible way to take into consideration the comments of the Committee. Regarding the right of prison guards to establish and join organizations, the Committee notes the Government's indication that following the recent legislative amendments, prison guards are recognized as military officials and are regulated by their own legislation. The Committee considers that the functions exercised by this category of public servants do not justify their exclusion from the rights and guarantees set out in the Convention. ***The Committee requests the Government to provide information on the right of prison guards to establish and join organizations along with copies of the above-mentioned amendments. The Committee further expects that the Government will provide full details on measures taken in consultation with the social partners to bring the legislation into conformity with the Convention on the above-mentioned issues.***

Regarding the practical application of sections 4 and 85 of the ELRA, which prohibit protest action in case of a dispute in respect of which a legal remedy exists, the Committee notes the Government's indication that there is neither restriction nor interference, and that the object of the procedures is to ensure the prevention of harm to the public under article 30 of the Constitution. The Committee considers that while the solution to legal conflicts arising as a result of a difference in the interpretation of a legal text should be left to the competent courts, it expresses ***concern*** that prohibiting all protest actions in respect of disputes for which a legal remedy exists may unduly interfere with the exercise of trade union rights. ***The Committee requests once again that the Government provide information on the application of the above-mentioned provisions in practice.***

Zanzibar

Articles 2 and 3 of the Convention. The Committee had previously noted that section 2(2) of the Labour Relations Act (No.1 of 2005) (LRA) excluded from its scope judges and all judiciary members; members of special departments; and employees of the House of Representatives and requested the Government to provide relevant pieces of legislation that grant the above-mentioned categories of workers the right to organize. The Committee notes the following pieces of legislation provided by the Government: The Special Departments Service Commission Act, No.6/2007; the Jeshi la Kujenga Uchumi Act, No.6/2003; and the Kikosi Maalum cha Kuzuia Magendo Act, No.1/2003. The Committee observes that the three Acts apply to the members and judges of special departments and to forces that protect the territories of the State, and none of the acts refer to the right to organize. ***The Committee therefore requests once again that the Government ensures that the above-mentioned categories of workers are granted the right to organize and to provide the relevant pieces of legislation in this regard.***

The Committee had previously requested the Government to amend the following provisions of the LRA:

- section 42, so that trade unions have the power to manage their funds without undue restrictions from the legislation;
- section 42(2)(j), to ensure that trade unions do not require the approval of the Registrar on the institution which they may choose to contribute to; and
- section 64(1) and (2), so that the prohibition of the right to strike only extends to public servants exercising authority in the name of the state or to essential services in the strict sense of the term.

The Committee notes the Government's indication that all labour laws are undergoing review. The Committee further takes note of the Government's request for technical and financial support from the Office. ***The Committee expects the Government to take the necessary measures in the near future to amend the above-mentioned provisions, in consultation with the social partners and with the technical assistance of the ILO. The Committee requests the Government to provide information on all developments in this regard.***

The Committee had previously requested the Government to indicate whether the time frame for advance notices was the same for strikes and protest actions. The Committee recalls that in its previous comments it considered that the period of advance notice should not be an additional obstacle to bargaining, with workers in practice waiting for its expiry in order to be able to exercise their right to strike. The Committee notes the Government's indication that while the advance notice period for strikes is different from the one for protest action, efforts will be made in consultation with stakeholders to take into account the issues raised by the Committee in this regard. ***The Committee requests the Government to provide information on all developments in this regard.***

United Republic of Tanzania

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

Previous comment

Scope of the Convention. The Committee, in its previous comments, requested the Government to include members of the prison service and exclude only members of the military service from the scope the Employment and Labour Relations Act (No. 6 of 2004) (ELRA), by amending sections 2(1)(ii) and 2(1)(iv) respectively. The Committee notes the Government's indication that prison guards have been recognized as military officials following an amendment in the law, and they are regulated by their own

legislation. The Committee recalls that civilian personnel in the armed forces enjoy the rights and guarantees set out in the Convention. ***The Committee considers that the functions exercised by this category of workers do not justify their exclusion from the rights and guarantees set out in the Convention, and it trusts that the Government will take the necessary legislative measures, in consultation with social partners, to bring national legislation in conformity with the Convention.***

Article 4 of the Convention. Compulsory arbitration. The Committee notes with ***regret*** that the Government does not provide information on the measures taken to ensure that compulsory arbitration in the framework of collective bargaining is acceptable only in relation to public servants engaged in the administration of the state, essential services in the strict sense of the term, and acute national crisis. ***It reiterates its previous request for information on the progress made in this regard, particularly by amending sections 17 and 18 of the Public Service (Negotiating Machinery) Act.***

Collective bargaining in practice. The Committee previously requested the Government to provide information and statistics on the collective agreements signed and in force in the country. The Committee notes the Government's indication that between July 2021 and June 2022, 32 collective agreements were lodged between the Tanzania Union of Industrial and Commercial Workers (TUICO) and various companies in diverse sectors (industrial and commerce (16), transportation (1), beverages (2), education (1), commercial (6), agriculture (3), health (1), mining (1) and textiles (1)). The Government adds that there are 3 collective agreements in Tanzania-Zanzibar, covering 398 workers in two sectors. ***The Committee requests the Government to: (i) continue providing information in this respect, including statistics on the total number of collective agreements in force in the country, the sectors concerned, and the number of workers covered; and (ii) provide information on the measures taken to promote collective bargaining in the different sectors of the economy.***

Zanzibar

Article 4 of the Convention. Legislation on collective bargaining. In its previous comment, the Committee requested the Government to take the necessary measures to: (i) amend section 57 of the Labour Relations Act, 2005 (LRA) to remove any ambiguity concerning the meaning of the term "majority" and to clarify that the most representative trade union, even when it does not represent more than 50 per cent of the workers, has the exclusive right to bargain with the employer; and (ii) amend section 54(2)(b) of the LRA to guarantee managerial employees their rights under the Convention, and to indicate the categories of employees excluded under section 54(2)(c). The Committee notes the Government's indication that the relevant provisions in the labour laws would be amended, post consultation with social partners and that it has requested the technical assistance of the Office to review and amend all labour laws. ***The Committee takes due note of this request for technical assistance and trusts that the Government will take the necessary steps to ensure the full compliance of the legislation with the Convention. The Committee requests the Government to provide information on progress made in this regard.***

Uruguay

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1954)

Previous comment

The Committee notes the Government's reply to the joint observations of the International Employers' Organisation, the National Chamber of Commerce and Services of Uruguay and the Chamber of Industries of Uruguay of 2018. The Committee also notes the observations of the Inter-Union Assembly of Workers – Workers' National Convention received on 21 August 2022 mentioning

two incidents in which the police used violence against protesters. The Committee notes the Government's indication, in its reply, that protests were allowed within the boundaries of the law, that the police acted to clear the entrance to the port and bus terminal of Montevideo, which were blocked by protesters, that the workers who were detained were released immediately and that the Ministry of the Interior acknowledged that one police officer had acted excessively. ***The Committee requests the Government to ensure that the intervention of the police in trade union demonstrations is in due proportion to the danger to public order that the authorities are attempting to control.***

Article 3 of the Convention. Workplace occupation and the right of management of the enterprise to enter the workplace in the context of a labour dispute. Recalling that the exercise of the right to strike and the occupation of the premises should respect the right to work of non-strikers, and the right of company management to enter its premises, both the Committee and the Committee on Freedom of Association (Case No. 2699) requested the Government to place a bill regulating workplace occupation before Parliament in full conformity with the Convention and to report on tangible developments in this regard. The Committee notes with ***interest*** the Government's indication that on 9 July 2020, the Urgent Consideration Law No. 19.889 was promulgated, section 392 of which provides that "the State guarantees the peaceful exercise of the right to strike, the right of non-strikers to access and work in the establishments concerned and the right of the management to enter the premises freely."

Bill on Legal Personality. The Committee notes that, in its report on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Government indicates that following discussions in a special tripartite committee, it drafted a Bill on the Legal Personality of Industrial Associations, which it introduced to Parliament on 2 August 2021 and which is currently under consideration in the Senate. The Committee refers to the aforementioned Bill in its comment concerning Convention No. 98.

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

Previous comment

The Committee notes the joint observations of the International Organisation of Employers (IOE), the Chamber of Commerce and Services of Uruguay (CNCS) and the Chamber of Industries of Uruguay (CIU) received on 31 August 2021 and 31 August 2022 dealing with matters addressed by the Committee in this comment and also notes the Government's reply in this respect. The Committee observes that the OIE, CNCS and CIU indicate that in July 2022, the Government introduced a preliminary Bill on Social Security Reform that would allow the establishment of voluntary contributions to the social security system through collective bargaining and observe that such a measure could be approved by the wage councils, which are tripartite bodies. The Committee notes the Government's indication in this regard that the preliminary Bill allows for the possibility of making voluntary social security contributions only through bipartite collective bargaining, without in any way promoting the involvement of the wage councils in the matter.

The Committee also notes the observations of the Inter-Union Assembly of Workers – Workers' National Convention (PIT-CNT) received on 31 August 2022 relating to issues addressed by the Committee in this comment and reporting acts of anti-union discrimination, including the suspension for a period of 14 days of a shop steward for alleged statements in the press which, in the view of the enterprise, damaged its image. The Committee notes the Government's reply to the observations of the PIT-CNT. ***Observing that, in its reply, the Government does not refer to the alleged suspension of the shop steward, the Committee requests the Government to provide information on the outcome of any complaints filed in this respect.***

Article 4 of the Convention. Promotion of free and voluntary collective bargaining. For a number of years, the Committee, together with the Committee on Freedom of Association (Case No. 2699) and the

Conference Committee on the Application of Standards, has been requesting the Government to revise Act No. 18566 of 2009 (establishing the fundamental rights and principles of the collective bargaining system, hereinafter Act No. 18566) with a view to ensuring the full compliance of the Act with the principles of collective bargaining and the Conventions ratified by Uruguay in this area. In 2015, 2016 and 2017, the Government submitted several proposals for legislative amendments to the social partners without reaching agreement, and in 2019 it introduced a bill to Parliament which partially addressed the Committee's comments and ended up being archived in 2020. The Committee recalls that, while the IOE, CNCS and CIU considered the proposed amendments contained in the Bill to be insufficient, the PIT-CNT was of the understanding that Act No. 18566 did not merit amendment. The Committee recalls that the 2019 Bill proposed to:

- include a final sentence in section 4 of Act No. 18566, requiring trade unions to have legal personality so that they can receive information from companies within the framework of the collective bargaining process, with a view to facilitating the possibility of bringing proceedings for liability in the event of a violation of the duty of confidentiality;
- remove section 10(d) of the Act establishing the competence of the Tripartite Higher Council to define the level of bipartite or tripartite negotiations;
- remove the final part of section 14 of the Act which, in the absence of a trade union represented in the company, confers bargaining power on higher-level trade unions;
- amend section 17(2) of the Act so that, for each agreement, the issue of continuing effect is subject to negotiation; and
- clarify that the decisions of wage councils and collective agreements do not require the authorization, approval or adoption of the executive authorities in order to be recorded and published.

In its latest comments, the Committee noted that these proposed amendments were consistent with the obligation under *Article 4* of the Convention to promote free and voluntary collective bargaining and noted with regret that, despite its reiterated comments, the Bill did not propose amendments or clarifications regarding the competence of the wage councils, which are tripartite bodies, in relation to adjustments made to wages that are above the minimum for the occupational category and working conditions (section 12 of Act No. 18566). The Committee recalled that although the establishment of minimum wages may be subject to decisions by tripartite bodies, *Article 4* of the Convention seeks to promote bipartite negotiation for the setting of working conditions, whereby all collective agreements establishing conditions of employment shall result from an agreement between employers or employers' organizations and workers' organizations. The Committee recalled that mechanisms can be established that would guarantee both the free and voluntary nature of collective bargaining and the effective promotion thereof, while ensuring that the country's existing collective agreements continue to offer a high level of coverage.

The Committee notes the Government's indication that: (i) on 27 October 2020 during a meeting of the Higher Tripartite Council, the executive authorities raised the need to work on the comments of the ILO supervisory bodies in relation to Act No. 18566 and suggested that a special tripartite committee could be set up to assess and consider a new draft amendment to the Act, which was unanimously approved; (ii) between May 2021 and February 2022, various meetings of the special tripartite committee were held and on 3 May 2022, the Government submitted a bill to Parliament, based on the Bill introduced to Parliament in 2019 by the previous Government, which is currently under consideration by the Labour Legislation Commission of the Chamber of Representatives; and (iii) between June and August 2022, representatives of the Ministry of Labour and Social Security and workers' and employers' delegations attended the Labour Legislation Commission to provide their opinion with regard to Bill. The Government indicates that it will continue to work in tripartite bodies to bring about reform of collective bargaining in wage councils that takes into account the comment on

section 12 of Act No.18566 and that, in the meantime, practicable measures are under consideration to ensure that the work of all delegates assigned to the wage councils results in agreements or decisions that expressly enable bipartite negotiation in situations where that is justified.

The Committee notes that, in their observations, the IOE, CNCS and the CIU indicate that although the Bill submitted to Parliament on 3 May 2022 contains a number of developments and while they value the legislative initiative, the Bill does not include an important aspect for employers which concerns the government intervention in the negotiation of issues that relate exclusively to the scope of bipartite negotiation. These organizations indicate that they have proposed adjustments to the text and observe that the current text could be substantially modified during the parliamentary debates. The Committee notes that, according to public statements issued by the PIT-CNT and reflected in documents provided by the Government, the PIT-CNT flatly rejects the Bill as a retrograde step for workers' rights that undermines collective bargaining.

The Committee takes due note of the establishment in 2020 of the special tripartite committee to address the comments of the ILO supervisory bodies in relation to Act No. 18566 and of the tripartite dialogue that has taken place within it. The Committee notes that the Bill which the Government submitted to Parliament on 3 May 2022 proposes the same amendments as the Bill introduced to Parliament in 2019. The Committee notes with ***regret*** that this Bill does not address an essential element that it has been highlighting for years concerning the amendment of section 12 of the law to ensure the bipartite nature of collective bargaining. ***Trusting that the partial progress contained in the Bill submitted to Parliament on 3 May 2022 will be incorporated in the current legislation as soon as possible, the Committee strongly encourages the Government to continue working in tripartite bodies and to take the necessary further measures to amend section 12 of Act No. 18566 such that, in accordance with the Convention, the law fully guarantees both the free and voluntary nature of collective bargaining and the continued effective promotion thereof, thereby ensuring that the country's existing collective agreements continue to offer a high level of coverage. The Committee requests the Government to provide information on any developments in this regard and recalls that it may continue to rely on the technical assistance of the Office.***

Bill on Legal Personality. The Committee notes the Government's indication that, following discussions in the special tripartite committee, the Government drafted a Bill on the Legal Personality of Industrial Associations, which it introduced to Parliament on 3 August 2021 and which is currently under consideration in the Senate. The Government indicates that the Bill relates to the proposal to amend section 4 of Act No. 18566 and that employers have expressed the view that, while the legal personality requirement is a desirable amendment, the procedure for obtaining legal personality should be swift and simple. The Committee notes that the Bill provides for the establishment of a register in the Ministry of Labour, that registration, which is optional, would result in the recognition of legal personality and that only trade unions with legal personality could receive information from enterprises in the framework of the collective bargaining process.

The Committee notes the indication of the IOE, CNCS and CIU that while they believed that this could constitute a step forward, they did not consider it necessary to establish a special regime such as the one proposed, since the country already has specific legislation whereby not-for-profit organizations can obtain legal personality, to which no objections have been raised. The Committee notes that the PIT-CNT has expressed the view, in public statements, that the fact that the unions are required to have legal personality in order to access the information necessary for the development of sound bargaining in good faith goes beyond what the ILO supervisory bodies have proposed. The Committee notes that the Bill provides that the information contained in the register shall be publicly accessible and recalls in this respect that the confidentiality of the processing of data on trade union membership in context of the registration procedure must be guaranteed, not only because such data relate to the private life of workers, but also because their disclosure could potentially expose workers to reprisals.

The Committee requests the Government to take the necessary steps to ensure that the concerns of workers' and employers' organizations in relation to the Bill are duly addressed in the tripartite social dialogue and the parliamentary discussion. It also requests the Government to ensure that whatever system of legal personality is required of organizations, it does not have the effect of hindering their activities and, consequently, collective bargaining. The Committee further requests the Government to take the necessary steps, in consultation with the social partners, to review the Bill in order to ensure the confidentiality of data relating to trade union membership and expects that if the Bill as submitted to Parliament is adopted, it will be implemented in such a manner as to contribute to maintaining the effective promotion of collective bargaining. The Committee requests the Government to keep it informed of any developments in this respect.

Uzbekistan

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
(ratification: 1992)

Previous comment

The Committee notes the observation of the Federation of Trade Unions of Uzbekistan (FPU), received on 27 September 2022, referring to the issues examined below. The Committee further notes that the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), in its observations on the application of Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) received on 31 August 2022, also refers to matters addressed in the present comment and alleges acts of anti-union interference and discrimination, including dismissals, in the agricultural sector. ***The Committee requests the Government to provide its comments thereon.***

Legislative developments. The Committee notes that the Government indicates that the Labour Code has been amended on 28 October 2022, and that the revision will come into force in April 2023. The Committee will examine its conformity with the Convention once a translation is available.

Trade union monopoly. In its previous comments, the Committee expected that the Government would provide information on the measures taken to address the IUF's 2016 allegations that the Government represses independent trade union organizing, controls the FPU and retaliates against activists for monitoring labour relations and practices. The Committee notes that the Government reports that the Law on Trade Unions (LTU), which entered into force on 8 March 2020, provides in section 12 that state bodies and their officials are prohibited from interfering in the activities of trade unions and their associations. It notes, however, that the 2022 observations of the IUF contain similar allegations to those of 2016 concerning repression of independent trade union organizing, control of the FPU and retaliation against activists. The Committee also observes that the Committee on Economic, Social and Cultural Rights of the United Nations, in its concluding observations of 31 March 2022 concerning the application of the UN Covenant on Economic, Social and Cultural Rights, expressed its concern that trade unions are required to obtain approval from the Ministry of Justice for registration, and recommended the elimination of this requirement and the removal of administrative obstacles to the formation of trade unions. ***Recalling that the imposition of a trade union monopoly is inconsistent with the principle of free and voluntary collective bargaining, the Committee requests the Government to take the necessary measures, including legislative, to guarantee the possibility of trade union pluralism, and to provide information on any developments in this regard. Moreover, recalling the responsibility of the Government to ensure that the rights provided for in the Convention are respected both in law and in practice, the Committee requests it to indicate the machinery and sanctions applicable in the event of acts of interference by state bodies or officials, and to provide information on the measures taken to ensure the implementation of section 12 of the LTU in practice.***

Article 4 of the Convention. Promotion of collective bargaining. The Committee had previously requested the Government to amend sections 21(1), 23(1), 31, 35, 36, 48, 49 and 59 of the Labour Code to ensure that only in the absence of trade unions at the enterprise, the branch or the territory, can the authorization to bargain collectively be conferred on representatives elected by workers. The Committee notes the Government's indication that the revised Labour Code, which was drafted in cooperation with the ILO, provides in section 37 that in the absence of trade unions at the appropriate levels of the social partnership, employees shall have the right to establish other associations to represent and protect their interests. ***The Committee requests the Government to provide information on the type of other associations the revised Labour Code refers to and on the application in practice of the above-mentioned provision.***

Collective labour disputes. In its previous comments, the Committee had requested the Government to provide a copy of the recommendations on the organization of activities of commissions on labour disputes which had been adopted in 2015. The Committee notes that the attachment containing the recommendations which is mentioned in the Government's report has not been provided. It also notes that the Government indicates that the revised Labour Code contains a chapter which guarantees the right to collective bargaining. ***The Committee reiterates its request that the Government provide a copy of the recommendations on the organization of activities of commissions on labour disputes of 2015 and hopes that the revised Labour Code will give full application to the principle of free and voluntary collective bargaining enshrined in article 4 of the Convention.***

Collective bargaining in practice. The Committee notes the statistical information provided by the Government, according to which 111,789 legal entities employing 4,547,381 workers concluded collective agreements in 2021. It further notes that the data submitted shows a decrease in the number of collective agreements concluded between 2018 and 2021. The Government explains that this decline is due to structural transformations accompanied by a change in the number of legal entities. The Committee also notes the Government's indication that 105 sectoral agreements were concluded by branch trade unions in 2021, including 66 in the state institutions and public services, energy, oil and gas, and agro-industrial sectors. ***The Committee requests the Government to report on the measures taken or envisaged to promote collective bargaining, and to continue to provide updated information on the number of collective agreements concluded and in force in the country, as well as the sectors concerned and the number of workers covered by these agreements.***

Bolivarian Republic of Venezuela

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1982)

Previous comment

The Committee notes the observations of the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 11 February 2022, and those communicated by the Government in its report. It also notes the observations of the Bolivarian Socialist Confederation of Urban, Rural and Fishery Workers of Venezuela (CBST-CCP), received on 22 April 2022, and those communicated by the Government. The Committee notes the observations of the Independent Trade Union Alliance Confederation of Workers (CTASI), the Confederation of Workers of Venezuela (CTV) and the Federation of University Teachers' Associations of Venezuela (FAPUV), communicated by the Government. The above observations refer to issues examined in this comment. The Committee also notes the observations of National Union of Workers of Venezuela (UNETE), received on 5 September 2022. ***The Committee requests the Government to provide its comments in response to the observations of UNETE.***

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

The Committee notes the discussions which took place during the 344th, 345th and 346th Sessions of the Governing Body (March, June and October-November 2022) on developments relating to the social dialogue forum (the Forum) to give effect to the recommendations of the Commission of Inquiry regarding the Government of the Republic of Venezuela, as well as the decisions adopted by the Governing Body. The Committee notes that, at its 347th Session (March 2023), the Governing Body will once again consider the progress achieved by the Government to ensure compliance with the recommendations of the Commission of Inquiry and will proceed with its examination of possible measures to meet this objective.

The Committee notes with ***interest*** the information provided by the Government to the Governing Body on the Forum to give effect to the recommendations of the Commission of Inquiry, in particular that: (i) on 7 March 2022, the inaugural session of the Forum took place virtually, chaired by the Ministry of People's Power for the Social Process of Labour (MPPPST), with the participation of other officials of the Ministry, and the following employers' and workers' organizations: FEDECAMARAS, CBST-CCP, the Venezuelan Federation of Small, Medium and Artisanal Industries (FEDEINDUSTRIA), CTASI, CTV, UNETE, the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA); ILO technical assistance was provided during the session to adopt terms of reference for the Forum, including pending issues to be addressed relating to the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), Convention No. 87, and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); (ii) between 25 and 28 April 2022, the first in-person meeting of the Forum was held, with the technical assistance of the Office, which resulted in the adoption of an action plan consisting of a schedule of activities relating to the application of the above Conventions; (iii) in the follow-up to the Forum, bilateral meetings were held with the social partners from 11 to 21 July 2022; (iv) from 26 to 29 September 2022, another session of the Forum was held, with the technical assistance of the Office, at which the activities carried out were assessed as part of the implementation of the action plan adopted in April, and it was agreed to update the plan; and (v) it is hoped that there will be another session of the Forum in February 2023.

Civil liberties and trade union rights. Climate free from violence, threats, persecution, stigmatization, intimidation or any other form of aggression, in which the social partners are able to exercise their legitimate activities, including participation in social dialogue with full guarantees. In its previous comment, the Committee reiterated the recommendations of the Commission of Inquiry and firmly urged the Government, in dialogue with the organizations concerned through the relevant bipartite or tripartite round tables, to take the necessary measures quickly to ensure implementation of the recommendations in question. The Committee firmly urged the Government to investigate and take appropriate action with respect to the pending allegations of violations of the Convention regarding civil liberties and trade union rights - contained in the Commission of Inquiry's report or subsequently brought before this Committee - in order to ensure a climate free of violence, threats, persecution, stigmatization, intimidation or any other form of aggression in which the social partners can exercise their legitimate activities, including participation in social dialogue with full guarantees. Lastly, the Committee requested the Government to provide detailed information on the follow-up action taken.

With regard to the situation of the trade unionist, Rodney Álvarez, the Committee recalls that it noted with deep concern the serious additional allegations of violation of due process in this case, and urged the Government to implement immediately the recommendations of the Commission of Inquiry in this regard. The Committee notes the Government's indication that on 1 June 2022, the 11th Court of First Instance of the criminal judicial circuit of the Caracas metropolitan area issued the final ruling ordering full freedom of Mr Álvarez, upon request of the Office of the Attorney-General (Attorney-General). The Government also reiterates that Mr Álvarez was sentenced for the common crime of

homicide and not for the exercise of trade union activities. The Committee notes, from the information sent from the Government to the Governing Body (GB.346/INS/12(Rev.1)), that Mr Álvarez requested to be reinstated in his job and to receive the payment of lost wages and other benefits that he stopped receiving from the time when he was taken into detention. In that connection, in Administrative Ruling No. 001 of 17 October 2022 the Labour Inspectorate of Puerto Ordaz ordered the workplace to pay all sums relating to Mr Álvarez's labour rights. It also dismissed the request to reinstate Mr Álvarez in his job, on the grounds that the case had lapsed, as the time limit established in section 34(c) of the Regulations under the Basic Labour and Workers Act (LOTTT regulations) had expired. The Committee notes the observations of several social partners (CTV, CTASI and FAPUV) indicating that Mr Álvarez has not been reinstated in his job and that after 11 years of imprisonment and the declaration of his innocence, he has not received reparation for the damages caused by his imprisonment. The Committee notes that the Constitution of the Bolivarian Republic of Venezuela sets forth that any person may request the State to restore or remedy the legal situation endured by judicial error, unjustified omission or delay (article 49(6)). ***While noting the resolution of the criminal case, the Committee recalls the right to appropriate sanction and reparation for the violations to civil liberties, and hence requests the Government to take all the necessary measures to ensure fair reparation for the damages caused to Mr Álvarez, including the corresponding financial compensation, taking into account the injuries suffered, and in accordance with the Constitution.***

The Committee notes the Government's general indication that the allegations and observations submitted by the social partners have been addressed, assessed and referred to the public authorities concerned, in the framework of the cooperation between them. The Government denies that there is a policy of violence, threats, persecution, stigmatization and intimidation or any other form of aggression against workers' and employers' organizations (and their members) and that this has been discussed in various dialogue forums between the MPPPST and the social partners, which are part of the Government's renewed policy of national dialogue in accordance with the Convention and where all social partners without exclusion are granted guarantees. In addition, the Committee notes the Government's indication to the Governing Body that on 23 August 2022, at a meeting of the National Council for Productive Economy (CNEP), led by the President of the Republic, the associations and chambers of the productive sectors headed by the presidents of FEDECAMARAS and FEDEINDUSTRIA were incorporated into the above Council.

The Committee notes that the action plan adopted at the Forum, and its update, includes the following expected outcomes, as follow-up to the decisions of the Governing Body and the recommendations of the Commission of Inquiry:

(i) the processing of the allegations of stigmatization and discrediting, including the submission to the relevant authorities by the organizations concerned of updated lists containing information identifying cases containing allegations associated with the Government, and the holding of bipartite meetings between the Government and the workers' and employers' organizations to consider and adopt relevant measures, as well as the follow-up to those measures; and

(ii) the effective handling of allegations of arrests and judicial proceedings or preventive measures substituting deprivation of liberty, allegedly related to the exercise of legitimate trade union activities, including the submission of updated lists (containing information identifying cases) of allegations previously verified by each sector concerned, their respective referral to the Attorney-General or other authorities concerned, and the holding of bipartite meetings to adopt the relevant measures.

With regard to the allegations concerning land by FEDECAMARAS, the Committee recalls that it noted various measures mentioned by the Government, including the establishment of round tables for meetings at the National Land Institute (INTI) to seek solutions to the cases raised by the National

Federation of Stockbreeders of Venezuela (FEDENAGA), and the setting up of a technical committee to discuss matters of interest to FEDENAGA and INTI, as well as the establishment of a list to prioritize cases in this regard also indicated by FEDECAMARAS. The Committee notes the Government's indication regarding the setting up of cooperation with the Ministry of People's Power for Agriculture and Lands and the INTI to address the cases brought to light by FEDECAMARAS. The Committee notes the observations of FEDECAMARAS regarding the list of estates prioritized for land recovery measures by INTI, indicating that meetings have been held with INTI but that nothing has been effectively returned to the legitimate owners, with the exception of progress made by INTI in the process to relocate the "invaders" of two of the estates reported in the above list (Estate 75 and Agropecuaria Boralito, S.A.).

The Committee welcomes the Government's indication regarding the planned establishment of two national Offices of the Attorney-General with specialized competence in the defence of labour rights. ***The Committee requests the Government to provide information on any developments in this respect.***

The Government concludes by reiterating that, contrary to the alleged policy of violence, threats, persecution or other forms of aggression against the social partners, efforts are being made to continue to strengthen spaces for dialogue.

The Committee notes that the CBST-CCP highlights the establishment of dialogue forums between the Government and the social partners, including the Forum and bilateral meetings. The CBST-CCP rejects the observations of the social partners that allege that the State is fomenting a policy of violence, persecution and aggression, and asserts that in reality it has been the guarantor of free trade union activity for all organizations without distinction.

The Committee notes the observations received from the other social partners alleging that the outcome of the dialogue bodies does not make it possible to overcome the previously reported difficulties and delays in the implementation of the action plan to comply with this set of recommendations, as well as additional violations of the Convention, which are listed as follows:

(i) FEDECAMARAS states that in April 2022, accusations were made against the former president of FEDECAMARAS in a programme broadcast on the State television channel and that as a follow-up, and in line with the action plan, this information was sent to the MPPPST, presenting this complaint to be dealt with in bipartite meetings. It indicates that, on 12 August 2022, a trade union leader was arrested in Bolívar State, the second senior director of the Trade and Industry Chamber of the General Manuel Cedeño Municipality of Bolívar State, and that he was charged for allegedly committing crimes related to the sale of gas. Furthermore, FEDECAMARAS reports that on 29 and 30 August 2022, the deputy of the National Assembly for the State of Yaracuy, Braulio Alvarez, disseminated hateful and intimidating messages against the President of FEDECAMARAS, Carlos Fernández, and of FEDENAGA, Armando Chacín, and other trade union leaders, in the context of the process of returning "invaded" lands. FEDECAMARAS nevertheless recognizes some improvements in the relationship with the Government, emphasizing that meetings were held with respect and cordiality (for example, on 19 July 2022 with the Minister of the MPPPST, on the action plan and other issues, and on 28 July 2022 regarding land cases) and its participation in the CNEP in August 2022. FEDECAMARAS reiterates the need for a formalized and permanent body to seek solutions to the issues related to the complaint and under the coordination of the MPPPST, in coordination with the other public authorities, to identify quick and effective solutions, given that the meetings held do not meet the required formalities, as recalled by this Committee. FEDECAMARAS confirms, with regard to one of the cases of the Commission of Inquiry, that on 24 August 2022, notification was given of the judgment of dismissal of the case against Mr Garmendia (former president of CONINDUSTRIA) and the lifting of the measure prohibiting disposal and encumbrance of the assets owned by this leader. Lastly,

the organization reiterates its concern that, to date, the recommendations of the Commission of Inquiry have not been accepted by the Government.

(ii) CTV, CTASI and FAPUV indicate that the outcome of the dialogue bodies does not make it possible to overcome the serious violations of human, labour and trade union rights, and significant delays in the implementation of the action plan. The trade union organizations, while acknowledging the sporadic release of some detainees, once again denounce many arbitrary arrests of trade unionists and trade union leaders, some in connection with the exercise of the right to peaceful protest and freedom of expression. They denounce the criminalization and prosecution of activities in defence of labour rights and human rights. They also denounce the arrest and imprisonment by the General Directorate of Military Counterintelligence (CDGCIM), the Bolivarian National Intelligence Service (SEBIN) and the Bolivarian National Police (PNB), without arrest warrants, of the following trade union leaders between July and August 2022: Emilio Negrín, president of the National Federation of Court Workers; Alcides Bracho, trade union leader of Venezuelan teachers; Gabriel Blanco, CTASI; Reynaldo Cortés, CTV trade union leader; and Douglas González, trade union leader of an aluminium enterprise. In addition, they reiterate their previous observations with respect to the detentions of other trade union leaders and trade unionists. The trade union organizations report acts of intimidation and aggression against trade union leaders, pointing in particular to the case of Pablo Zambrano, executive secretary of the Federation of Health Workers (FETRASALUD), who was interrogated by the Forensic, Penal and Criminal Investigation Unit (CICPC) and who had received threats from various groups when he attempted to submit a complaint to the Attorney-General.

The Committee notes with ***regret*** that the Government only provides the following information concerning the previous observations of the social partners: (i) the case of Eduardo Garmendia (which coincides with the indications of FEDECAMARAS in the present comment); and (ii) the case of Eudis Girot, which, as indicated by CTV, CTASI and FAPUV in their observations, concerns a leader of an oil trade union, detained by DGCIM on 18 November 2020 in Puerto La Cruz, accused of terrorism and other charges, and held in "Rodeo III" prison. In this regard, the trade union leader was acquitted of the offences of disclosure of confidential information (section 134 of the Criminal Code) and illegal possession of a firearm (section 111 of the Organic Act for Disarmament and Control of Arms and Ammunition), but was sentenced for the offence of incitement to hatred (section 235 of the Criminal Code) to three years' imprisonment, and the preventive measure substituting imprisonment was maintained in this regard. In addition, the Government reports that the process is at the stage of reaching the time limits for the submission of appeals and that, if the sentence becomes final, the competent court will impose alternative measures for serving the sentence in accordance with the Organic Code of Criminal Procedure.

While welcoming the meetings and the various social dialogue sessions held (March, in virtual format, and April and September 2022, and in person with ILO technical assistance), and with the participation of the social partners, as well as the commitments made by the Government in the Governing Body to continue with the dialogue regarding the application of the Convention including the development of a schedule (with tripartite and bipartite activities to be carried out between the second fortnight of November 2022 and February 2023), the Committee notes with ***deep regret*** the absence of replies and specific information on the acts reported by the social partners in their current and previous observations, as well as the fact that in the dialogue forums (including various tripartite meetings) no tangible solutions have been found and the conditions for dialogue recommended by the Commission of Inquiry have not been respected (no minutes were taken, there was no agenda or schedule, and no independent secretariat and presidency were appointed). The Committee also ***deplores*** that various employers' and workers' organizations have raised new and serious allegations of violations of civil liberties and trade union rights. In this respect, the Committee notes with ***deep regret***

the information provided by the Government to the Governing Body regarding some of the new cases raised in the observations of the trade union organizations, and notes that during the Forum in September, as indicated in the report to the Governing Body, deprivation of liberty was confirmed and charges for the crimes of conspiracy and criminal association were handed down for: Emilio Negrín, President of the Federation of Court Workers and participant in the April 2022 Forum, Gabriel Blanco, director of the National Assembly Workers' Union and CTASI, and Reynaldo Cortés, a CTV representative. The Committee notes that such cases, as well as those of other trade union leaders and members, have also been examined in the communication addressed to the Government by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (document AL VEN 4/2022 of 13 September 2022).

In light of the foregoing, the Committee strongly urges the Government to take the necessary measures, in dialogue with the organizations concerned through formal mechanisms and respecting the recommendations made by the Commission of Inquiry, to ensure the implementation of such recommendations and the agreements adopted in the Forum. In this regard, the Committee once again firmly urges the Government to investigate and take appropriate action, as agreed in the action plan, with respect to the pending allegations of violations of the Convention regarding civil liberties and trade union rights – contained in the Commission of Inquiry's report or subsequently brought before this Committee – in order to ensure a climate free of violence, threats, persecution, stigmatization, intimidation or any other form of aggression in which the social partners can exercise their legitimate activities, including participation in social dialogue with full guarantees. The Committee requests the Government to provide detailed information indicating all specific action carried out, particularly the follow-up action taken.

Articles 2 and 3 of the Convention. Respect for the autonomy of employers' and workers' organizations, particularly in relation to the Government or political parties, and suppression of all interference and favouritism by the state authorities. In its previous comment, the Committee once again referred to the conclusions of the Commission of Inquiry and reiterated the specific recommendations on the need to ensure respect for the independence of employers' and workers' organization, and the elimination of all interference and favouritism by the government authorities. The Committee urged the Government to refer all the pending allegations to the respective dialogue round tables with the organizations concerned – including the allegations of interference and obstacles regarding electoral procedures, and the use of Workers' Production Boards (WPBs) as mechanisms that restrict the exercise of freedom of association – in order to make tangible progress as quickly as possible.

The Committee notes in the action plan adopted in the Forum and its update, the signatory parties indicated that trade union elections are independent; and, in the context of implementing the effects of the decision, in accordance with what was discussed at the meeting of workers' organizations with the National Electoral Council (CNE) (28 September 2022), it was decided to initiate a work plan with the Electoral Authority to provide guidance and support to the trade union organizations in their electoral processes, where requested. The action plan includes, among the expected outcomes in follow-up to the decisions of the ILO Governing Body and to the recommendations of the Commission of Inquiry:

(i) the effective handling of the allegations concerning registration procedures and trade union election processes, including their publication by the organizations concerned, assessment, determination of relevant measures and information to the relevant organizations by the MPPPST, as well as the continuation of the dialogue on assistance from the CNE to the trade union organizations in their electoral processes, where requested; and

(ii) the effective handling and follow-up of allegations of interference by WPBs in the independent functioning of employers' and workers' organizations or in relations between them, including the communication to the MPPPST of the allegations by the organizations

concerned, enquiries and determination of measures to ensure the absence of interference and the application of appropriate corrective measures by the MPPPST; notification of the organizations concerned; and consultations regarding the adoption of the Regulations to the Constitutional Act on WPBs.

The Committee notes that the Government once again denies the allegations of interference and lack of respect for the independence of employers' and workers' organizations, and those of favouritism of the authorities towards organizations with alleged ties to it, indicating that it has demonstrated its full commitment to freedom of association and its policy of taking all representative organizations into account. In this regard, the Government emphasizes the various sessions of the Forum that were held.

With regard to the establishment of the WPBs, the Committee notes that the Government reiterates its previous indication to the supervisory bodies, including the Commission of Inquiry, emphasizing that far from excluding and affecting freedom of association, the WPBs promote the organization of the working class and foster its participation in the management of productive activity, and in no case replace the trade unions or are contrary to them, as established by section 17 of the WPB Constitutional Act. The Government adds that the MPPPST has not received any formal complaints of specific cases in which the organization of WPBs in any workplaces had interfered with the smooth functioning of the workplace. The Government also indicates, in response to the observations of FEDECAMARAS and certain trade union organizations, that in the action plan adopted within the framework of the Forum, a mechanism was set up for the receipt of complaints or reports on the negative impact of the WPBs on the functioning of a workplace, and that to date no complaints have been submitted by the organizations concerned in this respect.

The Committee also notes the observations of FEDECAMARAS, CTASI, CTV and FAPUV, warning that, instead of following up on the recommendations of the Commission of Inquiry, the Government continues to promote the formation and operation of the WPBs, reiterating that they are mechanisms that interfere in the independence of the trade union organizations and in the working life of the workers. FEDECAMARAS notes that: (i) 2,555 WPBs have been set up in enterprises; (ii) the President of the Republic mandated the MPPPST to draft a Regulation for the WPBs; (iii) a certification course in labour management was delivered for WPBs in enterprises to, inter alia, strengthen the process of communicating information to the Office of the Deputy Minister for Education and Work for Freedom; and, (iv) on 30 August 2022, an attempt was made to set up a WPB in a manufacturing company in Lara State, but the Union of Workers of the company (SINTRAPROB) refused and no worker wished to participate. Further, CTASI, CTV and FAPUV report that between 5 and 7 February 2022, the third national meeting of the WPBs was held, indicating their high number and the formation of ten of them in 2022.

With regard to registration procedures and trade union election processes, the Committee notes the Government's indication that in follow-up to the action plan, on 24–25 August 2022, two workshops were held with workers' (CBST-CCP, CTASI and CTV) and employers' (FEDECAMARAS and FEDEINDUSTRIA) organizations, respectively, on the procedures and requirements set out in the legislation with respect to the National Registry of Trade Union Organizations (RNOS). The Government indicated to the Governing Body that on 19 October 2022 a meeting was held with FEDECAMARAS and FEDEINDUSTRIA to make progress in defining requirements and procedures for the national registration of those organizations, forming a round table where the proposals presented by the social partners were discussed. The Committee notes that FEDECAMARAS indicates in its observations that on 6 May 2022, the records for 2018 to 2021 were registered in the subordinate registry of the records of annual meetings. FEDECAMARAS also indicates that on 25 August 2022, a workshop was held with the employer organizations (FEDECAMARAS and FEDEINDUSTRIA) on the RNOS. In this workshop, FEDECAMARAS reiterated the need for confidentiality and the preservation of the commercial value of the membership lists, and its view that the regulations on the matter are not applicable to employers' organizations, and raised the possibility of drafting a regulation to establish a registry for information purposes only, and of examining other experiences in Latin America in this area.

Regarding trade union elections, the Government reiterates its previous indication, namely that the CNE carries out support activities only where requested by the trade union organizations and that organizations can conduct their elections with or without the assistance of the CNE, according to the terms of the union statutes and any amendments thereto. The Government affirms its willingness to continue working on this matter in the various dialogue forums in cases where the practice is not aligned with the legislation in force. The Government indicates that, in March 2022, the MPPPST issued a legal opinion on the observations of different trade union organizations with respect to the conduct of the CNE and on whether there was an obligation to come before such an institution to carry out the elections of the trade union executive bodies. The CTASI, in its observations, provides the above legal opinion, which indicates that "…in order to guarantee the legitimacy of the trade union organizations, which, through their independence, shall determine the assistance of the CNE or conduct the elections by their own means, provided that they comply with the democratic guarantees required [sic] for the development of a trade union electoral process".

In this regard, the Committee notes that, on the one hand, the observations of the CBST-CCP highlight the procedures established to streamline the process, both by the MPPPST and the CNE, and state that they have conducted independent trade union elections, adding that 297 trade unions have requested technical advice and support of the CNE for their electoral processes. On the other hand, the CTASI, CTV and FAPUV emphasize in their observations that there have been no changes in law or practice in government policy relating to the registration of trade union organizations and electoral delays. These organizations report that the participation of the CNE in trade union elections is not optional, as seen in the case of the suspension of the elections of the Bar Association of the state of Carabobo, ordered by the Supreme Court of Justice as that the elections were called without the participation of the CNE (May 2022).

In light of the foregoing, in relation to these two areas of recommendations concerning the independence of the employers' and workers' organizations, the Committee notes with ***deep regret*** that the Government does not provide information on tangible progress in response to the specific allegations raised in the previous observations of several social partners, and that the social partners continue to denounce, in the most recent observations of FEDECAMARAS, CTASI, CTV and FAPUV relating to the conduct of the WPBs, the persistence of interference and obstacles in the electoral and union registration processes. The Committee also notes that in the updated action plan it was agreed that consultations would be held on the adoption of the regulations to the Constitutional Act on the WPBs, with the first meeting scheduled for the end of October 2022, and that the dialogue would continue on the assistance of the CNE to trade union organizations in their electoral processes, beginning on 28 September 2022, and follow-up meetings would be held.

In this light, the Committee once again refers to the conclusions of the Commission of Inquiry and reiterates its specific recommendations concerning the need to ensure respect for the independence of employers' and workers' organizations, and to eliminate all interference and favouritism on the part of the government authorities. The Committee urges the Government to take all necessary measures, as promptly as possible, in the framework of the dialogue with the organizations concerned and the agreements adopted in the updated action plan in the Forum, to address all the pending allegations – including the allegations of interference and obstacles regarding electoral procedures and also the use of WPBs as mechanisms that restrict the exercise of freedom of association – in order to make tangible progress in the near future. The Committee requests the Government to provide detailed information on the specific activities carried out and the outcome reached in this respect.

Lastly, the CTASI, CTV and FAPUV allege, in their observations, the formation on 7 May 2021 of the Presidential Council of the Government of the People's Power of the Working Class, exclusively established by and consisting of Government supporters. The trade union organizations allege that in this Council discussions were held on issues related to the protection of social benefits, pensions and

social welfare, and the presentation of collective bargaining models adapted to the economic war, among other issues. ***The Committee requests the Government to provide its comments in this respect.***

Financial management, internal administration and inviolability of trade union premises. The Committee notes the observations of the CTASI, CTV and FAPUV that the State retains and does not transfer trade union contributions despite the repeated request to the Government from various trade union organizations to return them. The organizations point out that this situation has been occurring since September 2021, when the payslips of public sector bodies began to be managed through the electronic platform known as the "sistema patria". In addition, the trade union organizations allege anti-union acts against premises and property of the National Single Trade Union (SUNEP-INPARQUES). ***The Committee requests the Government to provide its comments in this respect.***

Articles 2 and 3. Legislative issues. The Committee recalls that it has been asking the Government for several years to take the necessary steps, in consultation with the most representative workers' and employers' organizations, to revise various provisions of the Basic Labour Act (LOTTT), in particular sections 367, 368, 387, 388, 395, 402, 403, 410, 484 and 494. In its previous comment, the Committee also urged the Government, in the context of the dialogue round tables, to submit to tripartite consultation without further delay the revision of the laws and standards, such as the LOTTT, which raise problems of compatibility with the Convention in the light of the conclusions of the Commission of Inquiry (such as those regarding trade union registration, "electoral abeyance" or the WPBs) and the comments of the other ILO supervisory bodies. The Committee also asked the Government, in view of the social partners' allegations, to include in the above-mentioned tripartite dialogue the discussion of the impact on the exercise of freedom of association of the Constitutional Act against hatred and promoting peaceful co-existence and tolerance, and also of any measures needed to ensure that the application of this Act cannot restrict or suppress the exercise of freedom of association. The Committee also recalls that the Commission of Inquiry recommended the submission to tripartite consultation of the revision of the laws and standards that give effect to the Convention, such as the LOTTT, which raise problems of compatibility with the Convention in the light of the conclusions of the Commission of Inquiry and the comments of the ILO supervisory bodies.

The Committee notes the Government's indication that the Constitutional Act against hatred and promoting peaceful co-existence and tolerance contributes to and creates the conditions for promoting and guaranteeing the recognition of diversity, tolerance and respect, as well as preventing and eradicating all forms of hate, harassment, discrimination and violence. The Government states that the Act does not undermine the exercise of freedom of association, but rather contributes to it. The Committee notes with ***deep concern*** that the Government has not responded to the observations of the CTV, CTASI and FAPUV warning of the use of the Constitutional Act against hatred and promoting peaceful co-existence and tolerance, and also of accusations of terrorism, as a pretext for criminalizing trade union activity, carrying out arbitrary detentions of trade union leaders and sentencing them to imprisonment for exercising their freedom of expression. The Committee ***regrets*** that the Government does not provide information regarding the submission to tripartite consultation of the Act's impact on the exercise of freedom of association.

The Committee reiterates the recommendations of the Commission of Inquiry relating to legislative issues and urges the Government, in the context of institutionalized social dialogue, to submit to tripartite consultation without further delay the revision of the laws and standards, such as the LOTTT, which raise problems of compatibility with the Convention in light of the conclusions of the Commission of Inquiry (such as those regarding trade union registration, "electoral abeyance" or the WPBs) and the comments of the other ILO supervisory bodies. The Committee once again requests the Government, in view of the social partners' allegations, to include in the above-mentioned tripartite dialogue the discussion of the impact on the exercise of freedom of association of the Constitutional Act against hatred and promoting peaceful co-existence and tolerance, and of any measures needed

to ensure that the application of this Act cannot restrict or suppress the exercise of freedom of association. The Committee requests the Government to inform it of any developments in this respect.

The Committee welcomes the information provided by the Government to the Governing Body reiterating its commitment to engage in consultations with the social partners on bills, or their respective reforms, initiated by the National Assembly relating to international labour standards. In this respect, the Government indicates that on 11 October 2022 public consultations were held with the social partners on the Domestic Workers Act in which FEDECAMARAS, FEDEINDUSTRIA, the CBST-CCT, CTASI, CTV and CGT participated. The Government indicates that the same process will be followed for the Act on Workers with Disabilities.

The Committee notes with ***deep concern***, however, that: (i) the Government does not provide specific replies to the multiple serious allegations made in the Committee's previous comment; (ii) as highlighted by the observations of a number of social partners, the dialogue held so far still does not meet the necessary conditions to be effective, nor has it yielded concrete solutions to the pending issues, and thus, regrettably, no significant further progress can be observed in the application of the recommendations of the Commission of Inquiry; and (iii) allegations of serious violations of the Convention continue to be made, referring to the persistence of systemic patterns or problems to which attention was drawn by the Commission of Inquiry.

The Committee notes that the Government once again refers to its request for ILO assistance in order to determine the representativeness of employers' and workers' organizations, considering that this will be fundamental for determining representativeness according to objective verifiable criteria which fully respect freedom of association. The Government indicates that, during the above-mentioned workshops on the RNOS, the social partners were reminded of the importance of such a register in determining the representativeness of social organizations. In this respect, the Committee reiterates that since the recommendations are interrelated and need to be considered together, they should be implemented in a holistic manner and in a climate in which the social partners can exercise their legitimate activities, including participation in social dialogue with full guarantees, and with full respect for the independence of employers' and workers' organizations. ***The Committee once again recommends that ILO technical assistance should be defined on a tripartite basis in the context of institutionalized dialogue and in light of these considerations.***

The Committee firmly urges the Government to take the necessary steps, with ILO technical assistance, through institutionalized dialogue and in the manner indicated in the Commission of Inquiry's report, to ensure that the recommendations are fully implemented, so that tangible improvements can be noted in the near future, including those agreed upon by the parties in the updated action plan adopted by the Forum. The Committee also reiterates that it is vital that the issues raised above receive the full and ongoing attention of the ILO and its supervisory system so that firm and effective measures are adopted to ensure full observance of the Convention in law and practice.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1968)

Previous comment

The Committee notes the observations of the Independent Trade Union Alliance Confederation of Workers (CTASI), the Confederation of Workers of Venezuela (CTV), and the Federation of University Teachers' Associations of Venezuela (FAPUV), sent by the Government. The Committee also notes the observations of the United Federation of Workers of Venezuela (CUTV), received on 1 September 2022, and the observations of the Federation of Higher Education Workers of Venezuela (FETRAESUV), FAPUV, the National Federation of Administrative Professionals and Technicians of the Universities of Venezuela (FENASIPRUV), the National Federation of Labour Unions of Higher Education of Venezuela

(FENASOESV), and the Unions of Non-federated University Workers, received on 7 and 19 July 2021. The Committee notes the observations of FAPUV, received on 8 February 2019 and the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), received on 5 December 2018. The Committee also noted in its previous comment the observations of CTASI, received on 29 August 2018, together with those of the Confederation of Autonomous Trade Unions (CODESA), the CTV, the General Confederation of Labour (CGT) and the National Union of Workers of Venezuela (UNETE), received on 26 September 2018. The observations refer to issues examined in this comment.

The Committee also notes the observations of UNETE, received on 5 September 2022, alleging obstacles in law and practice to the exercise of free and voluntary collective bargaining, including the elimination of and failure to pay benefits agreed in collective agreements through measures adopted unilaterally by the Government, mainly affecting the public sector (education). ***The Committee requests the Government to provide its comments in respect of the observations of UNETE.***

The Committee recalls having suspended the examination of the application of Convention No. 98 until the Commission of Inquiry, established to examine the complaint submitted in 2016 under article 26 of the ILO Constitution, and alleging non-observance by the Bolivarian Republic of Venezuela of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), had completed its mission. The suspension of the above examination is also in light of the substantial links between the issues that the Committee has been examining under Convention No. 98 and the application of Convention No. 87 by the Bolivarian Republic of Venezuela.

The Committee recalls that, under its examination of the application of Convention No. 87, it noted with interest the information provided by the Government to the Governing Body concerning the holding of a social dialogue forum and the adoption of an action plan between the Government and various social actors to give effect to the recommendations of the Commission of Inquiry.

Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and interference. The Committee previously noted with concern the allegations made by various trade union organizations concerning many union leaders or members who have been dismissed or are being dismissed in various sectors, and relating to other damaging measures, and requested the Government to: (i) send information in this respect; and (ii) initiate a tripartite dialogue with the most representative workers' and employers' organizations concerning the practical effectiveness of the legal protection against acts of anti-union discrimination and to supply information on its outcome. The Committee notes the Government's information indicating that justified dismissal may be authorized through administrative procedures and that there is broad protection against acts of discrimination and interference. The Government indicates that from 2019 to 2022, 38 actions alleging anti-union practices were brought before the competent authorities. The Committee notes with ***regret*** that the Government has not provided specific information in response to the observations presented by the trade union organizations. ***The Committee urges the Government to provide information on the cases presented, including detailed information on the number of investigations conducted, their duration, the penalties and reparation measures applied. The Committee also urges the Government to take the necessary measures to engage in a tripartite dialogue, including in the social dialogue forum and other forums, on the effectiveness in practice of the legal protection against acts of anti-union discrimination and to supply specific information on the results.***

Article 4. Free and voluntary negotiation. The Committee recalls that for many years it has been requesting the Government to: (i) amend the requirement for the presence of a labour official during collective bargaining, under section 449 of the Basic Act on labour and men and women workers (LOTTT) in order to ensure conformity with the Convention; and (ii) submit to tripartite dialogue the issue of the

application in practice of sections 450 and 451 of the LOTTT (regarding, respectively, the requirement that the labour inspector shall verify conformity of the collective agreement with the applicable public order regulations, with a view to granting approval of the agreement; and the possibility for the labour inspector to make observations to the parties, which must be complied with in the following 15 days). In this respect, the Committee notes the Government's indication that the officials who are present at the negotiations act only as mediators, and that in some cases collective negotiations have taken place without the presence of a labour official and that the agreements are subsequently submitted to the labour inspectorate for verification and approval – which is not carried out at the discretion of the Ministry of People's Power for the Social Process of Labour (MPPPST). The Committee recalls that the above provisions can amount to interference in the negotiations between the parties and is contrary to the principles of free and voluntary negotiation and the autonomy of the parties. Therefore, the Committee recalls, with regard to sections 450 and 451, that they would only be compatible with the Convention on condition that refusal of approval is restricted to cases in which the collective agreement contains flaws regarding its form or does not comply with the minimum standards laid down by the labour legislation. ***The Committee requests the Government to provide information regarding the number of agreements that have been refused and the reasons given by the authorities. The Committee requests the Government to take the necessary measures, in consultation with the social partners, to make the corresponding amendments to section 449 of the LOTTT to bring it into full conformity with the Convention. The Committee also once again requests the Government to conduct a tripartite dialogue on the question of the application in practice of sections 450 and 451 of the LOTTT with a view to finding solutions to the issues raised. The Committee requests the Government to provide information on any developments in this respect.***

Compulsory arbitration. The Committee noted that the legislation provides for official arbitration in section 465 of the LOTTT, with regard to bargaining by branch of activity where conciliation is not possible, unless the participating trade union organizations state their intention to exercise the right to strike. In addition, the arbitration board for the settlement of the dispute shall be composed of one representative each of the employer, the workers and the Government (section 493), which, according to the Government, ensures the full confidence of the parties. In this respect, the Committee requested the Government, in consultation with the most representative workers' and employers' organizations, to take the necessary steps to draw up an official text to abolish arbitration on the initiative of the authorities – except in relation to public servants engaged in the administration of the State (*Article 6* of the Convention), essential services in the strict sense of the term and acute national crises – and to ensure that the composition of the arbitration board enjoys the confidence of the parties. The Committee notes with ***concern*** that the Government only refers to information previously sent and has not provided information relating to the measures taken to abolish compulsory arbitration in the legislation. ***The Committee urges the Government to adopt the necessary measures, in consultation with the social partners, to eliminate the use of compulsory arbitration, except in the cases laid out and permitted by the Convention. The Committee requests the Government to provide information on any developments in this respect.***

Collective bargaining in good faith. Public sector. Public servants not engaged in the administration of the State. The Committee notes the observations of the CTASI, CTV, FAPUV, FENASIPRUV, FETRAESUV and FENASOESV which denounce that the public administration refuses to negotiate with all the trade union organizations (including in the education and health sectors), favouring only those organizations allied with the Government. The trade union organizations indicate that, in the education sector, the Government did not allow the participation of FAPUV, FENASIPRUV, FETRAESUV and FENASOESV, which represent more than 90 per cent of the university workers, in the negotiation of the fourth collective agreement (IV CCU), favouring only the participation of the Federation of University Workers of Venezuela (FTUV). They also allege that wages were not subject to negotiation, as the Government has been imposing wages since 2018, through memorandum No. 2792 on guidelines to be implemented in

collective labour negotiations (11 October 2018). In this regard, they indicate that pursuant to the memorandum, the commission for the monitoring and follow-up of collective bargaining agreements was established, aimed at evaluating, monitoring and supporting the negotiation processes of collective labour agreements, as well as the implementation of those that have been signed, and at protecting and guaranteeing the payment and streamlining of labour benefits in both the public and private sectors. The memorandum sets out minimum wage as the wage scale baseline and lays down the requirement to review any previous collective bargaining agreements in which a wage higher than the minimum has been agreed as a baseline. The CTASI, CTV, FAPUV and CUTV also allege that as of March 2022, when a document was issued by the National Budget Office (ONAPRE) (Directive: process of adjustment of the remuneration system of the public administration, collective bargaining agreements, special tables and strategic enterprises, of 22 March 2022), several public protests have been held, as the above measure unilaterally eliminates the progressive labour rights of public administration workers, altering the wage scales and the formula for the calculation of socioeconomic benefits. The trade union organizations indicate that they have filed judicial appeals requesting the repeal or nullification of this measure, but that their actions were dismissed without a substantive examination. The Committee notes the trade union organizations' indication that they were notified of this measure through social networks and that, although it has not been recognized by the courts, the document is used by the employing public authorities to refuse to pay the wages previously agreed in collective agreements. The Committee notes the information provided by the Government in this respect in its report on the application of Convention No. 87, indicating that the MPPPST has taken various measures: (i) the development of a Memorandum of Internal Guidelines (7 June 2021) for the approval of the national labour policy on the discussion and signing of the collective labour agreements, in a context of freedom of association, and with no further restrictions than those established in the national legal system; and (ii) the issuance of the legal opinion of the MPPPST at the request of the CTASI regarding internal memorandum No. 2792. The Committee notes that the Government has not provided copies of the above-mentioned documents. ***Noting that the allegations made by the trade union organizations refer to serious violations of the principle of collective bargaining in good faith - through the non-recognition of the organizations for the purposes of collective bargaining, unilateral amendments and non-compliance with negotiated commitments, the Committee requests the Government to provide its comments in this respect and to provide copies of the above-mentioned documents.***

Application of the Convention in practice. The Committee notes that the trade union organizations refer to obstacles to collective bargaining deriving from the registration procedures and trade union electoral processes that were examined in depth in the framework of the examination by the Commission of Inquiry. In this respect, the Committee refers to its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee notes the Government's indication of the general manner in which collective agreements were negotiated in the private and public sector, and provides ten examples. ***The Committee requests the Government to provide information on the number of collective agreements, signed and in force, negotiated by level and sector, specifying the number of workers covered by collective bargaining.***

Regarding previous allegations by various trade union organizations on non-compliance with collective agreements in force, excessive delays attributable to the authorities in collective bargaining processes, and cases of negotiations with minority or government-backed unions, the Committee notes the Government's indication that it has been constantly reviewing the contractual benefits of public administration workers, approving increases in wage scales, and has signed certificates of agreements with workers' and employers' representatives, guaranteeing compliance with the agreements concluded. The Committee also notes the Government's information with respect to the holding of the social dialogue forum. ***The Committee requests the Government to provide its detailed comments relating to the above allegations of the workers' organizations and to indicate the specific measures taken to address those allegations in the context of social dialogue.***

Yemen

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee had previously requested the Government to provide comments on the 2012 observations made by the International Trade Union Confederation (ITUC) alleging that striking teachers were dismissed, striking sanitation workers were injured, and that the offices of the Yemeni Journalists' Syndicate were attacked. ***Noting with regret that the Government provides no reply to these observations, the Committee reiterates its previous request.***

The Law on Trade Unions (2002)

Articles 2 and 5 of the Convention The Committee had previously requested the Government to indicate whether employees of high-level public authorities and Cabinets of Ministers, excluded by virtue of its section 4 from the Law on Trade Unions (LTU) enjoy the right to establish and join trade unions. ***While taking due note of the Government's indication that since 2011 union committees have been established in all ministerial offices, the Committee requests the Government to clarify if senior public officials also have the right to establish and join their own organizations.***

The Committee had also requested the Government to take the necessary measures to amend sections 2, 20 and 21 of the LTU so as to repeal specific reference to the General Federation of Trade Unions of Yemen (GFTUY) and thereby to allow workers and their organizations to establish and join the federation of their own choosing. The Committee notes the Government's reiteration that it imposes no restrictions on trade union activity and that there are many unions representing workers' interests that do not operate within the framework of the GFTUY (for example, Trade Union of Doctors, Trade Union of Pharmacists, Trade Union of Engineers, and Lawyers' Trade Union). ***Noting that the specific reference to the GFTUY remains in the legislation, and that it could result in making it impossible to establish a second federation to represent workers' interests, the Committee once again requests that the Government take necessary measures to amend the LTU so as to delete this specific reference.***

Article 3. The Committee had previously requested the Government to clarify whether section 40(b) of the LTU required an authorization from the higher level trade union for a strike to be organized, and if this was the case, to take the necessary measures to amend the legislation to bring it into conformity with the Convention. In this regard, the Committee notes the Government's indication that by virtue of section 40(b) of the LTU there is a requirement to coordinate with the higher union body to organize a partial or general strike and that the Committee's previous comment on this legislative issue is being considered for the amendment of the Act. ***The Committee trusts that the Government will take the necessary measures to amend the LTU so as to ensure the right of workers' organizations to organize their activities and formulate their programmes. The Committee requests the Government to provide information on any development in this regard.***

The draft Labour Code. The Committee recalls that in its previous comments it had expressed the hope that the draft Labour Code would be adopted in the near future and that the Government would take into account the Committee's comments to further amend or revise some of the provisions in the draft. The Committee notes the Government's indication that due to the armed conflict affecting the country since 2011 it has been unable to complete the amendments of the labour legislation. The Committee further notes the Government's indication that the draft Labour Code is not applicable to domestic workers, members of the judiciary, and diplomatic and consular staff, but that their rights are guaranteed by law. ***Recalling that the only authorized exceptions from the scope of application of the Convention are members of the police and the armed forces, the Committee requests the Government to indicate all legislative provisions that afford domestic workers, members of the judiciary, and diplomatic and consular staff, the right to establish and join workers' organizations of their own choosing and without previous authorization.***

The Committee further notes the Government's indication that the draft Labour Code contains no provisions denying the right of workers' organizations to affiliate with international labour organizations. The Committee recalls that it had also requested the Government to:-revise section 173(2) of the draft Labour

Code so as to ensure that minors between the ages of 16 and 18 years may join trade unions without parental authorization;-provide a list of essential services referred to in section 219(3) of the draft Code, which empowers the Minister to submit disputes to compulsory arbitration, which will be issued by the Council of Ministers once the Labour Code is promulgated;-amend section 211 of the draft Labour Code which provides that strike notice must include an indication of the duration of a strike to ensure that a trade union can call a strike for an indeterminate period of time.

While acknowledging the complexity of the situation prevailing on the ground due to the presence of armed groups and armed conflict in the country, the Committee trusts that the current legislative reform will bring the national legislation into full conformity with the Convention and requests the Government to indicate any developments in this regard.

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

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

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 2 and 3 of the Convention. Protection against anti-union interference. The Committee recalls that, for a number of years, it has been requesting the Government to ensure that effective and sufficiently dissuasive sanctions that guarantee the protection of workers' organizations against acts of interference by employers or their organizations in trade union activities are expressly provided for in the national legislation. The Committee notes that the Government indicates once again that protection against interference for trade union activities is provided under the Labour Code and that it will seek to provide further legal protection when amending the Act on Trade Unions (ATU) in accordance with the Convention. ***The Committee once again requests the Government to indicate the progress made in this respect, and to provide copies of the amended legislative texts aimed at ensuring full respect for the rights enshrined in the Convention, as soon as they have been adopted.***

Article 4. Refusal to register a collective agreement on the basis of consideration of "economic interests of the country". The Committee recalls that it had previously requested the Government to take the necessary measures to amend sections 32(6) and 34(2) of the Labour Code so as to ensure that refusal to register a collective agreement is only possible due to a procedural flaw or because it does not conform to the minimum standards laid down by the labour legislation, and not on the basis of consideration of "the economic interests of the country". While the Committee had previously noted that the Government had adopted the Committee's proposal with regard to the amendment of the abovementioned section of the Labour Code, the Committee notes the Government's new indication that it will study the Committee's views in this respect. ***The Committee requests once again the Government to take the necessary measures to bring sections 32(6) and 34(2) of the Labour Code into conformity with the Convention.***

Articles 4 and 6. Right to collective bargaining of public servants not engaged in the administration of the State. ***The Committee once again requests the Government to indicate the legal provisions which guarantee the right to collective bargaining of public servants not engaged in the administration of the State.***

While acknowledging the complexity of the situation prevailing on the ground due to the presence of armed groups and armed conflict in the country, the Committee trusts that the Government will make all efforts to bring its law and practice into conformity with the Convention.

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

Zambia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)

Previous comment

Articles 2 and 3 of the Convention. Revision of the Industrial and Labour Relations Act. In its previous comment, the Committee had expressed regret that the last review of the Industrial and Labour Relations Act (ILRA) (Act No. 19 of 22 December 2017) failed to address the substantive issues raised by the Committee with regard to sections 2(e), 5(b), 7(3), 9(3), 18(1)(b), 21(5) and (6), 43(1)(a), 78(4), and 107, which pertain to the right of workers, without distinction whatsoever, to establish and join organizations, the right of organizations of workers and employers to elect their representatives, and the right of workers' organizations to freely organize their activities and to formulate their programmes. The Committee notes the Government's indication that the ILRA assists in maintaining industrial harmony and stability of the labour market and that social partners are not dismayed by the provisions identified as problematic by the Committee. The Committee notes with ***deep concern*** that no consideration is being given to amending the ILRA by the Government. ***Recalling that it is the responsibility of the Government to ensure the application of the international labour Convention concerning freedom of association which has been freely ratified, the Committee urges the Government to take all necessary measures to amend the above-mentioned provisions and to inform it of all steps taken in this respect.***

The Committee had previously requested the Government to provide information with regard to the closing of the procedure for the recognition of the Zambia Union of Financial Institutions and Allied Workers (ZUFIAW) by the Zambia Revenue Authority (ZRA) and to indicate whether workers of the ZRA can establish or join unions of their own choosing without prior authorization. The Committee notes the Government's indication that the ZRA is not a financial institution nor is it an allied financial institution. Thus, in line with section 5(b) of the ILRA, which limits trade union membership to workers in the same occupation or branch of activity, workers of the ZRA are not eligible to join the ZUFIAW. While noting the Government's indication that out of 2243 ZRA employees, 1953 are members of the Zambia Revenue Authority Worker Union, the Committee recalls that conditions such as those set by section 5(b) of the ILRA may be applied only to first-level organizations, a category to which ZUFIAW does not belong. ***The Committee therefore emphasizes the need to amend the ILRA without further delay so as to ensure the right of workers to establish and join organizations of their own choosing in law and in practice.***

[The Government is asked to reply in full to the present comments in 2023.]

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)

Previous comment

Legislative developments. The Committee notes that the Government: (i) acknowledges that the last review of the Industrial Labour Relations Act (ILRA) that took place in 2017 did not address the substantive issues raised by the Committee in its previous comments; and (ii) informs of the decision of the Tripartite Consultative Labour Council (TCLC) to proceed with a comprehensive review of the Act, so as to bring it in conformity with the Convention.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination. In its previous comments, the Committee requested the Government to take measures to shorten the maximum period (one year) within which a court should consider the disputes between an employer and an employee, as well as the matters affecting trade unions and collective bargaining rights and

issue its ruling (section 85(3)(b)(ii) of the ILRA). The Committee notes the Government's indication that when a matter is not concluded within a year, the presiding judge loses jurisdiction to handle the matter and the latter must be reallocated to another judge who then hears it *de novo*, passing the ruling much later than the intended one-year mark. In those circumstances, the Government believes that amending section 85(3)(b)(ii) to shorten the maximum period would further disadvantage the complainant. The Committee takes note that the Committee on Legal Affairs, Human Rights and Governance has made recommendations to alleviate this issue, notably through a proviso stating that a matter should be disposed of within twelve months, following the expiration of the statutory period of one year. The Committee also notes that further methods to address the congestion and delays in the justice system concerning labour matters are being considered by the Government, such as the employment of more judges, the increased number of courtrooms, and broader scope of jurisdiction from subordinate courts. The Committee takes due note of the statement of the Government concerning section 85(3)(b)(ii) of the ILRA and the actions envisaged to address the congestion of the labour justice system. ***The Committee requests the Government to take all the necessary measures, including of a legislative nature in the context of the review of the ILRA, to ensure that anti-union discrimination cases are dealt with through effective and expeditious legal proceedings. The Committee requests the Government to provide information in this respect and recalls that it can avail itself of the technical assistance of the Office***.

Article 4. Free and voluntary collective bargaining. Compulsory arbitration. The Committee requested the Government to take the necessary measures to amend section 78(1)(a) and (c) and section 78(4) of the ILRA, which allow, in certain cases, either party to refer the dispute to a court or arbitration. The Committee notes the Government's indication that it has not encountered any challenges in the administration of collective dispute resolution arising from provision 78 of the ILRA, as it sits currently but that in light of the decision of the TCLC to amend the Act, the proposed amendment of section 78 of the Act may be a matter for consideration. The Committee recalls that, in accordance with the principle of voluntary negotiation of collective agreements, arbitration imposed by legislation, or at the request of just one party is only acceptable in certain specific circumstances: namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis (2012 General Survey on the fundamental Conventions, paragraph 247).

The Committee trusts that as a result of the comprehensive review of the ILRA, the above provisions will be amended so as to ensure that arbitration in situations other than those mentioned above can take place only at the request of both parties involved in the dispute. The Committee requests the Government to provide information in this respect.

Article 4. Collective bargaining in practice. The Committee notes that the Government informs that there are 197 collective agreements in force in the country which cover 490,159 workers. ***The Committee invites the Government to inform on the measures taken to promote collective bargaining and to continue providing information on the collective agreements concluded and in force, the sectors concerned, and the number of workers covered.***

Zimbabwe

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2003)

Previous comment

Follow-up to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

The Committee notes the observations submitted by the Zimbabwe Congress of Trade Unions (ZCTU) and by the International Trade Union Confederation (ITUC), both received on 1 September 2022, which refer to the issues addressed by the Committee below.

The Committee notes the report of the Direct Contacts Mission (DCM), which visited the country in April 2022 following a request by the Conference Committee on the Application of Standards at its 108th Session (June 2019).

Civil liberties and trade union rights. In its previous comment, the Committee had requested the Government to provide information on all progress made with regard to the case against the ZCTU President and General Secretary arrested in 2019; the case of Secretary for Gender of the Amalgamated Rural Teachers Union (ARTUZ), alleged to have been arrested and tortured; alleged acts of violence against ARTUZ leaders following protests in 2020; as well as the repression against workers' protests in the health sector and several other instances of violation of civil liberties in the country that took place in 2020. The Committee had further requested the Government to provide information on the conviction and sentencing of a primary school teacher for public violence after being arrested while protesting against poor salaries. The Committee notes the Government's indication, also communicated to the DCM, that the case of the ZCTU Secretary General and the former President is closed and that the National Prosecuting Authority (NPA) has no intention of pursuing the matter further. The Committee notes from the report of the DCM that when a case is withdrawn before plea, as was the case with the two trade union leaders arrested in 2019, while such case is not prosecuted, it is technically not closed and can become an aggravating circumstance if there are further arrests. The DCM considered that the existing legal loophole in the procedure for dealing with cases withdrawn before plea should be closed and that to that end, the Government should engage with all relevant authorities and stakeholders. ***The Committee requests the Government to inform it of all measures taken or envisaged in this regard***. The Committee further notes the Government's indication that it still awaits to receive from the trade unions concerned information regarding allegations pertaining to the case of the ARTUZ Secretary of Gender and the incidents of violence and arrests alleged to have taken place in 2020, in order to enable the investigation and follow-up with the Prosecutor General and the Zimbabwe Republic Police (ZRP). ***The Committee urges the Government to engage with the unions concerned without further delay with a view to investigating the alleged violations of civil liberties and trade union rights. The Committee requests the Government to provide information in this respect.***

The Committee had previously urged the Government to take all necessary steps to ensure that the compensation for damages suffered during the disturbances of August 2018 is paid without further delay and also requested the Government to inform it of all progress made in this regard. The Committee notes that, according to the Government, the former legal advisor of the ZCTU has filed a compensation application at the Magistrate's Court, as well as an application for variation of the compensation amount, which the court accepted. The Committee recalls the Government's previous indication that the consultations on compensation modalities were ongoing. The Committee notes with ***concern*** the ZCTU statement to the DCM that no consultation had taken place. The Committee ***regrets*** that over four years after the events, the issue of compensation has not been resolved, despite the

recommendations made to that effect by a commission of inquiry established to investigate the disturbances. ***The Committee therefore urges the Government to engage with those who suffered during the disturbances, including the ZCTU former legal advisor, with a view to paying compensation as per the recommendations of the national commission of inquiry. The Committee requests the Government to provide information on the modalities and amount paid to the affected trade unionists.***

The Committee notes with ***deep concern*** the ZTUC and the ITUC allegations that in January 2022, members of the ARTUZ were attacked and arrested while being engaged in a protest action outside the National Social Security Office building where the National Joint Negotiating Council (NJNC) meeting was taking place between the Government and trade unions. According to the ZCTU, as the teachers gathered at the venue, 16 leaders of the ARTUZ were arrested, including the ARTUZ President, only to be released on bail six days later. The Committee further notes the ITUC allegation that the Secretary-General of the ARTUZ was arrested in July 2022 by the ZRP. According to the ITUC, he is facing charges of the murder of a colleague in 2016, despite the fact that a court investigation into the death of that colleague concluded there was no criminal act involved. The ITUC indicates that the arrest of the Secretary-General of the ARTUZ occurred a week after the release on bail of the ARTUZ President who is also facing similar criminal charges. ***The Committee requests the Government provide without delay its detailed comments on all these serious allegations of violation of trade union rights and civil liberties.***

Maintenance of Peace and Order Act (MOPA). In its previous comment, the Committee had requested the Government to provide information on all developments made with regard to the tripartite consultative workshop to unpack the MOPA, as well as on the outcome of the workshop between trade unions and law enforcement bodies, including a thorough examination of the allegations by the ZCTU and the ITUC of violations of civil liberties. The Committee notes the Government's indication that the objectives of the workshop, which was held in September 2022, were to develop an understanding of the MOPA, both in law and in practice, between various State actors and the social partners and to develop a mutually agreed strategy to minimize clashes between law enforcement agencies and trade unions. The workshop also aimed to facilitate an appreciation and in-depth knowledge of international labour standards. The workshop afforded an opportunity for the NPA to present an overview of the national prosecution system, with reference to some trade union cases. The Government indicates that the key recommendations resulting from the workshop pertain to the need for continued regular engagement between the law enforcements agents and the social partners. Also part of the recommendations were continued capacity building of law enforcement agents and social partners on international labour standards, continued collaboration, and joint tripartite inspections, particularly where there are alleged violations of workers' rights at workplaces. The Committee ***regrets*** that no information has been provided by the Government on the review of the implementation of the two instruments developed for use by the law enforcement bodies (the handbook on international labour standards and the code of conduct). ***The Committee therefore encourages the Government to continue engaging with the social partners and the relevant state authorities with a view to monitor the application of the MOPA in practice, the use by the law enforcement bodies of the two above-mentioned instruments and, with reference to the above, the allegations made by the ZCTU regarding the violation of civil liberties.***

Labour law reform and harmonization. The Committee recalls that for a number of years it has been requesting the Government to bring the Labour Act, Public Service Act and Health Services Act into conformity with the Convention in full consultation with the social partners.

Labour Act. The Committee had previously requested the Government to provide information on all progress made with regard to the legislative developments of the Labour Act, Public Service Act and Health Services Act, and the involvement of the social partners in the process in and outside the Tripartite Negotiating Forum (TNF). The Committee notes the Government's indication that a tripartite consultative workshop has been held by the Parliamentary Portfolio Committee for Labour and Social

Welfare (PPCL) in May 2022 on the Labour Amendment Bill. The objective of the workshop was to afford the social partners an opportunity to present their views and comments to Parliament ahead of the discussion of the Bill. As recommended by the DCM, the Government also submitted the Bill to the ILO and has received comments and observations thereon. The Government further indicates that the Bill has gone through the second reading in Parliament and is now awaiting debate in the House of Assembly. The Committee notes the Government's indication that the Ministry of Public Service, Labour and Social Welfare (the Ministry) is engaging with the Attorney General with a view to considering possible amendments to the Bill so as to take into account ILO comments and the PPCL report, which may lead to a notice for amendment on the Bill during the parliamentary discussions. The Government hopes the Bill will be adopted during the current session of Parliament. ***The Committee firmly expects that the Amendment Bill will be brought into conformity with the Convention and adopted without further delay and requests the Government to provide a copy of the amended Labour Act.***

Public Service Act. The Committee notes the Government's indication that the drafting of the Public Service Amendment Bill was concluded by the Attorney General's Office. The Bill has been submitted to the Cabinet Committee on Legislation (CCL) for consideration to take place by the end of October 2022. The Committee notes from the DCM report that while the Public Services Amendment Bill satisfied the Public Service Commission as it took into account the ILO supervisory bodies comments, it has not been discussed in the TNF. ***The Committee expects that the Public Service Act will be amended without further delay so as to bring it into conformity with the Convention. The Committee requests the Government to provide information on all progress made in this regard and to provide a copy thereof once the Amendment Bill is adopted.***

Health Service Amendment Act. The Committee notes the Government's indication that the Parliamentary Portfolio Committee on Health has concluded public hearings and consultations on the Act. The Committee notes, however, that the DCM observed the lack of consultations on the Act. The Committee also notes that the ZCTU considers that the Bill, as currently drafted, violates freedom of associations rights. ***The Committee therefore urges the Government to engage with the social partners, under the auspices of the TNF, to seek their views and proposals on the draft legislation which affects their rights and interests with a view to ensuring that the Bill is in full conformity with the Convention. The Committee requests the Government to inform it of all measures taken to this end.***

The Committee welcomes the Zimbabwe Tripartite Partners' Action Plan to address some of the issues raised in the preliminary findings of the DCM. ***The Committee encourages the Government to continue engaging with its social partners and the Office to ensure its implementation. The Committee requests the Government to provide information on all developments in this respect.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1998)

Previous comment

The Committee notes the observations submitted by the Zimbabwe Congress of Trade Unions (ZCTU) and by the International Trade Union Confederation (ITUC), both received on 1 September 2022, which refer to issues addressed by the Committee in the comment below.

Collective bargaining and the COVID-19 pandemic. The Committee previously requested the Government to provide its comments on the allegations of the ZCTU and the ITUC pertaining to: (i) the serious decrease of collective bargaining during the COVID-19; (ii) the lack of discussion before the Tripartite Negotiating Forum (TNF) of issues relating to the protective measures against COVID-19; and (iii) the rendering of the Bipartite Negotiating Panel for the health sector useless by the Government.

The Committee notes the Government's indications that, whilst the COVID-19 pandemic impacted the labour market, there were minimal effects on the collective bargaining processes. In sectors affected

by lock-down measures, innovations such as virtual and digital platforms were embraced with a view to ensuring continued negotiations and collective bargaining. The Government indicates that 56, 64 and 72 collective bargaining agreements have been registered in 2019, 2021 and 2022, respectively. The Government further indicates that, along with social partners under the auspices of the TNF, it agreed to a national minimum wage in 2020 to prop up negotiations across various sectors in light of challenges brought by COVID-19. The TNF held discussions on the management of the pandemic and containment measures, resulting in proposals that were adopted by the Government. The Government points out that collective bargaining in the health sector was never suspended, as there have been eight reviews on the conditions of service of the health sector during the pandemic period which saw frontline and essential workers getting improvements in their sector specific allowances. Consequently, the Government indicates that the Bipartite Negotiating Panel in the health sector was functional during the COVID-19 pandemic.

Follow-up to the 2009 recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO

Legislative developments

The Committee had previously noted with concern that, despite its numerous requests, some of which predate the 2009 Commission of Inquiry, there was no concrete progress in amending both the Labour Act and the Public Service Act so as to bring them into conformity with the Convention. The Committee expected that the labour and public service legislation would be brought into conformity with the Convention without further delay in full consultation with the social partners and requested the Government to provide information on all progress made in this regard.

Labour Act. In its previous comment, the Committee had noted the Government's indication that the outcome of the tripartite consultations on the draft of the Labour Amendment Bill had been consolidated and integrated into the Bill. The Committee notes that the Bill is now before the Parliament. The Committee notes with ***concern*** that according to the most recent ZCTU's observations, several sections of the Labour Amendment Bill go against the agreed Principles and the legislative changes previously requested by the supervisory bodies of the ILO. In this respect, the Committee notes the Government's indication that the Bill might further be amended during the parliamentary discussions so as to take into account technical comments of the ILO. The Government expects the Bill to be adopted in the near future. ***The Committee expects that the Labour Amendment Bill will be brought into full conformity with the Convention without further delay. The Committee requests the Government to provide information on all progress made in this respect.***

Public Service Act and the Health Services Act. The Committee notes the Government's indication that a consultative workshop to discuss the Public Service Amendment Bill was held in March 2022 where all stakeholders, including the social partners and the TNF, were invited to partake in. The Bill went through peer review a month later and its drafting was concluded by the Attorney General's Office before being submitted to the Public Service Commission and the Ministry. The Bill has been submitted to the Cabinet Committee on Legislation, which, the Government expects, will consider the Bill before the end of October 2022. Regarding the Health Service Act, the Government indicates the first reading of the Health Service Amendment Bill was carried out in June 2022 and the Parliamentary Portfolio Committee on Health has concluded public hearings and consultations. ***The Committee expects that the health and public service legislation will be adopted without further delay and requests the Government to provide information on all progress made in this respect.***

Article 4 of the Convention. Promotion of collective bargaining. The Committee had previously requested the Government to provide information on the application of the Convention in practice in the special economic zones and to indicate the number of collective agreements in force for such zones. The Committee notes the Government's indication that the Labour Act is the principal act that governs

the employment issues, including collective bargaining in the special economic zones. Therefore, no separate collective agreements were concluded or gazetted under the Zimbabwe Investment Development Agency Act, as all collective bargaining agreements are still guided by the Labour Act. Establishments in special economic zones are covered by their respective collective bargaining agreement relating to the classification of their undertakings. ***The Committee requests the Government to provide information on the number of collective agreements concluded and in force, the sectors concerned, and the number of workers covered by these agreements***.

Application of the Convention in practice

Article 1. Adequate protection against acts of anti-union discrimination. The Committee notes with ***concern*** the ZCTU's numerous allegations of acts of anti-union discrimination. The ZCTU refers, in particular, to the following alleged instances: (i) the President of the Zimbabwe Petroleum and Allied Workers Union (ZIPAWU) was suspended from employment after addressing a press conference in his capacity as a trade union president condemning corruption in the company; (ii) four trade union leaders were dismissed as they were preparing to participate, on behalf of the National Railways Union, in a conciliation meeting over the 2022 wage dispute in March 2022; (iii) an enterprise whose employers are protected under the Look East Agreement unlawfully dismissed an employee, disregarded a ruling by the National Employment Council for Textile Industry and ignored appeals by the trade union; and (iv) anti-union discrimination in the mining sector, where some companies have not complied to the conditions and terms prevailing in the collective bargaining agreements. ***With reference to its previous request to continue engaging with the social partners on all issues of application of the Convention in practice and to ensure that all allegations of violation are promptly investigated, the Committee requests the Government to provide its comments on these serious allegations of anti-union discrimination and to continue to provide information an all measures taken in consultation with the social partners to prevent cases of anti-union discrimination in practice.***

The Committee had previously requested the Government to provide information on any developments regarding an electronic case management system, which would assist in tracking labour dispute cases, particularly those relating to anti-union discrimination. The Committee notes the Government's indication that the procurement process of the hardware equipment is underway, and the Harare Institute of Technology innovation hub, which has been engaged by the Ministry of Public Service Labour and Social Welfare, is in the process of finalizing the development of the system. ***The Committee requests the Government to provide information on any further developments in this respect.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 11** *(Jamaica, Peru, Saint Vincent and the Grenadines, Solomon Islands, Sri Lanka);* **Convention No. 87** *(Algeria, Antigua and Barbuda, Barbados, Chad, Comoros, Congo, Djibouti, Ecuador, Gabon, Gambia, Guatemala, Jamaica, Kiribati, Luxembourg, Pakistan, Papua New Guinea, Peru, Poland, Portugal, Romania, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Serbia, Sierra Leone, Solomon Islands, Somalia, Spain, Sri Lanka, Suriname, Switzerland, Tajikistan, Timor-Leste, Türkiye, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, United Kingdom of Great Britain and Northern Ireland: Bermuda, United Kingdom of Great Britain and Northern Ireland: Montserrat, Uzbekistan, Vanuatu);* **Convention No. 98** *(Brazil, Comoros, Congo, Gabon, Gambia, Guinea, Hungary, Kenya, Kiribati, Malaysia, Morocco, Namibia, Rwanda, Samoa, San Marino, Senegal, Serbia, Singapore, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Suriname, Tajikistan, Timor-Leste, Togo, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland: Anguilla, United*

Kingdom of Great Britain and Northern Ireland: Bermuda, United Kingdom of Great Britain and Northern Ireland: British Virgin Islands, United Kingdom of Great Britain and Northern Ireland: Isle of Man, United Kingdom of Great Britain and Northern Ireland: Montserrat, Vanuatu, Viet Nam); **Convention No. 135** *(Antigua and Barbuda, Hungary, Poland, Portugal, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Sri Lanka, Sweden);* **Convention No. 141** *(Afghanistan, India, Spain);* **Convention No. 151** *(Belize, Gabon, Guyana, Madagascar, Namibia, Peru, Poland, Seychelles, Slovenia, Spain);* **Convention No. 154** *(Belize, Hungary, Madagascar, Romania, Russian Federation, Rwanda, San Marino, Slovenia, Suriname).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 11** *(Rwanda);* **Convention No. 135** *(Slovakia);* **Convention No. 151** *(Russian Federation, Slovakia).*

Forced labour

Argentina

Forced Labour Convention, 1930 (No. 29) (ratification: 1950)

Protocol of 2014 to the Forced Labour Convention, 1930 (ratification: 2016)

Previous comment

The Committee welcomes the ratification by Argentina of the Protocol of 2014 to the Forced Labour Convention, 1930. ***It requests the Government to provide detailed information on its application, in accordance with the report form adopted by the Governing Body***.

The Committee notes the observations of the Confederation of Workers of Argentina (CTA Autonomous) of 31 August 2021, and the General Confederation of Labour of the Argentine Republic (CGT RA) of 1 September 2021.

Articles 1(1), 2(1) and 25 of the Convention. 1. *Trafficking in persons. Institutional framework*. The Committee notes from the final evaluation report of the Biennial National Plan to Combat the Trafficking and Exploitation of Persons for 2018–20, attached to the Government's report, that, out of a total of 111 actions foreseen under the action plan, 80 per cent have been carried out. The Government indicates that, while the main objectives established under the action plan have been achieved, the context arising from the COVID-19 pandemic had a significant impact on the implementation of certain activities. The Committee notes the numerous awareness-raising and training actions carried out on trafficking and labour exploitation, particularly through information campaigns, the distribution of leaflets, and in-person and online training activities. The Committee also notes the adoption of the National Plan to Combat the Trafficking and Exploitation of Persons for 2020–22, drafted by the executive committee of the Federal Council to Combat the Trafficking and Exploitation of Persons and to Protect and Assist Victims, with the contribution of 44 agencies acting at the national, provincial and municipal level, and in collaboration with the ILO and several stakeholders from civil society. The National Plan contains 100 actions focusing on four main areas, namely: prevention; assistance to victims; prosecution; and coordination and strengthening of the institutional framework. The Committee also notes that 25 institutional round tables for preventing and combating trafficking in persons were established, with the specific aim of contributing to the continuous training of public servants on trafficking in persons, widely disseminating the number of the free helpline to report situations involving trafficking, developing diagnostic tools to better prevent trafficking, and coordinating efforts in that area. The Commission notes, in this regard, that the CGT RA and the CTA Autonomous underscore the importance of this inter-institutional work, which, from their point of view, must be continued and deepened, in order to effectively end trafficking and labour exploitation.

The Committee welcomes the continued strengthening of the institutional framework to combat trafficking in persons, and requests the Government to continue to take the necessary measures to effectively implement the four main lines of action under the National Plan to Combat the Trafficking and Exploitation of Persons for 2020–22. The Committee requests it to provide information on the diagnostic tools developed and the evaluation reports drafted in this regard, and on the impact of the measures taken and the difficulties encountered, as well as the activities carried out under the framework of the Federal Council to combat the trafficking and exploitation of persons and to protect and assist victims, and the interinstitutional round tables for preventing and combating the trafficking of persons established at the provincial level.

Action by the labour inspectorate. The Committee notes the Government's indication that a special procedure has been established to review the indicators of labour exploitation that may be identified

by labour inspectors during their activities, in accordance with Ministry of Labour Resolution No. 230/18 of 12 June 2018. Furthermore, in 2020, a practical guide was specially designed for inspectors to help them better understand the issues and mechanisms that allow for situations involving trafficking and labour exploitation to be identified and reported. This guide, a copy of which is contained in an annex to the Government's report, identifies three main indicators of labour exploitation: (1) the duration of the working day; (2) the remuneration received; and (3) the work environment and working conditions, and explains how to fill in the report on labour exploitation indicators (*Acta IEL*). Where applicable, labour inspectors are required to report to the free helpline of the Ministry of Justice and Human Rights in order for the situation observed to be addressed as a matter of priority and, if necessary, request intervention by the security forces and judicial authorities. The Committee notes that several in-person and online activities have been organized to train labour inspectors on the use of these new tools. It notes that the labour inspectorate conducted 191,903 inspections in 2018, and 146,926 inspections in 2019, despite a reduction in staff numbers (342 inspectors in 2018 compared with 321 in 2019). The Committee also notes the detailed information provided by the Government on the work methods of the Special Unit for the Inspection of Irregular Work (UEFTI). The UEFTI carried out several monitoring exercises, including in collaboration with trade union organizations, which combined several sources of information such as: (1) the number of workers declared on the public registry of employers (REPSAL); (2) the number of workers officially covered by collective agreements concluded with enterprises in the agricultural sector (collective co-responsibility agreements (*convenios de corresponsabilidad gremial*)); (3) the regular production of an enterprise for a given period; and (4) the number of workers normally required to manage this workload. These inspection activities are mainly carried out in the agricultural sector and have also involved the use of video surveillance tools, such as drones and manual video devices, which are specially adapted for use in remote regions.

The Committee notes with ***interest*** the activities and new tools developed by the inspection services to identify situations involving labour exploitation. ***The Committee encourages the Government to pursue this course of action and to continue to take measures to strengthen the capacity for action and resources of the labour inspection services throughout the country, and in particular in the sectors in which the incidence of forced labour is well known, in order to identify situations involving labour exploitation, and particularly trafficking in persons for the purpose of labour exploitation, and to gather evidence, punish violations, and collaborate with other bodies responsible for enforcing the law.***

Repression and imposition of penalties. The Committee notes the detailed information provided by the Government on the awareness-raising and training actions undertaken by the General Prosecution Service and by its special unit, PROTEX, with regard to repressing trafficking in persons. The Committee notes in particular that, in 2018 and 2019, several actions were aimed at ensuring training for judges and officials in the judicial field, as well as members of the security forces. The Committee also notes that PROTEX participated in different exchanges of best practices with Brazil in the context of a South–South cooperation programme among Brazil and Argentina, and other countries (Bolivia, Colombia, Ecuador, Peru and Venezuela), implemented by the ILO. The Committee notes that, according to PROTEX's 2020 report, the free helpline received 3,525 complaints in 2018 and 2019, of which 472 concerned cases of labour exploitation, and 82 per cent were submitted to the judicial authorities. Since 2012, a total of 20,719 complaints were received via the helpline. Furthermore, according to the statistical information provided by the Government, between 2018 and 2019, 125 legal proceedings were instituted in cases of trafficking (35 cases of trafficking for the purpose of labour exploitation and 83 for the purpose of sexual exploitation). For the same period, 85 convictions were handed down, of which 23 were in cases of labour exploitation and 59 were in cases of sexual exploitation. ***The Committee urges the Government to pursue its efforts to ensure that all identified cases of trafficking be subject to in-depth investigations with a view to prosecution, and to allow for the imposition of dissuasive penalties for persons engaged in trafficking. The Committee requests the Government to continue to***

provide information on the activities carried out by PROTEX, including on its collaboration with other bodies responsible for enforcing the law, and on the number of investigations and prosecutions carried out in cases of trafficking for the purpose of labour or sexual exploitation, and on the number of convictions handed down and penalties imposed.

Combating complicity and corruption in the police forces. The Committee notes that, according to the information communicated by PROTEX with the Government's report, thanks to the reports received anonymously through the free helpline, 117 cases of complicity of law enforcement officials were identified in 2018 in cases of trafficking or labour exploitation, and 110 cases in 2019. However, due to the anonymity of the complainants and the sometimes-vague allegations in the majority of the complaints made, PROTEX indicates that it was only able to conduct investigations in 10 per cent of cases. One conviction for complicity was handed down against an official in 2019, and none in 2018. The Committee observes with ***concern*** the lack of more specific information from the Government with regard to the possible measures envisaged to put an end in practice to cases of corruption and complicity by law enforcement officials in cases of trafficking in persons, although only one conviction for complicity was handed down against an official, and the General Prosecution Service reported difficulties in this area. ***The Committee urges the Government to continue to take proactive measures to ensure that investigations are duly conducted in cases of corruption and the complicity of law enforcement officials, and that appropriate and dissuasive penalties are imposed. The Committee requests the Government to provide detailed information on the measures implemented for this purpose and their impact, and updated information on the number of cases registered and prosecuted, as well as the penalties imposed.***

Protection and assistance to victims. The Committee notes that, according to the statistical information provided by the Government, between 2008 and 2022, assistance was provided for 18,220 victims of trafficking in persons (6,460 victims since 2018), of which 57 per cent were victims of labour exploitation, under the National Programme of Assistance and Support for Victims of Trafficking in Persons (Rescate). The Committee also notes the Government's indication that, in the context of the implementation of the action plan to combat the trafficking and exploitation of persons for 2020–22, in addition to the psychological, medical and legal assistance already provided for victims of trafficking, a framework agreement was signed in August 2021, with a view to facilitating their access to housing (agreement signed between the Ministry of Territorial Development and Habitat and the executive committee to combat the trafficking and exploitation of persons and assistance to victims). Concerning the strengthening of resources dedicated to the assistance of victims of trafficking, the Committee welcomes the adoption of Act No. 27.508 of 23 July 2019 establishing direct assistance funds for trafficking victims, regulated by Decree No. 844/2019 of 6 December 2019, and financed through the confiscation and seizure of property derived from the offence of trafficking, in order to ensure adequate redress for victims of trafficking. ***The Committee requests the Government to provide information on the implementation of procedures aimed at allocating the amounts from the fines imposed and property seized, following the identification of offences in the area of trafficking in persons, to programmes and funds for the provision of assistance to victims, and to indicate the manner in which these resources are used. It also requests the Government to provide information on the assistance provided in this context and the number of victims of trafficking who have received this assistance.***

2. *Labour exploitation in the garment sector and in agriculture.* The Committee notes that, in their respective observations, the CTA Autonomous and the CGT RA indicate that trafficking and labour exploitation of persons in the garment sector persist, particularly in sweatshops in the city of Buenos Aires. These organizations indicate that the victims are mainly migrant workers, in particular from Bolivia, and that, despite the lack of official statistical data, it is estimated that around 70 per cent of the products manufactured in the garment sector are of irregular origin. The CTA Autonomous and the CGT RA add that these workers often have their passport confiscated, have to work long hours while confined together in a small room, often without ventilation, and receive low pay. In this regard, the Committee

notes that, according to the report published in 2020 by the PROTEX, out of the 38 complaints of trafficking for the purpose of labour exploitation received in the first six months of 2020, five concerned cases of exploitation in sweatshops in the southern province of the city of Buenos Aires.

Regarding the agricultural sector, the CTA Autonomous and the CGT RA refer to the significant number of victims of trafficking and labour exploitation in the agricultural sector identified in recent years, following several interventions carried out by the labour inspectorate, particularly in the provinces of Rio Negro, La Rioja, Corrientes, Santa Fe and Santiago del Estero. The CTA Autonomous indicates that these agricultural workers were often paid less than the minimum wage, worked long hours and lived and worked in dangerous, precarious and degrading conditions, slept in tents without access to drinking water. According to the CTA Autonomous, collaboration between trade union organizations and various competent State bodies made it possible to identify several cases of trafficking and labour exploitation in the agricultural sector, which quickly led to prosecutions before PROTEX and to the activation of victim protection and assistance mechanisms.

The Committee notes the Government's indication in its report that a cooperation agreement was signed on 26 March 2019 between the Ministry of Labour and the National Register of Agricultural Workers and Employers (RENATRE), with a view to implementing joint inspection activities to identify undeclared work. It also refers to the work carried out to identify and disseminate the indicators of labour exploitation and child labour in the agricultural sector. The Committee notes that, according to PROTEX's 2020 report, in the first six months of 2020, 47 per cent of the complaints received concerning cases of labour exploitation in the agricultural sector, of which seven cases required urgent intervention by security forces. Furthermore, between July 2020 and July 2021, the labour inspectorate services identified 26 cases of trafficking for the purpose of labour exploitation in the agricultural sector concerning 222 workers, following joint actions carried out with RENATRE and other trade union organizations.

The Committee notes with ***concern*** from the above information that there is still recourse to forced labour in the garment sector and in agriculture.

Referring to its comments above on strengthening the general institutional framework to combat trafficking in persons, the Committee requests the Government to step up the efforts to combat all forms of labour exploitation, including the trafficking of persons for the purpose of labour exploitation, in the garment sector and in agriculture, and to continue to provide information on the targeted measures taken in this regard, particularly in collaboration with workers' and employers' organizations.

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

Australia

Forced Labour Convention, 1930 (No. 29) (ratification: 1932)

Previous comment

Articles 1(1), 2(1) and 2(2)(c) of the Convention. Privatization of prisons and prison labour. For a number of years, the Committee has been drawing the Government's attention to the fact that the privatization of prison labour goes beyond the conditions provided for under *Article 2(2)(c)* of the Convention for exempting compulsory prison labour from the scope of the Convention. However, where the necessary safeguards exist to ensure that the prisoners concerned offer themselves voluntarily, by giving their free, formal and informed consent and without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention, work of prisoners for private companies does not come under the scope of the Convention, since no compulsion is involved. The Committee requested the Government to take the necessary measures to ensure that the free, formal and informed consent

of prisoners is legally required for work in privately operated prisons, as well as for all work of prisoners for private enterprises.

1. *Prison labour in privately operated prisons.* The Committee previously noted that there were no privately operated prisons under the *Northern Territory* and *Australian Capital Territory* jurisdictions. The Committee also noted that, in *New South Wales*, the employment of convicts in correctional centres was voluntary.

As regards *Queensland,* the Committee observed that prisoners are obliged to perform work under section 66 of the Corrective Services Act 2006, which provides that the chief executive may, by written order, transfer a prisoner from a corrective services facility to a work camp, and the prisoner must perform community service as directed by the chief executive. It also noted that the work performed by prisoners is not limited to community services performed within the framework of work camps, but also includes employment in commercial industries operating on a commercial fee-for-service basis and in service industries to maintain the self-sufficiency of the correctional system and other unpaid work. The Committee notes the Government's statement, in its report, that transfer of prisoners to a work camp is a management decision made about the best placement of a prisoner according to the Queensland Corrective Services' (QCS) Custodial Operations Practice Directives (COPDs). Such community services include maintenance of public spaces and infrastructures (painting, mowing, gardening and cleaning) as well as building and restoring structures in public spaces, such as picnic tables. In 2019-20, 193,128 hours of community service were completed by prisoners. According to the Government, the financial value of the work performed in the community by prisoners is representative of making offenders accountable and providing reparation to the community as part of their rehabilitation. As regards participation of prisoners in commercial industries operating on a commercial fee-for-service basis and in service industries to maintain the self-sufficiency of the correctional system, the Government states that convicted prisoners are expected to work as it provides them with the opportunity to acquire vocational skills and contributes to their ability to gain and retain employment upon release. Unacceptable behaviour or work performance may incur the penalty of being placed in lower level employment positions and receiving a lower level incentive payment rate. The Government adds that the COPD on prisoner employment outlines the Queensland Corrective Services' objective of having convicted prisoners employed wherever possible, and prison industries providing prisoners with meaningful activity through employment on a commercial, fee-for-service basis or prisoner services or community service. According to above-mentioned COPD, Chief Superintendent of a corrective services facility must provide for employment of prisoners by assigning them to available positions using an interdisciplinary approach that considers a prisoner's behaviour. The Committee notes, from the Report on Government Services 2022 of Australia, that, in 2020–21 in *Queensland*, 26.3 per cent of the eligible prisoners were employed in commercial industries, while 38.9 per cent of them were employed in service industries (Chapter 8, table 8 A.12). It further notes the Government's statement that, since 1 July 2021, all *Queensland* prisons are under public administration and prisoners will no longer be under private administration in that State.

As regards *South Australia,* the Committee recalls that, pursuant to section 29(1) of the Correctional Services Act 1982, prison labour is compulsory both inside and outside correctional institutions. The Government indicated, however, that prisoners at Mt Gambier Prison (*South Australia*'s only privately operated prison) apply in writing to undertake work programmes, and that prisoners in the Adelaide Pre-Release Centre voluntarily apply for outside employment with private enterprises. The Committee notes the adoption of the Correctional Services (Accountability and Other Measures) Amendment Act 2021, which amended section 29(1) of the Correctional Services Act 1982, but observes that prison labour is still compulsory while remand prisoners are no longer explicitly excluded from this obligation. Furthermore, it notes the Government's indication that the Adelaide Remand Centre has been privatized and is now privately operated.

As regards *Victoria,* the Committee previously noted the Government's indication that prisoners working for both publicly and privately operated prisons have the same rights and entitlements, and that in both cases convicts must consent to undertake work. The Committee notes the Government's statement that all convicted prisoners are given the opportunity to work in prison industries in order to develop their employment skills. The Government adds that, in privately operated prisons, prisoners are not compelled to work. Vacant positions in prison industries are advertised to prisoners and they have the opportunity to apply for these positions. Prisoners are remunerated for their work in prison industries. If a prisoner refuses to work in prison industries, they are classified as unemployed and do not receive any remuneration but receive essential items and are encouraged to participate in other structured day activities such as training, education or programmes.

As regards *Western Australia,* the Committee previously noted that prison labour is compulsory under section 95(4) of the Prisons Act 1981 and section 43 of the Prison Regulations 1982. The Government indicated that such provisions had not been enforced as, in practice, prisoners are not forced to participate in work programmes, even in privately operated prisons. The Committee noted that, while section 6.5.3 of Prisons Procedure 302 on work camps provides that prisoners may apply for work camp placement, its section 7.1 provides that the designated superintendent shall ensure that those prisoners who may be suitable for work camp placement who have not initiated an application are appropriately assessed for inclusion. The Committee notes the Government's indication that there are currently five prisoner work camps and that the superintendents are aware of eligible prisoners and proactively canvas all prisoners to gather interest for work camp placement. The Department of Justice encourages prisoners to consider work camp placements, however, they have to individually consent to the placement and are appraised of and agree to the conditions of the placement.

In light of the above considerations, the Committee recalls that the Convention addresses not only situations where prisoners are "employed" by the private company or placed in a position of providing services to the private company, but also situations where prisoners are hired to or placed at the disposal of private undertakings but remain under the authority and control of the prison administration. It again draws the Government's attention to the fact that the work of prisoners in private prisons or for private companies is only compatible with the Convention where it does not involve compulsory labour. To this end, the formal, freely given and informed consent of the persons concerned is required, in addition to further guarantees and safeguards covering the essential elements of a labour relationship, such as wages, occupational safety and health and social security. ***The Committee expresses the firm hope that the necessary measures will be taken in Queensland, South Australia, Victoria and Western Australia, both in law and practice, in order to ensure that formal, freely given and informed consent of convicts is required, as well as conditions approximating those of a free labour relationship for work in privately operated prisons and for all work of prisoners for private enterprises, both inside and outside prison premises. It requests in particular the Government to:***

(i) provide information on the legislative provisions that regulate the procedures and working conditions of prisoners employed in other prison industries in Queensland, including both commercial industries and services industries;

(ii) amend section 29(1) of the Correctional Services Act 1982 of South Australia, in order to align it with the indicated practice, and specify whether remand prisoners are now compelled to work;

(iii) provide information on the legislative provisions in the State of Victoria which provide that prisoners in privately operated prisons are not compelled to work, while indicating how, in practice, it is ensured that the prisoners concerned offer themselves voluntarily, by giving their free and informed consent (as well as examples of the forms through which prisoners may apply for vacant positions in prison industries and any other relevant document signed); and

(iv) amend section 95(4) of the Prisons Act and section 43 of the Prison Regulations of Western Australia, in order to align the legislation with indicated practice.

2. *Work of prisoners for private enterprises. Tasmania.* In its previous comments, the Committee noted that there were no privately operated prisons in *Tasmania.* However, according to section 33 of the Corrections Act 1997, a prisoner may be directed to work within or outside of the prison premises. Pursuant to Schedule 1 (Part 2.26) of the Act, refusal to comply with such direction is considered a prison offence. The Government indicated that prisoners in *Tasmania* work for private enterprises on a voluntary basis and must apply for external leave in accordance with the Corrections Act 1997 (sections 41 and 42). The Government added that, in practice, there is no requirement for prisoners to participate in such employment and no penalty for non-participation.

The Committee notes the Government's statement that there has been no change introduced to align the legislation with the indicated practice but that due consideration would be given to the Committee's request to amend the Corrections Act 1997. ***The Committee welcomes this information and once again requests the Government to take the necessary steps in order to align the legislation with the indicated practice according to which prisoners work for private enterprises on a voluntary basis.***

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

Azerbaijan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2000)

Previous comment

The Committee notes the observations of the Azerbaijan Trade Unions Confederation (ATUC), received on 13 May 2022, the International Organisation of Employers (IOE), received on 25 August 2022, and the International Trade Union Confederation (ITUC), received on 1 September 2022. It also notes the detailed discussion that was held by the Committee on the Application of Standards (the Conference Committee) at the 110th Session of the International Labour Conference (June 2022), regarding the application of the Convention by Azerbaijan, as well as of the Government's report.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted the indications by a significant number of United Nations and European institutions and bodies on the use of various provisions of the Criminal Code as a basis for the prosecution of journalists, bloggers, human rights defenders, and other persons who had expressed critical opinions. The Committee notes that the Conference Committee urged the Government to ensure, among others, that the right to hold or express political views or views ideologically opposed to the established political, social or economic system without the threat of penalties involving compulsory labour is fully respected in line with *Article 1(a)* of the Convention.

The Committee takes due note of the adoption by the Government of the Action Plan for 2022–23 containing various measures to address the 2022 conclusions of the Conference Committee. The Committee also notes the Government's request for ILO technical assistance to conduct a review of the national legislation and practice to ensure the application of the Convention.

The Government further indicates that the sanctions of correctional and public works established for the violation of sections 147 regarding defamation, 169.1 on organization or participation in a prohibited public assembly, 233 on organization of group actions violating public order, and 283.1

regarding inflaming the national, racial or religious enmity of the Criminal Code do not constitute compulsory labour. In particular, according to the Government, the sanction of correctional work which represents a deduction of 5–20 per cent from the convicted person's earnings does result in the direct involvement of a convicted person in compulsory labour. The Government also points out that the sanction of public works which consists of an obligation to perform socially useful work does not lead to the social isolation of convicted persons and should be performed considering their age, state of health and professional experience.

The Government further underlines that sections 147, 169.1, 233 and 283.1 of the Criminal Code are in line with the Forced Labour Convention, 1930 (No. 29) and Convention No. 105 as the former, in *Article 2(2)(c)*, stipulates that "any work or service exacted from any person as a consequence of a conviction in a court of law …" shall not be considered forced or compulsory labour. In addition, the Government points out that sections 147, 169.1, 233 and 283.1 of the Criminal Code are not widely used in practice. According to the statistics of the Supreme Court of Azerbaijan, in 2021, there were approximately 32 court decisions handed down under section 147; no court decision under section 169.1; 2 court decisions under section 233; and 2 court decisions under section 283.1. The Government further indicates that, in 2021, an amnesty was applied to 17,267 convicted persons, which is the largest amnesty in terms of the number of persons covered. In addition, a number of offences were decriminalized following the legislative amendments to the Criminal Code in 2017 and 2020.

With respect to the judgments delivered by the European Court of Human Rights (ECHR) concerning the detentions and convictions of opposition political activists in Azerbaijan, the Government indicates that in several cases, the convictions have been quashed or the criminal proceedings have been terminated and compensation has been provided to the applicants.

The Committee notes the observations of the ATUC indicating its request to the ILO for technical assistance to conduct awareness-raising and capacity building activities on the application of the Convention. The ATUC further indicates that it has not received any complaints on the use of forced or compulsory labour. The Committee also notes the IOE's observations indicating that immediate and effective steps are needed to ensure that no person who peacefully expresses political opinions or opposes the established political, social or economic system can be given a sentence involving compulsory labour or imprisonment, either in law or in practice. The Committee further notes that the ITUC expresses its disagreement with the Government's statement that the sanction of correctional work does not amount to compulsory labour. The ITUC further indicates that despite the decriminalization of certain offences, the administrative penalties which are applied against human rights activists have increased from 15 days to 90 days of imprisonment.

With respect to sanctions of correctional work, public works and imprisonment established by sections 147, 169.1, 233 and 283.1 of the Criminal Code, the Committee notes that they involve compulsory labour for convicted persons. Regarding the sanction of correctional work, the Committee notes that convicts without a job are obliged to seek employment, including by registering with the employment agency, and cannot refuse a job offered to them (section 43 of the Code on the Execution of Penal Sentences). Convicts who have not found a job without a justified reason within a determined period of time are subject to sanctions, including the replacement of the unserved part of correctional work by the sanctions of restriction of freedom or imprisonment (section 51 of the Code on the Execution of Penal Sentences). The Committee notes in this respect that the sanction of correctional work leads to indirect coercion to perform labour under the threat of a penalty and results in compulsory labour. The Committee further observes that public works also involve compulsory labour as they consist of an obligation to perform socially useful work for a period ranging from 240 to 480 hours (section 47 of the Criminal Code). Furthermore, the sanction of imprisonment involves the obligation to perform labour, in accordance with section 95.1 of the Code on the Execution of Penal Sentences. The Committee therefore notes that sanctions of correctional work, public works and imprisonment involve compulsory labour and thus fall under the scope of the Convention.

The Committee further recalls that the exceptions from the definition of forced or compulsory labour set out by Article 2(2) of Convention No. 29 do not automatically apply to Convention No. 105. More particularly, the exemption concerning prison labour or other forms of compulsory labour exacted as a consequence of a conviction in a court of law does not apply to convicted persons sentenced to imprisonment or other punishments involving compulsory labour for expressing political views or views ideologically opposed to the established political, social or economic system within the meaning of *Article 1(a)* of Convention No. 105 (2007 General Survey on the eradication of forced labour, paragraph 144).

The Committee strongly urges the Government to continue to take the necessary measures to ensure that, both in law and practice, no one who, in a peaceful manner, expresses political views or opposes the established political, social or economic system can be sentenced to sanctions under which compulsory labour is imposed. The Committee once again requests the Government to review sections 147, 169.1, 233 and 283.1 of the Criminal Code by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. In this respect, the Committee requests the Government to provide information on the outcome of the review of the national legislation and practice. The Committee further requests the Government to continue to provide information on the application of sections 147, 169.1, 233 and 283.1 of the Criminal Code in practice, including any prosecutions carried out or court decisions handed down, indicating the penalties imposed and the facts that led to convictions.

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

Belarus

Forced Labour Convention, 1930 (No. 29) (ratification: 1956)

Previous comment

The Committee notes the observations of the Belarusian Congress of Democratic Trade Unions (BKDP), received on 30 August 2021 and 14 January 2022, and requests the Government to provide its reply to these observations. It also notes the discussion that was held by the Committee on the Application of Standards (the Conference Committee) at the 108th Session of the International Labour Conference (June 2019) regarding the application of the Convention by Belarus.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

Articles 1(1), 2(1) and 2(2)(c) of the Convention. Compulsory labour imposed by the national legislation on certain categories of workers and persons. 1. *Financial penalties imposed on unemployed persons.* The Committee notes from the conclusions of the Conference Committee that due to the 2018 amendments to Presidential Decree No. 3 of 2015, the sections regarding administrative penalties, levies or compulsory work imposed on unemployed persons has been deleted and, instead, the Decree focuses on employment promotion. The Committee also notes the Government's indication, in its report, that according to the amended Decree, people who are "able-bodied" and capable of working but who are not working have to pay for utility and public services at the full rate without any state subsidy. The Government further specifies the categories of persons who are not required to pay for utility and public services, including hot water, gas supply and heating, at the full rate since they are classified as economically active persons. Such categories include citizens who are legally employed, registered entrepreneurs, military personnel, clergymen, registered unemployed persons, parents or guardians of children under 7 years of age, students in full-time education, people who work or receive education

abroad, persons with disabilities, pensioners and other categories, as determined by the Council of Ministers' Decision No. 239 of 31 March 2018. The Government also indicates that the existence of a difficult life situation is taken into account, when deciding whether a person shall pay for utility and public services at the full rate.

The Committee notes the BKDP's observations reiterating its previous statement that the replacement of the former levy imposed on unemployed citizens by an obligation to pay for utilities and public services at the higher price constitutes another form of financial penalty. It further points out that although the amended Decree No. 3 of 2015 uses different terminology, it preserves the same repressive and discriminatory essence and constitutes indirect coercion to work. The BKDP also indicates that there is no publicly available data on the total number of persons included in the list of "able-bodied" citizens not involved in the economy.

The Committee requests the Government to continue to ensure that the implementation of Decree No. 3 of 2015 in practice does not go beyond the purpose of employment promotion. The Committee also requests the Government to continue to provide information on the application of the Decree in practice, particularly on the number of persons who are enlisted as "able-bodied" citizens not involved in the economy, as well as the number of persons who are required to pay for utilities and public services at the full rate.

2. *Persons interned in "medical labour centres".* The Committee previously noted that according to Act No. 104-3 of 4 January 2010, citizens suffering from chronic alcoholism, drug addiction or substance abuse who have faced administrative charges (three or more times in one year) for committing administrative violations under the influence of alcohol, narcotics or other intoxicating substances may be sent to medical labour centres. Another category of citizens who may be placed in medical labour centres comprises persons who are required to reimburse the State expenditure on the maintenance of children placed under state care, and who have committed disciplinary offences at work twice in one year, as a result of using alcohol or other intoxicating substances. The Committee further noted that both categories of persons might be sent to medical labour centres by a court order for a period of 12–18 months. The Conference Committee also noted that citizens might be required to participate in vocational skills training and compulsory work in medical labour centres, and called on the Government to ensure that no excessive penalties are imposed on citizens to oblige them to perform work.

The Committee notes that Act No. 70-3 of 10 December 2020 amending Act No. 104-3 of 4 January 2010 has established a new category of citizens who may be sent to medical labour centres. It includes "able-bodied" non-working citizens leading an asocial lifestyle who were warned about the possibility of being sent to medical labour centres and committed an administrative offence under the influence of alcohol, narcotics or other intoxicating substances within a year of the warning. Such persons may be sent to medical labour centres only by a court order after medical examination. The Government points out that timely referral of these categories of citizens to medical labour centres is considered a preventive measure taken against possible offences due to their asocial lifestyle. In this respect, the Committee notes that in her 2019 report, the United Nations Special Rapporteur on the situation of human rights in Belarus noted that the term "asocial lifestyle" is extremely vague and expressed concern that this could lead to cases of arbitrary detention or other abuses (A/HRC/41/52, paragraph 79).

The Government points out that due to the state policy on the prevention of drunkenness and alcoholism among the population, as well as the social rehabilitation of persons suffering from alcoholism, drug addiction and substance abuse, the number of people sent to medical labour centres has almost halved over the last five years. The Government further indicates that citizens placed into medical labour centres may work at the production enterprises of the Ministry of Internal Affairs or other enterprises located near medical labour centres. In this regard, the Committee observes, from the internal regulations of medical labour centres approved by the Decree of the Ministry of Internal

Affairs No. 86 of 25 March 2021, that persons placed in medical labour centres are obliged to work at places and in jobs determined by the administration of medical labour centres (section 185).

The Committee notes the BKDP's observations indicating that medical labour centres are de facto detention institutions, where the assistance in the treatment of alcoholism is either not provided at all or only formally. The BKDP further indicates that in 2020, 4,494 persons were sent to medical labour centres and about one third of these persons did not have problems with alcohol. The BKDP also indicates the cases of work performed by persons placed in medical labour centres for the benefit of the private sector.

The Committee requests the Government to continue to provide information on the implementation of Act No. 104-3 of 4 January 2010, as amended, in practice, indicating, in particular, the total number of persons placed in medical labour centres. The Committee further requests the Government to specify criteria for the determination of a lifestyle as "asocial" according to Act No. 104-3, as amended in 2020. It also requests the Government to indicate the types of work which may be performed by persons placed in medical labour centres and whether such work may be performed for the benefit of private entities.

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1995)

Previous comments: observation and direct request

The Committee notes the observations of the Belarusian Congress of Democratic Trade Unions (BKDP), received on 30 August 2021 and 14 January 2022, and requests the Government to provide its reply to these observations.

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for the expression of political views or views opposed to the established political, social or economic system. The Committee previously requested the Government to amend or repeal sections 193(1) (participation in the activities of unregistered groups), 339 (hooliganism and malicious hooliganism), 342 (organization of group actions violating public order), 367 (libelling the President), 368 (insulting the President) and 369(2) (violation of the procedure for the organization or holding of assemblies, meetings, street marches, demonstrations and picketing) of the Criminal Code to ensure that no penalties involving compulsory labour may be imposed for the peaceful expression of political views or views ideologically opposed to the established political, social or economic system.

The Committee notes that according to the information provided by the Government, in its report, section 193(1) of the Criminal Code was repealed. The Government further indicates that there is no linkage between crimes punishable under sections 339, 342, 367, 368 and 369(2) of the Criminal Code and the peaceful expression of political views or views by citizens that are ideologically opposed to the established political, social and economic system.

The Committee notes that according to the 2020 Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus in the context of the 2020 presidential election, criminal charges were increasingly brought in the context of protests. Between 9 August and 30 November 2020, more than 1,000 criminal cases were opened against peaceful protesters, opposition members and supporters, journalists, human rights defenders, lawyers and persons critical of the Government. The overwhelming majority of criminal charges against protesters were brought under section 342 (organization of group actions violating public order) of the Criminal Code; section 293 (organization of or participation in mass riots), punishable by up to eight years of imprisonment; section 339.2 (hooliganism and malicious hooliganism); and various charges for resistance to and violence against law enforcement officers. Charges were also brought for "insulting State officials", including by comments posted on social media, and for "insulting the flag and national

symbols" (A/HRC/46/4, paragraphs 43–45). The Committee notes the BKDP's observations that as of 14 November 2021, 843 people in Belarus were considered political prisoners and more than half of them were in institutions where prisoners are required to work.

The Committee also notes that, in its Opinion No. 50/2021, the United Nations Working Group on Arbitrary Detention concluded that the arrest and detention of a journalist under sections 130(3) (deliberate incitement to social hatred), 293(1), and 342 of the Criminal Code was arbitrary and based solely on his journalistic activity, and his freedoms of expression and assembly (A/HRC/WGAD/2021/50, paragraphs 5, 82 and 83). In addition, in its Opinion No. 23/2021, the United Nations Working Group on Arbitrary Detention concluded that the arrest and detention of the opposition candidate in the 2020 election under sections 130(3), 191(1) (obstruction of the exercise of electoral rights), 293(1) and 342(1) of the Criminal Code was arbitrary and the criminal proceedings were used to prevent a high-level political opponent expressing his views and participating in public life (A/HRC/WGAD/2021/23, paragraphs 61, 85 and 88).

The Committee ***deplores*** the use of various provisions of the Criminal Code to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of the limitation of freedom, deprivation of freedom or imprisonment, all involving compulsory labour. ***The Committee therefore strongly urges the Government to take immediate and effective measures to ensure that, both in law and practice, no one who, in a peaceful manner, expresses political views or opposes the established political, social or economic system, can be sentenced to sanctions under which compulsory labour is imposed. The Committee once again requests the Government to amend or repeal sections 339, 342, 367, 368 and 369(2) of the Criminal Code by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect.***

Article 1(d). Sanctions involving compulsory labour as a punishment for participation in strikes. The Committee notes the indication by the Government that participation of citizens in peaceful strikes or peaceful protests does not entail criminal liability, particularly under sections 310(1) (the intentional blocking of transport communications) and 342 (the organization of group actions violating public order and resulting in disturbances of operation of transport or work of enterprises, institutions or organizations) of the Criminal Code.

In this regard, the Committee noted in its 2021 comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) new detailed allegations of retaliation, including arrests and detentions of trade unionists and workers who participated in trade union led strike actions. The Committee further notes that in its conclusions of 2022, the Conference Committee on the Application of Standards noted with great concern and deeply regretted the numerous allegations of extreme violence to repress peaceful protests and strikes, and the detention, imprisonment and torture of workers while in custody following the presidential election in August 2020, as well as allegations regarding the lack of investigation in relation to these incidents.

The Committee notes with ***deep concern*** the information relating to the punishment of workers with sanctions involving compulsory labour for their peaceful participation in strikes. The Committee recalls that *Article 1(d)* of the Convention prohibits the use of any form of compulsory labour as a punishment for having participated in a strike. The Committee further reiterates that sections 310(1) and 342 of the Criminal Code are worded in broad terms and allow for sanctions involving compulsory labour, against the peaceful participation in assemblies, meetings, street marches, demonstrations and picketing.

The Committee urges the Government to take the necessary measures to ensure, both in law and practice, that no sanctions involving compulsory labour can be imposed for the mere fact of peacefully

participating in strikes. It requests the Government to amend or repeal sections 310(1) and 342 of the Criminal Code by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence. The Committee also requests the Government to provide information on the application of sections 310(1) and 342 of the Criminal Code in practice, including relevant court decisions, indicating in particular the penalties applied.

Botswana

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

Previous comment

Article 1(a) of the Convention. Sanctions involving the obligation to work as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee noted that a number of provisions of the Penal Code are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views. It referred to offences under sections 47 and 48 (publications prohibited by the President as being "contrary to the public interest"), 51(1)(c), (d) and (2) (seditious offences; raising discontent or disaffection amongst the inhabitants being considered a seditious intention), 66–68 (managing or being a member of an unlawful society, particularly of a society declared unlawful as being "dangerous to peace and order") of the Penal Code which may be punished with sentences of imprisonment, involving compulsory prison labour, pursuant to section 92 of the Prisons Act, Cap 21:03 of 1979.

The Committee notes the Government's information in its report that consultations are under way to review the Constitution, to inform the Government of the legislation requiring alignment with the Constitution, including the Penal Code. ***The Committee expresses the firm hope that the necessary measures will be taken to amend sections 47, 48, 51(1)(c), (d) and (2), sections 66–68, as well as sections 74 and 75 of the Penal Code, so as to ensure that no penalties involving compulsory labour may be imposed for the expression of political views or views opposed to the established system, for example by restricting the scope of application of these provisions to situations of violence, incitement to violence, or engagement in preparatory acts aimed at violence. The Committee requests the Government to provide information on the developments made in this regard.***

Article 1(c). Punishment for breaches of labour discipline. The Committee previously noted that section 43(1)(a) of the Trade Disputes Act (No. 15 of 2004) provides for penalties of imprisonment involving compulsory prison labour for any wilful breach of a contract of employment by an employee who is acting either alone or in combination with others, if such breach affects the operation of essential services. The Committee recalled that *Article 1(c)* of the Convention prohibits the use of compulsory labour as a punishment for breaches of labour discipline. Penalties involving compulsory labour could only be held compatible with the Convention when applied to breaches of labour discipline that impair or are liable to endanger the operation of essential services, in the strict sense of the term. The Committee observed in that regard that the list of essential services specified in the Trade Disputes Act was not limited to essential services in the strict sense of the term.

The Committee notes the Government's information that the list of essential services under the Trade Disputes Act has been amended by the Trade Disputes (Amendment) Act, 2019. It notes with ***interest*** the fact that the list of essential services has been reduced and that services such as diamond sorting, cutting and selling services; teaching services; government broadcasting services; the Bank of Botswana; vaccine laboratory services; railways operation and maintenance services; immigration and customs services; transportation and distribution services of petroleum products; sewerage services; and public veterinary services have been removed from the list. ***The Committee refers in this regard to its comments under the Freedom of Association and Protection of the Rights to Organise Convention, 1948 (No. 87).***

Brazil

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

The Committee notes the observations of the International Trade Union Confederation (ITUC), the Single Confederation of Workers (CUT) and the National Association of Labour Court Judges (ANAMATRA), received on 1 September, 2 September and 6 December 2021, respectively. It also notes the Government's response to the observations of the CUT.

Articles 1(1), 2(1) and 25 of the Convention. "Slave labour". (a) Legal framework. (i) *Section 149 of the Criminal Code criminalizing "reducing a person to a condition akin to slavery".* The Committee previously referred to the debates concerning the issue of the criminalization of "reducing a person to a condition akin to slavery" as envisaged in section 149 of the Criminal Code and the legislative proposals to amend the section. The Committee notes the Government's reference in its report to the adoption of Decree No. 1293 of 2017 which sets out a specific definition of the elements that constitute the crime of reducing a person to a condition akin to slavery within the meaning of section 149 of the Labour Code, namely forced labour, a harassing working day, degrading working conditions, the restriction of the freedom of movement of the worker by reason of having contracted a debt, and/or retention at the workplace. In this regard, the Government emphasizes that it emerges from these definitions and the case law that "the work of a person reduced to a condition akin to slavery within the meaning of section 149 of the Criminal Code (hereinafter "slave labour") is not limited to the use of physical violence (when used to restrict individual freedom), but may also be characterized by various other forms, where there is abuse of human dignity.

The Committee notes that in their observations both the CUT and the ANAMATRA express concern at the fact that the legal specification of the notion of reducing a person to a condition akin to slavery continues to be controversial at the political level and in certain jurisdictions. The ANAMATRA expresses concern at several draft legislative texts submitted with a view to the amendment of section 149 of the Criminal Code and at the restrictive interpretation of this section by certain first instance courts, and in particular of the concept of degrading working conditions, despite the fact that higher courts have already given a precise and objective interpretation of the concept in consolidated case law.

The Committee requests the Government to continue taking the necessary measures to ensure that the discussions relating to the scope of application of section 149 of the Criminal Code do not constitute in practice an obstacle to the action taken by the competent authorities for the identification and protection of the victims of any situation involving forced labour and to punish the perpetrators of this crime in an appropriate and swift manner.

(ii) *Article 243 of the Constitution.* The Committee recalls that, following the Constitutional amendment adopted in 2014, article 243 of the Constitution allows the expropriation of rural or urban property in which the use of slave labour has been identified and the consignment of this property to agrarian reform and social housing programme. The Committee notes the absence of information on the application of this article in practice. It observes in this regard that, although the Ministry of Labour and the Higher Labour Court consider that this article may be directly applied, the Attorney-General of the Union is of the view that article 243 of the Constitution is of "limited efficacy" and that its application depends on the adoption of legislation to give effect to it (case No. 000450-57.2017.5.23.0041, labour tribunal of Colider (TRT, 23rd Region) and case No. TST-RR-450-57.2017.5.23.0041). The Committee reiterates that the possibility of the expropriation of the property of persons found guilty of having imposed "slave labour" is an important tool in combating this phenomenon as it contributes to undermining the economic interests of those who exploit slave labour and to combating the sense of impunity. ***The Committee requests the Government to provide information on the measures adopted to ensure that effect is given in practice to this provision of the Constitution. It requests the Government to provide information on any decisions concerning expropriation that have been handed***

down and the measures adopted to ensure their execution. In particular, the Committee requests the Government to indicate whether the funds resulting from expropriated property directly benefit workers who have been victims of forced labour, thereby preventing the risk of them becoming victims once again.

(iii) *Register of employers.* With reference to the questions arising concerning the publication of the list of legal or physical persons or entities found to be responsible for using slave labour (known as the "dirty list"), the Committee observes that, following appeals to find it unconstitutional, the Supreme Federal Tribunal confirmed, on 14 September 2020, the constitutionality of the establishment, publication and updating of the list. The Government reiterates in this regard that persons and entities are included in the list only upon finalization of the administrative procedure relating to the violation reported, and that during this procedure employers benefit from constitutional procedural guarantees, such as the right to defence and respect for the principle of an adversarial procedure. Inclusion in the list is for a period of two years. The Committee notes, from the information available on the website of the Ministry of Labour and Social Welfare that, following its suspension in 2015 and 2016, the Ministry is continuing to update and publish the list every six months. The list published in October 2022 added 95 employers (66 persons and 29 legal persons or entities), bringing the total number of persons and entities on the list to 179.

The Committee emphasizes once again that this list is an information tool both for society as a whole and for enterprises, which are therefore in a better position to control and monitor their supply chains. The Committee notes in this regard the Government's reference to the National Pact Institute for the Eradication of Slave Labour (InPacto), of which the member enterprises are committed to determining the commercial restrictions that are to be established with legal entities on the list. ***The Committee therefore firmly encourages the Government to continue taking all the necessary measures to ensure that the list of physical and legal persons and entities recognized as being responsible for the use of labour in conditions akin to slavery is published regularly.***

(b) *Systematic and coordinated action.* Recalling that, because of its complexity, action to combat forced labour requires coordinated and concerted action by the public authorities and the involvement of civil society as a whole, the Committee previously requested the Government to provide information on the coordination activities of the National Commission for the Eradication of Slave Labour (CONATRAE) and on the implementation of the action envisaged in the second National Plan for the Eradication of Slave Labour (Plan II). The Government indicates that, despite the measures adopted since 1995, slave labour still persists in Brazil, and for this reason action to combat slave labour has been adopted at the level of a State policy. The Government reiterates that it is essential not only to raise the awareness of the Government authorities, but also the whole of the population of this issue. The Committee notes that CONATRAE, which has the mandate to support the implementation of Plan II and to propose measures for this purpose, approved the final evaluation report of the implementation of the Plan (a report drawn up with the assistance of the Office). According to the evaluation, nearly 70 per cent of the objectives set out in Plan II were achieved or partially achieved. In this context, CONATRAE has published a series of recommendations on the six pillars included in Plan II (including enforcement, prevention and the reintegration of victims). The Committee also takes due note of the creation of the SmartLab platform, through a joint initiative by the Ministry of Labour and the Office. This platform offers an observatory for the eradication of slave labour and trafficking in persons, which brings together all the information contained in the databases of the various authorities with competence for combating slave labour with a view to facilitating the effective management of public policies and programmes in this field.

The Committee requests the Government to continue taking the necessary measures to achieve all the objectives of the National Plan for the Eradication of Slave Labour (Plan II) and for the implementation of the recommendations made in this respect by CONATRAE and to provide information on this subject, with an indication of the results achieved and the difficulties encountered.

It also requests the Government to indicate the action taken by CONATRAE to ensure systematic, coherent and coordinated action to combat slave labour throughout the territory.

(c) *Action by the labour inspection services and labour courts*. The Committee previously requested the Government to strengthen the capacities of the labour inspection services and the labour courts. It emphasized on the key role played by the Special Mobile Inspection Group (GEFM) in the identification of cases of slave labour and by the labour investigation authorities which, through their action, have succeeded in imposing substantial fines for violations of labour legislation and compensation for the moral damage suffered by workers and the collective moral prejudice suffered by society. The Committee notes the Government's indication that, since the beginning of its operations in May 1995, the GEFM has released over 59,000 workers from situations of slave labour and that over 126 million reais have been received by workers for the wages and compensation due. It adds that the experience acquired by the GEFM and its operating methods have been presented in the context of the training provided to the Regional Labour and Employment Superintendences (SRTEs), which are now developing their own programmes to combat slavery-like labour. There are now more operations of the SRTEs than of the GEFM, which acts in a subsidiary capacity in cases where operations are urgent, complex or dangerous (54 and 46 per cent respectively in 2020). The Government adds that, following the adoption of Decree No. 1.293/2017, the labour inspection services adopted Directive No. 139 in 2018 reaffirming that inspections for the eradication of slave labour are coordinated by the Labour Inspection Secretariat (SIT) and establishing a non-exhaustive and non-exclusive list of indicators to be verified in the cases of suspected slave labour. The Government indicates that 272 operations were carried out in 2019, resulting in the release of 1,054 workers, of whom 655 were in the agricultural sector. In 2020, despite the social distancing measures related to the COVID-19 pandemic, operations continued with 276 being undertaken, resulting in the release of 936 workers. According to the assessment report of 2020 on the work of the labour inspection services in Brazil for the eradication of labour akin to slavery, 78 per cent of the workers released were in the rural sector (particularly in coffee cultivation and the production of vegetable carbon) and there was an increase in the urban sector.

The Committee notes the reference by the ITUC to the dismantling of mechanisms established in the past to combat slave labour. It refers in particular to the drastic reduction in the annual budget allocated by the federal government to action to combat slave labour; the lack of resources of labour prosecutors, who are not able to carry out investigations in the cases referred to them; and the shortage of federal labour inspectors. According to the ITUC, only 20 per cent of reported cases are investigated and the existence of slave labour is only proved in 45 per cent of those cases. ANAMATRA comes to the same conclusion and emphasizes that budget cuts have been stepped up since 2019 and that in 2021 the budget announced for inspections and action to combat slave labour was the lowest for the past seven years, with a cut of 47.3 per cent.

The Committee recalls that, as a result of their inter-institutional composition (labour inspectors and representatives of the labour prosecution services, the federal police and the federal prosecution services), the GEFM and now the SRTEs are a vital link in action to combat slave labour, not only through the release of workers from situations of forced labour, but also through the gathering of evidence which can be used to initiate civil and criminal prosecutions against the perpetrators of these practices. ***While noting certain of the measures adopted, the Committee urges the Government to intensify its efforts to take the necessary measures to provide the labour inspection services, and particularly the GEFM, with sufficient human and financial resources to be able to carry out their mission throughout the territory, and to reinforce the means of action of the labour investigation and prosecution authorities. The Committee requests the Government to provide information on the measures adopted in this respect and specify the number of operations undertaken, the number of workers released, the sectors concerned, the fines imposed and the compensation granted.***

(d) *Imposition of criminal penalties.* The Committee previously noted the absence of specific information on the rulings handed down by the federal judiciary under section 149 of the Criminal Code.

The Committee notes the Government's indication in its report that 951 judicial proceedings were initiated between 2001 and 2020 under section 149 of the Criminal Code. It also provides information relating to seven judicial decisions in which persons were convicted (one in 2010, one in 2017, three in 2019 and two in 2020). The Committee notes the indication by the CUT in its observations that, although many judicial proceedings are opened under section 149 of the Criminal Code, there are few convictions. The Committee also observes that, in its 2021 report on the situation of human rights in Brazil, the Inter-American Commission on Human Rights (IACHR) notes with concern that, even though the large number of workers liberated since 1995 and the sums paid to them point to fairly positive outcomes, related criminal convictions are still rare and there have been relatively few convictions for "exploiting labour under conditions akin to slavery". The Committee recalls in this regard that, in accordance with *Article 25* of the Convention, really adequate penalties shall be strictly enforced on persons for the exaction of forced labour. ***The Committee therefore requests the Government to provide specific information on the number of cases related to section 149 of the Criminal Code that are currently before the federal prosecution services, the number of judicial proceedings initiated, the number of convictions and the nature of the penalties imposed. The Committee also requests the Government to indicate the measures taken to reinforce coordination and collaboration between the labour inspection, the police, the labour prosecution services and the federal prosecution services for the gathering of evidence with a view to initiating judicial proceedings and prosecuting those suspected of the exaction of forced labour and, if they are found guilty, imposing criminal penalties on them that are commensurate with the crime committed.***

(e) *Protection and rehabilitation of victims.* The Committee notes that the Government is continuing to provide emergency and medium-term assistance to victims of forced labour with a view to facilitating their reintegration (particularly through the provision of unemployment benefit corresponding to three minimum wages). ***The Committee requests the Government to continue taking measures to protect and assist victims of forced labour and facilitate their social rehabilitation and to provide detailed information on the specific measures adopted in this respect. The Committee also requests the Government to provide information on the action taken to raise the awareness of workers of the risks that arise in the regions most affected by forced labour.***

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

Cambodia

Forced Labour Convention, 1930 (No. 29) (ratification: 1969)

Previous comment

Articles 1(1), 2(1) and 25 of the Convention. 1. *Trafficking in persons*. The Committee previously requested the Government to continue to take measures to ensure that thorough investigations and prosecutions are carried out in cases of trafficking in persons, and to provide information on the measures taken to protect and assist victims of trafficking.

The Government indicates in its report that, according to the 2019 report of the National Committee for Counter Trafficking (NCCT), the results of the fight against trafficking in persons for forced labour and sexual exploitation demonstrate progress, as compared to 2018. In 2019, legal proceedings were initiated in 103 cases, convictions were handed down in 63 cases and 140 perpetrators were sentenced to imprisonment. The Government also states that the NCCT conducted 163 training courses, benefiting 6,894 participants to strengthen the capacity of focal points and law enforcement officers relating to issues such as trafficking in persons, safe migration and victim identification. In addition, 37 workshops on law enforcement in the area of trafficking in persons were held, with 3,160 participants.

The Government also refers to the adoption of the National Strategic Plan for Counter Trafficking in Persons 2019-23, on the basis of which it commits to protect identified victims of trafficking and to expand access to information and social services, including psychological support, legal assistance, financial support, and employment and documentation assistance, in order to encourage long-term integration. The Committee notes in this regard that the National Strategic Plan 2019–23 includes four strategic objectives, namely: (i) strengthening cooperation; (ii) promoting prevention; (iii) promoting law enforcement; and (iv) strengthening the protection of victims.

The Committee further notes that, in its concluding observations of 18 May 2022, the United Nations Human Rights Committee expressed concerns about reports of a lack of adequate protection for victims of trafficking, despite the significant efforts made to eliminate trafficking in persons (CCPR/C/KHM/CO/3, paragraph 30). ***The Committee encourages the Government to pursue its efforts to prevent and combat trafficking in persons and requests it to continue to provide information on the number of cases of trafficking identified and investigated, as well as on the number of convictions handed down and the penalties imposed on perpetrators. The Committee hopes that the Government will take the necessary measures to implement the four strategic objectives of the National Strategic Plan for Counter Trafficking in Persons 2019–23 and requests it to provide information on the assessment of the measures taken, the results achieved and the difficulties encountered. Lastly, the Committee requests the Government to pursue its efforts to provide assistance and protection to victims of trafficking, and to indicate the measures taken in this regard and the number of victims who have benefited from such measures***.

2. *Vulnerability of migrant workers to conditions of forced labour*. The Committee previously requested the Government to continue its efforts to prevent migrant workers from Cambodia from becoming victims of abusive practices and conditions that could amount to forced labour in receiving countries, including Thailand and Malaysia. The Committee notes the Government's indication that it signed two Memorandums of Understanding (MoU) and a bilateral Agreement on labour and trafficking with Thailand, the principal destination country. It also signed the MoU on the Recruitment and Employment of Workers and the MoU on the Recruitment and Employment of Domestic Workers with Malaysia. It further states that the two Governments are working closely together to finalize the Standard Operating Procedures for sending Cambodian migrant workers to Malaysia. The Government reports that in 2020, there were 1,220,197 Cambodian migrant workers in Thailand and that through the action of the Committee for providing legalization to Cambodian workers who are staying and working in Thailand, approximately 1.07 million migrant workers were provided with proper legal documents to reside and work in Thailand by June 2018.

The Government also indicates that in 2020, 12 inspections were carried out in private recruitment agencies – two private agencies were given warnings and one had its operating licence revoked. The Ministry of Labour and Vocational Training received 21 complaints from migrant workers, of which 14 were resolved, four were cancelled and three are ongoing. The Government also refers to the adoption of the Cambodian Labour Migration Policy 2019–23, which has three main goals, namely strengthening migration governance, protecting and promoting the rights of migrant workers, and linking labour migration to socioeconomic development. In this framework, the Government will coordinate and collaborate with Myanmar, Laos and Thailand to develop a standard employment contract for migrant workers in the fishery sector. In addition, the Government has appointed a number of labour attachés to destination countries such as Thailand, Malaysia, South Korea and Japan in order to promote and protect the rights of migrant workers, including by ensuring that they are protected from labour exploitation and discrimination, and by assisting them regarding employment contracts, working conditions, legal documents and social protection.

The Committee also notes from the Rapid Assessment on Social and Health Impact of COVID-19 Among Returning Migrant Workers in Cambodia of the United Nations COVID-19 Response and Recovery Fund that 14.7 per cent of survey respondents reported some form of employment abuse,

including withholding of wages, false promises, excessive working hours, withholding of identity/travel documents and psychological abuse.

While taking due note of the measures taken by the Government to enhance the protection of Cambodian migrant workers and prevent them from being caught in abusive practices and conditions of work that could amount to forced labour, the Committee requests it to step up its efforts in this regard. The Committee requests the Government to continue to provide information on further measures taken in this regard and in particular with a view to: (i) providing training and information to candidates for migration on regular and safe recruitment channels, labour rights and the risks of forced labour associated with migration; (ii) ensuring that migrant workers have access to complaints mechanisms to assert their rights when they face exploitation and abusive practices and that they receive protection and compensation; and (iii) increasing the number of inspections undertaken to monitor the recruitment and placement agencies. Please provide information on the number of migrant workers assisted and abuses identified.

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)

Previous comments: observation and direct request

Article 1(a) of the Convention. Sanctions involving the obligation to work as a punishment for the expression of political views or views ideologically opposed to the established political, social or economic system. Noting that penalties of imprisonment involve an obligation to work pursuant to section 68 of the Act on Prisons of 2011, the Committee previously referred to a number of provisions of the national legislation providing for penalties of imprisonment for certain activities, which fall within the scope of *Article 1(a)* of the Convention and thus have a bearing on the application of the Convention. The Committee expressed its deep concern over the detentions of, and prosecutions against members of the opposition party, NGO representatives, trade union members and human rights defenders, and deplored the imprisonment (involving compulsory prison labour) of members of the Cambodia National Rescue Party (CNRP), which was dissolved in November 2017.

The Committee requested the Government to review the following provisions of the national legislation and urged the Government to ensure that no penalties involving compulsory labour may be imposed pursuant to these provisions on persons who express political views or views opposed to the established political, economic or social system:

(i) section 42 of the Act on Political Parties, as amended in 2017, according to which various offences related to the administration or management of a political party which has been dissolved, or whose activities have been suspended by a court, or whose registration has been refused, are punishable with sanctions of imprisonment for a term of up to one year;

(ii) sections 494 and 495 on incitement to disturb public security by speech, writing, picture or any audio-visual communication in public or to the public, section 522 on publication of commentaries intended to unlawfully coerce judicial authorities, and section 523 on discrediting judicial decisions of the Penal Code of 2009;

(iii) sections 305-309 on public defamation and insult; and

(iv) provisions of the Penal Code relating to insult and criticism of the King (section 445 and section 437 bis introduced in 2018).

The Government indicates in its report that the freedom of citizens to express themselves peacefully and to engage in politics is guaranteed by national legislation. It states that any citizen can freely support any political party without being discriminated against, except in the case of the commission of criminal offences. It points out that the Government has no power to dissolve a political party; only the Supreme Court has the authority to do so. In addition, it states that section 42 of the Act

on Political Parties as amended provides a precise definition regarding the penalty for any person who "continues to administer or lead a political party that the Supreme Court has finally dissolved". It adds that criticizing the letters and judgements of the Court with the aim of causing disorder or jeopardising the institutions of the Cambodian Government and disrespecting the Court's judgement is deemed a criminal offence according to the Penal Code. Regarding the Cybercrime Act, the Government indicates that the adoption of the draft Act has been postponed due to the COVID-19 pandemic and that discussions on the draft Act are still ongoing.

The Committee notes that, in its concluding observations of 2022, the United Nations Human Rights Committee expressed concern over: (i) the persistent violation of the freedom of expression, including through reports of the closure of media outlets, the blockage of websites critical of the Government, and the use of criminal legal actions against journalists and human rights defenders; (ii) the arrest and detention of protesters; (iii) the dissolution of the CNRP in 2017 and of three other opposition parties in 2021; (iv) threats, harassment, arbitrary arrests and mass trials targeting members of the opposition; and (v) the persistent lack of an independent and impartial judiciary (CCPR/C/KHM/CO/3, paragraphs 20, 32, 34, 36 and 38). In this regard, the Committee also notes the information from a news release of 29 June 2022 from a number of United Nations experts according to which at least 43 defendants, who were linked to the CNRP, were convicted in June 2022 at a mass trial on charges of plotting and incitement, and sentenced to penalties of up to eight years' imprisonment. The United Nations experts highlighted the existence of judicial flaws in these political trials and the lack of solid evidence supporting the charges.

The Committee further notes the concern of the United Nations human rights experts, in a statement of 24 August 2021, regarding sections 494 and 495 of the Penal Code, which are being used systematically to target and convict human rights defenders. In addition, the Special Rapporteur on the situation of human rights in Cambodia underlined, in a press release of 6 October 2021, intolerance towards online criticism of the COVID-19 response, which had led to several arrests and prosecutions, 25 human rights defenders imprisoned, nine opposition political figures sentenced to up to 25 years, and 50 reported instances of harassment of journalists in 2021.

The Committee ***deeply deplores*** the continued use of the provisions of the national legislation to arrest, prosecute and convict human rights defenders, opposition members and journalists who express political views or views ideologically opposed to the established political, social or economic system, leading to the imposition of penalties of imprisonment which involve compulsory prison labour. The Committee recalls that although some convictions have been made in accordance with the law of the State, they may fall within the scope of the Convention and thus be contrary to the Convention in so far as they allow persons holding or expressing political or ideological views to be compelled to work. The Committee emphasizes that limitations may be imposed by law on the rights and freedoms of expression which must be accepted as normal safeguards against their abuse (for example the purpose of securing due recognition and respect for the rights and freedoms of others or meeting the just requirements of public order). However, these limitations must meet strict standards of scrutiny regarding their justification and scope and the offences established in the legislation for that purpose should not be defined in such wide or general terms or applied by the judiciary in a way that they will lead to the imposition of penalties involving compulsory labour as a punishment for the expression of political or ideological views (see 2012 General Survey on the fundamental Conventions, paragraphs 302–304).

The Committee strongly urges the Government to take immediate and effective measures to ensure that persons who express political views or views opposed to the established system, including that of opposition members, human rights defenders and journalists, are not punished with penal sanctions involving compulsory labour, including compulsory prison labour. It urges the Government to review the wording of section 42 of the Act on Political Parties as well as sections 445, 437 bis, 494, 495, 522 and 523 of the Penal Code, by clearly restricting the scope of these provisions to situations

connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour, so as to ensure that their application in practice does not lead to the violation of the Convention. The Committee also requests the Government to provide training to law enforcement bodies in this regard. The Committee once again requests the Government to provide a copy of the amendments to the Penal Code in 2018 which criminalize criticism of the King, as well as information on the practical application of the above-mentioned provisions of the Penal Code and the Act on Political Parties, including the facts that gave rise to the convictions and the nature of the sanctions imposed. The Committee expresses the firm hope that the Cybercrime Bill will be drafted and applied taking into account the principles evoked above and the obligations of the Government under the Convention.

Article 1(d) of the Convention. Punishment for participation in strikes. The Committee previously noted from the observations of the International Trade Union Confederation (ITUC) that Van Narong and Pel Voeun, two members of the Cambodian Labour Confederation (CLC), were sentenced to imprisonment for misdemeanour and malicious defamation under sections 311 and 312 of the Penal Code after taking part in a protest following the dismissal of union members and after filing a complaint against two workers for violence. It also noted the arrest and prosecution of four leaders of the Workers Friendship Union Federation for having organized an illegal strike, blocking traffic and disturbing public order. The Committee requested the Government to indicate the legislative provisions and factual arguments on the basis of which the above-mentioned individuals were arrested and prosecuted.

The Government indicates that Van Narong and Pel Voeun were convicted for misdemeanour and malicious defamation, and that their allegations of violence were fictitious. Regarding the arrest and prosecution of the four leaders of the Workers Friendship Union Federation, the Government indicates that it will update the Committee on any developments in this case. The Government also points out that individuals are prosecuted for the offences they have committed and that trade unionists do not enjoy any privilege of impunity.

The Committee notes that in a press release of 5 January 2022, a number of United Nations human rights experts referred to the arrest and detention of at least 29 casino union leaders and activists during a strike, out of which nine have so far been charged with incitement to commit a felony, under sections 494 and 495 of the Penal Code, and remain in custody while the others have been released. The Committee further notes the concerns expressed by United Nations experts in a press release of 16 February 2022 regarding the measures taken under COVID-19 used to impose restrictions on lawful and peaceful strikers. The United Nations experts deemed these restrictions to be unjustified, unnecessary and disproportionate.

The Committee urges the Government to take the necessary measures to ensure that the application of legislative provisions will not lead in practice to the imposition of sanctions involving compulsory labour (such as compulsory prison labour) on workers for the mere fact of organizing or peacefully participating in strikes, in conformity with Article 1(d) of the Convention. The Committee requests the Government to provide information on the progress made in this regard. The Committee also requests the Government to provide a copy of the court decision regarding the four leaders of the above-mentioned Workers Friendship Union Federation.

In light of the situation described above, the Committee is bound to observe that there has been no progress with regard to protecting freedom of expression in Cambodia and that opposition political activists, journalists, human rights defenders and social media activists who express dissent or criticism of the authorities are convicted and imprisoned under various provisions of the national legislation, including the Penal Code. The Committee deeply deplores the continued use of the provisions of the national legislation, including the Penal Code, to prosecute and convict persons who express their political views or views ideologically opposed to the established political, social or economic system, leading to penalties of imprisonment involving compulsory prison labour. The

Committee considers that this case meets the criteria set out in paragraph 114 of its General Report to be asked to come before the Conference.

[The Government is asked to supply full particulars to the Conference at its 111th Session and to reply in full to the present comments in 2023.]

Chad

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(2)(a) of the Convention. Work in the general interest imposed in the context of compulsory military service. In its previous comments, the Committee noted that, according to section 14 of Ordinance No. 001/PCE/CEDNACVG/91 of 1991 reorganizing the armed forces within the framework of compulsory military service, conscripts who are fit for service are classified into two categories, one of which remains at the disposal of the military authorities for two years and may be called upon to perform work in the general interest by order of the Government. The Committee recalled that, to be excluded from the scope of application of the Convention and not considered to be forced labour, any work or service exacted under compulsory military service laws must be of a purely military character. The Committee therefore requested the Government to take measures to amend the provisions of section 14 and noted the Government's indication that those provisions would be brought into conformity with the Convention.

The Government once again indicates in its report that it will take the necessary measures to bring the provisions of section 14 of Ordinance No. 001/PCE/CEDNACVG/91 into conformity with the Convention. The Committee notes that section 14 of the Ordinance of 1991 reorganizing the armed forces was reproduced in section 32 of Act No. 012/PR/2006 of 10 March 2006 reorganizing the armed and security forces.

The Committee notes with ***regret*** the continued absence of measures bringing the provisions of the legislation on compulsory military service into conformity with the Convention, despite the Committee's requests in this regard over several years. ***The Committee urges the Government to amend the legislation setting out the rules applicable to compulsory military service in order to limit the work or services exacted as part of compulsory military service to that of a purely military character, without including work in the general interest, in conformity with Article 2(2)(a) of the Convention. The Committee also requests the Government to provide a copy of the legislation currently in force governing compulsory military service. Lastly, it requests the Government to provide information on the number of persons performing work in the general interest by order of the Government and on the nature of such work.***

Article 2(2)(c). Work imposed by an administrative authority. For many years, the Committee has been drawing the Government's attention to the need to amend or repeal section 2 of Act No. 14 of 13 November 1959 authorizing the Government to take administrative measures for the relocation, internment or expulsion of persons whose activities constitute a danger for public order and security, under which the administrative authorities may impose work on persons subject to a prohibition of residence once they have completed their sentence. This section provides that a person with a criminal conviction involving the prohibition of residence may be used for work in the public interest for a period the duration of which is determined by order of the Prime Minister.

The Committee notes with ***regret*** that the Government reiterates in its report that it will take the necessary measures to amend or repeal section 2 of Act No. 14 of 1959, without reporting any progress in this regard. The Commission recalls that, under *Article 2(2)(c)* of the Convention, mandatory work exacted from convicts is not considered forced labour only when it is exacted as a consequence of a conviction in a court of law and subject to certain conditions. ***Consequently, the Committee strongly urges the Government to take the necessary measures to amend or repeal section 2 of Act No. 14 of 13 November 1959 so that persons subjected to a prohibition of residence who have completed their sentence are not sentenced to work in the public interest by administrative authorities. In the meantime, the Committee requests the Government to provide information on the application in practice of section 2 of Act No. 14 of 1959, particularly on the number of sentences imposed under this section.***

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

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

Costa Rica

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Protocol of 2014 to the Forced Labour Convention, 1930 (ratification: 2020)

Previous comment

The Committee welcomes the ratification by Costa Rica of the Protocol of 2014 to the Forced Labour Convention, 1930. ***It hopes that the Government will provide detailed information on its application, in accordance with the report form adopted by the Governing Body.***

The Committee notes the observations of the Confederation of Workers Rerum Novarum (CTRN), received on 31 August 2021 and the Government's reply in that respect.

Articles 1(1), 2(1) and 25 of the Convention. Forced labour in plantations. Trafficking of Nicaraguan workers with the purpose of labour exploitation. The Committee notes that, in its observations, the CTRN refers to the situation of Nicaraguan plantation workers, mostly undocumented, who are victims of trafficking in persons for the workforce in pineapple and sugar cane plantations. The CRTN states that these workers are recruited by contractors, who provide them with false identity cards and offer them working conditions that are not fulfilled in practice , as they work up to 12 hours a day, without social security or conditions of occupational safety and health. Some workers do not receive the promised salary and therefore have no money for food or for their return trip to Nicaragua. Moreover, in some cases, they do not report the situation for fear of being deported.

The Committee notes that, in its reply to the CTRN's observations, the Government does not provide specific information on the situation of Nicaraguan migrant workers. However, the Committee duly notes the various measures taken to strengthen the legal and institutional framework to combat trafficking in persons referred to in its direct request. The Committee notes in particular the establishment of contact working groups by the Public Prosecutor's Office and the judicial and administrative police in the most vulnerable areas, identified as border areas and areas of lower socioeconomic development, to follow up and address the detection of cases of trafficking in persons.

Taking into account the situation of vulnerability to trafficking in persons for the purpose of labour exploitation in which many undocumented Nicaraguan workers may find themselves, the Committee requests the Government to take the necessary measures to: (i) ensure that the labour inspectorate can conduct inspections in plantations with a large presence of Nicaraguan workers; (ii) strengthen cooperation between the police, the Public Prosecutor's Office, in particular the Prosecutor's Office specialized in the crime of trafficking in persons, and the labour inspectorate to prevent, identify and investigate possible situations of trafficking of Nicaraguan nationals for the purpose of labour exploitation on pineapple and sugar plantations; (iii) facilitate access of Nicaraguan nationals to legal mechanisms so they can assert their rights; and (iv) provide these Nicaraguan nationals with immediate and comprehensive assistance and protection, independent of their migratory status. The Committee requests the Government to provide detailed information in this respect and also refers to its comments under the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

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

Democratic Republic of the Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Previous comment

Articles 1(1), 2(1) and 25 of the Convention. Forced labour and sexual slavery in the context of the armed conflict. The Committee previously urged the Government to step up its efforts to put an end to the sexual violence committed against civilians, particularly women who are subjected to sexual exploitation, and to take immediate measures to ensure that appropriate criminal penalties are imposed on persons responsible for sexual slavery and forced labour.

The Government indicates in its report that it has duly noted the Committee's comments and that urgent measures are being adopted to put an end to these serious violations. The Government refers in particular to the introduction of a new Disarmament, Demobilization, Community Recovery and Stabilization Programme (P-DDRC-S) in 2021, and the adoption of a national strategy for this programme on 4 April 2022. The Government reports a decrease in killings of civilians and in insecurity, as well as the demobilization of combatants.

The Committee also notes the report of 4 March 2019 of the Office of the United Nations High Commissioner for Human Rights on the Democratic Republic of the Congo, in the context of the Working Group on the Universal Periodic Review, in which the United Nations Joint Human Rights Office noted that most armed groups used women and children in hostilities or as sex slaves and/or subjected them to forced marriage or forced labour. Women and children were also abducted, including for sexual purposes. Sexual violence was then used as a tactic of war, perpetrated in a systematic and particularly brutal manner (A/HRC/WG.6/33/COD/2, paragraph 45).

The Committee also notes that the United Nations Secretary-General, in his report of 29 March 2022 on conflict-related sexual violence, highlighted the fact that in 2021 the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) documented 1,016 cases of conflict-related sexual violence, perpetrated by armed groups and state actors. The Secretary-General refers to cases of sexual violence committed in the context of forced marriage or sexual slavery by the armed group *Union des patriotes pour la défense des citoyens*. He emphasizes that progress was made in combating impunity, and that in 2021 military courts convicted 118 members of the Armed Forces of the Democratic Republic of the Congo (FARDC), 28 members of the Congolese National Police and 10 members of armed groups for conflict-related sexual violence (S/2022/272, paragraphs 27–29). The Committee also notes that the United Nations Committee on Economic, Social and Cultural Rights (CESCR), in its concluding observations of 28 March 2022, expressed concern that although the country had decided to implement transitional justice mechanisms to address the serious human rights violations committed in the past, in particular sexual violence, these serious violations continue to be committed with impunity (E/C.12/COD/CO/6, paragraph 6).

The Committee is bound to express its ***concern*** at the persistent use of sexual slavery and forced labour of women in the context of armed conflict. ***While recognizing the complexity of the situation prevailing in the country and the presence of armed groups, the Committee urges the Government to intensify its efforts to put an end to the sexual slavery and forced labour of which civilians are victims in the context of armed conflict and to forestall and prevent these serious violations of the Convention. The Committee urges the Government to continue taking measures to combat impunity, by providing the competent bodies with the resources to conduct the necessary investigations, prosecute the perpetrators of these crimes and ensure that the victims of such acts are fully protected and obtain compensation. The Committee requests the Government to provide information on progress made in this respect.***

Article 25. Criminal penalties. In reply to the Committee's request concerning the adoption of adequate legislative provisions enabling effective and dissuasive criminal penalties to be imposed in practice on persons exacting forced labour, the Government indicates that the Bill putting an end to forced labour, which provides for more effective criminal penalties, is still awaiting adoption by Parliament. ***Recalling that it is crucial that the law establishes appropriate criminal penalties to punish persons responsible for all forms of forced labour, the Committee urges the Government to take effective measures in this regard in the context of the Bill putting an end to forced labour. The Committee trusts that this Bill will be adopted in the very near future, that it will establish criminal penalties which constitute an adequate deterrent and are proportional to the seriousness of the crime, and that it will be the subject of an extensive dissemination and awareness-raising campaign by the competent authorities. The Committee requests the Government to provide information on progress made in this regard and to send a copy of the Bill once it has been enacted.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2001)

Previous comments: observation and direct request

Article 1(a) of the Convention. Imprisonment entailing compulsory labour imposed as a penalty for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously urged the Government to take the necessary steps to bring into conformity with the Convention certain provisions of the legislation under which activities which may come within the scope of *Article 1(a)* of the Convention are liable to incur criminal penalties (penal servitude) entailing compulsory labour (section 8 of the Criminal Code). The provisions in question are as follows:

- Criminal Code, sections 74, 75 and 77: injurious allegations and insults; sections 136 and 137: contempt towards members of the National Assembly, the Government and custodians of authority or law enforcement officers; section 199bis and ter: dissemination of false rumours liable to alarm the population; section 209: dissemination of tracts, bulletins or leaflets of foreign origin or inspiration liable to harm national interests; section 211(3): display in public places of drawings, posters, engravings, paintings, photographs and all objects or images liable to disturb public order.
- Act No. 96-002 of 22 June 1996 establishing arrangements for the exercise of freedom of the press, sections 73–76 of which refer to the Criminal Code for the definition and punishment of press-related offences.
- Legislative Ordinance No. 25-557 of 6 November 1959 on penalties to be imposed for infringements of general measures.
- Legislative Ordinances Nos 300 and 301 of 16 December 1963 on the punishment of offences against the head of State and foreign heads of State.

The Government indicates in its report that forced labour as a penalty established by the Criminal Code does not apply to the expression of political views or views ideologically opposed to the established political, social or economic system. Forced labour as a penalty is only imposed on persons guilty of the misappropriation of public funds. The Committee notes this information and recalls that among the penalties established by the Criminal Code, penal servitude (section 8) can entail compulsory labour and that the offences specified in the above-mentioned provisions of the legislation are liable to incur the penalty of penal servitude. The Committee is therefore bound to emphasize once again that the prohibition on imposing compulsory labour in the context of *Article 1(a)* of the Convention is not restricted to forced labour but applies to all work or service exacted from persons who hold or express

political views or views ideologically opposed to the established political, social or economic system, including where this work takes the form of prison labour imposed on convicted persons.

Furthermore, the Committee notes with ***concern*** that the United Nations (UN) High Commissioner for Human Rights, in her report of 15 July 2021 on the human rights situation in the Democratic Republic of the Congo, refers to attacks and threats against journalists, human rights defenders and other civil society actors, and also the violent repression of some peaceful demonstrations and the placement of restrictions on fundamental freedoms. The High Commissioner adds that at least 433 persons were subjected to arbitrary arrest or unlawful and arbitrary detention following their exercise of their right to freedom of opinion and expression, peaceful assembly or association (A/HRC/48/47, paragraphs 3 and 10). The Committee also notes Resolution 2612 adopted by the UN Security Council on 20 December 2021, in which the Security Council welcomed the measures taken by the Government to release political prisoners and investigate any disproportionate use of force by security forces on peaceful protesters.

The Committee further notes the adoption on 14 October 2022 of the law amending Act No. 96/002 of 22 June 1996 establishing arrangements for the exercise of freedom of the press. It also notes that Bills are under consideration concerning access to information, public demonstrations, protection of human rights defenders, and non-profit associations. The Committee recalls that the activities which must be protected, under *Article 1(a)* of the Convention, from punishment entailing forced or compulsory labour include activities involving the exercise of the freedom to express political or ideological views (orally, through the press or through other communication media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views (see the 2012 General Survey on the fundamental Conventions, paragraphs 302 and 303).

The Committee once again urges the Government to amend or repeal the above-mentioned provisions of the Criminal Code, of Legislative Ordinance No. 25-557 of 6 November 1959, and of Legislative Ordinances Nos 300 and 301 of 16 December 1963, and to ensure that, in law and practice, no penalty entailing compulsory prison labour (including in the context of penal servitude) can be imposed as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee requests the Government to report on progress made in this regard.

As regards the Bills concerning access to information, public demonstrations, protection of human rights defenders, and non-profit associations, the Committee requests the Government to provide information on their current status. The Committee expresses the firm hope that the provisions of these texts will take account of the foregoing comments and the obligations entered into under the Convention. It also requests the Government to provide a copy of the law amending Act No. 96/002 of 22 June 1996 establishing arrangements for the exercise of freedom of the press.

Article 1(d). Imprisonment entailing compulsory labour imposed as a penalty for participating in strikes. The Committee previously asked the Government to take the necessary steps to amend the provisions of section 326 of the Labour Code so that imprisonment entailing compulsory labour cannot be imposed as a penalty for participating in a strike. Section 326 of the Labour Code allows the imposition of a fine and/or penal servitude of up to six months on any person in breach of section 315 of the Criminal Code, which regulates the conditions for exercising the right to stop work on a collective basis in the event of a collective labour dispute.

The Government indicates in its report that the penalties established in section 326 of the Labour Code, namely penal servitude of up to six months and a fine, are the only penalties which can be imposed in cases where a striking worker is convicted. The Committee notes with ***regret*** the absence of measures taken by the Government to amend section 326 of the Labour Code, despite the amendments made to the Labour Code in 2016 by Act No. 16/010 of 15 July 2016 amending and supplementing the Labour Code; the Government merely indicates that the possible penalties are penal servitude and a

fine. The Committee recalls that penal servitude entails compulsory labour for the convicted person (section 8 of the Criminal Code) and therefore comes within the scope of the Convention. The Committee emphasizes that, under *Article 1(d)* of the Convention, no penalty involving compulsory labour may be imposed on workers for participating peacefully in a strike. ***The Committee therefore expects the Government to take the necessary steps, and to take account of the foregoing comments and those made in relation to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to amend section 326 of the Labour Code, so that the legislation does not allow the penalty of penal servitude to be imposed on persons who have participated peacefully in a strike. The Committee requests the Government to provide information on progress made in this regard.***

Eritrea

Forced Labour Convention, 1930 (No. 29) (ratification: 2000)

Previous comment

Article 1(1) and 2(1) of the Convention. Compulsory national service. For a number of years, both the Committee and the Committee on the Application of Standards (in 2015 and 2018) have been urging the Government to review the Proclamation on National Service (No. 82 of 1995), which establishes a system of compulsory participation in national service for all citizens aged between 18 and 50 years, that goes beyond the exceptions authorized by the Convention. Compulsory national service includes active national service and service in the reserve army. Active national service, which concerns all citizens aged between 18 and 40 years, is divided into two periods: six months of active military service in the National Service Training Centre, and 12 months of active military service and development works in the military forces (section 8). According to section 5 of the Proclamation, in addition to military objectives, the national service includes "enhancing the economic development of the country". The Committee also noted that, in practice, the conscription of all citizens for an indeterminate period had been institutionalized through their participation in different programmes. The Committee noted the Government's indication that the national service was a necessary measure of self-defence in the context of the armed conflict with Ethiopia, but measures had been taken to start demobilizing conscripts. The Committee welcomed the peace agreement concluded between Ethiopia and Eritrea in 2018 and requested the Government to ensure that the work exacted from citizens within the framework of compulsory national service be limited to work of a purely military character, and that its duration responded only to the exigencies of the situation.

The Committee notes the Government's indication that a large-scale demobilization in the context of national service has taken place, especially for women and other segments of society, so that many conscripts have been demobilized and are now under the civil service with an adequate salary. Most national service conscripts are assigned to civilian functions in the civil service or other public sectors and, at present, there is no national service beyond the statutory 18 months. The Committee further notes the Government's indication that even though a peace agreement was concluded with Ethiopia, the Tigray's People's Liberation Front (TPLF) poses a threat to the sovereignty of the country, against which Eritrea is obliged to defend its territorial integrity. Therefore, conscripts might be called upon to perform military activities in explicit circumstances at times of emergency.

The Committee further observes that in its report of 6 May 2022, the United Nations Special Rapporteur on the situation of human rights in Eritrea points out in relation to the National Service Programme that: (i) while the 2018 peace agreement with Ethiopia brought hopes for reform of the national service programme, it has not led to demobilization, and no meaningful changes have ever been introduced; (ii) further to the involvement of Eritrean forces in the war in Ethiopia, the Government has justified indefinite conscription as necessary to defend the country against the TPLF; (iii) under the

national service programme thousands of citizens are subjected to a government-sponsored system of forced labour, working for very little pay, and without having any choice in their profession or work location; and (iv) draft evaders and deserters are routinely punished with detention in highly punitive conditions, and often subjected to torture and inhuman or degrading treatment (A/HRC/50/20, paragraphs 23, 31 and 22).

The Committee notes with ***deep concern*** that the above-mentioned information points to the reinstituted mobilization of citizens for indefinite periods of time, and that no reform of the Proclamation on National Service (No. 82 of 1995) has taken place with a view to limiting the nature of tasks conscripts are required to undertake under the active national service. In this respect, the Committee wishes to emphasize that in order to be excluded from the definition of forced labour, the compulsory labour required under the active national service must be limited to work of a purely military character (compulsory military service) or to tasks aimed at addressing exceptional situations, such as war or a natural disaster. In both cases, the conditions and duration of the work should strictly respond to the exigencies of the situation. The Committee reiterates that the exceptions provided for in the Convention under *Article 2(2)(a)* and *(d)* do not allow governments to use national service obligations to compel citizens to participate in development works or programmes or to undertake civil functions in the public services. This is also in violation of Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of compulsory labour "as a method of mobilizing and using labour for purposes of economic development".

The Committee recalls that in the context of the ILO Technical Advisory Mission that took place in Eritrea in July 2018, the Government indicated that the national service was critical to ensure the country's development and its very existence but was open to cooperating with the ILO to ensure the effective application of the Convention, including by moving forward with the demobilization process.

While acknowledging the current security concerns of the country, the Committee once again urges the Government to reform the national service with a view to ensuring that: (i) the work exacted from conscripts is limited to military training, or work of a purely military character or to tasks aimed at addressing exceptional situations, such as war or a natural disaster; and (ii) in practice the duration and conditions of such work respond specifically to the exigencies of the situation. The Committee also requests the Government to ensure that the assignation of persons under the national service obligation to undertake civil service functions takes place on a voluntary basis. The Committee reminds the Government that it may avail itself of ILO technical assistance in this regard.

The Committee is addressing other issues in a request addressed directly to the Government.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2000)

Previous comments: observation and direct request

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been requesting the Government to take the necessary measures to review the following legislative provisions, which could lead to the imposition of penalties of imprisonment, which involve compulsory prison labour pursuant to section 110(1) of the Transitional Penal Code, for acts through which citizens can express political views or opinions opposed to the established political system:

From Press Proclamation No. 90/1996:

- section 15(3), according to which a person who prints or reprints for an Eritrean newspaper or publication which does not have a permit, or which is prohibited from printing or reprinting shall be punishable with imprisonment from six months to one year, or a fine;
- section 15(4), pursuant to which a person who prints or disseminates a foreign newspaper or publication which has been prohibited from or not permitted entry to Eritrea shall be punishable with imprisonment from six months to one year, or a fine;
- section 15(10), according to which the editor-in-chief and the journalist who disrupts general peace by publishing inaccurate news shall be punishable to penalties ranging from simple imprisonment to a life sentence.

From Proclamation No. 73/1995: Proclamation to legally standardize and articulate religious institutions and activities:

- section 3(3), read together with section 11(2), pursuant to which the author of a religious publication that interferes directly or indirectly with government politics and creates public unrest shall be punishable by a fine or imprisonment for up to two years, or both.

The Committee notes that the Government reiterates in its report that the expression of political opinions or beliefs is not considered a crime in Eritrea and is safeguarded by section 8 of the Transitional Civil Code, and is only subject to restrictions provided by the law with regard to the rights of others and morality. The Government further indicates that section 404 of the Transitional Civil Code recognizes the right to form associations, that religious freedom is also guaranteed by the law, and that there shall be no interference with its exercise, as long as it is not utilized for political purposes and is not prejudicial to public order or morality. The Committee observes that the Government emphasizes that no citizen was arbitrarily convicted and sentenced to prison labour for expressing his or her political opinion or belief contrary to that of the Government.

In this regard, the Committee notes that in its report of June 2022 the United Nations (UN) Special Rapporteur on the situation of human rights in Eritrea refers to the systematic repression, prolonged and arbitrary detention of thousands of persons expressing dissenting opinions or being perceived as opposed to the Government (including leaders and members of religious groups, members of the political opposition, journalists, activists and draft evaders), without due process guarantees being observed (A/HRC/50/20 paragraphs 39 and 43). While the Committee notes the Government's indication that it strongly disagrees with the UN human rights reports, it observes that the concerns of the UN Special Rapporteur have also been shared by other UN entities, including the UN Human Rights Council in its resolution of June 2017 (A/HRC/35/L.13/Rev.1 paragraph 6) and the UN Human Rights Committee in its 2019 concluding observations (CCPR/C/ERI/CO/1 paragraph 39). More recently, in its Resolution of 30 June 2022, the UN Human Rights Council called on the Government to extend its efforts to protect and fulfil the rights to freedom of religion or belief, peaceful assembly, association, opinion and expression, including for members of the press (A/HRC/50/L.19 paragraph 5).

The Committee notes with ***deep concern*** the above-mentioned information which highlights the fact that persons expressing opinions and views opposed to the established political system appear to continue to be arrested and detained. The Committee once again recalls that *Article 1(a)* of the Convention protects persons who hold or express political views or views ideologically opposed to the established political, social, or economic system by prohibiting their punishment with penalties which involve compulsory labour, including sentences of imprisonment that entail compulsory labour. The Committee notes that the above-mentioned provisions of Press Proclamation No. 90/1996 and Proclamation No. 73/1995 are drafted in broad terms and their scope of application is not limited to situations of violence or incitement to violence, thereby allowing for their application to persons who peacefully express political views or views opposed to the established political system.

Therefore, the Committee once again urges the Government to take all necessary measures to review sections 15(3), (4) and (10) of Press Proclamation No. 90/1996 and section 3(3) of Proclamation No. 73/1995 to ensure that both in law and practice, no penalties involving compulsory prison labour can be imposed on persons for the peaceful expression of views ideologically opposed to the established political, social or economic system. In the meantime, the Committee requests the Government to provide information on the application in practice of the above-mentioned provisions.

Article 1(b). Compulsory national service for purposes of economic development. For a number of years, the Committee has urged the Government to reform its compulsory National Service programme, which contemplates among its objectives enhancing the economic development of the country using its human resources in a trained and organized manner (section 5 of the National Service Proclamation No. 82/1995).

The Committee notes the Government's indication that all forms of compulsory labour performed in Eritrea meet the criteria of minor communal services for the best interest of the community, including activities such as reforestation, soil and water conservation as well as reconstruction activities, and food security programmes. According to the Government, these activities are limited to what is strictly required by the exigencies of the situation in Eritrea and are indispensable for the livelihood of the people at large.

The Committee notes that the types of work indicated by the Government do not qualify as "minor services" of short duration and, rather, appear to be large-scale activities whose beneficiary is not only a single community but the whole population of a country. Therefore, imposing on citizens the obligation to perform such activities as part of their compulsory National Service constitutes a method of mobilizing labour for the purposes of economic development, which is prohibited by *Article 1(b)* of the Convention.

Referring also to its comments under the Forced Labour Convention, 1930 (No. 29), the Committee once again urges the Government to take all the necessary measures to review National Service Proclamation No. 82 and eliminate both in law and practice, the use of compulsory labour in the context of national service obligations which constitutes a method of mobilizing labour for the purposes of economic development. The Committee requests the Government to provide information on the number of persons under compulsory national service obligations who undertake works that contribute to the economic development of the country each year, and the length of such service.

Article 1(d) of the Convention. Penalties involving compulsory labour for participating in strikes. For a number of years, the Committee had been noting that pursuant to Labour Proclamation No. 118/2001, participation in unlawful strikes is considered an unfair labour practice (section 119(8)) punishable with fines, unless in certain cases the provisions of the Criminal Code provide for more severe penalties (section 144). In the case of public servants, failure to carry out the duties in a proper manner and to the prejudice of the public, or participation in a strike with the intention of disturbing public order are punishable with imprisonment not exceeding three months (sections 412 and 413 of the Transitional Penal Code, respectively). The Committee requested the Government to take measures to ensure that both in law and practice, persons organizing and participating peacefully in a strike are not punished with sentences of imprisonment, which involve compulsory prison labour.

The Committee notes the Government's indication that no civil servant has been punished under sections 412 and 413 of the Transitional Penal Code. The Government emphasises that section 413 shall only apply to persons who participate in unlawful strikes and does not affect workers who run peaceful strikes. The Government adds that it has not come across experiences of strike action and that, regardless of the legality of the strike action in question, no sanctions will be imposed on those persons who participate in strike action under sections 412 and 413 of the Transitional Penal Code.

The Committee recalls that in all cases and regardless of the legality of the strike action in question, any sanctions imposed should not be disproportionate to the seriousness of the violations

committed, and no sanctions involving compulsory labour can be imposed for the mere fact of organizing or peacefully participating in strikes.

Therefore, the Committee requests the Government to take the necessary measures to ensure that both in law and practice, no person can be sanctioned with penalties of imprisonment (involving compulsory prison labour) for participating peacefully in a strike. In the meantime, the Committee requests the Government to continue providing information on the application in practice of sections 412 and 413 of the Transitional Penal Code, including on the facts that have given rise to legal proceedings.

Eswatini

Forced Labour Convention, 1930 (No. 29) (ratification: 1978)

Previous comment

Articles 1(1), 2 and 25 of the Convention. 1. *Legislative developments.* The Committee notes the Government's indication, in its report, that the redrafting of the Employment Bill was finalized by the tripartite Labour Advisory Board, after technical comments were provided by the ILO. It notes, more particularly, that sections 19 to 21 of the Employment Bill prohibit forced labour and section 158(1)(b) of the Bill establishes the penalties in case of forced labour. The Committee notes that section 19 of the Bill, which refers to five situations in which the work or service imposed should not be considered forced labour, generally follows the exceptions under *Article 2(2)* of the Convention. It notes, however, that:

(i) section 19(d) of the Bill provides that "communal services of a kind which are to be performed by the member of a community in the direct interest of the community and not being for the purposes of financial gain" do not constitute forced labour. In this regard, the Committee wishes to draw the Government's attention to the fact that section 19(d) of the Bill goes beyond *Article 2(2)(e)* of the Convention, which excludes from its scope *minor* communal services, provided they are "performed by the members of the community in the direct interest of the said community" and "that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services" (2012 General Survey on the fundamental Conventions, paragraph 281);

(ii) section 19(e) of the Bill provides that "any work or service which forms part of the normal civic and cultural obligations of the citizens of a fully self-governing country" do not constitute forced labour. In this regard, the Committee wishes to draw the Government's attention to the fact that section 19(e) of the Bill goes beyond *Article 2(2)(b)* of the Convention as the exception of "normal civic obligations" provided for under this provision of the Convention should be understood in a very restrictive way; and

(iii) section 158(1)(b) of the Bill provides that "exacting or imposing forced labour, or causing or permitting forced labour to be exacted or imposed" is punishable by a fine or imprisonment for a period not exceeding one year or both. The Committee observes that, according to this provision, a person committing the offence of forced labour may be sentenced to a fine only. It recalls that, pursuant to *Article 25* of the Convention, the exaction of forced or compulsory labour shall be punishable as a penal offence, and when the envisaged sanction consists of a fine or a short prison sentence it cannot be considered as an effective penalty of a dissuasive nature in view of the gravity of the offence (see the 2012 General Survey, paragraph 319).

The Committee notes the Government's indication that, in August 2021, the final draft of the Employment Bill was submitted to the Minister for Labour and Social Security and forwarded to the Office of the Attorney-General. The Bill will be then forwarded to the Cabinet for approval and to the

Parliament for adoption. The Government states that it is anticipated that the legislative process will be completed without any further delay, particularly taking into account the level and extent of consultations that have taken place within the Legislative Advisory Board. ***The Committee therefore expresses the firm hope that the Government will take into account the above comments and adopt the necessary measures to ensure that the final version of the Employment Bill fully complies with the provisions of the Convention, in particular by amending:***

- ***sections 19 (d) and (e) of the Bill in order to limit the scope of the exclusions from the definition of forced labour to: (i) minor communal services, while including a requirement to consult the members of the community or their direct representatives concerning the obligation to perform such minor community services; and (ii) "normal civic obligations" to be understood in a very restrictive way; and***
- ***section 158(1)(b) of the Bill in order to establish sufficiently dissuasive penalties of imprisonment for the exaction of forced labour.***

2. *Legislation concerning compulsory public works or services.* For a number of years, the Committee has been drawing the Government's attention to Swazi Administration Order No. 6 of 1998 which provides for the duty of Swazis to obey orders requiring participation in compulsory works, such as compulsory cultivation, anti-soil erosion works and the making, maintenance and protection of roads, enforceable with severe penalties for non-compliance. It previously noted that, despite the Government's indication that this Order had been declared null and void by the High Court of Swaziland (Case No. 2823/2000), such practices persisted, being rooted in the well-established and institutionalized customary law, in particular through the customary practice of *Kuhlehla* (rendering services to the local chief or to the King, such as ploughing the fields of traditional leaders), which was still practised and enforced with punitive measures for refusal to attend. While noting the Government's explanation that this customary practice was not compulsory, the Committee observed the absence of a text regulating the nature of this work or rules determining the conditions under which such work was required or organized. It requested the Government to take steps in order to explicitly set out in the legislation the voluntary nature of participation in the customary practice of *Kuhlehla*.

The Committee notes the Government's indication that the country has a dual legal system based on written Roman-Dutch common law and unwritten traditional and customary laws, as provided for under articles 252 and 258 of the Constitution (Act No. 1 of 2005). The Government adds that the customary practice of *Kuhlehla* forms part of the unwritten traditional and customary laws which therefore makes it impossible for the Government to adopt a text regulating this practice. The Government indicates that, in order to put an end to this issue, a new section 19(e) has been incorporated into the Employment Bill, in order to exclude from the definition of "forced labour" any work which forms part of the "cultural obligations" of the citizens. The Committee refers, in this regard, to its above comments regarding section 19(e) of the Employment Bill. The Committee notes with ***concern*** that despite its previous requests to the Government to ensure the voluntary nature of participation in work carried out pursuant to customary practices, such as *Kuhlehla*, the Government envisages explicitly excluding these practices from the scope of the legislation prohibiting forced labour. The Committee draws the Government's attention to the fact that, as long as customary practices, such as *Kuhlehla*, fail to meet the criteria of the exceptions to forced labour set out in *Article 2* of the Convention for "minor communal services", "civic obligation" or "cases of emergency", they are incompatible with the Convention. ***The Committee therefore urges the Government to take the necessary steps to ensure compliance with the Convention, whether by ensuring the voluntary nature of participation in work carried out under traditional and customary laws, and more particularly under the customary practice of Kuhlehla, or by limiting the work exacted under such practices to the exceptions of the Convention. It requests the Government to provide information on any progress made in this regard. The Committee further requests the Government to provide information on the***

number of persons who have been working as a result of customary practices, including the practice of Kuhlehla, as well as on the type and duration of services carried out.

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

Ethiopia

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)

Previous comment

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for the expression of political or ideological views. For a number of years, the Committee has been referring to the following sections of the Criminal Code, under which penal sanctions involving compulsory prison labour may be imposed by virtue of section 111(1) of the Code, in circumstances covered by *Article 1(a)* of the Convention:

- sections 482(2) and 484(2): punishment of ringleaders, organizers or commanders of forbidden societies, meetings and assemblies;
- section 486(a): inciting the public through false rumours; and
- section 487(a): making, uttering, distributing or crying out seditious or threatening remarks or displaying images of a seditious or threatening nature in any public place or meeting (seditious demonstrations).

The Committee also referred to the broad definition of terrorism and the reference to "encouragement of terrorism" under section 6 of Anti-Terrorism Proclamation No. 652/2009, according to which any person who "publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement, or other inducement to them, to the commission or preparation or instigation of an act of terrorism is punishable with rigorous imprisonment from ten to 20 years". The Committee noted with deep concern reports on the broad application of the above provisions and on the detentions of, and prosecutions against, members of the opposition parties and human rights defenders. It therefore requested the Government to amend the above-mentioned provisions so as to ensure that, in accordance with *Article 1(a)* of the Convention, persons who express political views or views ideologically opposed to the established political, social or economic system, cannot be sanctioned to imprisonment involving compulsory labour on the basis of these provisions.

The Committee notes that the Government merely reiterates in its report that the peaceful expression of views or opposition to the established political, social or economic system is a constitutionally respected right and nobody is subjected to forced or compulsory labour as a result of this. The Committee notes that the Government does not provide information on the review of the above-mentioned provisions of the Criminal Code nor on their application in practice.

The Committee nevertheless observes from the Compilation Report of the Office of the United Nations (UN) High Commissioner for Human Rights, of March 2019, that in 2018, the Government of Ethiopia lifted the state of emergency decree and released a number of political detainees, bloggers and other individuals who had been detained following their participation in protests in recent years (A/HRC/WG.6/33/ETH/2, paragraph 33). The Committee also notes from the Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of April 2020, that since 2018 the Government of Ethiopia has taken significant steps to identify and reform laws that were historically used to restrict freedom of expression. In this regard, the Committee notes that Anti-Terrorism Proclamation No. 652 of 2009 was repealed and replaced by the Proclamation for the Prevention and Suppression of Terrorism Crimes No. 1178 of 2020. The Committee observes that the preamble to this Act recognizes the need to replace the Anti-Terrorism Proclamation of 2009, which had

substantive and enforcement loopholes that had a negative effect on the rights and freedoms of citizens, with a law that adequately protects the rights and freedoms of individuals. The Committee welcomes the fact that new Proclamation No. 1176 of 2020 addresses some of its previous outstanding comments, for example by removing the reference to encouragement of terrorism under section 6 of the Anti-Terrorism Proclamation No. 652/2009. Moreover, new Proclamation No. 1176 of 2020 under section 4 provides for an exception to terrorist acts, by stating that "notwithstanding the provisions of section 3(1)(e) (on terrorist acts that seriously obstruct public or social service), obstruction of public service caused by a strike and the obstruction related to the institution or profession of the strikers or exercising rights recognized by law such as demonstration, assembly and similar rights shall not be deemed to be a terrorist act". The Committee also takes due note of the adoption of Media Proclamation No. 1238/2021, which establishes that acts of defamation committed through the media shall result in civil liability and not criminal liability.

The Committee requests the Government to continue to take the necessary measures to ensure that both in law and practice no penalties involving compulsory labour can be imposed on persons for the peaceful expression of political views or views opposed to the established political, social or economic system. It therefore requests the Government to review the provisions of sections 482(2), 484(2), 486(a) and 487(a) of the Criminal Code to ensure compliance with the Convention by limiting the application of criminal sanctions to situations connected with the use of violence or incitement to violence. It requests the Government to provide information on any progress made in this regard, as well as information on the application in practice of the above-mentioned sections of the Criminal Code, including copies of any court decisions, specifying the penalties imposed and describing the facts that led to the convictions.

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

Fiji

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1974)

Previous comments: observation and direct request

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion that was held by the Committee on the Application of Standards at the 110th Session of the International Labour Conference (June 2022) regarding the application of the Convention. The Committee observes that the Conference Committee noted with deep concern the repeated failure of the Government to bring its national legislative framework into conformity with the Convention so as to allow trade unionists to exercise their rights to free assembly and free speech without the threat of penal sanctions involving compulsory labour. The Conference Committee also deplored the systematic use of penal sanctions against workers and their representatives. The Conference Committee urged the Government to take effective, urgent and time-bound measures to amend the corresponding legislation.

The Committee notes the observations of the International Organisation of Employers (IOE) received on 25 August 2022, the observations of the International Trade Union Confederation (ITUC) received on 1 September 2022, as well as those received from the Fiji Trades Union Congress (FTUC) received on 2 September 2022, all of which reiterate their concerns expressed during the discussion of the case by the Conference Committee.

The Committee notes with ***deep regret*** that the Government merely indicates in its report that it maintains its stance as reflected in its report submitted to the Committee in 2021and that there have

been no amendments to the Public Order Act and the Crimes Act. ***Therefore, in line with the Conference Committee's conclusions, the Committee urges the Government to take immediate and effective measures to amend the legislation referred to in its previous comments which read as follows***:

Article 1(a) of the Convention. Sanctions of imprisonment involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted the following legislative provisions, which are worded in such general terms that may lead to the imposition of penalties involving compulsory labour (by virtue of section 43(1) of the Prisons and Corrections Act 2006) for activities that could be linked to the expression of political views or views ideologically opposed to the established political, social and economic order:

Public Order Act (POA), as amended by the Public Order (Amendment) Decree 2012:

– Section 14, which provides for sanctions of imprisonment for up to three years for using threatening, abusive or insulting words in any public place or any meeting, or behaves with the intent to provoke a breach of peace or whereby such a breach is likely to be occasioned; and having been given by any police officer any directions to disperse or to prevent obstruction or for the purpose of keeping order in any public place, without lawful excuse, contravenes or fails to obey such direction.

– Section 17, which provides for sanctions of imprisonment for up to 10 years for spreading any report or making any statement, which is likely to undermine or sabotage, or attempt to undermine or sabotage the economy or financial integrity of Fiji.

Crimes Act 1999:

– Section 67(b), (c) and (d), which provides for sanctions of imprisonment for seven years for uttering any seditious words; printing, publishing, selling, offering for sale, distributing or reproducing any seditious publication; or importing any seditious publication.

The Committee notes that the Government indicates in its report that the Public Order Act is in place to ensure the safety of people from acts of terrorism, racial riots, religious and ethnic vilification, hate speech and economic sabotage.

The Committee recalls that the Convention protects persons who express political views or views ideologically opposed to the established political, social or economic system by establishing that in the context of these activities they cannot be punished by sanctions involving an obligation to work. The range of activities protected include the right to freedom of expression exercised orally or through the press and other communications media, as well as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views. While recognizing that certain limitations may be imposed on these rights as normal safeguards for public order to protect society, such limitations must be strictly within the framework of the law. In this respect, the protection provided for by the Convention does not extend to persons who use violence, incite to violence or engage in preparatory acts aimed at violence.

In this respect, the Committee observes that in its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it noted the allegations of the International Trade Union Confederation (ITUC) and the Fiji Trades Union Congress (FTUC) denouncing that permissions for union meetings and public gatherings continued to be arbitrarily refused, and that section 8 of the POA (as amended by the 2012 Decree) has been increasingly used to interfere in, prevent and frustrate trade union meetings and assemblies. The Committee notes in this regard that according to section 10 of the POA, a person who takes part in a meeting or procession for which no permit has been issued or in contravention of the provisions of the POA is liable to a prison sentence (involving compulsory prison labour).

Therefore, the Committee requests the Government to review sections 10, 14 and 17 of the POA and section 67(b), (c) and (d) of the Crimes Act to ensure that, both in law and practice, persons who express political views or views opposed to the established political, social and economic system, including through the exercise of their right to freedom of expression or assembly, are not liable to penal sanctions involving compulsory labour, including compulsory prison labour. The Committee further requests the Government to provide information on the manner in which the above-mentioned legislative provisions are applied in practice, including information on the number of prosecutions initiated, convictions handed down, specific penalties applied and on the facts that led to the convictions, as well as information on the grounds on which permits for public meetings and gatherings are granted or refused.

Article 1(d) of the Convention. Penal sanctions involving compulsory labour for having participated in strikes. The Committee previously noted that, according to section 191 BQ (1) of the Employment Relations (Amendment) Act 2015, breaking an employment contract for the provision of essential service and industry, knowing or having reasonable cause to believe that such breaking, either alone or in combination with others, will deprive the public wholly or to a great extent of such service or industry or substantially diminish its enjoyment, constitutes an offence. According to section 256(a) of the Employment Relations Promulgation 2007, such an offence is punishable with imprisonment for up to two years (involving compulsory labour by virtue of section 43(1) of the Prisons and Corrections Act 2006). In its report, the Government indicates that it has taken note of the Committee's comment in this regard.

The Committee recalls that *Article 1(d)* of the Convention sets forth the principle that no sanctions involving compulsory labour, including compulsory prison labour, may be imposed on persons for the mere fact of peacefully participating in a strike. The Committee has indicated that when sanctions involving compulsory labour may exist for impairing or endangering the operation of essential services, this should be limited to situations where there is an effective danger, not mere inconvenience (2007 General Survey on the eradication of forced labour, paragraph 175).

Referring to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in relation to the need to review the list of essential services and the limitations on the right to strike in essential services, the Committee requests the Government to take the necessary measures to ensure that, both in law and in practice, no persons may be subject to sanctions involving compulsory labour for peacefully participating in strikes. In this regard, the Committee requests the Government provide information on the application in practice of section 191 BQ (1) of the Employment Relations (Amendment) Act 2015, including copies of any relevant court decision, indicating the grounds for prosecution and the penalties imposed, in order to enable the Committee to assess its scope of application.

Ghana

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

Previous comment

Article 1(c). Disciplinary measures applicable to seafarers. The Committee previously requested the Government to take measures to review the following provisions of the Merchant Shipping Act, 2003 (ACT 645), which provide for disciplinary offences punishable with penal sanctions involving compulsory prison labour (by virtue of section 42(1) of the Prison Service Act,1972):

- Section 168(1)(b): the seafarer or apprentice who wilfully disobeys any lawful command is liable to imprisonment for a term not exceeding one month.
- Section 168(1)(e): the seafarer or apprentice who conspires with any member of a crew to disobey any lawful command, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage is liable to a fine or imprisonment for a term not exceeding six months or to both.
- Section 169(1): the seafarer or the apprentice who deserts ship is liable to imprisonment for a term not exceeding two months.
- Section 169(2): the seafarer or apprentice who neglects or refuses without reasonable cause to join the ship, proceed to sea on the ship, is absent without leave at any time within the period of 24 hours immediately before the ship sails or at any time from the ship or duty without sufficient reason is liable to a term of imprisonment not exceeding two months.

The Committee notes that the Government indicates in its report that the above-mentioned provisions have not been enforced in the country against any seafarer for breach of labour discipline. The Government adds that provisions have been made in the 2023 workplan of the Ghana Maritime Authority to review the Ghana Shipping Act. The Committee recalls in this regard that *Article 1(c)* of the Convention prohibits the imposition of sanctions involving compulsory labour in respect of breaches of

labour discipline. Sanctions involving an obligation to perform work may be imposed only in cases where the safety of the ship or the life or health of the persons on board is endangered. ***The Committee once again requests the Government to take the necessary measures to review, without delay, sections 168(1)(b) and (e), and 169(1) and (2) of the Merchant Shipping Act so as to ensure that the law is in conformity with the Convention and the indicated practice.***

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

Guatemala

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1959)

Previous comment

Article 1(c) and (d) of the Convention. Criminal penalties involving compulsory labour imposed for breaches of labour discipline or for participating in strikes. For many years the Committee has been asking the Government to amend the following sections of the Criminal Code, which establish prison sentences involving compulsory labour (in accordance with section 47 of the Criminal Code and section 17 of the Prisons Act) and can be imposed as a means of labour discipline or for participation in a strike:

- section 390(2), which provides that any person committing an act intended to paralyse or disrupt an enterprise that contributes to the economic development of the country shall be liable to imprisonment of one to five years;
- section 419, which provides that any public servant or employee who fails or refuses to carry out, or delays carrying out, any duty pertaining to his/her position or office, shall be liable to imprisonment of one to three years; and
- section 430, which provides that public servants, public employees and other employees or members of the staff of service enterprises who collectively abandon their posts, work or service, shall be liable to imprisonment of six months to two years.

The Committee notes the Government's indication in its report that the participation of prisoners in prison labour is voluntary. However, the Committee recalls that both the Criminal Code and the Prisons Act provide for compulsory work for all prisoners, referring to such work as an obligation and a duty.

The Committee notes that, in the context of the 2013 road map adopted as follow-up to the complaint examined by the Governing Body regarding the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Legislation and Labour Policy Subcommittee of the National Tripartite Committee on Labour Relations and Freedom of Association discussed on several occasions the amendment of the above-mentioned provisions of the Criminal Code with a view to taking the comments of the present Committee into account. It notes that, in the context of the discussion in relation to the follow-up on the implementation of the road map during the 346th Session of Governing Body of the ILO, the Government indicated that in October 2022 the President of the Republic submitted to the Congress of the Republic a legislative initiative containing the texts reviewing sections 390(2) and 430 of the Criminal Code that were approved on a tripartite basis in March 2018 and September 2022.

The Committee refers to its comments on Convention No. 87, and expects that the Bill amending sections 390(2) and 430 of the Criminal Code will be adopted without delay so as to limit the scope of these provisions to prevent the imposition of criminal penalties involving compulsory labour on persons who participate in a strike or for a breach of labour discipline. The Committee requests the Government to continue providing information on progress made in this respect. The Committee also once again requests the Government to take steps to amend section 419 of the Criminal Code.

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

Iraq

Forced Labour Convention, 1930 (No. 29) (ratification: 1962)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. In its earlier comments, the Committee noted the adoption of Anti-Trafficking Law No. 28 of 2012, which contains a detailed definition of the constitutive elements of the crime of trafficking in persons, criminalizes trafficking in persons for sexual exploitation and forced labour, and establishes prison sentences of up to 15 years. The Committee noted that, according to the 2015 concluding observation of the United Nations (UN) Human Rights Committee, trafficking in persons and forced labour remain significant problems in Iraq. The Human Rights Committee recommended that the Government ensure that all cases of human trafficking and forced labour are thoroughly investigated; that perpetrators are brought to justice; and that victims receive full reparation and means of protection, including access to adequately resourced shelters. It should also adopt the measures necessary to guarantee that victims, in particular of trafficking for the purpose of sexual exploitation, are not punished for activities carried out as a result of having been subjected to trafficking.

The Committee notes the Government's indication in its report that pursuant to section 6 of the Labour Code of 2015, forced labour in all its forms, including trafficking in persons and slavery, is prohibited. The Government also refers to the Anti-Trafficking Law No. 28 of 2012, under which sexual exploitation and forced labour are punishable with imprisonment of up to 15 years. The Committee notes the absence of information in the Government's report on the measures taken to combat trafficking in persons and protect victims of trafficking. The Committee notes, moreover, that according to several reports of the United Nations, including the UN Human Rights Council, in June 2016 (A/HRC/32/CRP.2, paragraphs 54–126), there is a significant level of trafficking of Yazidi women and girls for both sexual and labour exploitation in the country. The Committee also observes that in its Resolution No. 2388 of 2017, the Security Council reiterates its condemnation of all acts of trafficking, particularly the sale or trade in persons undertaken by the Islamic State of Iraq and the Levant (ISIL, also known as Da'esh), including of Yazidis and other persons belonging to religious and ethnic minorities (S/RES/2388, paragraph 10). ***While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee once again urges the Government to take the necessary measures to prevent, suppress and combat trafficking in persons. In this regard, the Committee once again requests the Government to provide information on the application in practice of Anti-Trafficking Law No. 28 of 2012, indicating the number of investigations and prosecutions carried out, and the specific penalties applied. Finally, the Committee requests the Government to provide information on the measures taken to protect victims of trafficking.***

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

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

Kenya

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. Penal Code and the Public Order Act. For many years, the Committee has been referring to certain provisions of the Penal Code and the Public Order Act, under which sentences of imprisonment may be imposed as a punishment for participating in certain meetings and gatherings or the publication, distribution or importation of certain kinds of publications. These sentences involve compulsory labour under Rule 86 of the Prison Rules. The Committee has been referring, in particular, to section 5 of the Public Order Act (Cap. 56), under which the police is entitled to control and direct the conduct of public gatherings and has extensive powers to stop or

prevent the holding of public gatherings, meetings and processions (section 5(8)–(10)), contraventions being punishable with imprisonment (section 5(11) and (17)), which involves compulsory labour. The Committee has been also referring to section 53 of the Penal Code, under which printing, publishing, distributing, offering for sale, etc. of any prohibited publication is punishable with imprisonment; under section 52 of the Penal Code any publication can be declared a prohibited publication if it is necessary in the interests of public order, public morality or public health. The Committee requested the Government to bring into conformity the above-mentioned provisions in order to limit their application to only acts of violence.

The Committee notes with ***regret*** an absence of information on this point in the Government's report. The Committee notes that sections 52 and 53 of the Penal Code and section 5(8), (10), (11) and (17) of the Public Order Act referred to above are not limited to acts of violence or incitement to violence and their application may lead to the imposition of penalties involving compulsory labour as a punishment for various types of non-violent actions relating to the expression of views through certain kinds of publications and participation in public gatherings.

The Committee once again recalls that *Article 1(a)* of the Convention prohibits the use of any form of forced or compulsory labour, including compulsory prison labour, as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. Referring to paragraph 303 of its General Survey of 2012 on the fundamental Conventions, the Committee points out that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite violence or engage in preparatory acts aimed at violence. However, sanctions involving compulsory labour fall within the scope of the Convention if they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system, whether the prohibition is imposed by law or by an administrative decision. Such views may be expressed orally or through the press or other communications media or through the exercise of the right of association (including the establishment of political parties or societies) or participation in meetings and demonstrations. ***The Committee therefore urges the Government to take the necessary measures to bring the provisions referred to above into conformity with the Convention (for example by limiting their scope to acts of violence or incitement to violence or by replacing sanctions involving compulsory labour with other kinds of sanctions, such as fines); and to report on the progress made in this regard. Pending the adoption of such amendments, the Committee requests the Government to provide information on the application in practice of sections 52 and 53 of the Penal Code and sections section 5(8), (10), (11) and (17) of the Public Order Act.***

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

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

Kuwait

Forced Labour Convention, 1930 (No. 29) (ratification: 1968)

Previous comment

Articles 1(1) and 2(1) of the Convention. Protection of migrant workers against forced labour. 1. *Migrant domestic workers.* The Committee previously took note of Act No. 68/2015 on Employment of Domestic Workers, which establishes the specific obligations of employers with respect to recruitment, wages, hours of work, rest time and leave of domestic workers, as well as a complaints mechanism, and requested the Government to ensure its application. The Committee notes the Government's indication in its report of the adoption of Ministerial Decision 22/2022 on the Executive Regulations of Act No. 68 of 2015, which further regulates the recruitment, working conditions, transfer of employment and repatriation of migrant domestic workers.

(a) Retention of passports. The Committee welcomes the enactment of section 23(7) of Ministerial Decision 22/2022, which prohibits employers from keeping in their possession any papers or personal identification documents belonging to the domestic worker, except with the worker´s consent. The

Committee recalls that, in the past, it took note of cases of confiscation of passports of domestic workers by their employers. The Committee is of the view that given the intrinsic situation of vulnerability and dependence in which migrant domestic workers may find themselves, it cannot be excluded that domestic workers' consent to give the employer custody of their identification documents could be obtained under pressure or threat. The Committee recalls that the retention of passports is an element which increases the risk of domestic workers not being able to leave their employment when they are victims of practices that could amount to forced labour. ***Therefore, the Committee requests the Government to ensure that the provisions of section 23(7) of Ministerial Decision 22/2022 are implemented in practice by guaranteeing that under no circumstances can employers retain identification documents without the domestic workers' freely given consent, and that such workers are informed of and can readily access complaints mechanisms to report situations of illegal passport retention by the employer. To this extent, the Committee requests the Government to provide statistics on the number of complaints lodged by migrant domestic workers in this regard and the corresponding penalties imposed on employers.***

(b) Transfer of employment and absconding workers. The Committee notes that section 38 of Ministerial Decision 22/2022 provides that, for reasons of public interest, the Public Authority for Manpower (PAM) can issue an order to transfer the domestic worker from an employer to another if: the employer dies; the domestic worker requests to be transferred to the employer's husband or wife in the event of separation; the employer definitively leaves the country; the female domestic worker marries a husband in the country; the female domestic worker requests to be transferred to her husband's residence; the employer fails to meet the eligibility conditions or a final judgment sentences him/her to prison; and an act, statement or gesture of sexual connotation is proven to be committed by the employer or those living with him/her against the domestic worker. The Committee further notes that the Government indicates that the transfer should be made with the approval of the competent authority within the Ministry of Interior, which shall certify that the worker agrees to the transfer. However, the Committee notes with ***concern*** that section 38 of Ministerial Decision 22/2022 provides for restrictive and limited grounds for the PAM to issue an order of transfer of employment without the employer's consent. Hence, section 38 does not cover other situations of abusive working practices as grounds for a transfer of employment without the employers' consent, such as non-payment of wages, non-respect of established working hours or rest periods, or situations of physical or psychological violence without sexual connotation. The Committee also observes that, pursuant to section 16 of Act No. 68/2015, the domestic worker may not be able to voluntarily terminate the contract before its end (through notice of its termination two months in advance).

The Committee further notes that in its 2021 concluding observations, the United Nations Committee on Economic, Social and Cultural Rights expressed its concern at the continued reports of exploitation and abuse of migrant domestic workers by employers, and referred to the continued existence of the crime of "absconding" (unjustified discontinuation of work), which makes migrant workers vulnerable to abuse and forced labour (E/C.12/KWT/CO/3 paragraphs 20 and 22). In this respect, the Committee notes that section 51 of Act 68/2015 provides that, in the event a domestic worker absconds from her/his service post, the Ministry of Interior will take action to deport the worker to her/his country. It further notes that, according to section 35 of Ministerial Decision 22/2022, an employer is prevented from filing an absconding report against a domestic worker after the latter files a complaint to the competent department, provided that the domestic worker is registered among the residents of the migrant workers' accommodation centre. According to section 36 of this Ministerial Decision, the domestic worker's residence permit can be extended until the complaint is resolved, and he or she receives all due entitlements. Furthermore, pursuant to Ministerial Decree 27/2021, the employer of a worker who is absent without an excuse shall inform the PAM after seven days have passed from the date of the worker's absence. The notice submitted to the PAM must be displayed in a visible place at the workplace in order for the worker to be made aware of the notice, and the employer

who submits the notice of the worker's unexcused absence is prohibited from allowing the worker to resume their work until an investigation into the incident is concluded (sections 49 and 50). The Committee notes the Government's indication that, in 2021, 994 complaints related to abandonment of work were under consideration by the courts.

The Committee observes that Act No. 68/2015 does not foresee the termination of the employment relation by the domestic worker before the expiry of the initial employment contract (the maximum duration of the contract not being provided for in the Act) without approval of the employer. Furthermore, as indicated above, Ministerial Decision 22/2022 provides for the possibility of the domestic worker to transfer employment without the employer's consent only in a few very specific cases. The Committee is of the view that these two circumstances increase the dependence of migrant domestic workers and their vulnerability to situations of abuse that could amount to forced labour. It recalls that the effect of statutory provisions preventing termination of employment of large duration by means of notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with the Convention. ***Therefore, the Committee requests the Government to take the necessary measures to enable migrant domestic workers to transfer their employment at certain intervals and after having given reasonable notice during the duration of the contract. It also requests the Government to continue taking measures to ensure that, both in law and practice, migrant domestic workers can access the necessary mechanisms to defend themselves against complaints of absconding in situations when their rights have not been respected, and to indicate how many absconding cases have been brought by employers under section 51 of Act No. 68/2015 and how they have been decided. It also requests the Government to provide information on the number of domestic workers who have left their employment and been repatriated to their country of origin.***

(c) *Law enforcement.* In response to the Committee's request for information on the application of Act No. 68/2015, the Government indicates that, since 2019, the PAM is the entity responsible for domestic workers. The PAM has the responsibility to sensitize society with respect to the rights and obligations derived from the employment of a domestic worker, and to raise awareness among domestic workers about their rights using information brochures in multiple languages. It also undertakes periodic inspections of recruitment agencies and offices of domestic workers and follows up on complaints to ensure effective compliance with Act No. 68/2015. The Government adds that, since 2020, employers who want to hire a foreign domestic worker must use the standardized labour contracts that have been approved by the competent authority.

The Government emphasizes that the PAM seeks to resolve complaints in an amicable manner. If complaints cannot be resolved amicably, the PAM forwards them to the competent court. In cases of infringement or violation of the rights of domestic workers confirmed by the PAM, the employer will be prevented from obtaining entry visas for a period of six months. The complaint shall be later referred to the competent court for the imposition of further sanctions corresponding to the degree and type of the infringement. In 2021, a total of 1,487 complaints were filed by domestic workers against an employer (1,150 of which were resolved amicably) and three were filed against a recruitment office or agency.

The Committee requests the Government to continue taking the necessary measures to ensure that migrant domestic workers enjoy their rights provided for in the legislation, and to facilitate their access to mechanisms to defend themselves against situations of exploitation and abuse that could amount to forced labour, as well as reprisals. It also requests the Government to take the necessary measures to ensure that migrant domestic workers who are victims of forced labour receive the necessary psychological, social, medical and legal assistance. Lastly, it requests the Government to provide information on: (1) the type of sanctions imposed by the PAM (in addition to the suspension of granting of entry visas to the employers for six months) and national courts on employers and/or recruitment agencies who infringe the labour rights of migrant domestic workers; and

(2) investigations and prosecutions undertaken in relation to situations of forced labour of migrant domestic workers.

2. *Migrant workers in private enterprises.* The Committee notes that, according to section 48 of Act No. 6/2010 concerning labour in the private sector, the worker shall have the right to terminate his or her work contract without notification if the employer does not abide by the terms of the contract or the provisions of the law; the worker was assaulted by either the employer or his deputy; continuing work would endanger his or her safety and health; the employer or his deputy committed an act of cheating or fraud with regard to work conditions; the employer has accused the worker of committing a punishable act and the final verdict acquitted the worker, or the employer or his deputy has committed an act that violates public morals against the worker.

The Committee further notes that, pursuant to section 1 of Administrative Decision No. 712/2017 on the transfer of employment for workers in small and medium-sized enterprises (SMEs), a transfer is permitted only within the SMEs sector, after three years of continuous employment and with the approval of the employer. It also notes that, pursuant to section 2 of Administrative Decision No. 842/2015, private sector workers who work on government-contracted projects are permitted to transfer only to another government-contracted project implemented by the same sponsor and only after the end of the contract. Transfer without permission of the employer is permitted only after three years from the issuance of the work permit. If the worker wishes to transfer prior to the end of this period without the consent of the original employer, he or she shall file a complaint with the PAM (section 6 of Administrative Decision No. 842/2015).

The Committee requests the Government to indicate whether migrant workers in private enterprises who have the right to terminate employment under the circumstances established in Act No. 6/2010 can also transfer employment without the permission of the employer and without being asked to leave the country. It also requests the Government to provide information on the number of complaints before the Public Authority of Manpower submitted by migrant private sector workers working for government-contracted projects, who wish to transfer employment without the consent of the original employer and before the end of the labour contract, as well as the outcome of such complaints. It requests the Government to indicate whether this procedure of transfer also applies with respect to migrant workers in small and medium enterprises.

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

Previous comment

Article 1(a) of the Convention. Penalties involving compulsory labour as a punishment for expressing political views. For many years, the Committee has been referring to Legislative Decree No.65 of 1979, which establishes a system of prior authorization for holding public meetings and gatherings (which may be refused without giving reasons, under section 6 of the Decree) and, in the event of violations, provides for a penalty of imprisonment which involves compulsory prison labour. According to section 63 of the Penal Code, compulsory labour is imposed on persons convicted to at least six months of imprisonment. The Committee noted that the Government had prepared a Bill on Public Meetings and Assemblies, which, under sections 10 and 15 read together, provide for sanctions of imprisonment of up to three years for holding meetings or demonstrations that damage the reputation of the State or call for breach of the public order. In reply to the Committee's request to review the provisions of that Bill, the Government indicates that it will not be adopted before being discussed and examined by members of the specialized committees at the Parliament, so as to bring it into conformity with the provisions of the Convention.

The Committee recalls that *Article 1(a)* of the Convention protects persons who express political views or views ideologically opposed to the established political, economic or social system by establishing that, in the context of these activities, they cannot be punished by sanctions involving an obligation to work. In this respect, the Committee wishes to emphasize the importance of the right to assembly as it is often through the exercise of this right that views opposing the established political order can be expressed. In ratifying this Convention, States have undertaken to guarantee persons who manifest their opposing views in a peaceful manner the protection afforded by the Convention.

Noting the absence of any further development in this respect, the Committee urges the Government to take the necessary measures to ensure that the national legislation regarding public meetings and assemblies is in conformity with the Convention and that no person holding or joining a peaceful public meeting or demonstration can be punished with sanctions involving compulsory labour. Pending the adoption of new legislation on public meetings and assemblies, the Committee requests the Government to provide information on the application in practice of Legislative Decree No. 65 of 1979 in relation to persons who hold or join public meetings or gatherings not authorized by the respective authority, including the legal proceedings initiated (indicating the facts and specific legal provisions that led to those proceedings), sentences handed down and penalties imposed.

Article 1(c) and (d). Disciplinary measures applicable to seafarers. Over a number of years, the Committee has been requesting the Government to review or amend sections 11, 12 and 13 of Legislative Decree No. 31 of 1980 under which breaches of labour discipline, including unauthorized absence, repeated disobedience and failure to return to the vessel, may be punished by imprisonment involving compulsory labour. The Committee notes the Government's indication that continuous consultations with the competent bodies have been undertaken on the application of the provisions of Decree No. 31 of 1980, to ensure that the penalty of imprisonment as a disciplinary measure is only applied with respect to extremely dangerous situations which threaten the ship and the lives and health of persons on board.

While noting the consultations undertaken to ensure that in practice no sanctions involving compulsory labour are imposed for breaches of labour discipline, the Committee requests the Government to take the necessary measures without delay to review Decree No. 31 of 1980 so that, both in law and practice, penalties involving compulsory labour are strictly limited to acts endangering the vessel or the life or health of persons on board.

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

Lebanon

Forced Labour Convention, 1930 (No. 29) (ratification: 1977)

Previous comment

The Committee notes with ***deep concern*** that the Government's report, due since 2018, has not been received. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2018.

Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant domestic workers to conditions of forced labour. For a number of years, the Committee has been expressing concern about the situation of migrant domestic workers who are excluded from the protection of the Labour Law and have a legal status tied to a particular employer under the *kafala* (sponsorship) system, which places workers at risk of exploitation and makes it difficult for them to leave abusive employers. The Committee urged the

Government to ensure that the Bill regulating the working conditions of migrant domestic workers be adopted in the very near future and to fully protect them from abusive practices and working conditions that amount to forced labour.

The Committee notes, from the observations made by the ITUC, that there are over 250,000 migrant domestic workers working in private households in Lebanon. The ITUC points out that, while the Government has formed a national steering committee on domestic work and discussed various draft policies covering migrant domestic workers, none was passed into law. Furthermore, the exclusion of domestic workers from labour legislation and social protection exacerbates the power imbalance between employer and employee created by the *kafala* system and their vulnerability to abuse, exploitation and forced labour. In that regard, the ITUC indicates that migrant domestic workers continue to report routine confiscation of their passports, long working hours, refusal by their employers to allow sufficient time off, forcible confinement to the workplace, poor living conditions, delayed or non-payment of wages, and verbal, physical and sexual abuse.

The Committee notes that a revised Standard Unified Contract (SUC) for the employment of domestic workers was adopted by the Ministry of Labour on 8 September 2020, which included new protections for domestic workers, such as the possibility to terminate their contract without the consent of their employer and other guarantees afforded to other workers, such as a 48-hour work week, a weekly rest day, overtime pay, sick pay, annual leave and the national minimum wage, with some permissible deductions for housing and food. It notes, however, that following a complaint made by the Syndicate of Owners of Recruitment Agencies before the administrative court, on 14 October 2020, the Shura Council (Council of State) decided to suspend the implementation of the SUC on the ground that it represented "severe damage" to the agencies 'interests.

In this regard, the Committee notes that, in their concluding observations, several United Nations treaty bodies expressed persistent concern about: (1) the suspension of the implementation of the revised SUC for migrant domestic workers; (2) the delay in the adoption of legislation to protect migrant domestic workers, who are mainly women from Africa and Asia; and (3) the situation of migrant domestic workers under the *kafala* system who are vulnerable to abusive working conditions, in particular delayed payment or even non-payment of wages, long working hours, denial of time off, withholding of their identity documents, forced confinement, bonded labour-type situations, and verbal, physical and sexual abuse, treatment that has intensified during the COVID-19 pandemic (CEDAW/C/LBN/CO/6, 1 March 2022, paragraph 49; CERD/C/LBN/CO/23-24, 1 September 2021, paragraph 24; and CCPR/C/LBN/CO/3, 9 May 2018, paragraph 39). In this regard, the Committee notes that, as recently highlighted by the ILO, the economic crisis faced by Lebanon combined with COVID-19 has exacerbated the socioeconomic precarity of women migrant domestic workers and their potential to be coerced into forced labour, in particular with regard to excessive working hours, unpaid wages, and being pushed into having an irregular legal status (ILO, Women Migrant Domestic Workers in Lebanon: A Gender Perspective, 2021, page 4).

While acknowledging the challenging circumstances currently faced by Lebanon, the Committee notes with ***deep concern*** that migrant domestic workers are still lacking adequate legal protection and continue to be subjected to abusive employer practices which might cause their employment to be transformed into situations that can amount to forced labour. ***The Committee therefore urges the Government to take the necessary measures, without delay, in order to provide migrant domestic workers with adequate legal protection, including by ensuring the effective implementation of the revised Standard Unified Contract and the adoption of the Bill regulating the working conditions of domestic workers, and to provide a copy of the legislation, once adopted. It requests the Government to provide information on any progress made in this regard, as well as on any legislative changes adopted or envisaged to review the kafala (sponsorship) system. The Committee also urges the Government to take the necessary measures to ensure that, in practice, migrant domestic workers who are victims of abusive practices and working conditions that amount to forced labour are provided with***

adequate protection and assistance as well as remedies. The Committee requests the Government to provide detailed information in this regard.

Article 25. Penal sanctions for the exaction of forced labour. The Committee previously noted several alleged obstacles faced by migrant domestic workers with regard to their access to justice, and urged the Government to take measures to ensure that employers who engage migrant domestic workers in situations amounting to forced labour are subject to really adequate and strictly enforced penalties. The Committee observed, in this regard, that section 569 of the Penal Code establishes penal sanctions against any individual who deprives another of their personal freedom, and that according to the information provided by the Government this section should apply to the exaction of forced labour.

The Committee notes that, in its observations, the ITUC points out the lack of accessible complaints mechanisms, lengthy judicial procedures and restrictive visa policies which dissuade many migrant domestic workers from filing or pursuing complaints against their employers. Even when migrant domestic workers file complaints, the police and judicial authorities regularly fail to treat abuses against domestic workers as crimes, and workers are often returned by the police to the employer that they sought to lodge a complaint against, or find themselves detained for not having legal residency status or because the employer has filed a counter-complaint against them for stealing. In the ITUC's view, a major obstacle to migrant domestic workers' access to justice is the limitations placed on their ability to remain in Lebanon after they have left their employer. As soon as a legal complaint is in process, the employer can terminate his or her sponsorship obligation rendering the migrant domestic worker an illegal resident.

The Committee also notes that, in their concluding observations, several United Nations treaty bodies expressed persistent concern about: (i) the fact that many migrant domestic workers are unaware of the remedies available to them in the event of a violation of their rights; (ii) the existence of barriers faced by migrant domestic workers when seeking to report abuses and the risk of imprisonment or deportation faced by migrant domestic workers who sue their employers, given the restrictive visa system; and (iii) the fact that perpetrators of violations go unpunished (CEDAW/C/LBN/CO/6, 1 March 2022, paragraph 15; CERD/C/LBN/CO/23-24, 1 September 2021, paragraph 26; and CCPR/C/LBN/CO/3, 9 May 2018, paragraph 39).

In this regard, the Committee recalls that, pursuant to Article 25 of the Convention, the exaction of forced or compulsory labour shall be punishable as a penal offence, and when the envisaged sanction consists of a fine or a short prison sentence it cannot be considered as an effective penalty of a dissuasive nature in view of the gravity of the offence (see 2012 General Survey on the fundamental Conventions, paragraph 319). ***Emphasizing that it is crucial that appropriate criminal penalties are imposed on perpetrators so that recourse to forced labour practices does not go unpunished, the Committee urges the Government to take the necessary measures to ensure that: (i) migrant domestic workers have access to justice in the event of a violation of their rights and are protected against any measures of retaliation or deportation; and (ii) sufficiently dissuasive penalties are applied to employers who engage migrant domestic workers in situations amounting to forced labour. The Committee requests the Government to provide information on the measures taken to strengthen the capacity of law enforcement bodies in this area, as well as on the number of cases of forced labour of migrant domestic workers investigated and prosecuted, the number of convictions handed down and the penalties imposed.***

In light of the situation described above, the Committee notes with deep concern the repeated failure of the Government to respond to the Committee's comments since 2018. The Committee must also express its deep concern that migrant domestic workers are not granted adequate legal protection and continue to be subjected to abusive employer practices, including delayed or non-payment of wages, withholding of their identity documents, denial of time off, forced confinement and verbal, physical and sexual abuse which might cause their employment to be transformed into forced

labour situations. Lastly, the Committee observes the existence of barriers faced by migrant domestic workers when seeking to report abuses and the fact that the perpetrators of violations go unpunished. The Committee considers that this case meets the criteria set out in paragraph 114 of its General Report to be asked to come before the Conference.

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

[The Government is asked to supply full particulars to the Conference at its 111th Session and to reply in full to the present comments in 2023.]

Liberia

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Previous comment: direct request

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee requested the Government to indicate whether section 52(1)(b) of the Penal Law on sedition, which could punish certain forms of criticism of the Government with imprisonment (which may involve an obligation to work pursuant to section 34.14(1) of the Criminal Procedure Law), was still in force. The Committee notes the Penal Law of 1978, transmitted by the Government, which contains new provisions criminalizing sedition as well as criminal libel against the President with penalties of imprisonment (sections 11.11 and 11.12). The Committee notes with ***satisfaction*** that sections 11.11 and 11.12 have been repealed by the amendment to the Penal Law published on 26 February 2019, known as the Kamara Abdullah Kamara Act of Press Freedom.

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

Libya

Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1(1), 2(1) and 25 of the Convention. Situations of forced labour arising from the armed conflict. Trafficking of migrant workers. The Committee previously noted the various reports from several United Nations (UN) bodies concerning the grave crisis faced by the country. It noted in particular the report on the investigation by the Office of the UN High Commissioner for Human Rights on Libya of 15 February 2016, which indicated that migrants have been arbitrarily detained or deprived of their liberty, frequently in inhumane conditions, and subjected to financial exploitation and forced labour. In this regard, the UN High Commissioner for Human Rights recommended that the Government address urgently the situation of migrants and take effective action to combat human trafficking (A/HRC/31/47, paragraphs 61 and 83(j)). The Committee also noted the UN Security Council Resolution 2240 of October 2015, which condemned all acts of migrant smuggling and human trafficking into, through and from the Libyan territory and off the coast of Libya, which undermined further the process of stabilization of Libya and endangered the lives of thousands of people (S/RES/2240 (2015)).

The Committee notes the Government's indication in its report that the legal framework that ensures the prosecution of perpetrators of trafficking in persons, includes the Penal Code and the Criminal Procedure Act. In addition, a Bill on combating trafficking in persons is being drafted. The Government also refers to the future establishment of an Anti-Trafficking Committee that will be in charge of drafting a national action plan to combat trafficking.

The Committee observes that according to the Report of the United Nations Support Mission in Libya (UNSMIL), Libya is a destination and transit country for migrants. Many suffer human rights violations and abuses in the course of their journeys. After interception by armed men believed to be from the Libyan Coast

Guard, migrants are taken to detention centres or private houses and farms where they are subjected to arbitrary detention, sexual exploitation and forced labour. They are forced to work in farms, as well as in construction and as domestic workers, road-paving workers and rubbish collectors (Detained and Dehumanised: Report on Human Rights Abuses against Migrants in Libya, 13 September 2016, UN Support Mission in Libya Office of the UN High Commissioner for Human Rights, pages 1 and 18). Moreover, the Committee notes that in its resolution 2388 of 2017, the UN Security Council expressed concern that the situation in Libya is exacerbated by the smuggling of migrants and human trafficking into, through and from the Libyan territory, which could provide support to other organized crime and terrorist networks in Libya (S/RES/2388). The Committee must express its ***deep concern*** at the situation of migrant workers in Libya who are subjected to forced labour practices, including trafficking in persons. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take the necessary measures to prevent, suppress and combat trafficking in persons. The Committee requests the Government to take the necessary measures to ensure that migrant workers who are subjected to forced labour are fully protected from abusive practices. The Committee also recalls the importance of imposing appropriate criminal penalties on perpetrators so that recourse to trafficking or forced labour does not go unpunished. In this regard, the Committee requests the Government to take the necessary measures to ensure that perpetrators are prosecuted and that sufficiently effective and dissuasive criminal penalties are imposed in practice. Lastly, the Committee hopes that the Bill on combating trafficking in persons will be adopted soon and that the Government will provide a copy, once adopted.***

The Committee invites the Government to avail itself of technical assistance from the Office in order to facilitate the implementation of the Convention.

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

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) of the Convention. Sanctions involving compulsory labour as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been referring to various provisions of the Publications Act No. 76 of 1972, under which persons expressing certain political views or views ideologically opposed to the established political, social or economic system may be punished with penalties of imprisonment (involving, under section 24(1) of the Penal Code, an obligation to perform labour). The Committee also noted the Government's indication that the Publications Act would be amended to take into account the Committee's comments. Moreover, following the establishment of the revolutionary Transnational Council, laws that were not in conformity with the principles of freedom and democracy were suspended, including the Publications Act. The Committee noted furthermore from the Report on the Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya that journalists had faced serious harassment and death threats; some had been subjected to arbitrary detention and abduction. Journalists also faced criminal prosecution for defamation and libel for writing on political matters (2016 A/HRC/31/47, paragraph 50).

The Committee notes that in its report the Government refers to certain sections of the Publications Bill, indicating that the Bill is still being studied and amended and will be transmitted to the legislative authority as soon as it is completed. The Committee draws the Government's attention to the fact that the purpose of the Convention is to ensure that no form of compulsory labour, including compulsory prison labour, is used in the circumstances specified in the Convention. However, the Committee has observed that under various provisions of the abovementioned legislation, penalties of imprisonment involving compulsory labour may be imposed and are therefore not in line with the Convention.

Moreover, the Committee observes that according to the report of the United Nations High Commissioner for Human Rights of 2018, media professionals, activists and human rights defenders had their rights to freedom of expression and association restricted and were subjected to abductions, and arbitrary detention (A/HRC/37/46, paragraph 47). The Committee is therefore bound to express its ***deep concern*** at the current human rights situation in the country and recalls that restrictions on fundamental

rights and liberties, including freedom of expression, may have a bearing on the application of the Convention, if such measures are enforced by sanctions involving compulsory labour. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take the necessary measures to ensure that no prison sentences involving compulsory labour are imposed on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system. The Committee trusts that the necessary measures will be taken to bring the Publications Act No. 76 of 1972 into conformity with the Convention, and requests the Government to provide information on the progress made in this regard.***

The Committee invites the Government to avail itself of technical assistance from the Office in order to facilitate the implementation of the Convention.

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

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

Madagascar

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2007)

Previous comment

Article 1(b) of the Convention. Imposition of forced labour as a method of mobilizing and using labour for the purposes of economic development. The Committee recalls that Ordinance No. 78-002 of 16 February 1978 setting forth the general principles of national service, is incompatible with the Convention inasmuch as, under the Ordinance, all Malagasies are bound by the duty of national service, which is defined as compulsory participation in national defence and in the economic and social development of the country. The Committee notes the Government's indication in its report that a draft text amending Ordinance No. 78-002 of 16 February 1978 is being prepared at the Ministry of National Defence. The Government also explains that the recruitment of Malagasies who have opted for national service is undertaken on the basis of requests for recruitment received by the Ministry and only interested persons who have the requisite qualities are accepted. The Committee also notes the Government's indication in its report on the application of the Forced Labour Convention, 1930 (No. 29), that participation in national service is voluntary and requires a written request from the interested person.

The Committee observes that the obligations of national service, as defined in the above-mentioned Ordinance No. 78-002, include registration, review and activity for a period of two years. The latter can be performed either in or outside the armed forces, in particular in the context of "development action military service" (SMAD). The Committee recalls that programmes involving the compulsory participation of young persons in activities for the development of their country as part of military service or replacing it are incompatible not only with *Article 1(b)* of the Convention, which prohibits the use of labour for purposes of economic development, but also with Article 2(2)(a) of Convention No. 29, which provides that any work or service exacted in virtue of compulsory military service laws must be of a purely military character.

In view of the Government's indication that in practice participation in national service is voluntary and that a draft text amending Ordinance No. 78-002 is being prepared, the Committee expresses the firm hope that the Government will take the necessary steps to bring the legislation concerning national service into conformity with Conventions Nos 29 and 105, either by making national service voluntary or by limiting the work done as part of national service obligations to work of a purely military nature.

Malaysia

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

Previous comment

The Committee welcomes the ratification by Malaysia of the Protocol of 2014 to the Forced Labour Convention, 1930. ***It hopes that the Government will provide detailed information on its application, in accordance with the report form adopted by the Governing Body.***

Articles 1(1), 2(1) and 25 of the Convention. 1. *Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee previously noted that, despite various measures taken by the Department of Labour in order to protect migrant workers, labour rights violations and abusive working conditions of migrant workers that amount to forced labour persisted in practice, including passport confiscation by employers, wage arrears, long working hours and forced contract extension. The Committee notes the adoption of the Employment (Amendment) Act 2022 (Act A1651), and more particularly:

- the amendment of section 60K, which now provides that no employer shall employ a foreign employee unless prior approval has been obtained from the Director-General of Labour. An employer who contravenes this provision commits an offence and shall be liable to a fine or to imprisonment for a term not exceeding five years. The Director-General of Labour may approve an application if the employer complies with specific conditions, including having no outstanding matter or case relating to any conviction for any offence under the Employment Act or in relation to trafficking in persons and forced labour;
- new section 60KA, which provides that the employer shall, within 30 days of the termination of service, inform the Director-General of Labour of the termination; and
- new section 90B, which provides that "any employer who threatens, deceives or forces an employee to do any activity, service or work and prevents that employee from proceeding beyond the place or area where such activity, service or work is done, commits an offence and shall, on conviction, be liable to a fine … or to imprisonment for a term not exceeding two years or to both."

The Committee notes with ***interest*** these legislative developments, as well as the adoption of the National Action Plan on Forced Labour (2021-2025) – NAPFL, elaborated with ILO technical assistance. The NAPFL identifies four strategic goals focusing on: (1) awareness-raising; (2) legal compliance and enforcement; (3) labour migration management; and (4) access to remedy, support and protection services. The Committee notes that specific actions to improve labour migration governance are provided for in the framework of the NAPFL, with a view to: (1) improving recruitment systems and practices for migrant workers; (2) strengthening capacity of law enforcement officials for migration management and prevention of forced labour; and (3) raising awareness of migrant workers regarding legal migration pathways, workplace rights and entitlements and key relevant legislation relating to forced labour and trafficking in persons, in their own languages.

The Committee notes the Government's indication, in its report, that on 1 January 2022, the moratorium on the recruitment of foreign workers that had been imposed since March 2021 as a result of the COVID-19 pandemic, was lifted. However, the resumption of the application and admission of foreign workers into Malaysia for employers only started on 15 February 2022. The Government adds that recruitment and employment of foreign workers remains through the Memorandum of Understanding (MOU) framework on a government to government (G to G) basis. Currently, Malaysia has cooperation with ten source countries and MOUs were signed with Bangladesh, Indonesia and Vietnam. New MOUs are being negotiated with Cambodia, India, Sri Lanka, Nepal and Thailand. The Government further indicates that, in 2021 and 2022, training activities were implemented, with the

assistance of the ILO, in order to strengthen the capacities of labour inspectors in forced labour and a reporting and referral step-by-step Guide on forced labour and human trafficking was published. Furthermore, in May 2021, the Working for Workers application was launched with a view to enable workers to lodge online complaints. In this regard, the Committee notes that, as of June 2022, the Ministry of Human Resources received 17,091 complaints on various labour issues.

The Committee notes that, as highlighted in the framework of the Decent Work Country Programme for 2019–2025, migrant workers remain vulnerable to forced labour practices and are primarily employed in low-skilled and labour-intensive jobs in sectors such as construction, domestic work, agriculture and manufacturing. Furthermore, public attitudes towards migrant workers remain negative and are expressed through discriminatory actions, such as limiting or denying entry; exclusion from access to services; public support for laws that enshrine social exclusion of migrant workers; and denying equal wages on par with nationals (ILO and UN Women, Research brief, Public attitudes towards migrant workers in Malaysia, December 2020). More particularly, levels of exploitation and abuse are disproportionately high in both the plantation and domestic work sectors, largely due to the physical isolation of the workplaces, restrictions on movement, and inadequate mechanisms established to ensure accountability of employers (Enhancing standard employment contracts for migrant workers in the plantation and domestic work sectors in Malaysia, ILO, 2020). The Committee notes that, in his 2020 report, the United Nations Special Rapporteur on extreme poverty and human rights indicated that estimates of the number of migrant workers in Malaysia generally range between 3 and 6 million, inclusive of both documented and undocumented workers. Migrant workers are reportedly subjected to passport confiscation, low wages in violation of minimum wage laws, punishment by fines, high recruitment fees, debts to recruitment agencies and employers, and salary deductions. Reports documenting abuses against migrant workers are consistent and numerous. Labour protections appear widely unenforced and the situation seems not to have improved in recent years (A/HRC/44/40/Add.1, 6 April 2020, paragraphs 58–60).

While welcoming the measures taken by the Government, the Committee notes with ***concern*** the continued abusive working conditions of migrant workers that amount to forced labour, such as passport confiscation, high recruitment fees, non-payment of wages, deprivation of liberty, and physical and sexual abuse. Furthermore, it observes in this regard that the Government has not provided information on the number of prosecutions and convictions concerning cases of exploitative employment conditions of migrant workers. ***The Committee therefore urges the Government to continue to strengthen its efforts to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. It requests the Government to provide information on the implementation of the National Action Plan on Forced Labour (2021–25), and in particular on measures taken to:***

(i) raise awareness of migrant workers regarding legal migration pathways and labour rights, as well as public awareness of the situation of migrant workers in order to address negative public attitudes towards them;

(ii) strengthen the capacity of labour inspectors in order to ensure the effective implementation of section 60K of the Employment Act, and enable them to detect and identify cases of forced labour and collect evidence;

(iii) strengthen the capacity of law enforcement bodies and the cooperation among them, indicating the number of cases of forced labour of migrant workers identified and investigated, prosecutions initiated and convictions handed down;

(iv) improve labour migration management, providing information on bilateral agreements with countries of origin and on any measure taken to strengthen international cooperation in that regard; and

(v) ensure that appropriate protection and assistance is provided to migrant workers victims of forced labour practices, indicating the number of victims who have been identified and who have received assistance.

2. *Trafficking in persons.* The Committee previously noted the measures taken to strengthen the legislative and institutional framework to combat trafficking in persons, and requested the Government to pursue its efforts in this regard. The Committee welcomes the adoption of:

(i) the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022 (Act A1644) which: (i) expanded the definition of trafficking in persons; (ii) removed "coercion" as the only critical element in determining cases of trafficking in persons; and (iii) increased penalties for some offences including when public officials are found guilty of complicity with the perpetrators; and

(ii) the third National Action Plan to Combat Trafficking in Persons (2021–25) which comprises four pillars: prevention, prosecution and enforcement, protection, and partnership.

The Committee notes the Government's indication that several training activities were carried out for law enforcement officers, public prosecutors and protection officers in order to strengthen their capacity regarding the investigation and prosecution of cases of trafficking in persons and to provide protection and assistance to victims. The Government adds that specialized units on trafficking in persons were established under the Royal Malaysian Police and Immigration Department. The Committee notes that Standard Operating Procedures for enforcement agencies and National Guidelines on Human Trafficking Indicators (NGHTI) were launched by the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) in 2020 and 2021. The NGHTI document serves as a standard guide, particularly for enforcement officers, in the process of identifying trafficking victims. The Government adds that in November 2021 the Ministry of Women, Family and Community Development also launched a training manual on trafficking in persons based on a victim-centred and trauma-informed approach in order to better assist victims of trafficking in persons.

According to the information provided by the Government, in 2021, 43 victims of trafficking in persons were repatriated and 47 were granted permission to move freely and work. In 2021, 11 cases of trafficking in persons were under investigation (compared to 32 cases in 2020), while no case was under prosecution (compared to 7 in 2020). The Committee notes the important decline in the number of investigations and prosecutions for cases of trafficking, and notes that the Government has not provided information on the number of persons convicted for trafficking in persons. ***In light of the above, the Committee strongly encourages the Government to take the necessary steps for the effective implementation of the four pillars of the National Action Plan to Combat Trafficking in Persons (2021–25) and to provide information on the specific measures taken in this regard, as well as on the assessment of the results achieved and the difficulties encountered. It further requests the Government to continue to provide information on the application of the Anti-Trafficking in Persons Act in practice, as well as the number of victims of trafficking who have been identified and who have benefited from adequate protection. Recalling that Article 25 of the Convention provides that the imposition of forced labour shall be punishable by penalties that are really adequate and strictly enforced, the Committee requests the Government to provide specific information on the investigations carried out and prosecutions initiated, as well as on the number of persons convicted under the Anti-Trafficking in Persons Act and the penalties imposed.***

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

Mali

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Protocol of 2014 to the Forced Labour Convention, 1930 (ratification: 2016)

Previous comment

Articles 1(1) and 2(1) of the Convention, and Articles 1(2), 2 and 3 of the Protocol. Hereditary servitude. Systematic and coordinated action and protection of victims. The Committee previously noted with concern the persistence of slavery-like practices and requested the Government to take the necessary measures to assess the extent of the phenomenon of slavery and to adopt systematic and coordinated action to bring it to an end.

The Government indicates in its report that a study on hereditary servitude in the Kayes region and a national strategy to combat hereditary servitude were validated in July 2021 by the National Human Rights Commission (CNDH). The Committee notes that, according to the study, the causes of the persistence of hereditary servitude are of an economic nature ("slave masters" have large areas of land and slaves are the workforce to work on the land), but are also due to persistent traditional and religious beliefs (local customs, which provide the basis for a form of social domination, facilitate the practice of slavery) and the ignorance of populations (which are rural and mostly illiterate in the areas where slavery persists). The study emphasizes that slaves work for their masters in order to benefit from working the land. The slave either works exclusively for the master, who benefits from the whole harvest, or works both for the master and for him or herself. In the latter case, there are slaves who have access to lands on a precarious basis in return for accepting their conditions and servile status. They are required to work the land for their masters before tending their own fields.

The Committee also notes that, in its 2020 annual report, the CNDH emphasizes that the phenomenon of hereditary servitude in the Kayes region is demonstrating worrying trends, particularly as a result of its increasingly violent forms, which have resulted in the loss of human life, the abuse of physical and moral integrity, the right to property and internally displaced persons (page 5). The year 2020 was a highpoint in the expression of horror at the practice of slavery. Harmful discriminatory practices in respect of "descendants of slaves" are undeniable and recurrent. They mainly take the form of ill-treatment, aggression, the seizure of property and even total banishment from society. The CNDH emphasizes that these forms of violence are often a result of the refusal by "descendants of slaves" to accept their lower social status. Moreover, anyone who denounces this form of discrimination is systematically subjected to reprisals, often encouraged and carried out by the traditional chiefs of the various areas (pages 34 and 35).

The Committee notes that United Nations human rights experts reported, in a press release dated 29 October 2021, a series of barbarous attacks in 2021 against hundreds of persons born into slavery. The experts refer to eight attacks between January and September in the Kayes region, during which one person was killed, at least 77 were injured and over 3,000 people considered to be "slaves" were displaced.

The Committee expresses ***deep concern*** at this information, which bears witness to the persistence of the system of hereditary servitude in the country under which people are victims of forced labour, multiple forms of discrimination and violence when they attempt to assert their rights. The Committee recalls, as confirmed by the CNDH study, that the causes of the persistence of such practices are complex and multidimensional and that systematic and coordinated action is required to combat the phenomenon involving all sectors of society (economic, social, religious and so forth). It also notes that Mali is benefiting from ILO technical assistance through the project to combat slavery and discrimination based on slavery in Mali (2019–23). The project aims to improve stakeholders' knowledge and raise their awareness of slavery and slavery-based discrimination, strengthen victims' access to

economic independence and legal assistance services, and reinforce the legislative framework and its enforcement.

The Committee urges the Government to renews its efforts to bring an end to the practice of hereditary servitude and trusts that it will take the necessary measures as soon as possible to:

(i) implement the national strategy to combat slavery, with a view to ensuring systematic and coordinated action by the competent authorities and other actors involved;

(ii) designate the authority competent for the implementation of the strategy and provide it with the necessary resources for the discharge of its functions;

(iii) raise awareness, educate and inform the whole population of the real situation and the gravity of slavery-like practices, including the traditional and religious authorities in regions where slavery persists; and

(iv) identify, free and assist victims and ensure that they benefit from protection that is adapted to their situation to enable them to assert their rights, obtain compensation and recover psychologically, economically and socially.

Article 25 of the Convention and Article 1(3) of the Protocol. Imposition of penalties. The Committee previously requested the Government to take the necessary measures to ensure that prosecutions are undertaken in cases of slavery, and to reinforce the capacities of actors in the criminal justice system. The Government indicates that a preliminary draft of an amendment to the Criminal Code was validated on 20 August 2022 which seeks to include a specific offence of slavery in all its forms, including hereditary servitude, and establish specific penalties for this crime. The Government adds that once the amended Criminal Code has been adopted, particular emphasis will be placed on slavery and its various forms through an awareness-raising and training campaign for actors in the criminal justice system. The Government specifies that a 2019 circular of the Minister of Justice and Human Rights calls on magistrates to punish all offences related to the phenomenon of hereditary servitude.

The Committee notes the Government's indication that, in the context of the project to combat slavery and slavery-based discrimination in Mali, the Government, with ILO support, has been able to train 20 labour inspectors and controllers on the laws and policies to combat slavery, and on the identification and denunciation of cases of slavery and forced labour within the context of inspections undertaken in rural areas and the informal economy.

The Committee also notes, according to the information contained in the quarterly note of 30 May 2022 of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) on trends of violations and abuses of human rights in Mali, that some progress has been made in combating impunity, including remand warrants being issued for at least 30 persons in the context of investigations of acts of violence against persons considered to be "slaves". Moreover, the Minister of Justice and Human Rights has instructed the Prosecutor General of the Appeal Court of Kayes to organize a special session of the Assizes in 2022, focusing specifically on the judgement of cases relating to hereditary servitude practices (paragraph 52).

The Committee expresses the firm hope that the draft amendment to the Criminal Code will be adopted without delay, that it will contain provisions defining the constituent elements, incriminating and punishing hereditary servitude and all related offences, and that it will be broadly disseminated to the competent authorities and all groups of the population. The Committee also urges the Government to continue its efforts to reinforce awareness-raising activities and build the capacities of law enforcement institutions (the labour inspection services, the forces of order, the investigation and judicial authorities) in order to ensure that cases of slavery are identified, evidence gathered and prosecutions launched so that those responsible for such practices are punished. The Committee requests the Government to provide information on the number of cases of slavery that have been identified, the number of prosecutions initiated and the number and nature of the penalties imposed.

The Committee hopes that the Government will continue to avail itself of ILO technical assistance with a view to achieving notable progress in the fight against slavery in the near future.

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

Mauritania

Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

Protocol of 2014 to the Forced Labour Convention, 1930 (ratification: 2016)

Previous comment

The Committee once again notes that the Government has not provided the first report on the application of the Protocol of 2014 to the Forced Labour Convention, 1930, ratified in 2016. ***The Committee urges the Government to provide detailed information on its application in accordance with the report form adopted by the Governing Body.***

Articles 1(1), 2(1) and 25 of the Convention. Slavery and the vestiges of slavery. The Committee previously asked the Government to continue its action against slavery, a practice which persists in Mauritania despite the actions taken by the Government in the context of the road map for the eradication of contemporary forms of slavery adopted in 2014. The Committee emphasized that, in the face of such a complex and controversial phenomenon, it was essential to reinforce the multisectoral approach and ensure coordinated action, particularly through the adoption of an action plan against forced labour and slavery containing the four components set out below.

(a) Effective application of the 2015 Act criminalizing slavery and punishing slavery-like practices. The Committee previously noted the measures aimed at reinforcing the competencies, capacities and knowledge of law enforcement officers and judicial officials involved in combating slavery so as to ensure the effective application of the 2015 Act. While welcoming the fact that an increasing number of cases of slavery had been brought before the three special criminal courts, the Committee noted that obstacles remained in referring cases to these courts, that information on the cases examined was still imprecise, and that only a few cases seemed to have resulted in the imposition of really effective penalties.

The Committee notes the Government's indication in its report that measures have continued to be taken to ensure the effective application of the Act. The Government refers in particular to: (i) continuing the mobile units (caravans) providing awareness-raising and training for the administrative, judicial and security authorities on the 2015 Act and the organization of workshops for evaluation and judicial exchanges concerning the Act; (ii) the adoption of new circulars by the Public Prosecutor's Office containing instructions and guidance for the systematic engagement of investigations and prosecutions concerning credible allegations of slavery or trafficking in persons; (iii) the establishment of a watchdog unit responsible for monitoring the transparency, efficacy and rapidity of the judicial processing of cases referred to the courts, composed of representatives of the central administration of the Ministry of Justice and the Public Prosecutor's Office in conjunction with the Supreme Court; and (iv) the setting up of offices responsible for providing legal assistance to all *wilaya* courts and the inclusion of financing for this sphere in the state budget for the 2022 financial year. The Government also reiterates that the special courts have delivered various case law judgments which are testimony to abundant coverage of all possible judicial scenarios (convictions, acquittals, inadmissible cases, prejudicial issues regarding lack of competence, statutes of limitations). With regard to statistics, the Government indicates that seven complaints are under investigation, 11 are under prosecution, seven cases are before the special courts, 11 are before the *wilaya* courts, and 16 are before the appeal courts.

The Committee notes that the National Human Rights Committee (CNDH), in its annual report for 2020–21, issues a series of recommendations to the Government regarding the reinforcement of action against slavery. The CNDH calls on the Government to take all possible steps to ensure that justice takes its normal course without obstacles in order to impose criminal penalties on the perpetrators of the crime of slavery on the basis of the 2015 Act. It recommends the acceleration of judicial proceedings for the 22 cases of slavery pending before the courts monitored by the CNDH and *SOS Esclave* (SOS slavery) which have been dragging on for years without any justification.

The Committee notes all the above information, particularly that concerning the awareness-raising activities carried out with regard to the 2015 Act and public access to the justice system. It observes that a large number of cases are being examined by the Public Prosecutor's Office and the courts but that the Government has not provided specific information on the cases which have resulted in convictions and the imposition of criminal penalties for the perpetrators, or on the complaints lodged or the cases in which the victims have received support from the competent authorities. It also observes that the *wilaya* courts still seem to have certain slavery cases before them which have not been referred to the specialized courts by the Public Prosecutor's Office. The Committee recalls that, under *Article 25* of the Convention, States have the obligation to ensure that the penalties imposed by law for the exaction of forced labour are really adequate and strictly enforced. ***In this context, the Committee welcomes the setting up of the unit tasked with monitoring the transparency, efficacy and rapidity of the judicial processing of slavery cases brought before the courts, and hopes that this unit will be allocated the necessary resources to ensure the prompt and thorough handling of slavery cases at all their stages (investigation, prosecution and judgment). The Committee requests the Government to continue taking measures to ensure awareness-raising, training and specialization for all players in the criminal justice system. The Committee once again requests the Government to take the necessary measures, firstly, to evaluate the operation of the three specialized criminal courts and the manner in which slavery cases are referred to it, and, secondly, to build the capacities of the police and the Public Prosecutor's Office regarding the identification of situations of slavery, gathering of evidence and examination of the facts. The Committee also requests the Government to provide information on the number of cases of slavery reported to the authorities, the number of cases that have led to judicial action, the number of convictions handed down, the nature of the penalties imposed, the number of cases settled outside the judicial system, and the number of victims of slavery who have been compensated for the injury suffered, in accordance with section 25 of the 2015 Act.***

(b) Systematic and coordinated action. The Committee notes that the Government does not provide any information on the progress made regarding an action plan against forced labour which it had reported to the ILO mission to Mauritania in 2018. The same applies to the collection of qualitative data on the issue of slavery in the country. In this regard, the Committee recalls that the fight against slavery requires the engagement of everyone in the context of coordinated action at the highest level, as had been the case with the inter-ministerial committee responsible for the implementation of the road map under the direct supervision of the Prime Minister. ***The Committee therefore once again requests the Government to ensure that action against slavery forms part of systematic and coordinated action involving all stakeholders, including workers' and employers' organizations, in order to tackle the underlying causes of slavery and to respond to its many different aspects. The Committee also requests the Government to indicate the measures taken to have reliable qualitative and quantitative data on slavery and its various manifestations.***

(c) Protection and reintegration of victims. The Committee once again observes that the Government does not provide information on specific assistance given to victims of slavery despite the fact that a number of cases are under investigation or before the courts. It notes that, among the general measures to reduce poverty and ensure social integration, the Government refers to the programmes devised by the General Delegation for National Solidarity and Combating Exclusion (TAAZOUR), including the Cheyla programme on access to education, health, water and energy; the Albarka

programme on income-generating activities for poor and vulnerable population groups; the measures taken to facilitate the acquisition of civil status for persons without it, with the issuing of 191,684 civil status rulings to issue certificates of births registered between 2020 and 2022. The Committee notes the Government's indication that the recently established national authority for combating trafficking in persons and migrant smuggling will ensure, in conjunction with the services and structures concerned, the provision of the necessary social assistance for victims of trafficking, including slavery and slavery-like practices.

The Committee duly notes the general measures to combat poverty and to ensure social integration taken by the Government and encourages it to continue these actions by targeting the regions where cases of slavery have been recorded. It also requests the Government to provide information on the measures taken to facilitate access to property (real estate), an issue identified by the CNDH in its report as giving rise to numerous legal disputes concerning the descendants of former slaves, particularly the Ghidimaka.

The Committee also recalls that the victims of slavery must receive specific support geared to their situation, enabling them to assert their rights and rebuild their lives psychologically, economically and socially, and to enjoy protection against any form of reprisals or marginalization. The Committee notes with ***regret*** that the Government has not provided any information in this regard. ***The Committee urges the Government to provide information on the measures taken to ensure effective support for the victims of slavery once their situation has been reported to the authorities or civil society associations, especially in order to facilitate their access to complaint procedures, to ensure immediate and medium-term protection for their rehabilitation, and to ensure compensation for them. The Committee once again requests the Government to indicate the number of cases in which the competent authorities have supported victims at the stage of investigation and judicial proceedings, indicating the nature of such assistance.***

(d) Awareness-raising. The Committee previously requested the Government to continue undertaking awareness-raising activities on the issue of slavery throughout the country and to involve all stakeholders, including the local authorities, so that the firm position of the State on the issue of action to combat slavery, its vestiges and discrimination is communicated and understood at all levels. The Committee notes the Government's reference to the commemoration of the national day against slavery and slavery-like practices and to the mobile awareness-raising units.

The Committee also notes that the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences, at the end of his mission in May 2022, recognized the significant measures taken by the Government to combat slavery, while cautioning that much remained to be done. He emphasized that descent-based and contemporary forms of slavery continue to exist in Mauritania, within all the country's major ethnic groups, despite this practice being denied by certain parties. He stated that social transformation and a change in mindset is needed in order to fully recognize and address slavery instead of denying its existence (press release of 13 May 2022).

The Committee requests the Government to continue taking measures and strengthen its action to raise the awareness of all the competent authorities and society as a whole and to mobilize them on combating slavery, its vestiges and the discrimination suffered by slaves and their descendants. In view of this situation, the Committee hopes that the Government will collaborate with the traditional authorities, civil society and the social partners and that it will continue to avail itself of support from the ILO technical cooperation project assisting the implementation of Act No. 2015-31 criminalizing slavery and punishing slavery-like practices.

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

Mongolia

Forced Labour Convention, 1930 (No. 29) (ratification: 2005)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1(1), 2(1) and 25 of the Convention. 1. *Trafficking in persons.* The Committee previously noted the establishment of the National Sub-Council on Combating Trafficking in persons to regulate the activities on combating and preventing trafficking and provide professional guidance, following the adoption of the Law on Combating Human Trafficking (2012). It noted that a National Programme on Combating Human Trafficking had been drafted to provide a plan of action in implementing anti-trafficking activities. It also noted that the Parliament passed the Law on Witness and Victim Protection in 2013, providing for protection measures for victims of trafficking. The Committee encouraged the Government to pursue its efforts to prevent, suppress and combat trafficking in persons and to provide protection and assistance, including legal assistance, to victims of trafficking.

The Government indicates in its report that the updated National Programme on Combating Human Trafficking was adopted by resolution No. 148 of 24 May 2017. This programme aims, inter alia, at: (i) organizing work to prevent and combat trafficking in persons through the study of the root causes and the conditions of this phenomena; (ii) taking and implementing measures for the protection of victims, including medical and psychological assistance; and (iii) expanding cooperation with other Governments, international organizations and non-state organizations. The Government further states that the Minister of Justice and Home Affairs and the Chairman of the Coordinating Council for the Prevention of Crimes of Human Trafficking have approved in 2018 the Implementation Schedule for the National Programme on combating Human Trafficking. In this framework, the Ministry of Justice and Home Affairs and other organizations have implemented in 2018 a joint plan and set up training courses on the provision of assistance to victims of human rights and the identification of the victims for staff of the Ministry of External Relations, the Border Protection Agency, the Office for Foreign Nationals and the border Offices in Dornogov' Province. The Government also indicates that resolution No. A/173 regulates the composition and functions of the Sub-Council on Combating Trafficking in persons.

The Committee notes that the Criminal Code of 2015, which entered into force in July 2017, provides for a sentence of imprisonment of two to eight years for trafficking in persons for the purposes of labour and sexual exploitation, and of five to 12 years for cross-border trafficking. It also notes that, according to the 17th Status Report on human rights and freedoms issued in 2018 by the National Human Rights Commission of Mongolia, the National Programme on Combating Human Trafficking is a four year programme (2017–21), section 5.2 of which provides for comprehensive legal, psychological, medical and rehabilitative services for victims of trafficking and the establishment of shelters. This Report also indicates that in November 2017, ten criminal cases of trafficking in persons were registered at the national level, according to information received from the Ministry of Justice and Home Affairs. A common database was created in 2016 to improve inter-sectorial coordination among the Government and non-governmental organizations in combating trafficking in persons and in registering victims and suspects. The Committee also notes that a two-year project "Improving victim-centred investigation and prosecution monitoring on human trafficking in Mongolia", aimed at developing training manuals and at training law enforcement officials, prosecutors, judges and officers of the Immigration Department, is being implemented by the Ministry of Justice and Home Affairs and the Asia Foundation. The Committee further notes that, in its concluding observations of August 2017, the Human Rights Committee expressed concern at the lack of identification of victims and reports of arrest and detention of victims for acts committed as a direct result of being trafficked (CCPR/C/MNG/CO/6, paragraph 27). It also notes that, according to the European Commission's document of January 2018 on the assessment of Mongolia covering the period 2016–17, there are only two trafficking-specific shelters in the country (page 10). ***The Committee requests the Government to provide information on the impact of the measures taken by the Government, particularly the National Programme on Combating Human Trafficking and its Implementation Schedule, in preventing trafficking in persons and in identifying and assisting victims of trafficking in persons. It also requests the Government to take the necessary measures to ensure that victims of trafficking are treated as victims rather than offenders and have access to protection and assistance, and to provide information in this respect. Lastly,***

the Committee requests the Government to provide information on the application in practice of the provisions criminalizing trafficking in persons.

2. *Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee notes that according to the ILO's Mongolia Policy Brief on Forced Labour of June 2016, reports indicated that tens of thousands of Chinese construction and mining workers entered Mongolia with tourist visas through a Chinese labour agency and were sold to Mongolian employers, their passports being confiscated upon arrival. In addition, according to this Policy Brief and the concluding observations of the Human Rights Committee of August 2017 (CCPR/C/MNG/CO/6, paragraph 29), migrants from the Democratic People's Republic of Korea (DPRK) worked in Mongolia, in conditions tantamount to forced labour, and were prohibited from leaving work with their wages paid directly to a North Korean Government agency. The Committee recalls the importance of taking effective measures to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly when they are subjected to abusive employer practices such as retention of passports, deprivation of liberty, non-payment of wages, and physical abuse, as such practice might cause their employment to be transformed into situations that could amount to forced labour. ***The Committee requests the Government to take the necessary measures to ensure that migrant workers are fully protected from abusive practices and conditions amounting to the exaction of forced labour and to provide information on the measures taken in this regard. It requests the Government to supply information on the number of identified victims of forced labour among migrant workers, and on the number of investigations, prosecutions and sanctions imposed on the perpetrators.***

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

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

Mozambique

Forced Labour Convention, 1930 (No. 29) (ratification: 2003)

Protocol of 2014 to the Forced Labour Convention, 1930 (ratification: 2018)

Previous comment

The Committee welcomes the ratification by Mozambique of the Protocol of 2014 to the Forced Labour Convention, 1930. Noting that the first report of the Government has not been received, the Committee hopes that the Government will provide detailed information on the application of the Protocol, in accordance with the report form adopted by the Governing Body.

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. The Committee previously requested the Government to strengthen its efforts to combat trafficking and to implement a coordinated strategy in this regard, including through the adoption of a national action plan and the implementing regulations of Act No. 6/2008 of 9 July establishing the legal framework applicable for preventing and combating trafficking in persons. The Committee notes the Government's indication, in its report, that several awareness-raising activities were undertaken, including 1,299 presentations which were attended by 76,197 individuals throughout the country, and 55 radio and TV broadcasts, in 2022. The Government adds that the National Criminal Investigation Service (SERNIC) also carried out preventive actions through its National Reference Group (GRN) for Trafficking in Persons, Illegal Immigration and Child Protection, including in collaboration with the International Organisation for Migration (IOM). Furthermore, several training activities were carried out in order to strengthen the capacities of front-line officials, including from the Government, border control police and customs and migration services, with a view to ensuring better identification, referral and assistance for victims of trafficking in persons.

In this regard, the Committee notes that, in its 2021 annual report to the Assembly of the Republic, the Prosecutor-General highlights the specific difficulties faced in detecting cases of trafficking in

persons and identifying victims, as well as the need for concerted and increased efforts to prevent and combat trafficking in persons. The Prosecutor-General of the Republic indicates that only two cases of trafficking were investigated in 2020. The Committee further notes that in, July 2022, two Mozambican citizens were convicted by a South African Court for trafficking in persons for purposes of labour involving 39 persons from Mozambique. In this regard, the Committee notes that, according to data from the IOM and UNDOC Regional Office for Southern Africa, Mozambique remains a country of origin, transit and destination for trafficking in persons, with most victims being trafficked into forced labour, particularly in the agricultural and mining sectors, especially in South Africa. It further notes that, in the context of the deteriorating security situation in the Cabo Delgado region in the north of the country that has so far generated over 800,000 Internally Displaced Persons (IDPs), specific concerns were expressed regarding the increasing vulnerability to trafficking of persons escaping the conflict (IOM, Displacement Tracking Matrix, June 2022).

While taking due note of the activities undertaken in order to raise public awareness and strengthen the capacity of public officials to identify cases of trafficking in persons, the Committee notes with ***concern*** the low number of cases of trafficking investigated and prosecuted; the absence of progress in the adoption of an action plan and implementing regulations of Act No. 6/2008; and the lack of information from the Government on cases identified, and protection and assistance provided to victims. ***The Committee urges the Government to step up its efforts in order to prevent and combat trafficking in persons and take the necessary measures to adopt the national plan to prevent and combat trafficking in persons and implementing regulations of Act No. 6/2008. It further requests the Government to provide information on the concrete and coordinated measures implemented with a view to: (i) preventing trafficking in persons and raising public awareness of the issue, in particular in the Cabo Delgado region; (ii) reinforcing the capacities and training of the authorities responsible for the detection and prosecution of cases of trafficking; and (iii) ensuring the effective protection and reintegration of victims. The Committee requests the Government to provide information on the number of cases of trafficking in persons identified, and the investigations and judicial proceedings initiated, convictions handed down and specific penalties imposed on perpetrators under Act No. 6/2008.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1977)

Previous comment

Article 1(a) and (b) of the Convention. Compulsory labour for persons identified as "unproductive" or "anti-social". For many years, the Committee has been drawing the Government's attention to the need to amend the Ministerial Directive of 15 June 1985 on the evacuation of towns, under which persons identified as "unproductive" or "anti-social" may be arrested and sent to re-education centres or assigned to productive sectors. The Committee notes that the Government reiterates in its report that re-education centres no longer exist and persons are no longer identified as "unproductive" or "anti-social". The Government adds that the 1985 Directive has become obsolete and implicitly abrogated as a result of the revision of the Penal Code adopted in December 2019, which provides that any legislation contrary to the Penal Code is abrogated. While taking due note of this information the Committee notes with ***regret*** that the Government did not seize this new opportunity of the revision of the Penal Code to formally repeal this Directive. ***The Committee urges the Government to take the necessary measures to formally repeal the Ministerial Directive of 15 June 1985 on the evacuation of towns so as to bring the legislation into conformity with the Convention and with the practice indicated, thereby ensuring legal certainty.***

Article 1(b) and (c). Imposition of sentences of imprisonment involving an obligation to work for the purposes of economic development and as a means of labour discipline. For many years, the Committee has been emphasizing the need to amend or repeal certain provisions of Act No. 5/82 of 9 June 1982 concerning the defence of the economy, amended by Act No. 9/87, which provide for the punishment of types of conduct which, directly or indirectly, jeopardize economic development, prevent the implementation of the national plan and are detrimental to the material or spiritual well-being of the population. Sections 10, 12, 13 and 14 of the Act prescribe prison sentences, which may involve compulsory labour, for repeated cases of failure to fulfil the economic obligations set forth in instructions, directives, procedures and so forth, governing the preparation or implementation of the national State plan. Section 7 of the Act penalizes unintentional conduct (such as negligence, the lack of a sense of responsibility and so forth) resulting in the infringement of managerial or disciplinary standards.

The Committee notes the Government's indication that an analysis of Act No. 5/82 (as amended by Act No. 9/87) was carried out, as a result of which it appeared that the approach adopted by Act No. 5/82 is no longer applicable in the current economic context, and the subjects covered by such legislation have been incorporated in the Penal Code and other laws regulating economic activity. The Government adds that the adoption of more recent regulations led to the automatic abrogation of the provisions of Act No. 5/82. ***The Committee regrets that the Government did not take the opportunity of the adoption of the new Penal Code and other laws regulating economic activity to ensure that the national legislative framework complies with the Convention and to guarantee legal certainty. It trusts that the Government will not fail to take the necessary measures to formally repeal the provisions of Act No. 5/82 concerning the defence of the economy, as amended by Act No. 9/87, which although not applied in practice are contrary to the Convention.***

Article 1(d). Penalties imposed for participation in strikes. The Committee notes that, under section 268(3) of the Labour Act (Act No. 23/2007), striking workers who are in violation of the provisions of section 202(1) and section 209(1) (obligation to ensure a minimum service) face disciplinary penalties and may incur criminal liability, in accordance with the general legislation. The Committee notes the Government's general indication that the new Penal Code provides for the penalties applicable as a result of a violation of section 268(3) of the Labour Act. The Committee however observes that no provision in the Penal Code explicitly refers to the penalties that may be faced by striking workers in cases where their criminal liability is incurred. It recalls, in this regard that, in accordance with *Article 1(d)* of the Convention, persons who participate peacefully in a strike cannot be liable to penal sanctions involving compulsory labour. ***Referring also to its 2021 observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee requests the Government to ensure that no sanctions involving compulsory labour can be imposed on workers who participate peacefully in a strike and to provide information on any revision of section 268(3) of the Labour Act aiming at suppressing the reference to criminal liability. In the meantime, the Committee requests the Government to indicate the nature of the penalties that may be imposed on striking workers when their criminal liability is incurred pursuant to the provisions of section 268(3) of the Labour Act, specifying the provisions of the Penal Code applicable in such case.***

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

Nepal

Forced Labour Convention, 1930 (No. 29) (ratification: 2002)

Previous comment

Articles 1(1), 2(1) and 25. 1. *Trafficking in persons.* The Committee previously noted the measures taken to strengthen the legal and institutional framework to prevent and combat trafficking in persons,

and urged the Government to strengthen its efforts in this regard and to ensure the effective implementation of the Human Trafficking and Transportation (Control) Act of 2007 in practice. The Committee notes the Government's information that it is enforcing the Human Trafficking and Transportation (Control) Act of 2007 through institutions such as the Office of the Prime Minister and Council of Ministers, the National Planning Commission and other ministries. The Government also indicates that a coordination mechanism between the line ministries and the Office of the Attorney General has been established to ensure the effective application of the Act and "create a compelling argument" against human trafficking. Amendments to the existing laws are also being discussed, aimed at prescribing thorough investigations and prosecutions for the perpetrators of trafficking-related offences.

The Committee further notes from the Government's report of 3 November 2020 to the United Nations Human Rights Council that a separate and specialized Human Trafficking Investigation Bureau was established under the Nepal Police in 2018, as well as the National Committee for the effective implementation of the Human Trafficking and Transportation (Control) Act. The Committee also notes that a total of 285 and 338 cases of human trafficking were filed in the district courts in the fiscal years 2017/18 and 2018/19, respectively. Moreover, 678 victims of human trafficking were rescued in 2017/18 and 10,936 were rescued in 2018/19. According to the report, a fund for the rehabilitation of victims of trafficking has been established. There are 36 safe houses and rehabilitation centres in ten districts and one long-term rehabilitation centre for victims of trafficking. A total of 5,793 victims of trafficking have received various services from these centres during the last four years (A/HRC/WG.6/37/NPL/1, paragraphs 12, 33 and 34). ***The Committee requests the Government to continue its efforts to prevent and combat trafficking in persons and provide detailed information on the activities undertaken to this end, in particular by the National Committee for the effective implementation of the Human Trafficking and Transportation (Control) Act of 2007. The Committee further requests the Government to take measures to ensure adequate identification and investigation of cases of trafficking to ensure that perpetrators are prosecuted and dissuasive penalties are applied in practice. Lastly, the Committee requests the Government to continue providing appropriate protection and assistance to victims of trafficking and to provide information on the measures taken in this regard.***

2. *Vulnerable situation of migrant workers and imposition of forced labour.* The Committee previously noted the measures taken by the Government to protect migrant workers, including the introduction of a mandatory two-day pre-departure orientation course; a technical and vocational training policy for migrant workers; and a guideline for migrant domestic workers. It also noted the high prevalence of organized human smuggling and trafficking of Nepalese workers to Qatar, Saudi Arabia and the United Arab Emirates with widespread deception and fraud in the business of foreign recruitment and a high prevalence of exploitation due to a dual labour agreement system. The Committee notes that the Government reiterates that it is committed to continuing to undertake specific measures to address the difficult circumstances faced by migrant workers and to responding to cases of abuse. The Government indicates that during the COVID-19 pandemic in 2020, it rescued and repatriated a substantial number of migrant workers from several destination countries, and provided food and financial support to migrant workers who were stranded without employment in such countries.

The Committee notes from a study conducted by the *Pravasi* (Migrant) Nepali Coordination Committee (PNCC) (with financial and technical support of the ILO Country Office, Nepal) entitled *Impact of COVID-19 on Nepali Migrant Workers,* 2022, that between June and December 2020 the Government of Nepal repatriated more than 161,301 migrant workers from United Arab Emirates, Qatar, Saudi Arabia and Malaysia. This study also indicates that migrant workers have been exploited and abused both by recruiters at home and employers and authorities in destination countries, often having their rights curtailed, their welfare neglected and placing them at risk of serious physical and mental health issues and even death. The pandemic situation has exacerbated these long-standing challenges faced by migrant workers and has also created new ones. The labour permits of an estimated 1,500 workers

expired every day rendering their status in destination countries "illegal" and in many cases their passports were withheld by their employers. According to the PNCC study, migrant workers continued to (i) pay high recruitment and other migration related fees; (ii) face issues of wage-theft, exploitation, ill-treatment and abuse; (iii) face forcible expulsion from jobs without pay or benefits; and (iv) be subjected to violations of basic human rights. The Committee also notes from this study that the Government adopted the "employers pay" principle as well as the "free-visa-free-ticket" policy or the "zero cost" migration model in order to reduce the financial burden on migrant workers.

In addition, the Committee notes the Government's indication in its Report to the United Nations Human Rights Council that it has concluded Memorandums of Understanding with a number of destination countries, including Malaysia, Japan, United Arab Emirates, Mauritius, Israel and Jordan in order to protect Nepali workers from different types of vulnerabilities. A Safe Migration Project is being conducted in 39 districts to provide information and counselling, legal aid, skill development training, psychological counselling and financial literacy to migrant workers (A/HRC/WG.6/37/NPL/1, paragraph 103). ***While noting the measures taken by the Government, the Committee requests it to step up its efforts to prevent migrant workers from being trapped in conditions of work that amount to forced labour and to provide them with protection. The Committee requests the Government to continue to provide information on the measures taken in this regard, and in particular with a view to: (i) ensuring the effective implementation of the Foreign Employment Act; (ii) providing training and information to candidates to migration on regular and safe recruitment channels, labour rights and the risks of forced labour associated with migration; (iii) ensuring that migrant workers victims of trafficking who return to Nepal receive assistance and protection for their rehabilitation, and facilitating their access to complaints mechanisms to assert their rights when they face exploitation and abusive practices; and (iv) monitoring the recruitment and placement agencies.***

3. *Forced labour in brick industries.* The Committee notes from the Report on Employment Relationship Survey in the Brick Industry in Nepal, 2020 jointly conducted by the Central Bureau of Statistics, ILO and UNICEF, that bonded and forced labour still exists in the country's private sector, including in the brick industry. According to the survey estimates, the total work force involved in brick production, including family members, in 2020, was 186,150 persons, of which 176,373 were manual workers. Among these, 6,229 workers were found to be in forced labour and were unable to leave their jobs without negative repercussions or some risk, while some of them had fallen victims to debt bondage, and some others would lose all their wages due to them if they left the kiln.

The Committee notes that section 4 of the Labour Act of 2017 prohibits engaging anyone in forced labour, defined as any work or service performed by any worker against his/her will as a result of the threat an action with financial, physical or mental impact if he/she does not perform such work or service. Penalties for engaging any one in forced labour shall be imprisonment for two years or a fine or both, in addition to the requirement to pay remuneration, allowance and benefits, including damages (section 164). ***The Committee urges the Government to take effective measures to prevent and eliminate bonded and forced labour practices in the brick industries and to provide immediate assistance and protection to victims of bonded labour. The Committee also requests the Government to ensure that law enforcement bodies, in particular labour inspectors, carry out regular inspections to monitor the conditions of work in the brick kilns and are able to detect cases of forced labour. The Committee requests the Government to provide statistical data on the cases of bonded and forced labour detected, the prosecutions initiated and the specific penalties imposed for such violations.***

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

Nigeria

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Previous comments

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. 1. *Law enforcement and penalties.* In response to its previous comments on the application of effective sanctions to cases of trafficking, the Committee notes the Government's information in its report that the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) undertook several measures for the effective implementation of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 (Anti-Trafficking Act of 2015). These include: (i) increased efforts to investigate, prosecute and convict perpetrators of trafficking in persons and impose sufficiently stringent sentences involving imprisonment; (ii) facilitation of training for local, state and federal judges on the Anti-Trafficking Act of 2015, especially on the provision prohibiting the issuance of fines in lieu of imprisonment; (iii) proposals for a special court for trafficking in persons cases; and (iv) enactment of the Trafficking in Persons (Control of Activities of Organisations and Centres) Regulations, 2019. The Government also indicates that the Anti-Trafficking Act of 2015 is undergoing review to establish stiffer penalties for offences related to trafficking in persons.

The Committee notes that according to the data collected by the NAPTIP from 2018 to 2021, there were a total of 901 cases related to trafficking in persons for purposes of labour or sexual exploitation, and a total of 3,485 victims were rescued. It also notes the detailed information provided by the Government on the legal proceedings and convictions for trafficking-related offences under the Anti-Trafficking Act of 2015. Accordingly, from 2013 to 2021 there were 492 convictions registered. Among the 10 convictions handed down from January to March 2021, the Committee observes that in three cases offenders were sentenced to imprisonment ranging from five to seven years with an option of fines. In this regard, the Committee notes that the United Nations Special Rapporteur for trafficking in persons, especially women and children, in her end of visit statement of September 2018 stated that considering the magnitude of the phenomenon in the country, investigations and prosecutions need serious and robust improvement.

The Committee once again emphasizes the importance that appropriate criminal penalties be imposed on perpetrators and recalls that when the sanction consists only of a fine or a very short prison sentence, it does not constitute an effective sanction in light of the seriousness of the violation and the fact that the sanctions need to be dissuasive. ***The Committee therefore requests the Government to continue to take the necessary measures to ensure that all cases of trafficking are subject to thorough investigations and that sufficiently dissuasive penalties of imprisonment are imposed on persons who engage in trafficking. The Committee further requests the Government to continue providing information on the activities of the NAPTIP aimed at strengthening the capacities of law enforcement bodies in this regard. The Committee also requests the Government to provide statistical data on cases of trafficking for purposes labour or sexual exploitation, as well as information on the investigations carried out, the outcome of the legal proceedings instituted and the penalties imposed on perpetrators according to the Anti-Trafficking Act, 2015.***

2. *Plan of action.* The Committee notes from the Government's report that the NAPTIP approved the national action plan (NAP) on trafficking in persons (2022–26). The Committee notes that this national action plan is based on the five critical pillars of action on trafficking in persons, namely: protection and assistance; prevention; research and assessment; prosecution; and partnership and coordination. The strategic goals outlined under each pillar include: (i) to provide age, gender and diversity specific services for the protection of victims of trafficking to meet minimum human rights standards; (ii) to improve public awareness on trafficking in persons and enhance social protection for endemic communities; (iii) to develop and conduct cross-border qualitative research and data

management on human trafficking to identify trends, patterns and dimensions of human trafficking at national and international levels; (iv) to establish adequate legal frameworks and policies to address trafficking in persons; and (v) to strengthen partnership and coordination between NAPTIP and other relevant actors both at national and international levels to ensure the effective implementation of the NAP 2022–26. ***The Committee welcomes this comprehensive NAP and hopes that the Government will continue to take the necessary measures to implement its various components. The Committee requests the Government to provide information on the assessment of the results achieved, the challenges faced and the measures envisaged to overcome them.***

3. *Protection and assistance for victims.* The Committee previously noted the protection and services provided to victims of trafficking including through the establishment of a Trust Fund for the benefit of victims and shelters operated by NAPTIP. It notes the Government's information that NAPTIP is currently operating 13 shelters with capacity for over 300 beds. These shelters are equipped to provide safe space and psychosocial support to victims of trafficking. The Government further indicates that a large number of victims have undergone various forms of rehabilitation, formal education programmes and vocational training (three victims of trafficking have been employed by NAPTIP and 17 have graduated from school). The Government indicates that the measures for identification of victims of trafficking are embedded in the Guidelines on the National Referral Mechanism. According to these Guidelines, several services shall be provided to protect, prevent, rehabilitate and reintegrate victims of trafficking based on their specific individual needs. ***The Committee encourages the Government to continue its efforts to ensure that appropriate protection and assistance is provided to victims of trafficking for both sexual and labour exploitation. It requests the Government to continue to provide information on the measures taken in this regard, including under the National Referral Mechanism, and on the number of victims who have been identified, benefited from protection and assistance services and received compensation from the Trust Fund. In light of the fact that 35 per cent of the cases of trafficking consist of cross-border trafficking cases according to the National Action Plan, the Committee requests the Government to provide information on the measures taken to protect and reintegrate victims who return to Nigeria, as well as on the measures taken to inform Nigerian migrants of the risks of being victims of trafficking.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

Previous comment: direct request

Article 1(c) of the Convention. Punishment for breaches of labour discipline. Merchant Shipping Act. For a number of years, the Committee has been requesting the Government to amend section 196(2) of the Merchant Shipping Act of 2007, which provides for penalties of imprisonment, involving compulsory prison labour, for various breaches of labour discipline (including wilfully disobeying any lawful command (section 196(2)(b)) or continuing to wilfully disobey such commands or neglecting duties (section 196(b)(c)). The Committee notes the Government's information that the Merchant Shipping Act of 2007 and its regulations are still under review and amendments will be adopted in due course. ***The Committee expresses the firm hope that the necessary measures will be taken to amend section 196(2) of the Merchant Shipping Act of 2007 so as to ensure that no penalties involving compulsory labour may be imposed for breaches of labour discipline that do not endanger the ship or the life or health of persons.***

Article 1(d). Penalties involving compulsory labour for participation in strikes. In its previous comments, the Committee noted the Government's information that section 62 of the draft Collective Labour Relations Bill prohibits the imposition of penalties of imprisonment for peaceful participation in a strike, in conformity with the Convention.

The Committee notes the Government's indication that the Collective Labour Relations Bill is still being revised. The Committee recalls in this regard that both the Trade Disputes Act, Cap. 432, of 1990 (section 17(2)(a)) and the Trade Unions Act as amended by the Trade Unions Amendment Act, 2005 (section 30) provide for the possibility of imposing penalties of imprisonment for the participation in strikes and that it has been requesting the Government to bring these provisions into conformity with *Article 1(d)* of the Convention for a number of years. ***The Committee therefore requests the Government to take the necessary measures to ensure that the Collective Labour Relations Bill will be adopted shortly and that as part of the ongoing legislative process the above-mentioned provisions of the Trade Disputes Act and the Trade Unions Act will be amended. In the meantime, the Committee requests the Government to ensure that, in accordance with Article 1(d) of the Convention, no penalties involving compulsory labour are imposed for the peaceful participation in a strike. The Committee also refers to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).***

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

Rwanda

Forced Labour Convention, 1930 (No. 29) (ratification: 2001)

Previous comment: direct request

Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. The Committee notes the Government's information, in its report, on the adoption of Act No. 51/2018 of 13 August 2018 relating to the prevention, suppression and punishment of trafficking in persons and exploitation of others, which repeals the provisions of the Criminal Code criminalizing trafficking in persons. The Committee welcomes the fact that, in addition to provisions criminalizing trafficking in persons and establishing stringent penalties of imprisonment (section 18), Act No. 51/2018 also includes provisions on the prevention of trafficking, and on providing protection and assistance to the victims (sections 7 to 15). It notes the Government's indication that several awareness-raising and training activities were undertaken on trafficking in persons, more particularly for law enforcement institutions regarding the identification, investigation and prosecution of cases of trafficking in persons. The Government adds that, in 2019, the Rwanda Bureau of Investigation opened 63 cases of transnational trafficking in persons (41 for forced labour and 22 for sexual exploitation). Furthermore, 64 individuals were arrested for trafficking in persons, of whom 9 were prosecuted. Two individuals were convicted and sentenced to 20 years of imprisonment and a fine.

The Committee notes that, according to the findings of research undertaken in collaboration with the Ministry of Justice and the International Organization for Migration (IOM), in 2018, Rwanda is a transit country and, to a lesser extent, a country of origin for trafficking in persons. Data from the Department of Immigration and Emigration (DGIE) show that the majority of the suspected victims of trafficking in persons identified were women (77.67 per cent) and were mainly from neighbouring countries, and that Middle East Countries and East African Countries are the most frequent destination. The Committee notes that, in the framework of the Universal Periodic Review (UPR) of the United Nations Human Rights Council, the Government indicated that the findings of this research informed the drafting of the National Action Plan on counter-human trafficking which was at the stage of adoption by the Cabinet in November 2020 (A/HRC/WG.6/37/RWA/1, 9 November 2020, paragraph 107). It further notes that, in its 2021 concluding observations, the United Nations Committee on Migrant Workers expressed concern at the limited knowledge about trafficking in persons and the challenges in evidence-gathering as one of the main causes of the low conviction rate for the crime of trafficking in persons as compared with other crimes (CMW/C/RWA/CO/2, paragraph 53). ***The Committee requests the Government to pursue its efforts to combat trafficking in persons for both labour exploitation and***

sexual exploitation, including through the swift adoption of the draft National Action Plan on counter-human trafficking. The Committee requests the Government to provide information on the measures taken in this context to ensure adequate protection of victims of trafficking and strengthen the capacity of the law enforcement authorities to identify, investigate and prosecute cases of trafficking. The Committee also requests the Government to provide information on the number of cases investigated and prosecuted, the number of convictions handed down and the penalties imposed.

Article 2(2)(e). Minor communal services. For a number of years, the Committee has been drawing the Government's attention to the fact that sections 2(2), 3, 5 and 13 of Act No. 53/2007 of 17 November 2007 on community work, go well beyond the exception allowed in *Article 2(2)(e)* of the Convention for minor communal services. It noted that, pursuant to Act No. 53/2007, community work, referred to as *Umuganda*, shall aim to promote development activities in the framework of supporting the national budget and that every Rwandan from 18 to 65 years old shall have the obligation to perform community works, which shall take place on the last Saturday of every month. Persons who fail to participate without justified reasons are punishable by a fine. The Committee noted from the information provided by the Government that infrastructure construction was one of the main activities.

The Committee notes the Government's indication that *Umuganda* is the gathering of efforts of many people in order for them to carry out a general public interest activity. These community works shall be considered a civic obligation for Rwandan citizens, as provided for in *Article 2(2)(b)* of the Convention. In that regard, the Committee emphasizes that the exception of "normal civic obligations" provided for under this provision of the Convention should be understood in a very restrictive way. Three kinds of such "normal civic obligations" are specifically mentioned in the Convention as exceptions to its scope, namely: compulsory military service, work or service in cases of emergency and "minor communal services". Thus, it is not possible to consider, within the meaning of the Convention, "normal civic obligations" to be work undertaken for public purposes, such as compulsory public works of general importance or compulsory national development service, which is prohibited by the Convention (see 2012 General Survey on the fundamental Conventions, paragraph 277). Furthermore, the Committee recalls that "minor communal services" do not constitute forced labour only if certain criteria are met: (i) the services must be "minor", such as relating primarily to maintenance work; (ii) the services must be performed in the direct interest of the community and not relate to the execution of works intended to benefit a wider group; and (iii) the community which has to perform the services, or their "direct" representative, must be consulted in regard to the need for such services. ***Noting that the large-scale participation in Umuganda is compulsory and infrastructure construction is one of the main activities, the Committee urges the Government to take the necessary measures to review the provisions of Act No. 53/2007 of 17 November 2007 to ensure compliance with the Convention, whether by ensuring that participation in community works is voluntary or by limiting their scope to the exception of "minor communal services". It requests the Government to continue to provide examples of the types of community works that can be required of the population under Act No. 53/2007.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Previous comments

Article 1(a) of the Convention. Sanctions involving compulsory labour imposed as a punishment for expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously noted that several sections of the Penal Code (Organic Law No. 01/2012/OL of 2 May 2012) provide for sanctions of imprisonment, which involve compulsory labour, in circumstances falling within the scope of the Convention (sections 116, 136, 451, 462, 463, 468 and 469). It expressed concern regarding information on prosecution of opposition politicians,

journalists and human rights defenders as a means of discouraging them from freely expressing their opinions. The Committee requested the Government to ensure that no penal sanctions involving compulsory prison labour may be imposed on persons for peacefully expressing political views.

Concerning compulsory prison labour, the Committee notes the Government's indication, in its report, that a draft law regulating correctional services is currently under the enactment process. The draft law would repeal the obligation of prisoners to perform activities for the development of the country, themselves and the prisons, provided for under section 50(8) of Act No. 34/2010 of 12 November 2010 on the establishment, functioning and organization of the Rwanda Correctional Service, in order to avoid any abuse that may result from its application. While noting this information, the Committee observes that section 35 of Act No. 68/2018 of 30 August 2018 determining offences and penalties in general, which replaced the Penal Code, provides that the court may order that the convict serve community service as a principal penalty in lieu of imprisonment when an offence is punishable by a term of imprisonment of up to five years. The Committee observes that the legislation in force continues to provide that persons sentenced to imprisonment are under an obligation to perform activities.

Legislation related to civil liberties and political freedoms. Referring to its previous comments, the Committee notes with ***interest*** that, pursuant to Act No. 69/2019 of 8 November 2019 amending Act No. 68/2018, defamation against the President of the Republic and humiliation of national authorities are decriminalized. It notes, however, that, under a certain number of provisions of Act No. 68/2018, sanctions involving compulsory labour may still be imposed for acts related to civil liberties and political freedoms and through which persons can express political views or views ideologically opposed to the established political, social or economic system. The provisions in question are as follows:

- section 161 concerning public insult;
- section 164 concerning the crime of "instigating divisions";
- section 194 concerning the spread of false information or harmful propaganda with intent to cause a "hostile international opinion" against the Government;
- section 204 on causing uprising or unrest among the population; and
- section 225(1) and (2), concerning demonstration in a public place without prior authorization or illegal demonstration or public meeting (when security, public order or health is not threatened).

Legislation related to press and media freedoms. The Committee further notes that, pursuant to Act No. 02/2013 of 11 March 2013, regulating media, "the freedom of opinions and information shall not jeopardize the general public order and good morals …". In that regard, it notes that several legislations adopted in recent years also provide for sanctions involving compulsory labour for acts through which persons express political views or views ideologically opposed to the established political, social or economic system. More particularly:

- Act No. 60/2018 of 22 August 2018 on prevention and punishment of cyber-crimes imposes up to five years' imprisonment and a fine for publishing "rumours that may incite fear, … or that may make a person lose their credibility" (section 39); and
- Act No. 24/2016 of 18 June 2016, governing information and communication technologies, prohibits the dissemination of "grossly offensive" or "indecent" messages, as well as the use of information and communications technology to cause "annoyance, inconvenience, or needless anxiety" (section 60), and provides that any person who, knowingly or wilfully, publishes, transmits or causes to be published in electronic form, any "indecent" information commits an offence punishable in accordance with the provisions of the Penal Code (section 206).

The Committee also notes that, , as recently highlighted in the framework of the Universal Periodic Review (UPR) of the United Nations (UN) Human Rights Council, several UN treaty bodies and Special Rapporteurs continued to express serious concerns at prosecutions of politicians, journalists and human rights defenders, as a means of discouraging them from freely expressing their opinions (A/HRC/WG.6/37/RWA/2, 13 November 2020, paragraph 45; letter dated 30 May 2018 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and CAT/C/RWA/CO/2, 21 December 2017, paragraphs 52–53). In the framework of the UPR, a number of recommendations formulated by the Working Group, and supported by Rwanda, referred to the elimination from the legislation of provisions that undermine freedom of expression and the protection of journalists and members of the media and civil society against harassment and intimidation (A/HRC/47/14, 25 March 2021, paragraphs 134-136).

The Committee notes with ***deep concern*** this information. The Committee observes that the above-mentioned provisions of Act No. 68/2018 of 30 August 2018, Act No. 60/2018 of 22 August 2018 and Act No. 24/2016 of 18 June 2016, are worded in terms broad enough to lend themselves to their application as a means of punishment for peacefully expressing political views or views ideologically opposed to the established political, social or economic system. In so far as these provisions are enforceable with penal sanctions which involve compulsory labour, they fall within the scope of the Convention. The Committee recalls that legal guarantees of rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, constitute an important safeguard against the imposition of compulsory labour as a punishment for holding or expressing political or ideological views (2012 General Survey on the fundamental Conventions, paragraph 302). ***The Committee therefore urges the Government to ensure that persons who, by means of methods that neither use violence nor incite to violence, express political views or views opposed to the established political, social or economic system do not incur penal sanctions involving an obligation to work. It expresses the firm hope that the Government will take the necessary measures to review the above-mentioned provisions of Act No. 68/2018 of 30 August 2018 determining offences and penalties in general; Act No. 60/2018 of 22 August 2018 on prevention and punishment of cybercrimes; and Act No. 24/2016 of 18 June 2016 governing information and communication technologies, for example by clearly restricting the scope of these provisions to situations connected with the use of violence or incitement to violence, or by repealing sanctions involving compulsory labour (such as compulsory prison labour or compulsory community service). In the meantime, the Committee requests the Government to provide information on the application of these provisions in practice, including on the number of prosecutions initiated and convictions handed down, as well as information on the facts that led to them.***

Article 1(d). Sanctions for participating in strikes. The Committee notes the adoption of Act No. 66/2018 of 30 August 2018 regulating labour, which provides for a number of restrictions on the exercise of the right to strike, by considering a strike as being legal only when the arbitration committee has exceeded 15 working days without issuing its decision or the conciliation resolution on collective dispute or the court award being enforceable have not been implemented (section 105). It notes that section 118 of Act No. 66/2018 provides for sanctions of imprisonment for a term of not less than six months, involving compulsory labour, for employees who go on strike illegally. The Committee further notes the adoption of Ministerial Order No. 004/19.20 of 17 March 2020, determining essential services that should not be interrupted during strikes or lock-outs, which repealed Ministerial Order No. 4 of 13 July 2010. It observes that services related to communication, transportation or education are still considered as essential services, and that section 6 of the Ministerial Order provides that other services may be considered as essential services “for public interest”. Furthermore, employees are prohibited from exercising a strike within ten days preceding or following elections in the country (section 8). The Committee wishes to draw the Government’s attention to the fact that the right to strike may only be restricted or prohibited in essential services in the strict sense of the term (namely, in services the

interruption of which would endanger the life, personal safety or health of the whole or part of the population), in the public service only for public servants exercising authority in the name of the State, or in situations of acute national crisis (see General Survey, paragraph 314). ***The Committee therefore requests the Government to take the necessary measures, both in law and in practice, to ensure that no worker who participates peacefully in a strike can be liable and sentenced to penal sanctions involving compulsory labour.***

Saint Kitts and Nevis

Forced Labour Convention, 1930 (No. 29) (ratification: 2000)

Previous comment: direct request

Article 2(2)(c) of the Convention. Work exacted as a consequence of a conviction in a court of law. For a number of years, the Committee had observed that pursuant to section 193(5) of the Prison Act (Cap 19.08), prisoners (who pursuant to section 193(1) are under the obligation to undertake useful work) may be employed for the private benefit of any person, in pursuance of special rules. Having noted that, in practice, prisoners carry out work for private entities, the Committee requested the Government to review the Prison Act to ensure that prisoners only undertake work or service for private persons or entities on a voluntary basis. The Committee notes that the Government reiterates that the recommendations of the Committee will be reviewed by the National Tripartite Committee, in consultation with the competent authority and the Ministry of National Security, to ensure that any work or service by prisoners for private persons is performed voluntarily and notes with ***regret*** the lack of progress made in this regard. ***Therefore, the Committee urges the Government to take measures to review section 193(5) of the Prison Act (Cap 19.08) to ensure that any work or service by convicted prisoners for private persons is performed with the formal, freely given and informed consent of the prisoners concerned. It also requests the Government to ensure that, in practice, the conditions of work of the prisoners working for private entities approximate those of a free labour relationship.***

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

Syrian Arab Republic

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 1(1), 2(1) and 25 of the Convention. Situations of forced labour arising from the armed conflict. Trafficking and sexual slavery. Following its previous comments, the Committee notes that according to the 2016 Report of the UN Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic to the Human Rights Council, credible information indicates that women and girls trapped in conflict areas under the control of the Islamic State in Iraq and the Levant (ISIL) face trafficking and sexual slavery. Some specific ethnic groups are particularly vulnerable, such as Yazidis and those from ethnic and religious communities targeted by the ISIL (A/HRC/32/35/Add.2, paragraph 65). The Committee also notes that, according to the 2017 Report of the UN Secretary-General on conflict-related sexual violence, thousands of Yazidi women and girls who were captured in Iraq in August 2014 and trafficked to the Syrian Arab Republic continue to be held in sexual slavery, while new reports have surfaced of additional women and children being forcibly transferred from Iraq to the Syrian Arab Republic since the start of military operations in Mosul (S/2017/249, paragraph 69).

The Committee notes the Government's indication in its report that, pursuant to the Prevention of Human Trafficking Act of 2010, a Department to Combat Trafficking in Persons was established. However, since the conflict has erupted, trafficking of persons and sexual slavery have increased because of the presence of terrorist groups in the country. The Committee must express its ***deep concern*** that, after almost six years of conflict, trafficking in persons and sexual slavery are practices that are still occurring on a large scale on the ground. ***While acknowledging the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Committee once again urges the Government to take the necessary measures to put an immediate stop to these practices which constitute a serious violation of the Convention and to guarantee that the victims are fully protected from such abusive practices. The Committee recalls that it is crucial that appropriate criminal penalties are imposed on perpetrators so that recourse to trafficking or sexual slavery does not go unpunished. The Committee urges the Government to take immediate and effective measures in this respect, and to provide information on the results achieved.***

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

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been drawing the Government's attention to certain provisions under which penal sanctions involving compulsory prison labour, pursuant to sections 46 and 51 of the Penal Code (Act No. 148 of 1949), may be imposed in situations covered by the Convention, namely:

- Penal Code: section 282 (insult of a foreign State); 287 (exaggerated news tending to harm the prestige of the State); 288 (participation in a political or social association of an international character without permission); and sections 335 and 336 (seditious assembly, and meetings liable to disturb public tranquillity); and
- the Press Act No. 156 of 1960: sections 15, 16 and 55 (publishing a newspaper for which an authorization has not been granted by the Council of Ministers).

The Committee also previously noted that the abovementioned provisions are enforceable with sanctions of imprisonment for a term of up to one year which involves an obligation to perform labour in prison.

The Committee notes the Government's indication in its report that the Press Act of 1960 had been repealed and replaced by the Media Act No. 108 of 2011, under which the penalty of imprisonment has been replaced by a fine. The Government also indicates that a draft Penal Code has been prepared and is in the process of being adopted. ***The Committee expresses the firm hope that, during the process of the adoption of the new Penal Code, the Government will take all the necessary measures to ensure that persons who express political views or views opposed to the established political, social or economic system benefit from the protection afforded by the Convention and that, in any event, penal sanctions involving compulsory prison labour cannot be imposed on them.***

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

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

Turkmenistan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 2001)

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022. ***It requests the Government to provide its reply to these observations.***

Article 1(b) of the Convention. Imposition of forced labour as a method of mobilizing and using labour for purposes of economic development. Cotton production. In its previous comments, the Committee noted with deep concern the continued practice of forced labour in the cotton sector. The Committee also noted that, in its 2021 conclusions on the application of the Convention by Turkmenistan, the Conference Committee on the Application of Standards, urged the Government to take effective and time-bound measures to ensure that no one, including farmers, public and private sector workers and students, is forced to work for the state-sponsored cotton harvest. To effectively implement its conclusions, the Conference Committee called on the Government to accept a high-level mission of the ILO which would be granted all accommodations so as to carry out its duties, including during the harvest season.

The Committee notes the Government's indication, in its report, that no allegation of the use of forced labour in the cotton sector has been reported to state bodies, judicial authorities, representative organizations of employers and workers, or the Ombudsman's Office. The Government also indicates that the Ombudsman's Office has made recommendations to the Prosecutor General, the Ministry of Internal Affairs, the Ministry of Education, and the heads of the provinces and Ashgabat to strengthen monitoring with a view to preventing forced and child labour, including in cotton harvesting and other agricultural works. In addition, measures are being taken to improve the procedure for concluding employment contracts between farmers and cotton pickers.

The Committee further notes that a high-level mission of the ILO was carried out in Turkmenistan in two phases in 2022: the first phase was undertaken virtually due to the COVID-19-related restrictions in February 2022. A preparatory ILO mission to Turkmenistan took place from 14 to 16 September 2022 to prepare for the second phase of the high-level mission. The objective of this preparatory visit was to (1) further ILO understanding of how the cotton harvest in Turkmenistan was organized from an institutional and practical point of view; (2) discuss the parameters for the second phase of the high-level mission; and (3) discuss the development of a possible development cooperation project. Consequently, the second phase of the high-level mission was undertaken from 14 to 18 November 2022. The main objective of the second phase was to reach agreement on the parameters of a development cooperation project and immediate activities for cooperation between the ILO and the Turkmen constituents.

The Committee notes that as an outcome of the high-level mission, an agreement was reached on a draft road map for cooperation between the ILO and the Government for 2023. In particular, the road map provides for the elaboration of activities in the following six areas: (1) a review of the policy and administrative framework governing the cotton harvest; (2) improvement of labour inspection and law enforcement; (3) promotion of full, productive and freely chosen employment in the cotton sector; (4) improvement of cotton production and harvesting; (5) design and implementation of awareness-raising activities; and (6) promotion of social dialogue in cotton production. In addition, the road map includes activities on the improvement of the legislative framework for the prevention and prohibition of forced labour; the undertaking of a situation analysis on recruitment for cotton picking; improvement of the regulation of seasonal work in agriculture and contractual arrangements; improvement of labour inspection to strengthen oversight; the undertaking of field visits during the 2023 cotton harvest; as well as further enhancement of dialogue between the ILO and the Government. The Committee also

notes that the high-level mission undertook visits to *Mary* and *Lebap* provinces, during which it met with the regional authorities and visited the cotton fields.

The Committee further notes that the ITUC, in its 2022 observations, reiterates once again the continued recourse to the use by the State of forced labour in picking cotton. According to the ITUC, during the 2021 cotton harvest, mobilized persons were forced to work excessively long hours in poor sanitary conditions without access to medical care and compensation for their work. As in the previous years, in order not to participate in cotton harvesting, persons had to pay the amounts representing a substantial part of their income for replacement pickers. The ITUC also points out that the most vulnerable persons to forced labour in the cotton harvest are public sector workers who constitute the main workforce to pick cotton, internal migrant workers, persons receiving treatment for addiction, persons accused of prostitution or alimony delinquency, as well as students at state educational institutions.

While taking due note of the Government's collaboration with the ILO to address the issue of forced labour in cotton harvesting, the Committee once again notes with ***concern*** the reports of the continued practice of forced labour in the cotton sector. ***The Committee strongly urges the Government to pursue its efforts to ensure the complete elimination of the use of compulsory labour of public and private sector workers, as well as students, in cotton production. In this regard, the Committee strongly encourages the Government to continue to engage in cooperation with the ILO and the social partners to ensure the full application of the Convention in practice, including within the framework of the road map for cooperation between the ILO and the Government. It requests the Government to provide information on concrete measures taken in this respect, including on: (1) a review of the policy and administrative framework governing the cotton harvest; (2) improvement of labour inspection and law enforcement; (3) promotion of full, productive and freely chosen employment in the cotton sector; (4) improvement of cotton production and harvesting; (5) design and implementation of awareness-raising activities; and (6) promotion of social dialogue in the cotton production.***

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

Uganda

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)

Previous comment

The Committee notes with ***regret*** that the Government's report, which was due since 2019, does not contain replies to its previous comments. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee previously urged the Government to review and amend a number of provisions punishing certain activities, which might fall within the scope of the Convention, with penalties of imprisonment involving an obligation to perform labour pursuant to the Prisons Regulations (section 61). The provisions in question are as follows:

- provisions of the Public Order and Security Act No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence, subject to penalties involving compulsory labour;
- sections 54(2)(c), 55, 56 and 56(a) of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus rendering any speech,

publication or activity on behalf of, or in support of, such a combination, illegal and punishable with imprisonment; and

– sections 5(8) and 8(4) of the Public Order Management Act, 2013, respectively for disobedience of statutory duty in case of organizing a public meeting without any reasonable excuse, and for disobedience of lawful orders during public meetings.

Regarding the Public Order Management Act of 2013, the Committee notes the decision of the Constitutional Court of Uganda of March 2020 in the case *Human Rights Network Uganda & 4 Ors* v. *Attorney General (Constitutional Petition 56 of 2013)*. The Committee welcomes the fact that by a majority decision, the Court declared and ordered that section 8 of the Public Order Management Act was unconstitutional and therefore null and void, and that all acts made under that Act are also null and void.

The Committee notes with ***concern*** from the information of the United Nations (UN) country team in the framework of the Universal Periodic Review of the UN Human Rights Council of November 2021, that hundreds of opposition organizers, campaign staff, members and supporters were arrested and detained, and some were subjected to incommunicado detention, including in military detention facilities, during the electoral period. There were widespread restrictions on political participation, media freedom and freedom of peaceful assembly throughout the electoral campaign. The UN country team also referred to COVID-19 restrictions on public meetings and assemblies, which were applied in a discriminatory manner to target people perceived as opponents of the Government (A/HRC/WG.6/40/UGA/2, paragraphs 12 and 18).

The Committee recalls that legislation regulating the exercise of civil liberties shall not be applied in a manner that could result in the imposition of prison sentences involving compulsory labour on persons who hold or express political views or views opposed to the established political, social or economic system. The Committee points out that, in this regard, the range of activities which must be protected from punishment involving compulsory labour, under *Article 1(a)* of the Convention, comprises the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views (2012 General Survey on the fundamental Conventions, paragraphs 302 and 303). ***The Committee therefore urges the Government to take the necessary measures to ensure that, both in law and in practice, no penalties involving compulsory prison labour can be imposed on persons who peacefully express political views or views ideologically opposed to the established political, social or economic system. The Committee expresses the firm hope that the necessary action will be taken regarding the revision of the provisions the Public Order and Security Act No. 20 of 1967, the Penal Code (sections 54(2)(c), 55, 56 and 56(a)), and the Public Order Management Act, 2013 (section 5(8)), to ensure the observance of the Convention, and that the Government will soon report on any progress made in this regard. It also requests the Government to provide information on the legal consequences of the above-mentioned decision of the Constitutional Court.***

Article 1(d). Penal sanctions involving compulsory labour as a punishment for having participated in strikes. The Committee previously noted that the Labour Disputes (Arbitration and Settlement) Act, 2006 contains provisions concerning the resolution and settlement of labour disputes which could lead to the imposition of compulsory arbitration procedures, thus making strikes or other industrial action unlawful. Organization of strikes in these circumstances are punishable with imprisonment (involving compulsory prison labour) (sections 28(6) and 29(2) and (3)). The Committee also noted that under sections 33(1) and (2) of the Act, the minister may refer disputes in essential services to the Industrial Court, thus making illegal any collective withdrawal of labour in such services; the violation of this prohibition is punishable with imprisonment.

While the Government previously indicated under the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that an Amendment Bill, 2019, to the Labour Disputes (Arbitration and Settlement) Act, 2006, was before Parliament for discussion, the Committee notes with ***regret*** that the Labour Disputes (Arbitration and settlement) (Amendment) Act adopted in 2020 does not take into account the Committee's recommendations.

The Committee recalls in this regard that, in accordance with *Article 1(d)* of the Convention, persons who organize or peacefully participate in a strike cannot be liable to sanctions involving compulsory labour. Furthermore, when restrictions and prohibitions on the right to strike, connected with the imposition of compulsory arbitration, are enforceable with sanctions involving compulsory labour, they should be limited to the sectors, types of employment or situations where, in conformity with freedom of association principles, restrictions may be imposed on the right to strike itself (such as, essential services in the strict sense of the term or situations of acute national crisis). The Committee refers in this regard to its comments under Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). ***The Committee therefore urges the Government to take the necessary measures to ensure that the Labour Disputes (Arbitration and Settlement) Act, 2006, is amended so that workers who participate peacefully in a strike are not liable to sanctions of imprisonment involving compulsory labour. The Committee requests the Government to provide information on any progress made in this respect***.

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 29** *(Australia, Belarus, Belize, Botswana, Brazil, Cabo Verde, Cambodia, Canada, Chad, Comoros, Cook Islands, Costa Rica, Croatia, Cuba, Czechia, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, El Salvador, Eritrea, Estonia, Eswatini, Ethiopia, France: French Polynesia, Gabon, Ghana, Guatemala, Guyana, Islamic Republic of Iran, Iraq, Ireland, Israel, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mongolia, Montenegro, Mozambique, Nepal, Netherlands: Aruba, Nicaragua, Nigeria, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Somalia, Syrian Arab Republic, Uganda);* **Convention No. 105** *(Afghanistan, Azerbaijan, Barbados, Chad, Comoros, Congo, Cook Islands, Cuba, Czechia, Dominican Republic, Ecuador, Eswatini, Ethiopia, Gabon, Ghana, Grenada, Guatemala, Islamic Republic of Iran, Iraq, Israel, Kenya, Kuwait, Latvia, Lebanon, Lesotho, Liberia, Libya, Mali, Mongolia, Montenegro, Mozambique, Netherlands: Aruba, Nicaragua, Nigeria, Saint Kitts and Nevis, South Sudan, Syrian Arab Republic, Tajikistan, Turkmenistan, Uganda).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 29** *(Argentina).*

Elimination of child labour and protection of children and young persons

Afghanistan

Minimum Age Convention, 1973 (No. 138) (ratification: 2010)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously noted the implementation of the various measures taken by the Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD) to prevent child labour, including: the National Child Labour Strategy, 2012, followed by a National Action Plan to prevent child labour in brick kilns; a National Strategy for the Protection of Children at Risk; and a National Strategy for Working Street Children, 2011. However, the Committee noted, that children in Afghanistan are engaged in child labour and often in hazardous conditions, including in agriculture, carpet weaving, domestic work, street work, and brick making. Moreover, 27 per cent of children between the ages of 5 and 17 years (2.7 million children) are engaged in child labour with a higher proportion of boys (65 per cent). Of this, 46 per cent are children between 5 and 11 years of age. At least half of all child labourers are exposed to hazardous working conditions such as dust, gas, fumes, extreme cold, heat or humidity. Moreover, 56 per cent of brick makers in Afghan kilns are children and the majority of these are 14 years of age and below.

The Committee notes that the Government's report contains no new information in this regard. The Committee once again notes with ***concern*** that a significant number of children under the age of 14 years are engaged in child labour, of which at least half are working in hazardous conditions. ***The Committee therefore urges the Government to strengthen its efforts to ensure the progressive elimination of child labour in all economic activities, both in the formal and informal sectors, and requests that the Government provide information on the measures taken in this regard, as well as the results achieved.***

Article 2(1). Scope of application. The Committee noted that according to sections 5 and 13 of the Labour Law, read in conjunction with the definition of a "worker", the Law applies only to labour relations on a contractual basis and, therefore, that the provisions of the Labour Law did not appear to cover the employment of children outside a formal employment relationship, such as children working on their own account or in the informal economy.

Noting the absence of information provided in this regard in the Government's report, the Committee recalls that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship. ***The Committee therefore requests, once again, that the Government take the necessary measures to ensure that all children, including children working outside a formal employment relationship such as children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. In this regard, the Committee encourages, once more, the Government to review the relevant provisions of the Labour Law in order to address these gaps as well as to take measures to strengthen the capacity and expand the reach of the labour inspectorate to the informal economy with a view to ensuring such protection in this sector.***

Article 7(1) and (3). Minimum age for admission to light work and determination of light work. The Committee previously noted that section 13(2) of the Labour Law sets 15 years as the minimum age for employment in light work in industries and section 31 prescribes a weekly working period of 35 hours for young persons between 15 and 18 years of age. It observed that the minimum age for light work of 15 years is higher than the minimum age for admission to employment or work of 14 years, specified by Afghanistan.

Noting the absence of information provided in this regard by the Government, the Committee once again draws the Government's attention to the fact that *Article 7(1)* of the Convention is a flexibility clause which provides that national laws or regulations may permit the employment or work of persons aged 13–15 years in light work activities which are not likely to be harmful to their health or development and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received.

The Committee notes the lack of information contained in the Government's report and recalls once again that *Article 7(4)* permits Member States who have specified a general minimum age for admission to employment or work of 14 years to substitute a minimum age for admission to light work of 12–14 years to that of the usual 13–15 years of age (see General Survey on the fundamental Conventions, 2012, paragraphs 389 and 391). ***In view of the fact that a high number of children under 14 years of age are engaged in child labour in the country, the Committee once again requests that the Government regulate light work activities for children between 12 and 14 years of age to ensure that children who, in practice, work under the minimum age are better protected. The Committee also requests that the Government take the necessary measures to determine light work activities that children of 12–14 years of age are permitted to undertake and to prescribe the number of hours and conditions of such work, pursuant to Article 7(3) of the Convention.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2010)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Organisation of Employers (IOE) received on 30 August 2017, and the in-depth discussion on the application of the Convention by Afghanistan in the Committee on the Application of Standards at the 106th Session of the International Labour Conference in June 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery or practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for use in armed conflict and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. In its previous comments, the Committee noted that the Law on prohibiting the recruitment of child soldiers criminalizes the recruitment of children under the age of 18 years into the Afghan Security Forces. The Committee also noted that a total of 116 cases of recruitment and use of children, including one girl, were documented in 2015. Out of these: 13 cases were attributed to the Afghan National Defence and Security forces; five to the Afghan National Police; five to the Afghan Local Police; and three to the Afghan National Army; while the majority of verified cases were attributed to the Taliban and other armed groups who used children for combat and suicide attacks. The United Nations verified 1,306 incidents resulting in 2,829 child casualties (733 killed and 2,096 injured), an average of 53 children were killed or injured every week. A total of 92 children were abducted in 2015 in 23 incidents.

In this regard, the Committee noted the following measures taken by the Government:

- The Government of Afghanistan signed an Action Plan with the United Nations on 30 January 2011 to end and prevent the recruitment and use of children by the Afghan National Security Forces, including the Afghan National Police, Afghan Local Police and Afghan National Army.
- A roadmap to accelerate the implementation of the Action Plan was endorsed by the Government on 1 August 2014.
- The Government endorsed age-assessment guidelines to prevent the recruitment of minors.
- In 2015 and early 2016, three additional child protection units were established in Mazar e Sharif, Jalalabad and Kabul, bringing the total to seven. These units are embedded in Afghan National Police recruitment centres and are credited with preventing the recruitment of hundreds of children.

The Committee notes that the Conference Committee recommended that the Government take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children into armed forces and groups. It further recommended the Government to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are

carried out, and that sufficiently effective and dissuasive penalties are imposed in law and practice. Finally, the Conference Committee recommended the Government to take effective and time-bound measures to provide for the rehabilitation and social integration of children who are forced to join armed groups.

The Committee notes the IOE's indication that children are engaged in armed conflict in Afghanistan. The Committee notes the Government representative's indication to the Conference Committee that the Law on the Prohibition of Children's Recruitment in the Armed Forces (2014), along with other associated instruments, has helped prevent the recruitment of 496 children into national and local police ranks in 2017. Moreover, the Ministry of Interior, in cooperation with relevant government agencies, was effectively implementing Presidential Decree No. 129 which prohibits, among others, the use or recruitment of children in police ranks. Inter-ministerial commissions tasked with the prevention of child recruitment in national and local police have been established in Kabul and the provinces, and child support centres have been set up in 20 provinces, with efforts under way to establish similar centres in the remaining provinces. Finally, the Committee notes the Government's indication that the National Directorate of Security has recently issued Order No. 0555, prohibiting the recruitment of underage persons and that the Order is being implemented in all security institutions and monitored by national and international human rights organizations. ***While acknowledging the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Committee requests the Government to continue its efforts in taking immediate and effective measures to put a stop, in practice, to the recruitment of children under 18 years by armed groups, the national armed forces and police authorities, as well as measures to ensure the demobilization of children involved in armed conflict. It once again urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, it requests the Government to take effective and time-bound measures to remove children from armed groups and armed forces and ensure their rehabilitation and social integration, and to provide information on the measures taken in this regard and on the results achieved.***

Articles 3(b) and 7(2)(b). Use, procuring or offering of children for prostitution and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee previously noted that concerns remained regarding the cultural practice of *bacha-bazi* (dancing boys), which involves the sexual exploitation of boys by men in power, including the Afghan National Defence and Security Forces' commanders. It also noted that there are many child victims of *bacha bazi*, particularly boys between 10 and 18 years of age who have been sexually exploited for long periods of time. The Committee further noted that some families knowingly sell their children into forced prostitution, including for *bacha-bazi*.

The Committee notes that the Conference Committee recommended the Government to take immediate and effective measures to eliminate the practice of *bacha-bazi.* It also recommended the Government to take effective and time bound measures to provide for the rehabilitation and social integration of children who are sexually exploited.

The Committee notes the Government representative's indication to the Conference Committee that the Child Protection Law has been submitted to Parliament for adoption and makes the practice of *bacha-bazi* a criminal offence. The Committee also notes the new Law on Combating Human Trafficking in Persons and Smuggling of Migrants of 2017 (Law on Human Trafficking of 2017). It notes that section 10(2) of this Law punishes the perpetrator of trafficking to eight years' imprisonment when the victim is a child or when the victim is exploited for the purpose of dancing. ***The Committee urges the Government to take the necessary measures to ensure the effective implementation of the prohibition contained in section 10(2) of the Law on Human Trafficking of 2017. It requests the Government to provide information on the results achieved to effectively eliminate the practice of bacha-bazi, to remove children from this worst forms of child labour and to provide assistance for their rehabilitation and social integration. It also requests the Government to provide information on the adoption of the Child Protection Law, and its effective implementation.***

Article 7(2). Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour and taking into account the special situation of girls. Access to free basic education. The Committee previously noted the Government's statement that as a result of the past three decades of conflict, insecurity and drought, children and youth are the most affected victims, a majority of whom are deprived of proper

education and training. The Committee noted that Afghanistan is among the poorest performers in providing sufficient education to its population. A large number of boys and girls in 16 out of 34 provinces had no access to schools by 2013 due to insurgents' attacks and threats that lead to the closure of schools. In addition to barriers arising from insecurity throughout 2015, anti-government elements deliberately restricted the access of girls to education, including closure of girls' schools and a ban on girls' education. More than 369 schools were closed partially or completely, affecting at least 139,048 students, and more than 35 schools were used for military purposes in 2015. Finally, the Committee noted the low enrolment rate of girls, in particular at the secondary school level, high dropout rates especially in rural areas owing to a lack of security in the journey to and from school, and the increased number of attacks on girls' schools and written threats warning girls to stop going to school by non-state armed groups.

The Committee notes the Government representative's statement at the Conference Committee that many households respond to poverty by taking their children out of school and forcing them into labour. The Government indicates that child labour is not only a law enforcement matter but a fundamental problem which requires a comprehensive understanding and a robust response mechanism. With a view to providing preschool support to children under the age of six, the Ministry of Labour, Social Affairs, Martyrs and Disabled has established over 366 local kindergartens which house over 27,000 children. The Government also indicates it is taking strong action against the exploiters as well as the families who knowingly force their children into prostitution and expects a sharp decline in the practice in the coming years. Finally, the Committee notes the Government's indication that school burnings and the imposition of bans in Taliban-controlled areas prevented girls and children from attending school. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take the necessary measures to raise awareness among households that education is key in preventing the engagement of children in the worst forms of child labour. Additionally, it once again urges the Government to take the necessary measures to improve the functioning of the education system and to ensure access to free basic education, including by taking measures to increase the school enrolment and completion rates, both at the primary and secondary levels, particularly of girls.***

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

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

Antigua and Barbuda

Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3(1) and (2) of the Convention. Minimum age for admission to hazardous work and determination of these types of work. The Committee previously noted the Government's indication that the unions and employers' federation were consulted regarding the activities and occupations which should be prohibited to persons below 18 years of age. It noted that although a recommendation was made, it was not submitted before the National Labour Board, as it was the Government's aim to revamp the occupational health and safety legislation. Thereafter, the Committee noted the Government's statement that the proposed amendments to the provisions of the Labour Code on occupational health and safety have been circulated to Cabinet, but have not yet been adopted. It further noted the Government's indication that technical assistance was sought in relation to new and separate occupational health and safety legislation.

The Committee notes the Government's indication in its report that the National Labour Board is currently reviewing the occupational health and safety legislation. The Government states that it has noted the Committee's comments and that it will act accordingly. The Committee notes with ***regret*** that the list of hazardous types of work prohibited for children under 18 years of age has still not been adopted. The Committee therefore once again reminds the Government that *Article 3(1)* of the Convention provides that the minimum age for admission to any type of employment or work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of young persons, shall not be less than 18 years. It also reminds the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the

competent authority, after consultation with the organizations of employers and workers concerned. ***Observing that the Convention was ratified by Antigua and Barbuda more than 30 years ago, the Committee urges the Government to take the necessary measures to ensure that a list of activities and occupations prohibited for persons below 18 years of age is adopted in the near future, in accordance with Article 3(1) and (2) of the Convention. It encourages the Government to pursue its efforts in this regard through amendments to the occupational health and safety legislation, and to provide information on progress made. Lastly, it requests that the Government provide a copy of the amendments to the occupational health and safety legislation once adopted.***

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

Argentina

Minimum Age Convention, 1973 (No. 138) (ratification: 1996)

Previous comment

The Committee notes the observations of the General Confederation of Labour of the Argentine Republic (CGT RA), received on 1 September 2021, and of the Confederation of Workers of Argentina (CTA Autonomous), received on 31 August 2021.

Article 1 of the Convention. National policy for the effective abolition of child labour. In its previous comments, the Committee noted the National Plan for the Eradication of Child Labour and the Protection of Work by Young Persons (2018-22) and encouraged the Government to pursue its efforts towards the progressive elimination of child labour.

The Committee notes that, in response to the previous observations of the GGT RA concerning the need to strengthen the Provincial Commissions for the Prevention and Eradication of Child Labour (COPRETI), the Government indicates in its report that, with a view to maintaining permanent links between the provinces and the National Committee for the Eradication of Child Labour (CONAETI), provincial representatives (either the highest labour authority in the province or COPRETI coordinators) have been included on the board of the CONAETI. It also notes the creation of the Federal Strengthening Programme for the Eradication of Child Labour (Decision No. 268/2021 of the Ministry of Labour, Employment and Social Security), with the intention of reinforcing the role of institutions in territorial entities and/or value chains, which give rise to risks of the use of child labour, including through the training of leaders to promote childhood free from child labour. The Government adds that it is working on the establishment of provincial networks of enterprises involved in action to address child labour with a view to focusing more deeply on value chains. With ILO support, action has been initiated to eradicate child labour in the agricultural sector, and particularly in the production of tomatoes, garlic and cotton. The Committee notes the emphasis placed by the CGT RA on trade union participation in the design of policies to combat child labour, as reflected in the agreement concluded in 2021 between various unions and the Government with a view to articulating joint training activities for the prevention and eradication of child labour.

The Committee also takes note of the findings of the Survey of the Activities of Boys, Girls and Young Persons (EANNA) 2017, provided by the Government. According to the Survey, 10 per cent of boys and girls aged between 5 and 15 years in the country (763,544 boys and girls) are engaged in at least one productive activity (whether for the market, for own consumption or intensive unpaid domestic work involving ten or more hours of work a week), with a higher incidence in rural areas (19.8 per cent) and in the north-east and north-west of Argentina. Of a total of 781,513 boys, girls and young persons who work (between 5 and 17 years of age), 613,330 may be considered to fall within the ILO definition of child labour.

The Committee welcomes the efforts made by the Government for the strengthening of cooperation with provincial bodies responsible for combating child labour, and the compilation and publication of updated and disaggregated statistical data on the characteristics of child labour throughout the country, which will provide a basis for directing and monitoring the public policies adopted for its eradication. ***The Committee therefore encourages the Government to continue its efforts, in collaboration with the social partners, for the elimination of child labour in all sectors, and requests it to provide information on this subject. The Committee also requests the Government to continue providing updated information, where possible disaggregated by age and gender, on the nature, extent and trends of child labour in the country, including in the informal economy.***

Article 2(3). Compulsory schooling. The Committee notes that, according to the EANNA, although school attendance by children (from 5 to 15 years of age) is almost universal (98.7 per cent of those living in urban areas and 96.6 per cent in rural areas), the intensity of the working day is an indicator that runs counter to educational success. Of all children who carry out at least one productive activity in urban areas, 21 per cent arrive late at school, 19.4 per cent do not attend school frequently and 17.3 per cent have repeated a school year at least once; while among those in rural areas, 15.2 per cent arrive at school late, 17.3 per cent do not attend school frequently and 22.4 per cent have repeated a school year at least once. In this regard, the CTA Autonomous indicates that the tension between child labour and education takes the form of a deterioration in educational trajectories and emphasizes that, among those who work, the requirement to repeat years, late arrivals at school and frequent absences occur more often than for those not engaged in productive work, irrespective of whether the work is for the market, household consumption or domestic or intensive care work.

The Committee notes with ***concern*** this information, which indicates that children under the minimum age are engaged in work which prevents them from attending school regularly, achieving a good educational performance and benefiting from the education received. The Committee recalls in this respect that to prevent and combat child labour, compulsory education should be effectively implemented so as to ensure that all children under the minimum age are attending school (2012 General Survey on the fundamental Conventions, paragraph 375). ***The Committee therefore requests the Government to take all the necessary measures to: (i) identify the causes that lead children under the minimum age for admission to employment (16 years) to undertake work that prevents them from attending school; and (ii) ensure that all children under the minimum age are able to complete compulsory schooling in practice. In this regard, it requests the Government to continue providing updated statistical data on school attendance, drop-out, repetition and completion rates for children under 16 years of age.***

Article 7(1). Light work. In its previous comments, the Committee noted that, by virtue of section 17 of Act No. 26390/2008 on the prohibition of child labour and the protection of young workers, persons over 14 and under 16 years of age may work in enterprises owned by their father, mother or guardian for no more than three hours a day and 15 hours a week, on condition that the work is not hazardous or unhealthy and that they can continue attending school. However, the Committee notes that, according to the EANNA, in urban areas, 25.5 per cent of children (between 5 and 15 years of age) who work do so for between ten and 36 hours a week, and 8.5 per cent work for more than 36 hours a week. In rural areas, 28.5 per cent of children who work do so between ten and 36 hours a week, and 6.1 per cent for more than 36 hours a week. The Committee observes that, according to this statistical data, there are children engaged in light work for a number of hours that exceeds the limit established by the national legislation, and that some of them are even under the age established for such work. In this regard, the Committee wishes to recall that, in accordance with *Article 7(1)* of the Convention, children who are of the age to undertake light work may only carry out work that is not likely to be harmful to their health or development, and that is not such as to prejudice their attendance at school or their capacity to benefit from the instruction received. ***The Committee therefore requests the Government to take the necessary measures to: (i) identify the causes that lead children, even under***

the minimum age, to undertake light work, activities that exceeds the maximum number of hours established by the national legislation; and (ii) ensure that only children over 14 years of age undertake light work and that in no case does such work exceed the number of hours permitted by national laws and regulations (up to 15 hours a week).

Application in practice and labour inspection. The Committee notes the Government's indication that in 2020 the Coordinating Unit for the Prevention of Child Labour and the Protection of Young Workers became the Inspection Department for Work by Children and Young Persons and Evidence of Labour Exploitation (DITIAEIEL), the functions of which include promoting the continuous strengthening of labour inspection systems, furthering legal provisions and preparing information materials to optimize inspection, and technical assistance to labour jurisdictions. The Government also refers to Decision No. 425/2019 of the Secretariat of Labour establishing the procedure for action by the National Labour Inspectorate in cases of the presence of persons under 16 years of age engaged in work, which sets out the guidelines to be taken into account by labour inspectors when dealing with victims of child labour. The Committee notes the Government's indication that, between January 2020 and the first semester of 2021, a total of 17 criminal charges were brought for child labour under section 148bis of the Criminal Code, and it emphasizes that, despite the impact of the pandemic on inspection, all denunciations by citizens of work by children and young persons in violation of the labour regulations were subject to inspection. The Committee further notes that the CGT RA, in its observations on the Worst Forms of Child Labour Convention, 1999 (No. 182), refers to the lack of coordination and inadequacy of the number of inspectors to detect situations of child labour. ***Taking into account the number of children between the ages of 5 and 15 years who, according to the EANNA, are engaged in work, the Committee requests the Government to continue taking all the necessary measures to strengthen the capacities of the labour inspection system in relation to child labour with a view to ensuring its presence in all the regions of the country and economic sectors, including the informal economy. It once again requests the Government to provide information on the number of inspections carried out in relation to child labour, if possible disaggregated by region and sector of the economy, and on the nature and number of violations detected, the number of convictions and the type of sanctions imposed, including the reasons for the low number of criminal charges brought in light of the high number of very young children engaged in light work.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comment

The Committee notes the observations of the General Confederation of Labour of the Argentine Republic (CGT RA), received on 1 September 2021.

Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous types of work. In its previous comments, the Committee noted the adoption of Decree No. 1117/2016 determining the list of hazardous types of work prohibited for persons under 18 years of age and requested the Government to provide information on the effect given to the Decree. The Committee notes with ***concern*** that, according to the Survey of Activities by Boys, Girls and Young Persons (EANNA) 2016-17, a total of 538,871 boys, girls and young persons between the ages of five and 17 years engaged in work perform hazardous types of work: 117,377 in rural areas and 421,494 in urban areas. Moreover, one in every three boys, girls and young persons are tired by the work they perform; around one in three indicate that they suffer from excessive cold or heat in carrying out their work; and one in four boys and girls who work in urban areas carry out their work in the street or a means of transport. Moreover, the CGT RA indicates in its observations that boys and girls under 18 years of age are engaged in types of work that are prohibited by Decree No. 1117/2016. ***The Committee urges the Government to take the necessary measures to ensure that the legislation on hazardous types of work is applied effectively so that no boy, girl or young person under 18 years of age is engaged in types of work which, by their***

nature or the circumstances in which they are carried out, are likely to harm their health, safety or morals. In this regard, it requests the Government to provide information on the number of violations of Decree No. 1117/2016 that have been detected and the penalties imposed.

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

Australia

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2006)

Previous comment

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography and for pornographic performances. Provincial legislation. New South Wales (NSW). In its previous comments, the Committee noted that Division 15A of the Crimes Act which deals with offences related to child pornography applied only to children under 16 years of age. The Committee therefore urged the Government to take the necessary measures to extend this prohibition up to 18 years.

The Committee notes the Government's reference in its report to section 91D of the Crimes Act concerning promoting or engaging in acts of child prostitution which include sexual services by children under 18 years of age. The Government also indicates that where a relevant act involving a child over the age of 16 occurs without that child's consent, numerous other offences may also apply, including sexual assault and related offences under Division 10 of Part 3 of the Crimes Act, and offences relating to voyeurism and the recording and distribution of intimate images under Divisions 15B and 15C of the Crimes Act. The Government states that despite the distinction drawn between children under the age of 16 and 18 for child abuse material offences, the NSW Government considers that the commercial sexual exploitation of children under the age of 18 is prohibited in NSW.

While noting that the NSW legislation provides protection to children under 16 years of age regarding their involvement in the production of child abuse material and to children above 16 years if they do not consent, the Committee once again emphasizes the importance of distinguishing between the age of sexual consent and the age for protection from commercial sexual exploitation. The Committee considers that all persons under the age of 18 years are entitled to be protected absolutely from commercial sexual exploitation, and that neither the age of consent nor the physical appearance of a child affects the obligation to prohibit the worst forms of child labour. ***Therefore, recalling that by virtue of Article 3(b) of the Convention the use, procuring or offering of a child under 18 years of age for the production of pornography or pornographic performances is considered to be one of the worst forms of child labour and, under the terms of Article 1, this worst form of child labour shall be prohibited as a matter of urgency, the Committee once again urges the Government to take the necessary measures to specifically extend this prohibition up to 18 years.***

Clause (c). Use, procuring or offering of a child for illicit activities. Provincial legislation. Northern Territory. In its previous comments, the Committee noted the Government's information that the Department of Justice would develop a proposal to the Minister of Justice and Attorney-General, for considering a provision being inserted to the Criminal Code Act prohibiting the use, procuring or offering of a child for the purpose of illicit activities. It therefore urged the Government to take the necessary measures to prohibit the use, procuring or offering of a child under 18 years for illicit activities.

The Committee notes with ***satisfaction*** that a new provision which prohibits the recruitment of children under 18 years to engage in criminal activity has been introduced under section 148F of the Criminal Code Amendment Act No. 6 of 2021.

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

Barbados

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3(a) of the Convention. Worst forms of child labour. Sale and trafficking of children. The Committee previously noted the adoption of the Transnational Organized Crime (Prevention and Control) Act in 2011, section 8 of which criminalizes the trafficking of persons for the purposes of labour and sexual exploitation.

The Committee takes due note of the Government's information in its report that the Transnational Organized Crime (Prevention and Control) Act of 2011 was repealed and replaced by the Trafficking in Persons Prevention Act 2016-9, which contains comprehensive provisions addressing the issue of trafficking. According to section 4, the trafficking of children for labour and sexual exploitation is punishable by a fine of 2 million Barbadian dollars (BBD) (about US$990,099), life imprisonment or both. The Committee notes, however, that according to the Government's written replies to the list of issues of the Committee on the Elimination of Discrimination against Women (CEDAW) of 2017, since 2015, no new arrests and charges have been made in relation to trafficking (CEDAW/C/BRB/Q/5-8/Add.1, paragraph 52). In its concluding observations of 2017, the CEDAW expressed its concern that Barbados remains both a source and a destination country for women and girls, including non-nationals, who are subjected to trafficking for purposes of sexual exploitation and forced labour, as a result of high unemployment, increasing levels of poverty and the weak implementation of anti-trafficking legislation. The CEDAW was also concerned about the lack of information on the number of complaints, investigations, prosecutions and convictions related to the trafficking of women and girls (CEDAW/C/BRB/CO/5-8, paragraph 25). The Committee on the Rights of the Child (CRC) similarly expressed its concern at the high level of internal trafficking of children, the lack of information on the situation in general and the lack of effective measures to address and prevent the sale and trafficking of children in its concluding observations of 2017 (CRC/C/BRB/CO/2, paragraph 58). ***The Committee therefore requests the Government to take the necessary measures to ensure the effective implementation of the Trafficking in Persons Prevention Act 2016-9, particularly in relation to the trafficking of children. It also requests the Government to provide information on the application of section 4 of the Act in practice, including the number and nature of offences reported, investigations, prosecutions, convictions and penal sanctions imposed.***

Articles 3(d) and 4(1). Determination of hazardous work. The Committee previously noted that, while section 8(1) of the Employment (Miscellaneous Provisions) Act prohibits the employment of a young person in any work that by its nature or the circumstances in which it is done is likely to cause injury to his/her health, safety or morals, the national legislation does not contain a determination of these types of work, as required under *Article 4(1)* of the Convention. The Government indicated that the formulation of a list of types of hazardous work prohibited to persons under 18 years of age was being considered. The Committee also noted that the Safety and Health at Work Act 2005 entered into force in January 2013 and that draft regulations under the provisions of this were forwarded for comments to the representative employers' and workers' organizations.

The Committee notes the Government's repeated indication that the types of hazardous work prohibited to persons under 18 years of age are addressed in specific pieces of legislation, including the Factories Act, the Pesticide Control Regulations, the Protection of Children Act and the Employment (Miscellaneous Provisions) Act. However, the Committee observes that these provisions together do not constitute a comprehensive determination of the types of hazardous work prohibited for persons under 18 years of age. The Committee also notes the Government's statement that none of the draft regulations under the Safety and Health at Work Act deal with this issue. Considering that it has been referring to this issue since 2004, the Committee must express its ***deep concern*** at the absence of a comprehensive list of the types of hazardous work prohibited for children. The Committee once again draws the Government's attention to *Article 4(1)* of this Convention, according to which the types of work referred to under *Article 3(d)* must be determined by national laws or regulations or by the competent authority, taking into consideration relevant international standards, in particular Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). ***The Committee therefore urges the Government to take the necessary measures to ensure that the determination of types of hazardous work prohibited for persons under the***

age of 18 is included in national legislation, after consultation with the organizations of employers and workers concerned, and to provide information on any progress made in this regard.

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

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

Belize

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee notes with ***interest*** the adoption in 2022 of the Belize National Child Labour Policy and Strategy 2022-2025, which was developed with the technical support of the ILO and in consultation with the social partners and other relevant stakeholders. The Policy has four objectives: (1) to address existing legislative and information gaps, providing necessary legal protection for all children who are engaged or potentially engaged in child labour; (2) to increase compliance with labour laws for the benefit of children; (3) to substantially reduce barriers to school access and ensure continuous school attendance throughout the legal age for every child; (4) to ensure adequate support and economic resilience for children and their families as a way to pre-empt engagement in child labour. Key strategies contemplated in the Policy include, among others, building awareness among children, their families and society about the danger of child labour; strengthening data collection on child labour; identification of working undocumented child migrants; strengthening mechanisms to reduce child labour in the tourism industry; and extending the social protection floor.

The Committee notes from the statistical information contained in the Policy that, as of 2013, the child labour rate was 3.2 per cent (equivalent to 3,528 children). It also notes that the Mennonites were found to have the highest child labour rate at 9.5 per cent, two and a half times as high as any other ethnic group.

The Committee further notes the Government's indication in its report that a Child Labour Secretariat and Inspectorate was established in the Labour Department, which shall focus on child labour inspections, education and awareness-raising programs, and information gathering and reporting. Between 2019 and 2021, a total of 30 training sessions on child labour were conducted for different government entities and stakeholders, including the Banana, Sugar and Citrus industries, the tourism industry, the National Garifuna Council, and the Spanish Lookout (Mennonite) in the Cayo district. ***The Committee requests the Government to provide information on the measures adopted to ensure the progressive elimination of child labour, including among Mennonite children, under its National Child Labour Policy and Strategy 2022-2025, and the results achieved. In this regard, it requests the Government to continue to provide updated statistical information on the nature, extent, and trends of child labour, indicating the sectors of economic activity where child labour is more prevalent. Finally, it requests the Government to provide information on the activities of the Child Labour Secretariat and Inspectorate, including on the number of child labour inspections carried out, the infringements detected, and the penalties applied.***

With regard to the issues raised under Articles 2(1), 3(2), 7 and 9(3), the Committee requests the Government to see the consolidated comments at the end.

Article 2(1) Scope of application. In response to its previous comments concerning the existence of different minimum ages, the Committee takes due note that the Government indicates that the Legislative Review Committee (LRC) that was established to review the national legislation concerning child labour made recommendations to amend the respective sections of the Shops Act, Chapter 287,

and the Labour Act, Chapter 297 to ensure that the minimum age specified applies to all sectors of the employment and not only to industrial undertakings and shops.

Article 3(2). Determination of types of hazardous work. The Committee recalls that the LRC had recommended the insertion into the Labour Act of a hazardous work list.

Article 7. Light work. The Committee recalls that the LRC had recommended to raise the minimum age for light work from 12 to 13 years and adopt a list of types of light work.

Article 9(3) Registers of employment. The Committee recalls that the LRC had recommended deleting section 163 of the Labour Act, which limited the obligation to keep registers of employees under the age of 18 years to public and private industrial undertakings, and to replace it with a general requirement for all employers to prepare and keep one or more registers containing information of each worker available for inspection.

Noting the Government's indication that the review of the legislative proposals made by the LRC and by the Labour Advisory Board was completed, and later forwarded to the Minister of Labour, Local Government and Rural Development for further action, the Committee hopes the proposed amendments will be adopted as soon as possible to ensure that:

(i) the minimum age declared by the Government (14 years) is respected in all type of work undertaken by children, as well as in all sectors of economic activity;

(ii) a list of types of hazardous work is approved, in consultation with the organizations of employers and workers concerned, and incorporated into the labour legislation;

(iii) no child below 12 years of age be authorized to perform light work, and a list of types of light work is adopted;

(iv) all employers keep one or more registers containing information of each worker available for inspection.

It requests the Government to provide information on any progress made in this regard as well as a copy of the new legislation once adopted.

Benin

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comment

The Committee notes the observations of the International Organisation of Employers (IOE) received on 29 August 2022, as well as those of the International Trade Union Confederation (ITUC) received on 1 September 2022. It also notes the detailed discussion that was held by the Committee on the Application of Standards (the Conference Committee) at the 110th Session of the International Labour Conference (June 2022), regarding the application of the Convention by Benin, as well as of the Government's report.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

Article 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Vidomégon children. The Committee notes that the Conference Committee, while acknowledging the initiatives taken by the Government, noted with deep concern the persistent and widespread practices related to the worst forms of child labour, including *vidomégon* children. The Conference Committee requested the Government to strengthen its efforts to protect children under 18 years of age from all forms of forced labour and commercial sexual exploitation, particularly *vidomégon* children, with specific attention provided to girls. Moreover, the Committee notes that the ITUC states, in its observations, that while

the difficulties to access and inspect households, previously highlighted by the Government, need to be resolved in order to be able identify the presence of abuse, the exploitation of *vidomégon* children often takes place outside the household, since 90 per cent of the children do not attend school and are employed at markets and in the street trade or are victims of prostitution. The Committee notes that the IOE underscores that although the legislation in force makes school attendance obligatory for a child placed with a host family and prohibits the use of the child for domestic tasks, the prevalence of these unacceptable practices clearly reveals the many obstacles to implementing existing regulations.

In this regard, the Committee notes the Government's indication in its report that Benin is continuing its efforts to improve the protective legal framework for child victims of the worst forms of child labour. The Government indicates that 218 investigations into ill-treatment of children were undertaken in 2020, 153 in 2021 and 94 from January to June 2022. Moreover, in 2022, 15 cases of *vidomégon* children were heard, with both perpetrators and parents summoned before the juvenile court. Three children were reintegrated, and the others returned to their families by decision of the juvenile court. However, the Government also indicates that between 2019 and 2021, a total of 1,119 child victims of internal trafficking comparable to the situation of *vidomégons* were identified and received by the Social Protection Centres (SPCs), which represents a far higher number of victims than the number of investigations carried out and, above all, the number of cases coming before the juvenile court. ***The Committee urges the Government to intensify its efforts, in collaboration with the employers' and workers' representative organizations, to protect children under 18 years of age from all forms of forced labour or commercial sexual exploitation, particularly vidomégon children. It again requests the Government to take the necessary measures to ensure, as a matter of urgency, that thorough investigations and prosecutions are conducted of persons subjecting children under 18 years of age to forced labour or commercial sexual exploitation, and that sufficiently dissuasive penalties are imposed in practice. The Committee requests the Government to provide information on the results achieved in this regard in its next report.***

Sale and trafficking of children. The Committee notes that the Conference Committee urged the Government to strengthen the capacity to conduct investigations and prosecutions of persons subjecting children to sale and trafficking, and to ensure that sufficiently effective and dissuasive penalties are imposed in practice.

The Committee notes the ITUC's observations that the initiatives put in place to identify child victims of sale and trafficking are poorly adapted and ineffective. In its observations, the IOE adds that this question must be examined while bearing in mind that the practices of trafficking children from and to neighbouring countries are widespread and that although it may be difficult to identify high risk areas and vulnerable groups in advance, it is fundamental to be aware of them to be able to define priorities and allocate resources effectively.

In this regard, the Committee notes the information from the Government's report that action is being taken to strengthen the capacities of the actors involved in combating trafficking. For example, in September 2022 training was provided for magistrates as part of the Regional Project to Prevent the Trafficking of Persons in the Gulf of Guinea (PRALTPGG) coordinated by the Ministry of Development and Coordination of Government action. The Government recognizes however that additional financial resources must be mobilized to reinforce activities in the next two years. Effectively, the Committee observes, according to the table giving combined data from the courts of nine towns, provided with the Government's report, between 2019 and 2022, 102 prosecutions came before the courts, with 82 convictions for the trafficking of children, but only three prosecutions were filed in respect of the sale of children, with no convictions. ***The Committee urges the Government to strengthen its efforts better to identify the cases of sale and trafficking of children under 18 years of age and ensure the effective implementation and enforcement of its legislation, including by conducting thorough investigations and prosecutions of persons who engage in the sale and trafficking of children under 18 years of age. It requests the Government to provide information on the results obtained, in particular the number***

of investigations, prosecutions, convictions and penalties imposed for the trafficking of children under the age of 18 years.

Article 5. Monitoring mechanisms. The Conference Committee urged the Government to strengthen the capacity, including of inspections, to conduct investigations and prosecutions of persons subjecting children to the worst forms of child labour, including commercial sexual exploitation, sale and trafficking and dangerous work, especially in mines and quarries. In this regard, the Committee notes the information provided by the Government that the strengthening of the capacities of certain structures, including the inspections, is a constant part of the strategy to combat the worst forms of child labour in Benin. Several reinforcement efforts had been undertaken, including the organization by the Government of 4,634 inspection visits to apprenticeship centres, and mines and quarries between 2019 and 2021; the organization in 2020 of training for the staff of the Republican Police on judicial protection for children at the SOS Children's Village at Abomey Calavi; the organization in 2020 of a training workshop for protection focal points for children of the Republican Police (police officers); and the organization in May 2022, by the Ministry of Labour of training for 70 actors (labour inspectors, social assistants, judicial police officers, juvenile court judges, members of civil society) on the procedures and protocols for monitoring child labour. ***The Committee requests the Government to continue to take measures and provide the training required to the police and other bodies responsible for enforcing the law to combat the worst forms of child labour, particularly the trafficking of children and dangerous work in mines and quarries. The Committee also requests the Government to continue to provide information on the functioning of the labour inspection services, including on specific measures to strengthen the services' capacity to identify the worst forms of child labour and the results obtained. Finally, it requests the Government to provide the results of labour inspections into the mines and quarries, including the number of violations detected and penalties imposed.***

Articles 6 and 7(2). Programmes of action and effective and time-bound measures. Clauses (a) and (b). Prevent the engagement of children in the worst forms of child labour and provide assistance for their removal from these forms of labour. Children working in mines and quarries. The Conference Committee urged the Government to take effective and time-bound measures to protect children from hazardous work in the mining and quarrying sector and provide statistical data on the number of children removed from this hazardous work and provide information related to the rehabilitation and social integration measures.

The Committee notes that the ITUC, while acknowledging the implementation by the Government of initiatives such as raising the awareness of actors on the mining sites, occupational safety and health training courses and, working with UNICEF, putting monitoring committees in place, observed that it was imperative for the Government to pursue and reinforce its prevention efforts.

The Committee notes the Government's indication in its report that, despite the prohibition by the legislation in force of child labour in mines and quarries, children have been observed working in informal, artisanal mines, to varying degrees depending on the regions of the country and the household revenues. In this regard, the Committee notes that during the Conference Committee, the Government representative referred to a specific study launched in March 2022 to assess the magnitude of the phenomenon precisely. It is envisaged that the study will be accompanied by a three-year plan of action for targeted and significant intervention in the mining sector over the coming years. ***The Committee urges the Government to take, without delay, the necessary measures to ensure the protection of children engaged in hazardous work in mines and quarries, including within the framework of the triennial plan, and to provide information on the progress made in this regard. It again requests the Government to provide specific statistical data on the number of children protected against hazardous work in the mining and quarrying sector and who have been removed, and to indicate the measures provided for their rehabilitation and social integration. It also requests the Government to provide statistics compiled by the study into the magnitude of child labour in mines and quarries.***

Sale and trafficking of children. The Committee notes that the Conference Committee urged the Government to strengthen the rehabilitation and social integration measures provided to children victims of the worst forms of child labour, commercial sexual exploitation, the sale and trafficking of children and those in hazardous work.

The Committee notes the information provided by the Government regarding action undertaken to prevent violence against and exploitation and abuse of children, including trafficking, such as: the training session for the social actors on protection of the child; the joint awareness-raising visits by the Ministries of Labour and of Social Affairs to the large Benin markets; and the awareness-raising tour on child trafficking led by the same ministries to bulk carriers, Social Promotion Centres (SPCs) and community relays. The Government also indicates that data compiled by the Integrated System for Family, Women and New-generation Children Data reveal that 2,274 trafficked children, of which 1,192 were girls, were received by the SPCs and its partner structures between 2019 and 2021. At total of 1,119 of these children were victims of internal trafficking comparable to the situation of *vidomégons* and 711 were victims of cross-border trafficking. All SPC directors receiving a child victim apply the Minimum Intervention Package (PMI) which is the standard operating procedure for welcoming, listening and providing holistic care to victims, and also extends to their reintegration. Where the children are victims of cross-border trafficking, they are cared for under regional guidelines, which are implemented in coordination with the West African Network for the Protection of Children.

The Committee encourages the Government to continue its efforts to prevent children from becoming victims of trafficking, to remove children from the worst forms of child labour and to ensure their rehabilitation and social integration. The Committee also requests the Government to take effective, time-bound measures to strengthen the capacities of the centres and other social structures with regard to rehabilitation and social integration of children victims of trafficking and provide information on the results achieved in that respect.

Application of the Convention in practice. The Committee notes that the Conference Committee recommended that the Government develop a multidisciplinary time-bound action plan, with ILO technical assistance and in close cooperation with the social partners and other relevant civil society organizations with relevant competencies and expertise, including UNICEF. It also requested the Government to develop a robust statistical machinery to allow an efficient follow-up of the evolution of the practices of *vidomégon* children, the sale and trafficking of children and children working in mines and quarries.

The Committee notes, according to the ITUC's observations, that the absence of precise statistics on *vidomégon* children in Benin constitutes an obstacle to decision-taking and to establishing policies and action plans aimed at eradication of the practice.

The Government indicates that measures are currently undertaken regarding the elaboration of a multidisciplinary, time-bound plan. With regard to statistics, the Government indicates the need for overall improvement of the system for gathering statistics in order to harmonize them, as the tools in place produce overall data, rather than child-labour specific data. In this connection, the Government indicates that a study into the worst forms of child labour and *vidomégons* is envisaged, with a view to the formulation of the multidisciplinary time-bound plan. ***The Committee urges the Government to take the necessary measures to ensure that the study on the worst forms of child labour and vidomégons is conducted and completed as soon as possible. It requests the Government to provide, in its next report, information on progress made in this respect, as well as on the development and adoption of a multidisciplinary and time-bound action plan aimed at protecting children under 18 years of age from engaging in the worst forms of child labour.***

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

Botswana

Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

Previous comment

Article 1 of the Convention. National policy and the application of the Convention in practice. In reply to its previous comments, the Committee notes the Government's information in its report that the Ministry of Employment, Labour Productivity and Skills Development has partnered with the Government of the United States in implementing a project for the elimination of child labour, proposed in 2021 (National action plan for the elimination of child labour, 2021). This project aims to carry out programmes to (i) strengthen children's rights in Botswana by raising awareness of child labour, particularly in agriculture, (ii) empower civil society and local leaders to contribute to solutions, and (iii) ensure that the child protection laws are enforced by the Government. The proposed programmes within this project include research and study on the trends and nature of child labour; engage with stakeholders in agricultural regions to ensure their awareness of child labour regulations; raise public awareness; and child victim assistance. The Committee notes that the United Nations Committee on the Rights of the Child, in its concluding observations of June 2019 expressed concern about the ineffective implementation and evaluation of the National Plan of Action for Children 2006-2016 due to lack of sufficient resources (CRC/C/BWA/CO/2-3, paragraph 8). ***The Committee therefore strongly encourages the Government to take the necessary measures to ensure the effective implementation of the National Action Plan for the elimination of child labour, 2021. It requests the Government to provide information on the measures taken within the framework of this project and the results achieved. It finally requests the Government to provide information on the findings of any research or study conducted on the trends and nature of child labour within this project.***

Article 2(1). Scope of application and labour inspection. Following its previous comments with regard to the application of the provisions of the Employment Act of 1982 to all forms of employment, including in the informal economy, the Committee notes the Government's indication that the Labour Law review which is at an advanced stage has taken into account the issues of informal economy. It is envisaged that the Bill will be presented to the Parliament during July 2022 session. The Committee also notes the Government's information that the Ministry of Employment, Labour Productivity and Skills Development continues to monitor child labour issues through its labour inspectorate, including in the agricultural sector where child labour is perceived to exist. In this regard, the Committee notes from the project document of the National Action Plan for the elimination of child labour, 2021 that child labour exists in Botswana, particularly in the commercial agricultural and cattle sector. The Committee further notes that the United Nations Human Rights Committee on the International Covenant on Civil and Political Rights, in its concluding observations of November 2021 expressed concern about reports of forced child labour in cattle herding, particularly affecting children of the San community (CCPR/C/BWA/CO/2, paragraph 25). ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Labour Law Bill, which provides protection to all children carrying out economic activities even without an employment contract, particularly children working on a self-employed basis or in the informal economy, including in agriculture, will be adopted in the near future. It requests the Government to provide information on any progress made in this regard as well as to provide a copy once it has been adopted. The Committee further requests the Government to take the necessary measures to strengthen the capacity and extend the reach of the labour inspection services to better monitor the work performed by young persons in the informal economy, particularly in the agricultural sector and cattle herding, and to provide specific information on actions taken in this regard.***

Article 2(3). Age of completion of compulsory schooling. With regard to the revision of the Education and Training Act of 1967 ensuring the introduction of free and compulsory basic education up to the

minimum age for admission to employment of 15 years, the Government indicates that the new Bill is envisaged to be presented to the Parliament during its July 2022 session. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Education and Training Bill which provides for compulsory schooling up to the minimum age for admission to employment or work of 15 years, will be adopted and implemented soon. It requests the Government to provide information on the progress achieved in this respect as well as to provide a copy, once it has been adopted.***

Article 3(1) and (2). Hazardous work. ***With regard to the adoption of the list of hazardous types of work prohibited to children under 18 years of age, the Committee refers to its comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).***

Article 7(3). Determination of light work. ***Noting the Government's information that the Labour Law Bill which is awaiting approval from the Parliament has taken into account the determination of light work activities permitted to children from 14 years of age, the Committee requests the Government to provide information on any progress made with regard to its adoption. It requests the Government to provide a copy of the list of the types of light work permitted for children, once it is adopted.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comment

Articles 3(a) and 6 of the Convention. All forms of slavery or practices similar to slavery and programmes of action. Sale and trafficking of children. In response to its previous comments concerning the application of the Anti-human Trafficking Act of 2014, the Committee notes the Government's indication in its report that there are currently six cases of sale and trafficking of children under 18 years before the courts awaiting the final judgments. The Committee also notes the Government's information in its report under the Forced Labour Convention, 1930 (No. 29) that in July 2021, a woman was sentenced to imprisonment for ten years for trafficking a child of 16 years for sexual exploitation. This report also indicates that the Anti-Human Trafficking National Action Plan (NAP-HT) 2018-2022 was developed and structured in accordance with the internationally recognized 4P's strategies of prevention, protection, prosecution and partnership. The Human Trafficking (Prohibition) Committee, which is the coordination body responsible for the effective implementation of the NAP-HT has issued 18 resolutions pertaining to expediting pending cases, information campaigns and victim protection and referral procedures, of which 50 per cent have been successfully implemented.

The Committee, however, notes that the United Nations Human Rights Committee on the International Covenant on Civil and Political Rights, in its concluding observations of November 2021 expressed concern about the prevalence of trafficking in women and children for economic and commercial sexual exploitation and at the very low rate of investigations, prosecutions and convictions of the crime (CCPR/C/BWA/CO/2, paragraph 25). ***The Committee requests the Government to intensify its efforts, within the framework of the NAP-HT 2018-22 or otherwise, to ensure the thorough investigation and prosecution of perpetrators of child trafficking for labour or sexual exploitation, and to provide information on the convictions and penalties applied, including in the six cases of sale and trafficking of children under 18 years pending before the courts. In addition, the Committee requests the Government to provide information on the specific measures taken within the framework of the NAP-HT to combat trafficking in children as well as the results achieved.***

Article 4(1). Determination of hazardous work. Following its previous comments, the Committee notes the Government's information that the draft list of types of hazardous work prohibited to children under 18 years of age was incorporated in the ongoing labour law review. The Government indicates, in its report under the Minimum Age Convention, 1973 (No. 138) that the labour law review is at an advanced stage and it is envisaged that the Bill will be presented during the July 2022 session of the

Parliament. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Labour Law Bill containing the draft list of types of hazardous work prohibited to children under 18 years of age is adopted in the very near future. It requests the Government to supply a copy of this list, once it is adopted.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from the worst forms of child labour and ensuring their rehabilitation and social integration. Child victims of commercial sexual exploitation. In reply to its previous comments, the Committee notes the Government's statement that all efforts are made to protect children from being involved in commercial sexual exploitation by extending support to their families. The Government also indicates that no information is available on child victims of commercial sexual exploitation as no study was conducted on this subject. The Committee notes that the United Nations Committee on the Elimination of Discrimination against Women, in its concluding observations of March 2019, expressed concern about the lack of efficient mechanisms to prevent girls who drop out of school from engaging in prostitution (CEDAW/C/BWA/CO/4, paragraph 29). ***The Committee urges the Government to take the necessary measures to prevent the engagement of children in prostitution, and to remove them from this worst form of child labour as well as to rehabilitate and socially integrate them. It requests the Government to provide information on the measures taken in this regard, as well as on the number of children under 18 years of age who have been removed from prostitution and provided with appropriate care and assistance.***

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

Brazil

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

Previous comment

The Committee notes the joint observations of the Single Confederation of Workers (CUT), the National Forum for the Prevention and Eradication of Child Labour (FNPETI) and the National Union of Labour Inspectors (SINAIT) received on 23 October 2020, and the Government's replies to these observations. It also notes the observations of the National Association of Labour Justice Magistrates (ANAMATRA) received on 6 December 2021.

Article 1 of the Convention. National policy towards the elimination of child labour and application of the Convention in practice. With regard to its previous comments the Committee notes that the Government indicates in its report that the Third National Plan for the Prevention and Elimination of Child Labour and the Protection of Working Adolescents was finalized and is currently in force. The Plan includes among its objectives: (i) prioritizing prevention and elimination of child labour in political and social agendas; (ii) ensuring quality and free education for all children; (iii) protecting the health of children and adolescents against exposure to work-related risks; and (iv) fostering knowledge about the reality of child labour in Brazil. The Committee also notes that according to the National Continuous Household Survey (PNAD *Contínua*) (2016–2019) conducted by the Brazilian Institute of Geography and Statistics (IBGE), a total of 1,768,000 children and adolescents were engaged in child labour in 2019. The survey also shows that the number of children and adolescents (5 to 17 years of age) engaged in child labour fell from 5.3 per cent (2,100,000) in 2016 to 4.6 per cent (approximately 1,800,000) in 2019. The Committee further notes that the ANAMATRA highlights that, according to the data of the IBGE, of the total number of children engaged in child labour in 2019, 66.1 per cent were Afro-Brazilian children.

The Committee notes that in response to the observations of the CUT, FNPETI and SINAIT related to the abolition of the National Council for the Elimination of Child Labour (CONAETI), the Government indicates that the CONAETI was re-established by the Decree No. 10.574 of 14 December 2020, as one

of the thematic committees of the National Labour Council tasked with monitoring, evaluating and proposing policies on child labour. The composition of the CONAETI is tripartite, with the participation of six representatives of the Federal Government, six representatives of employers and six representatives of workers. The Committee also notes that the CUT, FNPETI and SINAIT observe that no measures have been taken to ensure the continuity of the Programme of Action for the Elimination of Child Labour (PETI). In this regard, the Government indicates that the PETI was redesigned with the aim of enhancing existing social welfare services and to align actions with other public policies to create a multisectoral child labour eradication agenda; and that its redesign did not affect the provision of cash transfers or social work carried out with families, but strengthened management and collaboration in five key areas: information and mobilization, identification, protection, advocacy and empowerment and monitoring. The Government adds that even though the COVID-19 pandemic has made it extremely difficult to keep social welfare services and programmes operational and the social protection network active, 8,843 activities have been carried out throughout Brazil at the state and municipal level under all five PETI areas of focus. ***The Committee encourages the Government to continue taking measures towards the elimination of child labour, including within the framework of the PETI, and requests it to continue providing information on the results achieved. In this respect, the Committee also requests the Government to provide information on the measures taken or envisaged to reduce child labour among Afro-Brazilian children. Finally, it requests the Government to provide information on the activities of the CONAETI, particularly in relation to the monitoring and evaluation of child labour policies.***

Article 2(1). Scope of application. Children working in family enterprises. Following its previous comments, the Committee takes due note of the Government's indication that section 402 of the Consolidated Labour Act, which excludes from its scope work undertaken by children and young persons in family enterprises, is not an exception authorizing child labour and that it in no way undermines the application of article 7 (XXXIII) of the Federal Constitution, which sets the minimum age at 16 years and prohibits hazardous work for young persons under 18 years. Furthermore, the Government refers to section 67 of the Statute of Children and Adolescent, according to which family workers shall not engage in night work, hazardous work, and work carried out during hours that prevent them from attending school. The Committee notes that, according to the statistical information provided by the Government, 30.9 per cent of children between 5 and 17 years engaged in child labour, work as helpers in family enterprises. ***The Committee requests the Government to take the necessary measures to ensure that, in practice, children working in family enterprises do not engage in child labour, including in hazardous work, and to provide information in this regard.***

Articles 2(1) and 7(1) and (3). Minimum age for admission to employment or work, minimum age for admission to light work and regulation of light work activities. The Committee notes that the ANAMATRA refers to a legislative proposal to amend item XXXIII of Article 7 of the Federal Constitution (PC 18/2011), which aims at reducing the minimum age for admission to employment or work, by authorizing children above 14 years to undertake part-time work for up to 25 hours per week. The Committee notes that the rapporteur of the Parliament Commission of Constitution, Justice and Citizenship, in his report dated 18 August 2021, declared the admissibility of PC 18/2021 highlighting that the Convention permits children who have reached the age of 13 years to undertake light work that is not likely to affect their safety, health and education.

In these circumstances, the Committee emphasizes that the overall objective of the Convention is to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. Moreover, pursuant to *Articles 1* and *2, paragraph 1* of the Convention, read together, once a minimum age for admission to employment has been specified upon ratification (16 years in the case of Brazil), the Convention provides for the possibility to raise it progressively, but does not allow the lowering of the minimum age once specified. While *Article 7(1)* of the Convention provides for an

exception to the general minimum age by allowing children who have reached 13 years of age to carry out light work, such work cannot prejudice their attendance at school, their participation in vocational orientation or training programmes and their capacity to benefit from the instruction received. Pursuant to *Article 7(3)* of the Convention, the competent authority shall determine the light work activities and prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

The Committee observes that the proposed constitutional amendment does not refer to specific light work activities permitted for children from the age of 14 years. Rather, it is broadly drafted so as to permit children to undertake any kind of work or occupation in any sector or in any occupation for up to 25 hours a week. Moreover, in giving effect to *Article 7(3)* of the Convention, special attention should be given to several key indicators, including the strict limitation of the hours spent at work in a day and in a week, the prohibition of overtime, the granting of a minimum consecutive period of 12 hours' night rest, and the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision (2012 General Survey on the fundamental Conventions, paragraph 396). The Committee is of the view that authorizing children from the age of 14 to carry out part-time work under such conditions may have a negative impact on children's school attendance and performance as the time needed for homework related to their education, as well as for rest and leisure could be considerably reduced and therefore may not be considered an authorized exception to the minimum age under the Convention. ***Therefore, the Committee expresses the firm hope that any legislative proposal to modify the minimum age for admission to employment or to regulate light work activities be considered in light of the above-mentioned provisions of the Convention.***

Labour inspection. The Committee notes that the Government enumerates different measures taken by the labour inspectorate to combat child labour in both the formal and informal economy, which include: (i) training for labour inspectors on addressing the various types of child labour; (ii) development of appropriate intervention instruments, including in the informal economy; (iii) inspection operations in child labour hotspots, including in rural areas; and (iv) actions planned in coordination with social partners with a view to the sustainable elimination of child labour hotspots. The Government adds that, as a result of the measures taken, the labour inspectorate found 535 children and adolescents engaged in child labour in the first semester of 2021. A total of 185 children and adolescents were found in child labour in the informal economy during inspections conducted in Maranhão, Espírito Santo, Roraima, Paraíba and Bahia during the same period. The Committee observes, however, that these numbers are still low compared to the overall number of children engaged in child labour in the country (according to the National Continuous Household Survey there were 1,768,000 children). ***Therefore, while noting the measures taken by the Government, the Committee strongly requests the Government to take the necessary additional measures to strengthen the capacities of the labour inspectorate to effectively detect situations of child labour, particularly in the informal economy, and to provide information about the impact of these additional measures. The Committee also requests the Government to continue providing information on the number of inspections related to child labour that have been carried out, the number and nature of violations detected, the sectors in which they were found, and the penalties applied.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comments: observation and direct request

The Committee notes the observations of the National Association of Labour Court Judges (ANAMATRA) received on 6 December 2021 and requests the Government to provide its reply to them.

Articles 3(d), 5 and 7(1) of the Convention. Hazardous work, labour inspection and penalties. In relation to its previous direct request, the Committee notes that the Government indicates in its report that,

between January 2017 and July 2021, the labour inspectorate imposed 1,276 penalties on workplace supervisors for violating Decree No. 6481 of 12 June 2008 containing a list of hazardous work prohibited for children. During the same period, the labour inspectorate also issued 68 violation notices for subjecting children and adolescents to other working conditions (not included in the list) that were considered harmful to their physical, psychological, morals, and social development and 71 penalties for allowing workers under 18 years of age to perform night work. The Committee notes that information concerning the number of children found to be in hazardous work is continuously updated and made available through the Radar SIT (Labour inspection statistics and information dashboard) webpage on child labour.

While noting the results of the inspections undertaken to identify situations of children engaged in hazardous work, the Committee notes with ***concern*** that, according to the National Household Sample Survey (PNAD *contínua*) conducted by the Brazilian Institute of Geography and Statistics for the period 2016-2019, a total of 706,000 children between 5 and 17 years of age are still in hazardous occupations (most of them within the age group of 5 to 13 years of age). Moreover, it notes that the ANAMATRA indicates that the number of children undertaking hazardous work who have been victims of accidents at the workplace increased by 30 per cent from 2019 to 2020. ***The Committee requests the Government to take, as a matter of urgency, all the necessary measures to ensure that children under the age of 18 years are not engaged in hazardous work, including in the informal economy, and that they benefit from the protection afforded by the Convention. It requests the Government to continue providing information in this regard, including on the number and nature of violations of the Decree No.6481 of 12 June 2008 that have been detected by the labour inspectorate and the penalties imposed.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. With regard to its previous comments, the Committee notes that the Government refers to two programmes that address the issue of education in rural areas, namely: (i) The Way to School Programme, which supports access to education by students living in rural and riparian areas by providing buses, motorboats and bicycles designed specifically for safe transportation in such regions; and (ii) The Land School Programme, which aims at providing training opportunities for teachers in rural areas on a continuous basis and facilitating school enrolment and retention of rural and Afro-Brazilian students. In 2019, some 1,800 teachers in rural and Afro-Brazilian communities benefited from that programme.

The Committee notes that, according to the 2019 National Household Sample Survey – Education (PNAD Education), 99.7 per cent of children aged 6 to 14 were enrolled in school in 2019. School failure or dropout affected 12.5 per cent of children aged 11 to 14 and 28.6 per cent of the children aged 15 to 17. It further notes that, according to the 2021 UNICEF report entitled “Out-of-School Children in Brazil”, the highest out-of-school rates (children aged 6 to 14) are found in rural areas, particularly in the North and Northeast regions of the country. The UNICEF report also highlights that, in absolute numbers, Afro-Brazilian and indigenous children and adolescents aged 4 to 17 who are out of school total 781,577, corresponding to 71.3 per cent of all children and adolescents who are currently not attending school. The Committee further notes the ANAMATRA’s observations that many children who were excluded from distance learning during the pandemic, were taken to work in the countryside, to perform domestic work or to work on the streets. ***While noting that the COVID-19 pandemic has had an impact on children’s access to school and recalling that education is key in preventing the engagement of children in the worst forms of child labour, the Committee requests the Government to continue to take measures to ensure that all children complete free basic education, particularly those living in rural and riparian areas. In this regard, it requests the Government to provide information on specific measures taken to facilitate access to school for Afro-Brazilian and indigenous children and the results achieved, as well as updated statistical data on school enrolment, retention and drop-out rates disaggregated by age and gender.***

Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assistance for their removal, rehabilitation, and social integration. Trafficking and commercial sexual exploitation of children. In reply to previous comments, the Committee notes the Government's indication that the labour inspectorate is implementing measures to combat the commercial sexual exploitation of children and adolescents, which include training on commercial sexual exploitation of children and adolescents for labour inspectorates and the designing of specific protocols on the subject. It also notes that the Government has put in place the Initial Support Project to improve the protection and assistance networks for child and adolescent victims of commercial sexual exploitation. The project involves the participation of different institutions including the Ministry of Labour and Social Security and the National Coordination Office for Combating Child and Adolescent Labour. In addition, the Federal Traffic Police designed a Mapping Project to identify places along Brazil's federal roads that lend themselves to the commercial sexual exploitation of children and adolescents. The information is consolidated in a document that serves as guidance in combating commercial sexual exploitation.

The Committee further notes that according to the National Report of the Ministry of Justice and Public Safety on Trafficking in Persons (2017-2020), within the period 2018-2020, 32 child and adolescent victims of trafficking in persons were registered by the Federal Police. Moreover, according to the Ministry of Health, 229 persons under 18 years of age were considered as possible victims of trafficking in persons within the same period. While noting the adoption of measures to combat the commercial sexual exploitation of children and adolescents, the Committee observes that the Government does not provide information on the measures taken to provide child victims of trafficking and commercial sexual exploitation with rehabilitation services, including the establishment of shelters. ***Therefore, the Committee once again requests the Government to take all the necessary measures to ensure that child victims of trafficking and commercial sexual exploitation are removed from these worsts form of child labour, rehabilitated and socially reintegrated, and to provide information on the results achieved. It also requests the Government to continue providing updated statistical information on the number of child victims of trafficking in persons that have been identified, rehabilitated, and reintegrated.***

Clause (d). Children at special risk. Child domestic workers. The Committee notes that according to the National Household Sample Survey (PNAD *contínua*) for the period 2016–19, the number of children engaged in domestic work within the age group 5 to 17 was 125,528. It also notes the Government's indication that the labour inspectorate has taken various measures to address child domestic labour, including awareness raising campaigns and the development of training materials for labour inspectors and specific protocols on the issue. Between January 2013 and July 2021, the labour inspectorate removed seven children and adolescents from domestic work and imposed seven penalties on individuals responsible for hiring persons under 18 years of age as domestic workers. While noting the measures taken by the Government, the Committee observes that the number of child domestic workers remains significant, and that very few were identified and removed from this type of work over a period of eight years***. Therefore, the Committee urges the Government to strengthen its efforts to ensure that no person under 18 years of age is involved in domestic work, in conformity with Decree No. 6481 of 12 June 2008, and to provide information on the results achieved***

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

Cabo Verde

Minimum Age Convention, 1973 (No. 138) (ratification: 2011)

Previous comments: observation and direct request

Article 3(1) and 3(2) of the Convention. Minimum age for admission to, and determination of, hazardous work. The Committee previously noted with regret that the list of hazardous types of work prohibited

for children in different industries and which was adopted by Act No. 113/VIII/2016 on 10 March 2016 only applies to children under 16 years of age. The Committee takes note of the Government's indication, in its report, that the list of hazardous types of work does not fully comply with the requirements of the Convention. The Committee notes that, in the framework of the EU-funded Trade for Decent Work (T4DW) project, the review of the list of hazardous types of work is intended.

The Committee once again reminds the Government that, by virtue of *Article 3(1)* of the Convention, the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than *18 years.* It once again emphasizes that the authorization to undertake hazardous work from the age of 16 years is a limited exception to the general rule on the prohibition of young persons under 18 years performing hazardous work, and that it does not constitute an unqualified authorization to engage in hazardous work as from the age of 16 years (2012 General Survey on the fundamental Conventions, paragraph 379). ***The Committee therefore urges the Government to take the necessary measures, in the framework of the T4DW project, to ensure that the review of the list of hazardous types of work raise the general minimum age for admission to hazardous work to 18 years, and to ensure that no child under the age of 18 shall be authorized to engage in hazardous work, other than in the exceptional cases allowed by Article 3(3) of the Convention. It requests the Government to provide detailed information on the progress made in this regard.***

Article 3(3). Admission to types of hazardous work from the age of 16 years. The Committee, once again observing that Act No. 113/VIII/2016 does not require any conditions to be met prior to authorizing the employment of young persons from 16 to 18 years of age in hazardous work, recalls that, under the terms of *Article 3(3)* of the Convention, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, authorize the employment of young persons between 16 and 18 years of age in hazardous work provided that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee therefore urges the Government to take the necessary measures, in the framework of the review of the hazardous work list intended by the T4DW project, to ensure that the performance of hazardous tasks by young persons aged from 16 to 18 years is authorized only as prescribed by Article 3(3) of the Convention. It requests the Government to provide detailed information on the progress made in this regard.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comments: observation and direct request

Article 3(a) of the Convention. Worst forms of child labour. Slavery or practices similar to slavery. Sale and trafficking of children. The Committee previously requested the Government to provide information on the application in practice of section 271A of the Penal Code, which criminalizes the sale and trafficking of persons, including minors, for purposes of sexual or labour exploitation. The Committee notes with ***concern*** that the Government does not provide this information. In this regard, the Committee notes the concern expressed by the United Nations Human Rights Committee, in its concluding observations of 3 December 2019, regarding the absence of sufficient information about investigations, prosecutions and convictions of those engaged in trafficking activities (CCPR/C/CPV/CO/1/Add.1, paragraph 25). This concern is echoed by the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), in its concluding observations of 2 June 2022, with regard to the low number of investigations, prosecutions and convictions of perpetrators of trafficking offences, given that no case of trafficking in persons of children has yet been detected, and the difficulties faced in providing disaggregated data according to

the information provided by the State party (CMW/C/CPV/CO/1-3, paragraph 69.). ***The Committee therefore requests the Government to strengthen its efforts to ensure the effective enforcement of section 271A of the Penal Code and to gather and provide information on its application in practice, including the number of investigations, prosecutions and convictions, as well as sanctions imposed with regard to the sale and trafficking of children under 18 years.***

Article 3(b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. The Committee notes that the Government provides detailed information in its report on several measures taken to strengthen the legislative framework on sex crimes committed against children in order to respond to the rise in such acts that has been observed in recent years, a situation that, according to the Government, illustrates the shortcomings of the existing punitive penal system. Such measures include the amendment of the Cabo Verdean Penal Code through Act No. 117/IX/2021 of 2021 to include separate provisions on sex crimes, including a new section 150-A on child pornography which covers not only digital pornography offences, but pornography in all its forms. The Government indicates that the amendments were introduced to create a robust and effective code on child sex crimes that aligns with international provisions on child protection.

Moreover, the Committee takes note of the information provided by the Government on the interventions carried out in the scope of the National Plan of Action to Combat Sexual Violence 2017–19, including the promotion of measures to improve the legal framework on sexual exploitation and abuse in order to strengthen institutional capacities of the safety and justice systems. These include the training of judges and the creation of dedicated courts for families, children and labour within certain districts. In addition, the Committee notes that, in the framework of the implementation of the EU-funded Trade for Decent Work (T4DW) project, a tripartite workshop on sexual exploitation in the tourism sector was held in September on the island of Sal, at the end of which the participants recommended police training on child sexual exploitation and a pilot project to identify, support and monitor child victims of sexual exploitation.

The Committee notes, however, that the Government offers no information in response to its previous request to provide information on the application in practice of the sections of the Penal Code which prohibit the use, procuring or offering of a child for prostitution or pornography. Moreover, it notes the concern expressed by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) at the low rate of investigations, prosecutions and convictions for cases of exploitation of prostitution, as well as the limited support and redress provided to victims. The CEDAW also expresses concern at the cases of parents encouraging their daughters to be exploited in prostitution to obtain immigration visas or to support the family financially, and cases of girls as young as 12 years of age who have been sexually exploited in exchange for drugs (CEDAW/C/CPV/CO/9, paragraph 23). ***The Committee therefore urges the Government to take the necessary measures – in the framework of the T4DW project or otherwise – to ensure the application in practice of sections 145A, 148, 149 and 150 of the Penal Code and to provide information in this regard, including the number of investigations, prosecutions and convictions, as well as sanctions imposed with regard to the use, procuring or offering of a child under 18 years of age for prostitution, for the production of pornography or for pornographic performances.***

Articles 3(d) and 4(1). Hazardous work. ***With regard to the list of hazardous types of work prohibited to children under 18 years of age, the Committee refers to its detailed comments under the Minimum Age Convention, 1973 (No. 138).***

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

Cambodia

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. Following its previous comments, the Committee takes note of the information communicated by the Government in its report regarding the results achieved through its various measures, including the National Plan of Action on the Reduction of Child Labour and Elimination of the Worst Forms of Child Labour 2016–25 (NPA–WFCL) and the Decent Work Country Programme (DWCP) 2016-18. It notes that, according to the latest statistics from the Socio-Economic Survey 2019-20 of the National Institute for Statistics, the number of working children decreased from 23.6 per cent in 2012 to 18.2 per cent in 2019–20.

The Committee notes that the Government continues to take measures aimed at improving the socio-economic conditions and reducing the incidence of child labour in the country, including the continued implementation of the NPA-WFCL. It also notes that the 2019-23 DWCP is designed to help the country achieve sustained job-rich growth and inclusive and sustainable development while advancing decent work for all Cambodian women and men. Moreover, according to information available to the ILO on policy responses in Cambodia, among other measures adopted in response to the COVID-19 crisis, the Government is expanding existing social protection programmes to the poor and vulnerable, especially through cash transfer programmes. ***The Committee encourages the Government to continue its efforts to ensure the progressive elimination of child labour through the implementation of the NPA–WFCL, the 2019-23 Decent Work Country Programme and other policies and social protection programme, and requests it to continue to provide information on the results achieved. In this regard, the Committee also requests that the Government continue to provide any updated statistical information on the employment of children and young persons.***

Article 2(1). Scope of application and labour inspection. 1. *Children working in the informal economy.* Following its previous comments, the Committee notes the Government's information that the Ministry of Labour and Vocational Training (MLVT) has conducted technical meetings and training courses with labour inspectors with a view to increasing their effectiveness in monitoring child labour. From 2019 to 2020, 14 training courses were conducted with 1,604 labour inspectors and other relevant stakeholders to prevent the exploitation of child labour. In addition, the Government indicates that under the draft law on the amendment of the Labour Act, labour inspectors will receive a qualification as juridical police, which will allow them to have better access when conducting inspections and contribute to the prevention of child labour and its worst forms. ***The Committee requests the Government to continue its efforts to strengthen the labour inspection services to enable them to effectively monitor and detect cases of child labour, including children working on their own account or in the informal economy. It requests the Government to provide information in this regard and on the number and nature of violations found related to child labour, including in hazardous conditions, and the penalties imposed. It also requests information on the specific aspects of better access for labour inspectors that are enabled, based on their qualification, as juridical police.***

2. *Child domestic workers.* In response to the Committee's previous concern that the minimum age for employment or work did not apply to domestic workers and household servants, the Committee notes with ***satisfaction*** the issuance of Prakas No. 235 by the MLVT on 29 May 2018, according to section 4 of which domestic workers must be at least 18 years of age, or at least 15 years of age for light domestic work which is not hazardous to health.

Article 2(3). Compulsory schooling. Regarding the Committee's previous comments relating to the fact that, under the provisions of the Education Law of 2007, basic education in Cambodia is free but not compulsory, the Government indicates that the Ministry of Education, Youth and Sport will

undertake a feasibility analysis with a view to implementing nine years of basic education (until 15 years of age) and prepare an action plan to introduce compulsory education on a phase by phase basis and clearly outline the roles and responsibilities of the various levels of government and financial arrangements in this regard. The Government indicates that, to start, it will undertake preparatory work to implement free and compulsory education at pre-primary level, which will become an integral part of basic education. The Committee once again stresses the importance of adopting legislation providing for compulsory education up to the minimum age for admission to employment or work, because where there are no legal requirements establishing compulsory schooling, there is a greater likelihood that children under the minimum age will be engaged in child labour (2012 General Survey on the fundamental Conventions, paragraph 369). ***The Committee therefore encourages the Government to take the necessary measures to implement compulsory education, up to the minimum age for admission to employment, and to provide information on the progress made in this regard.***

The Committee is raising another matter in a request addressed directly to the Government.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2006)

Previous comment

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children. In relation to the Committee's previous comments regarding measures taken to strengthen the enforcement of Cambodia's anti-trafficking legislation, the Committee notes the Government's information in its report that the Department of Anti-human trafficking and juvenile protection is providing resources, equipment and funds to the Anti-human trafficking and juvenile protection authority for the organization of trainings and implementation of the relevant laws and regulations. The Committee takes note of the Government's detailed statistical data compiled by the Department of Anti-human trafficking and juvenile protection, Department of Cybercrime, National Gendarmerie and Commissariat of Municipal/Provincial Police. In particular, the Committee notes that in 2018, these bodies cracked down on 134 cases, arrested 224 suspects, and rescued 230 victims, including 92 minors under the age of 15 and 23 aged between 15 and 17. In 2019, there were 169 cracked down cases, 229 arrested suspects, and 456 rescued victims (141 under the age of 15, and 55 between 15 and 17 years). Finally, in 2020, there were 155 cracked down cases, 193 arrested suspects, and 467 rescued victims (130 under the age of 15, and 39 between 15 and 17 years). The Committee observes, however, that the Government does not provide information on the number of convictions and penalties applied. ***The Committee strongly encourages the Government to continue taking measures aiming to ensure that the Law on Suppression of Human Trafficking and Sexual Exploitation is effectively applied. It also encourages the Government to take the necessary measures to strengthen the capacity of law enforcement agencies, including through the allocation of financial resources and adequate training, to combat the sale and trafficking of children under 18 years of age, and to provide information on the progress made in this regard. It further requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied, specifically in cases of child trafficking for labour or sexual exploitation.***

Articles 3(d), 5 and 7(2)(b). Hazardous work, monitoring mechanisms and effective and time bound measures. Debt bondage in brick kilns. The Committee notes the Government's indication that the Taskforce of the Ministry of Labour and Vocational Training on child labour prevention in the brick making industry (MLVT Taskforce) was established in 2019. The Government indicates, in its report under the Minimum Age Convention, 1973 (No. 138), that a census of 486 operational brick kilns was conducted in the country in 2019-2020 and that labour inspectors have not identified any cases of child labour or debt bondage at those brick kilns. The Committee notes, however, that in its concluding observations of 27 June 2022, the United Nations Committee on the Rights of the Child remained deeply concerned about the large number of children involved in child labour, including debt bondage, in the

construction and brickmaking industries (CRC/C/KHM/CO/4-6, paragraph 45). Similarly, the United Nations Human Rights Committee, in its concluding observations of 18 May 2022, expressed its concern about allegations of cases of debt bondage involving children, in particular in the brick industry (CCPR/C/KHM/CO/3, paragraph 30). ***The Committee therefore requests the Government to take measures, both in law and in practice, to identify and protect children under 18 years of age engaged in the brick kiln industry from debt bondage and hazardous work, including through the action of the MLVT Taskforce. In this regard, it urges the Government to take measures to ensure the prohibition of the employment of children under 18 years in debt bondage or hazardous work in the brick kiln industry, and to ensure that effective and dissuasive penalties are applied against offenders. It also requests the Government to provide information on the number of children removed from working in brick kilns through inspections and provided with direct assistance for their rehabilitation and social integration.***

Articles 6 and 7(2)(a) and (b). Programmes of action and time-bound measures for prevention, assistance and removal. Child trafficking. Following its previous comments, the Committee takes note of the detailed information provided by the Government in its report concerning the number of victims of trafficking that were rescued, rehabilitated and reintegrated between 2014 and 2020. The Government indicates, for example, that in 2019, the Ministry of Social Affairs, Veterans and Youth Rehabilitation and the provincial/municipal department of social affairs, in collaboration with relevant stakeholders, rescued 1,415 persons, among which 78 are children. The Committee observes, however, that the statistics provided by the Government regarding the number of rehabilitated victims appear to be sporadic and do not clearly make the distinction between child and adult victims. For example, the Government indicates that, in 2017, 8 victims were rehabilitated (4 girls through Caritas, and 1 boy and 3 girls through HAGAR International); in 2018, 16 victims were rehabilitated through the Department of Social Welfare and Development; and in 2019 and 2020 respectively, 396 and 106 victims were rehabilitated through a variety of governmental and non-governmental institutions. In addition, the Committee notes that the United Nations Human Rights Committee, in its concluding observations of 18 May 2022, expressed concern about reports of a lack of adequate protection for victims of trafficking, in particular women and children (CCPR/C/KHM/CO/3, paragraph 30). ***The Committee requests the Government to strengthen its efforts to ensure that child victims of trafficking who are removed from sexual or labour exploitation are rehabilitated and socially integrated. It encourages the Government to take measures to ensure that adequate statistics in this regard are compiled, disaggregated by gender and age, and requests it to provide this information in its next report.***

Article 8. International cooperation. Trafficking. Following its previous comments, the Committee notes the Government's information regarding the number of child victims of trafficking and illegal migrants who were victims or at risk of trafficking, that were intercepted, rehabilitated or repatriated as a result of various efforts. ***The Committee requests the Government to continue to provide information on the measures taken to enhance international cooperation to combat trafficking in children, particularly as regards identification, protection and assistance of child victims of trafficking.***

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

Canada

Minimum Age Convention, 1973 (No. 138) (ratification: 2016)

Previous comment: direct request

Article 2(1) of the Convention. Scope of application. The Committee notes the information provided by the Government in its report regarding the manner in which the protection provided by the Convention is guaranteed to children and young persons working in family-owned businesses in *Nova Scotia*, *Prince Edward Island* and *Saskatchewan.*

Adding to the fact that the legislation of these three provinces provides that children must be enrolled in and attend school until the age of 16, the Committee notes the following:

- *Nova Scotia*: Family-owned businesses are subject to the Occupational Health and Safety Act, in accordance with which employers must take every reasonable precaution to ensure the health and safety of persons at work, provide information, instruction and training, and generally ensure the workers' health and safety (section 13(1)).
- *Prince Edward Island:* The Government intends to begin a review of the Employment Standards Act, which is expected to take into consideration compliance with ratified ILO Conventions. In the meantime, young persons working in family-owned businesses are protected through education and enforcement. The Occupational Health and Safety (OHS) Division has a dedicated Farm Safety Specialist that routinely visits farm employers to discuss workplace safety specific to farms. In the spring, an OHS Officer dedicates time to visiting fisher employers to discuss safety requirements. In addition, the Workers Compensation Board (WBC) employs a full-time Youth Education consultant, who is responsible for developing educational information targeted at young worker safety.
- *Saskatchewan*: A review of the employment standards provisions of the Saskatchewan Employment Act is expected to take place in 2022-23, which will provide an opportunity for consultation on this matter. In the meantime, Saskatchewan employment standards officers investigate all complaints received – even those in situations that are not covered by the Act – and an interactive programme for young workers to be aware of their rights and responsibilities in the workplace introduced in 2010–11 contributes to the compliance of employers.

The Committee requests the Government to provide information on the progress made by Prince Edward Island and Saskatchewan in reviewing their employment standards legislation, and whether these reviews will address the issue of including family-owned businesses and enterprises in the scope of application of those standards. The Committee further requests the Government to provide information on the number of children employed in such family-owned businesses and enterprises in Nova Scotia, Prince Edward Island and Saskatchewan who are effectively protected, in particular through the application of occupational health and safety legislation and inspections, and through the inspections conducted by Saskatchewan's employment standards officers.

Article 7(1) and (3). Age for admission to light work and determination of light work. 1. *British Columbia.* The Committee previously took note of *British Columbia*'s Employment Standards Act and requested the Government to indicate the measures taken or envisaged to regulate the employment of children in light work from the age of *13 years*, as required by *Article 7(1)* of the Convention.

The Committee notes with ***interest*** that the recently enacted Employment Standards Amendment Act, 2019, of *British Columbia* raises the general working age to 16, and allows youth aged *14 and 15* to perform appropriate jobs defined as "light work" (new section 9(1) of the Amendment Act). Examples of light work considered appropriate for 14–15 year-olds which are unlikely to be harmful to the child's health or development include: (i) recreation and sports club work; (ii) light farm and yard work, such as gardening, clearing leaves and snow; (iii) administrative and secretarial work; (iv) retail work; (v) food service work; and (vi) skilled and technical work. Restrictions on when youth may engage in these activities (i.e. not during school hours) continue to apply so it will not prejudice their attendance at school.

2. *Manitoba and Saskatchewan*. The Committee notes the Government's information that, in order to determine the types of light work activities that youth aged 13 years are permitted to participate in, *Manitoba* undertook a jurisdictional scan and engaged in stakeholder consultations with the Labour Management Review Committee (LMRC), which is made up of stakeholders representing the views of both employers and employees. Recent consultations with the LMRC resulted in the addition of a

prohibition on employment of workers under age 14 in food preparation work if the work involves the use of dangerous tools or machinery.

In the case of *Saskatchewan*, the Government indicates that while section 3-3 of the Occupational Health and Safety Regulations, 2020, currently provides a detailed list of prohibited work for anyone under the age of 16, there is no current definition of "light work" in the Employment Act or associated regulations. A review of the employment standards provisions of the Act is expected to commence in 2022–23, with a regulatory review to follow. The Government indicates that the concept of light work should be considered as a part of these consultations. ***The Committee requests the Government of Manitoba to provide information on the progress made in the process of determining light work activities that may be permitted to children from the age of 13 years, in consultation with the LMRC. It also requests the Government of Saskatchewan to provide information on the progress made in its review of the Employment Act and regulations, and requests it to take measures to ensure that this review include a determination of types of light work activities that may be permitted to children from the age of 14 years.***

3. *New Brunswick, Nova Scotia and Prince Edward Island*. The Committee notes the Government's information that the Employment Standard Branch in *New Brunswick* processes youth work permit applications and indicated that the majority of applications deal with children 15 years or older. The Employment Branch also consults with WorkSafeNB on the work conditions of the workplace and imposes special conditions of work including supervision, limited hours of works, and tasks, in certain instances.

The Government further indicates that in the case of *Prince Edward Island*, the Government intends to begin a review of the Employment Standards Act and of the Youth Employment Act, which is expected to be extensive and take into consideration compliance with the ILO Conventions ratified by Canada, including Convention No. 138. This work is expected to take a few years to complete. The Committee notes that the Government provides no information with regard to *Nova Scotia.* ***The Committee requests the Government of Prince Edward Island to provide information on the progress made in its review of the Employment Standards Act and the Youth Employment Act, and to take measures to ensure that this review include the establishment of a minimum age of 13 years for employment in light work, as required by Article 7(1) of the Convention. It once again requests the Government of Nova Scotia to indicate the measures taken or envisaged to establish a minimum age of 13 years for employment in light work.***

4. *Northwest Territories, Nunavut and Yukon*. The Committee notes that the Government of the *Northwest Territories* is of the view that the Employment Standards Act (sections 46-47) and the Safety Act (section 4), combined with the requirement under the Education Act – that children under the age of 16 attend school – are sufficient to ensure that children are not employed in work that would be harmful to their health or development and that their attendance at school is not prejudiced. However, the Governments of *Nunavut* and *Yukon* provide no further information at this time. ***The Committee once again requests the Governments of Nunavut and Yukon to take the necessary measures to ensure that the minimum age for admission to light work is set at 13 years, and to determine the types of light work activities that may be permitted for persons of 13 years and above as well as the number of hours during which, and the conditions in which, such employment may be undertaken, as required under Article 7 of the Convention.***

5. *Ontario*. The Committee takes due note of the Government's information that the minimum age for working in Ontario is 14 years for most types of work, with certain types of work requiring a higher minimum age, in accordance with the Occupational Health and Safety Act (OHSA). The Government indicates that health and safety protections set for different types of workplaces and different kinds of workplace hazards, as required under the OHSA and its regulations, would apply to all workers,

regardless of age. In addition, higher minimum ages are prescribed by the OHSA for certain types of work that may be more hazardous.

6. *Quebec*. The Committee previously noted that pursuant to section 84.3 of the Act respecting Labour Standards, a child under 14 years of age may be employed with a written consent of the child's parent or tutor. It noted that sections 84.4 to 84.7 provide conditions in terms of schooling and working hours that are imposed on the employment of children. The Government indicated that that the term child under sections 84.4 to 84.7 refers to persons under 17 years.

The Committee notes that the Government does not provide new information on this subject in its report. ***The Committee once again requests the Government of Quebec to take the necessary measures to ensure that no child under the age of 13 years is permitted to be employed in light work. It also once again requests the Government to take the necessary measures to determine the types of light work activities that may be permitted for persons of 13 years and above.***

Article 9(1). Penalties and labour inspection. Following its previous comments, the Committee notes the detailed information provided by the Government on the federal, provincial and territorial labour inspectorates and their functioning, as well as on violations detected and penalties applied. For example, it notes the Government's indication that, at the federal level, there was only one complaint concerning underage employment between 1 January 2010 and 8 August 2021, which was determined to be unfounded upon inspection. In *British Columbia*, the Employment Standards Branch of the Ministry of Labour has issued two penalties in the past five years for violations of section 9 of the Employment Standards Act (hiring of a child without a permit). In *Manitoba*, 22 youth-related Director's Own Accord (DOA) investigations were carried out between 2017 and 2021, during which 13 violations were detected. In the *Northwest Territories*, 92 payroll inspections were completed by the Employment Standards Inspectors, but none of these inspections identified violations with regard to the employment of youth.

However, the Committee observes from the Government's report that, in many cases, inspections do not collect information specific to the age of the employee in question. In *British Columbia*, both the Employment Standards Branch and WorkSafeBC (who undertakes workplace inspections and issues orders for non-compliance under the Occupational Health and Safety Regulations) do not collect information specific to the age of the employees. In *New Brunswick*, where the system under the Employment Standards Branch is largely complaint-driven, inspections involving young employees are not specifically tracked. In addition, workSafeNB inspects workplaces for adherence to OHSA, but focused inspections at workplaces employing children and youth are not conducted. In *Newfoundland and Labrador*, there have been 22,113 inspections over the past five years, but the OHS division does not track the age of people involved in complaints. In *Prince Edward Island*, there have been no complaints/investigations/violations/penalties issued in relation to the employment of children under the Employment Standards Act or Youth Employment Act. Moreover, the Committee notes that certain provinces, including *Newfoundland and Labrador*, report that they do not even collect data relating cases of violations of legislation relating to the employment of children or to their occupational health and safety.

The Committee further observes, from the Government's report, that violations of minimum age provisions across Canada do not appear to be penalized. For example, in *New Brunswick*, notices of non-compliance are generally issued to employers without the need for further sanctions. In *Manitoba*, in all the cases of violations detected by the DOA through its youth-related investigations between 2017 and 2021, no administrative sanctions were issued. In *Nova Scotia*, employment of children concerns are typically resolved by educating employers about the provisions of the Code, rather than through prosecutions, as authorized by the Labour Standards Code.

The Committee recalls that *Article 9(1)* of the Convention requires that all necessary measures, including the provision of appropriate penalties, be taken by the competent authority to ensure the

effective enforcement of the provisions of the Convention. While the adoption of national legislation is essential as it establishes a framework within which society determines its responsibilities with regard to young persons, even the best legislation only takes value when it is applied effectively (2012 General Survey on the fundamental Conventions, paragraph 410). Moreover, the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors (2012 General Survey on the fundamental Conventions, paragraph 408). ***The Committee therefore requests the Government to take the necessary measures to adapt and strengthen the labour inspection services in order to enable them to effectively monitor children working across all sectors. It also requests the Government to take the necessary measures to ensure that the regulations providing for penalties – administrative or otherwise – in the case of a violation of the provisions on the employment of children and young persons are effectively implemented by the labour inspectorate or other competent authorities. In this regard, it requests the Government to provide information on the number and nature of violations detected and penalties imposed relating to the employment of children across Canada.***

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

Central African Republic

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022. It also notes the detailed discussion, which was held at the 110th Session of the Conference Committee on the Application of Standards (Conference Committee) in June 2022, concerning the application of the Convention, and the Government's report.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. The Committee notes that the Conference Committee, while aware of the complexity of the situation in the country, deplored the current situation where children are being recruited and used by the armed forces and armed groups as combatants and in support roles. The Conference Committee urged the Government to take all necessary measures, in consultation with the social partners, to ensure the full and immediate demobilization of all children and to put a stop, in law and practice, to the forced recruitment of children into the armed forces and armed groups. In this regard, it also urged the Government to take all necessary measures to ensure that thorough investigations and robust prosecutions of all persons, including members of the armed forces and armed groups, are carried out, and that sufficiently effective and dissuasive penalties are imposed in law and practice. The Committee also notes that, in its observations, the ITUC supports the conclusions of the Conference Committee and, in particular, recalls that the report of the UN Secretary-General on children and armed conflict identified, in May 2021, over 580 cases of children recruited and used by armed groups and armed forces, which constitutes an alarming deterioration of this situation.

The Committee notes that, according to the report of the UN Secretary-General on children and armed conflict of 23 June 2022, the United Nations confirmed that 329 children (262 boys, 67 girls), some as young as 7 years of age, had been recruited and used by armed groups (293), including as combatants (84 children). A total of 36 children were used by other security personnel (28), the Armed Forces of the Central African Republic (5), the Armed Forces of the Central African Republic/internal security forces (2) and the Armed Forces of the Central African Republic/other security personnel (1) for

intelligence gathering, at checkpoints and to run errands. Most violations (189) occurred in Haute-Kotto Prefecture. Eight boys were detained by national authorities for alleged association with armed groups. Two remain in detention and the United Nations continues to advocate their release. The Committee also notes the detailed information contained in the report on the hundreds of cases of murder, rape and other forms of sexual violence, and abduction, perpetrated against children, and attacks on schools and hospitals (A/7/871-S/2022/493, paragraphs 26–34).

The Committee notes the Government's indication in its report that efforts continue to be undertaken through the Strategic Committee responsible for disarmament, demobilization, reintegration and repatriation; reform of the security sector; and national reconciliation (DDRR/RSS/RN), chaired by the President of the Republic, and the National Strategy for the Reform of the Defence and Security Sector 2017–21, which allowed for the strengthening of the technical capacity of the defence forces. The Committee also notes that, according to the written information provided by the Government to the Conference Committee, and the information contained in the report of the Independent Expert on the situation of human rights in the Central African Republic of 22 August 2022, measures are being taken with regard to the prosecution of perpetrators of offences concerning human rights violations, including the worst forms of child labour. These efforts include not only the holding of regular criminal sessions since the end of 2015, but also the operationalization of the Special Criminal Court, which began its first trial in April 2022 in a case of prosecution for war crimes and crimes against humanity, of members of rebel groups (A/HRC/51/59, paragraphs 65 et seq.). However, according to this report, while the fight against impunity is a government priority, many incidents have not been investigated by the State. The Independent Expert states that political will in this area should be translated into effective action (A/HRC/51/59, paragraphs 83–84).

While noting the measures taken by Government, and recognizing the difficult situation prevailing in the country, the Committee finds itself obliged to once again ***deplore*** the continuing recruitment and use of children in the armed conflict in the Central African Republic, all the more so as it gives rise to other serious violations of the child rights, such as abductions, murder and sexual violence, and attacks targeting schools and hospitals. ***The Committee therefore urges the Government to pursue its efforts to put an end to the practice of forced recruitment of children of less than 18 years of age by the armed forces and armed groups in the country. Moreover, the Committee again urges the Government to continue to take immediate and effective measures to ensure that all persons, including members of the regular armed forces, who recruit children of under 18 years of age for use in armed conflict, are thoroughly investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice, particularly within the framework of national jurisdictions and the Special Criminal Court. The Committee once again requests the Government to provide information on the number of investigations undertaken, prosecutions filed, and convictions handed down against such persons. It also requests the Government to provide a copy of the Child Protection Code.***

Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education. The Committee notes that the Conference Committee noted with deep concern the situation of children, especially girls, who are deprived of education due to the impact of the political and security crisis prevailing in the country. The Conference Committee urged the Government to intensify its efforts to improve the operation of the education system and facilitate access to free quality basic education for all children, particularly girls, and in zones affected by the conflict.

The Committee further notes that, in its observations, the ITUC also notes with deep concern the impact of the political and security crisis on the situation of children, in particular girls, who are deprived of education. The ITUC recalls that the school attendance rate remains extremely low, and that the drop-out rate between primary and secondary education is very high. This situation is due, in particular, to the partial or total closure of several schools as a result of the armed conflict, particularly in the hinterland, where armed groups pillage, attack and occupy schools in the context of the conflict. The

ITUC therefore considers that the Central African Republic still has to make considerable efforts to comply with its obligations under *Article 7(a) and (c)* of the Convention, which seeks to ensure access to free basic education for all children.

In this regard, the Government indicates in its reports that the right to education for all is one of its priorities, and that efforts have been made to restore school facilities, even in the areas most affected by the conflict, and to build the capacity of teaching staff. The Government indicates that it approved, in May 2020, the Sectoral Plan for Education for 2020–29, which provides an analysis of access to education, governance reform and financing of the education system.

While noting with ***deep concern***, the significant number of children deprived of education due to the climate of insecurity prevailing in the country, the Committee wishes to recall that education plays a key role in preventing children from engaging in the worst forms of child labour, including their recruitment in armed conflicts. ***The Committee therefore urges the Government to intensify its efforts to improve the functioning of the education system in the country and to facilitate access to free basic education for all children, including girls and in areas affected by conflict. It requests the Government to provide information on the impact of the specific measures taken in this regard, under the Sectoral Plan for Education for 2020–29 or any other project, as well as on the school attendance, maintenance and drop-out rates at primary and secondary levels.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Forced recruitment of children for use in armed conflict. The Conference Committee urged the Government to intensify its efforts on the prevention, removal, rehabilitation and social integration of children recruited to be used for armed conflict, including through awareness-raising and reintegration programmes.

In this regard, the ITUC notes with concern, in its observations, that children who have been forcibly recruited are victims a second time of the political and security crisis prevailing in the country, due to the insufficient means allocated for their rehabilitation and reintegration into society. The ITUC highlights that the reintegration programmes must be strengthened to ensure the effective and long-term demobilization of children, and that the rehabilitation of former child soldiers constitutes a major challenge in the country. The ITUC notes that, while political commitments have existed for a long time in the Central African Republic, the time frame for effectively implementing these commitments has been significantly exceeded, and that numerous issues continue to arise in practice with regard to the rehabilitation and social integration of former child soldiers.

In this regard, the Committee notes the Government's indication that several persons, including children from armed groups, have been demobilized and reintegrated into the economic and social system. The Government underscores that, since 2014 and with the support of UNICEF and other partners, over 15,500 children were freed, of whom 30 per cent were girls, and of whom several have attended training courses at the Office of the High Commissioner through the *Jeunesse Pionnière* (Young Pioneers) youth organization. The Committee also notes that, according to the information contained in the report of the Secretary-General on children and armed conflicts of 23 June 2022, interministerial plans have been developed to implement the Child Protection Code (A/7/871-S/2022/493, paragraph 35). According to UNICEF, the implementation of the Code makes it possible to ensure the effective protection of children, including against serious violations of their rights, and to strengthen the monitoring and reporting mechanism and foster the liberation and reintegration of children from the armed forces and armed groups, and to provide medical and psycho-social care for children affected by conflict.

The Government indicates that, in collaboration with UNICEF, it is seeking ways to ensure that the 2,000 children affected by violence, exploitation and abuse, who were freed from armed groups in 2021, are reintegrated into their families/communities, or placed in alternative services. In this regard, the Committee notes that, according to the report of the Independent Expert on the situation of human

rights in the Central African Republic of 22 August 2022, despite the funding of projects for the socio-economic reintegration of individuals, including children, who have left armed groups, this challenge remains outstanding (A/HRC/51/59, paragraph 10). ***The Committee therefore once again urges the Government to step up its efforts to ensure the removal of all children recruited for use in the armed conflict and for their rehabilitation and social integration. It also once again requests the Government to take all measures necessary to ensure that all children removed from armed groups and from the armed forces benefit from reintegration programmes, including in the context of its cooperation with UNICEF. It requests the Government to continue to provide information in this regard, including on the number of children who have benefited from rehabilitation and social integration.***

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

Chad

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 3(a) of the Convention. All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845–S/2013/245, paragraphs 45 and 46), despite progress in the implementation of the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad, and although the national army of Chad did not recruit children as a matter of policy, the country task force verified 34 cases of recruitment of children by the army during the reporting period. The 34 children appeared to have been enlisted in the context of a recruitment drive in February–March 2012, during which the army gained 8,000 new recruits. In this respect, the Committee noted the new roadmap of May 2013, adopted further to the review of the implementation of the action plan concerning children associated with the armed forces and armed groups in Chad and aimed at achieving full observance of the 2011 action plan by the Government of Chad and the United Nations task force. The Committee observed that, in the context of the roadmap, one of the priorities was to speed up the adoption of the preliminary draft of the Child Protection Code, which prohibits the recruitment and use of young persons under 18 years of age in the national security forces and lays down penalties to that effect. Moreover, during 2013 it was planned to establish transparent, effective and accessible complaint procedures regarding cases of recruitment and use of children, and also to adopt measures for the immediate and independent investigation of all credible allegations of recruitment or use of children, for the persecution of perpetrators and for the imposition of appropriate disciplinary sanctions.

The Committee takes note of the information contained in the United Nations Secretary-General's report of 15 May 2014 to the Security Council on children and armed conflict (A/68/878–S/2014/339). According to this report, the deployment of Chadian troops to the African-led International Support Mission in Mali (AFISMA) has prompted renewed momentum to accelerate the implementation of the action plan signed in June 2011 to end and prevent underage recruitment in the Chadian National Army, and the Chadian authorities have renewed their commitment to engage constructively with the United Nations to expedite the implementation of the action plan. The Government of Chad, in cooperation with the United Nations and other partners, has therefore taken significant steps to fulfil its obligations. For example, a presidential directive was adopted in October 2013 to confirm 18 years as the minimum age for recruitment into the armed and security forces. This directive also establishes age verification procedures and provides for penal and disciplinary sanctions to be taken against those violating the orders. The directive was disseminated among the

commanders of all defence and security zones, including in the context of several training and verification missions. Furthermore, on 4 February 2014, a presidential decree explicitly criminalized the recruitment and use of children in armed conflict.

The Secretary-General states, however, that while the efforts made by the Government to meet all obligations under the action plan have resulted in significant progress, a number of challenges remain to ensure sustainability and the effective prevention of violations against children. Chad should pursue comprehensive and thorough screening and training of its armed and security forces to continue to prevent the presence of children, including in the light of Chad's growing involvement in peacekeeping operations. While no new cases of recruitment of children were documented by the United Nations in 2013 and no children were found during the joint screening exercises carried out with the Chadian authorities, interviews confirmed that soldiers had been integrated in the past into the Chadian National Army from armed groups while still under the age of 18. According to the Secretary-General, the strengthening of operating procedures, such as those for age verification, which ensure the accountability of perpetrators, should remain a priority for the Chadian authorities. Finally, the Secretary-General invited the National Assembly to proceed as soon as possible with the examination and adoption of the Child Protection Code, which should provide greater protection for the children of Chad. ***The Committee therefore requests the Government to intensify its efforts to end, in practice, the forced recruitment of children under 18 years of age by the armed forces and armed groups and to undertake immediately the full demobilization of all children. The Committee urges the Government to take immediate measures to ensure that the perpetrators are investigated and prosecuted and that sufficiently effective and dissuasive penalties are imposed on persons found guilty of recruiting and using children under 18 years of age in armed conflict. Finally, the Committee urges the Government to take the necessary measures to ensure the adoption of the Child Protection Code as soon as possible.***

Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Preventing children from being engaged in the worst forms of child labour, removing children from these forms of labour and ensuring their rehabilitation and social integration. Children who have been enlisted and used in armed conflict. In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General on children and armed conflict of 15 May 2013 (A/67/845–S/2013/245, paragraph 49), the actions taken by the Government for the release, temporary care and reunification of separated children, while encouraging, were not yet in line with the commitments made in the action plan signed between the Government and the United Nations in June 2011 concerning children associated with the armed forces and armed groups in Chad. The Committee noted that one of the priorities referred to in the 2013 roadmap was to secure the release of children and support their reintegration.

The Committee notes that, according to the Secretary-General's report of 15 May 2014, a central child protection unit has been established in the Ministry of Defence, as well as in each of the eight defence and security zones, to coordinate the monitoring and protection of children's rights and to implement awareness-raising activities. Between August and October 2013, the Government and the United Nations jointly conducted screening and age verification of approximately 3,800 troops of the Chadian national army in all eight zones. The age verification standards had been previously developed during a workshop organized by the United Nations in July. In addition, between August and September 2013, a training-of-trainers programme on child protection was attended by 346 members of the Chadian National Army. As from July 2013, troops of the Chadian National Army deployed in Mali started to receive pre deployment training on child protection and international humanitarian law; in December of the same year, 864 troops attended child protection training at the Loumia training centre. ***The Committee encourages the Government to intensify its efforts and continue its collaboration with the United Nations in order to prevent the enrolment of children in armed groups and improve the situation of child victims of forced recruitment for use in armed conflict. In addition, the Committee requests the Government once again to supply information on measures taken to ensure that child soldiers removed from the armed forces and groups receive adequate assistance for their rehabilitation and social integration, including reintegration into the school system or vocational training,***

wherever appropriate. It requests the Government to supply information on the results achieved in its next report.

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

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

Comoros

Minimum Age Convention, 1973 (No. 138) (ratification: 2004)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(3) of the Convention. Compulsory schooling and application of the Convention in practice. In its previous comments, the Committee noted that child labour was a visible phenomenon in the country, particularly as a result of poverty and of the low school enrolment rate in some cases. In this regard, the Committee noted that the capacity of schools was very limited and that some primary and secondary schools were obliged to refuse to enrol certain children of school age. Consequently, a large number of children, particularly from poor families and disadvantaged backgrounds, were deprived of an education.

The Committee noted the Government's indication that there had been a positive trend towards gender parity in school, standing at 0.87 at primary level. However, it was less satisfactory at secondary level, where the numbers of girls in school had fallen significantly. According to the Government, particular problems in the educational situation for girls involved late enrolment, a very high repetition rate – around 30 per cent in primary school and 23 per cent in secondary school – and a high drop-out rate, with only 32 per cent of pupils completing primary education.

The Committee notes the Government's statement in its report that it is taking steps to reduce the disparity in school enrolment rates for girls and boys. The Government indicates that the school mapping system is being revised by the Ministry of Education, in conjunction with the education offices and UNICEF, with a view to boosting educational coverage and ensuring better access to education for children living in rural areas. Moreover, the Committee notes that a UNICEF country programme has been adopted for 2015–19, which aims, among other things, to support the Government's efforts to enhance children's right to education. One of the main objectives of the programme is to ensure that all children are enrolled in and complete inclusive, high-quality education, with the focus on equity and achievement.

However, the Committee notes that section 2 of Framework Act No. 94/035/AF of 20 December 1994 provides that schooling is only compulsory from 6 to 12 years of age, which is three years earlier than the minimum age for admission to employment or work, namely 15 years. Referring to the General Survey of 2012 on the fundamental Conventions, the Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (paragraph 371). The Committee therefore considers it desirable to raise the age of completion of compulsory schooling so that it coincides with the minimum age for admission to employment or work, as provided for in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee strongly encourages the Government to take the necessary steps to make education compulsory until the minimum age for admission to employment, namely 15 years. Moreover, the Committee requests that the Government intensify its efforts to increase the school attendance rate and reduce the school drop-out rate, especially among girls, in order to prevent children under 15 years of age from working. The Committee requests that the Government provide information on the results achieved in this respect.***

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

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

Congo

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted that a large number of children were involved in economic activity but that no national policy had been adopted in this regard. It noted the Government's indication that there were no inspection reports providing any information on the presumed or actual employment of children in enterprises in Congo during the reporting period. However, the Committee noted that 25 per cent of Congolese children were involved in child labour, according to UNICEF statistics.

The Committee notes with ***regret*** that the Government's report still does not contain any information on the adoption of a national policy for ensuring the effective abolition of child labour. The Committee also observes that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of 2014, noted that child labour and the economic exploitation of children remain widespread, particularly in the big cities (CRC/C/COG/CO/2-4, paragraph 74). ***Expressing its deep concern at the large number of children working below the minimum age in the country, and given the lack of a national policy designed to ensure the effective abolition of child labour, the Committee once again urges the Government to take the necessary steps to ensure the adoption and implementation of such a policy as soon as possible. It requests that the Government provide detailed information in its next report on the measures taken in this respect.***

Article 3(2) and (3). Determination of hazardous types of work and age of admission to hazardous work. In its previous comments, the Committee noted that section 4 of Order No. 2224 of 24 October 1953, which establishes employment exemptions for young workers, determines the types of work and the categories of enterprises prohibited for young persons and sets the age limit for the prohibition, prohibits the employment of young persons under 18 years of age in certain hazardous types of work, and includes a list of such types of work.

The Committee notes the Government's indication that Order No. 2224 is no longer in force. The Committee also notes that section 68(d) of Act No. 4-2010 of 14 June 2010 concerning child protection (Child Protection Act) provides that any work which, by its nature or the conditions in which it is performed, is likely to harm the health, safety or morals of the child is prohibited. It also provides that a decree issued further to the opinion of the National Labour Advisory Committee shall determine the list and the types of work and the categories of enterprises prohibited for children and the age limit for the prohibition. ***The Committee requests that the Government take the necessary steps to ensure the adoption as soon as possible of the decree determining the list of hazardous types of work, in accordance with section 68(d) of the Child Protection Act.***

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

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

Democratic Republic of the Congo

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

Previous comments: observation and direct request

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted that a large number of children were involved in child labour, including under hazardous conditions.

The Committee notes the information provided by the Government on its efforts to improve access to the school system in order to withdraw children from child labour and reintegrate them through the "Sectoral strategy for education and training (SSEF) 2016–25". However, the Committee

notes the Government's report does not contain any information on current data relating to the employment of children and young persons, or any information on the monitoring and supervision of working children.

In this regard, the Committee notes from the 2017–18 MICS (multiple indicator cluster surveys) report produced by UNICEF that 15 per cent of children between 5 and 17 years of age are engaged in child labour and 13 per cent of children between 5 and 17 years of age work under conditions which are dangerous for their health. In the northern provinces of the country (Haut Uelé, Bas Uelé, Sud Ubangui, Ituri and Nord Ubangui) and in Lomami, Kasai and Maniema, between 20 and 30 per cent of children between 5 and 17 years of age are involved in child labour. While noting the measures taken by the Government, the Committee is bound to express its ***deep concern*** at the number of children exposed to child labour, including under hazardous conditions. ***The Committee once again requests the Government to intensify its efforts to ensure the progressive elimination of child labour. It requests the Government to provide information on the application of the Convention in practice, particularly statistics, disaggregated by gender and age, on the employment of children and young persons, and also extracts from the reports of the inspection services.***

Article 2(1). Scope of application and labour inspection. The Committee previously noted the concern expressed by the United Nations Committee on the Rights of the Child (CRC) regarding the large number of children who work in the informal economy and who are often not covered by the protection measures established by the national legislation.

The Committee notes the Government's indication in its report that reforms have been undertaken with a view to capacity-building for the labour inspectorate, including through the implementation of the project "Support for progress in labour standards in the Democratic Republic of the Congo (SPNT) 2022–25", in collaboration with the ILO and the US Department of Labor. This project will help to strengthen the capacities of the labour inspectorate. As part of capacity-building for labour inspectors and controllers, steps have been taken to allocate them a permanent allowance, which was adjusted in 2020. The practical guide for labour inspectors is a tool for gathering information during routine and special inspections in enterprises and establishments of all kinds, including in relation to child labour. ***The Committee requests the Government to continue taking measures to adapt and reinforce labour inspection services in order to guarantee the supervision of child labour and ensure that all children enjoy the protection afforded by the Convention, including those who work in the informal economy. In this regard, the Committee requests the Government to provide information on the results achieved in the context of the SPNT. It also requests the Government to provide information on the structure, operation and activities of the labour inspectorate relating to child labour.***

Article 2(3). Age of completion of compulsory schooling. Further to its previous comments, the Committee notes the Government's indication in its report that there has been an increase in the gross school enrolment rate for both girls and boys between 2018 and 2020.

The Committee also notes that, according to the 2021 UNICEF report on education challenges in the Democratic Republic of the Congo, the net school attendance rate rose from 52 per cent in 2001 to 78 per cent in 2018. However, UNICEF points out that about 4 million children between 6 and 11 years of age are still out of school and account for some 21 per cent of the total number of children in this age group, and that only one third of children are in secondary education.

In this regard, the Committee also notes the information on the 2019–20 compendium of school statistics produced by the Technical Unit for Education Statistics with technical support from UNESCO, according to which a total of 13,872,674 girls and 12,190,775 boys are enrolled in pre-primary, primary and secondary classes.

The Committee further notes the various activities undertaken by the Government to improve children's access to education, particularly the meeting of the Sectoral Consultation Committee in September 2022, the "SSEF joint mid-term review", and also the progress made on projects, including

the "Project to improve the quality of education (PAQUE)", and the "Project for greater equality and strength in the education system (PERSE)". Moreover, a survey was also conducted with regard to the return to school of more than 2 million pupils since 2019. ***In view of the fact that compulsory education is one of the most effective means of combating child labour, the Committee requests the Government to continue its efforts to ensure the entry into the education system of children who have not reached the minimum age of 14 years for admission to employment or work.***

Article 3(3) of the Convention. Admission to hazardous work from the age of 16 years. In its previous comments, the Committee noted that, according to figures contained in the "Second demographic and health survey" (EDS-RDC II 2013–14), 27.5 per cent of children under 18 years of age have worked under dangerous conditions and that working conditions that fulfil the requirements of *Article 3(3)* of the Convention have not been established.

The Committee notes the Government's indication in its report that it has planned to supplement the provisions of Ministerial Order No. 12/CAB.MIN/TPSI/045/08 of 8 August 2008 (Order of 8 August 2008) establishing conditions of work for children, in such a way as to bring the regulations on admission to hazardous work from the age of 16 years into line with *Article 3(3)* of the Convention. The Committee recalls that the flexibility clause established in *Article 3(3)* of the Convention allows the competent authority to authorize hazardous work from the age of 16 years only if the following requirements are met: (a) prior consultation must be held with the employers' and workers' organizations; (b) the health, safety and morals of the young persons concerned must be fully protected; and (c) it must be ensured that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee once again urges the Government to take the necessary regulatory measures to ensure that the performance of hazardous work by young persons between 16 and 18 years of age is authorized only if the requirements of Article 3(3) of the Convention are met.***

Article 7. Light work. In its previous comments, the Committee noted that section 17 of the Order of 8 August 2008 contains a list of light and healthy types of work authorized for children under 18 years of age but does not set a minimum age from which children may perform light work or establish the conditions under which light work may be performed.

The Committee notes the Government's indications that it undertakes to amend and supplement, with the agreement of the National Labour Council, the provisions of section 17 of the Order of 8 August 2008 regarding the minimum age from which children may perform light work and under which conditions, including by incorporating the provisions of Paragraph 13 of the Minimum Age Recommendation, 1973 (No. 146), which gives effect to *Article 7(3)* of the Convention.

The Committee once again reminds the Government that *Article 7(1) and (4)* of the Convention is a flexibility clause under which national laws or regulations may permit the employment of children between 12 and 14 years of age in light work, or the performance by these children of such work, provided that it is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority, or their capacity to benefit from the instruction received. ***The Committee once again requests that the Government take the necessary steps to ensure that the types of work referred to in section 17 of the Order of 8 August 2008 are authorized only for children who are at least 12 years of age, provided that the requirements set out in Article 7(1) and (4) of the Convention are met.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comment

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. In its previous comments, the

Committee expressed its deep concern at the large number of children recruited by armed groups, including the armed forces.

The Committee notes the Government's reference in its report to the adoption of the strategy of the Disarmament, Demobilization, Community Recovery and Stabilization Programme (P-DDRCS) in April 2022. This programme is based on five major pillars, consisting of: (i) conflict resolution; (ii) restoration of state authority and security; (iii) economic recovery and community reintegration; (iv) stabilization, economic and social development; and (v) communication and awareness-raising in the east of the country.

The Committee observes that, according to the report of 23 June 2022 of the United Nations (UN) Secretary-General (A/76/871-S/2022/493, paragraphs 52–68), the UN verified 3,546 violations committed against 2,979 children (2,090 boys, 889 girls) between January and December 2021. The report also mentions that: (1) a total of 565 children (487 boys, 78 girls) who had been separated from armed groups in 2021 were recruited again and used by these groups. Of these 565 children, 241 children were used in combat, 324 children were used in support roles and 42 girls were used for, and subjected to, sexual violence; (2) a total of 436 children (7 boys, 429 girls) were subjected to sexual violence, with 336 violations committed by armed groups and 100 by government forces; (3) a total of 684 children (416 boys, 268 girls) were abducted, 669 by armed groups and 15 by the armed forces; and (4) a total of 69 schools were attacked and four schools were used for military purposes by the national armed forces.

The Committee also notes that the UN Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations on the eighth periodic report in 2019 (CEDAW/C/COD/CO/8, paragraph 28), expressed concern at reports of trafficking in persons and of exploitation and forced prostitution of girls in conflict areas, including in North Kivu.

While noting the measures taken by the Government and recognizing the difficult situation prevailing in the country, the Committee once again expresses its ***deep concern*** at the persistent recruitment and use of children in armed conflict in the Democratic Republic of the Congo, especially as this gives rise to other serious violations of the rights of the child, such as abductions, killings, sexual violence and attacks on schools. ***The Committee therefore urges the Government: (1) to take measures with the utmost urgency to proceed, in the context of the P-DDRCS, with the immediate and full demobilization of all children and put an end in practice to the forced recruitment of children under 18 years of age into armed groups and the armed forces and to provide information on the results achieved; (2) to take immediate and effective measures to ensure the thorough investigation and prosecution of persons, including officers of the regular armed forces, who recruit children under 18 years of age for use in armed conflict, and to ensure that penalties constituting an effective deterrent are imposed in practice, pursuant to Act No. 09/001 of 10 January 2009; and (3) to provide information on the number of investigations conducted, prosecutions brought and convictions handed down with respect to such persons and the penalties imposed.***

Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child labour in mines. Further to its previous comments, the Committee duly notes the Government's indications that a mechanism for the supervision, observation and monitoring of child labour in artisanal mines and at artisanal mining sites has been put in place in the context of the project entitled "Combating child labour in the Democratic Republic of the Congo's cobalt industry (COTECCO)", in partnership with the ILO and with funding from the US Government. This mechanism makes it possible: (1) to identify the real number of children working at artisanal mining sites; (2) to constitute a database of children working in mines; (3) to follow up the process of social/occupational or educational reintegration of children withdrawn from mining sites; and (4) to implement a communication and awareness-raising strategy for all stakeholders regarding action against child labour.

The Committee notes the adoption on 18 October 2017 of the plan for the implementation of the "National sectoral strategy to combat child labour in artisanal mines and at artisanal mining sites in the Democratic Republic of the Congo 2017–25" (CAB.MIN./MINES/02/1315/2017). The Committee also notes Ministerial Order No. 00122/CAB.MIN/MINES/01/2020 of 6 March 2020 on the establishment of the inter-ministerial committee for monitoring the issue of child labour in artisanal mines (CISTEMA), whose primary role is to implement the national strategy against child labour.

The Committee also notes that the UN Committee on Economic, Social and Cultural Rights (CESCR), in its concluding observations of 28 March 2022 (E/C.12/COD/CO/6, paragraph 44), expressed concern at the fact that, despite the adoption of the national sectoral strategy against child labour in artisanal mines and at artisanal mining sites for the 2017–25 period, large numbers of children continue to work in the mining sector.

While duly noting the measures taken by the Government, the Committee expresses its ***concern*** at the large number of children working in mines under hazardous conditions. ***The Committee requests the Government to provide information on the actual implementation of the "National sectoral strategy to combat child labour in artisanal mines and at artisanal mining sites in the Democratic Republic of the Congo 2017–25". The Committee also requests the Government to provide information on the results achieved in the context of the COTECCO project. Furthermore, the Committee once again requests the Government to take the necessary steps to ensure the thorough investigation and effective prosecution of offenders and to ensure that penalties constituting an effective deterrent are imposed in practice.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. 1. *Child soldiers.* The Committee notes the Government's indications that the P-DDRCS steering committee is functional, but it notes the absence of information on child soldiers.

The Committee notes the indication in the report of the UN Secretary-General of 21 March 2022 on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) that Presidential Ordinance No. 22/003, published on 7 January, assigned to the Ministry of Defence and former combatants the responsibility for planning and implementing the demobilization of ex-combatants and children associated with the armed forces and armed groups with a view to reintegrating them in the community.

Furthermore, the Committee notes that the implementation of the "Accelerated presidential programme against poverty and inequality (PPA-LCPI)" will primarily target population groups which are extremely poor, vulnerable and exposed to security-related, endemic and environmental risks and that the provinces affected by armed conflict are considered as priority intervention areas for the programme.

However, the Committee notes that the UN Committee on Economic, Social and Cultural Rights (CESCR), in its concluding observations of 28 March 2022 (E/C.12/COD/CO/6, paragraph 44), expressed concern at the fact that, in the context of the armed conflict in the country, many children are in a situation of extreme vulnerability and neglect and are thus exposed to a risk of being recruited by armed groups. ***The Committee once again urges the Government to intensify its efforts and take effective and time-bound measures to remove children from the armed forces and armed groups and ensure their rehabilitation and social integration through the Ministry of Defence in the context of the P-DDRCS strategy. The Committee also requests the Government to provide information on the number of child soldiers, disaggregated by age and gender, who have been removed from the armed forces and armed groups and have been reintegrated through appropriate assistance with rehabilitation and social integration.***

2. *Children working in mines.* The Committee takes due note of the Government's indication in its report that in addition to the "National sectoral strategy against child labour in artisanal mines and at

artisanal mining sites in the Democratic Republic of the Congo 2017–25" and the COTECCO project, other actions have been undertaken, including the "Project to support the alternative welfare of children and young people involved in the cobalt supply chain (PABEA-Cobalt) 2019–24", which is being implemented and targets a total of 14,850 children and 6,250 parents. The Committee also notes the engagement of the Ministry of Mining in 2020 in the "Cobalt action partnership (CAP)", whose objectives include: combating child labour and forced labour; implementing the Decent Work Country Programme (DWCP) 2021–24, including promoting decent employment for young persons in a post-conflict context and sustainable development in partnership with the ILO; and continuing with the "Plan for the elimination of the worst forms of child labour by 2020 (PAN)". ***While noting the Government's efforts to prevent the engagement of children under 18 years of age in work in mining and to remove them from this worst form of child labour, the Committee requests the Government to continue its efforts to implement the various projects to combat hazardous work for children in mining. It requests the Government to provide information on the results achieved in this regard. The Committee also requests the Government to provide information on necessary and appropriate direct assistance to ensure the rehabilitation and social integration of these children.***

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

Dominican Republic

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Previous comment

The Committee notes the observations of the National Confederation of Trade Union Unity (CNUS), the National Confederation of Dominican Workers (CNTD) and the Autonomous Confederation of Workers' Unions (CASC), received on 1 September 2021.

Article 2(3) of the Convention. Completion of compulsory schooling. With reference to its previous comments, the Committee notes that, according to the National Multipurpose Household Survey (ENHOGAR MICS 2019), the net school attendance rate of boys and girls of primary school age was 96.9 per cent in 2019 for urban areas and 95.3 per cent for rural areas, while the school attendance rate for boys and girls of the age to go to the first cycle of secondary school (12 to 14 years of age) was 81.8 per cent in urban areas and 74.4 per cent in rural areas, which is an increase from previous years (in 2016, the rate was 66.5 per cent for girls and 57.7 per cent for boys). The Committee notes with ***interest*** that Order No. 2-2016 of the Ministry of Education, referred to in the Government's report, establishes measures to facilitate coordination between families, education establishments and the National Council for Children and Young Persons (CONANI) to follow up school attendance. In accordance with section 18 of the Order, on the third consecutive day of unjustified absence by a student, the respective teacher must inform the CONANI of the absence in writing, and the CONANI will be responsible for investigating the situation. The Committee also notes that the Government has been implementing various programmes to promote access to secondary education, including the "*Te quiero en Secundaria*" (You are wanted in secondary school), intended for young persons who have dropped out of secondary school, with a view to promoting their reintegration as students based on an analysis of the causes of them dropping out. ***The Committee encourages the Government to continue taking measures to ensure compulsory schooling for all boys and girls up to the age of 14 years (primary school and the first cycle of secondary education), and requests it to continue providing updated statistical information on school registration, attendance and drop-out rates.***

Article 3(1) and (2). Hazardous types of work. The Committee notes the Government's indication that it is engaged in updating the list of hazard types of work for children, and in improving follow-up and monitoring information systems and awareness raising for enterprises and workers. The Committee observes that, according to the ENHOGAR MICS 2019, the percentage of persons between the ages of

5 and 17 years working under hazardous conditions was 5.1 in urban areas (16,042) and 7.5 per cent in rural areas (5,906). The Committee recalls that, in accordance with *Article 3(2)* of the Convention, the types of employment or work considered to be hazardous shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. The Committee considers that these consultations could be held in the round table established in 2016 on matters relating to international labour standards. ***The Committee requests the Government to continue taking measures to prevent persons under 18 years of age from performing work considered to be hazardous and to report on progress in the adoption of the new list of hazardous types of work that is being prepared in consultation with the social partners. The Committee also requests the Government to indicate whether violations have been detected under Resolution No. 52/2004 on hazardous and unhealthy types of work prohibited for persons under 18 years of age and, if so, the penalties imposed.***

Application of the Convention in practice and labour inspection. In reply to its previous comments, the Committee notes the Government's indication that: (i) within the framework of the road map to make the Dominican Republic a country free of child labour and the worst forms of child labour, round tables have been established to follow up the action to prevent and eradicate child labour, with the participation of the various institutions that are members of the National Steering Committee to Combat Child Labour; (ii) the Ministry of Labour has carried out awareness-raising campaigns on child labour for employers, workers, officials of the Ministry of Labour, actors in education and religious and community leaders; and (iii) plans are being made for the conclusion of an inter-institutional agreement between the Ministry of Labour and the Ministry of Education for the prevention and eradication of child labour.

However, the Committee also notes that, according to the ENHOGAR MICS 2019**,** the proportion of boys and girls between the ages of 5 and 17 years engaged in child labour was 3.8 per cent (4.6 per cent for boys and 3 per cent for girls), with the majority between the ages of 5 and 11 years. The Committee also notes the indication by the CNUS, CNTD and CASC that, although some action has been taken to contribute to addressing the issue of child labour, it is inadequate and would benefit from greater follow-up by the labour inspectorate and other social institutions. ***While noting the measures taken, the Committee requests the Government to take stronger action for the progressive and full elimination of child labour, including in the informal economy, and requests it to continue providing information on the measures adopted within the context of the road map and their results. In this regard, the Committee requests the Government to report on the activities of the labour inspectorate in this connection (including information on the number and nature of the violations reported, the sectors concerned and the penalties imposed). Finally, it requests the Government to continue providing updated statistical data on the extent and trends of child labour in the country.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comment

Articles 3(a) and (b) and 7(1) of the Convention. Sale and trafficking of children for commercial sexual exploitation, and penalties. The Committee notes the Government's response, in reply to its previous comments, that in 2020 the Special Prosecutor's Office against the Illicit Trafficking of Migrants and Human Trafficking reported 41 cases of commercial sexual exploitation of young persons under 18 years of age; and that between 2016 and 2020 a total of 239 cases of illicit human trafficking involving minors were recorded. Moreover, according to information on the official website of the Attorney-General's Office, between May 2017 and March 2019 legal proceedings were opened in 139 cases relating to commercial sexual exploitation, illicit trafficking of migrants, child pornography and human trafficking. These cases involved 88 victims under 18 years of age, and convictions were handed down in 33 cases.

The Committee also notes that the United Nations (UN) Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, observes in the 2018 report on her visit to the Dominican Republic that a significant proportion of foreign tourists come to the country for the purpose of sexual exploitation, including of girls, and that child sexual exploitation is especially concentrated in beach areas such as Bávaro, Boca Chica, Sosúa, Cabarete and Las Terrenas. The UN Special Rapporteur also highlights the fact that intermediaries who facilitate child sexual exploitation form part of a chain that includes pimps, taxi drivers, and owners of motels, night clubs and car-wash facilities, and that these criminal structures often operate with the complicity of the local authorities (A/HRC/37/60/Add.1, paragraphs 18 and 19). Taking account of the fact that the trafficking of children for commercial sexual exploitation has been an extensive problem in the country, particularly in the tourism sector, and that there has been a high degree of impunity in this sphere, the Committee notes with ***deep concern*** this information and also the low number of convictions in relation to the number of cases involving the trafficking and commercial sexual exploitation of minors.

Lastly, with regard to the revision of the Penal Code for the purpose of reinforcing the penalties for perpetrators of the sale and trafficking of children for commercial sexual exploitation, the Committee notes that the new draft Code has already been approved by the Chamber of Deputies and is being reviewed by a special committee of the Senate of the Republic. ***The Committee once again firmly urges the Government to take all necessary steps without delay to ensure that circumstances which constitute the sale and trafficking of children for exploitation are investigated and that the perpetrators are duly prosecuted and penalized. The Committee requests the Government to continue sending information on the application in practice of section 3 of Act No. 137-03 on the illicit trafficking of migrants and other persons which criminalizes the trafficking of children for commercial sexual exploitation, and sections 408–410 of the Code for the protection of the rights of children and young persons, which establish penalties for the commercial sexual exploitation of minors. Lastly, the Committee requests the Government to continue sending information on progress made with regard to the adoption of a new Penal Code.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Commercial sexual exploitation in the tourism industry. The Committee notes the Government's indication, in reply to its previous comments, that the Central Tourism Police Department (POLITUR) has a "Programme for the protection of children and young persons" aimed at protecting children and young persons against all forms of violence, abuse, exploitation and trafficking, especially those that occur as a result of tourism-related activities. In order to achieve this objective, POLITUR coordinates its actions with the Public Prosecutor's Office, the hotel sector and tourism clusters. The Committee also notes that the Ministry of Labour has established a committee to work on aspects of commercial sexual exploitation and other worst forms of child labour in coordination with the Attorney-General's Office, the National Council for Children (CONANI), and other institutions that are part of the National Steering Committee to Combat Child Labour and the Inter-institutional Commission against the Abuse and Commercial Sexual Exploitation of Children. Within the above-mentioned committee, awareness-raising workshops have been held for members of tourism clusters throughout the country. In addition, the Ministry of Labour has established local, provincial and municipal steering committees in all provinces of the country, including in tourist areas, and also watchdog committees or units in municipalities and districts where there are no labour offices. The Committee notes that the UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, observed in her 2018 report that the province of Puerto Plata is one of the main centres of child sexual exploitation in tourism and that the local authorities are overwhelmed by the problem without the support of the central authorities to prevent and combat it. The Special Rapporteur also expressed regret at the lack of real and effective involvement on the part of the Ministry of Tourism in combating child sexual

exploitation in tourism (A/HRC/37/60/Add.1, paragraphs 20 and 61). ***The Committee requests the Government to intensify its efforts and continue to adopt effective time-bound measures to prevent the commercial sexual exploitation of children in the tourism industry, in coordination with central and local authorities and in collaboration with the various actors in the aforementioned industry (Ministry of Tourism, hotel sector and other tourism enterprises). The Committee also requests the Government to send information on this matter and also on the watchdog activities of POLITUR to protect children and young persons against commercial sexual exploitation in tourism-related activities.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Commercial sexual exploitation. Further to its previous comments on the number of child victims of commercial sexual exploitation who have received assistance and been removed from such exploitation, the Committee notes with ***regret*** that the Government has once again not provided information on this matter. Furthermore, the Committee observes that the UN Special Rapporteur on the sale and sexual exploitation of children noted with regret in her 2018 report the absence of accessible complaint mechanisms for child victims of violence, abuse and sexual exploitation (A/HRC/37/60/Add.1, paragraph 54). ***The Committee therefore requests the Government to take measures to ensure that child victims of commercial sexual exploitation, or their parents or tutors, can access complaint mechanisms rapidly, easily and free of charge, and can also access programmes for their rehabilitation and social reintegration. In this regard, it requests the Government to send up-to-date statistical information on the number of child victims of commercial sexual exploitation who have been identified, rescued and rehabilitated.***

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

El Salvador

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comment

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children. In its previous comments, the Committee welcomed the adoption of the Special Act to combat trafficking in persons, which criminalizes and penalizes the crime of trafficking in boys, girls and young persons for sexual or labour exploitation and establishes measures for prevention and the protection of victims. In response to the request for information on the effect given in practice to the Act, the Committee notes the indication by the Government in its report that: in 2019 a case of trafficking in persons for labour exploitation was prosecuted involving five victims under 18 years of age of Guatemalan nationality, and that four of those charged were convicted. The National Civil Police recorded eight cases of the trafficking of minors in 2018 (three for labour exploitation and five for sexual exploitation) and 19 cases in 2019 (three for labour exploitation and 16 for sexual exploitation); 15 cases were referred to the National Council for Children and Young Persons (in charge of providing assistance to child victims of trafficking) involving boys, girls and young persons who were presumed victims of trafficking; and the Ministry of Education, Science and Technology identified 73 students affected by the crime of trafficking. The Committee also notes the detailed information on action to prevent trafficking in children and young persons, including: (i) training days on trafficking for police responsible for prevention and immigration officials; (ii) awareness-raising talks for students in public and private educational institutions; and (iii) coverage of the crime of trafficking in persons in the education curriculum at all levels, with a view to promoting a culture of denouncing the crime. Health workers have also been trained in the early detection of victims of trafficking, as a result of which 28 presumed cases of trafficking were detected in 2019 involving children and young persons between the ages of 10 and 17 years, which were referred to the Office of the Public Prosecutor for the respective

investigations. The Committee notes that, in its concluding observations in 2018, the United Nations Committee on the Rights of the Child expressed concern at the occurrence of child trafficking in schools (CRC/C/SLV/CO/5-6, paragraph 42). ***Noting the measures adopted by the Government, the Committee encourages it to continue taking measures to prevent, investigate and punish trafficking of children and young persons for labour and sexual exploitation. It also requests the Government to continue providing updated statistical information on the number of investigations, prosecutions and convictions in cases of trafficking of children and young persons under the Special Act to combat trafficking in persons.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. In its previous comments, the Committee noted the various measures adopted by the Government to facilitate the access to education of boys and girls in a situation of poverty and requested the Government to provide information on their results. In this regard, the Committee notes the Government's indication that programmes for the provision of school uniforms and materials to children in public educational institutions are continuing and that measures have been taken to improve the infrastructure in educational establishments with a view to creating safe and pedagogically appropriate spaces to bring together students and communities. A total of 727 school infrastructure and furniture projects were carried out in 2018, 1,334 in 2019, 667 in 2020 and 93 between January and April 2021. Moreover, between 2018 and 2020, a total of 1,048,953 children and young persons in initial or middle education benefited from the provision of school meals. The Committee also notes the adoption of various measures to eradicate poverty, including transport vouchers for young persons in the third cycle of the general or technical baccalaureate in any of the forms provided by the Ministry of Education, as well as additional vouchers for young mothers who are still in the education system.

The Committee also notes, according to the 2017 report of the Ministry of Education Observatory of Subsidized Public and Private Educational Establishments in El Salvador, that 44.61 per cent of educational establishments in 2017 were in communities where gangs are present; 38.11 per cent were located in areas where theft and/or burglaries are reported; 34.62 per cent are in areas where drugs are circulating; 27.62 per cent in areas where the carrying of knives and firearms have been identified; and 18.76 per cent in areas where extortion is practiced. It also notes that in its 2018 concluding observations, the Committee on the Rights of the Child emphasizes the overwhelming impact of violence on children's access to education, with the majority of schools situated in communities where there is a high crime rate and a high number of killings of teachers and students (CRC/C/SLV/CO/5-6, paragraph 42). The United Nations Special Rapporteur on the human rights of internally displaced persons, in her 2018 report on her visit to El Salvador, also indicates that schools in some localities are no longer considered safe spaces for children, teachers are threatened, gangs operate within and around some school facilities where they recruit children, expose them to gang-related criminal activities, and identify girls as sexual targets for gang members (A/HRC/38/39/Add.1, paragraph 22).

While recognizing that the Government has adopted certain measures to facilitate the access of children and young persons to free basic education, the Committee notes with ***concern*** the existence of a climate of violence in certain areas of the country, which could have a negative impact on the access of children and young persons to education. ***Recognizing the difficult security situation in the country, and considering that education is key in preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to renew its efforts to improve the education system and to continue facilitating access to free basic education for children living in all the regions of the country. The Committee also requests the Government to provide information on the progress achieved in this respect, and on the results of the various educational support programmes for poor children.***

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

Eritrea

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Previous comments: observation and direct request

Article 1 of the Convention. National policy and application of the Convention in practice. Following its previous comments, the Committee notes the Government's information, in its report, regarding the action taken by the Ministry of Labour and Social Welfare (MLSW) to support and assist marginalized women to become independent and generate income through the provision of training and micro credit. The Government indicates that this can have an impact on the elimination of child labour. The Committee also notes the Government's indication that necessary measures will be taken at the appropriate time to develop the national plan of action on the elimination of child labour, which the Government had referred to in its previous report. ***While noting the measures taken by the Government, the Committee once again urges it to intensify its efforts to progressively eliminate child labour in the country by adopting and implementing the National Action plan for the elimination of child labour. The Committee requests the Government to continue to provide information on the application of the Convention in practice, in particular statistical data on the employment of children and young persons by age group.***

Article 2(1) of the Convention. Scope of application and labour inspection. Self-employment. Following its previous comments, the Committee notes once again the Government's indication that it is engaged in including self-employment within the draft amendments to the Labour Proclamation No. 118/2001 (Labour Proclamation), which currently excludes self-employed workers from its scope of application. The Committee also notes the Government's indication that the Labour Inspectorate regularly monitors workplaces and that, in this regard, measures are being taken to improve the number and quality of labour inspections through various trainings. For example, new labour inspectors were given training in August 2022, raising the number of inspectors to 55. ***Recalling that the Committee has been requesting the Government to take the necessary measures in this respect for many years, the Committee once again strongly urges the Government to strengthen its efforts to ensure that the protections provided under the Labour Proclamation are extended to children working outside of an employment relationship in the very near future. The Committee also requests the Government to continue to take measures to strengthen the capacity of the labour inspection system to adequately monitor and detect cases of child labour in the country, in particular self-employed children or children working in the informal economy. It further requests the Government to provide information on the number of inspections on child labour carried out by the labour inspectors as well as on the number and nature of violations detected and penalties applied.***

Article 2(3) and (4). Age of completion of compulsory schooling. ***With regard to the measures taken to improve access to education, the Committee refers to its comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).***

Article 3(2). Determination of the types of hazardous work. Following its previous comments, the Committee notes with ***regret*** that the Government once again indicates that the MLSW is engaged in the process of finalizing the regulation issuing the list of hazardous activities prohibited to persons under the age of 18 years. The Committee once again recalls that the Government has been referring to the upcoming adoption of a list of hazardous activities prohibited to young employees since 2007. ***The Committee accordingly strongly urges the Government to take the necessary measures to ensure that the ministerial regulation issuing the list of hazardous activities prohibited to persons under the age of 18 is adopted in the near future. It once again requests the Government to provide a copy, once it has been adopted.***

Article 7. Light work. Following its previous comments, the Committee notes the Government's indication that, considering that children often combine light work with schooling and are usually engaged in gainful employment for an income to supplement family living expenses, the MLSW is envisaging regulating and determining the types of activities, number of hours and conditions in which light work may be undertaken by children from the age of 12, in conformity with Article 7 of the Convention. ***Considering that it has been raising this question for a number of years, the Committee urges the Government to take the necessary measures to regulate and determine the types of activities, the number of hours and the conditions under which light work may be undertaken by children from the age of 12 years, as required under Article 7 of the Convention. It requests the Government to provide information on the progress made in this regard.***

Article 9(3). Keeping of registers by employers. Following its previous comments, the Committee notes with ***regret*** that the Government indicates once again that the MLSW is still undertaking studies to develop the regulation on the registers of employment to bring it into conformity with *Article 9(3)* of the Convention. ***Noting that the Government has been referring to the adoption of this regulation since 2007, the Committee once again urges the Government to take the necessary measures to ensure that the regulation concerning the registers to be kept by employers is adopted without delay. It also once again requests the Government to provide a copy, once it has been adopted.***

The Committee strongly encourages the Government to seek ILO technical assistance in its efforts to combat child labour.

Eswatini

Minimum Age Convention, 1973 (No. 138) (ratification: 2002)

Previous comment

Article 1 of the Convention. National policy. *Revision of the Employment Act.* Following its previous comments, the Committee notes that the Employment Bill, 2022, was approved by the Attorney-General and that the legislative process for its adoption (via Cabinet and Parliament) is to follow. ***The Committee encourages the Government to take the necessary steps to ensure that the Employment Bill, 2022, is adopted without delay, taking into consideration the comments made by the Committee. It requests the Government to provide a copy of the adopted Employment Act with its next report.***

Article 2(1). Scope of application and labour inspection. Informal economy, including family undertakings. The Committee observes that, while the current Employment Act excludes domestic employment, agricultural undertakings and family undertakings from its scope of application, and therefore from the coverage of its minimum age provisions, the Employment Bill, 2022, removes these exclusions and sets a minimum age of 15 for employment or work for all workers, including those working in the informal economy. The Committee further notes the Government's information, in its report, regarding the capacity building workshops it is continuing to conduct for labour inspectors. In particular, the Committee notes that Eswatini has availed itself of ILO technical assistance to introduce the ILO Strategic Labour Compliance Planning on labour inspection, which seeks to address the challenges posed by the lack of resources and position labour administration systems to achieve more with less by maximizing available resources. Measures for improved labour inspection to better monitor child labour violations are also expected to be undertaken in the framework of the Action Programme on Combating Child Labour in Eswatini 2021-26 (APCCL). ***The Committee requests the Government to continue to take measures to strengthen the capacity of labour inspectors with a view to allowing them to better monitor and identify cases of child labour in the informal economy. It asks the Government to provide information on the measures taken in this regard, within the framework of the APCCL or otherwise, and the results achieved.***

Article 2(3). Age of completion of compulsory education. Following its previous comments, the Committee notes the Government's statement that compulsory and free primary education does not necessarily end at 12 years, but that some children finish primary education later, in which case it remains free. The Committee reminds the Government that, regardless of the age when some children finish primary education in practice, the age of completion of compulsory education must, by law, be linked to the age of admission to employment or work (2012 General Survey on the fundamental Conventions, paragraph 369). Currently, under the Free Primary Education Act of 2010, education is free and compulsory only in the case of primary education, which normally ends when the child is 12 years of age (unless the child in question either dropped out of school or faced other difficulties in schooling, such as repetition).

The Committee notes, in this regard, the Government's indication that one of the goals of the Education Sector Policy of 2018 is the provision of an equitable and inclusive education system that affords all learners access to free and compulsory basic education and senior secondary education of high quality. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee once again urges the Government to take the necessary steps to make education compulsory (and not only free) for students at the primary and lower secondary levels, up until the minimum age for admission to employment, which is 15 years in the Kingdom of Eswatini.***

Article 3(2). Determination of hazardous work. The Committee notes with ***interest*** that, as opposed to the Employment Act, the Employment Bill, 2022, in section 9, provides a list of types of hazardous work that are prohibited to children and young persons under 18. Moreover, the Government indicates that Regulations adopted pursuant to the Children's Protection and Welfare Act, 2012, will soon be published which also will cover the types of hazardous work prohibited to children and young persons. ***The Committee urges the Government to take the necessary measures to ensure the adoption of the Employment Bill ,2022, in the very near future. It requests the Government to provide a copy of the Regulations adopted pursuant to the Children's Protection and Welfare Act, 2012.***

Article 7. Light work. Following its previous comments, the Committee notes the Government's information that, under section 10 of the Employment Bill, 2022, children under the minimum age of 15 years can work in certain exceptional circumstances. According to subsections 1 and 3, a child (meaning a person under 15 years of age) may perform work in a family business carried on only by a parent or guardian of the child. This type of work may not be performed during school hours, during the night between 6 p.m. and 7 a.m., *for more than six hours per day or for more than 33 hours per week*.

The Committee recalls that under *Article 7(1)* of the Convention, the employment of children is permitted from *13 years of age*, in light work which is not likely to be harmful to their health or development and is not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received. Pursuant to *Article 7(3)* of the Convention, the competent authority shall determine the light work activities and prescribe the number of hours during which and the conditions in which such employment or work may be undertaken. The Committee recalls that in giving effect to *Article 7(3)* of the Convention, special attention should be given to several key indicators, including the strict limitation of the hours spent at work in a day and in a week, the prohibition of overtime, the granting of a minimum consecutive period of 12 hours' night rest, and the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision (2012 General Survey on the fundamental Conventions, paragraph 396).

The Committee observes that there is no minimum age set for light work in family undertakings under section 10 of the Employment Bill, 2022 which allows children of any age to work for up to six hours per day or 33 hours per week. The Committee is of the view that children who work for up to six hours per day or 33 hours per week cannot effectively attend school, as the time needed for school work, rest and leisure could be considerably reduced, and that, therefore, this exception is not in

accordance with the Convention. In this regard, the Committee observes that, in the context of the Integrated Labour Force Survey of 2021 conducted by the National Employment Statistics Office, children between the ages of 12 and 14 working for more than 14 hours per week are considered to be engaged in child labour (page 53). ***The Committee therefore requests the Government to take the necessary measures to ensure that section 10 of the Employment Bill, 2022 is modified to set a minimum age of 13 years for the performance of work in a family business carried on only by a parent or guardian of the child, and to reduce the number of hours per week that children between the ages of 13 and 15 are permitted to work in these circumstances in order to ensure that such work is not likely to be harmful to their health or development and is not such as to prejudice their attendance at school. In this regard, the Committee suggests that examples could be taken from the Labour Force Survey of 2021 and a maximum number of 14 hours per week established as a threshold. The Committee requests the Government to provide information on the progress made in this regard.***

Application of the Convention in practice. Following its previous comments, the Committee notes that the Labour Force Survey 2021 reveals that 8.2 per cent of children of all ages are engaged in child labour in Eswatini, that most child labour occurs in rural areas (86.1 per cent) as opposed to urban areas (13.9 per cent), and that more boys than girls are engaged in child labour. According to the information reported in the document of the ACCPL, the typical kinds of work that children do in Eswatini include herding livestock, fetching water and firewood, ploughing, planting, weeding, cooking, cleaning, washing clothes and selling in kiosks. ***Noting that a significant number of children are engaged in child labour in Eswatini, the Committee requests the Government to strengthen its efforts to combat child labour. The Committee also requests the Government to continue providing updated statistical information on the situation of working children in Eswatini, including for example data on the number of children and young persons below the minimum age who are engaged in economic activities, and statistics relating to the nature, scope and trends of their work.***

The Committee is raising another matter in a request addressed directly to the Government.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

Previous comment

Article 3 of the Convention. Worst forms of child labour. Following its previous comments, the Committee notes that section 10 of the Employment Bill prohibits the worst forms of child labour. Recognizing that the Employment Bill has been subjected to a thorough process of consultations, including with the ILO, the Government indicates that it hopes that the remaining legislative process will be undertaken without further needless delays. ***The Committee therefore urges the Government to take the necessary measures to ensure that the draft Employment Bill is adopted without delay. It once again requests the Government to supply a copy thereof, once it has been adopted.***

Clause (a). Sale and trafficking of children. Following its previous comments, the Committee notes the Government's information, in its report, regarding investigations, prosecutions and convictions conducted under the People Trafficking and Smuggling (Prohibition) Act No. 11 of 2010. In particular, the Government investigated 14 suspected trafficking cases in 2018-19 – eight cases of forced labour, two sex trafficking cases, and three cases of an unknown type of exploitation – compared with 19 the previous year (2017). During the same year 2018–19 the Government initiated prosecutions of three alleged traffickers compared with one during the year 2017–18. The Committee further notes the Government's information that two cases of trafficking went to prosecution in 2020/2021, one internal and one transnational. One of the cases concerned the offences of kidnapping and sex trafficking of a girl from 2017 to 2019, for which the perpetrator was convicted to 55 years of imprisonment. The Committee notes, however, the Government's indication that resource constraints, both within the Government and NGOs providing prevention and protection services, have limited the levels of

implementation of trafficking laws, investigations and prosecutions. ***The Committee encourages the Government to strengthen its efforts to ensure the effective application of the People Trafficking and Smuggling (Prohibition) Act, and to provide information on the progress made in this regard. It requests the Government to continue to provide information on the application in practice of the Act, including the number of infringements reported, investigations, prosecutions, convictions and penalties applied for the sale and trafficking of children under 18 years of age.***

Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. The Committee notes with ***satisfaction*** that the Sexual Offences and Domestic Violence Act (SODV Act) was adopted in 2018, which prohibits and penalizes sexual offences including, but not limited to: (i) commercial sexual exploitation, including of children (section 13); (ii) the procurement of or benefit from prostitution, including that of children (sections 15 and 16); (iii) the use of children for pornography (section 24); and (iv) the production of, benefit from, and distribution and possession of child pornography (sections 25 to 28). The Committee notes, however, that the United Nations Committee on the Rights of the Child, in its concluding observations of 22 October 2021, remained seriously concerned at the high prevalence of sexual exploitation and abuse of children and that few cases were reported, even though the perpetrators are often known to the victims (CRC/C/SWZ/CO/2-4, paragraph 40). ***The Committee requests the Government to provide information on the application in practice of the sections mentioned above of the SODV Act, indicating the number of prosecutions, convictions and penal sanctions applied for the offences related to prostitution and pornography involving children.***

Article 4(1). Determination of hazardous types of work. ***With regard to the adoption of the list of hazardous types of work prohibited to children under 18 years of age, the Committee refers to its detailed comments under the Minimum Age Convention, 1973 (No. 138).***

Application of the Convention in practice. Following its previous comments, the Committee takes due note that the National Employment Statistics Unit has generated the 2021 Integrated Labour Survey, which covers issues of child employment. According to the Survey, the prevalence of child labour in the country is estimated to be at 8.2 per cent. Moreover, according to the document of the Action Programme on Combating Child Labour in Eswatini (APPCL), critical areas of child labour include domestic work, children engaged in subsistence and commercial agriculture, street children working as traders and hawkers, children working in the public and private transport sector, children engaged in scavenging and recycling, children working in formal and informal bars, children working in factories, children working in informal tourism industry and children working in the construction industry. Many of the children engaged in these forms of child labour carry out work that is hazardous and falls under the category of worst forms of child labour. Examples include livestock herding, street work and factory work under hazardous conditions. ***Noting the prevalence of child labour, including in various types of hazardous work, in Eswatini, the Committee urges the Government to strengthen its efforts to eliminate hazardous child labour. The Committee also requests the Government to continue providing information on the nature, extent, and trends of the worst forms of child labour, the number of children covered by the measures giving effect to the Convention, and information on the number and nature of infringements reported, investigations undertaken, prosecutions, convictions and penal sanctions applied. To the extent possible, all information provided should be disaggregated by age and gender.***

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

Ethiopia

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously noted that according to the 2015 Child Labour Survey results, the number of children aged 5–13 years engaged in child labour was estimated to be 13,139,991 with 41.7 per cent aged between 5 and 11 years.

In response to its previous comments concerning the measures undertaken for the elimination of child labour, the Committee notes the Government's information in its report that several policies and action plans for the elimination of child labour are in place notably, the National Social Protection Policy, the Education and Training Policy, the National Occupational Safety and Health Policy and the newly endorsed National Action Plan on the Elimination of the Worst Forms of Child Labour (NAP-WFCL) 2021–2022. The Government indicates that the Tripartite Steering Committee undertook the evaluation of the 2019–2020 national action plan implementation report and identified critical challenges and crafted remedial measures. In addition, a national Tripartite plus Steering Committee comprising the Federal Government agencies, employers' and workers' organizations and civic societies have been established to execute, follow-up, monitor and evaluate the NAP 2021–22.

The Committee further notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182) that a number of projects are being implemented in collaboration with CARE-Ethiopia, the Freedom Fund, the ILO-Ethiopia Office, the Confederation of Ethiopian Trade Unions (CETU), and GIZ (German Agency for International Cooperation for sustainable development) with the objective of preventing and reducing the prevalence of child labour in Ethiopia.

The Committee however notes from the UNICEF Policy Brief 2020: *Child labour and the Youth Market in Ethiopia* that despite several initiatives taken by the Government and civil society to combat child labour, the incidence of the phenomenon remains high in Ethiopia with approximately 43 per cent of children aged 5–17 engaged in child labour. The Committee further notes from the UNICEF report entitled *A Review of Child Sensitivity in Social Policies in Ethiopia*, December 2021 that a recent study on child poverty in Ethiopia estimates that 36 million of its 41 million children are multidimensionally poor. The impact of a rise in poverty and extreme poverty, coupled with social norms that normalize child labour to some extent, make households far more likely to resort to child labour to cope with job losses associated with COVID-19. While noting the measures taken by the Government, the Committee expresses its ***concern*** at the significant number of children who are involved in and are at risk of being involved in child labour. ***The Committee therefore urges the Government to intensify its efforts to address the situation of children engaged in child labour, and to ensure the progressive elimination of child labour. It requests the Government to provide specific information on the concrete measures taken in this regard, including within the framework of the NAP 2021-22 and the results achieved.***

Article 2(1). Scope of application and labour inspection. The Committee had previously noted that 89.4 per cent of the children engaged in child labour worked in the agricultural, forestry and fishing sectors and in wholesale and retail trade sector and the majority of children performing economic activities were working as unpaid family workers (95.6 per cent).

The Committee notes that the new Labour Law Proclamation No. 1156 of 2019, which prohibits the employment of children under 15 years, applies only to employment relations based on a contract of employment that exists between a worker and an employer (section 3). The Committee notes the Government's information that in order to monitor child labour in the informal economy, the newly structured labour administration body of the Ministry of Labour and Skills has developed a new strategy to complement the labour advisory services of the labour inspection system. Accordingly, MOU's were

signed with key Ministries including the Ministry of Health and Agriculture which has access to all households in the informal sector and uses its extension worker service to create public awareness and to detect and inform cases of child labour to the law enforcement bodies. The Government also indicates that a complaint handling mechanism has been established for filing and responding to complaints about child labour. The labour inspection service closely works with the community police, trade unions, community-based organization, women's associations, and non-governmental organizations to receive complaints and information related to child labour and exploitation. In addition, the labour inspection services have been enhanced by increasing the number of labour inspectors from 441 in 2019 to 637 in 2021 and their annual labour inspection visits raised from 39,000 in 2019 to 43,000 in 2021. Newly assigned labour inspectors were provided training on conducting inspections, particularly of child labour. Moreover, in coordination with the ILO Decent Work Country Programme, eight motor bikes and nine digital monitoring equipments were distributed to labour inspectors in six regions based on their activity. The Government indicates in its report under Convention No. 182 that in 2020 a total of 58,006 workplace inspections were carried out including inspections of child labour in enterprises. Investigation reports on 13,981 visited establishments notified that the minimum age for admission to employment (15 years) should be respected and strict screening mechanisms to determine the age of applicant need to be followed. ***The Committee requests the Government to continue to strengthen the functioning of the labour inspection system to enable it to effectively monitor and detect cases of child labour, including children working on their own account as well as in agriculture and the informal economy and to provide information on the measures taken in this regard. The Committee also requests the Government to provide statistical information on the number and nature of violations of child labour detected through the new strategy developed within the labour advisory services of the labour inspection system as well as the number of complaints related to child labour and exploitation received and handled by the Complaints Handling Mechanism within the labour inspection service.***

Article 2(2). Raising the minimum age for admission to employment or work. The Committee previously noted the Government's indication that the revised Labour Law raises the minimum working age limit of young persons from 14 to 15 years. The Committee accordingly notes with ***satisfaction*** that section 89(2) of the Labour Proclamation No. 1156 of 2019 prohibits the employment of persons under 15 years of age. ***The Committee once again requests the Government to consider the possibility of sending a new declaration under Article 2(2) of the Convention thereby notifying the Director-General of the ILO that it has raised the minimum age that it had previously specified.***

Article 2(3). Age of completion of compulsory schooling. With regard to its previous comments, concerning making education compulsory up to the minimum age of admission to employment, the Committee notes the Government's indication that it is currently engaged in drafting legislation and conducting public discussions on making primary education compulsory. The Committee also notes the Government's information that the Education Policy provides for free primary education and that the Government is committed to achieving universal and quality primary education for all school age children through various programmes, including the school feeding programme, provision of uniform and other educational materials for children, mobile schooling for children from pastoralist areas, and the expansion of school facilities and advocacy works. ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee expresses the firm hope that the Government will take the necessary measures to make education compulsory up to the minimum age for admission to employment or work in accordance with Article 2(3) of the Convention.***

Article 3. Determination of hazardous work. The Committee notes that the Government has not provided any information as requested by the Committee in its previous comments but indicates that the data will be collected from the regional and city labour inspection offices.

The Committee notes the Government's information that a new Directive No. 813/2021, restating the hazardous activities prohibited to young workers, has been issued in order to protect young workers from serious occupational injuries or damage to their health in the course of their work and that the

federal and regional labour inspection service is currently enforcing this directive across the country. ***The Committee requests the Government to provide a copy of Directive No. 813 of 2021 and to provide information on its application in practice, indicating the number and nature of violations detected and penalties imposed.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

Previous comment

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Sale and trafficking of children. In reply to its previous comments concerning the application in practice of the Ant-trafficking Proclamation No.909/2015, the Committee notes the Government's indication in its report that Proclamation No. 909 of 2015 has been repealed and replaced by a new Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation (Prevention and Suppression of TIP-SOP Proclamation No. 1178/2020). The Committee notes with ***interest*** the Government's statement that this new Proclamation is more efficient in crime prevention, holding perpetrators accountable, and contains provisions for protecting and rehabilitating victims. Moreover, it provides for undertaking activities that reach segments of society vulnerable to the crimes taking into consideration the age, sex and special needs of victims through facilitating international cooperation.

The Committee notes that section 4 of the Prevention and Suppression of TIP-SOP Proclamation No. 1178/ 2020 makes it an aggravating circumstance if the victim of any of the crimes under this Act is a child and provides for a penalty of rigorous imprisonment from ten to twenty years and a fine from 30,000 to 100,000 Birr (approximately US$571 to US$1,905). Moreover, smuggling of a child is punishable with rigorous imprisonment from seven to fifteen years and fine from 20,000 to 100,000 Birr. Section 33 of the Prevention and Suppression of TIP-SOP Proclamation No. 1178/2020 provides for the establishment of the National Council to coordinate the prevention and control of the crimes related to trafficking, smuggling and unlawful sending of persons abroad for work. However, the Government indicates that statistical information on the number and nature of offences, investigations, prosecutions and penal sanctions related to trafficking of children is impossible to find due to weak and irregular reporting system at all levels. ***The Committee urges the Government to strengthen its efforts to ensure the effective application of the Prevention and Suppression of TIP-SOP Proclamation No. 1178 of 2020 and to take the necessary measures to ensure that thorough investigations and prosecutions of persons who engage in the sale and trafficking of children are carried out and that effective and dissuasive penalties are imposed in practice. It requests the Government to take the necessary measures to collect data, including statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penal sanctions imposed with regard to the trafficking of children under 18 years and to provide information in this regard.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Ensuring access to free basic education. The Committee notes that according to the UNICEF Ethiopia Humanitarian Situation report of June 2022, over 2.9 million children (17 per cent of the school age children) across Ethiopia remain out of school, including 2.53 million due to conflict and 401,000 due to drought. Almost 50 per cent of those out of school children are entering their third year without any access to learning, heightening the risk of a lost generation for children in northern Ethiopia. Based on school damage assessments in May, more than 8,660 schools across Ethiopia are fully or partially damaged, 70 per cent of which were in Afar, Amhara and Tigray due to the North Ethiopia conflict. The Committee also notes that the UNESCO estimates for 2020 indicates a net enrolment rate of 87.2 per cent at the primary level. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take the necessary measures to improve the operation of the education system and to facilitate access to free basic education to all children, particularly in the zones affected by the conflict. It requests the Government to provide***

information on the concrete measures taken in this regard and the results achieved, in particular concerning the increase in school enrolment and completion rates and reduction in the school drop-out rates in primary and secondary education.

Clauses (a) and (b). Prevention and direct assistance for the rehabilitation and social integration. Trafficking and commercial sexual exploitation of children. The Committee notes that sections 23 and 24 of the Prevention and Suppression of TIP-SOP Proclamation No. 1178/2020 provides for the protection, rehabilitation and compensation of victims of trafficking. The Government indicates that the Ministry of Women and Social Affairs conducted awareness raising and advocacy programmes on prevention of trafficking to over 5.6 million people; conducted anti-trafficking community conversation sessions in 20,732 villages; and established 1,617 school anti-trafficking clubs to advocate and conduct peer education programmes.

The Committee notes that the Committee on the Elimination of Discrimination Against Women (CEDAW), in its concluding observations of 2019, expressed concern at the limited data on trafficking in women and girls and at the lack of data on the extent of exploitation of prostitution of women and girls in the State party; and at the lack of information on programmes implemented for the benefit and protection of women and girls who are victims of trafficking and exploitation of prostitution (CEDAW/C/ETH/CO/8, paragraph 25). ***The Committee urges the Government to take effective and time-bound measures to prevent children from becoming victims of trafficking and prostitution and to remove child victims from these worst forms of child labour and ensure their rehabilitation and social integration. It requests the Government to provide information on the protection and rehabilitation measures taken for child victims of trafficking pursuant to sections 23 and 24 of the Prevention and Suppression of TIP-SOP Proclamation No. 1178/2020.***

Clause (d). Identifying and reaching out to children at special risk. 1. *Child orphans of HIV/AIDS and other vulnerable children (OVCs).* Following its previous comments, the Committee notes the Government's information that various guidelines to identify and reach out to children at special risk, in particular orphans and OVC were developed including: (i) Case Management guidelines; (ii) the Service Linkage and Referral guideline; (iii) the Urban Destitute Implementation Manual; (iv) the Service Provision Standard Guideline; and (v) the Care and Support Guideline for AIDS orphans. The Government indicates that the Federal HIV/AIDS Prevention and Control Office is the focal institution to nationally coordinate and guide the social protection support based on the implementation guidelines, especially to children orphaned by HIV/AIDS. Support for HIV/AIDS orphans are regularly assisted by funds to combat HIV, in addition to engaging families on income generating activities. It notes that the Ministry of Women and Social Affairs, in cooperation with relevant NGOs, civil society, religious and community-based organizations developed and implemented OVC care and support programmes in 2020–21 for an estimated 1,193,448 beneficiaries including children under difficult circumstances. During this period, 20,121 vulnerable children received institutional services and 3,883 children were integrated with their families. The Committee observes that, according to estimates made by UNAIDS in 2021, approximately 280,000 children aged 0 to 17 years are orphans due to HIV/AIDS in Ethiopia. ***Recalling that HIV/AIDS orphans and OVCs are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to continue its efforts to ensure that HIV/AIDS orphans and OVCs are protected from the worst forms of child labour. The Committee requests the Government to provide information on the specific measures taken in this respect and on the results achieved.***

Clause (e). Special situation of girls. Domestic work. The Committee previously noted that there were approximately 6,500–7,500 child domestic workers in Addis Ababa.

The Committee notes the Government's information that some preliminary studies conducted on domestic work revealed that child domestic workers are subjected to exploitation, with long working hours for minimal pay and modest shelter and food as well as vulnerability to physical and sexual abuse.

Recognizing the situation of child domestic workers in major urban centres, the Confederation of Ethiopia Trade Unions (CETU) in collaboration with NGO's initiated a campaign to combat exploitative and abusive child domestic work and to ratify Convention No. 189 on domestic work. The Government also refers to section 3(c) of the Labour Proclamation No.1156 of 2019 which states that the Council of Ministers shall issue regulations governing conditions of work applicable to the domestic service. ***The Committee requests the Government to indicate whether any regulations on conditions of work for the domestic service have been issued pursuant to section 3(c) of the Labour Proclamation No. 1156/2019 and, if so, whether such regulations have addressed or contemplate addressing child domestic workers. It requests the Government to take immediate and effective measures to protect child domestic workers, particularly girls, from engaging in exploitative domestic work, and to report on the efforts of the labour inspectorate in this regard. The Committee requests the Government to provide information on the effective and time-bound measures taken in this regard and on the results achieved.***

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

Gabon

Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124) (ratification: 1968)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(1) of the Convention. Medical examination of persons under 21 years of age prior to underground work in mines. In its previous comments, the Committee noted that under section 207 of the Labour Code, the initial medical examination prior to recruitment was only compulsory for children under 18 years of age and not, as envisaged by the Convention, for persons under 21 years of age. The Government gave an undertaking to take into account the requirement to make the initial medical examination prior to recruitment compulsory for workers under 21 years of age in the framework of the adoption of a draft Decree to update Order No. 3773 of 25 March 1954 on the organization and operation of medical services. It also noted that under section 178 of the Labour Code, as amended by Ordinance No. 018/PR/2010 of 25 February 2010, labour inspectors may require a medical examination for fitness for employment of children and young persons up to the age of 18 years and up to the age of 21 years for types of work which involve high health risks. The Committee nevertheless observed that medical examination prior to recruitment for young persons of under 21 years of age is still not compulsory. The Committee notes the Government's indication in its report that section 178 of the Labour Code was amended by Ordinance No. 018/PR/2010 of 25 February 2010. Nevertheless, the Committee notes that the new section 178, which authorizes labour inspectors to require a medical examination until 18 years of age, or until 21 years for types of work that involve high health risks, still does not make medical examinations prior to recruitment compulsory. The Committee recalls that *Article 2(1)* of the Convention provides that a thorough medical examination for fitness of employment shall be required for work underground in mines for persons under 21 years of age. ***The Committee therefore requests the Government to take the necessary measures to give full effect to this provision of the Convention, and to provide information on any new developments in this regard.***

Article 3(2). X-ray film of the lungs. The Committee has been emphasizing for a number of years that the national legislation in Gabon does not contain any provision requiring an X-ray film of the lungs on the occasion of the initial medical examination and it expressed the hope that the Government would envisage the inclusion in the national legislation of a provision to this effect. The Committee has subsequently noted that the draft Decree to update Order No. 3773 of 25 March 1954 on the organization and operation of medical services would take into account the requirement of an X-ray film of the lungs during the initial medical examination and also, if considered necessary from a medical point of view, during re-examinations. The Committee notes the Government's indication that there have been no further developments, but that it reiterates its commitment to taking measures to this effect. ***Recalling that it has been raising this matter for nearly 30 years, the Committee urges the Government to take the necessary measures to ensure that an***

X-ray film of the lungs is required during the initial medical examination of any person under 21 years of age with a view to their employment or work in underground mines and, if considered necessary from a medical point of view, during subsequent re-examinations. In this respect, it expresses the firm hope that the draft Decree will be adopted in the near future and requests the Government to continue providing information in this respect.

Article 4(4) and (5). Records of persons who are employed or work underground. In its previous comments, the Committee noted General Order No. 3018 of 29 September 1953, the provisions of which do not meet all the requirements of *Article 4(4)* and *(5)* of the Convention. However, the Government indicated that it would introduce provisions in conformity with *Article 4* of the Convention when the time came to update General Order No. 3018. The Committee notes that, according to the Government's report, General Order No. 3018 has not yet been amended, but that the Government is working to bring its provisions into conformity with the Convention. ***The Committee therefore requests the Government to take the necessary measures in the near future to bring General Order No. 3018 of 29 September 1953 into conformity with the Convention.***

Article 5. General policy for the implementation of the Convention. The Committee previously noted that section 251 of the Labour Code provides for the establishment of an advisory committee on occupational safety and health, the composition and operation of which are determined by Order No. 000808/MTRHFP/SG/IGHMT of the Minister of Labour. In this respect, the Committee noted that the technical advisory committee on occupational safety and health had not yet been established due to a problem relating to the representativity of trade unions.

The Committee notes the Government's indication that the problem relating to the representativity of trade unions described in the previous report persists, due to the absence of elections, and that it has therefore not yet been possible in practice to establish the technical advisory committee. ***The Committee requests the Government to continue providing information on any progress made in this respect.***

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

Minimum Age Convention, 1973 (No. 138) (ratification: 2010)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(1) of the Convention. Scope of application and minimum age for admission to employment or work. In its previous comments, the Committee noted that, under section 177 of the Labour Code of Gabon of 1994 as amended by Ordinance No. 018/PR/2010 of 25 February 2010, children may not be employed in any enterprise before the age of 16 years. The Committee also observed that, under the terms of section 1, the Labour Code only governs the employment relationship between workers and employers, and between employers or their representatives and apprentices and trainees placed under their authority. It therefore appears that the Labour Code and the provisions concerning the minimum age for admission to employment or work do not apply to work performed outside a formal employment relationship, as in the case of children working on their own account or those working in the informal economy.

The Committee notes the Government's indication in its report that the Committee's comments will be taken into account in the draft revision of the Labour Code. It also notes the Government's indications that it plans to extend the social coverage of the National Health Insurance and Social Guarantee Fund (CNAMGS) to children working in the informal economy. It notes that, under section 2 of Decree No. 0651/PR/MTEPS of 13 April 2011 establishing individual exceptions to the minimum age for admission to employment in Gabon, individual exceptions to the minimum age for admission to employment, which is fixed at 16 years, can be granted for work taking place in establishments where only family members are employed under the authority of the father, mother or guardian. The Committee reminds the Government that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not these are governed by a contractual employment relationship, including work in a family enterprise. ***The Committee expresses the firm hope that the draft amendments to the Labour Code will be adopted in the very near future, so that all children under 16 years of age who engage in economic activities outside a formal employment relationship, particularly children who work in the informal economy, including in a family enterprise, benefit from the protection afforded by the Convention. The Committee requests the Government to provide information on progress made in this respect and to send a copy of the***

draft amendments to the Labour Code. It also requests the Government to provide information on progress regarding social coverage through the CNAMGS of children working in the informal economy.

Article 3(1) and (2). Minimum age for admission to hazardous types of work and determination of such types of work. The Committee noted previously that, under section 177 of the Labour Code of 1994 as amended by Ordinance No. 018/PR/2010 of 25 February 2010, children under 18 years of age may not be employed in types of work considered to constitute the worst forms of child labour, particularly work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of young persons. The Committee also noted that the list of types of work and the categories of enterprises prohibited for young persons, and the age limit to which this prohibition applies, is determined by Decree No. 275 of 5 November 1962, but that the list of hazardous types of work was being revised.

The Committee notes with ***satisfaction*** the adoption of Decree No. 0023/PR/MEEDD of 16 January 2013 determining the nature of the worst forms of labour and the categories of enterprises prohibited for children under 18 years of age, pursuant to section 177 of the Labour Code. Section 2 of the Decree prohibits the employment of children under 18 years of age in certain types of work such as: work in abattoirs and tanneries; extraction of minerals, waste, materials and debris in mines and quarries; driving of motor vehicles and mechanical equipment; and work in construction, except for finishing work that does not require the use of scaffolding. ***The Committee requests the Government to provide information on the application in practice of Decree No. 0023/PR/MEEDD, including the number and nature of infringements detected relating to the performance of hazardous work which is prohibited for children under 18 years of age, and the penalties imposed.***

Article 9(1). Penalties and labour inspection. In its previous comments, the Committee noted that section 195 of the Labour Code provides that any person who violates the provisions of section 177, concerning the minimum age for admission to employment or work, shall be liable to a fine and/or imprisonment of two to six months. Any person violating section 177(3), concerning hazardous work, shall be liable to a fine and five years' imprisonment without the possibility of a suspended sentence. Each of these penalties is doubled for repeat offences. The Committee also noted that, under section 235 of the Labour Code, labour inspectors are responsible for reporting violations of the laws and regulations relating to labour, employment, occupational safety and health, and social security. The Committee also noted with concern the Government's indication that no penalties had yet been imposed in this regard, even though the Committee on the Rights of the Child, in its concluding observations of 2016, had highlighted the large number of children working in sand quarries and *gargotes* (low-quality restaurants) and on taxis and buses. It further noted, in its comments on the Worst Forms of Child Labour Convention, 1999 (No. 182), that the labour inspectorate had not recorded any offences involving child labour.

The Committee notes the Government's indication that the labour inspection services do not have the necessary resources to investigate child labour properly but that in 2017, with support from partners including UNICEF, a pilot phase of capacity-building for inspectors was launched, involving training for labour inspectors relating to the exploitation of child labour. The Government explains that the pilot phase of capacity-building for labour inspectors is due to be extended to the whole country to enable effective implementation of the provisions of the Convention. However, the Committee notes that the Government still provides no details of any convictions of offenders under section 177 of the Labour Code. ***The Committee requests the Government to renew its capacity-building efforts for labour inspectors in order to ensure that the regulations providing for penalties for violations of section 177 of the Labour Code are implemented effectively. In this regard, it requests the Government to report on the results of this capacity-building in terms of the numbers of labour inspectors and of inspections with a focus on child labour, including hazardous work. It also requests the Government to provide information on the application of these penalties in practice, indicating the number and nature of violations reported and penalties imposed and, where possible, to provide extracts from labour inspectors' reports.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour. Sale and trafficking of children. Penalties. In its previous comments, the Committee noted that a number of children, particularly girls, are victims of internal and cross-border trafficking for the purposes of work as domestic servants or in the country's markets. Children from Benin, Burkina Faso, Cameroon, Guinea, Niger, Nigeria and Togo are victims of trafficking to Gabon. The Committee emphasized that, despite the conformity of the national legislation on the sale and trafficking of children (in particular Act No. 09/2004) with the Convention, and even though several institutions have an operational mandate in this field, the legislation is still not enforced and coordination is weak. Moreover, the Committee noted with concern that, even though prosecutions had been initiated against suspected traffickers of children, no ruling had yet been handed down, even though the United Nations Committee on the Rights of the Child (CRC) had stated that 700 child victims of trafficking had been identified and repatriated to their countries of origin. The Committee therefore asked the Government to take steps to ensure the in-depth investigation and robust prosecution of persons who engage in the sale and trafficking of children under 18 years of age.

The Committee notes the Government's statement in its report that Act No. 09/2004 concerning the prevention and combating of trafficking of children has been revised following the national symposium on combating the trafficking of children held in June 2016. The Committee also notes the Government's indications that any persons violating the laws and regulations relating to the sale and trafficking of children are liable to severe punishment under the law in the form of fines or imprisonment. The Government indicates that prosecutions have been initiated against eight persons in cases involving the forced labour of children. It also states that in 2016 officers from the immigration control department were given training in identification and investigation methods in trafficking cases. The Committee also notes the Government's indication, in its report relating to the Minimum Age Convention, 1973 (No. 138), that deadlines for the courts to hand down judgments (except for administrative tribunal decisions) are unknown and it recognizes the ineffectiveness of the Gabonese justice system. It indicates that judicial prosecutions are limited, owing to a lack of financial resources at the High Court of Justice, which deals with trafficking cases but cannot hold regular sessions. The Government further indicates that data on the repression of trafficking is limited, in particular because of a lack of communication between ministries. The Government also states that reports have indicated that corruption and complicity of public officials in trafficking cases remain a source of serious concern. It indicates that judges are at risk of being corrupted by suspected traffickers and that they often delay or abandon cases which have been opened against traffickers.

The Committee further notes that, according to the UNICEF annual report for 2017, the trafficking of children is constantly increasing because of the lack of effective and comprehensive enforcement of the laws against the trafficking and exploitation of children. The Committee notes that the August 2017 report of the United Nations High Commissioner for Human Rights (UNHCHR), in the context of the universal periodic review, emphasizes that the Special Rapporteur on trafficking expressed concern at the trafficking of women and girls for sexual exploitation and prostitution (A/HRC/WG.6/28/GAB/2, paragraph 50). The Committee is therefore bound to note with ***deep concern*** the lack of convictions handed down for traffickers of children, which perpetuates the situation of impunity that appears to exist in the country. ***Recalling that penalties are only effective if they are actually enforced, the Committee urges the Government to take the necessary steps without delay to ensure the thorough investigation and robust prosecution of perpetrators of the sale and trafficking of children, including government officials suspected of complicity and corruption, and to ensure that penalties constituting an adequate deterrent are imposed on them. Further, recalling that it is the responsibility of the State to provide the judicial system with the means to function, as well as to ensure effective communication between the ministries, the Committee also requests the Government to take the necessary steps to facilitate communication between ministries and to strengthen the capacities of the High Court of Justice, including its ability to hand down judgments within a reasonable time. The Committee requests the Government to continue providing information on the application of provisions relating to this worst form of child labour, including statistics on the number of convictions handed down and the criminal penalties imposed.***

Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances, or for illicit activities. The Committee previously urged the Government to take the necessary steps to ensure that the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances, or for illicit activities, including the production and trafficking of drugs, are explicitly prohibited in the national legislation.

The Committee notes with ***satisfaction*** that Decree No. 0023/PR/MEEDD of 16 January 2013, determining the nature of the worst forms of labour and the categories of enterprises prohibited for children under 18 years of age, defines the "use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances" and "for illicit activities including the production and trafficking of drugs as defined by the relevant international conventions" as the worst forms of child labour. It notes that this Decree was adopted pursuant to section 177 of the Labour Code. The Committee observes that section 195 of the Labour Code provides that any person who violates the provisions of section 177(3), concerning the worst forms of child labour, which refers to the above-mentioned Decree, shall be liable to a fine of 5 million CFA francs (US$8,429) and five years' imprisonment without the possibility of a suspended sentence. Each of these penalties is doubled for repeat offences. ***The Committee requests the Government to provide information on the application in practice of this new Decree, including the number and nature of violations detected in relation to the use, procuring or offering of a child for the production of pornography, for pornographic performances or for illicit activities, including the production and trafficking of drugs.***

Articles 5 and 6. Monitoring mechanisms and programmes of action. 1. *Council to Prevent and Combat the Trafficking of Children and the Monitoring Committee.* The Committee previously noted that the Council to Prevent and Combat the Trafficking of Children is an administrative authority attached to the Ministry of Human Rights. In practice, monitoring of the phenomenon of trafficking is ensured by a monitoring committee and several watchdog committees, which are responsible for monitoring and combating the trafficking of children for exploitation within the country. The Committee asked the Government to intensify its efforts to strengthen the capacity of the watchdog committees and their coordination with the Council to Prevent and Combat the Trafficking of Children and the monitoring committee with a view to ensuring the enforcement of the national legislation against trafficking in children.

The Committee notes the Government's announcement that the Council to Prevent and Combat the Trafficking of Children became operational in December 2017. The Government indicates that the watchdog committees have conducted information campaigns on the possibility of assistance for victims and on the existence of penalties for traffickers of children, aimed at having a deterrent effect. The Government also highlights the presence of an Inter-Ministerial Committee to Combat the Trafficking of Children, and also the formulation and adoption of a "Plan of action against the trafficking of children 2016–17". The Committee notes that, according to information from the ILO office in Yaoundé, the above-mentioned action plan for 2016–17 has not been renewed. ***While noting the measures taken by the Government, the Committee requests the Government to continue its efforts to ensure that the watchdog committees have the capacity to detect situations where children under 18 years of age are victims of trafficking. It requests the Government to provide information on the number of child victims of trafficking who have been identified, and on the results of the "Plan of action against the trafficking of children 2016–17", including the activities undertaken. The Committee also requests the Government to provide information on the recent activities of the Council to Prevent and Combat the Trafficking of Children and on the role of the Inter-Ministerial Committee to Combat the Trafficking of Children.***

2. *Labour inspection.* ***With regard to labour inspection, the Committee refers to its detailed comments on the Minimum Age Convention, 1973 (No. 138).***

Article 7(2) of the Convention. Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and ensuring their rehabilitation and social integration. Reception centres and medical and social assistance for child victims of trafficking. The Committee previously noted that the country has four reception centres where children removed from a situation of exploitation receive an initial medical examination a few days after their placement in a centre. In addition to their rehabilitation and social integration, children are supervised by specialist teachers and psychologists, and benefit from social and educational activity programmes and administrative and legal support. The Committee also noted that during their stay in the centres school-age children removed from trafficking are enrolled free of charge in state schools, while those who are no longer of school age are enrolled in literacy centres.

The Committee notes the Government's indication that in 2015 a total of 15 child victims of trafficking for forced labour were identified and directed to the social services. The Government explains that a number of structures, including NGOs, religious authorities and UNICEF, provide support for the operations of the reception centres. The Committee notes that, according to the UNICEF annual report for 2017, a number of child protection structures, including social workers and civil society organizations, have received training, including with regard to providing care for victims of abuse, violence, and exploitation. It also observes that the Government, in its report to the United Nations Human Rights Council in August 2017 in the context of the Universal Periodic Review, indicates that in 2014 and 2015 the monitoring committee recorded more than 750 children who had been removed from trafficking circuits and reintegrated locally or repatriated to their countries of origin (Benin, Togo and Nigeria) (A/HRC/WG.6/28/GAB/1, paragraph 42). ***While noting the large number of children removed from trafficking circuits, the Committee recalls the importance of measures for the rehabilitation and social integration of child victims of trafficking and requests the Government to take the necessary steps to ensure that all children withdrawn from trafficking are effectively rehabilitated and integrated in society. The Committee also requests the Government to provide information on the number of children under 18 years of age who have actually been removed from this worst form of child labour and placed in reception centres.***

Article 8. International cooperation. The Committee noted previously that the Government had signed the Multilateral Regional Cooperation Agreement against the trafficking of persons (especially women and children) in West and Central Africa in July 2006 and that a bilateral agreement against trafficking in children was being negotiated with Benin. It noted that, according to the Special Rapporteur, with a maritime border of over 800 kilometres and a porous frontier with three countries, Gabon was in need of sound cooperation with its neighbours to combat the phenomenon of trafficking. However, only one bilateral agreement with Benin had been concluded.

The Committee notes the Government's indications that bilateral cooperation between Gabon and Togo relating to the prevention and combating of child migration for cross-border trafficking and economic exploitation has been strengthened and has enabled the development of a draft bilateral agreement for combating the cross-border trafficking of children and also the repatriation and reintegration of 30 Togolese girls who were victims of trafficking to Gabon. The Government also indicates that it has cooperated with the Economic Community of Central African States and with Senegal, as part of action against the trafficking of children. The Committee notes that, according to the August 2017 report of the UNHCHR, the Committee on the Rights of the Child (CRC) expressed concern at the lack of bilateral agreements between Gabon and countries of origin of child victims of trafficking, in particular Mali, Nigeria and Togo (A/HRC/WG.6/28/GAB/2, paragraph 29). ***The Committee requests the Government to continue its efforts to ensure that bilateral agreements on trafficking in persons are concluded with neighbouring countries in the very near future, particularly with a view to boosting the numbers of border police officers. It requests the Government to provide information on progress made in this respect.***

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

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

Ghana

Minimum Age Convention, 1973 (No. 138) (ratification: 2011)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. Following its previous comments, the Committee notes the Government's information in its report that it has implemented several concrete measures within the framework of the National Plan of Action – Phase II on Elimination of the Worst Forms of Child Labour 2017–21 (NPA2), including: (i) sensitization and awareness-raising (over 2 million people reached in 2021); (ii) capacity-building of various stakeholders, including Community Child Protection Committees (CCPCs), law enforcement agencies, parents, teachers and children (over 150,000 beneficiaries in 2021); and (iii) measures aimed at improving school

enrolment and retention. The review of the NPA2, which has elapsed, has not yet been completed, and there are discussions on the possibility of either extending its implementation or elaborating a new plan of action. ***The Committee requests the Government to take measures to ensure that the NPA2 is either extended or that a new plan of action is elaborated. It requests the Government to provide information on the progress achieved and on the impact of the new or revised plan of action on the progressive elimination of child labour. Finally, the Committee once again requests the Government to continue to provide information on the application of the Convention in practice, in particular up-to-date statistical data on the number of children and young persons below the minimum age of 15 who are engaged in child labour, and information on the nature, scope and trends of their work. To the extent possible, this information should be disaggregated by age and gender.***

Article 3(1) and (2). Minimum age for admission to hazardous work and determination of hazardous work. ***With regard to the determination and adoption of the list of hazardous types of work prohibited to children under the age of 18 years, the Committee refers to its detailed comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).***

Article 7(3). Determination of light work activities. The Committee notes the Government's information that the list of light work activities permitted to young persons between the ages of 13 and 15 is included in the new Hazardous Activities Framework (HAF), which will be submitted as a legislative instrument to Parliament for consideration. ***The Committee expresses the firm hope that the list of types of light work activities and the conditions of light work permitted for young persons between the ages of 13 and 15, as required by Article 7(3) of the Convention, are duly integrated into the new HAF, and requests the Government to take the necessary measures to ensure that the HAF is adopted into law in the near future. It requests the Government to provide information on the progress made in this regard, as well as a copy of the new HAF, once adopted.***

Labour inspectorate. Following its previous comments, the Committee notes that the International Trade Unions Confederation, in a communication dated 1 September 2022 and submitted to the Committee for examination of Ghana's application of the Worst Forms of Child Labour Convention, 1999 (No. 182), observes that the labour inspection continues to be underfinanced and insufficiently manned, and that inspectors do not have adequate training and capacity to eliminate child labour issues.

In this regard, the Committee takes note of the Government's information regarding the measures taken to reinforce the Labour Inspectorate. In particular, the Committee notes that the functioning and capacity of the Labour Inspectorate are strengthened through the Ghana Employment and Social Protection (GESP) project, in the framework of which the resources of the Labour Inspectorate were strengthened and labour inspectors were trained in various skills required to improve their operations and reporting, including on how to identify child labourers and refer them to the Department of Social Welfare for follow-up action. The Government indicates that 75 labour inspectors received additional training on inspections in the informal sector leading to 520 inspections, that a data collection exercise on these inspections began this year, and that the statistics collected will be communicated to the Committee in subsequent reports. Furthermore, the Committee notes the Government's information, under Convention No. 182, according to which the Trade for Decent Work (T4DW) project of the European Union, supported the training of new labour officers and representatives of the office of the Attorney-General on the prosecution of child labour cases and other violations at the workplace. ***The Committee strongly encourages the Government to continue strengthening the capacity and functioning of the Labour Inspectorate, in order to ensure the effective supervision of the provisions giving effect to the Convention and to expand the reach of the labour inspection services to the informal economy. It requests the Government to provide information on the measures taken in this regard and on the results achieved, including the data collected through the labour inspections that have been conducted in the informal sector and the number of prosecutions of child labour cases facilitated through the support of the T4DW project.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 1 September 2022, as well as the Government's report. It notes that the ILO Technical Advisory Mission (TAM), requested by the Committee in its previous comments, took place in April 2022.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery and practices similar to slavery. Sale and trafficking of children. Following its previous comments, the Committee notes the ITUC's observation that Ghana continues to be a source, transit and destination country for trafficking of persons, in particular the trafficking of boys and girls for labour and sexual exploitation, and that children are trafficked for exploitation in domestic servitude, the cocoa industry and exploited in harmful practices such as the *trokosi* system of servitude and debt bondage. The ITUC observes that the number of investigations, prosecutions and convictions for cases of trafficking are insufficient in comparison to the scale and persistence of the worst forms of child labour in the country. The Committee further notes that, according to the report of the ILO TAM, the Worker representatives of the General Agricultural Workers Union indicated that one of its key conclusions of a mapping that was undertaken on issues of forced labour and trafficking was the low level of prosecutions in comparison with the number of arrests. Several representatives of the Government, Workers and Employers indicated that this was partly due to the inability to obtain sufficient evidence, but also to the level of capacity of law enforcement officials to address the issue of trafficking even when it is brought to their attention.

The Committee notes the Government's information, in its report, that from October 2021 to July 2022, 22 prosecutions were initiated and a total of 10 convictions involving 16 offenders were handed down. The Government provides information on the penalties applied, including several prison sentences, hard labour, and fines. While taking due note of this information, the Committee observes that the numbers appear to remain low in light of the prevalence of the issue.

In this regard, the Committee takes note of the Government's information regarding the multiple measures taken to strengthen the capacity of the law enforcement officials, including the Ghana Police Service, the Anti-Human Trafficking Unit (AHTU), the Anti-Human Smuggling and Trafficking in Persons Unit of the Ghana Immigration Service (AHSTIPU), and prosecutors and judges. In addition, the Ghana Police Service has put in place several measures to further intensify its efforts in the fight against trafficking in persons, including the training of border officers on the identification of victims of trafficking; the establishment of anti-trafficking desk offices at the regional and district offices to assist in identifying child labour and child trafficking cases; and the confiscation of the properties of perpetrators and their prosecution in civil proceedings, alongside criminal proceedings. Furthermore, the Committee notes that one of the four main axes of the new National Plan of Action for the Elimination of Trafficking in Ghana (NPA) 2022–26, is to improve the effectiveness of prosecution efforts for trafficking/strengthen the legal and regulatory framework to combat trafficking, and that many actions are planned in this regard. ***The Committee therefore strongly encourages the Government to pursue its efforts to strengthen the capacity of the law enforcement officials, including in the framework of the NPA 2022–26, so as to ensure that thorough investigations and prosecutions of persons who engage in the sale and trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to continue to provide information on the measures taken in this regard as well as specific information on the number of prosecutions, convictions and specific penalties applied on persons found guilty of trafficking children under 18 years of age.***

Clause (d) and Article 7(2)(a) and (b). Hazardous work in cocoa farming and preventing children from being engaged in and removing them from such hazardous work. Following its previous comments, the

Committee takes note of the ITUC's observations that an estimated 10 per cent of children working on cocoa farms are engaged in hazardous activities and that the incidence of child employment in cocoa appears to be rising faster than elsewhere. Over 200,000 children in the principal cocoa-growing regions are exposed to hazardous work and suffering serious injuries. Considering the importance of the cocoa industry in Ghana (about 40 per cent of Ghana's total earnings), child labour in its worst forms in Ghana also has implications for Ghana's cocoa supply chains in the global economy.

The Committee notes that, according to both the report of the ILO TAM and the Government's report, various measures were taken to prevent children under 18 years of age from engaging in hazardous work in the cocoa sector. In particular, the Committee notes: (i) the continuous sensitization of community members, including farmers and the general public, on child labour and its consequences; (ii) the implementation of several measures aiming to strengthen local level structures to support the elimination of child labour in the cocoa sector, through capacity-building of stakeholders including Community Child Protection Committees (CCPCs); and (iii) the public–private partnership for the elimination of child labour in cocoa growing areas called "Children first in cocoa" aiming to improve the lives of children living in the cocoa-growing regions of Ghana by 2025. Furthermore, the Government indicates that, under the Trade for Decent Work Project (T4DW Project) of the European Union, the CCPC members of five cocoa growing communities in the Eastern and Ashanti regions were trained on the basic concepts of child labour and child protection, identification, withdrawal and rehabilitation of victims. ***The Committee therefore strongly encourages the Government to continue its efforts to prevent children under 18 years of age from being engaged in hazardous types of work in this sector, as well as to remove them and rehabilitate them. It requests the Government to continue to provide information on the measures taken in this regard, as well as on the number of child victims of hazardous types of work who are removed from such work and rehabilitated as a result.***

Article 4(1) and (3). Determination and revision of the list of hazardous types of work. Following its previous comments, the Committee notes that the Government representatives indicated, during the ILO TAM, that both the Hazardous Activities Framework for the cocoa sector, developed in 2008, and the General Hazardous Activities Framework, covering 17 other occupations and developed in 2012, have been reviewed, validated, and merged into one Hazardous Activities Framework (HAF). In this regard, the Committee notes both the information contained in the report of the ILO TAM and the Government's information on the series of steps necessary to ensure the adoption of the HAF into a legislative instrument, including sending it to the Attorney-General for review and instructions, submitting it to the authorities (Cabinet and Parliament) for approval, and converting it into a decree or regulation pursuant to the revised Children's Act, which is currently before Parliament for adoption. ***The Committee requests the Government to take the necessary measures to ensure that the HAF is adopted in the near future. It requests the Government to continue providing information on the progress made in this regard and to provide a copy of the HAF, once it has been adopted into law.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. *Trafficking in the fishing industry and domestic service.* Following its previous comments, the Committee notes the ITUC's observation that the Government must ensure that children who are rescued from the worst forms of child labour are rehabilitated and reintegrated into society.

In this regard, the Committee takes note of the information contained in the report of the ILO TAM and of the Government's information regarding the measures taken to combat child trafficking, including for the purpose of the exploitation of their labour in hazardous work in the fishing industries and in domestic servitude, such as the establishment of one-stop shop centres (shelters) for victims of violence, including domestic violence, where there are a number of in-house professionals to help reintegrate victims. The Government indicates that, in 2021, 660 children (149 girls and 511 boys), were rescued from trafficking, including in fishing-related activities. The child victims were provided a range

of support services, which included shelter, food, medical care, psychological support, counselling, legal services, family tracing, COVID testing, and more. The Committee further notes that two of the four main axes of the NPA 2022–26 are to prevent trafficking and protect its victims, through various measures aiming to improve advocacy, develop capacity-building, ensure provision of comprehensive care to victims of trafficking, and enhance family strengthening interventions for rescued victims and their families. ***The Committee strongly encourages the Government to continue its efforts to prevent children from becoming victims of trafficking and to remove child victims from the worst forms of child labour and ensure their rehabilitation and social integration. It also requests the Government to continue providing information on the measures taken in this regard and the results achieved in terms of the number of child victims of trafficking, disaggregated by age and gender, who have been removed and rehabilitated.***

2. *Trokosi system.* Following its previous comments, the Committee notes the ITUC's observation that, while the Government announced that the traditional practice of *trokosi* was proscribed by law and, consequently, there is no official data on it, this harmful practice of servitude and debt bondage is still ongoing and thousands of children are suffering the consequences of it. The ITUC observes that the Government must ensure that, in practice, children are not subjected to it and must put in place measures to monitor the enforcement of the law in practice, to carry out an appropriate statistical evaluation system.

The Committee notes that both the Government and social partners stated, during the ILO TAM, that they were not aware of any cases of *trokosi* being reported. The Government adds, in its report, that the practice of *trokosi* has been outlawed in Ghana, and that there is no official data on this practice in the country. In this regard, the Committee notes the observation of the Worker representatives made to the ILO TAM that visits into the *trokosi* communities should be conducted in order to verify these allegations at the national level. The Government indicates, in the meantime, that it continues to conduct sensitization campaigns in order to prevent this practice from resurfacing. ***The Committee requests the Government to take measures to verify the prevalence of the practice of trokosi in the country, including through the collection of data on this issue. It requests the Government to provide information on the progress made in this regard and the results achieved. It also encourages the Government to continue its sensitization measures and to provide information on their impact on preventing girls under the age of 18 from becoming victims of this practice.***

Application of the Convention in practice. The Committee notes that, according to the mission of the ILO TAM, many of the constituents indicated the need to improve data collection and that the Government should work on the national production of statistics on child labour and its worst forms, considering that the last survey on child labour was conducted in 2003. ***The Committee requests the Government to take the necessary measures to ensure the availability of sufficient data on the worst forms of child labour in the country, particularly as regards child trafficking and hazardous work, and to provide information on the nature, scope, and trends of these worst forms, and on the number of children covered by measures giving effect to the Convention. To the extent possible, this information should be disaggregated by gender and age.***

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

Guatemala

Minimum Age Convention, 1973 (No. 138) (ratification: 1990)

Previous comments: observation and direct request

The Committee notes the observations of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), forwarded by the Government with its report.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee notes the information provided in the Government's report on the adoption by the Ministry of Employment and Social Welfare of Ministerial Decision No. 260-2019 of 23 July 2019 approving the procedure for the effective application of ILO Convention No. 138. The Decision provides that the Protection Unit for Young Workers will coordinate action with the General Labour Inspectorate to monitor admission to employment for young persons, as well as regular inspection of the various sectors where there is a possibility of children being engaged in child labour (sections 3 and 5 of the Decision). The Committee also notes that the National Commission for the Prevention and Elimination of Child Labour (CONAPETI) was replaced in 2019 by the Thematic Round Table for the Prevention and Eradication of Child Labour in the Specific Social Development Cabinet, with the participation of the General Labour Inspectorate. The Thematic Round Table has been discussing the establishment of Comprehensive Care Centres for the Prevention and Eradication of Child Labour (CAIPETI), the Child Labour Risk Identification Model (MIRTI) and the development of the Strategy and National Plan for the Prevention and Eradication of Child Labour and Work by Young Persons. The Departmental Committees for the Prevention and Eradication of Child labour (CODEPETIS) will continue to operate. The Committee notes the Government's indications in its report on the Worst Forms of Child Labour Convention, 1999 (No. 182), concerning the findings of the final evaluation of the implementation of the Roadmap to make Guatemala a country free from child labour and its worst forms (2016–20) carried out with representatives of the 21 CODEPETIS. In this regard, it notes that the conclusions of the evaluation emphasize: (i) the lack of institutionalization of the commitments set out in the Roadmap; (ii) the absence of budgetary allocations to the bodies responsible for its implementation; and (iii) the lack of social involvement in its implementation.

The Committee notes the indication in the CACIF's observations that employers are participating actively in the Thematic Round Table on the Prevention and Eradication of Child Labour, as well as the CODEPETIS, and are committed to undertaking awareness-raising activities in enterprises. It also reports various enterprise initiatives, particularly in the agricultural sector, to prevent and combat child labour.

While noting all this information, the Committee observes that, according to the findings of the National Survey of Employment and Income 2-2018, available on the official webpage of the National Institute of Statistics, 297,408 boys and 99,071 girls under 14 years of age are engaged in child labour. The Committee also observes that, between January 2018 and May 2022, the labour inspection services detected 136 cases of child labour during inspections in private enterprises in the various departments of the country. ***The Committee hopes that all the measures adopted, including the follow-up to the Roadmap to make Guatemala a country free from child labour and its worst forms will contribute to the progressive elimination of child labour and requests the Government to provide information on this subject.***

With reference to the activities of the labour inspection services to combat child labour, the Committee also requests the Government to investigate the causes of the significant difference between the number of cases of child labour detected in enterprises during inspections and the high number of children under 14 years of age who are engaged in child labour, according to the National Survey of Employment and Income 2018. The Committee considers that this will provide a basis for identifying the measures that could be taken to strengthen the capacities of the labour inspection services to combat child labour, including in the informal economy. The Committee also requests the Government to provide updated statistical data on the nature and extent of child labour.

Article 2(1) and (3). Minimum age for admission to employment. The Committee notes the Government's indication that, on the basis of the recommendations made, the Guatemalan Social Security Institute (IGSS) has prepared new proposed regulations on the manual lifting and transport of loads that would repeal Decision No. 885 of 1990, which provides that boys and girls aged over 13 years may undertake the lifting, carrying or moving of loads appropriate to their age, on condition that such

work is not prejudicial to their development and does not prejudice their health and/or safety. ***The Committee takes due note of this information and trusts that the new regulations on the manual lifting and transport of loads that are adopted will bring the minimum age for that work into line with that established in the Labour Code and the Act on the comprehensive protection of children (14 years).***

Article 3(1). Minimum age for admission to hazardous types of work. With reference to the need to amend section 148(a) of the Labour Code (under the terms of which the minimum age for hazardous types of work shall be determined by the regulations for the respective occupation or the labour inspectorate) in order to set the general minimum age at 18 years for all hazardous types of work, in accordance with Government Decision No. 250-2006, the Government indicates that the legislative initiative to amend the Labour Code in this respect is still awaiting discussion in Congress. ***The Committee trusts that this amendment will be adopted without delay to ensure that the Labour Code sets the minimum age for hazardous types of work at 18 years, in accordance with Decision No. 250-2006.***

Article 6. Minimum age for work done in education or training programmes. ***The Committee trusts that the envisaged revision of the Labour Code will set the minimum age for admission to work done in education and training programmes at 14 years, in accordance with the provisions of the Convention.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comment

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and sanctions. Sale and trafficking of children for sexual exploitation. The Committee notes the Government's indication in its report that under the Public Prosecutor's Strategic Plan for 2019–2023 action has been taken to strengthen the capacities of prosecutors to carry out effective investigation and prosecution of perpetrators of trafficking of children. The inter-institutional technical board for the investigation and prosecution of traffickers from abroad has also been implemented. Police officers have been trained in the protection of children and young persons in a migrant context, especially where the children have been abducted.

The Committee notes that in the period between January 2018 and May 2022, 120 cases of trafficking of persons involving minors under 18 years of age had been registered and were under investigation. During the same period, the Prosecutor charged 93 persons with the trafficking of children under 18 years of age (section 202 ter of the Penal Code, as amended by the Act against Sexual Violence, Exploitation and Trafficking of Persons, 2009), with 14 convictions handed down. The Committee also notes with ***interest*** the creation of new courts of the first instance and of courts specialized in crimes of trafficking of persons in eight departments with a high incidence of trafficking of persons for commercial sexual exploitation (Suchitepéquez, Retalhuleu, Sololá, Quiché, Totonicapán, Huehuetenango, San Marcos and Quetzaltenango).***The Committee encourages the Government to continue to take measures to strengthen the capacities of the bodies responsible for enforcing the law with a view to ensuring exhaustive investigations and effective prosecution of perpetrators of trafficking of minors under 18 years of age for sexual exploitation. It requests the Government to provide information on: (1) the functioning of the newly established courts, and (2) the number of investigations, prosecutions and convictions under section 202 ter of the Penal Code regarding trafficking of persons under 18 years of age for the purpose of sexual exploitation.***

Forced child labour. The Committee notes that the Government indicates that during the period between January 2018 and April 2022 a total of 340 minors under 18 years of age were identified in a situation of labour exploitation, begging and forced labour. During the same period, six judgements for the crime of trafficking in children for labour exploitation were handed down, of which two were acquittals. Moreover, the Committee notes that the national police force is carrying out joint operations

with the Ministry of Labour to combat forced child labour in shops and tortilla factories. ***The Committee requests the Government to continue to take the necessary measures to identify, prosecute and sentence persons responsible for placing children in a situation of forced labour, including begging, and to provide information in that connection.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these forms of labour and ensuring their rehabilitation and social integration. Sale and trafficking of children and commercial sexual exploitation. The Committee notes the Government's indication that under the National Plan for the Prevention of Crimes of Sexual Violence, Exploitation and Trafficking of Persons and Commercial Sexual Exploitation, activities were carried out to raise the awareness of and inform 270,882 children and young persons. Between January 2018 and May 2022, the Social Welfare Secretariat ran 252 prevention workshops to combat commercial sexual exploitation of minors, with participants from the indigenous communities. The Committee also notes the Government's indication that new bodies have been included in the National Board for the Prevention of and Protection against, Sexual Exploitation of Children and Young Persons in Activities related to Travel and Tourism, established in 2013, including hotel associations and the Guatemalan Airlines Association. To date, 3,692 enterprises have adhered to the Code of Conduct for the prevention of, and protection against, sexual exploitation of children and young persons in travel and tourism. A national campaign "Protecting our greatest treasure" ("Protegiendo Nuestro Mayor Tesoro") against the sexual exploitation of children and young persons in activities connected to tourism has been under way since 2017.

Finally, the Committee notes that between January 2018 and March 2022, 99 minors under the age of 18 years were rescued from commercial sexual exploitation and 13 victims of child pornography. From 2020–21, care and protection were provided in shelters to 150 children and young victims of trafficking in persons. The care included psychological, medical, legal, pedagogical and social support. ***The Committee encourages the Government to continue taking the necessary measures to combat the sale and trafficking of children and the commercial sexual exploitation of children, and to withdraw, rehabilitate and reintegrate child victims of the worst forms of child labour. In that connection, it requests the Government to continue to provide information on the direct assistance programmes for child victims of the trafficking of persons and commercial sexual exploitation that have been carried out, and their results, giving details of the number of victims that have been rehabilitated and socially integrated.***

Article 8. International cooperation. Trafficking of children. The Committee notes the updating of the Inter-Institutional Protocol for the Repatriation of Victims of Trafficking, which has two strands: the procedure for the repatriation of Guatemalans, who are or may be victims of trafficking of persons abroad; and the procedure for the repatriation of foreigners, who are or may be victims of trafficking of persons identified in Guatemala. Under the Protocol, 34 child and young person victims of trafficking have been repatriated. ***The Committee encourages the Government to continue taking the necessary measures to repatriate child victims of trafficking in persons, whether from Guatemala back to their countries of origin or from abroad back to Guatemala, and requests it to continue providing information on the number of children that have been repatriated. It also requests the Government to provide information on the measures adopted as part of international cooperation to prevent trafficking in persons under the age of 18 years.***

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

Guinea

Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

Previous comment

Article 2(1) of the Convention. Scope of application and labour inspection. Further to its previous comments, the Committee notes the Government's reference in its report to the adoption of Decree No. D/2022/0265/PRG/SGG regulating the powers and structure of the labour inspectorate. The Government also indicates that the 152 active employees of the labour inspectorate have carried out inspections, mainly focused on urban areas, and that a systematic control mission was conducted in 2022, directed by the labour inspectorate with the participation of the Directorate-General of Labour, the National Directorate of Labour, Employment and Social Legislation, the Department of Occupational Medicine, the National Social Security Fund, and the Guinean Employment Promotion Agency.

In this regard, the Committee notes the Government's indication that proposals are under way regarding the application of the provisions of section 513.5 of the Labour Code with a view to ensuring the permanence of the human, financial and material resources needed by the labour inspectorate to discharge its duties.

The Committee notes that the Government will soon conduct training for labour inspectors and controllers with regard to combating child labour and the worst forms thereof, with technical and financial support from UNICEF. ***The Committee strongly encourages the Government to continue strengthening the capacities of the labour inspectorate so that it can undertake adequate supervision and detection activities with regard to children engaged in child labour. To this end, the Committee once again requests the Government to provide information on the implementation in practice of inspections by labour inspectors with regard to child labour, including information on the number of violations recorded and extracts from labour inspection reports.***

Article 2(3). Age of completion of compulsory schooling. The Committee duly notes the adoption of the new Children's Code 2019. The Committee notes with ***satisfaction*** that section 39 of the new Children's Code 2019 provides that it is compulsory for children to attend school until the age of 16 years, and section 921 prohibits children in compulsory schooling from being employed during school hours. Section 920 also indicates that any person employing a child during school hours shall be liable to a fine of 500,000 to 1 million Guinean francs. ***The Committee encourages the Government to take steps to ensure the practical application of the age of completion of compulsory schooling.***

Article 7(1). Minimum age for admission to light work. The Committee notes that section 932 of the new Children's Code 2019 sets the age for admission to light work at 12 years, as do sections 5–7 of Order No. 2791/MTASE/DNTLS/96 on child labour. In this regard, the Committee once again recalls that under *Article 7(1)* of the Convention, national laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. ***The Committee once again urges the Government to take the necessary steps to ensure that the minimum age for admission to light work prescribed in the legislation is 13 years and, accordingly, to make the appropriate amendments to section 932 of the Children's Code and to sections 5–7 of Order No. 2791/MTASE/DNTLS/96 on child labour.***

Article 7(3). Determination of light work, number of hours and conditions in which light work may be undertaken. The Committee previously noted the Government's indication that section 19 of the Bill which will prescribe working hours and conditions of employment or work for light work provides that for children between 11 and 14 years of age, the working time may not exceed eight hours per day, the work must be carried out between 8 a.m. and 9 p.m., and a half-hour uninterrupted rest break must be

provided every four hours. The Committee previously emphasized that any work that may extend to eight hours per day, irrespective of the type of work performed or the conditions in which it is undertaken, does not constitute "light work".

The Committee observes that section 929 of the Children's Code 2019 prescribes the maximum loads authorized for young workers under 18 years of age, without indicating working hours and conditions of employment or work for children. It also once again notes the absence of information from the Government regarding the amendment of section 19 of the Bill. ***The Committee requests the Government to ensure that the amendment of section 19 will guarantee that the number of hours and conditions of employment for children working from the age of 13 years meet the requirements of the Convention for light work. The Committee requests the Government to provide information in this regard.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

Previous comment

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour, and penalties. Sale and trafficking of children. Further to its previous comments, the Committee notes the Government's indication in its report that the effective application of the legislation is ensured by the Labour Inspectorate-General, which carries out inspections and controls in workplaces.

The Committee also notes that, according to the statistics available in 2021 from the Office for the Protection of Gender, Childhood and Morality (OPROGEM), six children (two girls and four boys) were identified as victims of trafficking.

However, the Committee notes the absence of information on the number of investigations, prosecutions, convictions and criminal penalties for the trafficking of persons under 18 years of age. ***The Committee once again urges the Government to take the necessary steps to ensure the effective application of the sections of the penal Code relating to the sale and trafficking of children. It once again requests the Government to provide detailed information, indicating in particular the number of child victims of trafficking and also the number and nature of convictions and criminal penalties imposed.***

Articles 3(d) and 4(1) and (3). Determination and revision of the list of hazardous types of work. Further to its previous comments, the Committee notes the indication in the Government's report that sections 918 and 925 of the new Children's Code of 2019 refer to types of work that are prohibited for children. The Committee notes with ***interest*** that these provisions prohibit several types of hazardous work for children under 18 years of age, including: (i) the handling and use of explosive, irritant, corrosive or toxic materials; (ii) work in slaughterhouses or establishments processing animal entrails, work in tanneries, or work involving the continuous surveillance of cattle; (iii) the extraction of mineralized waste, materials and rubble in mines and quarries, and also as part of levelling work; and (iv) all types of work performed at night. The Committee notes that any person employing children in hazardous work is liable to incur the penalties established by sections 918 and 928. ***The Committee requests the Government to ensure the application in practice of sections 918 and 928 of the Children's Code relating to penalties. It also requests the Government to provide information on the number and nature of violations recorded and the penalties imposed in cases of children performing hazardous work.***

Article 5. Monitoring mechanisms and application of the Convention in practice. Hazardous work. Further to its previous comments, the Committee notes the Government's indication in its report that training has been conducted and resources allocated for capacity-building for OPROGEM and the Anti-Trafficking Division at the Central Office for Combating Organized Crime (OCLCO).

The Committee highlights the fact that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations of March 2020, expressed concern at the large number of children who are exploited in economic activities, including in hazardous conditions (E/C.12/GIN/CO/1, paragraph 29). ***The Committee requests the Government to provide information on the capacity-building measures implemented for the OCLCO and OPROGEM with a view to monitoring and combating hazardous work for children.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour and giving special attention to the situation of girls. Ensuring access to free basic education. Further to its previous comments, the Committee notes the Government's indications that education is a priority and that measures have been taken to improve the school system, such as recruiting and training teachers, establishing a remote area allowance for teachers, and guaranteeing that studies are free of charge. Moreover, incentive bonuses have been granted to promote the participation of girls in education.

The Committee duly notes the "National policy for literacy and non-formal education" adopted in 2018. The National Directorate for Literacy, Non-Formal Education and the Promotion of National Languages conducted a workshop to validate a strategy paper for the implementation of a literacy programme for 2 million young persons and adults by 2020.

Moreover, the Committee notes the preparation of a sectoral plan for education and training entitled the "Ten-Year Education Programme in Guinea 2020–29". The current status report on the programme indicates that only two thirds of young persons currently receive six years of schooling. In addition, according to the latest statistics available, for the 2019–20 period the primary school enrolment rate was 78.4 per cent for girls and 93.3 per cent for boys, and the high school completion rate was 16.8 per cent for girls and 28.5 per cent for boys. ***The Committee requests the Government to continue its efforts to improve the functioning of the education system in the country. In this regard, it requests the Government to take steps to increase the school enrolment, attendance and completion rates at both the primary and secondary levels, giving particular attention to the situation of girls. The Committee also requests the Government to continue providing information on the measures taken and the results achieved, including statistics on school enrolment and completion rates.***

Clause (b). Necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Begging, talibé children, and children working in mines. The Committee noted, according to the Government's indications in its previous report, that begging undertaken by children remained a major concern in Guinea. It also notes that sections 909–911 of the new Children's Code prohibit begging by children and that the perpetrators of the use of children for begging are liable to be punished by imprisonment. However, the Committee notes with ***regret*** the Government's indication in its report that no measures have been taken regarding children subjected to forced begging, even though it indicates that certain measures are under consideration.

In this regard, the Committee notes that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of February 2019, referred in its recommendations to the consistently high number of children involved in child labour, including the worst forms thereof, and requested the Government to strengthen its measures to combat the economic exploitation of children, in particular those working in mines and begging on the streets, including *talibé* children (CRC/C/GIN/CO/3-6, paragraph 42). ***The Committee once again urges the Government to take the necessary time-bound measures to remove children under 18 years of age from begging and to provide information in this regard. The Committee once again encourages the Government to establish a time-bound programme to ensure that child beggars under 18 years of age, including talibé children, are rehabilitated and socially integrated. It also requests the Government to provide information on the measures taken regarding the situation of children working in mines.***

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

Guinea-Bissau

Minimum Age Convention, 1973 (No. 138) (ratification: 2009)

Previous comment: direct request

Article 1 of the Convention and application of the Convention in practice. National policy designed to ensure the effective abolition of child labour. Further to its previous comments, the Committee notes the Government's indication in its report that the national child protection policy has been drawn up but is still the subject of public consultations. The Government also indicates that, in partnership with UNICEF, it has prepared a labour instrument aimed at abolishing child labour, and this is being finalized.

The Government further indicates that it does not have any information on the effective application of the Convention since child labour is not widespread in the country and that children generally gain practical experience of certain activities or learn occupations within their families. In this regard, the Committee notes with ***interest*** that, according to the latest MICS (Multiple Indicator Cluster Surveys) statistics established by Guinea-Bissau with support from UNICEF, the incidence of child labour appears to have decreased from 57 per cent in 2010 to 51.1 per cent in 2014 and 17.2 per cent in 2018–19. ***The Committee encourages the Government to continue its efforts to eliminate child labour in the country and would appreciate if the Government could provide information on the measures adopted that led to the reduction of child labour from 2010 to 2019. It also requests the Government to take the necessary steps to ensure the adoption in the near future of the national child protection policy and the labour instrument aimed at abolishing child labour, and to provide information on progress made in this respect and on their implementation once they have been adopted. Lastly, the Committee requests the Government to continue providing information on the manner in which the Convention is applied in practice, including statistics on the employment of children and young persons, extracts from the reports of the inspection services, and information on the number and nature of violations detected involving children and young persons.***

Article 2(1) of the Convention. Scope of application. Child domestic workers. The Committee notes the Government's indication that the latest statistical information available in the report on the situation of domestic workers in Guinea-Bissau, published in June 2020 by the National Association for the Protection of Domestic Workers, indicates that a total of 7,438 domestic workers have been recorded in the country. The Government also indicates that in Guinea-Bissau 35 per cent of children working as domestic employees are 12, 13 or 14 years of age. In this regard, the Government indicates that the new Labour Code, promulgated in July 2022, contains provisions on domestic work, including those concerning the minimum age for admission to such work, which is currently 16 years, and also the terms of domestic work contracts, remuneration arrangements, hours of work and limits on the length of the working day (meal breaks and weekly rest), holidays, and provisions on occupational safety and health (sections 287–300). ***The Committee therefore urges the Government to take steps to ensure the effective application of the new Labour Code so as to ensure that children under 16 years of age do not engage in domestic work. It requests the Government to provide information on measures taken in this respect and the results achieved, including on the number of cases of children under 16 years of age engaged in domestic work who have been identified, and the penalties imposed for violations.***

Article 2(2). Raising the minimum age for admission to employment or work. The Committee notes that section 347 of the new Labour Code, promulgated in July 2022, establishes the minimum age for admission to employment or work as 16 years. However, the Committee observes that at the time of ratification of the Convention, Guinea-Bissau declared 14 years as the minimum age for admission to employment or work. ***The Committee requests the Government to consider the possibility of notifying the ILO Director-General, by a new declaration within the meaning of Article 2(2) of the Convention,***

that the minimum age specified at the time of ratification of the Convention has been raised to 16 years.

Article 2(3). Age of completion of compulsory schooling. The Committee once again notes that under sections 12 and 13 of Act No. 4/2011 on education (Education Act), the age of completion of compulsory schooling is 14 years. The Committee notes that, since the new Labour Code prescribes a minimum age for admission to work of 16 years, it appears that the age of completion of compulsory schooling does not coincide with this. The Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (see 2012 General Survey on the fundamental Conventions, paragraph 371). ***The Committee therefore encourages the Government to consider raising the age of completion of compulsory schooling so that it coincides with the minimum age for admission to employment or work.***

Article 3(1) and (2). Minimum age for admission to hazardous work, and determination of hazardous types of work. Further to its previous comments, the Committee notes that section 355(1) of the new Labour Code provides that work which, by its nature or potential risks or the circumstances in which it is carried out, is likely to jeopardize the physical or psychological development of children under 18 years of age shall be prohibited. The Committee also notes that, under section 355(2), it shall be prohibited for children under 18 years of age to work in theatres, cinemas, nightclubs, discotheques or other similar establishments, or to engage in vending or door-to-door selling of pharmaceutical products, alcoholic beverages or tobacco. However, the Government indicates that no list of hazardous types of work has been drawn up. ***The Committee requests the Government to take the necessary steps to ensure that the list of hazardous types of work prohibited for children under 18 years of age is drawn up, after consultation of the employers' and workers' organizations concerned, and that it is adopted in the near future. The Committee requests the Government to provide information on all progress made in this regard.***

Article 6. Apprenticeships. The Committee notes that section 350 of the new Labour Code allows a child under 16 years of age who has not completed compulsory schooling to work if all the following conditions are fulfilled: (i) the child follows education or training which provides compulsory schooling and vocational training; (ii) in the case of a fixed-term employment contract, the length of the contract is not less than the total duration of the training, if the employer is responsible for the training process; (iii) the normal period of work includes a part devoted to training; and (iv) working hours make it possible to participate in education and training programmes. The Committee observes that the above-mentioned section appears to be concerned with cases of apprenticeship within an enterprise but that no minimum age is fixed in this regard. The Committee recalls that under *Article 6* of the Convention the minimum age for admission to an apprenticeship is *14 years*. ***The Committee requests the Government to take the necessary steps to ensure that the national legislation fixes the minimum age for entry to an apprenticeship at 14 years, as required by Article 6 of the Convention, and to provide information on progress made in this regard.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2008)

Previous comment: direct request

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. *Sale and trafficking of children.* With regard to the Committee's request to provide information on the application in practice of Act No. 12/2011 on preventing and combating trafficking in persons, particularly women and children (Anti-Trafficking Act), the Government indicates in its report that it does not have any information on this matter, since the juvenile court has not received any

complaints on the worst forms of child labour. The Committee also notes with ***concern*** the Government's indication, in its report on the application of the Forced Labour Convention, 1930 (No. 29), that two investigations into cases of trafficking in persons have been opened but no prosecution has been initiated and no sentence has been handed down. ***The Committee therefore requests the Government to ensure that persons engaging in the trafficking of children are investigated and prosecuted, and that penalties constituting an adequate deterrent are imposed. It once again requests the Government to provide information on the number of investigations, prosecutions, convictions and criminal penalties imposed for the trafficking of persons under 18 years of age, pursuant to the Anti-Trafficking Act.***

Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. Further to its previous comments, the Committee notes with ***regret*** the Government's indication that it does not have any information on the measures taken or envisaged to ensure that the *use*, that is to say *by a client*, of a child between 16 and 18 years of age in prostitution is prohibited. The Committee recalls that *Article 3(b)* of the Convention prohibits not only the procuring or offering but also the use of a child under 18 years of age for prostitution. ***The Committee urges the Government to take the necessary steps to ensure that the use of children between 16 and 18 years of age in prostitution is prohibited, and to provide information on progress made in this regard.***

Clause (d) and Article 4(1). Hazardous work and determination of hazardous work. ***As regards the adoption of the list of hazardous types of work in which it is prohibited to employ persons under 18 years of age, the Committee refers to its detailed comments on the application of the Minimum Age Convention, 1973 (No. 138).***

Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking of boys for forced labour and begging. The Committee notes with ***regret*** the Government's indication that it does not have any information on the subject of boys, especially *talibés*, who are victims of trafficking for forced labour and begging. However, the Committee notes the Government's indication, in the report which it submitted on Convention No. 29, that support was given in connection with the return of *talibé* children from Senegal (164 in 2021 and 78 in 2022). The aforementioned report also indicates that trafficking victims receive multiple forms of assistance, including psycho-social assistance, food and medical care, following eight stages: (1) identification of the victim; (2) emergency care, including medical care, for the victim; (3) examination of the victim's personal situation; (4) evaluation of the victim's family situation and environment; (5) possible alternatives for placing the victim outside his/her family; (6) social and occupational reintegration; (7) monitoring of the child after return to his/her family and community; and (8) support for the development of the socio-economic capacities of the family and community. These services are provided by a variety of actors in their respective roles, including social workers, police, community officials, reception centres and social partners. ***The Committee requests the Government to continue taking effective and time-bound measures to withdraw children under 18 years of age, and particularly young boys, from situations of trafficking for forced or compulsory labour, such as begging, and to ensure their rehabilitation and social integration. It requests the Government to provide information on the results achieved, particularly regarding the number of children, whether talibé or others, who have been withdrawn from trafficking and then rehabilitated and socially integrated via the eight stages of assistance for victims.***

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

Guyana

Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy for the elimination of child labour, labour inspection and application in practice. For a number of years, the Committee has urged the Government to strengthen its efforts to adopt a national policy for the elimination of child labour and to provide information on the measures taken in this direction. The Committee notes with ***satisfaction*** the adoption in 2019 of the National Child Labour Policy, that covers both the formal and informal economy, and the National Action Plan for the Elimination of Child Labour (2019–2025), as indicated in the Government's report. The objective of the National Child Labour Policy is to provide a supportive environment that fosters and enables the coordination, collaboration and cooperation of all parties concerned (including child protection, education and health sectors), to effectively prevent and eliminate child labour in all its forms. The National Action Plan has a three-fold dimension (preventive, protective and rehabilitative) and focuses on ten strategic issues: (1) enhancing public awareness; (2) promoting civil engagement and children participation; (3) widening access to education; (4) ensuring security for at risk families; (5) strengthening legislation; (6) ensuring rehabilitation for children removed from child labour; (7) building capacities to combat child labour; (8) implementation of a child management information system; (9) guaranteeing adequate resources; and (10) strengthening of leadership and coordination of a multi-sectoral response. The Committee notes that a National Child Labour Prevention and Elimination Committee and a Child Labour Inspectorate will be created to ensure the implementation of the National Action Plan. In this regard, the Child Labour Inspectorate should undertake regular investigation, inspection and monitoring of child labour in collaboration with other actors. The Committee also notes that the Government indicates that the National Steering Committee on Child Labour was re-established by the Ministry of Labour in 2020 and includes representatives from different ministries, the Guyana Child Protection Agency, associations of miners and the private sector. The Committee further notes that, according to the information contained in the National Action Plan, as of 2014, 18 per cent of children aged 5–17 years were engaged in child labour activities and 13 per cent worked under hazardous conditions. ***The Committee encourages the Government to continue taking measures towards the effective elimination of child labour, including hazardous child labour, within the framework of the National Child Labour Policy and National Action Plan 2019–2025, and to provide information on the results achieved. In this regard, the Committee requests the Government to provide information on the progress made towards the creation and subsequent functioning of the Child Labour Inspectorate. Finally, the Committee requests the Government to provide updated statistical information on the employment of children and young persons below the age of 15 in the country.***

Article 3(1) and (2). List of hazardous work. In reply to the Committee's request for information on the revision of the list of hazardous work, the Government indicates that this matter is still under consideration by the National Tripartite Committee. ***The Committee requests the Government to continue providing information on the progress made towards the revision of the list of hazardous work prohibited for children under the age of 18 years and to supply a copy of the new list once adopted.***

Article 3(3). Authorization to work in hazardous employment from the age of 16 years. For a number of years, the Committee has observed that section 6(b) of the Employment of Young Persons and Children Act (Chapter 99:01) authorizes the Minister to regulate the employment of children between the ages of 16–18 years in hazardous work. Recalling that *Article 3(3)* of the Convention requires that any hazardous work for persons from the ages of 16–18 years be authorized only upon the conditions that the health, safety and morals of the young persons concerned are fully protected and that they, in practice, receive adequate specific vocational training, the Committee urged the Government to bring the Employment of Young Persons and Child Act into conformity with the Convention. The Committee notes the Government's indication that, in line with the National Action Plan's strategic objective of strengthening national legislation related to child labour, the Government will send the Employment of Young Persons and Children Act to the National Steering Committee on Child Labour for its consideration and action. ***The Committee firmly hopes that the National Steering Committee on Child Labour will take the necessary steps to bring the Employment of Young Persons and Children Act into conformity with the Convention and requests the Government to provide a copy of the amendments to the Act once they have been finalized.***

Article 9(3). Keeping of registers. The Committee previously noted that section 86(a) of the Occupational Safety and Health Act, Chapter 99:06, provides for the obligation of employers of industrial establishments to keep registers of all employees under the age of 18 years and requested the Government to indicate the legislation that establishes the same obligation for employers in non-industrial undertakings. The Committee notes that the Government indicates that while section 86(a) of the Occupational Safety and

Health Act only concerns industrial establishments, the practice of the Ministry of Labour is to have in the general register the particulars of persons under the age of 18 years employed outside industrial undertakings. Taking note of the practice of the Ministry of Labour, the Committee recalls that, according to *Article 9(3)* of the Convention, national laws or regulations or the competent authority shall prescribe the registers or other documents, which shall be kept and made available by the employer, of persons whom he/she employs or who work for him/her and who are less than 18 years of age. Such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of all persons employed under the age of 18 years. ***Therefore, the Committee requests the Government to take the necessary measures to ensure that national legislation or regulations be adopted to ensure that all employers of non-industrial undertakings are obliged to keep registers of all persons below the age of 18 years who work for them, in conformity with Article 9(3) of the Convention and the indicated practice.***

The Committee recalls that the Government can avail itself of ILO technical assistance in relation to the issues raised in this observation.

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

Indonesia

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee noted from the 2009 Indonesia Child Labour Survey that there were approximately 1.76 million children engaged in child labour in Indonesia. It urged the Government to strengthen its efforts to ensure the elimination of child labour and to provide information on the measures taken in this regard.

The Committee takes note of the detailed information provided by the Government in its report concerning the various measures taken to eliminate child labour. These measures include: (i) carrying out awareness-raising activities to prevent and reduce child labour; (ii) disseminating the Child-Labour Free Indonesia Roadmap, pocket books and leaflets to 20 relevant companies, agencies and institutions; (iii) encouraging the private sector to contribute to the prevention of child labour through Corporate Social Responsibility funds; (iv) providing business assistance to parents of children vulnerable to child labour; (v) developing National Guidelines for Community Based Child Labour Elimination in Villages and Districts in collaboration with NGOs; (vi) preparing regional regulations for eliminating child labour; and (vii) reviewing the Child Labour Free Indonesia Roadmap in 2022 and conducting comprehensive collaboration with related ministries and agencies to achieve SDG 8.7 of no child labour by 2030. In addition, several measures to ensure the education of children, particularly children from underprivileged families, remote and disadvantaged areas were implemented through the Smart Indonesia Programme (to prevent children from dropping-out of school) and the National Strategy for Handling Out-of-School children as well as by introducing alternative education through building and equally distributing non-formal education units in remote and disadvantaged areas. Moreover, a Community-based Education/Development Information System was established to identify out-of-school children.

The Government also refers to certain regulations and policies adopted by the Government for the protection of children, in particular the Ministerial Regulation No. 2 of 2020 concerning the 2020–2024 Strategic Plan of the Ministry of Women Empowerment and Child Protection which, amongst others, aims to reduce child labour; and the Social Minister Decree No. 1 of 2018 concerning the Family Hope Program (PPA-PKH programme) which provides cash to very poor households. The Committee further notes the Government's information that the Ministry of Manpower, through the Family Hope Programme, succeeded in removing from work, 11,252 boys and 6,748 girls in 2019, and 4,078 boys and

4,922 girls in 2020 in various sectors. Overall, from 2008 to 2020, the Child Labour Reduction Programme in support of the Family Hope Programme removed a total of 143,456 children from child labour who returned to school.

The Committee, however, notes from the Government's Combined 5th and 6th periodic report to the Committee on the Rights of the Child of 2021 that according to the findings of the 2019 National Labour Force Survey, 2.36 million (6.35 per cent) of the workforce are children aged 10–17 years (paragraph 282). ***While taking due note of the measures taken by the Government, the Committee strongly encourages the Government to continue its efforts to ensure the progressive elimination of child labour. It requests the Government to continue to provide information on the measures taken in this regard, and the results achieved in terms of the number of children removed from child labour.***

Article 2(1). Scope of application and labour inspection. 1. *Informal economy.* The Committee previously noted that Act No. 13 of 2003 (Manpower Act) excluded from its application children who are engaged in self-employment or working without a clear wage relationship. It also noted from the 2009 Indonesia Child Labour Survey Report that, 57 per cent of all working children aged 5–17 years were employed in agriculture, including forestry, hunting and fishery. Moreover, out of all working children between the ages of 5–12, 12.7 per cent were self-employed, and 82.5 per cent were unpaid family workers.

With regard to the situation of child labour in the agricultural sector, the Government indicates that the labour inspectorate has made efforts to monitor the situation of child labour in this sector through the declaration of child-labour-free oil palm plantation sector in 287 companies in 35 districts/cities in 7 provinces. It also indicates that Government Regulation No. 78 concerning Special Protection for Children in situations of exploitation and Presidential Regulation No. 25 of 2021 concerning Child-Friendly District/City Policies were adopted for protecting children from child labour. The Committee notes from the Government's report submitted in 2021 under the Labour Inspection Convention, 1947 (No. 81) that focus group discussions and training on handling child labour for labour inspectors were conducted. ***Noting that a vast majority of children working under the minimum age are involved in informal employment which is not covered by the Manpower Act, the Committee once again urges the Government to take the necessary measures to ensure that the Convention is applied to all children, including children working outside an employment relationship. In this regard, the Committee requests the Government to continue to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate services to better monitor children working in the informal economy and on their own account, particularly in the agricultural sector. It requests the Government to continue to provide information on the measures taken in this regard and on the number and nature of violations relating to the employment of children and young persons detected by the labour inspectorate and the penalties imposed.***

2. *Domestic work.* ***With regard to the protection of children engaged in domestic work, the Committee requests the Government to refer to its detailed comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).***

Article 9(3). Keeping of registers. In its previous comments, the Committee noted that there appeared to be no provisions in the Manpower Act prescribing that a register be kept and made available by the employer.

The Committee notes that the Government has not provided any relevant information in this regard. The Committee therefore once again recalls that *Article 9(3)* of the Convention requires employers to keep registers containing the names and ages or dates of birth, duly certified wherever possible, of persons whom they employ or who work for them and who are less than 18 years of age. ***The Committee once again requests the Government to take the necessary measures, by amendment of the law or regulation, to ensure that all employers are obliged to keep registers of all persons below***

the age of 18 years who work for them, in conformity with Article 9(3) of the Convention and to provide information on any measures taken in this regard.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comments: observation and direct request

Articles 3 and 5 of the Convention. Worst forms of child labour and monitoring mechanisms. Clause (a). Sale and trafficking of children. With regard to its previous comments concerning the measures taken to strengthen the capacities of the law enforcement bodies to combat trafficking in persons, the Committee notes the Government's information in its report that in 2021, the Ministry of Women Empowerment and Child Protection (MoWECP) organized several trainings on issues related to trafficking in persons for 140 law enforcement & Human Resources officials from 34 provinces in Indonesia. The MoWECP also issued the Ministerial Regulation No. 08/2021 on the Standard Operating Procedure (SOP) for Integrated Services for Witnesses and/or Victims of trafficking in persons. The scope of this regulation includes complaints mechanism, health rehabilitation, legal assistance, repatriation, social rehabilitation and reintegration. Moreover, the Indonesian National Police conducts routine trainings on handling cases related to trafficking in persons for its officials and criminal investigators from the central and regional police offices. According to the data from the National Police Criminal Investigation Department, from 2015 to 2021, there were 1,279 victims of trafficking, including 25 girls and one boy. There were 103 cases involving 189 suspects, of which 78 cases have been completed. Moreover, based on the data compiled by the Online Information System for the Protection of Women and Children (SIMFONI PPA) in June 2022, the number of cases of trafficking in persons has increased steadily, from 226 cases in 2019, to 422 cases in 2020; and 683 cases in 2021. The majority of victims (91 per cent) were women and girls, while 9 per cent were men, including boys.

The Committee, however, notes from the UNICEF Report on State of Children in Indonesia, 2020 that Indonesia is a major source (and a destination and transit) country for trafficking in persons, including children, for purposes of sexual and labour exploitation. Indonesian women and girls are subjected to sex trafficking primarily in Malaysia, the Middle East and Taiwan as well as subjected to internal trafficking – particularly for mining operations in Maluku, Papua and Jami province. ***The Committee urges the Government to strengthen its efforts to combat trafficking of children by ensuring that thorough investigations and prosecutions are carried out against persons who engage in the trafficking of children and to provide information on the number of investigations, prosecutions and convictions, as well as the specific penalties imposed in this respect. In this regard, it requests the Government: (1) to continue to take the necessary measures to strengthen the capacity of law enforcement bodies to combat trafficking in children, including by means of training on anti-trafficking legislation and the provision of adequate resources, and (2) provide information on the criteria used for the identification of victims of trafficking as well as on the challenges faced by law enforcement bodies in this regard . The Committee requests that the Government provide information on the measures taken in this regard and the results achieved.***

Clause (c). Use, procuring or offering of children for the production and trafficking of drugs. The Committee previously noted that section 89 of the Act on Child Protection of 2002, provides for penalties involving imprisonment for life for persons who involve children in the production, sale and trafficking of drugs. However, it noted the Government's information that there had not been any significant progress made with regard to the prosecution of persons employing children in several of the worst forms of child labour, including drug trafficking, and that some cases were not taken to court.

The Committee notes the Government's reference to section 133(1) of Law No. 35 of 2009 on Narcotics that establishes penalties of imprisonment for involving children under the age of 18 years

for drug related offences, including the production, selling, buying and importing of drugs. The Government further provides information concerning the judicial procedure for drug related offences and indicates that children who engage voluntarily or without orders from an adult person in drug related offences shall be punished. Referring to its general observation on Convention No. 182 adopted in 2020, the Committee emphasizes that children involved in the worst forms of child labour, such as work in illicit activities should be treated as victims, rather than criminals. ***The Committee urges the Government to take the necessary measures to ensure that thorough investigations and prosecutions of persons who involve children in the production, sale or trafficking of illicit drugs are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It also requests the Government to take the necessary measures to ensure that children engaged in drug related offences are treated as victims rather than offenders and therefore are not punished. The Committee further requests the Government to provide information on the number of investigations, prosecutions and sanctions imposed pursuant to section 89 of the Act on Child Protection of 2002 and section 133(1) of Law No.35 of 2009 about Narcotics.***

Clause (d). Hazardous work. Child domestic workers. The Committee previously noted that the Domestic Workers Protection Bill, which will regulate domestic work by children under 18 years of age, was undergoing endorsement. It also noted that three local regulations on the protection of domestic workers were initiated in Bandar Lampung City, South Sulawesi Province and in Malang District. It further noted that the Committee on the Rights of the Child, in its concluding observations of 10 July 2014 expressed concern, at the high number of children, as young as 11 years old, who were involved in hazardous work in domestic work.

The Committee notes the Government's information that efforts are being made to eradicate hazardous child labour in the domestic sector through the Reduction of Child Labour to support the Family Hope Programme (PPK-PKH Programme) 2008–2020. Moreover, community-based child-labour eradication programmes, are being conducted in four regions namely Bandar Lampung City, South Sulawesi Province, Malang and Banten Districts. The Government also indicates that two regulations were issued for the prevention of child domestic work at the regional level, namely the Regent Regulation No. 4 of 2018 concerning Improving the Competence of Domestic Workers and Regulation No. 8 of 2018 concerning the Protection of Female Domestic Workers in Bandar Lampung City. With regard to the Domestic Workers Protection Bill, the Government states that a task force has been established to expedite its adoption process.

The Committee further notes that the ILO Project, namely Promoting Decent work for Domestic Workers and the Elimination of Child Labour in Domestic Work in Indonesia, 2018 had led to the development of ten emerging good practices from Indonesia which includes: campaigning through social media and engaging mass media to promote decent work for domestic workers and eliminate child domestic work; community-based monitoring; improving domestic worker supplier agencies' practices through Codes of Conduct, which includes respecting the minimum age of 18 years for recruitment and placement of domestic workers. ***The Committee strongly encourages the Government to continue its efforts to address the situation of child domestic workers, and to continue to provide information on the measures taken and the results achieved, particularly in terms of the prevention and withdrawal of children from domestic work. The Committee further hopes that the Government will take the necessary measures to ensure that the Domestic Workers Protection Bill is adopted, without delay, in order to ensure the comprehensive protection of children under 18 years from domestic work. It requests the Government to provide information on any progress made in this regard and to provide a copy once adopted.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assisting the removal of children from these worst forms. Commercial sexual exploitation of children. The Committee previously noted that the Government developed a guideline entitled "Child-friendly Tourism Villages" which would be applied as part of the

Community-based Integrated Child Protection Villages in tourism spots. It had urged the Government to intensify its efforts to protect children under 18 years of age from commercial sexual exploitation, including in the tourism sector.

The Committee notes the Government's information that Law No. 12 of 2022 concerning the Crime of Sexual Violence, which also regulates matters relating to the protection of victims of sexual exploitation along with penalties for its perpetrators have been adopted. The Government also indicates that throughout 2021, the MoWECP conducted Training of Trainers for the establishment of Exploitation-Free Child-Friendly Tourism Villages for 14 districts in 8 provinces, and from 2021–22, conducted Technical Guidance and Assistance for the Establishment of Exploitation-Free Child-Friendly Tourism Villages in 8 villages. The Government states that through these activities the villages have committed to protecting children and offering help and assistance for children in dealing with cases of exploitation including trafficking for sexual exploitation. The Committee, however, notes from the UNICEF report on the State of children in Indonesia, 2020 that children are sexually exploited in tourism in the Riau Islands bordering Singapore and in Bali. Furthermore, according to the UNICEF Press release of 22 July 2022 on the findings of a survey entitled Disrupting Harm in Indonesia, 2021 (funded by the Global Partnership to End Violence against Children with UNICEF as one of its partners), at least 2 per cent of children (around 500,000) aged 12–17 years in Indonesia are reported to be victims of online sexual exploitation. ***The Committee urges the Government to continue to take effective and time-bound measures to identify and protect children under the age of 18 years from commercial sexual exploitation in the tourism sector and online sexual exploitation. It requests the Government to continue to provide information on the measures taken in this regard, including the number of children who have been removed from commercial sexual exploitation and rehabilitated. Lastly, the Committee requests the Government to continue to provide information on the impact of the Guideline on Child-friendly Tourism Villages in preventing children from engaging in commercial sexual exploitation.***

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

Iraq

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2019. The Committee notes the detailed discussion which took place at the 108th Session of the Conference Committee on the Application of Standards in June 2019, concerning the application by Iraq of the Convention.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

Articles 3(a) and 7(1) of the Convention. All forms of slavery and practices similar to slavery. Compulsory recruitment of children for use in armed conflict and penalties. In its previous comments, the Committee noted from the report of the United Nations Secretary-General on Children and Armed Conflict of 16 May 2018 that the recruitment of children for their use in armed conflict is still prevailing on the ground. The Committee also noted that the UN Secretary-General expressed his concern about the organization of military training for boys aged 15 and above by the pro-government Popular Mobilization Forces (PMF) and encouraged the Government to develop an action plan to end and prevent the alleged training, recruitment and use of children by the PMF (A/72/865–S/2018/465, paragraph 85). The Committee strongly urged the Government to take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop to the forced recruitment of children under 18 years of age into armed forces and armed groups.

The Committee notes that the Conference Committee urged the Government to provide an immediate and effective response for the elimination of the worst forms of child labour, including to: (i) take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children into armed forces and armed groups; (ii) adopt legislative measures to prohibit the recruitment of children under 18 years of age for use in armed conflict; (iii) take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out and sufficiently effective and dissuasive penalties are imposed in practice; and (iv) collect and make available without delay information and statistics on investigations, prosecutions and penalties relating to the worst forms of child labour according to national enforcement mechanisms.

The Committee notes the observations of the ITUC that children are recruited and trained for suicide attacks, production of explosives and sexual exploitation. The eradication of these forms of child labour must be the highest of priorities for the Government of Iraq. It would also appear that military training is organized for boys aged 15 and over by pro-government forces. To combat these practices, it is essential for the legislation in Iraq to establish this prohibition explicitly together with effective and dissuasive penalties against those responsible for such recruitment.

The Committee notes the Government's reference to Law No. 28 of 2012. The Committee observes however that Law No. 28 is related to trafficking in persons and is not linked to the recruitment of children for use in armed conflict. The Committee notes the Government's indication that the competent courts have taken all legal measures to investigate those accused of mobilizing and recruiting children. The Government adds that there have been unverified reports of cases of children being forcibly recruited and compelled to fight by armed and similar groupings unlawfully claiming to be affiliated with the PMF. The only information that has been corroborated relates to terrorist groupings associated with the Islamic State in Iraq and Levant (ISIL) and their forced recruitment of children into their organizations and use of them in suicide missions and as human shields.

The Committee observes that in its report "Children and armed conflict" of 2019, the UN Secretary-General (UN Report) indicates that 39 children were recruited and used by parties to the conflict including five boys between the ages of 12 and 15, used by the Iraqi Federal Police in Nineveh Governorate to fortify a checkpoint, and one 15-year-old boy used by ISIL in Anbar Governorate to drive a car bomb into Fallujah city. In addition, 33 Yazidi boys between the ages of 15 and 17 were rescued after being abducted in Iraq in 2014 by ISIL and trained and deployed to fight in the Syrian Arab Republic (A/73/907/S/2019/509, paragraph 71).

The Committee once again ***deeply deplores*** the current situation of children affected by armed conflict in Iraq, especially as it entails other violations of the rights of the child, such as abductions, murders and sexual violence. It recalls that, under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, Member States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee once again strongly urges the Government to take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop to the forced recruitment of children under 18 years of age into armed forces and armed groups. It also once again urges the Government to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons, including members in the regular armed forces, who recruit children under 18 years of age for use in armed conflict, are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, the Committee once again urges the Government to take the necessary measures to ensure the adoption of the law prohibiting the recruitment of children under 18 years of age for use in armed conflict and expresses the firm hope that this new law will establish sufficiently effective and dissuasive penalties. The Committee requests the Government to provide information on any progress made in this regard.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (c). Prevent the engagement of children in the worst forms of child labour. Access to free basic education. The Committee notes that the Conference Committee urged the Government to: (i) develop policies and programmes aimed at ensuring equal access to free public and compulsory education for all children by taking steps to give immediate effect to its previous commitment to introduce laws that prohibit the recruitment of children for armed conflict and

dissuasively penalize those who breach this law; and (ii) supplement without delay the UNESCO "Teach a Child" project and other projects with such other measures as are necessary to afford access to basic education to all children of school age, particularly in rural areas and areas affected by war.

The Committee notes the Government's reference to a number of projects and programmes aiming to provide access to basic education for all children including: (i) the UNESCO "Teach a child" project has been implemented in the General Directorates of Education in the following governorates (Baghdad/Al-Rusafa Third/Al-Karkh Third) during the 2018–19 school year; (ii) the "Stabilization and Peace" programmes have been implemented in Nineveh Governorate during the 2018–19 school year, with support from the Mercy Corps international organization, to bring school dropouts in the 12–18 age group back into the classrooms; and (iii) programmes have been implemented to foster educational opportunities for young people from the governorates affected by the crises in Iraq (i.e. Baghdad/Al-Karkh First and Second/Al-Rusafa First and Second/Diyala/Kirkuk/Al-Anbar/Saladin) by opening "Haqak Fi Altaalim" centres for the 10–18 age group during the 2018–19 school year with the support of the Mercy Corps international organization. The Government also states that schools have been opened and have accelerated learning offered to bring in children in the 10–18 age group in the different governorates with appropriate monitoring and follow-up. ***While acknowledging the difficult situation prevailing in the country, the Committee encourages the Government to continue to take the necessary measures to improve access to free basic education of all children, particularly girls, children in rural areas and in areas affected by the conflict. It also requests the Government to continue to provide information on the results achieved through the implementation of projects, particularly with respect to increasing the school enrolment and completion rates and reducing school drop-out rates so as to prevent the engagement of children in the worst forms of child labour.***

Clause (b). Providing the necessary and appropriate assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. *Children in armed conflict.* The Committee notes the Government's indication that a High-Level Supreme National Committee was established to follow up on abuses to which children are subjected to or the deprivation of their rights as a result of the armed conflict. This Committee is chaired by the Minister of Labour and Social Affairs and the Head of the Childcare Agency, with the membership of the board of the High Commission for Human Rights, the Ministry of the Interior, the Ministry of Education, the NGO Directorate, along with a representative from the PMF and another from the Foreign Ministry.

The Committee notes that according to the UN Report, as of December 2018, at least 902 children (850 boys and 52 girls) between the ages of 15 and 18 remained in detention on national security-related charges, including for their actual and alleged association with armed groups, primarily ISIL (paragraph 72). The Committee ***deplores*** the practice of the detention and conviction of children for their alleged association with armed groups. In this regard, the Committee must emphasize that children under the age of 18 years associated with armed groups should be treated as victims rather than offenders (see 2012 General Survey on the fundamental Conventions, paragraph 502). ***The Committee, therefore, once again urges the Government to take the necessary measures to ensure that children removed from armed groups are treated as victims rather than offenders. It also, once again, urges the Government to take effective and time-bound measures to remove children from armed groups and ensure their rehabilitation and social integration. It requests the Government to provide information on the activities of the High-Level Supreme National Committee and the results achieved, in terms of the number of children removed from armed groups and socially reintegrated.***

2. *Sexual slavery.* The Committee notes that the Conference Committee urged the Government to take effective measures to identify and support children, without delay, who have been sexually exploited and abused through such means of sexual enslavement.

The Committee notes the Government's reference to article 29(iii) of the Constitution (prohibition of economic exploitation of children) as well as to section 6(iii) of the Labour Law of 2015 (elimination of child labour). The Committee notes however the absence of information on the practical measures envisaged or taken to identify and remove children from sexual slavery. ***The Committee therefore once again urges the Government to take effective and time-bound measures to remove children under 18 years of age from sexual slavery and ensure their rehabilitation and social integration. It once again requests the Government to provide information on specific measures taken in this regard as well as the number of children removed from sexual slavery and rehabilitated.***

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

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

Kenya

Minimum Age Convention, 1973 (No. 138) (ratification: 1979)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously noted the Government's indication that it had established several social support programmes, including the Cash Transfer Programmes to Orphans and Vulnerable Children (CT–OVC); Urban Food Subsidy; and several bursaries such as the Presidential Bursary Scheme for Orphans and Vulnerable Children. It further noted several activities undertaken by the ILO–IPEC, through the Global Action Programme (GAP 11) as well as the achievements made under the Support to the National Action Plan (SNAP) project. The Committee, however, noted from the SNAP project report that child labour remained a developmental challenge in Kenya that was linked to issues such as access to education, skills training and related services, social protection and the fight against poverty. The Committee therefore strongly encouraged the Government to strengthen its efforts to improve the situation of children under the age of 16 years and to ensure the progressive elimination of child labour in the country.

The Committee notes the detailed information provided by the Government in its report on the measures taken to eliminate child labour through improving the functioning of the educational system. In this regard, the Committee notes the measures taken to improve school enrolment and attendance rates and reduce drop-out rates, such as the implementation of: (i) free primary education policy; (ii) provision for primary school infrastructure improvement grants; and (iii) the implementation of feeding programmes in selected primary schools in arid and semi-arid lands (ASAL), slums and poverty-stricken areas.

The Committee further notes the information from the ILO website that in October 2016, the National Assembly of Kenya adopted a National Policy on Elimination of Child Labour (NPCL) which aims at building synergies and mainstreaming child labour interventions in national, county and sectoral policies. The National Policy focuses on strategies that are aimed at the prevention, identification, withdrawal, rehabilitation and reintegration of children involved in all forms of child labour. It also notes from the Government's report to the Human Rights Council that a National Plan of Action (NPA) for Children 2015-2022 has been adopted which proposes to implement programmes for children (A/HRC/WG.6/35/KEN/1, paragraph 16).

However, the Committee notes the Government's further indication that 17 per cent of children aged between 5-17 years are involved in child labour with the agricultural and domestic sectors being the main areas where child labour is more prevalent. The Committee further notes from the UNICEF Situation Analysis of Children and Women in Kenya, 2017 that a total of 9.5 million children in Kenya are experiencing multidimensional child poverty. While noting the measures taken by the Government, the Committee must express its ***concern*** at the significant number of children who are involved in child labour and are at risk of being engaged in child labour. ***The Committee therefore urges the Government to intensify its efforts to improve the situation of children under the age of 16 years and to ensure the progressive elimination of child labour in the country. It requests the Government to continue to provide specific information on the concrete measures taken in this regard, including the measures taken within the framework of the NCLP and the NPA 2015-2022 as well as the results achieved. The Committee also requests the Government to provide detailed information on the manner in which the Convention is applied in practice, including, for example, statistical data on the employment of children and young persons, extracts from the reports of the inspection services, and information on the number and nature of violations detected and penalties applied involving children and young persons.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3(a) and 7(1) of the Convention. Worst forms of child labour and penalties. Trafficking of children. The Committee notes from the Assessment Report on Human Trafficking Situation in the Coastal Region of Kenya, 2018 by the International Organization for Migration (IOM Assessment Report), that Kenya has been identified as a source, transit and destination country for men, women and children subjected to forced labour and sex trafficking. The IOM has documented that internal trafficking occurs within Kenya mainly for purposes of domestic labour and sexual exploitation, while international or cross-border trafficking occurs for purposes of forced labour, domestic servitude and sexual exploitation. Child trafficking constitutes the main category of cases reported in the country and children are trafficked to work as domestic labourers, work in farming, fisheries, begging and for sex work in the coastal region of Kenya. This report also indicates that trafficking in persons in the coastal region of Kenya has been increasing with the most prevalent forms being trafficking for labour and sexual exploitation and child trafficking. The Committee also notes that the Committee on the Elimination of Discrimination against Women (CEDAW) in its concluding observations of November 2017 expressed its concern that women and girls, including in refugee camps, remain at risk of trafficking for purposes of sexual exploitation or forced domestic labour and at the low level of prosecutions of traffickers, particularly under the Counter-Trafficking in Persons Act of 2010 (CEDAW/C/KEN/CO/8, paragraph 26). ***The Committee therefore urges the Government to take the necessary measures to ensure the effective implementation and enforcement of the provisions of the Counter Trafficking in Persons Act by conducting thorough investigations and prosecutions against persons who engage in the trafficking of children and ensuring that sufficiently effective and dissuasive sanctions are imposed. It requests the Government to provide information on the measures taken in this regard and on the number of investigations, prosecutions, convictions and penalties imposed for the offences related to the trafficking of children under 18 years of age.***

Articles 3(d), 4(1) and 7(2)(a) and (b). Hazardous work and effective and time-bound measures to prevent the engagement of children in, and to remove them from the worst forms of child labour and to provide for their rehabilitation and social integration. Child domestic work. In its previous comments, the Committee noted that section 12(3), read in conjunction with section 24(e) of the Employment (General) Rules of 2014, prohibits the employment of children under the age of 18 years in various types of hazardous work listed under fourth schedule of the Rules, including domestic work. The Committee also noted that ILO–IPEC, through the Global Action Programme (GAP 11) has supported several activities, including the carrying out of a situational analysis for child domestic workers in Kenya. According to the GAP report of 2014, the situation analysis revealed that, children over 16 years of age, some of whom started working at 12–13 years, are involved in domestic work in Kenya. Many are underpaid and work for long hours averaging 15 hours per day and are subject to physical and sexual abuse. It further noted that according to the report entitled Road Map to Protecting Child Domestic Workers in Kenya: Strengthening the Institutional and Legislative Response, April 2014, there were estimated 350,000 child domestic workers in Kenya, the majority of whom are girls between 16 and 18 years of age. The Committee requested the Government to take the necessary measures to prevent child domestic workers from engaging in hazardous work and to take effective and time bound measures to remove them from such work and to provide for their rehabilitation and social integration.

The Committee notes that the Government has not provided any information on the measures taken to remove children from hazardous domestic work nor on measures for their rehabilitation and social integration. However, it notes the Government's indication in its report that 17 per cent of children aged between 5–17 years are involved in child labour with the agricultural and domestic sectors being the main areas where child labour is more prevalent. About 82 per cent of the domestic workers are girls from rural areas working in urban centres. The Committee notes with ***concern*** the large number of children under the age of 18 years who are involved in domestic work and are subject to hazardous working conditions. ***The Committee therefore once again urges the Government to take the necessary measures to ensure that its new regulation on hazardous work is effectively applied so as to prevent domestic workers under 18 years of age from engaging in hazardous work. It also requests the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children engaged in domestic work from hazardous working conditions and ensure their rehabilitation and social integration.***

The Committee finally requests the Government to provide information on the measures taken in this regard and on the results achieved, in terms of the number of child domestic workers removed from such situation and rehabilitated.

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. 1. *Street children*. In its previous comments, the Committee noted the Government's information that the Government, in partnership with ILO–IPEC was working to support the removal of children from street work and to enrol them in skills training programmes and entrepreneurship training. The Committee requested the Government to continue to provide information on the measures taken by the Government to protect street children from the worst forms of child labour and to provide for their rehabilitation and social integration.

The Committee notes the Government's information that it has been implementing the Street Family Rehabilitation Trust Fund and that it is in the process of developing a National Policy on Rehabilitation of Street Families. The Committee also notes that according to the UNICEF Situation Analysis of Children and Women (SITAN report) in Kenya, 2017 under the Street Family Rehabilitation Trust Fund, more than 80,200 street children and youth have been enrolled in primary and secondary schools, while 18,000 street children have been re-integrated with their families. However, SITAN report indicates that there are an estimated 50,000 to 250,000 children who are living and/or working on the streets in Kenya. While noting the measures taken by the Government the Committee must express its ***concern*** at the significant number of children working on the streets. ***The Committee therefore urges the Government to intensify its efforts to protect street children from the worst forms of child labour, and to ensure the rehabilitation and social integration of children actually removed from the streets. It also requests the Government to provide information on the measures taken in this regard and the results achieved in terms of the number of street children removed from such situations and socially reintegrated.***

2. *Orphans of HIV/AIDS and other vulnerable children (OVCs).* The Committee previously noted, that according to the ILO–IPEC TACKLE project report entitled "Combating child labour in Siaya District, Kenya through sustainable home grown school feeding programme", the Government of Kenya estimated that 1.78 million children are orphans in Kenya, half of them being due to HIV/AIDS related deaths, with 40 per cent of them living with their grandparents. The Committee requested the Government to strengthen its efforts to protect child victims and orphans of HIV/AIDS from the worst forms of child labour, in particular by increasing their access to education.

The Committee notes that the Government has not provided any information in this regard. It notes from the SITAN report that currently 353,000 households are benefitting from the Cash Transfer Programme for OVCs. Moreover, the Presidential Bursary Scheme for OVCs is being provided to 50 children per constituency. The SITAN report further indicates that there are 854 registered Charitable Children's Institutions in Kenya providing care and protection to around 43,000 children. The Committee, however, notes from the SITAN report that approximately 3.6 million Kenyan children are orphans or otherwise classified as vulnerable. Of these, 646,887 children have lost both parents, while 2.6 million have lost one parent (one million of these due to AIDS). Other children are made vulnerable due to poverty, harmful cultural practices, abandonment, natural disasters, ethnic and political conflict and/or poor care arrangements. ***Recalling that orphans and OVCs are at a greater risk of being involved in the worst forms of child labour, the Committee urges the Government to intensify its efforts to ensure that such children are protected from the worst forms of child labour and to facilitate their access to education. It requests the Government to provide information on the effective and time bound measures taken and the results achieved in this regard.***

Clause (e). Take account of the special situation of girls. Commercial sexual exploitation of girls. In its previous comments, the Committee noted that children were exploited in prostitution throughout Kenya, including in the coastal sex tourism industry, in the eastern khat cultivation areas, and near Nyanza's gold mines. Brothel-based child prostitution was reportedly increasing in Migori, Homa Bay, and Kisii counties, particularly around markets along the border with the United Republic of Tanzania. The Committee requested the Government to take effective and time bound measures to protect girls from becoming victims of commercial sexual exploitation and to provide information on such measures.

The Committee notes an absence of information in the Government's report on this point. The Committee, however, notes from the SITAN report that the sexual exploitation of children in travel and tourism is reportedly common in major tourist destinations such as Nairobi, Mombasa, Kisumu, Kakamega,

Nakuru as well as in other major towns in Kenya. It also notes from the IOM Assessment Report that an estimated 10,000 to 15,000 girls between 12 and 18 years living in Diani, Kilifi, Malindi and Mombasa are involved in sex work. This report also indicates that child sex workers including beach boys, bar staff, waiters and others are often compelled to deliver sexual services and that during the low tourist season, the local market for child sex workers keeps the system going. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations of 2016, expressed concern about the high level of child prostitution and child pornography, particularly in the tourism and travel sector (CRC/C/KEN/CO/3-5, paragraph 37). The Committee notes with ***deep concern*** the significant number of children who are engaged in this worst forms of child labour in Kenya***. The Committee therefore urges the Government to take effective and time-bound measures to protect girls from becoming victims of commercial sexual exploitation, particularly in the coastal regions of Kenya. It requests the Government to provide information on the measures taken in this regard and the results achieved in terms of the number of children who are, in practice, removed from commercial sexual exploitation and rehabilitated.***

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

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

Lao People's Democratic Republic

Minimum Age Convention, 1973 (No. 138) (ratification: 2005)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously requested the Government to provide information on the implementation of the National Strategy and Plan of Action on Prevention and Elimination of Child Labour (2014-2020), which aims at improving access for child labourers and vulnerable children to services and interventions, maintaining children in school and mainstreaming child labour concerns into agriculture sector policies and interventions. The Committee also requested the Government to provide information on the development of a database on child labour and school attendance and of the second National Child Labour Survey, planned for 2020.

The Government indicates in its report that it has collected data in two provinces (Savannakhet and Salavan), within the framework of the National Strategy and Plan of Action on Prevention and Elimination of Child Labour (2014–2020). The Committee observes however that the corresponding data has not been provided by the Government. The Committee notes from the Government's report to the United Nations Committee on the Rights of the Child (CRC) of October 2017, that the National Strategy and Plan of Action on Prevention and Elimination of Child Labour (2014–2020) institutionalized mandatory training on child labour for law enforcement officials, prosecutors, judges and labour inspectorates (CRC/C/LAO/3-6, paragraph 178).

The Committee observes that according to the Lao Social Indicator Survey II 2017 (LSIS II), issued in 2018 by the Lao Statistics Bureau and UNICEF, 41.5 per cent of children aged 5–14 years are engaged in child labour. It further notes that 16.5 per cent of children aged 5–11 years and 39.3 per cent of children aged 12–14 years are involved in hazardous types of work. A total of 27.9 per cent of children aged 5–17 years work under hazardous conditions (26.7 per cent of girls and 29 per cent of boys). The Committee is therefore bound to express its ***concern*** at the significant number of children below the minimum age for admission to employment who are engaged in child labour, including in hazardous conditions. ***The Committee requests the Government to strengthen its efforts to ensure the progressive elimination of child labour in all economic activities. It requests the Government to provide information on the measures taken in this respect as well as on the results achieved, including within the framework of the National Strategy and Plan of Action on Prevention and Elimination of Child Labour (2014–2020).***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Organisation of Employers (IOE), and the International Trade Union Confederation (ITUC) received on 29 August and 1 September 2019, respectively. It also notes the detailed discussion which took place at the 108th Session of the Conference Committee on the Application of Standards in June 2019, concerning the application by the Lao People's Democratic Republic of the Convention.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

Articles 3(a) and (b) and 7(1) of the Convention. Worst forms of child labour and penalties. Trafficking and commercial sexual exploitation. The Committee previously noted the Government's information that it was taking measures to implement the Anti-Human Trafficking Law of 2015, which imposes a sentence of 15 to 20 years of imprisonment for trafficking of children, in order to combat the trafficking and commercial sexual exploitation of children. The Committee also noted from the National Commission for the Advancement of Women and Mothers and Children (NCAW-MC), that the People's Supreme Court recorded 264 cases involving trafficking of children in 2017. It further noted that the United Nations Committee on the Rights of the Child (CRC) expressed concern at the large number of cases of trafficking and sexual exploitation of children not leading to prosecutions or convictions, among other reasons because of traditional out-of-court settlements at the village level, corruption and the alleged complicity of law enforcement, judiciary and immigration officials. The Committee therefore urged the Government to take the necessary measures to ensure that, in practice, thorough investigations and prosecutions were carried out for persons who engaged in the trafficking of children including foreign nationals and state officials suspected of complicity, and that sufficiently effective and dissuasive sanctions were imposed.

The Committee notes that the Government representative of Lao, during the discussion at the Conference Committee, indicated that at the village level, the Child Community Protection Network has been established to make child protection services more accessible to communities, including for children at risk of being trafficked or sexually exploited.

The Committee notes that, in its conclusions adopted in June 2019, the Conference Committee urged the Government to continue to formulate and thereafter carry out specific measures targeted at eliminating the worst forms of child labour, including trafficking and commercial sexual exploitation of children, in consultation with the social partners. The Conference Committee also urged the Government to take measures as a matter of urgency to strengthen the capacity of the law enforcement authorities including the judiciary; and to establish a monitoring mechanism in order to follow-up on complaints filed, investigations carried out as well as to ensure an impartial process of prosecuting cases that takes into account the special requirements of child victims, such as protecting their identity and the ability to give evidence behind closed doors.

The Committee notes the observations of the IOE that the national system is lacking consistency and effectiveness to combat child trafficking and commercial sexual exploitation, leading to few investigations, prosecutions and convictions relating to cases of trafficking of children for exploitation. The Committee also notes the observations of the ITUC that it is concerned at the absence of concrete steps taken by the Government to combat in practice the incidence of child trafficking and exploitation. It deplores the lack of results obtained so far in adequately investigating, prosecuting and convicting those responsible for child trafficking and states that stronger enforcement measures are needed in this regard.

The Committee notes the Government's information, in its report, that according to the data of the National Anti-trafficking Committee, in 2018, law enforcement officers have investigated and prosecuted 39 cases of trafficking in persons, including 26 new cases, involving 64 victims among which 24 were under 18 years of age. The Government also indicates that it will immediately build the technical capacities of law enforcement officials and judicial bodies to allow them to perform their duties with transparency, impartiality and effectiveness.

The Committee observes that, according to the report of the United Nations Special Rapporteur on the sale and sexual exploitation of children of January 2019 on her visit to the Lao People's Democratic

Republic, the sexual exploitation of children, mainly girls, by both locals and foreigners, is an issue of concern in the country, happening in places such as casinos, bars and brothels, with the complicity of the authorities in some instances. It indicates that the sale and trafficking of children for sexual and labour exploitation, both internally and externally, including to Thailand, is also an issue of utmost concern in the country (A/HRC/40/51/Add.1, paragraphs 9, 10, 11 and 17). The Special Rapporteur also states that the lack of accountability for the perpetrators of trafficking in children and of enforcement of the existing legal frameworks impedes the prevention of sale and sexual exploitation of children. Moreover, the participation of the authorities in the trafficking rings and criminal networks, as well as the impunity of perpetrators are some of the main issues of concern relating to cross-border trafficking with Thailand (A/HRC/40/51/Add.1, paragraphs 25, 37 and 44).

While noting some measures taken by the Government to prosecute a certain number of cases of trafficking in persons, including children, the Committee notes an absence of information on the convictions or penalties applied, as well as an absence of information on prosecutions, convictions and penalties applied to child sex tourists. ***The Committee therefore urges the Government to strengthen its efforts to combat the trafficking and commercial sexual exploitation of children, by ensuring that traffickers, including complicit officials, as well as child sex tourists, are held accountable, through thorough investigations and prosecutions, as well as through the imposition of sufficiently effective and dissuasive penalties. It requests the Government to provide information on the application of the relevant provisions of the Anti-Human Trafficking Law in practice, indicating in particular the number of investigations, prosecutions, convictions and penal sanctions applied for the offences of trafficking and commercial sexual exploitation of persons under 18 years of age.***

Article 7(2). Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing assistance for the removal of children from such labour. Trafficking and commercial sexual exploitation of children. The Committee previously requested the Government to pursue its efforts to ensure that child victims of trafficking were provided with appropriate services for their repatriation, rehabilitation and social integration. The Committee also urged the Government to take effective and time-bound measures to protect children from becoming victims of commercial sexual exploitation in the tourism sector.

The Committee notes that, in its conclusion of June 2019, the Conference Committee urged the Government to take immediate and time-bound measures, together with the social partners, to protect children from falling victim to commercial sexual exploitation, including through the implementation of programmes to educate vulnerable children and communities about the dangers of trafficking and exploitation, with a focus on preventing children from being trafficked and being subject to commercial sexual exploitation, and through the establishment of centres to rehabilitate child victims and reintegrate them into society.

The Committee notes that, in its observations, the IOE calls upon the Government to implement effective measures, in consultation with employers and workers, to protect children from becoming victims of commercial sexual exploitation, targeting places where the incidence of such abuse and exploitation is said to be high. It also states that action should be taken to mobilize business groups within the tourism industry such as hotels, tour operators and taxi drivers, and to monitor more closely tourists and visitors. The Committee also notes the observations of the ITUC that it is seriously concerned that the absence of government investment in rehabilitation and education of victims of sexual exploitation and trafficking of children makes victims vulnerable to re-trafficking.

The Committee notes the Government's indication that it has conducted various awareness-raising events in several provinces in 2018 and 2019 to promote the prevention of and protection from commercial sexual exploitation of children, focusing inter alia on the tourism sector. The Government also indicates that, from 2014 to 2016, the National Commission for the Advancement of Women and Mothers and Children, together with the Ministry of Labour and Social Welfare (MLSW), provided assistance to 164 women and children victims of trafficking who were repatriated, as well as provided scholarships, vocational training, and counselling and medical services. The Government further indicates that, since 2006, the Centre for Counselling and Protection of Women and Children of the Lao Women's Union has provided 150 child victims of trafficking with accommodation and legal, medical, educational and vocational referrals. The Government specifies that four centres provide assistance to trafficking victims. It also states that, within the framework of the Memorandum of Understanding with Thailand, the Government will build a social development centre in Vientiane to provide victims of trafficking with medical services and vocational training. ***While taking note***

of the efforts being made by the Government, the Committee requests it to redouble its efforts to prevent children under 18 years of age from becoming victims of trafficking as well as commercial sexual exploitation in the tourism sector and to supply information on the measures taken in this regard. It also requests the Government to continue to take the necessary measures to provide child victims of trafficking and commercial sexual exploitation with appropriate services for their rehabilitation and social integration, and to continue to supply information on the measures taken in this regard, including the number of child victims of trafficking and commercial sexual exploitation who have been removed and provided with support and assistance.

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

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

Lebanon

Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 2(1) of the Convention. Scope of application. In its earlier comments, the Committee noted that the Labour Code only applies to work performed under an employment relationship (by virtue of sections 1, 3 and 8 of the Code). The Committee recalled that the Convention applies to all branches of economic activity and covers all types of employment or work, whether they are carried out on the basis of an employment relationship or not, and whether they are remunerated or not. The Committee also noted that under Chapter 2, section 15, of the draft amendments to the Labour Code, it seemed that the employment or work of young persons would also include non-traditional forms of employment relationship. The Committee therefore requested that the Government provide information on the progress made in relation to the adoption of the provisions of the draft amendments to the Labour Code.

The Committee notes an absence of information in the Government's report on this point. ***Considering that the Government has been referring to the draft amendments to the Labour Code for a number of years, the Committee once again expresses the firm hope that the Government will take the necessary steps to ensure that the amendments to the Labour Code relating to self-employed children and children in the informal economy are adopted in the very near future. The Committee requests that the Government provide a copy of the new provisions, once adopted.***

Article 2(2). Raising the minimum age for admission to employment or work. In its earlier comments, the Committee noted that, at the time of ratifying the Convention, Lebanon declared 14 years as the minimum age for admission to employment or work and that Act No. 536 of 24 July 1996, amending sections 21, 22 and 23 of the Labour Code, prohibits the employment of young persons before the age of 14. The Committee also noted the Government's intention to raise the minimum age for admission to employment or work to 15 years of age and that the draft amendments to the Labour Code would include a provision in this regard (section 19). The Committee requested that the Government provide information on the progress made in the adoption of the provisions of the draft amendments to the Labour Code on the minimum age for employment or work.

The Committee notes the Government's indication in its report that the Committee's comments have been taken into account in the draft amendments to the Labour Code. The draft has also been submitted to the Council of Ministers for its examination. ***The Committee once again requests that the Government provide information on any progress made in the adoption of the provisions of the draft amendments to the Labour Code regarding the minimum age for employment or work.***

Article 2(3). Compulsory education. In its earlier comments, the Committee noted that the age limit for compulsory education is 12 years of age (Act No. 686/1998 relating to free and compulsory education at the primary school level). The Committee also noted the Government's indication that a draft law aimed at raising

the minimum age of compulsory education to 15 years had been sent to the Council of Ministers for examination. The Committee requested that the Government indicate the progress made in this regard.

The Committee notes the Government's indication that the Ministry of Labour took into account the Committee's comments which were inserted in the draft amendments to the Labour Code. Moreover, the Committee notes that in its 2016 concluding observations, the UN Committee on Economic, Social and Cultural Rights is concerned at the number of children, especially refugee children, who are not in school or have quit school owing to the insufficient capacity of the educational infrastructure, the lack of documentation, and the pressure to work to support their families, among other reasons (E/C.12/LBN/CO/2, paragraph 62).

In this regard, the Committee recalls the necessity of linking the age of admission to employment to the age limit for compulsory education. If the two ages do not coincide, various problems may arise. If the minimum age for admission to work or employment is lower than the school leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work (see 2012 General Survey on the fundamental Conventions, paragraph 370). Noting the Government's intention to raise the age of completion of compulsory schooling to 15 years, the Committee once again reminds the Government that pursuant *to Article 2(3)* of the Convention, the minimum age for admission to employment (currently 14 years) should not be lower than the age of completion of compulsory schooling. ***Therefore, the Committee urges once again the Government to intensify its efforts to raise the minimum age for admission to employment or work to 15 years, and to provide for compulsory education up until that age, within the framework of the adoption of the draft amendments to the Labour Code. The Committee requests that the Government provide a copy of the new provisions, once adopted.***

Article 6. Vocational training and apprenticeship. In its earlier comments, the Committee noted that the Government had stated that the draft amendments to the Labour Code (section 16) had set the minimum age for vocational training under a contract at 14 years. The Committee expressed the firm hope that such a provision under the draft amendments would be adopted in the near future.

The Committee notes the Government's indication that section 16 will be adopted along with the draft amendments to the Labour Code. The Government also indicates that the National Centre for Vocational Training is in charge of carrying out vocational training and apprenticeships. ***The Committee once again expresses the firm hope that section 16 of the draft amendments to the Labour Code, setting a minimum age of 14 years for entry into an apprenticeship, in conformity with Article 6 of the Convention, will be adopted in the very near future.***

Article 7. Light work. In its earlier comments, the Committee noted that under section 19 of the draft amendments to the Labour Code, employment or work of young persons in light work may be authorized when they complete 13 years of age under certain conditions (except in different types of industrial work in which the employment or work of young persons under the age of 15 years is not authorized). The Committee also noted that light work activities would be determined by virtue of an Order from the Ministry of Labour. The Committee requested that the Government provide information on any progress made in this regard.

The Committee notes the Government's indication that it has asked for light work to be included in the ongoing ILO–IPEC Project "Country level engagement and assistance to reduce child labour in Lebanon" (CLEAR Project) and that a few meetings have been held in this regard. The Government indicates that, once the CLEAR Project is launched, it will be able to prepare a statute on light work in accordance with the relevant international standards. ***The Committee once again requests that the Government take the necessary measures to ensure the formulation and adoption of a statute determining light work activities, including the number of hours during which, and the conditions in which, light work may be undertaken. It requests that the Government provide information on the progress achieved.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Articles 3, 7(1) and (2)(b) of the Convention. Worst forms of child labour, penalties and direct assistance for rehabilitation and social integration. Clause (a). All forms of slavery or practices similar to slavery. Trafficking. In its previous comments, the Committee noted the adoption of the Anti-Trafficking Act No. 164 (2011). The Committee requested the Government to provide information on the application of this Act, in practice.

The Committee notes the statistical information related to trafficking of children provided by the Government in its report. It notes that in 2014, five child victims of trafficking for labour exploitation (street begging), and one child victim of trafficking for sexual exploitation, were identified. According to the Government's indication, all the child victims identified were referred to social and rehabilitation centres, such as the "Beit al Aman" shelter in collaboration with Caritas. The Government also indicates that in 2014 the Higher Council for Childhood drafted a sectorial Action Plan on Trafficking of Children that is still under consultations with the relevant stakeholders.

The Committee also notes that in its 2015 concluding observations, the UN Committee on the Elimination of Discrimination against Women (CEDAW) recommended the Government to provide mandatory gender-sensitive capacity-building for judges, prosecutors, the border police, the immigration authorities and other law enforcement officials to ensure the strict enforcement of Act No. 164 to combat trafficking by promptly prosecuting all cases of trafficking in women and girls (CEDAW/C/LBN/CO/4-5, paragraph 30(a)). ***The Committee requests the Government to take the necessary measures to ensure that the draft sectorial Action Plan on Trafficking of Children is adopted in the near future, and to provide information on any progress made in this regard. The Committee also requests the Government to continue to provide information on the application in practice of Act No. 164 of 2011, including statistical information on the number of investigations, prosecutions, convictions and penal sanctions applied for the offence of trafficking of children. Lastly, the Committee requests the Government to provide information on any measures adopted in order to prevent trafficking of children as well as measures taken to ensure that child victims of trafficking are provided with appropriate rehabilitation and reintegration services.***

Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities, in particular for the production and trafficking of drugs. In its previous comments, the Committee noted that under section 33(b) and (c) of the draft amendments to the Labour Code, the use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities is punishable under the Penal Code, in addition to the penalties imposed by the Labour Code. It also noted that section 3 of Annex No. 1 of Decree No. 8987 of 2012 on hazardous work prohibits such illicit activities for minors under the age of 18. The Committee noted the statistical information (disaggregated by gender and age) provided by the Government on the number of children found engaged in prostitution from 2010 to 2012.

The Committee notes the Government's indication that the labour inspectorate is the body responsible for the supervision of the implementation of Decree No. 8987. The Committee notes with ***concern*** that according to the Government's indication no cases related to the application of the Decree have been detected so far. ***The Committee urges the Government to take immediate and effective measures to ensure the application in practice of the provisions of Decree No. 8987 of 2012 prohibiting the engagement of children for prostitution or pornographic purposes or for illicit activities. The Committee requests the Government to provide statistical information on any prosecutions and convictions made with regard to the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.***

As for the draft amendments to the Labour Code, the Committee once again requests the Government to take the necessary measures without delay to ensure the adoption of the provisions prohibiting the use, procuring or offering of persons under the age of 18 for the production of pornography

or for pornographic performances, and the use, procuring or offering of persons under the age of 18 for illicit activities, as well as of the provisions providing for the penalties imposed.

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. 1. *Refugee children*. In its previous comments, the Committee requested the Government to provide information on the measures taken within the work programme of the National plan of action on the elimination of child labour (NAP–WFCL) for working Palestinian children to protect them from the worst forms of child labour.

The Committee notes the Government's indication that no new measures have been taken due to the political and security situation in the country. The Committee also notes that according to the 2016 United Nations High Commissioner Job Refugees (UNHCR) report entitled "Missing out: Refugee Education in Crisis", there are more than 380,000 refugee children between the ages of 5 and 17 registered in Lebanon. It is estimated that less than 50 per cent of primary school-age children have access to public primary schools and less than 4 per cent of young persons have access to public secondary schools. The report highlights that since 2013 the Government has introduced a two-shift system in public schools to encourage the enrolment of refugee children. About 150,000 children have entered this system. It also notes from the ILO report entitled "ILO response to the Syrian Refugee crisis in Jordan and Lebanon", of March 2014, that many refugee children are working in hazardous conditions in the agricultural and urban informal sector, street peddling or begging. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take effective and time-bound measures to protect refugee children (in particular Syrian and Palestinian) from the worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the number of refugee children who have benefited from any initiatives taken in this regard, to the extent possible disaggregated by age, gender and country of origin.***

2. *Children in street situations.* The Committee notes the Government's indication that the Ministry of Social Affairs has taken a series of measures to address the situation of street children, including: (i) undertaking activities to raise awareness through education, media and advertisement campaigns; (ii) training of a certain number of social protection actors/players working in child protection institutions; (iii) providing rehabilitation activities for a certain number of street children and their reintegration in their families; (iv) within the framework of the Poverty Reduction Strategy (2011–13) 36,575 families have been chosen to benefit from free basic social services, such as access to free compulsory public education as well as medical facilities. The Government also indicates that the 2010 draft "Strategy for Protection, Rehabilitation and Integration of Street Children" has not been implemented yet, but is in the process of being revised.

The Committee notes the 2015 study "Children Living and Working on the Streets in Lebanon: Profile and Magnitude" (ILO–UNICEF–Save the Children International) which provides detailed statistical information on the phenomenon of street-based children across 18 districts of Lebanon. The Committee also notes that the report comprises a certain number of recommendations, including: (i) enforcing relevant legislation; (ii) reintegrating street-based children into education and providing basic services; and (iii) intervening at the household-level to conduct prevention activities. The Committee further observes that despite street work being one of the most hazardous forms of child labour under Decree No. 8987 on hazardous forms of child labour (2012), it is still prevalent with a total of 1,510 children found to be living or working on the streets. Moreover, the Committee notes that in its 2016 concluding observations, the UN Committee on Economic, Social and Cultural Rights recommended that the Government raise resources so as to provide the necessary preventive and rehabilitative services to street children and enforce existing legislation aimed at combating child labour (E/C.12/LBN/CO/2, paragraph 45). ***Recalling that street children are particularly vulnerable to the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children, and to provide for their rehabilitation and social reintegration. The Committee also urges the Government to take the necessary measures to actively implement the 2010 draft strategy entitled "Strategy for Protection, Rehabilitation and Integration of Street Children", once revised and report on the results achieved. Finally, the Committee requests the Government to provide information on the number of street children who have been provided with educational opportunities and social integration services.***

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

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

Lesotho

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

Previous comment

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour and application of the Convention in practice. In response to its previous comments, the Committee notes the Government's statement in its report that it is in the process of developing the second National Action Plan on the Elimination of Child Labour (APEC-II) 2022-2026. It also notes from the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the preliminary findings of the Labour Force Survey 2020 reveals that 2.99 per cent of children are in child labour with the highest proportion among males (79.1 per cent) and among children in the rural areas (80 per cent). The Committee further notes from the UNICEF-Lesotho 2021 Multidimensional Child Poverty Report that the country has successfully reduced poverty in the past fifteen years following the implementation of extensive social protection programmes. However, this report indicates that as of 2018, 45.5 per cent of the child population is multidimensionally poor and nearly one in three children aged 5–17 years are engaged in child labour. ***The Committee therefore requests the Government to continue to take effective measures to reduce the incidence of child labour in the country. Accordingly, it requests the Government to ensure the adoption and implementation of APEC-II without delay and to provide information on the specific measures taken within its framework to eliminate child labour and the results achieved. The Committee further requests the Government to continue to provide information on the situation of working children in Lesotho, including the number of children below the minimum age engaged in child labour and the nature, scope and trends of their work, disaggregated by age and gender. Lastly, it requests the Government to provide a copy of the results of the Labour Force Survey, once completed.***

Article 2(1). Scope of application and labour inspectorate. Self-employment and work in the informal economy. In its previous comments, the Committee noted from the Decent Work Country Programme III 2018–23 document that over 50 per cent of the labour force is employed in the informal sector and that regulating and preventing child labour is a major concern since the coverage of labour inspectorate did not include informal economy activities. It further noted that the Labour Code Amendment Bill contains provisions extending its scope as well as the labour inspection services to the informal economy.

In response to its previous comments, the Committee notes the Government's information that the labour inspectorate through the Child Labour Unit works with the Community Child Protection Teams (CCPTs) in the villages where child labour is rampant. In addition, the District Child Protection Teams (DCPTs) regularly conduct public gatherings to raise awareness on child labour issues. The Government indicates that two Child Helplines supported by the Police and the Ministry of Social Development were launched and the Child Labour Unit provides training to social workers on identifying and dealing with calls that entail child labour issues. The Committee also notes from the Government's report under Convention No. 182 that the Labour Code Amendment Bill is awaiting a clearance certificate from the Attorney General to be presented before Parliament.

The Committee further notes the Government's information in its report of 2020 to the Human Rights Committee on the International Covenant on Civil and Political Rights that the Labour Inspectorate is undergoing a restructuring process which will enable it to establish its own budget, transportation, equipment and an increase in the number of labour inspectors dedicated to child labour. The new structure suggests that there will be labour inspectors responsible for conducting inspections

in the informal sector, including domestic work and herding (CCPR/C/LSO/2, paragraph 140). ***The Committee requests the Government to continue to take the necessary measures to ensure that the protection afforded by the Convention is granted to self-employed children and children working in the informal economy, including children engaged in herding and domestic work. It requests the Government to provide detailed information on the measures taken in this regard, including within the restructuring process of the labour inspectorate as well as the measures taken by the Child Labour Unit, CCPTs and DCPTs in addressing child labour in the informal economy. The Committee finally expresses the firm hope that the Labour Code Amendment Bill which contains provisions protecting children working in the informal economy and extending labour inspection services to the informal economy, will be adopted and enforced in the near future.***

Article 2(3). Age of completion of compulsory schooling. The Committee previously noted that, according to the Education Act of 2010, the age of completion of compulsory education is 13 years in Lesotho, two years before a child is legally eligible to work (15 years).

The Committee notes the Government's information that deliberations are in progress among the responsible ministries to raise the compulsory age for education. The Committee once again reminds the Government that compulsory schooling is one of the most effective means of combating child labour, and underlines the need to link the age for admission to employment or work to the age of completion of compulsory schooling, as established in Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). If compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (see 2012 General Survey on the fundamental Conventions, paragraph 371). ***The Committee therefore once again strongly encourages the Government to take the necessary measures to ensure compulsory education up to the minimum age of employment or work of 15 years. It requests the Government to provide information on any progress made in this regard.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comment

Articles 3(d) and 7(2)(b) of the Convention. Hazardous work and effective and time-bound measures to remove children from the worst forms of child labour and provide for their rehabilitation and social integration. Child domestic work. The Committee previously noted that children performing domestic work often worked under poor conditions for long hours and during the night, without adequate food and clothing, were exposed to extreme weather conditions in isolated areas, and did not attend school.

With regard to the adoption of the draft Labour Code Bill which contain provisions promoting the fundamental principles and rights of all workers, including domestic workers, the Committee notes the Government's information in its report that the Ministry of Labour and Employment is awaiting a clearance certificate from the Attorney-General for its presentation before the Parliament. The Government also indicates that the special regulations prohibiting hazardous domestic work by children under 18 years shall be developed after the adoption of the Labour Code Bill. ***The Committee once again expresses the firm hope that the Government will take the necessary measures to ensure that the Labour Code Bill which guarantees protection to domestic workers and the special regulations which prohibit hazardous domestic work by children under 18 years of age, are adopted in the near future. It requests the Government to provide information on any progress made in this regard. It further requests the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to remove children engaged in domestic work from hazardous working conditions and ensure their rehabilitation and social integration and to provide information on the measures taken in this regard.***

Article 7(2). Effective and time-bound measures. Clause (d). Identify and reach out to children at special risk. 1. *Children engaged in animal herding.* The Committee previously noted from the UNICEF Multiple Indicator Cluster Survey results of 2018, that two thirds of the children involved in child labour are engaged in herding animals. It also noted that children involved in herding are still exposed to the worst forms of child labour.

In reply to its previous comments, the Committee notes the Government's information that the Ministry of Labour and Employment conducts monthly public gatherings and media campaigns in each district to sensitize the public and the herders on the implementation of the guidelines for the agricultural sector. The Government also indicates that it is anticipated to launch the second phase of the National Action Plan for the Elimination of Child Labour (APEC-II 2022–26) in October 2022. The Committee further notes from the Government's report of April 2020 to the Human Rights Committee on the International Covenant on Civil and Political Rights, that the Government has been taking measures (i) to provide sufficient resources to fully implement APEC and address in particular the exploitation of children in herding; (ii) to translate and widely disseminate the Minimum Employment Guidelines for herd-boys; and (iii) to undertake more awareness-raising programmes and campaigns against exploitation of children in herding (CCPR/C/LSO/2, paragraphs 139, 140 and 141). The Committee also notes the Government's information in its report under the Minimum Age Convention, 1973 (No. 138) that the national commemoration Day of the African Child was held in Mokhotlong where a lot of children are herd boys. ***The Committee requests the Government to continue to take effective and time-bound measures to ensure that children who are engaged in hazardous work in animal herding are removed from this worst forms of child labour and are rehabilitated and socially integrated. In this regard, it requests the Government to continue providing information on the implementation of the guidelines for the agricultural sector as well as the specific measures taken against exploitation of children in herding within the framework of APEC-II, and the results achieved.***

2. *Orphans of HIV/AIDS and other vulnerable children (OVCs).* Following its previous comments, the Committee notes the Government's information that the Ministry of Social Development continues to assist vulnerable families with children with a monthly stipend of M300 (approximately US$17) in order to protect children from falling victims to the worst forms of child labour. Moreover, OVCs are freely enrolled into schools at all levels.

The Committee notes from the UNICEF report entitled *Universal Child Benefit Case Studies: the Experience of Lesotho, 2019* that the Child Grants Programme covers about 108,833 children in 38,738 households and that the Government is committed to progressively include all eligible households in this programme. The Committee notes, however, that according to the 2021 estimates from UNAIDS, about 110,000 children aged 0–17 are orphans due to HIV/AIDS in Lesotho, an increase from 85,000 in 2019. ***While taking note of the measures taken by the Government, the Committee urges the Government to continue strengthening its efforts to ensure that orphans of HIV/AIDS and other vulnerable children who are at an increased risk of being engaged in the worst forms of child labour, are protected from these worst forms. It requests the Government to continue to provide information on specific measures taken in this regard, and on the results achieved, particularly the number of OVCs benefiting from these initiatives and the nature of the assistance provided.***

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

Liberia

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 4(1) of the Convention. Determination of hazardous work. In its previous comments, the Committee expressed the firm hope that the Decent Work Bill, which contains a provision prohibiting the

engagement of children under the age of 18 years in hazardous types of work would be adopted in the near future. It also expressed the hope that a regulation specifying hazardous types of work and processes prohibited to children under 18 years of age would be developed after consultation with the organizations of employers and workers concerned.

The Committee notes with ***interest*** that the Decent Work Act of 2015 has been enacted. It notes that Chapter 21, section 21.4(a) of the Decent Work Act prohibits the employment of children under the age of 18 years in those types of hazardous work enumerated under Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). Section 21.4(b) further states that the minister shall, within 12 months from the coming into force of this Act, issue regulations specifying further types of work that may be prohibited to children and identify hazardous processes, temperatures, noise levels or vibrations that are dangerous to the health of children. In this regard, the Committee notes the Government's information, in its report, that the Law Reform Committee has prepared a draft list of types of hazardous work prohibited to children and that consultations with stakeholders on its finalization are ongoing. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the draft list of types of hazardous work prohibited to children under 18 years of age will be finalized and adopted without delay. It requests the Government to provide information on any progress made in this regard.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously noted from the compilation prepared by the Office of the High Commissioner for Human Rights to the Human Rights Council (A/HRC/WG.6/22/LBR/2, 23 February 2015) that according to the United Nations Development Assistance Framework (UNDAF), the gender gap was apparent in education and that illiteracy rates among women and girls were especially high at 60 per cent. It further noted from this report the statement made by the United Nations Country Team in Liberia that, due to the spread of the Ebola Virus Disease (EVD), schools had been ordered to be closed in June 2014 and an estimated 1.4 million students had been forced to stay home. The Committee requested the Government to take the necessary measures to ensure the proper functioning of the education system and to strengthen its efforts to bring back children to schools as well as to take measures to increase the enrolment and completion rates at primary and secondary levels and to provide information in this regard.

The Committee notes the Government's statement that since the last recorded case of Ebola in 2015, proper precautionary measures were taken and that schools were reopened and children were encouraged to return to school. The Government indicates that better mechanisms to keep children at schools and out of child labour are being initiated. In this regard, the Committee notes the information from the publication entitled: Education in Liberia-Global Partnership for Education, that in order to address the challenges in the education sector related to the rebuilding and recovery from civil war, constrained national finances, poor infrastructure and the Ebola epidemic, the Government has developed a strategic response through "Getting to Best Education Sector Plan for 2017–21". This plan consists of nine programmes including: (i) improving the efficiency and management of education system; (ii) improving access to quality early childhood education; (iii) providing quality alternative education for overage and out-of-school children; (iv) mainstreaming gender and school health across the education sector; and (v) improving the quality and relevance of vocational and technical training. The Committee notes, however, that according to the UNESCO statistics, in 2016, the net enrolment rate was 36.75 per cent in primary education and 10.37 per cent in secondary education. Moreover, there were 572,439 children and adolescents who were out-of-school in 2016. The Committee notes with ***concern*** the low enrolment rates at the primary and secondary levels and the high number of children who are out-of-school. ***Considering that education is key in preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to intensify its efforts to improve the functioning of the education system and to facilitate access of all children to free basic education, including through the "Getting to Best Education Sector Plan for 2017–21". It requests the Government to provide information on the concrete measures taken or envisaged in this regard, aimed, in particular at increasing the school enrolment and attendance rates at the primary and secondary levels and reducing school drop-out rates as well as to provide updated statistical information on the results obtained, disaggregated by age and gender.***

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

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

Libya

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2017.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 106th Session, June 2017)

The Committee notes the detailed discussion which took place at the 106th Session of the Conference Committee on the Application of Standards in June 2017, concerning the application by Libya of the Convention.

Articles 3(a) and 7(1) of the Convention. All forms of slavery and practices similar to slavery. Compulsory recruitment of children for armed conflict and penalties. In its previous comments, the Committee noted from the Report on the Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya (A/HRC/31/47 and A/HRC/31/CRP.3, detailed findings) of 15 February 2016 (Investigation Report by the OHCHR), that there was information on the forced recruitment and use of children in hostilities by armed groups pledging allegiance to the Islamic State in Iraq and Levant (ISIL). These children were forced to undergo religious and military training (including how to use and load guns and to aim and shoot at targets using live ammunition), watch videos of beheadings, used to detonate bombs, in addition to being sexually abused. This Report, further referring to another report, indicated that the Islamic State in Sirte welcomed the graduation of 85 boys below the age of 16, describing them as the "Khilapha Cubs" who were trained in conducting suicide attacks.

The Committee notes the observations of the IOE that the position of children affected by armed conflict in the country was deplorable and that the recruitment of children for the purpose of war which included compulsory religious and military training was a calamity for the child's present and future situation.

The Committee notes that the Government representative of Libya, during the discussion at the Conference Committee, while acknowledging the situation of severe political crisis and escalation of violence since 2011, stated that his Government, represented by the Presidency Council of the Government of National Accord had captured the last ISIL position in Sirte on 6 December 2016 and had officially declared the liberation of the city which had been under ISIL control for over one and a half years. Hence, the ISIL's practices against children, including the forcible recruitment of children into their military operations and the prohibition of children from enrolling in school was brought to an end.

The Committee also notes that at the Conference Committee, the Worker members recalled that Libya continued to suffer from armed conflict and that the proliferation of armed groups had led to serious violations and abuses including the forced recruitment and use of children by different armed groups pledging allegiance to ISIL. The Worker member of Libya, added that those children who were recruited by the armed groups were moved to camps in Turkey near the Syrian border, where they were trained for combat with the financial support of those States that supported and exported terrorism.

The Committee notes that the Conference Committee deeply deplored the situation of children who were forcibly required by armed groups pledging allegiance to ISIL to undergo military and religious training.

The Committee notes the Government's information in its report that following the expulsion of the ISIL from Sirte and its suburbs, a post-conflict stabilization plan for Sirte was developed under the supervision of the Presidency Council. Moreover, measures were taken by the Libyan security agencies under the Ministry of Interior to prevent children from being lured or groomed into criminal activity and severe punishments were imposed on persons who were involved in such activity. In addition, at the beginning of

2017, UNICEF, in collaboration with municipalities, launched a national campaign "Together for Children" to ensure that children do not get involved in armed conflict.

The Committee notes, however, from the Report of the Secretary-General on Children and Armed Conflict of 16 May 2018 (A/72/865-S/2018/465, paragraph 106) that cases of use of children by armed groups continue to be reported. In October 2017, 125 adolescents formerly associated with the armed groups in the Zintan municipality were released. The Committee further notes that the Secretary-General expressed concern at the reports of sexual violence and other violations committed against children, including use in armed conflict and trafficking of children. While noting some of the measures taken by the Government, the Committee must express its ***deep concern*** at the continued use and recruitment of children by armed groups and at the current situation of children affected by armed conflict in Libya, especially as it entails other violations of the rights of the child, such as abductions, murders and sexual violence. ***While acknowledging the difficult situation prevailing in the country, the Committee strongly urges the Government to take the necessary measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed groups. It also urges the Government to continue to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children under 18 years of age for use in armed conflict, are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously noted from the Investigation Report by the OHCHR, that access to education in Libya had been significantly curtailed due to the armed conflict, particularly in the east (for example, the Office for the Coordination of Humanitarian Affairs estimated, in September 2015, that 73 per cent of all schools in Benghazi were not functioning). Schools were either damaged, destroyed, occupied by internally displaced persons, converted into military or detention facilities, or were otherwise dangerous to reach. In addition, in many areas where schools remained open, parents refrained from sending their children to school for fear of injury from attacks, especially of girls being attacked, harassed or abducted by armed groups. Moreover, there were reports that in areas controlled by groups pledging allegiance to ISIL, girls were not allowed to attend school or were permitted only if wearing a full face veil. This report further indicated that children residing in camps for the internally displaced persons, faced particular challenges in their access to education.

The Committee notes the Worker members' statement at the Conference Committee that children's access to education had been severely limited and compromised by the conflict in Libya.

The Committee notes that the Conference Committee deeply deplored the situation of children, especially, girls, who were deprived of education due to the situation in the country where although mandatory and free education existed, many schools were damaged and used as military or detention facilities which prohibited children from attending them.

In this regard, the Committee notes the Government's indication that following the expulsion of ISIL, there has been a rise in the number of children enrolled in schools. It also notes that the Government, along with the United Nations Development Programme, undertook the maintenance of a number of schools and by the school year 2017–18, all schools were opened on scheduled time for pupils. The Committee notes, however, from the UNICEF Humanitarian Situation report of September 2018 that around 300,000 children in Libya are in need of education. ***The Committee therefore, urges the Government to take effective and time-bound measures to improve the functioning of the education system in the country and to facilitate access to free basic education for all children, particularly girls, children in areas affected by armed conflict, and internally displaced children. It requests the Government to provide information on concrete measures taken in this regard and the results achieved.***

Clause (b). Providing the necessary and appropriate assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Children in armed conflict. The Committee notes the Government's indication that in Sirte, the Government social workers are engaged in a project to rehabilitate former child soldiers, which includes medical and psychological assistance as well as enrolling them in educational and training programmes. In addition, the UNICEF national campaign "Together for Children" also involves establishing rehabilitation centres to reintegrate children, including former child soldiers, into schools and the community. The Committee notes, however, from the Report of the Secretary-

General (paragraph 107) that in the context of the fight between the Libyan National Army (LNA) and the Petroleum Facilities Guard (PFG), boys as young 10 years of age were arrested and detained for up to seven weeks by the LNA for their alleged association with PFG. The Committee expresses its ***deep concern*** at the practice of arrest and detention of children for their alleged association with armed forces or groups. In this regard, the Committee must emphasize that children under the age of 18 years associated with armed groups should be treated as victims rather than offenders (see 2012 General Survey on the fundamental Conventions, paragraph 502). ***The Committee, therefore, urges the Government to take the necessary measures to ensure that children removed from armed forces or groups are treated as victims rather than offenders. It also urges the Government to continue to take effective and time-bound measures to remove children from armed forces and groups and ensure their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard and on the number of children removed from armed forces and groups, and reintegrated.***

Noting the interest expressed by the Government representative in obtaining technical assistance, the Committee invites the Government to avail itself of technical assistance from the Office in order to facilitate the implementation of the Convention.

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

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

Madagascar

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. Further to its previous comments, the Committee notes the information provided by the Government in its report concerning the results of the implementation of the "National Plan of Action against child labour in Madagascar (PNA)", in its third and final phase from 2014 to 2019. Among other things, the PNA resulted in the revision of the decree on child labour: new Decree 2018-009 supplementing and amending Decree 2007-563 on child labour defines light work and prohibits domestic work which is dangerous for children. The PNA also enabled the training of labour inspectors on the new laws on child labour in six regions of Madagascar in 2020 in the context of the Alliance 8.7 project, in collaboration with the ILO and UNICEF. Moreover, the PNA provided for training for *fokontany* (Malagasy traditional village) chiefs to enable them to identify at-risk working children and arrange for intervention by the local protection network. The Committee also notes that, in the annual report of Madagascar for May 2020–April 2021 as an Alliance 8.7 pathfinder country, a new plan of action to combat child labour is being formulated and the Labour Code is being revised in order to, inter alia, reinforce the capacity of the labour inspectorate.

The Committee notes that, according to a baseline survey conducted in 2018 as part of the project entitled "Supporting actors in the vanilla sector for the benefit of children in the SAVA region" (SAVABE project), 16.6 per cent of children in the SAVA region were exposed to child labour. Most children work in agriculture, including 10.5 per cent in the vanilla sector and 58.6 per cent outside it. Slightly less than half the children (46 per cent) work as unpaid family members and 44.2 per cent are employed by third parties. The Committee also notes the concern expressed by the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of 9 March 2022, that child labour remains a significant issue in the country, with 47 per cent of children between 5 and 17 years of age working in economic activities or domestic work, especially in rural areas, with a significant portion of children, in particular from poor households, working in hazardous conditions (CRC/C/MDG/CO/5-6, paragraph 40). ***While noting the measures taken by the Government, the Committee once again urges the Government to intensify its efforts to ensure the progressive elimination of child labour. It requests the Government***

to provide information on the measures taken in this respect in the context of the new plan of action to combat child labour and on the results achieved through its implementation, and also on progress made on the revision of the Labour Code, particularly as regards the strengthening of the capacities of the labour inspectorate.

Article 2(3). Age of completion of compulsory schooling. Further to its previous comments, the Committee notes the Government's indications that reform projects have been launched with respect to Directive 2008-011 amending certain provisions of Act No. 2004-004 of 26 July 2004 (governing the education system) in order to give concrete expression to the presidential commitments on education but that this draft legal amendment is currently before Parliament for discussion, deliberation and adoption. The publication of the decision adopted in the National Assembly will shed light on the new direction adopted for compulsory education in Madagascar, at which point it will be known whether the age of completion of compulsory schooling will be aligned to the minimum age for admission to employment or work, as required by the Convention. However, the Committee notes that according to the Sectoral Plan for Education 2018–22, it is envisaged to implement a reform of basic schooling to give it a duration of nine years, which would mean that children finish school at 15 years of age.

The Committee notes with ***concern*** that the question of the age of completion of compulsory schooling has still not been settled and has remained under discussion for many years. The Committee once again reminds the Government that compulsory schooling is one of the most effective means of combating child labour, and once again observes that if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children (see 2012 General Survey on the fundamental Conventions, paragraph 371). This is especially important in Madagascar, where a large number of children under 15 years of age do not attend school and are working. ***Noting that the Government has been discussing this matter for over ten years, the Committee once again urges the Government to take the necessary steps, as a matter of urgency, to raise the age of completion of compulsory schooling so that it coincides with the minimum age for admission to employment or work in Madagascar. It requests the Government to provide information on progress made in this regard.***

Article 6. Vocational training and apprenticeships. Further to its previous comments, the Committee notes the Government's indication that the bill on the national employment and vocational training policy (PNEFP), drawn up in collaboration with the ILO and in consultation with the social partners, is still being approved. ***The Committee once again requests the Government to take the necessary measures to speed up the approval and adoption of the bill concerning apprenticeships and vocational training. It requests the Government to provide information on progress made in this regard and to send a copy of this legislative text once it has been adopted.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comment

Articles 3(b) and 7(1) of the Convention. Worst forms of child labour and sanctions. Child prostitution. Further to its previous comments, the Committee notes the Government's indications in its report according to which, in view of the increase in child sex tourism (CST), various types of action have been taken by the Ministry of Tourism for its elimination, including various awareness-raising measures, the establishment of a unit to combat tourist scourges within the Ministry of Tourism and the promotion and implementation of a Code of Conduct for tourism actors. The Government indicates that specific results have been achieved as a result of the dissemination of the Code of Conduct to the various actors in the tourism sector. These include surveys undertaken in 736 establishments between November 2019 and March 2020, in collaboration with youth associations and local universities in the five areas (Nosybe, Tuléar, Majunga, Tamatave and Fort Dauphin). The Government adds that measures have been taken

within the framework of the Alliance 8.7 project, including the monitoring, awareness raising and protection of children from child prostitution and the commercial sexual exploitation of children (CSEC) in the Atsimo Andrefana region in 2019, in collaboration with the Ministry of Tourism to raise awareness of sex tourism and CSEC and enrol victims in schools.

While noting the measures taken by the Government, the Committee notes the Government's indication that, not only has there been no follow-up to its request for data on the number of investigations carried out, prosecutions, convictions and penal sanctions imposed in cases of child prostitution in Madagascar, but establishments where cases of CST have been identified appear to have been subject only to *administrative* penalties. Moreover, the Government has not indicated the number of inspections carried out by youth and university associations. The Committee further notes the concern expressed by the United Nations Committee on the Rights of the Child on 9 March 2020 in response to reports that the sexual exploitation of children is widespread and tolerated in Madagascar, especially in tourist destinations (CRC/C/MDG/CO/5-6, paragraph 24). The Committee therefore once again notes with ***deep concern*** that there still appears to be a prevailing climate of impunity for crimes relating to child prostitution in the country. With regard to penalties, it refers to its indications in its 2012 General Survey on the fundamental Conventions (paragraphs 637–639). ***The Committee therefore once again urges the Government to take immediate measures to ensure that effective investigations and prosecutions are carried out and completed into persons suspected of procuring, using, offering and employing children for prostitution, and that sufficiently effective and dissuasive penalties are imposed. It requests the Government to provide information on statistics covering the number and nature of the violations reported, investigations, prosecutions, convictions and criminal penalties imposed in this respect.***

Articles 3(d) and 7(2)(a) and (b). Hazardous types of work and effective and time-bound measures. Children engaged in hazardous work in the agricultural sector. Supporting Vanilla Sector Stakeholders to Benefit Children in the SAVA region (the SAVABE project). The Committee notes that the SAVABE project, which aims to achieve a sustainable improvement in the living conditions of vanilla-producing communities by ensuring the absence of child labour, was implemented by the ILO in the SAVA region between 2016 and 2020. The components of the project included the reduction of child labour through the mobilization and involvement of exporters in supply chain policies and programmes and the strengthening of the enforcement of child labour laws and referral and shelter systems for the protection of children. Within the context of this project, a baseline survey was undertaken in 2018. The Committee notes with ***concern*** that this survey revealed that 16.6 per cent of children in the region were exposed to child labour, of whom 67.1 per cent, representing 11.1 per cent of all children in the regions concerned, were engaged in work considered to be hazardous. Over half (51.6 per cent) of children considered to be engaged in hazardous forms of work were in the agricultural sector (other than vanilla) and 15.2 per cent were in the vanilla sector. The great majority of children engaged in hazardous forms of work (75.3 per cent) were classified as such on the basis of their conditions of work. Almost half of the children (45.1 per cent) worked long hours. Boys were more numerous than girls in hazardous forms of work (17.9 per cent compared with 8.7 per cent).

The Committee notes that the SAVABE project has resulted in several achievements. In particular, it notes the renewed dynamic, restructuring, training and equipment of the Regional Committee to Combat Child Labour in the SAVA region and the establishment of 27 local committees to combat child labour. ***While noting the measures adopted, the Committee requests the Government to strengthen its efforts to prevent children from being engaged in hazardous types of work in agriculture, including in the vanilla sector, and to remove children who are already working there and ensure their social rehabilitation and integration. It also requests the Government to continue providing information on the measures adopted in this regard and the results obtained in terms of the number of children identified and removed from hazardous types of work in these sectors, including through the action of the local committees.***

Article 5. Monitoring mechanisms. Labour inspection. In its previous comments, the Committee noted that the Conference Committee on the Application of Standards had recommended the Government to take measures to improve the capacities of the labour inspection services, particularly to combat child labour in mines and quarries. The Committee notes that, within the framework of the European Union Trade for Decent Work (T4DW) project, of which Madagascar is one of the beneficiaries, 40 labour inspectors were trained in 2021 and 2022 on child labour in the mining sector, a practical guide for the use of labour inspectors was prepared on controlling child labour, and support was provided for the development of an overall strategic action plan for labour inspection, which envisages the strengthening of inspections in enterprises. The Committee also notes the Government's indication that, in the context of the Alliance 8.7 project, the capacities of the labour inspection services are being reinforced through the provision of the necessary resources for monitoring as a basis for the adoption of prevention and protection measures. To overcome the absence of certain working tools, the means of action of labour inspectors have been strengthened, particularly through the provision of information and communication equipment. The Government adds that measures have been taken to enable the labour inspection services to have access to difficult sites in several regions and sectors, including brick making, tourist areas and mines and quarries. The Committee further notes that, according to the annual report of Alliance 8.7 pathfinder countries for May 2020 to April 2021 of Madagascar, the reinforcement of the powers of labour inspectors is envisaged through a revision of the Labour Code, which was commenced in February 2021. ***The Committee encourages the Government to continue taking the necessary measures to improve the capacities of the labour inspection services, particularly through the provisions of the necessary resources to enable labour inspectors to have access to difficult sites, especially mines and quarries, so that they can take effective action to combat the worst forms of child labour. It requests the Government to provide information on the measures adopted in this regard and on the number of children engaged in the worst forms of child labour who have been identified by labour inspectors as a result. The Government is also requested to report on progress in the revision of the Labour Code.***

Article 6. Programmes of action. Joint National Plan to Combat Child Labour in the Mica Sector (PNC). The Committee notes that the Ministries of Labour, Population and Mines have joined efforts for the formulation of a Joint National Plan, with support from the ILO, the United Nations Development Programme (UNDP) and UNICEF, and other technical partners, within the framework of the T4DW project, of which Madagascar is one of the beneficiaries. According to the report on the action proposed in five African projects under the T4DW project in 2021, the Government confirmed that child labour in mica mines is a scourge in the country. The PNC therefore targets: (i) the formalization of small-scale mining activities in the region; (ii) the involvement of the private sector in action to combat child labour; (iii) education, awareness raising and communication to change behaviour concerning the problem of children and the community; (iv) the reinforcement of the child protection system; (v) the establishment of a social protection programme to remove children from the worst forms of child labour; and (vi) the strengthening of the resilience of communities in mica mining areas through economic diversification. The Committee also notes that, within the framework of the T4DW project, a qualitative study is being undertaken of child labour in the mica sector. ***The Committee encourages the Government to reinforce its efforts to combat the worst forms of child labour in mines and quarries, including mica mines. In this regard, it requests the Government to provide information on the specific measures taken within the framework of the implementation of the PNC to combat child labour in the mica sector, and on the results achieved in eliminating the worst forms of child labour in this sector. It also requests the Government to provide the findings of the study on child labour in the mica sector when it has been completed.***

Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Street children. Further to its previous comments, the Committee notes the Government's indication that the Public Investment Programme for Social Action (PIP) has been withdrawn from the public finance heading and

reassigned to the operating budget of the Department for Labour and the Promotion of Fundamental Rights (DTPDF). The Government adds that the Manjarysoa Centre has been established to combat the worst forms of child labour around 67 Ha (a settlement located in Antananarivo). During 2019–20, some 70 children were protected by the Centre and have benefited from school and vocational integration activities. ***The Committee requests the Government to renew its efforts to protect street children from the worst forms of child labour and to ensure their rehabilitation and social integration, particularly through the reintegration of the PIP in the budget of the DTPDF. It requests the Government to continue providing information on the number of street children who have benefited from school and vocational rehabilitation through the Manjarysoa Centre or any other centre established for this purpose.***

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

Malawi

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Previous comment

Article 1 of the Convention. National policy. Following its previous comments, the Committee notes with ***interest*** the many measures adopted by the Government to combat child labour in the country. The Government has reviewed the National Plan of Action (NAP II), which now runs from 2020 to 2025. The main priority areas of the NAP II are: (i) Legal and Policy Framework; (ii) Capacity Building; (iii) Awareness Raising; (iv) Prevention, Withdrawal, Rehabilitation and re-Integration; (v) Chronic Illnesses and HIV and AIDS in the context of Child Labour; (vi) Child Labour Information Base and Management; and (vii) Availability of Child Labour Information.

The Government also developed the National Child Labour Mainstreaming Guide, which aims to assist Government institutions, social partners and other key stakeholders on how to include child labour issues in their functional scope and programming. The expected outcomes are: (i) Child labour elimination strategies incorporated in key legal and policy documents; (ii) Enhanced child labour responsive planning and service delivery; and (iii) Enhanced multi-sectoral collaboration in addressing child labour. The guide is aligned with the NAP II and directly supports its priority areas.

Another initiative is the adoption by the Government of the National Advocacy and Communication Strategy (NACS) 2022, to reinstate the commitment of the authorities in terms of support to the implementation of the child labour Conventions and provide a conducive environment for combating child labour. The overall objective of the NACS is to ensure well-coordinated and effective advocacy and awareness of child labour to accelerate its elimination through, for example, advocacy for child labour legislation and policy improvement and lobbying of the Government and stakeholders for increased resource allocation towards child labour programmes.

Finally, the Committee also notes that a Decent Work Country Programme (DWCP) 2020-23 is being implemented in Malawi, the overall objective of which is to contribute to the achievement of the national development agenda through improved, gainful, secure, and rights-based employment for youth, women and men. Consequently, the DWCP 2020-23 should contribute to the elimination of child labour by mitigating some of the push factors that are inducing children to work (such as poverty or lack of decent work opportunities for their families). ***The Committee encourages the Government to continue taking the necessary measures to ensure the progressive elimination of child labour. It requests the Government to provide information on the progress made and results achieved, in particular in terms of the effective reduction of the prevalence of child labour.***

Article 2(1). Scope of application. Self-employed children, children working in the informal economy and labour inspectorate. Following its previous comments, the Committee notes the Government's indication

that the labour inspections referred to under section 9 of the Employment Act may be conducted at any place where people are working, including in the informal economy, and that the exclusion of that sector is due, rather, to administrative reasons, including challenges related to human and financial resources.

However, measures are being taken to strengthen the labour inspectorate, including the Ministry of Labour entering into MOUs with some employers, especially in the tobacco sector, to conduct independent labour inspections to identify labour-related issues, including child labour. The Committee further notes that certain activities are planned, in the framework of the NAP II, to further strengthen the labour inspectorate and expand its reach, including the review of legislation related to child labour to ensure that all workplaces including informal sector are eligible for inspection and the extension of labour inspection services to monitor child labour in the informal sector and private homes. ***The Committee strongly encourages the Government to continue its efforts to strengthen the capacity of the labour inspectorate – including in the framework of the NPA II, of the MOUs entered into with employers, and through the provision of appropriate human and financial resources – to ensure that all self-employed children or children working in the informal economy benefit from the protection of the Convention. It requests the Government to continue providing information on specific measures taken in this regard, as well as on the results achieved, including the number and nature of violations relating to the employment of children and young persons detected by the labour inspectorate.***

Article 3(1). 1. *Minimum age for admission to hazardous work*. In its previous comments, the Committee noted a discrepancy between article 23 of the Constitution, which provides for protection from dangerous work for children below the age of 16 years, and section 22(1) of the Employment Act, which, in accordance with the Convention, lays down a minimum age of 18 years for work that is likely to be harmful to their health, safety, education, morals or development, or prejudicial to their attendance in school. The Committee notes with ***satisfaction*** that a constitutional amendment was adopted which establishes the minimum age for admission to hazardous work at 18 years under article 23.

2. *Hazardous work in commercial agriculture*. The Committee takes due note of the Government's detailed information regarding the activities implemented and results achieved regarding the use of hazardous child labour in commercial agriculture. ***With regard to the measures taken and results achieved to protect children under 18 years from hazardous work in commercial agriculture, in particular tobacco plantations, the Committee refers to its comments under the Worst Forms of Child Labour Convention, 1999 (No. 182).***

Article 9(3). Keeping of registers by employers. Following its previous comments, the Committee notes the Government's indication that it has planned to develop the model register of employment, in line with *Article 9(3)* of the Convention, before the end of 2022, with the support of the ILO. ***Observing that the Government has been referring to the model register of employment since 2006, the Committee once again strongly urges the Government to take the necessary measures to ensure its elaboration and adoption without delay. It once again requests that the Government supply a copy of the model register as soon as it is adopted.***

Practical application of the Convention. Data on child labour. The Committee notes that, according to the document of the NAP II, while child labour surveys are supposed to be conducted every 4–5 years, only two were conducted in the country: the first one in 2002, and the follow-up survey of 2015, which revealed that 38 per cent (over 2.1 million) of children aged 5–17 years were involved in child labour. To remedy this gap, and to contribute to the effective monitoring of the progress made in eliminating child labour, one of the main objectives of the NAP II is to improve child labour information availability and accessibility. Measures planned to achieve this objective include building the capacity of District Labour Officers (DLOs) to collect, manage and analyse data on child labour, conduct a national child labour survey, and create a national database for child labour. ***The Committee encourages the Government to pursue its efforts aimed at monitoring the application of the Convention in practice through the***

development of a data collection system on child labour and requests it to provide information on the progress made in this regard. It expresses the hope that the national child labour survey to be conducted in the framework of the NAP II will contain up-to-date statistical data on the employment of children and young persons by age group, gender and sector, and requests the Government to communicate the results of the survey with its next report.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)

Previous comment

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Tenancy system. The Committee notes with ***satisfaction*** that the Employment Act was amended in 2021 to prohibit the land tenancy labour system, which was one of the main causes of leading children to work in hazardous conditions in tobacco plantations. In accordance with the new section 4 of the Employment Act, any person who exacts or imposes forced or tenancy labour on another person or causes or permits another person to perform forced or tenancy labour, commits an offence which is punishable by a fine of five million Kwacha (approximately US$5,000) and imprisonment for five years. ***The Committee requests the Government to provide information on the application in practice of section 4 of the Employment Act, in particular the number of prosecutions, convictions and penalties applied in relation to children under the age of 18 years.***

Articles 3(a) and 7(1). Worst forms of child labour and penalties. Sale and trafficking of children. Following its previous comments, the Committee notes the Government's indication in its report that its statistics on the application of the Trafficking in Persons Act No. 3 of 2015, which criminalizes and punishes the offences related to trafficking, including of children, are not currently disaggregated by age. The Committee notes that, according to the report of the Government under the Forced Labour Convention, 1930 (No. 29), from January 2020 until August 2022, 55 cases of trafficking were prosecuted, out of which 36 are completed with 27 ending up in convictions and 8 in acquittals. The Government indicates that the cases will be disaggregated by age going forward. ***The Committee requests the Government to take the necessary measures to ensure that data on the application in practice of the Trafficking in Persons Act is disaggregated by age, in particular with regard to the number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions imposed for the sale and trafficking of children under 18 years of age. It requests the Government to provide this information in its next report.***

Article 3(b). Use, procuring or offering of a child for prostitution. In its previous comments, the Committee noted the various provisions of the Penal Code of 1930, as amended by Act No. 9 of 1999, establishing offences related to the procuring or offering of a girl or woman, or the indecent assault of boys under the age of 15 (sections 140 and following). However, the Committee noted that there appeared to be no provision criminalizing the *use* of a child by a client for prostitution and, furthermore, there were no provisions that protect boys aged 15 to 18 years from the use, procuring or offering for prostitution.

The Committee notes that the Government gives no new information on this issue. Therefore, it appears that these practices are still not explicitly prohibited by law. The Committee considers that the effective prohibition and penalization of the use of all children – both boys and girls – for commercial sexual exploitation, including for use in prostitution, is not only required by *Article 3(b)* of the Convention, but also an essential component of any strategy undertaken to effectively eradicate this scourge. ***The Committee therefore once again urges the Government to take the necessary measures to ensure the protection of boys between 15 to 18 years from commercial sexual exploitation, as well as to criminalize clients who use children – either girls or boys – under 18 years of age for prostitution. It also urges the Government to take the necessary measures to ensure that thorough investigations and***

prosecutions are carried out against persons responsible for such offences and that effective and sufficiently dissuasive penalties are imposed in practice.

Article 7(2)(a) and (b). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing assistance for the removal of children from these types of work and for their rehabilitation and social integration. 1. *Commercial sexual exploitation of children.* Following its previous comments, the Committee notes the Government's information on the measures taken to prevent both boys and girls under the age of 18 from becoming victims of commercial sexual exploitation, as well as on the measures taken to rehabilitate the victims. Such measures include child participation activities where girls are encouraged to take on leading roles; the creation of a forum for girls to express their views and promote their rights; various educational measures; and interventions to protect children with special attention on the girl child to prevent sexual exploitation and keep them in school. The Government has also put in place Lakeside committees that are protecting children, with much focus on girls under the age of 18, from patronizing lakeside activities which expose them to sexual exploitation through sensitization meetings and campaigns. The Government also indicates that section 23 (2)(c) of the Child Care Protection and Justice Act identifies children in situations of sexual exploitation as situation requiring care and protection. In this regard, the Government provides rehabilitation services to survivors of various abuses, including sexual exploitation. The Government indicates that it has rehabilitated 12,530 children (11,999 girls and 534 boys). ***Taking due note of the measures taken by the Government, the Committee encourages it to continue its efforts aimed at protecting children – both girls and boys – under 18 years of age against commercial sexual exploitation. It requests the Government to continue providing information on the measures taken to rehabilitate and socially integrate child victims, and on the results achieved.***

2. *Children engaged in hazardous work in commercial agriculture, particularly tobacco estates*. Following its previous comments, the Committee notes the Government's detailed information on the activities conducted to combat hazardous work in agriculture, in particular tobacco production, in its reports under Conventions No. 138 and No. 182. In particular, the Committee takes due note of the activities implemented and results achieved by the National Smallholder Farmer's Association of Malawi (NASFAM) under the Achieving Reduction of Child Labour in Support of Education (ARISE) programme, and by the Tobacco Association of Malawi (TAMA) Farmer's trust. These include: (i) various trainings and awareness-raising campaigns on child labour, including in supply chains, for farmers; (ii) MOUs with tobacco companies which aim to protect children engaging in hazardous work in commercial agriculture, especially in tobacco; (iii) the adoption, dissemination and implementation of a Child Labour Policy by TAMA; and (iv) the implementation of projects (such as the "knowledgeable farmer" project) to promote the use of social dialogue in child labour elimination at the local level. Positive results were achieved, including the mainstreaming of child labour issues and knowledge even at community level and the re-enrolment of children in school.

The Committee notes that the Government continues to work with social and development partners, including the ILO, in protecting children from worst forms of child labour in agriculture. The 2020–24 project to Address Decent Work Deficits in the Tobacco Sector in Malawi (ADDRESS), for example, which is the umbrella for ILO development cooperation projects touching upon the tobacco sector, is being implemented with several partners, including the tripartite constituents and civil society organizations, to ensure that they effectively address decent work deficits in this sector and ensure access to rights. Other projects include Accelerating action for the elimination of child labour in supply chains in Africa (ACCEL), which aims to improve policy, legal and institutional frameworks to address child labour and its root causes in global supply chains by institutionalizing innovative and evidence-based solutions.

Moreover, in the framework of these and other projects, Malawi authorities requested and contributed to the collection of relevant data on the issues concerned to fill existing knowledge gaps and develop appropriate responses. For instance, a qualitative study on the tenancy system, conducted

with the support of the ILO in 2020, led to the identification of the key issues and contributed to the national dialogue around the abolition of the land tenancy system by the Government. A quantitative study is also being finalized in collaboration with the National Statistical Office (NSO), to assess the number and characteristics of tenants in tobacco at the national level.

The Committee therefore observes with ***interest*** that action is being taken to combat the worst forms of child labour in the agricultural sector, in particular tobacco plantations, through a multi-pronged and tailored approach addressing the root causes of child labour in this sector. ***The Committee strongly encourages the Government to continue its efforts to protect children from hazardous work in these sectors, in particular in tobacco plantations, through measures taken within the framework of the various ongoing projects and initiatives. It requests the Government to continue to provide concrete information on the number of children who have been prevented or withdrawn from engaging in this type of hazardous work, and then rehabilitated and socially integrated.***

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

Malaysia

Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

Previous comment

Article 3(2) of the Convention. Determination of hazardous work. ***With regard to the determination of types of hazardous work prohibited to children under the age of 18 years, the Committee requests the Government to refer to its detailed comments under the Worst Forms of Child Labour Convention, 1999 (No.182).***

Article 7(1). Minimum age for admission to light work. The Committee previously noted that section 2(2)(a) of the Children and Young Persons (Employment) Act of 1966 (CYP Act) allows children to be employed in light work which is suitable to their capacity in any undertaking carried on by their family but observed that no minimum age for admission to light work had been specified.

The Committee notes with ***satisfaction*** that section 3(c)(2A) of the CYP Amendment Act of 2019 establishes a minimum age of 13 years for admission to light work. The Committee also notes that the CYP Amendment Act, 2019 defines light work as "any work performed by a child or young person which is not likely to be harmful to their health, mental or physical capacity; or to prejudice his/her attendance at school that includes any place which teaches any religion, his/her participation in vocational orientation or training programmes approved by the competent authority or his capacity to benefit from the instruction received."

Article 9(1). Penalties, labour inspection and application of the Convention in practice. In reply to its previous comments, the Committee notes the Government's indication that the penalties provided under section 14 of the CYP Act of 1966 for the violations of any of its provisions have been enhanced by the CYP Amendment Act of 2019. Accordingly, any contravention of the provisions of the Act shall be punishable with imprisonment not exceeding two years or to a fine of RM50,000 (approximately US$10,555) or to both. In the event of a second or subsequent offence, the penalty shall be imprisonment not exceeding five years and/or a fine not exceeding RM100,000. With regard to the number of prosecutions carried out, the Government indicates that 21 cases were prosecuted under the CYP Act of 1966, whereby the majority of the cases related to the contravention of the hours of work, but provides no information on the results of these prosecutions or penalties imposed. The Committee also notes the Government's information that in order to promote awareness towards eliminating child labour, the Ministry of Human Resources has established Technical Working Groups in the plantation sector that provide guidance on the national legislation and policies on child labour as well as on dealing with labour issues so as to ensure compliance with the relevant laws and policies.

The Committee further notes that a facilitator's manual for Malaysian labour inspectors, entitled: *Training for Malaysian inspectors on forced labour, child labour and gender-based discrimination, violence and harassment in the workplace: Facilitator's manual*, was developed and published in 2022, within the framework of the ILO project, "From Protocol to Practice: A Bridge to Global Action on Forced Labour". This manual aims at improving the capacity of the labour inspectorate to respond to the most urgent needs for the protection of workers' rights, particularly on forced labour and child labour and provides suggestions to address the challenges in conducting inspection on child labour. According to this document, child labour is common in the informal economy and includes scavenging, begging, mobile vending, work in small-scale or home-based industries and domestic work. Moreover, according to the information from the 2018 Employment survey in oil Palm plantations, as referred in this document, 33,600 children aged 5 to 17 years are in child labour on oil palm plantations in Malaysia, with 58.8 per cent in Sabah and 39.5 per cent in Sarawak, of which an estimated 47.5 per cent are children aged 5–11 years and 30.9 per cent are children aged 15–17 years (pages 83 and 87). The Committee further notes from a Press release of ILO of 25 June 2020 wherein the ILO and the UNICEF urged Malaysia to tackle child labour which has increased due to COVID-19 situation. ***The Committee requests the Government to continue its efforts to strengthen the capacity of the labour inspectorate to better monitor child labour, particularly in the oil palm plantations in Sabah and Sarawak and to provide information on the measures taken and the results achieved in this regard. It also requests the Government to continue to take the necessary measures to ensure that persons who violate the CYP Act and other related legislation on the employment of children, are prosecuted and that sufficiently effective and dissuasive penalties are imposed, and to provide information on the nature of the violations found, and the number and nature of the penalties imposed including, for fines assessed, and the amounts actually collected. Lastly, it requests the Government to provide information on the situation of working children, including data on the number of children and young persons below the minimum age of 15 who are engaged in child labour, and information on the nature, scope and trends of their work. To the extent possible, this information should be disaggregated by age and gender.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comments: observation C182; observation C138

Article 4(1) of the Convention. Determination of types of hazardous work. In its previous comments under the Minimum Age Convention, 1973 (No.138), the Committee noted that the Department of Occupational Safety and Health had developed a list of types of hazardous work prohibited to persons under the age of 18 years and that it was undergoing legal process for enactment.

The Committee notes the Government's information in its report that the Children and Young Persons (Employment) Act of 1966 was amended by the Children and Young Persons (Employment) (Amendment) Act of 2019 (CYP Amendment Act of 2019). It notes that section 3(b)(1A) of the CYP Amendment Act of 2019 prohibits the employment of children and young persons under the age of 18 years in hazardous work. The Committee notes with ***satisfaction*** that the Fourth Schedule of the CYP Amendment Act of 2019 lists over 25 types of hazardous work prohibited to children and young persons. This list includes: work related to machines, installations and other equipment; work conducted in hazardous environments, such as underground work, underwater or work in a confined space, work at heights, in dusty environments, in extreme weather conditions, manual handling, lifting, carrying or pushing heavy load; work that is exposed to biological hazards such as in laboratories, slaughterhouse, meat processing place or storages; construction work, work in the timber industry, petroleum platforms; and work as a lifeguard, in fishing activities, and work in water treatment plants. It also notes that section 3(c)(2B) of the CYP Amendment Act of 2019 prohibits children and young persons from engaging in employment specified in the Fifth Schedule of CYP Amendment Act of 2019 which contain seven activities, including engaging in prostitution or any work related to pornography, the production

or sale of alcoholic beverages, lotteries and gambling activities, and for the production and trade of drugs and narcotics. ***The Committee requests the Government to provide information on the application in practice of sections 3(b)(1A) and 3(c)(2B) of the CYP Amendment Act of 2019, indicating the number and nature of violations reported and penalties imposed for the offences related to the employment of children under 18 years in the hazardous occupations listed under the Fourth and Fifth Schedule.***

Articles 3(a), 5 and 7(1). Worst forms of child labour, monitoring mechanisms and penalties. Trafficking. The Committee notes that the Government has not provided any specific information concerning the investigations, prosecutions and penalties applied for the offences related to the trafficking of children. Nevertheless, it states that the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM) Act of 2007 has been amended through the insertion of a new provision under section 14 (offence of trafficking in children) to specifically state that there is no need to prove the "means" element in child trafficking cases. With regard to its previous comments concerning the measures taken by the Task Force on Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM Task Force) to prevent trafficking of children under the age of 18 years, the Government states that it provides intelligence and information to all enforcement agencies under the Council for Anti-Trafficking in Persons and Ant-Smuggling of Migrants (MAPO). Moreover, according to the data provided by the Government, from 2019 to 2022, 57 child victims of trafficking, including 4 nationals, were identified by the ATIPSOM Task Force.

The Committee further notes from the Report of the United Nations Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material of January 2019 that the scope and magnitude of the sale and trafficking of children across the borders with Thailand, Viet Nam, Indonesia and the Philippines and within Malaysia for purposes of sexual and labour exploitation is an issue of grave concern. This report further indicates that in practice, child trafficking cases and statistics on convictions are not separated from other human trafficking cases (A/HRC/40/51/Add.3, paragraph 8). ***The Committee therefore once again urges the Government to take the necessary measures to ensure that, in practice, thorough investigations and prosecutions are carried out for persons who engage in the trafficking of children, and that sufficiently effective and dissuasive sanctions are imposed. In this regard, the Committee once again requests the Government to provide information on the number of cases of trafficking of children under the age of 18 years identified, including by the ATIPSOM Task Force, and the investigations, prosecutions, convictions and penal sanctions applied in accordance with the provisions of the ATIPSOM Act.***

Articles 5 and 7(2)(a) and (d). Monitoring mechanisms and effective and time-bound measures. Access to free basic education and identifying and reaching out to children at special risk. Migrant children. In its previous comments, the Committee noted that tens of thousands of migrant workers' children worked in the palm oil plantations without regulated employment hours, as well as in family food businesses, night markets, small-scale industries, fishing, agriculture and catering. It noted that children of migrant workers, particularly children of Indonesian workers face particular challenges accessing education, as non-nationals are prevented from accessing public education.

In response to its previous comments, the Committee notes the Government's information that the findings of the Employment Survey in oil palm plantations carried out in 2018 by the Ministry of Plantation Industries and Commodities in collaboration with the ILO, indicates the existence of forced and child labour in the plantation sector with 8.3 per cent of children involved in hazardous work. The Government states that it is committed to eliminate and combat forced and child labour in the country and that various initiatives have been taken in this regard, including: (i) making amendments to the Children and Young Persons (Employment) Act; (ii) strengthening of the labour inspection system in order to protect children of migrant workers and carrying out regular labour inspections in the plantation sector; (iii) carrying out information and dialogue sessions for employers in the plantation sector on their rights and responsibilities, on the best labour practices to prevent forced and child

labour, on mechanization and safety issues; and (iv) establishing Technical Working Groups to address child labour issues and to provide guidance on national legislations and policies on child labour.

With regard to access to education of non-citizen children, the Government indicates that they are allowed to access education in the government or government-aided schools if they meet the criteria and conditions set under the Education Act. The Government has created guidelines for alternative learning centres and has encouraged the initiatives by the private sector and NGOS to provide education for children of migrant workers working in plantations as well as for children who are not eligible to be admitted to formal education. In addition, the Government has facilitated the establishment of community learning centres (CLCs) in the plantations in Sabah and Sarawak, in a collaborative effort by the plantation owners and the Indonesian Embassy. The CLCs provides primary and lower secondary education which is run in Indonesian national curriculum. The Committee notes the Government's indication that as of 2022 there are 112 CLCs in Sabah (86) and Sarawak (16) which accommodate more than 9,500 children.

The Committee further notes from the ILO Press release of October 2022 that 34 labour officers of the Sabah Department of Labour were trained and equipped with information and techniques utilizing the ILO Facilitator's Manual: Training for Malaysian inspectors on forced labour, child labour and gender-based discrimination, violence and harassment in the workplace. This Press release indicates that more frequent inspections will be undertaken by these inspectors to ensure that the employers are compliant with all laws and policies pertaining to labour. ***Noting that 8.3 per cent of children are involved in hazardous work in the palm oil plantations, the Committee urges the Government to continue its efforts to protect children of migrant workers from engaging in the worst forms of child labour, particularly by ensuring their unreserved access to quality free basic education. It also requests the Government to continue to take the necessary measures to strengthen the labour inspection system to effectively monitor the implementation of labour laws so as to receive, investigate and address complaints of alleged violations of the worst forms of child labour. The Committee requests the Government to provide information on the measures taken in this regard, as well as information on the number of children identified and withdrawn from hazardous work in the plantation sector and provided with education.***

Articles 6 and 7(2). Programmes of action and effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and removing them from these worst forms and ensuring their rehabilitation and social integration. Trafficking. The Committee notes the Government's information that it has launched the third five-year National Action Plan on Trafficking in Persons (NAPTIP 3.0) 2021–25. It notes from the NAPTIP document that this national action plan focuses on nine programme areas with specific objectives, including combating child trafficking and providing victim-centred protection and assistance to victims of trafficking. This document also indicates that the Minister of Home Affairs provided funding support for three shelters for victims of trafficking and appointed three Victims Assistance Specialists (VAS) to carry out a 12-month pilot project in March 2019. This project was implemented to improve support services by assisting victims from the point of rescue, through the process of the criminal justice system and right up to repatriation, as well as to assist the enforcement officers and prosecutors in victim engagement and communication. During the 12-month pilot project, the VASs provided support services to a total of 72 victims. This project was further extended until March 2022. ***The Committee encourages the Government to strengthen its measures, within the framework of the National Action Plan to Combat Trafficking in Persons, 2021-25, to prevent trafficking of children under the age of 18 years, and provide for their removal from such situations and subsequent rehabilitation and social integration. It requests the Government to provide information on the concrete measures taken in this regard and on the results achieved in terms of the number of children reached through such measures.***

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

Mali

Minimum Age Convention, 1973 (No. 138) (ratification: 2002)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. Further to its previous comments, the Committee takes due note of the information in the Government's report that a new National Plan of Action for the Elimination of Child Labour in Mali (PANETEM II) 2023–2027 is being approved and would be implemented in January 2023. It was developed by the National Steering Committee Against Child Labour and the National Unit Against Child Labour (CNLTE) in cooperation with the ILO. In this regard, four regional consultations have been held in Bamako, Sikasso, Kaye and the Mopti region to review the results of PANETEM I and to integrate the concerns of each region into the future plan.

The Committee also take due note of the information in the CNLTE's 2021 national report, annexed to the Government's report, that various activities have been carried out, including awareness-raising and planning relating to child labour, as well as the establishment of the SOSTEM data collection tool for monitoring child labour and children at risk in the Kéniéba region. It also notes the results achieved through the CNLTE focal points, including: (1) the removal from labour and reintegration of 150 children through the Clear Cotton programme in the Sikasso region; (2) the reception, referral and reintegration of 291 children in the Gao region, through the Stop Child Labour/ZLTTE project; and (3) the removal from labour and reintegration of 380 boys and 357 girls in the regions of Djenné, Mopti and Bankass. ***The Committee encourages the Government to continue its efforts to ensure the progressive elimination of child labour. It requests the Government to provide information on the measures being implemented as part of PANETEM II. It also requests the Government to provide information on the results achieved in monitoring child labour and children at risk through the SOSTEM data collection tool.***

Article 2(1). 1. *Scope of application and labour inspection.* In its previous comments, the Committee noted that no measures have been taken to enable labour inspectors to target children working on their own account or in the informal economy.

The Committee notes the Government's indication that inspections by labour inspectors in coordination with CNLTE focal points are focused primarily on gold washing sites and areas with a high level of agricultural activity. ***The Committee strongly encourages the Government to redouble its efforts to strengthen the labour inspection services to ensure that all children receive the protection provided for by the Convention. It requests the Government to provide information on the results achieved, including the number of identified cases of children engaged in gold washing and agricultural activities, and the penalties imposed for violations.***

2. *Minimum age for admission to employment or work.* Further to its previous comments, the Committee notes Decree No. 2022-0125/PT-RM of 4 March 2022, amending certain provisions of Decree No. 96-178/P-RM of 13 June 1996 on the implementation of the Labour Code. In this regard, the Committee notes with ***satisfaction*** the review of section D.189-23 of the Labour Code, setting out the list of loads for children, raising the minimum age from 14 to 15 years for children who cannot carry, drag or push a load, depending on the type of transport, weight of the load and sex of the child. This amendment is in line with the minimum age in section 20(b) of the Child Protection Code, in conformity with the minimum age of 15 years stated by the Government on the occasion of the ratification of the Convention.

Article 3(3). Admission to hazardous types of work from the age of 16 years. In its previous comments, the Committee emphasized that section D.189-33 of Decree No. 96-178/P-RM did not set forth the obligation to ensure that young persons between the ages of 16 and 18 years engaged in hazardous

types of work have received adequate specific instruction or vocational training in the relevant branch of activity, as provided for in *Article 3(3)* of the Convention.

The Committee notes that the new Decree No. 2022-0125/PT-RM amending certain provisions of Decree No. 96-178/P-RM of 13 June 1996, on the terms and conditions of application of the Labour Code relating to hazardous types of work from the age of 16 years, is still not in conformity with the conditions set forth in *Article 3(3)* of the Convention. ***The Committee requests the Government to take measures to ensure that the provisions of the Labour Code concerning admission to hazardous types of work from the age of 16 years are brought into conformity with the conditions set forth in Article 3(3) of the Convention. It requests the Government to provide a copy of the texts when they have been adopted.***

Article 7. Light work. In its previous comments, the Committee noted that the Government planned to amend section 189-35 of Decree No. 96-178/P-RM of 13 June 1996 so as to raise the minimum age for domestic work and light work of a seasonal nature from 12 to 13 years. The Committee notes with ***regret*** that no amendment has been made to section 189-35 in new Decree No. 2022-0125/PT-RM on the minimum age of 12 years for light work.

The Committee notes that according to the Government's information, a draft decree, prepared by the labour services and submitted to the social partners, is in the process of being adopted. The Government also indicates that the process is under way to draw up a list of light work with a view to determining types of light work and the conditions under which they are carried out, in cooperation with the ILO. ***The Committee expresses the hope that the decree in the process of being adopted on the application of the Labour Code will be aligned with the Convention in order to regulate the employment of children in light work from the age of 13 years. It requests the Government to provide a copy of the decree and the list of light work when they are adopted.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comment

Articles 3(a) and 7(1) of the Convention. All forms of slavery or practices similar to slavery. 1. *Compulsory recruitment of children in armed conflict.* Further to its previous comments, the Committee notes the absence of information in the Government's report concerning the compulsory recruitment of children in armed conflict.

In this regard, the Committee notes the information in the Global Protection Cluster Annual Report 2021, regarding an increase in child trafficking, forced labour and compulsory recruitment by armed groups in Mali, as a result of the conflict, insecurity, the COVID-19 pandemic and the deterioration in socio-economic conditions. The report indicates that armed groups also engage in trafficking children for gold panning and that other children are forced to fight within armed groups. They are victims of trafficking in persons, rape, sale and domestic or sexual slavery.

The Committee also notes in the November 2020 Report of the United Nations Secretary-General, on children and armed conflict in Mali (S/2020/1105, paragraph 16), that for the first time since 2014, boys were associated with the Malian armed forces in the Gao region. A total of 24 boys in 2019 and 21 boys in 2020, between the ages of 9 and 16, were used as domestic workers and couriers. However, they were released to their families in 2020 and have been receiving reintegration support.

The Committee once again ***deplores*** the recruitment and use of children in the armed conflict affecting the north of the country, especially since the persistence of this worst form of child labour entails other grave violations of the rights of children. ***While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in certain regions of the country, the Committee once again requests the Government to take the necessary measures, as a matter of urgency, to bring an end, in practice, to the forced recruitment of children under 18 years of age by the parties to the conflict. It also requests the Government to implement the***

process of disarmament, demobilization and reintegration of all children associated with the armed forces or armed groups in order to ensure their rehabilitation and social integration. Lastly, the Committee requests the Government to take the necessary measures to ensure that persons forcefully recruiting children under 18 years of age for their use in armed conflict are prosecuted and penalized, and to provide information in this regard.

2. *Forced or compulsory labour. Begging.* Further to its previous comments, the Committee notes the Government's information that, between 2019 and 2022, 11 Koranic teachers (*marabouts*) were brought before the courts for forced begging affecting 109 children. The Government states that the cases are pending before the examining judges of the Court of First Instance of Commune III of Bamako. ***The Committee requests the Government to continue to take the necessary measures to ensure that thorough investigations and prosecutions are carried out and that sufficiently effective and dissuasive sanctions are imposed upon*** **marabouts** ***who use children under 18 years of age for purely economic purposes. It requests the Government to provide information on the results achieved in this regard, including the number of convictions and the penalties imposed.***

Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously noted the significant number of child victims of commercial sexual exploitation in the country. The Committee notes with ***regret*** that the Government has not noted any cases of prosecutions or convictions relating to the use, procuring or offering of children under 18 years of age for prostitution.

In this regard, the Committee notes the report of the United Nations Independent Expert on the situation of human rights in Mali in the Human Rights Council of 15 January 2020, (A/HRC/43/76 paragraph 55) that, during its universal periodic review in January 2018, Mali agreed to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. ***The Committee once again urges the Government to take the necessary measures to ensure the effective implementation of the provisions of Act No. 2012-023 on the use, procuring or offering of a child under 18 years of age for prostitution. It also requests the Government to provide information in this regard, including statistics on the convictions and criminal penalties handed down.***

Articles 3(d) and 7(2). Hazardous work and effective and time-bound measures. Children working in traditional gold panning. In its previous comments, the Committee notes that there are a significant number of children working in hazardous conditions in gold mines, some of whom are not even 5 years old.

The Committee notes from the report of the National Unit against Child Labour (CLNTE), annexed to the Government's report, that a total of 52 girl and 20 boy victims of the worst forms of labour were identified through the monitoring of three gold panning sites in 2021.

The Committee also notes the total number of 205 girls and 232 boys who have benefited from the project against child labour in the cotton production and gold panning value chains through the accelerated schooling strategy (SSA/P), and the results of the Clear Cotton project, both conducted in cooperation with the ILO Office.

However, the Committee notes the Government's indications that the National Plan of Action for the Elimination of Child Labour in Mali (PANETEM I) has not received adequate funding owing to the political and security crisis in the country, but that PANETEM II, which will cover the period 2023 to 2027, is in the process of being approved. ***The Committee requests the Government to continue its efforts, under PANETEM II, the Clear Cotton project and the SSA/P, in order to remove children from the worst forms of child labour in traditional gold panning and cotton production, with a view to ensuring their rehabilitation and social integration. It requests the Government to continue to provide information on the progress achieved and results obtained in this regard.***

Article 7(2)(a). Access to free basic education. Further to its previous comments, the Committee notes the information in the Government's report that the results of the implementation of the ten-year

programme for the development of second-generation vocational training and education 2019–2028 (PRODEC II) will be available at the end of 2022. The Government emphasizes in PRODOC II that the children who are out of school come mainly from rural areas and are relatively higher in number in the regions of Mopti (60.4 per cent), Ségou (52.3 per cent), Sikasso (43.7 per cent) and Kayes (45.3 per cent).

The Committee notes the statistics of the UNESCO Institute for Statistics, according to which in 2018, a total of 2,061,713 children and adolescents of primary and lower secondary school age were not in school. In this respect, the Committee notes from the quarterly report of the United Nations Multidimensional Integrated Stabilization Mission in Mali on trends in human rights violations and abuses in Mali from 1 April to 30 June 2022, that a total of 1,731 schools are not operational (affecting 519,300 children) due to insecurity, particularly in the Mopti and Ménaka regions.

The Committee once again expresses its ***concern*** at the large number of children deprived of education due to the armed conflict affecting northern Mali. ***The Committee urges the Government to step up its efforts to improve the functioning of the education system and to provide access to free basic education, by increasing school enrolment rates, both at the primary and secondary levels, and by reducing the drop-out rates in all regions of the country. In this regard, it requests the Government to provide information on the progress achieved and the results obtained through the implementation of PRODEC II 2019-2028.***

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

Mauritania

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

Previous comments: observation and direct request

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously requested the Government to continue its efforts to ensure the progressive elimination of child labour and to continue providing information on the activities and results of the National Plan of Action on the Elimination of Child Labour (PANETE–RIM).

The Committee notes the information in the Government's report that the implementation of PANETE-RIM has resulted in the organization of activities to combat child labour, primarily in the *wilayas* (regions) of Guidimaka and Trarza: first and foremost, tripartite missions coordinated by the Ministry of Public Service and Labour (MFPT), the Ministry of Livestock and the Ministry of Social Affairs, Children and Family; and also regional workshops related to the second and third strategic axes of PANETE-RIM aimed at strengthening the technical and operational capacities of the actors involved and raising awareness and improving knowledge about child labour and its worst forms, particularly in the livestock sector. In addition, the Government indicates that a consultation mechanism has been set up with the social partners for the protection of children and the implementation of the national child protection strategy. ***The Committee requests the Government to continue its efforts to ensure the progressive elimination of child labour and to continue to provide information on the activities carried out and results achieved in this regard. It also requests the Government to provide information on the activities of the consultation mechanism to combat child labour. Finally, it requests the Government to take the necessary measures to ensure the availability of updated statistical information on the economic activities of children and young persons, including on the number of children working below the minimum age.***

Article 3(1) and (2). Hazardous work. ***With regard to the adoption of the list of types of hazardous work prohibited for children under the age of 18 years, the Committee refers to its comments in relation to the Worst Forms of Child Labour Convention, 1999 (No. 182).***

Article 5. Limitation of the scope of application of the Convention to certain branches of economic activity. The Committee previously noted that, at the time of ratification of the Convention, Mauritania declared that it was initially limiting the scope of application of the Convention to the branches of economic activity and types of enterprise covered by *Article 5(3)* of the Convention, namely: mining and quarrying; manufacturing; construction and public works; electricity, gas and water; sanitary services; transport, storage and communications; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing waged workers. It noted the information provided by the Government that in industries that are excluded from the scope of the provisions of the Convention, child labour is virtually non-existent. However, the Government stated that it intended to extend the scope of the provisions of the Convention to the informal sector, where child labour might still exist.

In this regard, the Committee noted, in its comments on Convention No. 182, the statistics in the September 2018 report on the survey of child labour in agriculture in Mauritania, produced jointly by the Government and the ILO, which indicated that 77.1 per cent of working children who responded to the survey were unpaid family workers. According to that report, more than one third (37.2 per cent) of interviewed child workers between 5 and 17 years of age said that they had been exposed to dangers and hazards connected with agricultural activities, such as injuries from tools and exposure to chemicals.

The Committee notes with ***concern*** that the employment of children in informal family enterprises, including in hazardous conditions, appears to be widespread in the country. The Committee emphasizes that, although the scope of the Convention may be limited to certain branches of economic activity, the protection of children from engagement in hazardous work cannot be excluded from the scope of the Convention, especially since the new Order No. 0066 of 17 January 2022 on the list of hazardous work prohibited for children, prohibits the employment of children under 18 years of age in hazardous work harmful to their physical or mental health, in establishments of any kind, including family enterprises. ***Recalling that Article 5(4) of the Convention allows Member States to extend the scope of the Convention by a declaration addressed to the Director-General of the Office, the Committee strongly encourages the Government to consider the possibility of making use of this Article to ensure the protection of children working in the informal sector, in particular in a family context. In the meantime, the Committee requests the Government to take the necessary measures to ensure that no child under the age of 18 years is engaged in hazardous work, including those working in a family business, and to provide information on the progress made in this regard and the results achieved.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comment

Articles 3(a) and 7(1) of the Convention. Slavery or slavery-like practices and penalties. 1. *Child victims of slavery.* Regarding the measures taken to ensure effective application of Act No. 2015-31 of 10 September 2015 criminalizing slavery and suppressing slavery-like practices, the Committee refers to its detailed comments on the Forced Labour Convention, 1930 (No. 29).

2. *Forced or compulsory labour. Begging.* The Committee previously noted that section 42(1) of Ordinance No. 2005-015 for the protection of children under criminal law provides that any person who causes a child to beg or directly employs a child to beg shall be liable to imprisonment of one to six months and a fine. It again notes with ***regret*** the lack of information on investigations and prosecutions of *marabouts* who force children to beg. ***Recalling that even the best legislation is only effective if it is enforced, the Committee again urges the Government to take the necessary steps to ensure the effective application of section 42(1) of Ordinance No. 2005-015 for the protection of***

children under criminal law. The Committee urges the Government to provide information on this matter, including, for example, the number of marabouts identified as using children for purely economic purposes, the number of prosecutions and the criminal penalties imposed.

3. *Sale and trafficking of children.* In its previous comments, the Committee noted that, under section 78 of Act No. 2018-024 of 21 June 2018 issuing the General Child Protection Code, any person who subjects a child to trafficking shall be liable to imprisonment of 10 to 20 years.

The Committee notes from the information available in the Government's report submitted in respect of Convention No. 29, that the new Act No. 2020-017 of 6 August 2020 on the prevention and repression of trafficking in persons and the protection of victims, defines and includes all forms of human trafficking that were not provided for under Act No. 2015-031 criminalizing slavery and suppressing slavery-like practices. It provides adequate sanctions for all forms of trafficking to which persons may be exposed, including forced labour, slavery and slavery-like practices. It also aims to promote national coordination and international cooperation in the field of combating trafficking in persons. The Government also supplies detailed information on the action undertaken since the entry into force of Act No. 2015-031, including the annual organization of training and awareness-raising activities by the Justice Department, aimed at strengthening the capacities of magistrates, and of the actors in the criminal justice system, including judges, prosecutors, judicial police officers, attorneys, registrars and civil society actors. Moreover, the Committee notes, still according to the Government's report on Convention No. 29, the data concerning the cases considered by the Supreme Court, the appeal courts and the judicial authorities related to trafficking for the purpose of slavery. The Committee notes however that this data do not include the other forms of trafficking and are not disaggregated by age. ***The Committee requests the Government to continue its efforts to strengthen the capacities of the entities responsible for the application of legislation to combat the sale and trafficking of children under 18 years of age, including through training and the provision of adequate resources. It also requests the Government to provide information on the application in practice of section 78 of Act No. 2018-024 of 21 June 2018 issuing the General Child Protection Code and of Act No. 2020-017 on the prevention and repression of trafficking in persons and the protection of victims, indicating the number and nature of the violations identified, the prosecutions filed and the penalties imposed, in cases specifically concerning child victims of trafficking under 18 years of age.***

Articles 3(d) and 4(1). Hazardous work and determination of hazardous types of work. The Committee previously expressed the firm hope that the Government would adopt the list of hazardous types of work prohibited for children under 18 years of age in the very near future. It notes with ***satisfaction*** the adoption of Ordinance No. 0066-2022 of 7 January 2022 concerning the list of hazardous work prohibited for children, which prohibits the employment of children in hazardous work detrimental to their physical or mental health, in any public or private establishment, whether agricultural, commercial or industrial in nature, including where such establishments impart religious or occupational education or are charitable institutions, family enterprises or private households. In this regard, the Ordinance contains a detailed list of the types of hazardous work prohibited to children. Moreover, section 7 provides that the Secretary-General of the Ministry of Labour, the Director-General of Labour and the labour inspectors, as the case may be, are responsible for application of the Ordinance. ***The Committee requests the Government to provide information on the application in practice of Ordinance No. 0066-2022 concerning the list of hazardous work prohibited for children. In particular, it requests the Government to provide information on the number and nature of the violations identified by the labour inspection and to indicate what sanctions are provided and applied in such cases.***

Article 7(2) Effective and time-bound measures. Clause (b). Assistance for the removal of children from the worst forms of child labour and for their rehabilitation and integration into society. Forced or compulsory labour. Begging. The Committee previously noted the persistent presence of children engaged in begging and requested the Government to continue to indicate the number of child victims of begging who have been removed from the streets and rehabilitated and integrated into society, including by

social protection and rehabilitation centres, and to inform the Committee of any other measure taken to identify and remove *talibé* children from being obliged to beg.

The Committee notes with ***regret*** the absence of relevant information in the Government's report. It notes from Mauritania's national report of 9 November 2020, presented under the Universal Periodic Review of the Human Rights Council, that a programme has been launched to tackle the practice of begging, and a project for the integration and education of child beggars helping to put an end to this practice is under way (A/HRC/WG.6/37/MRT/1), paragraph 119). ***The Committee requests the Government to intensify its efforts to remove children under 18 years of age from begging, rehabilitate and integrate them socially. It urges the Government to communicate information in this regard, including on the number of talibé children taken into care by the social protection and rehabilitation centres or rehabilitated within the framework of the programme to tackle the practice of begging.***

Clause (c). Access to free basic education. The Committee previously noted that while access to basic education has been improved in primary education, with virtual parity between boys and girls, it remained concerned at the poor quality of the teaching, the low transition rates to secondary school, insufficient monitoring of private and Koranic schools, overcrowding and understaffing in schools and the very high school drop-out rates among girls who are descended from persons subjected to slavery or among black African girls.

The Committee notes with ***regret*** that the report lacks information in this respect. It notes the information provided by the Government in Mauritania's national report of 9 November 2020, submitted under the Universal Periodic Review to the Human Rights Council, concerning the implementation of the education policy, the principal aim of which is to guarantee for all children on the Mauritanian territory a complete and good quality education, by improving educational opportunities, eliminating disparities of all kinds, raising the quality of teaching and introducing a results-based management approach. Within this framework, the measures taken include: (i) increasing the budget allocated to education; (ii) expanding the network of primary schools, particularly in rural areas, and increasing the numbers of teachers; (iii) introducing nutrition programmes and fitting sanitary installations, specifically for girls; (iv) providing school buses for female students in rural areas; (v) granting cash transfers to poor families, subject to sending their children to school (30,512 poor family beneficiaries); and (vi) granting of monthly scholarships to nearly 2,400 girls from disadvantaged backgrounds. ***Considering that access to free basic education and school attendance are essential to prevent the engagement of children in the worst forms of child labour, the Committee requests the Government to continue its efforts to improve the functioning of the education system in the country, including by increasing the secondary school enrolment and completion rate. It again requests the Government to continue to take the necessary steps to improve access to education in public schools, the quality of teaching, and to combat school drop-outs. Lastly, the Committee urges the Government to provide statistical information on the school enrolment and completion rates at both primary and secondary levels, disaggregated by age and gender.***

Clause (e). Particular situation of girls. Domestic work. In its previous comments, the Committee noted that more than half of all domestic workers in Mauritania are children, the majority of them girls, separated from their families and exposed to economic exploitation, violence, discrimination and abuse, including sexual abuse. The Committee noted that the Government explained that contracts for domestic work must be in written form and that abuses in this area are severely punished. The Committee requested the Government to communicate statistical information on the number and nature of penalties imposed on persons who exploit girls in domestic work, and to provide copies of standard employment contracts for domestic workers.

The Committee once more notes with ***regret*** that the Government provides no information in this respect in its report. However, the Committee notes that, under the new Ordinance No. 0066-2022 of 7 January 2022 concerning the list of hazardous work prohibited for children, domestic work is included

in the sectors of activity prohibited to children under the age of 18 years. ***The Committee therefore urges the Government to take the necessary measures to ensure the effective implementation of Ordinance No. 0066-2022, thereby putting an end in practice to the exploitation of girls under 18 years of age in domestic work. In this regard, it again requests the Government to provide statistical information on the number and nature of penalties imposed on persons who exploit girls in domestic work and to send copies of standard employment contracts for domestic workers. Lastly, the Committee urges the Government to take the necessary measures to identify and remove girls under 18 years from hazardous domestic work and to provide information on the number of girls removed and rehabilitated and socially integrated.***

The Committee is raising other matters in a request made directly to the Government.

Mongolia

Minimum Age Convention, 1973 (No. 138) (ratification: 2002)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. National policy and application of the Convention in practice. The Committee previously noted the outcomes of the National Programme for the Elimination of the Worst Forms of Child Labour 2011–16 (the NAP–WFCL) indicated by the Government, including 694 cases of child labour identified, and the organization of training and awareness-raising events. It further noted that child labour rose from 7 per cent in 2002–03 to 16 per cent in 2011, according to the Understanding Children's Work (UCW) project. The Committee requested the Government to continue its efforts to ensure the progressive abolition of child labour.

The Government indicates in its report that the National Programme for the Development and Protection of Children was adopted by resolution No. 270 of 20 September 2017. This programme, which will be implemented for the 2017–21 period, includes measures to eliminate child labour. The Government states that the Implementation Schedule for the National Programme for the Development and Protection of Children for 2018–19 was approved in 2018 by the Minister of Labour and Social Protection, the Minister of Education, Culture, Science and Sport, and the Minister of Health.

The Committee notes that, according to the 17th Status Report on Human Rights and Freedoms in Mongolia, issued in 2018 by the National Human Rights Commission of Mongolia, the Government expanded the child helpline service by resolution No. 55 of 2016, as an official service centre under the Authority for Family, Child and Youth Development. The Committee notes that the Deputy Minister of Labour and Social Protection indicated in its opening statement for the 75th Session of the United Nations Committee on the Rights of the Child (CRC) on 25 May 2017 that the child helpline is a 24-hour call centre free of charge, with four channels. The centre receives 15,000 calls per month and provides necessary information and advice related to child protection and contributes to monitoring the receipt and processing of complaints by children. ***The Committee encourages the Government to pursue its efforts towards the progressive elimination of child labour and to provide information on the measures taken in this regard, including on the implementation of the National Programme for the Development and Protection of Children and on the impact of the child helpline service.***

Article 2(1). Scope of application. Informal economy. In its previous comments, the Committee noted that the Labour Law excluded work performed outside the framework of a labour contract and self-employment from its scope of application. It noted that the definition provided in the new draft Labour Law did not cover work performed outside the framework of an employer/employee relationship or in the informal economy and requested the Government to modify its draft Labour Law to ensure that the protections provided are extended to children working outside of an employment relationship.

The Committee notes the Government's indication that a parliamentary working group on the Labour Law revision has been appointed by the Parliament, in order to suggest proposals and conclusions prior to the discussion in the Parliament. The Government states that the working group is preparing proposals in order to provide legal protection to all workers, including children, in the Labour Law. The Committee notes that, according to the ILO's information collected in the framework of the project on "Sustaining Generalised

Scheme of Preferences-Plus (GSP+) Status by strengthened national capacities to improve International Labour Standards compliance and Reporting-Mongolia Phase 2 (GSP+3)", the draft Labour Law extends labour protection to all cases where employment relations exist, regardless of the existence of an employment contract. It also notes that, according to the ILO's information, the draft revised Labour Law will be discussed during the spring session of parliament, as of 5 April 2019. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the draft Labour Law does not fail to take into account the Committee's comments, thus ensuring that all children working outside of an employment relationship, such as children working on their own account or in the informal economy, benefit from the protection laid down by the Convention. It requests the Government to provide a copy of the new law, once adopted.***

Article 2(3). Age of completion of compulsory schooling. In its previous comments, the Committee had noted the contradictory provisions in various national laws which regulate the minimum age for admission to employment and the age of completion of education. It noted the Government's indication that its legislation provides for nine years of compulsory schooling starting from the age of 6. The Government indicated that the draft Labour Law provides for the prohibition of employment to "(1) children less than 15 years of age and (2) those who have reached that age but who have not finished compulsory education". The Committee accordingly requested the Government to take the necessary measures to ensure that a provision linking the minimum age for admission to employment to the age of completion of compulsory schooling is included in the draft Labour Law.

The Committee notes the Government's statement that the draft Labour Law is under review and that a parliamentary working group on the Labour Law revision has been appointed. ***The Committee expresses the firm hope that the revision of the Labour Law will include a provision linking the minimum age for admission to employment to the age of completion of compulsory schooling.***

Article 7(1) and (3). Light work and determination of light work activities. The Committee previously noted the Government's indication that the legislation concerning light work is included in the draft Labour Law which provides for regulations that will determine light work and hours and conditions in which minors may be employed. It urged the Government to take the necessary measures to ensure that a provision regulating light work is adopted in the near future.

The Committee notes the Government's indication that, in the framework of the revision of the Labour Law, light work which may be carried out by children will be regulated for the first time. The Committee notes that, according to the Final Narrative Report of the project GSP+3, the draft revised Labour Law allows children of 13 years of age and above to perform light work that has adequate occupational safety and health conditions with the permission of their legal representatives. The Committee recalls that, under Article 7(1)of the Convention, national laws or regulations may permit the employment or work of persons as from 13 years of age in light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational training or training programmes approved by the competent authority or their capacity to benefit from the instruction received. ***The Committee expects the Government to take the necessary measures without delay to regulate light work and determine the types of light work activities that may be undertaken by children of 13 years of age and above, within the framework of the Labour Law review process. It requests the Government to provide a copy of the list of the types of light work permitted for children, once it has been adopted.***

Article 8. Artistic performances. The Committee previously noted the Government's indication that there is no law or policy limiting age and work hours for children working in artistic performances yet. It requested the Government to take the necessary measures to establish a system of individual permits to be granted for children under 15 years who work in activities such as artistic performances and to limit the hours during which, and prescribe the conditions in which, such employment or work is allowed.

The Committee notes the Government's statement that, in the framework of the revision of the Labour Law, regulations for granting permits, limiting the number of hours during which, and prescribing the conditions in which children under the age of 15 are allowed to work in activities such as artistic performances, will be established. ***The Committee expresses the firm hope that the revision of the Labour Law will ensure the establishment of a system of individual permits to be granted for children under 15 years of age who work in activities such as artistic performances, in compliance with Article 8 of the Convention. It requests the Government to provide information in this respect.***

Article 9(1). Penalties. The Committee previously noted that a draft of the revised version of the Criminal Code, which includes a criminal offence provision for persons employing children in the worst forms of child labour, was being reviewed by the Parliament. It requested the Government to take the necessary measures to ensure that the draft Criminal Code establishes sufficiently effective and dissuasive penalties.

The Committee notes the absence of information on this point in the Government's report. It notes the Government's indication, in its report to the CRC, that a new Chapter "Crime against children" was added in the Criminal Code of 2015 (which entered into force on 1 July 2017), defining as a crime the intentional engagement of a child to conduct work that is physically and mentally harmful to him/her. The Committee notes that, pursuant to section 16.10 of the Criminal Code, this crime is punishable by a fine, community work, restriction of movements or imprisonment of six months to one year. ***The Committee requests the Government to provide information on the application of section 16.10 of the Criminal Code in practice, including information on the number of violations reported, the nature of the offences, and the penalties imposed.***

Article 9(3). Keeping of registers. In its previous comments, the Committee noted that the national legislation does not contain provisions on the obligation of an employer to keep and make available the registers of persons under the age of 18 whom he/she employs. It noted that the draft regulations to the Labour Law prescribes that an employer must keep a record of "minor employees", and requested the Government to ensure that the regulations will require employers to keep a register containing the name and age (or date of birth) of all persons under the age of 18 years whom they employ.

The Committee notes the Government's indication that section 93.7 of the draft Labour Law requires the employer to keep a register of all children employed by him/her, including their name, date of birth, the work period and the conditions of work, and to inform, within ten days of the start of employment, the relevant state body responsible for labour and labour supervision. The Government further indicates that the draft Penalties Act has been amended in line with the draft revised Labour Law to impose penalties on employers who do not keep registers of children employed. ***The Committee expresses the firm hope that the draft Labour Law will be adopted without further delay, so as to be in line with Article 9(3) of the Convention, and requests the Government to send a copy of the Law once it has been adopted. It also requests the Government to indicate the penalties applicable to employers who fail to comply with the keeping of registers of children whom they employ and to provide information on the adoption of the draft Penalties Act.***

The Committee expresses the firm hope that the Government will take into consideration the Committee's comments while finalizing its draft legislation. In this regard, the Committee welcomes the ILO project financed by the European Union to support the Generalised Scheme of Preferences (GSP+) beneficiary countries to effectively implement international labour standards targeting Mongolia.

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

Morocco

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2(1) of the Convention. Minimum age for admission to employment or work and application of the Convention in practice. 1. *Children working in informal artisanal activities and other sectors.* In its previous comments, the Committee noted that, according to the International Trade Union Confederation (ITUC), child labour was common in informal artisanal activities. It also noted that, according to the report entitled "Understanding Children's Work in Morocco", 7 per cent of children between 7 and 14 years of age were engaged in work, while 18 per cent of children were economically active in the 12 to 14 age group. According to this study, 87 per cent of working children were in rural areas, where they worked in agriculture. The Committee also observed that, under section 4 of the Labour Code, children employed in informal artisanal activities, or formal artisanal activities involving five employees or fewer, do not enjoy the protection of the Labour Code and, consequently, do not benefit from the application of the minimum age of 15 years for admission to employment or work. The Committee noted that, according to the survey of children's work in

small agricultural undertakings in Morocco (2014), the average age of children working in small agricultural undertakings was 14.3 years, with the over-15 age group accounting for nearly 57 per cent of the total and the under-12 age group for 10 per cent. It further noted that the average school dropout age was 13 years. The Committee noted with interest the Government's statement that the bill concerning conditions of work and employment in activities of a purely traditional nature (bill on traditional activities), which prohibits work for children under 15 years of age in this sector in accordance with sections 143 and 153 of the Labour Code, was examined by the Council of the Government on 25 December 2014.

The Committee notes the Government's indication in its report that the bill on traditional activities has been amended to incorporate new protectionist provisions which are favourable to workers in the sector and that it was referred to the Secretariat-General of the Government on 7 June 2018. The Committee also notes that, according to the quarterly employment survey of the Office of the High Commissioner for Planning, a total of 46,662 children under 15 years of age were engaged in work in the third quarter of 2017 and over 88 per cent of them were working in rural areas. The Committee further notes that the United Nations Human Rights Committee, in its concluding observations of December 2016, expressed concern at the continued economic exploitation of children, particularly in agriculture (CCPR/C/MAR/CO/6, paragraph 47). The Committee recalls that the Convention applies to all sectors of economic activity and all forms of employment or work, including the artisanal and agricultural informal economy. ***The Committee expresses the firm hope that the bill concerning conditions of work and employment in activities of a purely traditional nature will be adopted in the very near future and requests the Government to send a copy when it has been adopted. It requests the Government to continue its efforts to combat child labour, especially in the artisanal and agricultural sectors, and to provide information on the implementation of any project in this regard and the results achieved.***

2. *Child domestic workers.* ***As regards the issue of child domestic labour, the Committee requests the Government to refer to its detailed comments on the Worst Forms of Child Labour Convention, 1999 (No. 182).***

Article 9(1). Penalties. In its previous comments, the Committee noted that section 151 of the Labour Code provides that the employment of a child under 15 years of age, in breach of section 143 of the Labour Code, shall be punishable by a fine of 25,000–30,000 dirhams (MAD) (US$3,000–3,600), and that a repeat offence is subject to a term of imprisonment of six days to three months and/or a fine of MAD50,000–60,000 (US$6,000–7,200). It nevertheless noted that sections 150 and 183 of the Labour Code provide for a fine of MAD300–500 (US$36–60) for breaches of sections 147 and 179 of the Labour Code (prohibiting the employment of children under 18 years of age in hazardous work, in quarries or mines, or in work likely to hamper their growth). The Committee noted with regret the lack of information on any legislative amendments relating to penalties for violations of the ban on employing children under 18 years of age in hazardous work. Furthermore, the Committee noted that, before resorting to penalties, labour inspectors must give advice and information to employers on the dangers to which child workers are exposed. Under sections 542 and 543 of the Labour Code, a labour inspector who detects a violation of the safety and health provisions or regulations that poses an imminent risk to the workers' health or safety shall issue an order requiring the employer to take all the necessary measures immediately. It is only if the employer refuses or fails to comply with the requirements of the order that the labour inspector shall immediately refer the matter to the court of first instance, where the employer may be given a deadline for taking all necessary steps to prevent the imminent danger and may order the closure of the establishment and determine, where appropriate, the necessary duration of the closure. The Committee observed that persons who have employed children in breach of the provisions giving effect to the Convention are not generally prosecuted if such employment is brought to an end.

The Committee notes the Government's indications that in 2017 labour inspectors carried out 684 inspections in which they made 2,306 observations and issued 43 compliance notices. The Government indicates that, out of 85 working children under 15 years of age, 70 were removed from work and, out of 542 children between 15 and 18 years of age engaged in hazardous work, 158 were removed from such work. The Committee notes with ***regret*** that the Government has not sent any information on the number of persons prosecuted and the penalties imposed on persons violating provisions giving effect to the Convention. Furthermore, the Committee notes with concern that despite the fact that it has been raising this issue since 2005, the penalties for violating the prohibition on the employment of children under 18 years of age in hazardous work still do not constitute an adequate deterrent to ensure the application of

the provisions of the Convention concerning hazardous work. ***The Committee urges the Government to take the necessary measures to ensure that all persons who employ children under 18 years of age in hazardous work are prosecuted and incur penalties that constitute an effective and adequate deterrent, in accordance with Article 9(1) of the Convention and in line with the more severe penalties envisaged in section 151 of the Labour Code. The Committee also requests the Government to provide information on the type of violations of the Convention detected by the labour inspection services, the number of persons prosecuted for each type of violation and the penalties imposed, particularly in relation to the provisions giving effect to the Convention.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3(a) and (d) and 7(1) of the Convention. Forced or compulsory labour, hazardous work and penalties. Child domestic labour. In its previous comments, the Committee noted the statement by the International Trade Union Confederation (ITUC) that child domestic labour, performed under conditions of servitude, is common practice in the country, with parents selling their children, sometimes as young as 6 years of age, to work as domestic servants. The Committee noted that section 10 of the Labour Code prohibits forced labour and that section 467-2 of the Penal Code prohibits the forced labour of children under 15 years of age. It further noted that a bill concerning domestic work, fixing the minimum age for this type of employment at 16 years, was in the process of being adopted. The Government indicated that a specific list determining hazardous types of work prohibited in the domestic work sector had been drawn up and would be circulated for approval after promulgation of the abovementioned bill. Furthermore, an initial survey of girl domestic workers indicated a total of nearly 23,000 girls under 18 years of age engaged in domestic work in the Greater Casablanca area, 59.2 per cent of whom were under 15 years of age. The survey revealed that many of these girls were victims of abuse. The Committee noted with concern the observation of the United Nations Committee on the Rights of the Child (CRC) that the authorities had not taken sufficient measures to remove girls, some only 8 years old, from households where they are employed as domestic workers in precarious conditions. The Committee urged the Government to take the necessary steps to ensure that the abovementioned bill and the list of hazardous types of domestic work were adopted as a matter of urgency.

The Committee notes with ***satisfaction*** the adoption of Act No. 19-12 fixing the conditions of work and employment of male and female domestic workers. The Government refers in its report to the adoption of two implementing decrees, specified in sections 3 and 6 of the aforementioned Act, which establish, respectively, the standard employment contract for domestic workers and the list of hazardous types of work prohibited for domestic workers aged between 16 and 18 years. Activities prohibited for children include the use of chemicals and electric cutting tools or machines which may present a risk to the safety and health of domestic employees, and work which may expose domestic workers to health risks because of contact with persons suffering from contagious diseases.

The Committee notes that section 6 of Act No. 19-12 fixes the minimum age for admission to employment as a domestic worker at 18 years. The aforementioned section provides for a transition period of five years during which children between 16 and 18 years of age may be employed as domestic workers further to written permission from their guardians. Section 7 of the Act prohibits forced labour involving domestic workers. Under section 23 of the Act, persons who infringe sections 6 and 7 are liable to a fine of 25,000–30,000 Moroccan dirhams (MAD) (US$3,000–3,600) and, in the case of a repeat offence, a fine of double the amount and/or three months' imprisonment. The Committee further notes that the United Nations Human Rights Committee, in its concluding observations of December 2016, expressed concern at the continued economic exploitation of children, particularly as domestic workers (CCPR/C/MAR/CO/6, paragraph 47). While noting the Government's efforts to regulate domestic work, the Committee reminds the Government that, under *Article 3(a)* and *(d)* of the Convention, work done by young persons under 18 years of age under conditions similar to slavery or under hazardous conditions constitutes one of the worst forms of child labour and, under *Article 1,* must be eliminated as a matter of urgency. ***The Committee***

therefore requests the Government to continue its efforts to combat child domestic labour, particularly by ensuring that Act No. 19-12 fixing the conditions of work and employment of male and female domestic workers is applied in practice, and that penalties constituting an effective deterrent are imposed in practice on any individuals who subject children under 18 years of age to domestic work in hazardous or abusive conditions. It requests the Government to provide information on the number and nature of reported offences, the number of prosecutions and the penalties imposed.

Article 3(a). Trafficking of children. In its previous comments, the Committee noted that there was no national legislation relating to the trafficking of children. It also noted the CRC's observation that Morocco remains a country of origin, destination and transit for children, who are subjected to forced labour, particularly as domestic workers, and also to trafficking for sexual exploitation and forced begging, two-thirds of trafficking victims being children. The Committee further noted that the 2015 study on the trafficking of women and children in Morocco, produced jointly by UN Women, Morocco and the Swiss Confederation, refers to the existence of forced labour for boys in craft work and agriculture and also of trafficking for sexual exploitation in the form of prostitution or pornography. The Committee asked the Government to take the necessary steps to ensure the adoption of legislation prohibiting the trafficking of children.

The Committee notes with ***interest*** the adoption of Act No. 27-14 concerning action against trafficking in persons, promulgated by Dahir No. 1-16-104 of 18 July 2016, under which the definition of exploitation includes all forms of sexual exploitation, particularly exploitation of the prostitution of third parties and exploitation in the form of pornography, including through electronic communication media, and also exploitation in the form of forced labour, servitude, begging, slavery or similar practices, and exploitation in armed conflicts (section 448.1). The Committee notes that, under section 448.4, traffickers of persons are liable to imprisonment of 20–30 years and a fine of MAD200,000 to MAD2 million (US$21,000–210,000) when the victims are young persons under 18 years of age. The Government indicates that the Act contains provisions relating to institutional measures and provides for the setting up of a national advisory committee whose mandate is to put forward proposals on combating trafficking of persons and to ensure that the necessary steps are taken to support projects run by associations providing assistance for victims.

However, the Committee notes that, according to the report on the work and recommendations of the July 2017 study day on the institutional framework for combating human trafficking, Morocco continues to be a country of origin, transit, and destination for the trafficking of children for labour or sexual exploitation and domestic servitude. The report emphasizes that Morocco has become a country of transit for many migrants originating from sub-Saharan Africa and Asia, who are at special risk of becoming victims of trafficking networks. ***While noting the efforts made by the Government to combat trafficking in persons, the Committee requests the Government to provide information on the application in practice of Act No. 27-14 concerning action against trafficking in persons, indicating in particular the number of child victims of trafficking, disaggregated by gender and age, and the number and nature of prosecutions and penalties imposed.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and removing them from these worst forms, and ensuring their rehabilitation and social integration. Child prostitution and sex tourism. In its previous comments, the Committee expressed concern at the persistence of child prostitution and sex tourism involving young Moroccans and immigrants, particularly boys, despite the amendment to the Penal Code in 2003 making sex tourism a criminal offence. It noted the Government's indications that the scourge of the sexual exploitation of children remains unseen and unrecognized in Morocco, and so the Government is making every effort to tackle it. Moreover, the CRC, in its concluding observations of 2014, expressed concern at the growth of sex tourism in Morocco. The Committee also noted that, in the 2011 mid-term evaluation of the National Action Plan for Children 2006–15 (PANE), the Government indicated that PANE had recorded significant progress in the protection of child victims of sexual exploitation, by establishing new public structures for the protection of child victims of sexual violence, including care units in courts and hospitals, support units within the Directorate-General for National Security, guidance and support units in schools, the ONDE telephone helpline and child reception areas in police stations. In this context, the Committee noted that five child protection units (UPEs) were set up between 2007 and 2010 in Marrakech, Casablanca, Tangier, Meknès and Essaouira to ensure better medical, psychological and legal assistance for child victims of violence and mistreatment, including sexual and economic exploitation, and that hundreds of children have benefited. The Government indicated that it

had established an integrated public child protection policy in 2013, which included the objective of protecting children from sexual exploitation.

The Committee notes the Government's indication that the "Integrated public policy for the protection of children in Morocco 2015–25 (PPIPM)", adopted on 3 June 2015, comprises five strategic objectives, including: (i) strengthening the legal framework for child protection and making it more effective; (ii) establishing regional integrated child protection mechanisms; and (iii) setting up information, follow-up/evaluation and monitoring systems. The Government refers to the setting up of a programme for the rehabilitation of the UPEs, developed by the Ministry for the Family, Solidarity, Equality and Social Development (MFSEDS) in collaboration with the National Assistance Agency and associations with expertise in this field, in order to reinforce structures for the social protection of children and improve the quality of care for children in difficult situations. In 2016, three new UPEs were set up in Salé, Taza and Agadir. The Committee notes that the Government does not provide any information on the number of children prevented from engaging in commercial sexual exploitation or removed from it by the UPEs. ***The Committee requests the Government to continue its efforts to combat the commercial sexual exploitation of children. It also requests the Government to send information on the implementation of the integrated public child protection policy with regard to sexual exploitation and also information on the number of children prevented from engaging in commercial sexual exploitation or removed from it by the UPEs.***

Clause (d). Children at special risk. Child domestic labour. The Committee previously noted the adoption of the "National programme to combat the use of young girls in domestic work (INQAD)" as part of the National Action Plan for Children. It also noted the results achieved through the ILO–IPEC–PAMODEC project, particularly the training of 50 labour inspectors in the area of child labour with a specific component on child domestic labour, three regional information and consultation meetings with the relevant stakeholders aimed at establishing a process for the preparation of regional plans to combat domestic labour, six training sessions on child domestic labour for educators and social facilitators in non-governmental organizations (NGOs), participation and consultation on the bill concerning domestic workers, the implementation of two action programmes against child domestic labour involving young girls in the regions of Rabat/Salé and Marrakech/Safi in support of the AMESIP and Al Karam associations (providing aid for children in precarious situations).

The Committee notes the Government's indications that financial support from the Government in 2017 enabled associations to develop projects, inter alia, to reduce child domestic labour involving young girls, while also taking action to reduce the school dropout rate. Even though the Government indicates that, in 2016, a total of 286 children under 15 years of age were removed from work and 271 children between 15 and 18 years of age were removed from hazardous work, including young girl domestic workers, the Committee notes the lack of information regarding the number of girls removed from domestic work in particular. ***The Committee encourages the Government to step up its efforts to identify, remove and reintegrate girls under 18 years of age who are employed in domestic work and are victims of economic or sexual exploitation, and requests it to provide information on the results achieved with respect to domestic work involving young girls.***

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

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

Mozambique

Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

Previous comments: observation and direct request

Article 2(1) of the Convention. Scope of application and labour inspection. Children working in the informal economy. Following its previous comments, the Committee notes the Government's indication, in its report, that the General Labour Inspectorate (IGT) does not monitor or inspect activities or work in the informal economy considering that the Labour Law (Act No. 23/2007 of 1 August 2007) only regulates work in the formal economy. Consequently, while no situations constituting the employment

of children under the minimum age have been identified in inspections conducted in the formal economy, there is no statistical data on the observance of international labour standards regarding the employment of children and young persons in the informal economy. The Government indicates, however, that the IGT has recommended the dissemination of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), and is continuing its efforts to identify instances of child labour, which is mostly observed in the agricultural, mining and livestock grazing sectors.

While taking due note of this, the Committee notes that, in its concluding observations of 27 November 2019, the United Nations Committee on the Rights of the Child recommended that Mozambique strengthen its labour inspectorate, including through increased financial resources and continuous capacity-building, and develop programmes and intersectional coordination mechanisms to identify and protect victims of child labour, including in the informal sector (CRC/C/MOZ/CO/3-4, paragraph 44). ***The Committee requests the Government to strengthen its measures to ensure that the protection afforded by the Convention is guaranteed to children working in the informal economy, including through labour inspection. In this regard, the Committee once again encourages the Government to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate services to better monitor children working both in the formal and in the informal economy, particularly in the agricultural sector, as well as in the mining and livestock grazing sectors. It requests the Government to provide information on specific measures taken in this regard, as well as on the results achieved.***

Article 6. Vocational training and apprenticeship. Following its previous comments, the Committee notes the Government's indication that Act No. 6/2016, amending Act No. 23/2014 on Vocational Education, provides that the minimum requirement to enter the basic level of vocational education is completion of at least the second grade of primary education or equivalent, and the minimum requirement to enter the intermediate level of vocational education is the completion of at least the basic level of vocational education or the first cycle of general secondary education or equivalent. The Committee observes that this does not respond to the requirement, under *Article 6* of the Convention, of ensuring that no minor under 14 years of age is permitted to enter into an apprenticeship programme, and that it appears that the minimum age to do so remains 12 years of age, in accordance with section 248(3) of the Labour Law. ***The Committee therefore requests the Government to take the necessary measures to ensure that children below the age of 14 do not enter apprenticeship programmes in undertakings, including in the framework of the current Labour Law review.***

Article 7(1) and (3). Minimum age for admission to light work and determination of light work. The Committee previously noted that the national legislation of Mozambique permitted minors between 12 and 15 years of age to enter into employment contracts (section 26(2) of the Labour Law), including domestic work (section 4(2) of the Regulations on Domestic Work (Decree No. 40/2008)), with the written authorization of their legal representatives. It requested the Government to take the necessary measures to bring that legislation, including the Labour Law, into conformity with *Article 7(1)* and *(3)* of the Convention (minimum age of 13 for light work and conditions and hours for permitted light work activities).

The Committee notes the Government's indication that the revised draft Labour Law will establish the age of 18 as the sole minimum age for admission to employment, without exceptions. ***The Committee expresses the firm hope that the provisions of the revised Labour Law will ensure that any light work activities may not be undertaken by children under the age of 13 years, as required by Article 7 of the Convention, including in domestic work. In this regard, it requests the Government to keep it informed of the progress made in the adoption of the revised Labour Law, and whether a minimum age of 18 years, without exception, is provided for by the new Labour Law.***

Application of the Convention in practice. The Committee notes the information contained in the Government's report relating to the cases of child labour received by the Children's Court (six cases in

2022), through activities led by municipalities throughout Mozambique. While taking due note of this information, the Committee notes with ***regret*** the absence of information concerning the Committee's previous request for statistics on the number of children under 15 years of age who are involved in child labour. ***The Committee once again requests the Government to take the necessary measures to ensure that up-to-date statistical information on the economic activities of children and young persons is made available, including the number of children working under the minimum age. It also requests the Government to provide information on the manner in which the Convention is applied in practice as well as information on the number of inspections carried out, the number and nature of violations relating to the employment of children and young persons detected, and the penalties imposed.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

Previous comments: observation and direct request

Articles 3(a), 5 and 7(1) of the Convention. Worst forms of child labour. Sale and trafficking of children, monitoring mechanisms and penalties. Following its previous comments, the Committee notes the information contained in the Government's report according to which the Specialized Unit for Trafficking in Persons, Illegal Immigration and Child Protection (SUTP) of the National Criminal Investigation Service (SERNIC) has carried out prevention interventions throughout the country. The Government indicates that awareness-raising presentations aimed at front-line officials from the SERNIC, the Department for the Assistance of Women and Child Victims of Violence, border control police, and the Customs Service and the National Migration Service have been held in coordination with other State institutions, non-governmental organizations and the International Organization on Migration (IOM). The Committee further notes the information contained in the Government's report under the Forced Labour Convention (No. 29), 1930, according to which other measures have been taken to reinforce the capacities of anti-trafficking authorities, including the production and distribution of handbooks containing procedures for assisting victims of violence, including trafficking victims; weekly technical training sessions provided to police sub-units, addressing various issues including trafficking in persons; and training sessions and short courses held by the SUTP for its focal points throughout Mozambique in order to improve techniques for detecting cases, arresting traffickers and rescuing victims as well as criminal investigation methods. The Committee notes the Government's indication that, in 2021, SERNIC recorded four cases of livestock grazing in Eswatini and the forced labour and sexual exploitation of children in South Africa, both involving Mozambican children. The children involved in these cases, all of whom were girls, were rescued and brought back to their families. The Government also provides statistics on the cases of sexual abuse of minors recorded by SERNIC (299 cases in 2022), but it is unclear whether those cases are related to trafficking or commercial sexual exploitation. Moreover, the Committee observes with ***regret*** that the Government does not provide any information on the number of prosecutions, convictions and penalties applied in cases of trafficking of children for commercial sexual or labour exploitation. ***The Committee therefore requests the Government to take measures to ensure that thorough investigations and prosecutions of perpetrators of the sale and trafficking of children are carried out. The Committee also once again requests the Government to provide information on the practical application of the Trafficking in Persons Act 2008, including information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied in cases involving children under the age of 18 years.***

Clause (b). Use, procuring or offering of a child for prostitution, pornography or pornographic performances. Following its previous comments, the Committee notes the Government's information, in its report, that specific and coordinated interventions have been implemented by the relevant bodies, namely the national police and the SERNIC, to remove children from situations that are harmful to their health and development, including from areas where child prostitution is practised. The Committee

notes, however, that the Government does not provide information on measures taken to ensure that persons who use, procure or offer children for the purposes of prostitution or pornography are effectively punished through appropriate criminal penalties (see 2012 General Survey on the fundamental Conventions, paragraphs 637–639). ***The Committee, therefore, urges the Government to take the necessary measures to ensure that appropriate criminal penalties which constitute an effective deterrent are established for the offences related to the use, procuring or offering of a child for prostitution and for the production of pornography or for pornographic performances. The Committee asks the Government to provide information on the measures taken in this regard.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. Following its previous comments, the Committee notes the Government's information regarding the results achieved through the implementation of the National Action Plan to Combat the Worst Forms of Child Labour (NAP) 2017–22, including: (i) the enrolment of 7,395,512 students in full primary education by 2022 (73 per cent of the overall target); (ii) the construction of 1,183 primary classrooms, benefitting more than 130,000 students (35 per cent of overall target); and (iii) the provision of school meal programmes that benefited 206,158 students in 42 districts and 340 schools.

While taking due note of this information, the Committee observes that most measures taken appear to only benefit children at the level of primary education. In this regard, it recalls that, according to a 2021 UNICEF report on the situation of children in Mozambique, the net attendance rate at the secondary level was just 20 per cent for boys and girls between the ages of 13 and 17 years in 2017, with the lowest rates appearing in the North of the country. ***Considering that education is key in preventing the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to intensify its efforts to improve the functioning of the educational system, particularly by increasing the enrolment, attendance and completion rates at the lower secondary level. It requests the Government to provide information on the measures adopted and the results achieved in this regard.***

Application of the Convention in practice. The Committee notes with ***regret*** that the Government does not provide up-to-date data on the situation of working children, including those involved in the worst forms of child labour, in Mozambique. ***The Committee urges the Government to take the necessary measures to ensure that sufficient data on the situation of working children, including those involved in the worst forms of child labour in Mozambique, is made available. It also once again requests the Government to supply information on the number of investigations, prosecutions, convictions and penalties applied for offences related to the worst forms of child labour. To the extent possible, all information provided should be disaggregated by age and gender.***

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

Nepal

Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. Following its previous comments, the Committee notes the Government's information that the Nepal Labour Force Survey (NLFS III) was conducted in 2017–18 by the Central Bureau of Statistics in collaboration with ILO. The Committee notes that according to the Nepal Child Labour Report of 2021, published by the ILO based on the data drawn from the NLFS III, the results of the survey shows a declining trend of overall child labour in Nepal, reaching 1.1 million in 2018 from 1.6 million in 2008. A significant decline is observed in the number of children in hazardous occupations (0.62 million in 2008 to 0.20 million in

2018). The child labour prevalence for children between 5 and 13 years is 18 per cent while it is 10 per cent for children between 14 and 17 years. Female children are more likely to be engaged in child labour (17 per cent than that of male children 14 per cent). This report also indicates that the National Master Plan II (NMP-II) on Child labour 2018-2028 that aims to eliminate all forms of child labour by 2025 has been approved.

The Committee further notes from the Government's 6th and 7th periodic reports to the Committee on the Rights of the Child, submitted on 15 February 2022, that the labour inspectorate conducted 1,762 child labour inspections at workplaces during the 2020-21 fiscal year, and in collaboration with the National Child Rights Council and Civil Society Organisation prosecuted several employers and rescued more than 100 child labourers (paragraph 182). In addition, the Ministry of Labour, Employment and Social Security has been implementing child labour free local level campaigns where 26 local levels are already engaged and additional 50 local levels are set to join in 2021/22 (paragraph 181). ***The Committee welcomes the decline in the prevalence of child labour, including hazardous child labour and strongly encourages the Government to continue its efforts to ensure the progressive elimination of child labour, including through the implementation of effective measures within the framework of the National Master Plan II. It requests the Government to provide information on the concrete measures taken in this regard and the results achieved.***

Article 2(1). Scope of application and labour inspection. Children working in the informal economy. In its previous comments, the Committee noted that the Labour Act of 2017 guarantees the right of labour inspectors to inspect all workplaces, including the informal economy. It also noted section 94(1)(g) of the Labour Act which states that the labour inspector shall inspect and find out whether children are employed or not and if found employed, shall rescue them immediately and take action against the employer.

In response to its previous comments concerning strengthening the capacity of the labour inspectorate, the Government indicates that the Occupational Safety and Health Centre has planned for 23 training activities for labour inspectors on various occupational safety and health related matters in the year 2022–23. However, the Committee notes from the Nepal Child Labour Report of 2021, that 87 per cent of children engaged in child labour are working in the agricultural sector, including 13.2 per cent in the production of goods for own use. ***The Committee therefore urges the Government to continue to take the necessary measures to strengthen the capacity and expand the reach of the labour inspectorate services to better monitor children working in the informal economy or on their own account, particularly in the agricultural sector. It requests the Government to continue to provide information on the measures taken in this regard as well as the number and nature of violations relating to the employment of children and young persons detected by the labour inspectorate and the penalties imposed.***

Article 3. Minimum age for admission to hazardous work and determination of types of hazardous work. The Committee previously observed that pursuant to sections 2(a) and 3(2) of the Child Labour (Prohibition and Regulation) Act, 2000 the prohibition on hazardous and risky jobs listed under Schedule 1, applies only to children under *16 years*. Similarly, section 43(2) of the Labour Rules, 1993 also prohibits the employment of persons under *16 years* on dangerous machines and in operations which are hazardous to their health. The Committee noted the Government's indication that the draft list of types of hazardous work prohibited to children under 18 years, had been finalized and was awaiting adoption.

The Committee notes that the Government has not provided any information concerning the adoption of the draft list of types of hazardous work prohibited to children under 18 years, and instead refers to Schedule 1 of the Child Labour (Prohibition and Regulation) Act of 2000. The Committee, however, notes that according to section 7(6) of the newly enacted Act Relating to Children of 2018, every child, defined as persons who have not completed 18 years of age, shall be protected from being

exploited economically and from activities that are harmful to their health, physical, mental, moral or social development. ***The Committee urges the Government to take the necessary measures to ensure the adoption of the draft list of types of hazardous work prohibited to children under 18 years, without further delay and to provide information on any progress made in this regard.***

Article 3(3). Admission to types of hazardous work from the age 16 years. The Committee previously noted that some of the activities contained in the proposed list of types of hazardous work, appeared to be prohibited only to children under 16 years. The Committee expressed the hope that the necessary measures would be taken to protect persons between 16 and 18 years who are engaged in hazardous types of work as laid down under *Article 3(3)* of the Convention.

The Committee notes the Government's information that it is committed to protecting persons between 16 and 18 years who are engaged in hazardous work through school enrolment programmes, family support programmes and alternative care options through the National Child Rights Council and Provincial and Local Child Rights Committees. ***Recalling the provisions under Article 3(3) of the Convention, the Committee once again requests the Government to take the necessary measures to ensure that children between 16 and 18 years of age may be permitted to perform hazardous work only on the condition that their health, safety and morals are fully protected and that they have received adequate training in that activity.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

Previous comment

Articles 3(a) and 7(2)(b) of the Convention. Worst forms of child labour and time-bound measures to provide direct assistance for their removal and rehabilitation and social integration. Child bonded labour. In its previous comments, the Committee noted the various rehabilitation programmes provided to *Haliya* and *Kamaiya* (agricultural based bonded labour practices) and *Kamlari*, (offering girls for domestic work to families of landlords) girls by the Ministry of Land Management and Poverty Alleviation. It requested the Government to continue its efforts and to provide information on the measures taken and the results achieved in this regard.

The Committee notes the Government' information in its report that out of the total 27,570 liberated *Kamaiyas*, 25,195 were provided with land, while 12,820 out of 16,322 *Haliya* families were rehabilitated. It also notes the Government's information in its report under the Forced Labour Convention, 1930 (No. 29) that the Department of Education has institutionalized a system of extending educational services, by providing scholarships and hostel facilities, to freed *Kamlari* girls. ***The Committee encourages the Government to pursue its efforts to ensure that all child victims of bonded labour receive appropriate services for their rehabilitation and social integration, including access to education. It requests the Government to continue to provide information on the measures taken in this regard and on the results achieved indicating the number of child bonded labourers that have been rehabilitated.***

Article 3(b). Use, procuring or offering of a child for the production of pornography or for pornographic performances. The Committee previously observed that the prohibition on the use or involvement of children in an "immoral profession" (sections 2(a) and 16(1)) of the Children's Act, 1992, applies only to children under 16 years. It noted the Government's information that the Children's Bill which contained provisions prohibiting the use, procuring or offering of all children under 18 years for the production of pornography or for pornographic performances was tabled in the Parliament for adoption.

The Committee notes that the Act Relating to Children, 2018 has been adopted. It notes with ***satisfaction*** that section 66(3) of this Act which deals with offences related to child sexual abuse makes it an offence to use a child (persons under 18 years as per section 2(j)) for the production of any obscene

material or act (subsection (d)); to engage or cause to engage a child in sexual exploitation (subsection h); or to use or cause to use a child in sexual abuse, including child pornography (subsection (j)). According to section 72, these offences are punishable with a fine of up to 100,000 rupees and imprisonment for up to five years. ***The Committee requests the Government to provide information on the application in practice of section 72 in relation to sections 66(3)(d), (h), (j) of the Act Relating to Children, 2018 for the offences related to the use, procuring or offering of children for the production of pornography or pornographic performances, indicating the number of cases reported, prosecutions, convictions and penalties applied.***

Articles 5, 7(1) and 7(2)(b). Monitoring mechanisms, penalties and direct assistance for child victims of the worst forms of child labour. Trafficking. In its previous comments, the Committee noted the activities undertaken by the National and District Committees on Controlling Human Trafficking and the Nepal Police in combating trafficking in persons. It also noted the establishment of a Child Helpline and a Human trafficking and Control Unit.

The Committee notes that the Government report does not contain any information concerning its efforts to combat trafficking in children as requested by the Committee in its previous comments. However, the Committee notes the Government's information in its report of November 2020 to the Human Rights Council that the Nepal Police created a High-level task force to prevent and control the incidence of trafficking and illegal migration, particularly of women and girls and investigate such crimes. Moreover, security check-posts in ten critical points and twenty boarder locations were established for carrying out intensive vigilance and security checks to prevent the incidence of trafficking (A/HRC/WG.6/37/NPL/1, paragraph 109). The Committee also notes the Government's information in its Combined 6th and 7th periodic reports submitted on 15 February 2022 to the Committee on the Rights of the Child (Report to the CRC, 2022), that the Service Centres established under the Nepal Police and the Missing Children Response Centres (MCRC) operate in partnership with the Nepal Police, provide support and services to child victims of trafficking and exploitation. Moreover, the Child Helpline provides counselling, legal aid, information, rescue and temporary shelter facilities for child victims of trafficking and vulnerable children. This report further indicates that the MCRC which are functional in 73 district police offices have supported 3619 children in 2020-21 and the Child helpline which is functional in 18 locations covering 72 districts have supported 10,348 children in 2020–21. According to the statistics of the Nepal Police Women, Children and Senior Citizens Service Directorate, a total of 75 child victims of trafficking (71 girls and 4 boys) were identified in 2019–20. Moreover, in 2020-21, more than 3,000 children were prevented from trafficking and reunited with families through boarder interceptions (paragraphs: 97, 107, 108, 136 and 189). ***The Committee strongly encourages the Government to continue its efforts to combat trafficking in children and to provide information on the activities undertaken by the Nepal Police and the High-level task force, in monitoring and identifying child victims of trafficking. It requests the Government to provide information on the number of cases of trafficking of children identified, investigations, prosecutions and convictions carried out and the penalties imposed. Lastly, it requests the Government to continue to provide information on the number of child victims of trafficking who have been provided support and assistance by the Child Helpline, the Missing Children Response Centres and the Service Centres.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. In its previous comments, the Committee noted the measures taken to improve access to education of children, including provisions of scholarships for girls and *Dalit* children. However, it noted that a significant number of children were out of school.

The Committee notes the Government's information that the Act Relating to Compulsory and Free Education, 2018 guarantees free and compulsory education at the primary level and free education up to secondary school (sections 6 and 20). The Government states that it has been concentrating its efforts on increasing retention and completion rates along with improving quality education and a child friendly

environment at schools. It indicates that a total of 35,674 schools were operational in 2019–20 which educated over 7 million children from grades 1 to 12 with a fair share of *Dalit* and indigenous children and a good share of girls' representation in schools. According to the Government's information, in 2019, the net enrolment rate was 97 per cent at the primary level (an increase from 64 per cent in 1991), 94.7 per cent at the lower secondary level, and 51.2 per cent at the higher secondary level with the ratio of girl to boy students increasing from 0.43 to 0.98 in basic education and from 0.43 to 1.01 in secondary education. The Government indicates that it continues to provide scholarships to girls, *Dalit* students and children from poor families. For the fiscal year 2019–20, and for 2020–21 respectively , 3.19 billion rupees and 2.7 billion rupees were allocated for such scholarships.

The Committee also notes from the Government's report to the Human Rights Council that 3,288,924 children, including children from the *Dalit* community, conflict affected families and highly marginalized and indigenous communities were provided with scholarships (A/HRC/WG.6/37/NPL/1, paragraph 69). The Committee further notes that the Government, in its report to the CRC, 2022, refers to various initiatives undertaken by the provincial governments for the protection of girls and to support their education, including: (i) the *Beti Bachao Beti Padhao (Save Girls and Educate Girls)* campaign that provides bicycles for girls, scholarship and educational supports; (ii) the *Bank Khata Chhoriko: Surakshya Jivan Bhariko (Daughter's Bank Account- Protection for Lifelong)* programme through which the Government deposits cash for the girl child from birth till she is 20 years of age; and (iii) the *Sanai Chhu Ma Badhna Deu, Bal Bibah Hoina Padhna Deu (I am Young let me grow, no child marriage but let me go to school)* programme which has been launched to provide special educational opportunities and protection for girls (paragraph 37). The Committee, however, notes that according to the UNESCO statistics over 74,280 children and 189,753 adolescents (including 117,859 female adolescents) were out of school in 2021. ***The Committee therefore strongly encourages the Government to continue its efforts to facilitate access to free, basic and quality education for all children, with a particular focus on girls and indigenous children. It requests the Government to continue to provide information on the measures taken in this regard and on the results achieved, particularly with regard to improving the functioning of the education system, increasing the school enrolment, attendance and completion rates, and reducing the school drop-out rates.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. 1. *Commercial sexual exploitation.* The Committee previously noted from the Report of the National Human Rights Commission (NHRC) that a large number of girls and women were involved in commercial sexual exploitation in the entertainment establishments in the Kathmandu valley.

In response to its previous comments concerning the measures taken to remove children from commercial sexual exploitation and to provide assistance, the Committee notes that the Government only refers to a few laws that set the legal framework against trafficking and commercial sexual exploitation, including the Directives for Protection against Economic and Sexual Exploitation of Women and Girls in the Entertainment Sector, 2008. In this regard, the Committee notes from a report of Alliance 8.7 (a global partnership, including ILO, committed to achieving SDG Target 8.7) entitled Understanding Commercial Sexual Exploitation of Children in Nepal, 2018 that the adult entertainment sector is a high-risk environment for girls where commercial sexual exploitation is known to occur. Many of these workplaces have become a front for commercial sex and working in these places can lead girls to the sex industry. It is estimated that around 13,000 people in this sector started working as children under the age of 18 years. ***The Committee once again requests the Government to take effective and time-bound measures to remove children under 18 years of age from commercial sexual exploitation in the entertainment industry and to provide them with the appropriate assistance to ensure their rehabilitation and social integration. It requests the Government to provide information on the***

measures taken in this regard and the results achieved, indicating the number of children under 18 years removed and rehabilitated.

2. *Children working in brick kilns.* The Committee notes from the Report on Employment Relationship Survey in the Brick Industry in Nepal, 2020 conducted by the ILO, UNICEF and the Central Bureau of Statistics of Nepal that there are an estimated 17,738 children working in the brick kilns of Nepal with 44.5 per cent of these children involved in hazardous work. These children are mostly exposed to dust and flames, working excessively long hours, working at night and carrying heavy loads. ***Observing that the work carried out by children under 18 in the brick kiln industry is inherently hazardous, the Committee urges the Government to take the necessary measures to prevent all children under 18 years of age from working in the brick kiln industry. It also requests the Government to take effective and time bound measures to remove children from this worst form of child labour and to provide for their rehabilitation and social integration. The Committee requests the Government to provide information on the measures taken and the results achieved in this regard.***

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

New Zealand

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Previous comment

The Committee notes the observations of Business New Zealand communicated with the Government's report.

Articles 3(d) and 4(1) of the Convention. Hazardous work. Minimum age for admission to hazardous work. The Committee previously noted the Government's indication that children under 18 years cannot work in any restricted areas of licensed premises such as bars, licensed restaurants or clubs. However, it noted that by virtue of section 54(d) of the Health and Safety in Employment Regulations of 1995 (HSE Regulations), hazardous work was prohibited for children under 15 years of age. Moreover, sections 43–48 of the Health and Safety at Work (General Risk and Workplace Management) Regulations, 2016 require the person conducting a business or undertaking (PCBU) to ensure that no worker under the age of 15 years carries out or be present in any area of the workplace where: goods are manufactured or prepared for trade or sale; construction work is carried out; work related to logging or tree-felling is carried out; hazardous substances are manufactured, used or generated; or to lift heavy weights or perform other harmful tasks, or work at or with machinery.

The Committee notes the Government's information in its report that measures to assess options for raising the minimum age for engagement in certain types of hazardous work from 15 to 16 were initiated in 2018. However, the issue was then delayed due to various factors including the need to address COVID-19 pandemic situation. The Government indicates that the matter is still under consideration and efforts will be continued to raise the minimum age for participation in certain types of hazardous work to 16 years. In this regard, the Committee once again draws the Government's attention to Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190) which addresses the possibility of authorizing the employment or work of young persons as from the age of 16 under strict conditions that their health and safety be protected and that they receive adequate specific instruction or vocational training in the relevant branch of activity. ***While acknowledging the difficulties imposed by the COVID 19 pandemic, the Committee expresses the hope that the discussions to which the Government refers will continue with the aim to ensure that the current review of the regulatory frameworks for young persons will take into consideration the requirement that employment or work in certain types of hazardous work by young persons between 16 and 18 years may be authorized only under strict conditions that their health, safety and morals be protected and***

that they receive adequate specific instruction or vocational training in the relevant branch of activity The Committee requests the Government to provide information on any progress made in this regard.

Article 4(1) and (3). Periodic revision of the types of hazardous activities. Following its previous comments, the Committee notes the Government's indication that the matter concerning the revision of the list of types of hazardous work for young persons is still under consideration and that efforts to revise the list of types of hazardous work shall continue. The Committee once again reminds the Government that, pursuant to *Article 4(1)* and *(3)* of the Convention, the types of work which, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children under 18, shall be determined by national laws or regulations, and that this list shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned. ***The Committee therefore expresses the firm hope that the Government will take the necessary measures to ensure that the revision of the regulatory framework for young persons, carried out in consultation with the organizations of employers and workers concerned, will result in the adoption of a concrete list of types of hazardous work prohibited to young persons under 18 years, including work in plants, work with machineries and vehicles used for agricultural purposes as well as certain types of work in the agricultural, construction and hospitality industries, as identified by the report of the Department of Labour. The Committee requests the Government to provide information on any progress made in this regard.***

Article 5. Monitoring mechanisms and application of the Convention in practice. The Committee notes the Government's information that the COVID-19 pandemic situation has significantly impacted the delivery of the Youth Health and Wellbeing Survey. The data collection has been completed and is expected to be published in the second half of 2022. The Committee also notes the Government's information that no marked reduction in the rate of work-related injuries for young workers has been observed from 2018-2020. According to the data provided by the Government in this regard, 19 incidents of work-related fatal injuries of children between 4 to 17 years were reported from 2018 to 2020. Of these, in four incidents children were employed, including one child of 15 years, while the rest of the incidents involved members of the public. In this regard the Committee also notes the observations made by the Business New Zealand that the workplace child fatalities are recorded as workplace accidents because they occur in a workplace but that in many instances, the child concerned lives on the premises and is not necessarily there as a paid employee. The Government further indicates that the overall work-related acute injury rates have reduced by 25 per cent from 2013 to 2020. ***The Committee expresses the firm hope that the findings of the Youth Health and Wellbeing Survey will be published in the near future, and to provide a copy of the same so as to better understand the working conditions of young persons and health and safety outcomes.***

Nicaragua

Minimum Age Convention, 1973 (No. 138) (ratification: 1981)

Previous comments: observation and direct request

Article 1 of the Convention. National policy and application of the Convention in practice. In its previous comments, the Committee repeated its request to the Government for statistical information on the nature, extent and trends of the employment of children under 14 years of age, disaggregated by sex and by age. The Committee notes the Government's indication in its report that the Ministry of the Family, Adolescence and Childhood (MIFAM) has taken measures within families and communities to ensure children's full development within families, without having to work. To this end, through the "Traffic light Plan" ("Plan Semáforo"), MIFAM has raised awareness in families working on their own

account to reduce the time the children spend on the streets and in sectors at risk, thereby ensuring that the families enrol and keep their children in the education system.

The Committee once again notes with ***regret*** the lack of statistical information on the extent and trends of child labour in the country. ***Recalling the importance of having up-to-date statistical data on the nature, extent and trends of child labour to examine the application of the Convention in practice, the Committee urges the Government to provide such information in its next report. The Committee also requests the Government to provide detailed information on the measures and programmes adopted to eradicate child labour, and their results.***

Article 2(3). Age of completion of compulsory schooling. In its previous comments, the Committee requested the Government to take the necessary measures to match the age of completion of compulsory schooling with the minimum age for admission to employment or work, which is 14 years. The Committee ***deeply regrets*** once again noting that the Government's report does not contain any information on the measures taken to raise the age of completion of compulsory schooling, set at 12 years, (in accordance with section 23 of the 2006 General Education Act) to at least 14 years, which is the declared minimum age for admission to employment. The Committee once again recalls that if compulsory schooling comes to an end before the age at which children are legally entitled to work, a vacuum may arise which regrettably opens the door for the economic exploitation of children (see the 2012 General Survey on the fundamental Conventions, paragraph 371). The Committee therefore reiterates the desirability of raising the age of completion of compulsory schooling so that it matches the minimum age of admission to employment. ***The Committee therefore urges the Government to take, without delay, the necessary measures to guarantee compulsory schooling up to the minimum age for admission to employment or work, namely 14 years.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comments: observation and direct request

Articles 3(d) and 7(2)(b) of the Convention. Hazardous work. Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee notes the Government's indication in its report under the Minimum Age Convention, 1973 (No. 138) that, between 2018 and the first quarter of 2022, 7,395 special child labour inspections were conducted, 927 of which in the agricultural sector and 36 in quarry and salt mines. As a result of those inspections, 12 boys and 4 girls were ordered to be immediately removed from their workplace. ***The Committee requests the Government to continue taking measures to detect and penalize situations where children under 18 years are working in hazardous occupations, including in the agricultural and mining sectors. In this respect, it requests the Government to continue providing information on the number of inspections carried out, infringements detected and penalties imposed. Lastly, it requests the Government to continue taking measures to remove and rehabilitate children from this worst form of child labour, and provide information on the results achieved in this respect.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee notes the Government's indication in its report that in order to improve children's access to education, distance learning modalities have been implemented for primary and secondary levels, and that school kits have been provided. It notes that one of the objectives of the National Plan against Poverty for Human Development 2022–2026 is to have, by 2026, 94 per cent of children in school and 96.9 per cent completing school at primary level (6 to 12 years old); and 93 per cent of children in school and 95.6 per cent completing school at secondary level (12 to 17 years old). It also sets out training for 20,000 schoolteachers and headteachers in the proper use of educational technology, and for

260,000 students, teachers and parents through counselling measures among educational communities. The Committee also notes that the United Nations Committee on Economic, Social and Cultural Rights, in its 2021 concluding observations concerning Nicaragua, expressed its concern about shortcomings in the quality of school infrastructure and materials and in the content of curricula and the training of teachers, particularly in rural areas and on the Caribbean coast (E/C.12/NIC/CO/5, paragraph 46). ***Recalling that education is key in preventing the engagement of children in the worst forms of child labour, the Committee requests the Government to pursue its efforts to improve the functioning of the education system and to facilitate access to free, quality basic education, to all children. In this respect, it requests the Government to provide information on the results of the National Plan against Poverty for Human Development relating to primary and secondary education, including updated statistics on rates of enrolment, attendance and completion in school.***

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

Nigeria

Minimum Age Convention, 1973 (No. 138) (ratification: 2002)

Previous comment

Article 1 of the Convention. National policy and application of the Convention in practice. In response to its previous comments, the Committee notes the Government's information in its report on the results achieved following the implementation of the measures undertaken within the framework of the National Action Plan for the Elimination of Child Labour. Accordingly, a total of 6,933 children (3,858 boys and 3,075 girls) were rescued from child labour and 120 vulnerable households were empowered. The Government also states that the second cycle of its National Policy on the Elimination of Child Labour and its National Action Plan (NAP) 2021-2025 has been launched and is currently being implemented. A State Action Plan on child labour in alignment with the NAP has been developed in the six states of Ogun, Oyo, Ondo, Niger, Lagos and Ekiti. Moreover, capacity building workshops were conducted which benefitted 85 Child Labour Desk Officers and State Controllers of Labour.

With regard to the data collected through the National Reporting Template on child labour, the Committee notes the Government's information that from 2018 to 2020, 12,334 cases of child labour were detected, of which 2,772 children were empowered, 2, 671 children were referred to social services, and 6,891 children were reunited with their families. The Government also indicates that from 2018 to 2019, 629 prosecutions were conducted, 308 fines were imposed, and 63 persons were sentenced to imprisonment.

The Committee further notes that the ILO project entitled "Accelerating Action for the Elimination of Child Labour in Supply Chains in Africa" launched in 2018 in Nigeria (ACCEL Africa Project in Nigeria) aims to eliminate child labour in supply chains in cocoa and artisanal small-scale gold mining supply chains. This project has undertaken several activities, including: (i) strengthened systems and provided stakeholders across spheres of the society with the skills and tools required to urgently eliminate child labour and achieve SDG Target 8.7 by 2025; (ii) carried out a series of interventions on child labour, including research, the provision of school kits and re-registration of out-of-school children and other direct and indirect interventions; and (iii) conducted capacity building workshops for 37 child labour desk officers to enhance the national response to eradicate child labour, to build the requisite skill and also to equip them with the modalities of implementing the actions for the elimination of child labour. The Committee notes from an ILO Press Release of May 2021 entitled: *ILO Supports Nigeria's Response to Child Labour Emergency* that in order to reduce child labour in supply chains, Nigeria is operating a Conditional Cash Transfer (CCT) Scheme with over 2.5 million households that are currently beneficiaries and which is envisaged to be extended to over one million vulnerable households within its Nigeria's Action Pledges. The Committee, however, notes from this Press release that about fifteen million

children under 14 years are engaged in economic activities and about half of this population are working in hazardous situations. While noting the measures taken by the Government, the Committee expresses its ***deep concern*** at the large number of children engaged in child labour and hazardous work in Nigeria. ***The Committee therefore strongly urges the Government to intensify its efforts to ensure the elimination of child labour, including within the framework of the National Action Plan 2021-2025 and the ACCEL Africa Project in Nigeria and to provide information on the concrete measures taken in this regard and the results achieved. It also requests the Government to continue to provide information on the data collected with regard to the employment of children and young persons through the National Reporting Template. The Committee further requests the Government to continue to provide information on the manner in which the Convention is applied in practice, including updated statistical data on the employment of children and young persons, especially regarding children working in the informal economy, as well as extracts from the reports of inspection services and information on the number and nature of violations detected and penalties applied. To the extent possible, this information should be disaggregated by age and gender.***

With regard to the issues raised under Article 2(1), Article 3(2), Article 6, and Article 7(1) and (3), the Committee requests the Government to see the consolidated comments at the end.

Article 2(1). 1. *Scope of application. Self-employment and work in the informal economy.* In its previous comments, the Committee noted that section 60 of the revised Labour Standards Bill has broadened the definition of an employee to include, "other forms of employment both in the formal and informal economy" thereby ensuring protection for all working children, including self-employed children and children working in the informal economy.

2. *Minimum age for admission to work.* Following its previous comments concerning the discrepancies on the minimum ages for employment prescribed by the national legislation, the Committee notes the Government's information that the minimum age of 15 years for employment or work, which is the age specified at the time of ratification, has been incorporated in the revised Labour Standards Bill.

Article 3(2). Determination of hazardous work. In reply to its previous comments, the Committee notes the Government's information that the list of types of hazardous work prohibited to children under 18 years of age has been incorporated in the third schedule of the revised Labour Standards Bill.

Article 6. Apprenticeship. With regard to the minimum age for apprenticeship, the Committee previously noted that section 46(1)A of the revised Labour Standards Bill establish a minimum age of 14 years for apprenticeship programmes.

Article 7(1) and (3). Minimum age for admission to light work and determination of light work activities. In its previous comments, the Committee noted the Government's information that section 8(1)A of the revised Labour Standards Bill established a minimum age of 13 years for admission to light work and lays down the conditions and hours of work permitted to children of 13 years of age in light work activities. It also noted the Government's indication that Schedule two of the revised Labour Standards Bill provides for a list of activities that constitute light work.

Noting the Government's information that the Labour Standards Bill has been validated by the social partners, the Committee urges the Government to take the necessary measures to ensure that the revised Labour Standards Bill which:

(i) provides for the protection of all working children, including self-employed children and children working in the informal economy;

(ii) provides for a minimum age of 15 years for admission to employment or work;

(iii) provides for a list of types of hazardous work prohibited to children under 18 years;

(iv) establishes a minimum age of 14 years for apprenticeship programmes;

(v) establishes a minimum age of 13 years for light work activities, indicating the hours and conditions of light work; and

(vi) provides for a list of light work activities permitted to children of 13 years;

will be adopted in the near future. It requests the Government to provide information on any progress made in this regard as well as a copy once it has been adopted.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

Previous comment

Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery and practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for armed conflict and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. In its previous comments, the Committee noted from the Report of the Secretary-General on Children and Armed Conflict that an action plan was signed between the Civilian Joint Task Force (CJTF) and the United Nations to end and prevent the recruitment and use of children and a standing order was issued by the CJTF in this regard. However, it noted that although there was a decline in the total number of verified cases of recruitment and use of children for armed conflict, the Report of the Secretary-General indicated that grave violations and abuses committed by Boko Haram against children remained gravely disturbing, in particular the use of children as carriers of person-borne improvised explosive devices as well as the large number of abductions.

In response to its previous comments the Committee notes the Government's statement in its report that it has been identified that persons who forcefully recruit children in armed conflicts are members of the Boko Haram terrorist group. In order to put a stop to this practice, the Government through the Ministry of Defence is carrying out regular sensitization workshops and ensuring the registration of members of vigilante groups that are closely monitored by the Nigerian Security and Civil Defence Corps. The Government also indicates that child victims who have been released from the enclaves of Boko Haram are adequately rehabilitated through the Operation Safe Corridor carried out by the Ministry of Humanitarian, Disaster Management and Social Development and the Ministry of Defence.

The Committee also notes from the Report of the Special Representative to the Secretary-General for Children and Armed Conflict of July 2022, that the Governor of the State of Borno, (which has remained the epicentre of protracted armed conflict for more than 12 years) has signed the Child Rights Bill into law, which provides for the protection of children against recruitment and use for armed conflict and other forms of violence and exploitation (paragraph 22). The Committee further notes that the Secretary-General for Children and Armed Conflict, in her Report of June 2022, commended the CJTF for sustaining the progress on the 2017 action plan to end and prevent the recruitment and use of children, including through a child protection training plan and the establishment of child protection units in CJTF formations in Borno State, in collaboration with the United Nations (paragraph 271). However, the Report of the Secretary-General indicates that the United Nations verified 444 grave violations against 356 children in north-east Nigeria. A total of 63 children (9 boys and 54 girls), some as young as 6 years of age, were recruited and used by Boko Haram-affiliated and splinter groups: Jama'atu Ahlis Sunna Lidda'Awati Wal-Jihad (JAS) (45) and Islamic State West Africa Province (ISWAP) (18) in Borno State, mostly following abductions (paragraphs 263, 264).

While noting certain measures taken by the Government on the use of children in armed conflict, the Committee must once again ***deeply deplore*** the persistence of this practice, especially as it entails

other violations of the rights of the child, such as abductions, murders and sexual violence. ***While acknowledging the complexity of the situation on the ground and the presence of armed groups in the north-east of the country, the Committee strongly urges the Government to continue to take measures, using all available means, to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment or use of children under 18 years of age into armed groups. It also urges the Government to take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons, who forcibly recruit children under 18 years of age for use in armed conflict, are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to take effective and time-bound measures to provide for their rehabilitation and social integration and to provide information on the measures taken in this regard and on the results achieved.***

Articles 5 and 7(1). Monitoring mechanisms and penalties. In reply to its previous comments, the Committee notes the Government's information that the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) is undertaking systematic efforts to fight trafficking in persons including through conducting awareness-raising and capacity building programmes for the judiciary and law enforcement bodies on investigation and appropriate punishment for the offences under the Act on Trafficking in Persons (Prohibition) Law Enforcement, 2015. The Government also indicates that the investigation of child trafficking cases have led to the rescue of 2,966 child victims of trafficking. The Committee also notes that the United Nations Special Rapporteur for Trafficking in Persons, especially women and children, in her End of visit Statement of September 2018, commended the efforts of NAPTIP both at federal and state level, as well as the recent initiative of the Governor of Edo State to put in place the 'Edo State Task Force against Human Trafficking' chaired by the Edo State Attorney General.

However, this document states that Nigeria remains a source, transit and destination country for victims of trafficking and that internal trafficking of girls for the purpose of domestic servitude and sexual exploitation and boys for the purpose of child begging are rampant. Furthermore, the Committee notes with ***concern*** from the UNICEF Situation Analysis of Children in Nigeria, 2022 that the International Organization for Migration (IOM) reports that 18 per cent of trafficking victims in Nigeria are girls under the age of 18. Thousands of children from poor homes, mostly aged 15–17, are involved in domestic labour (page 17). ***The Committee requests the Government to strengthen its efforts to combat child trafficking by ensuring that the perpetrators of these acts are identified and prosecuted, and that sufficiently effective and dissuasive sanctions are imposed. It requests the Government to continue providing information on the measures taken in this regard, including by the NAPTIP. The Committee further requests the Government to continue to provide statistical information on identified cases of trafficking in children under 18 years, the prosecutions brought, the convictions obtained and the penalties imposed.***

Article 7(2)(a) and (e). Preventing the engagement of children in the worst forms of child labour. Access to free basic education and special situation of girls. In its previous comments, the Committee noted the various measures and policies implemented in Nigeria for improving access to education, such as the National Policy on Inclusive Education; Safe School Initiative launched in the Northeast for students affected by the conflict; the Students Tutoring, Mentoring and Counselling Programme; and the School enrolment campaign. The Committee however, noted from the 2018 UNICEF report on education in Nigeria, that although primary school enrolment had increased in the recent years, the net attendance was still low at about 70 per cent. Nigeria still had 10.5 million out-of-school children, which was the highest in the world, with 60 per cent of them in northern Nigeria, where the conflict had deprived many children of access to education. The Committee had also noted that about 60 per cent of out-of-school children are girls, many of those who do enrol and then drop out.

The Committee notes that the Government report does not contain any information on this matter. The Committee notes from a Press Release of June 2022 of the UNICEF that the Katsina State Government, in partnership with UNICEF launched a cash transfer programme in June 2022, which will

provide learning opportunities for over 20,000 out of school children in the state and improve the socio-economic wellbeing of beneficiaries and their households. This Press Release also states that there are currently 536,132 out of school children in Katsina State. The UNICEF Press Release of January 2022 further states that a full one-third of Nigerian children are not in school and one in five out-of-school children in the world is Nigerian. Millions of Nigerian children have never been to a classroom. It is estimated that 35 per cent of Nigerian children who attend primary school do not attend secondary school. In March 2021, around 618 schools were closed in six northern states over the fear of attacks and abductions of pupils and staff. According to the UNICEF Situation Analysis of Children in Nigeria, 2022 the proportion of out-of-school children at primary school level was 27.2 per cent (26.5 per cent male and 27.9 per cent female) and 25.8 per cent at the secondary school level (24.4 per cent male and 27.3 per cent female). The highest rate of out-of- school children was reported in the North-East (39.8 per cent at the primary and 37.3 per cent at the secondary). The Committee further notes that according to the UNESCO estimates, the gross enrolment rates in 2018 at the primary and secondary level were 87.45 per cent and 43.51 per cent, respectively.

While noting certain measures taken by the Government, the Committee must express its ***deep concern*** at the significant number of children who are deprived of basic education. ***The Committee therefore urges the Government to intensify its efforts to improve the functioning of the education system and to facilitate access for all children to free basic education, in particular for girls and children in the war-affected areas of north-eastern Nigeria. In this regard, the Committee requests the Government to take the necessary measures, to increase the school enrolment and attendance rates at the primary and secondary levels and to decrease the school drop-out rates. It requests the Government to continue to provide information on the concrete measures taken in this regard and to provide updated statistical information on the results obtained, particularly with regard to reducing the number of out-of-school children at the primary and secondary levels.***

Clause (d). Identifying and reaching out to children at special risk. Street children. In its previous comments, the Committee noted an increase in the number of children in street situations, including *almajiri* children (children in Islamic schools who are also sent out to beg). It also noted the Government's information concerning the establishment of the *Almajiri* Special Education Project with the aim to integrate basic education into Koranic schools.

The Committee notes an absence of information in the Government's report on this matter. The Committee notes with ***concern*** from the UNICEF Situation Analysis of Children in Nigeria, 2022, that 62 per cent of the over 10.1 million out of school children in Nigeria are boys, of which the majority, especially in the north, are made up of *Almajiri* children who are denied the right to education (page 55). ***Considering that street children are at a higher risk of being engaged in the worst forms of child labour, the Committee once again requests the Government to take effective and time-bound measures to protect all street children, including almajiris from the worst forms of child labour and to provide for their rehabilitation and reintegration. It requests the Government to provide information on the measures taken in this regard as well as on the results achieved. It also requests the Government to provide information on the number of almajiri children who have been integrated through the Almajiri Special Education Project.***

In light of the situation described above, the Committee deplores the continued recruitment and use of children in armed conflict by armed groups, especially as it entails other violations of children's rights, such as abductions, murders and sexual violence. The Committee also observes with concern the large number of boys and girls under 18 who are victims of both cross-border and internal trafficking for labour and sexual exploitation. Lastly, the Committee must express its deep concern at the significant number of children deprived of basic education in the country, including Almajiri children (children in Islamic schools who are also sent out to beg). The Committee considers that this case meets the criteria set out in paragraph 114 of its General Report to be asked to come before the Conference.

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

[The Government is asked to supply full particulars to the Conference at its 111th Session and to reply in full to the present comments in 2023.]

North Macedonia

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3(a), 5 and 7(1) of the Convention. Trafficking in children, monitoring mechanisms and penalties. The Committee notes the Government's information in its report that, section 12 of the Law on Child Protection (amended in 2013) prohibits the sale and trafficking of children, in addition to the relevant provisions in the Criminal Code. The Committee also notes the Government's information that, in 2014, 18 perpetrators were accused and convicted of child trafficking, while in 2015, six perpetrators were accused and convicted.

The Committee also notes the Government's indication that a training for representatives of professional services on the prevention of human trafficking was conducted by the Public Institutions of Social Protection for Children at Risk, involving 14 employees in four institutions. Moreover, another training was conducted for police officers and social workers with 75 participants, focusing on the identification and referral of potential victims of human trafficking. In addition, a training has also been provided to foster families for ten caregivers regarding direct assistance and protection of child trafficking victims. The Committee also notes that the National Commission for Combating Human Trafficking keeps a database on all types of exploitation of victims of human trafficking. In 2015, three victims of human trafficking subjected to sexual and labour exploitation were identified, of which two were children. ***The Committee requests the Government to pursue its efforts to combat trafficking in children, and to continue to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied in this regard. It also requests the Government to pursue its efforts to ensure that victims of child trafficking are provided with appropriate protection and services. Lastly, the Committee encourages the Government to continue its efforts to strengthen the capacity of the mechanisms in place to ensure the effective monitoring and identification of child victims of trafficking.***

Article 3(c). Use, procuring or offering a child for illicit activities, in particular the production and trafficking of drugs. The Committee previously noted that the Law on the Protection of Children did not penalize adults who use children for the illegal production and trafficking of drugs. The Committee noted the Government's statement that the relevant governmental institutions were taking the necessary measures to protect children from misuse and other types of abuse with respect to the illicit production and trade of drugs. It requested the Government to take the necessary measures to ensure that the use of a child for illicit activities, particularly the production and trafficking of drugs, is prohibited.

The Committee notes with ***satisfaction*** that section 12 of the Law on the Protection of Children, which was amended in 2015, prohibits any illicit activities and the use of child labour for the production and trafficking of drugs, and psychotropic substances. ***The Committee requests the Government to provide information on the application in practice of section 12 of the Law on the Protection of Children, including the number and nature of infringements, investigations, prosecutions, convictions and sanctions applied.***

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Children in street situations. The Committee previously noted that, according to data from the Ministry of Labour and Social Policy (MLSP), there were approximately 1,000 children in street situations in the country, 95 per cent of whom were Roma, and that labour exploitation and begging contributed to this phenomenon. The Committee further noted the Government's information on the measures adopted to protect children in street situations, including the expansion of the network of daily centres for street children. The Government also indicated that, in 2012, a national SOS helpline was created in order to receive calls from citizens who want to report on children in street situations.

The Committee notes the Government's information that the problem of children in street situations is becoming more prevalent. The MLSP is responsible for taking measures to reduce the number of street

children. To date, the MLSP has opened four day centres for street children in Skopje, Bitola and Prilep, as well as a 24-hour transit centre in Ohrid. Moreover, the MLSP financially supported a day care centre managed by a civil association in Shuto Orizari. The Committee further notes the Government's statement according to which it is often the parents who use their children to beg with them or make their children beg. Thus, the amendments to the Law on Family of 2014 provide that inducing a child to beg or using a child for begging shall be considered as abuse or severe neglect in the performance of parental duties, in which case the Centre of Social Work shall intervene. Depending on the situation, measures may include professional advice, constant supervision, temporary guardianship of the concerned child by the social work centre, and proceedings to withdraw parental rights or to file a criminal complaint before a competent court. ***While taking due note of the measures taken by the Government, the Committee strongly encourages the Government to continue its efforts to protect children in street situations from the worst forms of child labour, and once again requests it to provide information on the number of children removed from the streets and who have benefited from rehabilitation and social integration measures.***

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

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

Saint Kitts and Nevis

Minimum Age Convention, 1973 (No. 138) (ratification: 2005)

Previous comment: direct request

Article 3(1) and (2) of the Convention. Minimum age for admission to, and determination of, hazardous work. The Committee previously noted that the draft Labour Code was expected to be enacted by December 2017, and that the National Advisory Committee for the Elimination of Hazardous Child Labour, which would determine the types of work deemed to be hazardous for young persons under the age of 18 years would be established under the draft Labour Code and become operational following its entry into force.

The Committee notes the Government's information in its report that the Amalgamated Draft Labour Code, which went through its consultative processes in 2019, was expected to be reviewed by the National Tripartite Committee in the third quarter of 2021 to include changes related to the COVID-19 pandemic. The Government once again indicates that the National Advisory Committee for the Elimination of Hazardous Child Labour will become operational after the Labour Code has passed into Law. ***In light of the fact that the Committee has been raising this issue for over ten years, the Committee expresses the firm hope that the draft Labour Code will be adopted in the near future. The Committee also requests the Government to take the necessary measures to ensure, without delay, the establishment of the National Advisory Committee for the Elimination of Hazardous Child Labour in order to ensure, in turn, the adoption of a list of types of hazardous work prohibited to children under the age of 18 years. The Committee requests the Government to continue providing information on the progress made in this regard.***

Article 3(3). Admission to hazardous work as from 16 years. The Committee previously requested the Government to take the necessary measures to ensure that the authorization of the performance of hazardous types of work for persons between the ages of 16 and 18 years is subject to strict conditions respecting protection and prior training, pursuant to *Article 3(3)* of the Convention.

It notes once again the Government's information that such provisions were included in phase II of the review of the draft Labour Code. ***The Committee trusts that the draft Labour Code will be adopted in the near future, which provides for all the appropriate provisions ensuring the protection of the young persons, as required by Article 3(3) of the Convention.***

Article 7(1). Light work from the age of 13 years. The Committee previously noted that the Employment of Children (Restriction) Ordinance permits children under the age of 12 to be employed by their parents in agricultural or horticultural work on land belonging to their parents, as well as children between the ages of 12 and 16 years to work in non-hazardous daytime work outside of school hours, specifying a maximum of two hours of work on school days and Sundays (section 3(1)). The Committee trusted that the provisions in the Employment of Children (Restriction) Ordinance would be applied in conformity with *Article 7(1)* of the Convention, so that children below the age of 13 would not be authorized to undertake light work activities.

The Committee takes note of the Government's specification that the Employment of Children (Restriction) Ordinance has been amended by Act No. 19 of 2002 and is now part of the Employment of Women, Young Persons and Children Act, Chapter 18.10, also amended by Act No. 20 of 2002. The Committee notes that section 7(1) of this Act is a repetition of the previous section 3(1) of the Employment of Children (Restriction) Ordinance. The Committee notes the Government's indication that the National Tripartite Committee will review the legislation, in consultation with the Ministry of Social Development, to ensure that its provisions are in conformity with *Article 7(1)* of the Convention and that children below the age of 13 are not authorized to undertake light work activities. ***Considering that the Committee has been raising this issue for more than ten years, it urges the Government to take the necessary measures to ensure that the Employment of Women, Young Persons and Children Act, Chapter 18.10 is amended in a manner to prohibit children under the age of 13 to perform light work activities.***

Article 9(1). Penalties. The Committee previously noted the Government's indication that the fines prescribed for the violation of the child labour provisions under the Employment of Women, Young Persons and Children Act and the Employment of Children (Restriction) Ordinance had not been updated in recent years. However, it intended to review some of the fines during the consultative process of the Labour Code.

The Committee once again notes the Government's indication that the National Tripartite Committee, in consultation with the Ministry of Social Development, will review this issue in the hope of upgrading the fines. The Committee recalls that *Article 9(1)* of the Convention requires that all necessary measures, including the provision of appropriate penalties, be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention, and that even the best legislation only takes value when it is applied effectively (2012 General Survey on the fundamental Conventions, paragraph 410). ***The Committee therefore once again urges the Government to take the necessary measures to ensure that either the provisions of the draft Labour Code or those of the Employment of Women, Young Persons and Children Act will prescribe appropriate and upgraded fines for the violations of child labour provisions.***

Article 9(3). Keeping of registers. The Committee previously noted that section 12(1) of the Employment of Women, Young Persons and Children Act requires employers in an industrial undertaking to keep a register of all persons under the age of 16 years, which is the minimum age for admission to employment in Saint Kitts and Nevis, and that this provision is retained in the draft Labour Code. The Committee reminded the Government that, in accordance with *Article 9(3)* of the Convention, national laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer of persons whom he/she employs and who are less than 18 years of age, and that this provision applies to all sectors of employment, not just in industrial workplaces.

The Committee notes the lack of new information in the Government's report on this issue. ***It therefore urges the Government to take the necessary measures to ensure that the draft Labour Code contain provisions requiring employers in all sectors of the economy to keep registers of all persons***

employed under the age of 18, in conformity with Article 9(3) of the Convention. It requests the Government to provide information on the progress made in this regard in its next report.

The Committee reminds the Government that it may avail itself of ILO technical assistance in order to bring its legislation into conformity with the Convention.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Previous comment: direct request

Article 3 of the Convention. Worst forms of child labour. Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee previously noted that, according to a UNICEF report entitled "Situation Analysis of Children in Saint Kitts and Nevis" of 2017, the boy child who gets caught in the poverty trap often drops out of school to bring more income into the household or falls into gang activities and the drug trade (page 34). Noting the absence of provisions in the national legislation prohibiting the use, procuring or offering of a child under 18 years for illicit activities, in particular for the production and trafficking of drugs, the Committee reminded the Government that such activities are considered to be one of the worst forms of child labour and that, under the terms of *Article 1* of the Convention, each Member which ratifies the Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

The Committee once again notes the Government's indication in its report that the issue of the prohibition of procuring or offering of children under the age of 18 years for illicit activities was forwarded to the Department of Child Protective Services to include it in relevant legislation, and that the Government would take measures to make the necessary legislative amendments. ***In light of the fact that the Committee has been raising this issue since 2011, the Committee once again urges the Government to take the necessary measures to ensure the adoption of specific provisions prohibiting the use, procuring or offering of children under the age of 18 years for illicit activities, in particular the production and trafficking of drugs, as a matter of urgency. It requests the Government to provide information on any progress made in this regard.***

Articles 3(d) and 4(1). Hazardous work. ***With regard to the adoption of the list of hazardous work, the Committee refers to its detailed comments under the Minimum Age Convention, 1973 (No. 138).***

The Committee is raising another matter in a request addressed directly to the Government.

Sao Tome and Principe

Minimum Age Convention, 1973 (No. 138) (ratification: 2005)

Previous comment: direct request

Article 3(2) of the Convention. Determination of hazardous work. In its previous comments, the Committee noted the Government's information that the list of types of hazardous work prohibited to children under 18 years would be made available with the new Labour Code and requested the Government to provide a copy of the list once it was adopted.

The Committee notes with ***satisfaction*** that Annex IV of the Labour Code No. 6/2019 provides for a list of hazardous types of work prohibited to children under 18 years, pursuant to section 274(3). The list contains 48 hazardous activities in various sectors including agriculture, livestock and forestry; fishing; mines and quarries; industrial establishments; the production and distribution of electricity and water; construction; transport and storage; health and social services; collective, social, personal and other services; as well as four types of work harmful to morality. ***The Committee requests the***

Government to provide information on the application in practice of section 274(3) and Annex IV of the Labour Code No. 6/2019 containing the list of hazardous types of work prohibited to children under the age of 18 years, including statistics on the number and nature of violations reported and penalties imposed.

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

Solomon Islands

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2012)

Previous comments: observation and direct request

The Committee notes the observations of the International Organisation of Employers (IOE) received on 25 August 2022, as well as those of the International Trade Union Confederation (ITUC) received on 1 September 2022 and requests the Government to reply to them. It also notes the discussion that was held by the Committee on the Application of Standards (the Conference Committee) at the 110th Session of the International Labour Conference (June 2022) regarding the application of the Convention by Solomon Islands in the absence of the Government.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

Articles 3(a) and (b), 5 and 7(1) of the Convention. Sale and trafficking of children and commercial sexual exploitation, monitoring mechanisms and sanctions. The Committee notes that the Conference Committee took positive note of the steps taken by the Government to bring its national legislation in conformity with the Convention, including with respect to the use, procuring and offering of children for prostitution, but expressed its deep concern about the persistence of the sale and trafficking of children, particularly girls, for sexual exploitation purposes. The Conference Committee urged the Government to ensure that cases concerning the sale and trafficking of children are duly investigated, prosecuted, and sanctioned, and to strengthen the capacities of law enforcement bodies for this purpose.

The Committee notes that the ITUC refers in its observations to the existence of evidence of cases of sale and trafficking of children by their parents to foreign workers for sexual purposes, including in nightclubs, motels, logging camps, and fishing vessels, as well as to the absence of information on measures of prevention, inspection, investigation, and prosecution of this practice.

The Committee also notes that, in its observations, the IOE points out to the need to continue adopting measures, as a matter of priority, to sensitize the community on this matter and to reinforce the capacities of the labour inspectorates, operators of the criminal justice system, social workers, and the private sector to effectively eliminate this worst form of child labour. It also encourages the Government to continue working with the most representative workers' and employers' organizations and international development cooperation organizations to prevent the use and procuring of children for prostitution.

The Committee notes that the Government refers in its report to one criminal case concerning child pornography which ended in the conviction of the offender. It further notes, the Government's indication that the Sexual Assault Unit within the Police Force investigates cases related to child commercial sexual exploitation. However, it notes that the Government does not provide information on cases related to the sale and trafficking of children for sexual exploitation or the use, procuring or offering of children for prostitution that have been investigated, prosecuted, and punished. ***Therefore, the Committee urges the Government to take all the necessary measures to reinforce the capacities of the law enforcement bodies (including the police force, prosecutors, and judges) to ensure that: (i) thorough investigations and prosecutions are carried out against persons who engage in the sale or***

trafficking of children and/or the use, procuring and offering of a child for prostitution; and (ii) sufficiently dissuasive penalties are imposed on the offenders. In this regard, the Committee requests the Government to provide information on the number of prosecutions, legal proceedings, convictions, and penalties imposed for trafficking of children for sexual exploitation (section 145 of the Penal Code (Amendment) (Sexual Offences) Act 2016 and section 77 of the Immigration Act 2012), and for using, procuring or offering a child for prostitution (sections 141(2) and 143 of the Penal Code (Amendment) (Sexual Offences) Act 2016).

Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee notes that the Conference Committee urged the Government to adopt, without delay, legislation prohibiting the use, procuring, or offering of a child under the age of 18 years for the production and/or trafficking of drugs. The Committee notes that the Government indicates that it will consider this matter to be included in the national penal legislation. ***The Committee requests the Government to take all the necessary measures to ensure that the national legislation prohibits the use, procuring or offering of a person under 18 years for illicit activities, in particular for the production and trafficking of drugs.***

Clause (d) and Article 4(1). List of types of hazardous work. The Committee previously noted that the Government was developing a list of types of hazardous work prohibited for children under the age of 18 with the technical support of the ILO. The Committee notes that the Conference Committee urged the Government to adopt without delay, in consultation with the social partners, a list of types of hazardous work prohibited for children under the age of 18 years.

The Committee notes that the ITUC calls on the Government to finalize, in consultation with the social partners, the list of types of hazardous work prohibited for children under 18 years of age.

The Committee notes the Government's indication that section 49 of the Labour Act (which prohibits the work of persons under the age of 18 years in underground mines, on ships, as a trimmer or stroker, or during the night in any industry) is still applied pending the adoption of a list of types of hazardous work. The Government indicates that a copy of the list will be sent once it has been tabulated and adopted, in collaboration with the social partners. ***The Committee urges the Government to take all the necessary measures to finalize a list of types of hazardous work prohibited for persons under 18 years of age, in consultation with the organizations of employers and workers concerned. The Committee requests the Government to provide a copy of the list once adopted.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously noted the adoption of Education Strategic Framework (ESF) 2016–2030, which sets out as a long-term objective achieving full completion to quality and relevant primary and junior secondary (age 13 to 15) education for all. The Committee notes that, in its observations, the ITUC refers to the disparities in access to and the quality of education between urban and remote areas. It also notes that the Conference Committee urged the Government to ensure access to free basic education to all children, particularly children from poor and disadvantaged families as well as children living in remote areas.

The Committee notes the Government's indication that the Gross Enrolment Ratio for primary and junior secondary education remains stable and in line with the population growth. At primary level, the Gross Enrolment Ratio increased from 136 to 142 per cent over 2016–20, signalling that over-age students were enrolled in schools. However, there was a five per cent increase in out-of-school children between 2018 to 2019 (from 8 to 13 per cent). The Government adds that one of the measures taken by the Ministry of Education to keep children in school was to abolish the sixth year exam in 2019 to allow students to advance into the seventh year of education (junior secondary education). ***The Committee requests the Government to continue taking effective and time-bound measures to facilitate access to free basic education (both primary and lower secondary education) by all children, particularly children from poor and disadvantaged families and those living in remote areas. It also requests the***

Government to continue providing updated statistical information on school enrolment, completion and drop-out rates for primary and lower secondary education.

Application of the Convention in practice. With regard to the Conference Committee's and the Committee's request for updated statistical data on situations of worst forms of child labour, the Committee notes the Government's indication that it will intensify its efforts to implement a database containing statistical information on the nature, extent, and trends of the worst forms of child labour; the number of children protected by measures giving effect to the Convention; as well as the number and nature of offences reported, investigations, prosecutions, convictions, and penalties imposed. ***The Committee hopes that the Government will be able to provide this information in its next report.***

The Committee encourages the Government to avail itself of ILO technical assistance in relation to the issues raised in this observation.

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

Syrian Arab Republic

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Application of the Convention in practice. The Committee previously noted that the ongoing conflict in the Syrian Arab Republic has had an alarming impact on children. It noted that the number of children affected by armed conflict in the Syrian Arab Republic has more than doubled, going from 2.3 million to 5.5 million, and the number of children displaced inside the Syrian Arab Republic has exceeded 3 million.

The Committee takes note of the Government's information in its report on the provisions of national legislation that give effect to the provisions of the Convention. However, the Committee notes that, according to the 2015 UNICEF report entitled "Small Hands, Heavy Burden: How the Syria Conflict is Driving More Children into the Workforce", four and a half years into the crisis, as a result of the war, many children are involved in economic activities that are mentally, physically or socially dangerous and which limit or deny their basic right to education. The report indicates that there is no shortage of evidence that the crisis is pushing an ever-increasing number of children towards exploitation in the labour market. Some 2.7 million Syrian children are currently out of school, a figure swollen by children who are forced to work instead. Children in the Syrian Arab Republic were contributing to the family income in more than three quarters of households surveyed. According to the report, the Syria crisis has created obstacles to the enforcement of national laws and policies to protect children from child labour, one of the reasons being that there are too few labour inspectors. In addition, there is often a lack of coherence between national authorities, international agencies and civil society organizations over the role of each, leading to a failure in national mechanisms to address child labour.

The Committee notes the Government's information in its 5th periodic report submitted to the Committee on the Rights of the Child published on 10 August 2017 (CRC/C/SYR/5, paragraph 203), that the Ministry of Social Affairs and Labour (MoSAL), in collaboration with the Syrian Authority for Family and Population Affairs (SAFPA) and in cooperation with other stakeholders, developed a National Plan of Action for the Elimination of the Worst Forms of Child Labour (NPA-WFCL). The Government also indicates that, in collaboration with UNICEF, the SAFPA conducted a survey on the worst forms of child labour in two industrial towns, Hassia in Homs and Haouch el Blas in Damascus.

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee must once again express its ***deep concern*** at the situation of children in the Syrian Arab Republic who are affected by the armed conflict and driven into child labour, including its worst forms. ***The Committee urges the Government to take immediate and effective measures in the framework of the implementation of the NPA-WFCL to improve the situation of***

children in the Syrian Arab Republic and to protect and prevent them from child labour. It requests the Government to provide information on the results achieved, as well as the results of the surveys conducted in Hassia and Haouch el Blas.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict. The Committee previously noted that the Syrian Arab Republic had adopted a series of legislative reforms such as Law No. 11/2013 which criminalizes all forms of recruitment and the use of children under the age of 18 years by armed forces and armed groups. It noted, however, that numerous armed groups in the Syrian Arab Republic, including the Free Syrian Army affiliated groups (FSA), the Kurdish People Protection Units (YPG), Ahrar al-Sham, Islamic State in Iraq and Sham/the Levant (ISIS/ISIL) and other armed groups were reportedly recruiting and using children for logistics, handling ammunition, manning checkpoints and as combatants.

The Committee notes the Government's indication in its report that armed terrorist groups recruit children and involve them in violence and exploit them sexually. The Committee notes that, according to the report of the Secretary-General on the situation of human rights in the Syrian Arab Republic of 9 June 2016 (A/70/919, paragraphs 50–52), from early 2015, UNICEF verified 46 cases of recruitment (43 boys, one girl, two unknown): 21 were attributed to ISIL, 16 to non-state armed opposition groups, five to armed groups affiliated with the Government, two (including a girl) to YPG, and two to government forces. UNICEF reported that children were increasingly recruited at younger ages (some as young as 7 years old) by non-state armed groups. Children's participation in combat was widespread and some armed opposition groups forced children to carry out grave human rights abuses, including executions and torture, while government forces allegedly submitted children to forced labour or used them as human shields. The Secretary-General also refers to reports from the OHCHR, according to which ISIL publicly announced, on 11 December 2015, the already known existence of a children's section among its ranks, the "Cubs of the Caliphate". The OHCHR also received allegations that ISIL was encouraging children between 10 and 14 years of age to join, and that they were training children in military combat.

The Committee further notes that, according to the report of the Secretary-General on children and armed conflict of 20 April 2016 (2016 report of the Secretary-General on children and armed conflict, A/70/836-S/2016/360, paragraphs 148–163), a total of 362 cases of recruitment and use of children were verified (the Secretary-General indicates that the figures do not reflect the full scale of grave violations committed by all parties to the conflict), and attributed to ISIL (274), the Free Syrian Army and affiliated groups (62), Liwa' al Tawhid (11), popular committees (five), YPG (four), Ahrar al-Sham (three), the Nusrah Front (two) and the Army of Islam (one). Of the verified cases, 56 per cent involved children under 15 years of age, which represents a significant increase compared with 2014. The Secretary-General further indicates that the massive recruitment of children by ISIL continued, and that centres in rural Aleppo, Dayr al-Zawr and rural Raqqah existed that provided military training to at least 124 boys between 10 and 15 years of age. Verification of the use of child foreign fighters increased as well, with 18 cases of children as young as 7 years of age. In addition, the recruitment and use of children as young as 9 years of age by the Free Syrian Army was also verified, as well as the recruitment of 11 Syrian refugee children from neighbouring countries by Liwa' al-Tawhid, and the YPG continued to recruit boys and girls as young as 14 years of age for combat roles. Recruitment and use by pro-government groups was also verified, with five cases of boys being recruited by the Popular Committee of Tallkalah (Homs) to work as guards and conduct patrols. In addition, there were allegations of the use of children by government forces to man checkpoints.

The Committee must once again ***deeply deplore*** the use of children in armed conflict in the Syrian Arab Republic, especially as it entails other violations of the rights of the child, such as abductions, murders

and sexual violence. It once again recalls that, under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, Member States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee once again strongly urges the Government to take measures, using all available means, to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed forces and groups. The Committee once again urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of all persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Law No. 11 of 2013. It requests the Government to provide information on the number of investigations conducted, prosecutions brought and convictions handed down against such persons.***

Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. The Committee previously noted that, with approximately 5,000 schools destroyed in the Syrian Arab Republic, the resulting sharp decline in children's education continued to be a matter of great concern among the population. This report also indicated that more than half of Syrian school-age children, up to 2.4 million, were out of school as a consequence of the occupation, destruction and insecurity of schools.

The Committee notes that, according to the 2016 report of the Secretary-General on children and armed conflict (paragraph 157), the number of schools destroyed, partially damaged, used as shelters for internally displaced persons or rendered otherwise inaccessible has reached 6,500. The report refers to information from the Ministry of Education, according to which 571 students and 419 teachers had been killed in 2015, and from the United Nations that 69 attacks on educational facilities and personnel were verified and attributed to all fronts, which killed and maimed 174 children. The Committee further notes that, according to the report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic of 5 April 2016 (A/HRC/32/35/Add.2, paragraphs 50–53), a further 400,000 children were at risk of dropping out of school as a direct result of conflict, violence and displacement. While basic education facilities were in place in the displacement centres visited by the Special Rapporteur, such centres, often using school buildings, offer only limited educational facilities.

According to the same report, UNICEF is working with local partners to reach some 3 million children and has implemented an informal education programme to reduce the number of children out of school. The inter-agency initiative "No Lost Generation" is a self-learning programme aimed at reaching 500,000 children who missed out on years of schooling. In areas hosting high numbers of displaced children, UNICEF is also rehabilitating 600 damaged schools and creating 300 prefabricated classrooms to accommodate 300,000 additional children. The Committee further notes that, according to UNICEF's 2016 Annual Report on the Syrian Arab Republic, UNICEF's interventions in education, focusing on quality, access and institutional strengthening, contributed to an increase in school enrolment from 3.24 million children (60 per cent of school-age population) to 3.66 million (68 per cent) between 2014–15 and 2015–16. These efforts also resulted in a decrease in the number of out-of-school children from 2.12 million (40 per cent) in 2014–15 to 1.75 million (32 per cent) in 2015–16.

Nevertheless, the Committee notes that, in his report, the Special Rapporteur on the human rights of internally displaced persons declares that the challenge of providing even basic education access to many internally displaced children is immense and many thousands of children are likely to remain out of education in the foreseeable future (A/HRC/32/35/Add.2, paragraph 53). The Committee is, therefore, once again bound to express its ***deep concern*** at the large number of children who are deprived of education because of the climate of insecurity prevailing in the country. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to strengthen its efforts and take effective and time-bound measures to improve the functioning of the educational system in the country and to facilitate access to free basic education for all Syrian children, especially in areas affected by armed conflict, and giving particular attention to the situation of girls. It requests the Government to provide information on concrete measures taken in this regard.***

Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. 1. *Children affected by armed conflict.* The Committee previously noted that the recruitment and use of children in armed conflict in the Syrian Arab Republic had become common and that a great majority of the children recruited are trained, armed and used in combat.

The Committee notes the Government's indication that the competent authorities in the Syrian Arab Republic seek to care for children recruited in armed conflict and to help them return to ordinary life. However, the Committee notes with ***deep concern*** that the situation in the Syrian Arab Republic has not changed and that not only are there no reports of children having been withdrawn from armed forces and groups in the 2016 report of the Secretary-General on children and armed conflict but that, according to this report, children continue to be recruited and used in armed conflict. ***The Committee, therefore, strongly urges the Government to take effective and time-bound measures to prevent the engagement of children in armed conflict and to rehabilitate and integrate former child combatants. It once again requests the Government to provide information on the measures taken in this regard and on the number of children rehabilitated and socially integrated.***

2. *Sexual slavery.* The Committee previously noted that ISIS abducted hundreds of Yazidi women and girls, most of whom were sold as "war booty" or given as "concubines" to ISIS fighters, and that dozens of girls and women were transported to various locations in the Syrian Arab Republic, including Al Raqqah, Al Hasakah and Dayr az Zawr, where they were kept in sexual slavery.

The Committee notes with ***regret*** the absence of information in the Government's report on this issue. It notes that, according to the report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 15 June 2016 entitled "They came to destroy: ISIS Crimes Against the Yazidis" (A/HRC/32/CRP.2), ISIS has sought to destroy the Yazidis through such egregious human rights violations as killings, sexual slavery, enslavement, torture and mental harm. The report indicates that over 3,200 women and children are still held by ISIS. Most are in the Syrian Arab Republic where Yazidi girls continue to be sexually enslaved and Yazidi boys indoctrinated, trained and used in hostilities. The report reveals that captured Yazidi women and girls over the age of 9 years are deemed the property of ISIS and are sold in slave markets or, more recently through online auctions, to ISIS fighters. While held by ISIS fighters, these Yazidi women and girls are subjected to brutal sexual violence and regularly forced to work in their houses, in many instances forced to work as domestic servants of the fighter and his family. The Committee ***deeply deplores*** the fact that Yazidi children continue to be victims of sexual slavery and forced labour. ***While acknowledging the difficult situation prevailing in the country, the Committee strongly urges the Government to take effective and time-bound measures to remove Yazidi children under 18 years of age who are victims of forced labour and sexual exploitation and to ensure their rehabilitation and social integration. It once again requests the Government to provide information on specific measures taken in this regard, and the number of children removed from sexual exploitation and rehabilitated.***

Clause (d). Identifying and reaching out to children at special risk. Internally displaced children. The Committee previously noted that, by early 2013, there were 3 million children displaced and in need of assistance inside the Syrian Arab Republic.

The Committee notes that, according to the report of the Special Rapporteur on the human rights of internally displaced persons on his mission to the Syrian Arab Republic of 5 April 2016 (A/HRC/32/35/Add.2, paragraph 67), the extent of the conflict and displacement has had a massive impact on children, many of whom have experienced violence first-hand and/or witnessed extreme violence, including the killing of family members and/or separation from family members. The Special Rapporteur indicates that child protection concerns and issues, including child labour resulting from parents' loss of livelihood, trafficking, sexual and gender-based violence and early and forced marriage, continue to be reported. Children have also been recruited and used by different parties to the conflict, both in combat and support roles. ***Observing with concern that internally displaced children are at an increased risk of being engaged in the worst forms of child labour, the Committee once again strongly urges the Government to take effective and time-bound measures to protect these children from the worst forms of child labour. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

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

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

Uganda

Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour and application of the Convention in practice. In its previous comments, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, a total of 2.009 million children aged 5–17 years were in child labour (approximately 16 per cent of all children). Moreover, a total of 507,000 children aged 5–17 years were found in hazardous work (25 per cent of the children in child labour). The Committee also noted that the Government acknowledged the problem of child labour in the country and recognized its dangers. It took due note of the Government's indication that the National Action Plan for the elimination of the worst forms of child labour in Uganda (NAP) was launched in June 2012. This NAP is a strategic framework that will set the stage for the mobilization of policy-makers and for awareness raising at all levels, as well as provide a basis for resource mobilization, reporting, monitoring, and evaluation of performance and progress of the interventions aimed at combating child labour. The Committee requested that the Government provide detailed information on the implementation of the NAP and its impact on the elimination of child labour.

The Committee notes the Government's information in its report that the NAP is in the process of being reviewed by the Government with support from the ILO. It also notes, from the ILO–IPEC field office, that a total of 335 children (156 girls and 179 boys) have been withdrawn from child labour and were given skills and livelihood training. Moreover, the child labour agenda has been promoted through the Education Development Partners Forum, Stop Child Labour Partners Forum and other national forums within the education and social development sectors. The Committee finally notes from the 2016 UNICEF Annual Report on Uganda that 7,226 children aged 5–17 years were withdrawn from child labour (page 28). While noting the measures taken by the Government, the Committee must express its ***concern*** at the number of children involved in child labour in the country, including in hazardous work. ***The Committee once again urges the Government to strengthen its efforts to ensure the effective elimination of child labour, especially in hazardous work. In this regard, it requests that the Government provide detailed information on the implementation of the reviewed NAP, once adopted. It also requests that the Government supply information on the application of the Convention in practice, particularly statistics on the employment of children under 14 years of age.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously requested the Government to take the necessary measures to ensure that the procuring or offering of boys under 18 years of age for prostitution is prohibited, to impose criminal

responsibility on clients who use boys and girls under 18 years of age for prostitution, and to ensure that boys and girls under 18 years of age who are used, procured or offered for prostitution are treated as victims rather than offenders. The Committee noted that the Director of the Directorate of Public Prosecutions had indicated that efforts were being made to amend the Children's Act of 2000 to fully comply with the Convention on the prohibition of the use, procuring or offering of children for prostitution.

The Committee notes with ***satisfaction*** that section 8A of the Children's (Amendment) Act of 2016 provides that a person shall not engage a child in any work or trade that exposes the child to activities of a sexual nature, whether remunerated or not. It notes that the perpetrator is liable to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.

Clause (d). Hazardous types of work. Children working in mines. The Committee observes that, according to the UNICEF Situation analysis of 2015, the Karamoja region has a high incidence of child labour in hazardous mining conditions (page 13). The Committee also observes, from the UNICEF Annual Report of 2016, that 344 girls and 720 boys were removed from the worst forms of child labour, such as mining, as a result of the support of the Ministry of Gender, Labour and Social Development to the strategic plan for the national child helpline. Moreover, the Committee notes that section 8 of the Children's (Amendment) Act of 2016 prohibits hazardous work, and that the list of hazardous occupations and activities in which the employment of children is not permitted (first schedule of the Employment of Children Regulations of 2012) includes the prohibition of children working in mining. The Committee notes with ***concern*** the situation of children working in mines under particularly hazardous conditions. ***The Committee urges the Government to take the necessary measures to ensure the effective application of the Children's (Amendment) Act of 2016 and of the Employment of Children Regulations of 2012, so as to prevent children under 18 years of age from working in mines, and to provide the necessary and appropriate direct assistance for their removal.***

Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. 1. *Orphans and vulnerable children.* The Committee previously noted the Government's information that a range of factors has contributed to the problem of child labour, such as orphanhood arising from the HIV/AIDS pandemic. The Committee noted that orphans and vulnerable children (OVCs) in Uganda were recognized in both the Policy on orphans and other vulnerable children and the National Strategic Plan on OVCs. The Committee also noted that the policies and activities of the National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2013–17 (NAP) include orphans and HIV/AIDS affected persons in its target groups. However, noting with concern the large number of children orphaned as a result of HIV/AIDS, the Committee urged the Government to intensify its efforts to ensure that such children are protected from the worst forms of child labour.

The Committee notes the absence of information on this point in the Government's report. The Committee however notes that, according to a report by the Uganda AIDS Commission, entitled: "The Uganda HIV and AIDS country progress report: July 2015–June 2016", approximately 160,000 OVCs received social support services and a mapping of OVC actors was conducted, among other achievements. The Committee also notes that the Second National Development Plan 2015/16–2019/20 outlines two programmes to support OVCs: the SUNRISE–OVC (Strengthening the Ugandan National Response for Implementation of Services for OVCs), and the SCORE (Strengthening Community OVC Response). While taking due note of the strategic plans developed by the Government and the decrease in the number of OVCs, the Committee notes with ***concern*** that there are still approximately 660,000 HIV/AIDS orphans in Uganda, according to UNAIDS estimates for 2015. ***Recalling that children orphaned as a result of HIV/AIDS and other vulnerable children are at particular risk of becoming involved in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect these children from the worst forms of child labour. It requests the Government once again to provide information on specific measures taken in this respect, particularly in the framework of the Policy on orphans and other vulnerable children, the National Strategic Plan on OVCs, the SUNRISE–OVC and the SCORE, and the results achieved.***

2. *Child domestic workers.* The Committee previously noted that the list of hazardous occupations and activities prohibits the engagement of children under 18 years of age in several activities and hazardous tasks in the sector of domestic work. However, the Committee noted that, according to the National Labour Force and Child Activities Survey 2011–12 of July 2013, approximately 51,063 children, that is 10.07 per cent of the number of children aged 5–17 years engaged in hazardous work in Uganda, are domestic housekeepers, cleaners and helpers. In this regard, the Committee observed that domestic workers form a

group targeted by the NAP, and requested the Government to provide information on the impact of the NAP on the protection of child domestic workers. The Committee notes the absence of information from the Government in this regard. ***Recalling that children in domestic work are particularly vulnerable to the worst forms of child labour, including hazardous work, the Committee once again requests the Government to provide information on the impact of the NAP on the protection of child domestic workers, particularly the number of child domestic workers engaged in hazardous work who have benefited from initiatives taken in this regard.***

3. *Refugee children.* The Committee observes that, according to the UNICEF Uganda situation report of 31 May 2017, there are over 730,000 refugee children in Uganda, among more than 1.2 million refugees. The Committee also observes from the joint Updated regional framework for the protection of South Sudanese and Sudanese refugee children (July 2015–June 2017), developed by UNHCR, UNICEF and NGOs, that South Sudanese and Sudanese refugee children are subjected to child labour in Uganda (page 5). The Committee finally notes that a Uganda Solidarity Summit on Refugees took place in Kampala in June 2017 to showcase the Uganda model of refugee protection and management, to highlight the emergency and long-term needs of the refugees and to mobilize resources. ***While acknowledging the difficult refugee situation prevailing in the country and the efforts provided by the Government, the Committee strongly urges the Government to take effective and time-bound measures as a matter of urgency to specifically protect refugee children from the worst forms of child labour and to provide the necessary and appropriate direct assistance for their removal and for their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard.***

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

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

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 123** *(Gabon);* **Convention No. 124** *(Kyrgyzstan);* **Convention No. 138** *(Afghanistan, Cabo Verde, Cambodia, Canada, Chad, Comoros, Congo, Cuba, El Salvador, Eswatini, Gabon, Grenada, Guatemala, Guinea, Guinea Bissau, Indonesia, Iraq, Israel, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Mauritania, Morocco, Mozambique, Nepal, Nicaragua, Nigeria, North Macedonia, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, South Sudan, Uganda);* **Convention No. 182** *(Afghanistan, Argentina, Australia, Barbados, Benin, Botswana, Brazil, Cabo Verde, Cambodia, Canada, Central African Republic, Chad, Comoros, Cook Islands, Croatia, Cuba, Democratic Republic of the Congo, Dominican Republic, El Salvador, Eswatini, Ethiopia, Gabon, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Indonesia, Iraq, Israel, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Mali, Mauritania, Montenegro, Morocco, Mozambique, Nepal, Netherlands: Aruba, Nicaragua, Nigeria, North Macedonia, Rwanda, Saint Kitts and Nevis, Sao Tome and Principe, Solomon Islands, South Sudan, Syrian Arab Republic, Uganda, Vanuatu).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Conventions Nos 77, 78, 79** *(Kyrgyzstan).*

Equality of opportunity and treatment

Afghanistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

Previous comment

The Committee notes with ***deep concern*** that the Government's report, due since 2019, has not been received. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 1(b) and 2 of the Convention. Equal remuneration for work of equal value. Legislation and practice. The Committee previously noted that while some of the provisions of the Labour Law (namely sections 8, 9(1), 59(4) and 93) read together provided some protection against discrimination based on sex with respect to remuneration, they did not reflect fully the principle of the Convention. In light of the lack of information available regarding any progress made in the revision process of the Labour Law, the Committee wishes to point out that the concept of "work of equal *value*" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal *value* as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal *value* (see the 2012 General Survey on the fundamental Conventions, paragraph 673). ***The Committee asks that all necessary steps be taken to give full legislative expression and effect to the principle of equal remuneration for men and women for work of equal value set out in the Convention. It requests information on any progress made in that regard.***

Gender pay gap and occupational gender segregation. The Committee notes that, according to an ILO assessment made in January 2022, since the change of power in August 2021 and the ensuing economic crisis as well as the restrictions on women's participation in the economy, it was estimated that more than 900,000 jobs could be lost by mid-2022 (ILO Brief, Employment prospects in Afghanistan: A rapid impact assessment, January 2022). Furthermore, the Committee notes from the report of the United Nations Special Rapporteur on the situation of human rights in Afghanistan that, by March 2022, 61 per cent of women had lost their job or income generating activities (A/HRC/51/6, 6 September 2022, paragraph 38). The Committee notes with ***deep concern*** this information and refers to its comments made on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) regarding the bans and increasing discriminatory restrictions imposed on women's employment since August 2021. ***The Committee therefore urges that all steps be taken to address occupational gender segregation and promote women's participation in the labour market, in particular in jobs with career prospects and higher pay, including by removing any restrictions regarding women's access to education, vocational training and employment.***

Awareness-raising and enforcement. ***The Committee requests information on any activities undertaken: (i) to raise public awareness of the principle of equal remuneration for men and women for work of equal value, the procedures and remedies available; and (ii) to enhance women's access to formal justice mechanisms in case of discrimination in remuneration.***

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

Previous comments: observation and direct request

The Committee notes with ***deep concern*** that the Government's report, due since 2019, has not been received. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 1(1)(a), 2 and 3 of the Convention. Discrimination based on sex. Restrictions on women's access to education, vocational training and employment. The Committee notes that since August 2021, high-level United Nations (UN) bodies have expressed deepest concern regarding the increasing deterioration of human rights and fundamental freedoms of women and girls in the country (UN Special Rapporteur on the situation of human rights in Afghanistan, Statement, Urgent Debate on the situation of women and girls in Afghanistan, 1 July 2022; UN Security Council, Statement on the situation in Afghanistan, 24 May 2022; and High Commissioner for Human Rights, A/HRC/49/24, 4 March 2022). According to these bodies, as a result of the policies and practices adopted, severe restrictions have been imposed on women's and girls' freedom of movement, access to education, vocational training and employment. The Committee notes, more particularly, that: (1) since August 2021, women have been excluded from the workforce. They are also absent from the public administration, where all members are men; (2) since September 2021, women and girls have been denied access to secondary and higher education. Even where girls have been allowed to attend schools, instruction has been restricted due to the absence of women teachers; (3) the Ministry of Women's Affairs and the Afghanistan Independent Human Rights Commission have been disbanded; and (4) specialized courts addressing the elimination of violence against women and prosecution offices have also been closed, thus leaving women without access to justice. The Committee notes that, in its resolution 50/14 on the situation of human rights of women and girls in Afghanistan, adopted on 8 July 2022, the Human Rights Council specifically: (1) condemned in the strongest possible terms all human rights violations and abuses committed against all individuals, including women and girls, in Afghanistan, including all forms of discrimination and violence, including sexual and gender-based violence; (2) called upon the Taliban in particular to reverse the policies and practices that currently restrict the human rights and fundamental freedoms of Afghan women and girls, to ensure that women and girls have opportunities and access to inclusive and quality education at all levels, equal to those afforded to men and boys, and to immediately open schools for girls of all ages; and (3) called for measures to ensure that victims of sexual and gender-based violence have access to justice and to effective remedies and reparations (Human Rights Council resolution 50/14, A/HRC/RES/50/14, 14 July 2022). Furthermore, the Committee notes from the recent report of the Special Rapporteur on the situation of human rights in Afghanistan that: (1) "the restrictions on Afghan women are disproportionately affecting their ability to sustain themselves, thereby further diminishing their enjoyment of other basic rights"; (2) "in early 2021, about 17,369 women-owned businesses were creating over 129,000 jobs, over three-quarters held by women, and many more unregistered women-owned businesses operated in the informal economy [and] by March 2022, 61 per cent of women had lost their job or income generating activities …"; (3) "in the informal sector, women can no longer take products to market due to movement restrictions and the closure of many women's markets"; (4) "women who continue to work often face harassment and abuse"; (5) "women have been excluded from the de facto justice system"; and (6) "female civil servants, except those doing jobs in health, security and education which cannot be carried out by men, were directed to stay home until conditions enable them to return to work in accordance with Sharia, although their male counterparts were called back" (A/HRC/51/6, 9 September 2022, paragraphs 38 and 39). The Committee ***strongly deplores*** the discriminatory prohibitions, bans and restrictions based on sex imposed on girls and women, in particular regarding their access to, and remaining in, education,

vocational training and employment, both in the public and private sectors, and on their enjoyment of other human rights and fundamental freedoms, as well as their exposure to sexual and gender-based violence. ***The Committee therefore strongly urges that all steps be taken to: (i) remove without delay all bans, discriminatory practices and unequal treatment based on sex imposed on girls and women to prohibit, limit or impede their access to secondary and higher education, vocational training, employment and all types of occupations in all sectors; and (ii) prevent and address violence and harassment against girls and women.***

The Committee asks for information on the measures taken to that end and the results achieved on the equal participation of women in employment and occupation, including by providing statistical information, disaggregated by sex and occupation, on the participation of girls and women in education, vocational training and employment in both the public and private sectors.

Articles 1, 2 and 3. Protection against discrimination. Legislation. The Committee notes that, in its 2020 report to the UN Committee on the Elimination of Racial Discrimination (CERD), the Government indicated that a draft Anti-Discrimination Law had been developed, which defines direct and indirect discrimination and prohibits discrimination in employment and occupation (CERD/C/AFG/2-16, 27 July 2020, paragraphs 28 and 47). ***Recalling that the prohibition of discrimination in section 9 of the Labour Law is formulated in very broad terms, the Committee asks that all necessary measures be taken to explicitly define and prohibit in law direct and indirect discrimination based on at least all of the grounds listed in Article 1(1)(a) of the Convention (namely, race, colour, sex, religion, political opinion, national extraction and social origin), as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with Article 1(1)(b), covering all aspects of employment and occupation, both in the private and public sectors. The Committee asks for information on any progress made in that regard.***

Article 1(1)(b). Discrimination against persons with disabilities, in particular women and girls. The Committee recalls that, while section 15 of the Law of Rights and Benefits of Persons with Disabilities provides for equal rights for persons with disabilities in terms of social, economic and educational participation, in practice, persons with disabilities had very low education and employment levels. The Committee notes that, in its resolution 50/14 on the situation of human rights of women in Afghanistan, the Human Rights Council expressed deep concern at the situation currently faced by girls and women with disabilities who are often subject to multiple, aggravated or intersecting forms of discrimination and disadvantages (A/HRC/RES/50/14, 14 July 2022). ***The Committee calls once again for specific actions to be taken in order to facilitate access to education and vocational training and promote employment opportunities of persons with disabilities, in particular girls and women, both in the private and public sectors.***

Monitoring and enforcement. The Committee notes that, in her March 2022 report on the situation of human rights in Afghanistan, the UN High Commissioner for Human Rights expressed specific concerns about the fact that, "since August 2021, the previously operating legal and justice systems became dysfunctional, with little clarity as to applicable laws and the side-lining of justice sector personnel. Since then, the de facto authorities have gradually sought to resume the functioning of a country-wide justice system and courts under Islamic law with numerous appointments at the de facto ministry of justice" and de facto courts and initiated "an ongoing review of formal law's asserted compliance with both Islamic Law and with the objectives and policies of the new de facto administration. In the meantime, de facto authorities continued administering justice in lieu of the former judiciary in a decentralized manner in consultation with religious scholars, elders, and local communities" (A/HRC/49/24, 4 March 2022, paragraph 60). The Committee wishes to recall that Afghanistan has a binding legal obligation to uphold the fundamental human rights and freedoms guaranteed in customary international law and human rights treaties that the country is signatory to, including the Convention which it has ratified. ***The Committee therefore urges that all steps be taken***

to ensure access to non-discriminatory formal justice mechanisms and effective remedies and to organize activities to raise public awareness of the principles of non-discrimination and equality.

In light of the situation described above, the Committee notes with deep concern the repeated failure of the Government to respond to the Committee's comments since 2019. The Committee also must express its deep concern at the significant deterioration of the situation of women and girls, including the situation of vulnerable groups of women, since 2021. In this context, it deplores the numerous acts of discrimination based on sex against women and girls thereby impairing the enjoyment of their human rights and their access to, and retention in, education at all levels, vocational training and employment in all the sectors of the economy and increasing their exposure to sexual and gender-based violence. The Committee also deplores the lack of legal framework explicitly defining and prohibiting direct and indirect discrimination based on at least all the grounds set out in the Convention, in all aspects of employment and occupation, as well as the lack of access to non-discriminatory formal justice mechanisms and effective remedies. The Committee considers that this case meets the criteria set out in paragraph 114 of its General Report to be asked to come before the Conference.

[The Government is asked to supply full particulars to the Conference at its 111th Session and to reply in full to the present comments in 2023.]

Algeria

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)

Previous comment

Articles 1–4 of the Convention. Assessment of the gender pay gap. The Committee recalls that, according to the data provided by the Government in its previous report, the wage gap in 2011 was in favour of women in almost all sectors, and it considered that this unusual situation could be explained by the low participation rate of women in the labour market and the high level of positions that they occupy. In effect, as recalled in its observation under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), women working in Algeria in the formal sector generally have high qualification levels and often occupy high ranking positions in sectors occupied predominantly by men and, therefore, in well-paid positions. The Committee notes that, in its report, the Government does not provide updated statistical information, disaggregated by sex, on the remuneration of men and women by occupational category, in the private and public sectors. It also notes that data on wages, published regularly by the Office for National Statistics (ONS), are still not disaggregated by sex, which does not allow trends in the gender pay gap to be monitored. The Committee further notes that, according to the survey, "Activity, Employment and Unemployment", published by the ONS in May 2019: (1) the rate of economically active women (17.3 per cent) remains very low compared with that of men (66.8 per cent); and (2) 62.2 per cent of economically active women hold a higher education degree. It also notes that, according to the World Economic Forum's annual Global Gender Gap Report 2022, Algeria was ranked third out of 146 countries assessed in terms of equal pay for men and women for *similar* work, which is significant progress (it was ranked 15th out of 149 countries assessed in 2018). However, the Committee emphasizes that the notion of equal remuneration for men and women for similar work is narrower than the principle of equal remuneration for men and women for work of equal value, enshrined in the Convention, which encompasses not only "equal", "the same" and "similar" work, but also work that is of an entirely different nature, which is nevertheless of equal value (see the 2012 General Survey on the fundamental Conventions, paragraphs 672–675). Lastly, the Committee notes that the same report indicates that women's estimated annual income is clearly lower than that of men (US$3,310 for women and US$18,000 for men), which ranks the country in 144th place out of 146 countries assessed. ***In order to follow the trends on pay gaps over time and across sectors –***

particularly given the low participation of women in the labour market and their high levels of qualification – the Committee once again requests the Government to take the necessary steps to regularly collect and analyse statistical data on the remuneration of men and women, by occupational category and in the public and private sectors (including the informal economy if possible), and to supply these data disaggregated by sex.

Articles 1(b) and 2(2)(a). Equal remuneration for work of equal value. Civil service. Legislation. For several years, the Committee has been emphasizing that Ordinance No. 06-03 of 15 July 2006, issuing the General Civil Service Regulations, which prohibits all discrimination, particularly on the grounds of sex (section 27), does not contain any provisions explicitly providing for equal remuneration for men and women for work of equal value. The Committee recalls that, in the absence of a clear legislative framework, it is particularly difficult for men and women workers to assert their right to equal remuneration for work of equal value vis-à-vis employers, the relevant bodies and the courts. It notes with ***regret*** that no legislative amendment has been introduced in this regard. ***The Committee therefore once again urges the Government to take the necessary steps to: (i) amend Ordinance No. 06-03 of 15 July 2006 issuing the General Civil Service Regulations, in order to incorporate a provision explicitly providing for equal remuneration for men and women for work of equal value; and (ii) assess the pay gaps between men and women in the civil service and raise awareness among public officials and their organizations, as well as personnel managers, of the principle of equal remuneration for men and women for work of equal value.***

Article 3. Objective evaluation and classification of jobs in the civil service. The Committee notes the information provided by the Government on the occupational evaluation of civil servants. It notes, however, that there appears to be some confusion between the concept of performance evaluation – which aims at evaluating the way in which a given worker carries out his or her duties – and the concept of objective job evaluation, namely the calculation of the relative value of jobs that do not have the same content on the basis of the duties to be performed. An objective job evaluation must evaluate the position and not the individual worker. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, *Article 3* presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions. For further information, the Committee draws the Government's attention to paragraphs 695–709 of its 2012 General Survey on objective job evaluation. ***Therefore, the Committee once again requests the Government to: (i) review the job evaluation and classification method to ensure that the classification of jobs and the applicable salary scales in the public service is free from any gender bias and does not result in undervaluation of jobs mainly occupied by women; (ii) encourage the use of job evaluation methods based on objective criteria, such as skills and qualifications, effort, responsibility and working conditions; and (iii) provide statistical information, disaggregated by sex, on personnel numbers in the respective categories (A, B, C and D) in the public service. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

Previous comment

Article 1 of the Convention. Protection against discrimination. Legislation. Private sector workers. For many years, the Committee has been emphasizing that: (i) section 6 of Act No. 90-11 of 21 April 1990 on labour relations is of a very general nature as it provides that workers are entitled to "protection against

all discrimination regarding the occupation of a post other than distinctions made on the basis of their ability and merit"; (ii) section 17 of that Act does not cover all of the grounds of discrimination in employment and occupation listed by the Convention, as it targets only discrimination "based on age, sex, social or marital status, family relations, political beliefs [and] membership or non-membership of a trade union"; and (iii) section 17 does not provide for penalties for discriminatory conduct by the employer or any other person toward a worker in all aspects of work and employment (recruitment, promotion, dismissal and so forth). It merely provides that "any provision in a collective agreement or employment contract that may generate discrimination of any kind among workers regarding employment, remuneration or working conditions" is null and void. The Committee notes with ***deep regret*** that no legislative amendment of these provisions has been introduced to date. ***Emphasizing once again the importance of establishing a comprehensive protection mechanism for private sector workers against discrimination in employment and occupation, the Committee urges the Government to take all necessary measures, in cooperation with the workers' and employers' organizations, to ensure that: (i) sections 6 and 17 of Act No. 90-11 of 21 April 1990 explicitly prohibit all forms of direct or indirect discrimination, on at least all of the grounds listed in Article 1(1)(a) of the Convention, and all other grounds specified pursuant to Article 1(1)(b); and (ii) section 17 of the same Act prohibits discriminatory conduct by the employer or any other person toward a worker in all aspects of work and employment, including with regard to access to employment and the various occupations, promotions and dismissal.***

Civil servants. For many years, the Committee has been emphasizing that section 27 of Ordinance No. 06-03 of 15 July 2006 issuing the General Conditions of Service of Civil Servants does not prohibit all of the grounds of discrimination listed in the Convention, as it provides only that "there must be no discrimination between civil servants on the basis of their opinions, sex, origin or any other personal or social circumstance". It nevertheless notes that, as indicated above, no legislative amendment has been introduced in this regard. ***Recalling the importance of implementing a comprehensive system to protect civil servants from discrimination in employment and occupation, the Committee once again urges the Government to take the necessary steps to ensure that section 27 of Ordinance No. 06-03 of 15 July 2006 issuing the General Conditions of Service of Civil Servants explicitly prohibits all forms of direct or indirect discrimination, on at least all of the grounds listed in Article 1(1)(a) of the Convention and all other grounds specified pursuant to Article 1(1)(b)).***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. The Committee notes that Act No. 15-19 of 30 December 2015 introduced into the Criminal Code section 341 bis, under which "any person who abuses the authority conferred by his or her function or occupation, by giving orders to others, making threats, imposing constraints or by exerting pressure in order to obtain favours of a sexual nature, is considered to have committed the offence of sexual harassment and shall be punished by imprisonment of one to three years and a fine of 100,000 to 300,000 Algerian dinars. Anyone who harasses another person by any act, or words of a sexual nature or insinuation is also guilty of the offence stated in the previous clause and punishable by the same penalty". The Committee recalls that criminal provisions are not completely adequate in discrimination cases because, inter alia, they do not always provide a remedy to the victim and are very unlikely to cover all forms of conduct that amount to sexual harassment. ***The Committee requests the Government to provide information on: (i) the number, nature and outcome of complaints filed on the basis of section 341 bis of the Criminal Code, and the penalties imposed; and (ii) the preventive and awareness-raising measures implemented, in cooperation with the employers' and workers' organizations, to combat sexual harassment in employment and occupation.***

Articles 2 and 3. National policy. Equality of opportunity and treatment for men and women. For many years, the Committee has expressed serious concern regarding the low participation of women in the labour market and the persistence of strongly stereotyped attitudes with respect to the roles and responsibilities of women and men in society and in the family, both of which have a negative impact

on women's access to employment and training. The Committee notes that, according to the survey, "Activity, Employment and Unemployment" published by the Office for National Statistics (ONS) in May 2019, women's activity rate remains quite low (17.3 per cent) and is still significantly lower than that of men (66.8 per cent). The same survey indicates that significant disparities can be noted with regard to sex, with 77.9 per cent of women in the workforce concentrated in the following sectors: health and social work (45.1 per cent), manufacturing industry (18.9 per cent), and public administration (13.9 per cent). The Committee also notes that the unemployment rate for women in 2019 was 20.4 per cent, while that for men was 9.1 per cent. Furthermore, it notes with ***concern*** that, according to the World Bank's 2022 Algeria Economic Update, the number of women jobseekers who signed up with the National Employment Agency (ANEM) increased by 63 per cent in the first quarter of 2022. In this respect, the Committee emphasizes that, in its national report submitted to the universal periodic review (UPR) in September 2022, the Government states that measures taken to promote education and training for women have resulted in Algeria having one of the highest proportions of women graduates in the world at 48.5 per cent, thus ranking top in the 2018 United Nations Educational, Scientific and Cultural Organization (UNESCO) report. In this report, the Government also indicates that its action plan prioritizes measures to strengthen the economic integration of housewives and women living in rural areas (A/HRC/WG.6/41/DZA/1, paragraphs 106–107). ***The Committee requests the Government to provide detailed information on the measures taken or envisaged to: (i) implement the intersectoral programme to support the integration of rural women and housewives into the economy, referred to in the Government's action plan for the implementation of the President's programme of September 2021; (ii) combat the very high rate of unemployment for women compared with men; (iii) effectively combat vertical and horizontal occupational gender segregation, as well as gender bias and gender stereotypes concerning the vocational aspirations and capabilities of women and their suitability for certain jobs; and (iv) allow women and men workers to achieve a better balance between work and family responsibilities.***

Article 5. Special protection measures. Work prohibited for women. For many years, the Committee has been drawing the Government's attention to the need to review the provisions prohibiting night work for women, as well as those concerning the assignment of women to work that is dangerous, insalubrious or harmful to their health. It nevertheless notes with ***regret*** that no progress has been made in this regard. The Committee recalls that there has been a shift over time from a purely protective approach concerning the employment of women to one based on promoting genuine equality between men and women and eliminating discriminatory law and practice. The protection measures taken for women can be broadly divided into two categories: those aimed at protecting maternity in the strict sense, which come within the scope of *Article 5*, and those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society. This second category is contrary to the Convention and constitutes obstacles to the recruitment and employment of women (see the 2012 General Survey on the fundamental Conventions, paragraph 839). The Committee further recalls that it considers that provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health. Restrictions on women's employment ("non-pregnant" and "non-nursing" women) are contrary to the principle of equality of opportunity and treatment for men and women, unless they are genuine protective measures put in place to protect their health. This protection must be determined on the basis of the results of a risk assessment showing that there are specific risks for women's health and/or safety. Therefore, such restrictions, if any, have to be justified and based on scientific evidence and, when in place, have to be periodically reviewed in the light of technological developments and scientific progress to determine whether they are still necessary. The Committee further recalls that it may be necessary to examine what other measures, such as improved health protection of both men and women, adequate transportation and security, as well as social services, are

necessary to ensure that women can access the types of employment concerned on an equal footing with men (see 2012 General Survey on the fundamental Conventions, paragraph 840). The Committee also emphasizes the need to adopt measures and to put in place facilities to enable workers with family responsibilities, particularly women who continue to bear the unequal burden of family responsibilities, to reconcile work and family responsibilities. ***The Committee therefore urges the Government to take the necessary steps to ensure that the special protection measures for women are limited to what is strictly necessary for maternity protection and do not constitute obstacles to the access of women to employment and to the various occupations. It also once again invites the Government to consider the possibility of taking support measures aimed at, inter alia, improving safety and health protection for men and women, and the availability of adequate transport services and social services, to enable women to access all types of employment on an equal footing with men. The Committee requests the Government to provide information on all provisions adopted in this regard.***

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

Angola

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1976)

Previous comment: direct request

Articles 1 and 2(2)(a) of the Convention. Definition of remuneration. Equal remuneration for men and women for work of equal value. Scope of application. Legislation. The Committee notes that section 157 of the General Labour Act (Act No. 7/15) of 15 June 2015 provides for equal remuneration for men and women for the same work or for work of equal value. It observes, however, that: (1) several categories of workers, such as civil servants and casual workers, are excluded from the scope of application of the General Labour Act (section 2 of the Act); and (2) the definition of remuneration set out in section 155 of the General Labour Act excludes several components of remuneration (such as travel and accommodation allowances, family allowances and other social security benefits) which are covered by the definition of "remuneration" in *Article 1(a)* of the Convention. As regards civil servants, the Committee notes that section 9(c) of the Basic Civil Service Act No. 26/22 of 22 August 2022 provides that civil servants shall enjoy the right to receive "fair remuneration" but observes that this provision does not reflect the principle of the Convention. The Committee notes that, in January 2022, a new draft General Labour Act was examined by the National Commission for Social Dialogue, and, on 27 April 2022, the draft Act was approved by the Council of Ministers and forwarded to the General Assembly. ***The Committee hopes that the Government will take all necessary steps, in particular in the framework of the revision of the General Labour Act, to give full legislative expression to the principle of equal remuneration for men and women for work of equal value set out in the Convention, in particular by ensuring that all components of remuneration contained in Article 1(a) of the Convention are included in the definition of "remuneration" and all workers in the private sector are covered by the principle of the Convention. With respect to civil servants, it asks the Government to consider, in the framework of a future revision, including in the Basic Civil Service Act No. 26/22 provisions reflecting the principle of equal remuneration for men and women for work of equal value. The Committee asks the Government to provide information on: (i) any progress made in that regard; (ii) any proactive measures taken to raise awareness of the meaning and scope of application of the principle of equal remuneration for work of equal value among workers and employers and their organizations, as well as among law enforcement officials; and (iii) the number, nature and outcome of any cases of pay inequality between men and women dealt with by the labour inspectors, the courts or any other competent authority.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1976)

Previous comments: observation and direct request

Articles 1 and 2 of the Convention. Protection against discrimination in employment and occupation. Legislation. The Committee notes that section 4 of the General Labour Act (Act No. 7/15) of 15 June 2015 provides for equality of opportunity and non-discrimination for all citizens based on race, colour, sex, ethnic origin, marital status, social origin or status, religious reasons, political opinion, trade union membership or language. It notes the Government's indication, in its report, that a revision process of the General Labour Act has been initiated and would address the issues previously raised by the Committee regarding: (1) the definition of discrimination in order to encompass both direct and indirect discrimination in all aspects of employment and occupation; (2) the prohibited grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention, including national extraction; (3) the prohibition of sexual harassment; (4) the restrictions on women's access to work; and (5) the scope of the measures applicable to workers with family responsibilities. In that regard, the Committee notes that, in January 2022, the draft General Labour Act was examined by the National Commission for Social Dialogue. On 27 April 2022, the draft Act was approved by the Council of Ministers and forwarded to the General Assembly. ***Recalling the importance of having a clear and comprehensive legislative framework in order to effectively address discrimination in employment and occupation and ensure the effective implementation of the Convention, the Committee trusts that the Government will take every necessary step, in particular in the framework of the revision of the General Labour Act, to give full legislative expression to the provisions of the Convention regarding the above-mentioned matters. It asks the Government to provide information on the steps taken to that end and their outcomes.***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. The Committee welcomes the Government's indication, in its report, that section 301 of the draft revised General Labour Act would prohibit sexual harassment. It notes that, in their concluding observations, the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW) and the UN Human Rights Committee expressed specific concerns at: (1) the failure to comprehensively prohibit all forms of gender-based violence against women and girls in the public and private spheres; and (2) the under-reporting of gender-based violence against women and girls owing to the social legitimization of violence, a culture of silence and impunity, and the stigmatization of victims by health professionals and law enforcement officers, legal illiteracy and a lack of trust in law enforcement authorities (CEDAW/C/AGO/CO/7, 14 March 2019, paragraph 25; and CCPR/C/AGO/CO/2, 8 May 2019, paragraph 17). ***The Committee asks the Government to take steps to: (i) include in its national legislation a clear definition and prohibition of both quid pro quo and hostile work environment sexual harassment in employment and occupation; and (ii) ensure that appropriate preventive and remedial measures and procedures are in place. It also requests the Government to provide information on any practical measures taken to prevent and address sexual harassment in employment and occupation.***

Articles 1(1)(a) and 5. Restrictions on women's access to work. The Committee notes that a list of jobs prohibited for women was adopted by Executive Decree No. 172/10 of 14 December 2010, pursuant to section 243 of the General Labour Act. It notes the Government's general indication that several provisions of the draft General Labour Act refer to restrictions on women's access to work but observes that the Government did not provide information on the content of such provisions. The Committee recalls that special measures for the protection of women should be limited to maternity protection in the strict sense, and that provisions for the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health (see 2012 General Survey on the fundamental Conventions, paragraphs 839 and 840). ***The Committee asks the***

Government to take measures, in particular in the framework of the revision of the General Labour Act, to ensure that existing restrictions on women's access to work are removed so as to allow women's access to employment on an equal footing with men, and that any restriction regarding the access of women to certain jobs is strictly limited to maternity protection in the broad sense.

Article 1(1)(b). Real or perceived HIV status. The Committee notes that sections 5 and 7 of Act No. 8/04 of 1 November 2004 on HIV and AIDS prohibit discrimination based on workers' health status in relation to HIV/AIDS. It notes that, in August 2021, the Government initiated the revision of Act No. 8/04 with a view to "responding to current complaints about discrimination", especially in the workplace, with domestic workers often being fired as a result of their HIV positive status. In that regard, the Committee notes that, in its 2019 concluding observations, the UN Human Rights Committee expressed concern at reports that persons living with HIV/AIDS face stigmatization and de facto discrimination (CCPR/C/AGO/CO/2, paragraph 13). ***The Committee asks the Government to provide information on: (i) the current status of the revision process of Act No. 8/04; (ii) any measures taken in law and in practice to prevent and address discrimination based on real or perceived HIV status in employment and education, in particular against domestic workers; and (iii) any cases of discrimination based on real or perceived HIV status dealt with by the competent authorities, including sanctions imposed and remedies granted.***

Article 2. Equality of opportunity and treatment for men and women. The Committee notes the Government's indication that several programmes have been implemented in order to promote equality of opportunity and treatment for men and women, and enhance women's participation in professional training courses, including the Women's Vocational Training Programme. Since 2018, 2,360 women have benefited from such training. The Committee notes that, according to ILOSTAT, the labour force participation rate of women was estimated at 74 per cent in 2021. It further notes, from the statistical information provided by the Government, that the number of women placed in employment decreased, with women representing, in 2021, only 21 per cent of workers placed in employment compared with 38 per cent in 2020. In that regard, the Committee notes the Government's statement that, despite its efforts, the existing gender gap in access to employment remains a key issue. The Committee notes that in its concluding observations, the CEDAW remained concerned about: (1) the disproportionately high levels of illiteracy among women, in particular in rural areas, and the difficulties faced by rural women in obtaining identity documents, which restricts their access to employment opportunities and bank loans; (2) the inadequate and decreasing budget allocations to the education sector, forcing girls to walk long distances to school and depriving them of adequate sanitary facilities; (3) the under-representation of girls and women in traditionally male-dominated areas of education, including technical and vocational education; and (4) the continuing horizontal and vertical occupational gender segregation and the concentration of women in the informal labour market (CEDAW/C/AGO/CO/7, paragraphs 33, 35 and 37). ***Taking into consideration the persistence of vertical and horizontal occupational gender segregation, the Committee encourages the Government to strengthen its efforts to implement proactive measures to promote equality of opportunity and treatment for men and women in employment and occupation. It asks the Government to provide: (i) information on any measures implemented to enhance girls' and women's access to education, occupational training and employment opportunities in the formal economy, in particular for rural women, and their results; and (ii) statistical information on the participation of men and women in education, training, employment and occupation, if possible disaggregated by occupational categories, both in the public and private sectors.***

Workers with family responsibilities. The Committee notes that: (1) section 244 of the General Labour Act provides that employers must facilitate part-time work for "women with family responsibilities"; and (2) sections 247 and 248 provide for maternity leave while there is no provision for paternity leave. In that regard, it welcomes the Government's indication that section 214 of the draft revised General Labour Act would provide for paternity leave. ***Recalling that, in order to achieve the***

objective of equality set out in the Convention, measures to assist workers with family responsibilities should be available to both men and women on an equal footing, the Committee asks the Government to provide information on the measures taken, in particular in the framework of the revision of the General Labour Act, to enable both men and women to reconcile work and family responsibilities.

Equality of opportunity and treatment irrespective of race, colour or national extraction. Indigenous peoples. The Committee notes that, in its 2019 concluding observations, the UN Human Rights Committee expressed concern at reports that individuals belonging to certain groups, in particular indigenous peoples, face stigmatization and de facto discrimination in their access to land, natural resources and education. Pastoralists in the south-west have faced exclusion from grazing land and expropriation of land (CCPR/C/AGO/CO/2, paragraphs 13 and 49). ***The Committee asks the Government to provide information on the steps taken or envisaged to ensure equality of opportunity and treatment of indigenous peoples in employment and occupation, including any steps directed at protecting their right to engage in their traditional occupations and livelihoods without discrimination.***

Monitoring and enforcement. The Committee notes that the new Criminal Code (Act No. 38/20 of 11 November 2020) criminalizes discrimination in employment based on race, colour, ethnic origin, birthplace, sex, sexual orientation, illness or disability, creed or religion, political or ideological opinion, social origin or status or other forms of discrimination, and establishes penalties of two years of imprisonment or a fine (section 212). It also notes the Government's indication that no case of discrimination in employment or occupation has been lodged. The Committee recalls that criminal provisions are not completely adequate in discrimination cases because, inter alia, they do not always provide a remedy to the victim and are very unlikely to cover all forms of conduct that amount to sexual harassment. The Committee also recalls that where no cases or complaints, or very few, are being lodged, this is likely to indicate a lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures or fear of reprisals. The lack of complaints or cases could also indicate that the system of recording violations is insufficiently developed (see 2012 General Survey on the fundamental Conventions, paragraph 870). In that regard, the Committee notes that in their 2019 concluding observations, the CEDAW and the UN Human Rights Council remained concerned about: (1) the limited availability of courts and out-of-court dispute settlement centres, in particular in rural areas; (2) the lack of independence of the judiciary and the insufficient number of trained judges, prosecutors and lawyers, which may prevent many citizens from accessing justice; and (3) the lack of capacity-building programmes for actors involved in traditional conflict resolution mechanisms and the limited oversight over their functions, which heightens the risk of such institutions perpetuating discriminatory gender stereotypes (CEDAW/C/AGO/CO/7, paragraph 13 and CCPR/C/AGO/CO/2, paragraph 37). ***The Committee therefore asks the Government to provide information on: (i) the number and outcomes of inspections carried out by the General Labour Inspectorate regarding discrimination in employment and occupation; (ii) the number and nature of cases concerning discrimination in all aspects of employment and occupation brought before the courts, the penalties applied and remedies granted; and (iii) any measures taken to raise public awareness of the provisions of the Convention and the legislation, procedures and remedies available, and to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of discrimination.***

Antigua and Barbuda

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2003)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) and (b) of the Convention. Work of equal value. The Committee previously noted that section E8(1) of the Labour Code of 1975 did not give full legislative expression to the principle of the

Convention. Noting that the National Labour Board had reviewed the Labour Code and that a report had been submitted to the relevant authority for action, it requested the Government to report on the progress made in this regard. In its report, the Government indicates that it is envisaged that the revised text of the Labour Code will set out the principle of equal remuneration for men and women for work of equal value, which should not only provide for equal remuneration for men and women working in the same occupations, but also for equal remuneration for work carried out by men and women that is different in nature but of equal value. Upon revision by the National Labour Board, the upgraded text of the Labour Code will be subject to amendment after the process of public consultation is completed. The Government adds that the National Labour Board will ensure that the Labour Code does not contravene this Convention. ***The Committee requests the Government to provide information on the progress made towards the amendment of the Labour Code to give full legislative expression to the principle of the Convention and, in the meantime, on any measures taken or agreements and policies adopted providing for equal remuneration for men and women for work of equal value.***

Remuneration. In its previous comments, the Committee noted the use and definitions of the terms "wages", "gross wages", "remuneration" and "conditions of work" in sections A5, C3, C4(1) and E8(1) of the Labour Code. It noted that, while the definition of "gross wages" appeared to be in accordance with the definition of remuneration set out in *Article 1(a)* of the Convention, it remained unclear whether section C4(1) prohibiting sex discrimination with respect to wages covered the gross wage. It noted the Government's indication that the terms "wages", "gross wages" and "remuneration" were used interchangeably in practice, but emphasized that these various terms were often understood to have distinct meanings, thus potentially giving rise to confusion. Noting the ongoing review of the Labour Code, the Committee requested the Government to ensure that the revised text would harmonize the provisions of the Labour Code relevant to wages and remuneration, and include a clear definition of "remuneration" in accordance with *Article 1(a)* of the Convention. The Committee notes the Government's indication that the National Labour Board will consider a definition for the term "remuneration" (as opposed to the interchangeable use of the terms "wages" and "gross wages"), which will cover not only the ordinary, basic or minimum wage or salary, but also any additional emoluments payable directly or indirectly, whether in cash or kind, by the employer, in accordance with *Article 1(a)* of the Convention. This will ensure that there is no potential for confusion. ***The Committee requests the Government to provide information on the progress made in the amendment of the Labour Code in order to include a clear definition of remuneration in accordance with Article 1(a) of the Convention.***

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1983)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(1)(a) of the Convention. Grounds of discrimination – National extraction and social origin. For a number of years, the Committee has been noting the absence of an explicit prohibition of discrimination on the basis of national extraction and social origin in the national Constitution and the Labour Code. The Committee has been asking the Government to ensure that workers are protected in law and in practice against direct and indirect discrimination on the basis of national extraction and social origin, in all aspects of employment and occupation, and to monitor emerging forms of discrimination that may result in or lead to discrimination in employment and occupation on the basis of these grounds, and to report in detail on the progress made. The Government indicates in its report that the process of revising the Labour Code is still ongoing and the National Labour Board is currently considering provisions aimed at defining and prohibiting direct and indirect discrimination, as well as including all grounds of discrimination, namely race, colour, sex, religion, political opinion, national extraction and social origin. The Government adds that, once finalized, these proposals will be made available for public consultation. ***The Committee firmly hopes that the amendments to the Labour Code will be adopted in the near future and will include specific provisions ensuring and promoting the protection of workers against direct and indirect discrimination in all aspects***

of employment and occupation, and with respect to all the grounds of discrimination set out in Article 1(1)(a) of the Convention.

Article 2. General observation of 2018. Regarding the above issues and more generally, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and differences in remuneration for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, and remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population. ***The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

Equality for men and women. Access to education, vocational training and employment. In its previous comments, the Committee urged the Government to take concrete steps to collect, analyse and provide statistical information, disaggregated by sex, on the participation of men and women in education and the various vocational training courses offered, as well as statistics on the number of men and women who have filled vacancies following such training, including for jobs traditionally held by the other sex. The Committee also urged the Government to provide detailed information on recent initiatives to promote women's participation in courses and jobs traditionally held by men, including up-to-date information on the courses offered by the Gender Affairs Department and the Ministry of Education, as well as the Institute of Continuing Education. The Committee notes the Government's indication that a comparative analysis was done on the participation of men and women in various vocational training courses in institutions such as the Ministry of Education, the Antigua and Barbuda Institute of Continuing Education (ABICE), the Antigua State College (ASC), the Directorate of Gender Affairs, the Antigua and Barbuda Hospitality Training Institute (ABHTI), the Department of Youth Affairs (DYA) and the Gilbert Agricultural Rural Development (GARD) Centre. The Government states that statistics indicate that there is still a striking disparity in the participation of women in professions traditionally occupied by men. However, women are slowly participating to a greater extent in technical and skilled occupations. It is envisaged that the institutions mentioned above will endeavour to engage in strategic planning that will encourage more women to access training so as to enter technical professions which are traditionally occupied by male workers. Currently, most institutions are actively involved in open-day activities geared towards attracting persons to the programmes provided and in spending time in counselling persons to access the training that best suits them. However, the Government states that there is little initiative specifically designed to encourage women to participate in areas traditionally dominated by men. The Committee notes that in its 2019 concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recommended adopting effective measures to combat horizontal and vertical occupational segregation in both the public and private sectors, including through professional training and incentives for women to work in traditionally male-dominated fields of employment (CEDAW/C/ATG/CO/4-7, 14 March 2019, paragraphs 36(a) and 37(a)). ***The Committee asks the Government to provide statistics, disaggregated by sex, on the participation of men and women in education at all stages and the various vocational training courses offered, as well as on the number of men and women who have filled vacancies following such training, including for jobs traditionally held by the other sex. The Committee hopes that the Government will be in a position to provide information in its next report on the manner in which it promotes women's participation in courses and jobs traditionally held by men.***

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

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

Bahrain

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)

Previous comment

The Committee notes the observations of the General Federation of Bahrain Trade Unions (GFBTU) received by the Office on 24 September 2020 and 31 August 2022.

Article 1 of the Convention. Discrimination on the basis of political opinion. The Committee notes that the Government affirms that all remaining individual dismissal cases related to the 2011 events have been resolved. The Government refers to its communication to the ILO Director-General dated 10 June 2019 in which it explains that, out of the 55 outstanding cases, 44 individuals were reinstated in their jobs in the private sector and 11 workers accepted financial compensation in lieu of reinstatement in their previous jobs, which amounted to US$1.417 million. The Government further indicates that the Ministry of Labour and Social Development (MLSD) received a communication dated 3 June 2019 from the GFBTU indicating its acceptance of this final settlement. In light of the above, and the fact that the MLSD has not registered any complaints from workers who were reinstated, the Government considers that the cases of the workers dismissed in the wake of the 2011 events and mentioned in the Tripartite Agreements of 2011 and 2014 are closed. The Committee notes however that, in its observations, the GFBTU states that the dismissed workers who were finally reinstated did not receive financial compensation for their unfair dismissal, except in the case of workers from the University of Bahrain and the Bahrain Chamber of Commerce and Industry (BCCI) as already indicated in the Committee's previous observation. The Committee recalls that, under the Supplementary Tripartite Agreement of 2014, the Government had agreed with the social partners to refer to a tripartite committee the cases which relate to financial claims or compensation that have not been settled and, in the absence of consensus, to refer them to the judiciary. According to the GFBTU no such committee has been set up so far. The Government points out that, despite this alleged failure to set up a tripartite committee to monitor discrimination in employment and occupation in the country, the MLSD and the social partners have been able to settle many pending issues and restates that all avenues for collaboration are open to the GFBTU to discuss its views on this issue and any other issues through the joint bilateral committee. The Committee notes that according to the GFBTU, while some dismissed workers received financial compensation, others have not yet received it. ***In light of the above, the Committee asks the Government: (i) to clarify whether the tripartite committee referred to in the Supplementary Tripartite Agreement of 2014 has been established; and (ii) to provide information on the number of the outstanding cases mentioned by the GFBTU and the steps taken to resolve them.***

Education International. The Committee notes with ***regret*** the absence of information on the outstanding cases of teachers dismissed in the wake of the 2011 events and not yet reinstated, in particular the case of the 15 teachers who were members of the now dissolved Bahrain Teachers Association and who are allegedly still unable to obtain employment in private schools, ten years after the events, due to a lack of clearance from the Ministry of Education. ***The Committee requests the Government to take the necessary measures to examine, without delay, the case of the 15 dismissed teachers and to ensure that if appropriate they receive compensation in respect of their dismissals and that they are cleared to return to their jobs in the education sector, if they still wish to do so.***

Act No. 58/2006 on the protection of society from acts of terrorism. The Committee takes note of the Government's statement that the aforementioned law was formulated to protect society from terrorism, extremism and other phenomena which destabilize social peace and safety and therefore it does not

fall under the umbrella of the application of the Convention or the issues which are of concern to the ILO. ***While recalling what is stated in its 2012 General Survey on the fundamental Conventions (paragraphs 805, 832 and 833), the Committee reiterates its request to the Government: (i) to ensure that the application of Act No. 58/2006 does not in practice infringe the right of workers to be protected from discrimination on grounds of political opinion, as required by the Convention; and (ii) to provide information on the impact of the application of the Act in the fields of employment and occupation, as well as on any cases brought before the courts against any worker alleged to be "abusing the social media", indicating the charges brought and the outcome.***

Article 1(1)(a) and (3). Grounds of discrimination and aspects of employment and occupation. Private and public sectors. Migrant workers, including domestic workers. The Committee notes the introduction by Legislative Decree No. 59 of 2018 of an addition to section 2 – section 2 bis – to Labour Code No. 36 of 2012 which states that: "Discrimination on the grounds of sex, origin, language, religion or belief against workers who are governed by the provisions of this law is hereby prohibited." The Committee recalls that section 2 of the Labour Code excludes domestic workers and persons regarded as such from the scope of the protection of the Labour Code, except for certain provisions. Domestic workers are covered by the "Tripartite Domestic Workers contract" which regulates the relationship between the recruitment agency, the employer (the household) and the migrant domestic worker, the aim of which is to prevent the exploitation of domestic workers and it is expected to help guarantee the rights of migrant domestic workers. The Committee notes that new section 2 bis has been added to the list of the provisions of the Labour Code that apply to domestic workers and persons regarded as such (such as for example, sections 6, 19, 20, 21, 37, 38, 40, 48, 49, 58, 116, 183, 185 and Parts Twelve and Thirteen). The Government indicates that, following the adoption of this amendment, it has launched an information campaign through messages disseminated via the MLSD website, social media networks related to the Ministry, several awareness-raising lectures at the Ministry and in workplaces, with the embassies of labour-exporting countries and a number of civil society institutions and other bodies. It has also set up a hotline which can be contacted to request clarification and replies to any query.

The Committee welcomes the introduction of this formal general prohibition of discrimination in the Labour Code and its extension to domestic workers and persons regarded as such. The Committee notes however that, despite its previous observations, this amendment is still lacking as: (1) the new section 2 bis of the Labour Code does not mention *all* of the grounds of discrimination formally listed in the Convention; (2) the Labour Code still does not provide a *comprehensive* definition of discrimination, as well as a prohibition of *direct* and *indirect* discrimination, with respect to *all* aspects of employment (in other words, access to vocational training, to employment and to particular occupations, and terms and conditions of employment). ***Once again, the Committee asks the Government to amend both the Labour Code and the Civil Service Instructions No. 16/2016 to provide for: (i) a comprehensive definition of discrimination which should include direct and indirect discrimination and cover the seven grounds listed in the Convention; and (ii) protection against discrimination in all forms of employment and occupation.***

Discrimination based on sex. Sexual harassment. The Committee notes the Government's indication that Decree No. 59 of 2018 amending Labour Law No. 36 of 2012 formally prohibits sexual harassment in the workplace, by adding under Chapter 17 on "Sanctions" a section 192 bis which provides that: "A sentence of imprisonment of a maximum of one year or a maximum fine of 100 dinars [approximately US$265] shall be imposed on any worker who, in the course of, or for reasons of employment, sexually harasses a co-worker by a gesture, verbal or physical conduct, or by any other means. A sentence of imprisonment for a minimum term of six months or a minimum fine of 500 dinars [US$1,326] and a maximum fine of 1,000 dinars [US$2,653] shall be imposed whenever such a crime is committed by the employer or by his representative". In that regard, the Committee notes that although section 192 bis provides for sanctions against sexual harassment, sexual harassment is not formally defined in the labour legislation. The Penal Code prescribes the sanctions available in the case of sexual harassment

but does not include a clear and comprehensive definition of sexual harassment and only addresses cases where a worker is subject to sexual harassment from a co-worker, not when the perpetrator is a representative of the employer or a third party. The Committee takes note of the Government's statements that: (1) issues related to exposing a worker to discrimination by another colleague at work cannot be included in the Labour Law which only governs the relationship between employers, or their representatives, and their workers; (2) a worker victim of discrimination by a co-worker or a client should use other laws and regulations, provided the allegations are considered to be a crime or a misdemeanour towards individuals; and (3) this worker can submit his/her complaint before administrative bodies (MLSD, Civil Service Diwan, the General Secretariat for Grievances, the National Institution for Human Rights) or the courts. The Committee notes that under the new amendment, discrimination (and implicitly sexual harassment) is criminalized. It also notes that, in response to its previous statement – that a lack of complaints is not always an indicator of an absence of discrimination in practice – the Government affirms that, even if sexual harassment was addressed by the civil or labour law, in addition to the Penal Code, this does not mean that there would be cases of discrimination registered by the competent authorities, in view of: "(1) the legal and legislative progress in the Kingdom of Bahrain, and (2) the advanced cultural and educational levels of the labour force to exercise civil and political rights". The Committee notes the Government's statement that, although awareness-raising and guidance in this area is a joint responsibility of relevant government bodies, social partners and civil society institutions, the MLSD is considering launching an information campaign to raise awareness. ***However, the Committee once again strongly urges the Government to take steps to adopt a clear and comprehensive definition and prohibition of sexual harassment. The Committee also asks the Government to provide detailed information on the remedies available to a victim in the event of a proven case of sexual harassment lodged with the various judicial, quasi-judicial and administrative bodies, and on any developments concerning the future awareness-raising campaign against sexual harassment in the world of work. The Committee reminds the Government again that an absence of complaints does not mean that harassment is not occurring.***

Article 2. Equality of opportunity and treatment for men and women. *Legislation.* The Committee notes with ***interest*** that Legislative Decree No. 16 of 2021, which amends several sections of the Labour Code, has added a second paragraph to section 39 of the Labour Code which prohibits discrimination in wages between male and female workers for work of equal *value*.

As regards the presence of Bahraini women in the economic, social and political spheres, the Committee takes notes of the information communicated by the Government, such as, for example, their presence in the legislative authorities (the current Chairperson of the Council of Representatives is a woman, as well as a number of chairs of parliamentary committees), the fact that they are heading important ministries (Minister of Health, Minister of Housing) and that a number of ambassadors are women, and so on. According to the Government, women currently comprise 40 per cent of the total workforce in the public and private sectors which is high compared with labour markets in the Middle East and North Africa region. The Supreme Council for Women – which the Government says plays an important role in the promotion and empowerment of women in society and addresses the various forms of discrimination against them – indicates that the percentage of women in administrative posts has reached 46 per cent and that they are progressively assuming leadership positions on administrative boards and are playing an important role as entrepreneurs and in the ownership of small and medium-sized enterprises. In the last four years, the MLSD has inaugurated recruitment programmes for women to encourage their employment via part-time work and remote working, which have contributed to the recruitment of some 7,000 Bahraini women. As regards training and vocational programmes, the statistics indicate that the percentage of women who benefited from training is quite high: 49 per cent in 2019, 29 per cent in 2020 (reflecting the impact of COVID-19 pandemic) and 60 per cent in 2021. Furthermore, the Government draws the Committee's attention to the National Plan for the Advancement of the Bahraini Women (2013–2022) which encompasses several pillars aimed at

enhancing women's participation in the labour market, such as focusing on education and training, economic empowerment and lifelong learning. In that regard, the Committee welcomes the information showing that, in the field of education (enrolment in secondary education and at university), the country has nearly closed the gender gap, to 98 per cent (compared with a global average of 95 per cent). As for proactive measures taken or envisaged to address inequality based on societal and traditional reasons, the Committee notes the Government's statement that Bahraini society is an open society which accepts the presence of women in all posts without exception, in addition to supporting them in their education and in career promotion. ***The Committee asks the Government to provide information on the results achieved following the implementation of the 2013–2022 National Plan, as well as the impact of the above-mentioned measures and initiatives adopted.***

Flexi work permit (Flexi permit). The Government recalls that the Flexi permit gives an opportunity to migrant workers in an irregular situation from specific categories to stay and work legally in the country without being tied to an employer (subject to annual fees). It allows them to benefit from health services, as well as from insurance against occupational injuries and to resort to the competent authorities to submit complaints, in addition to the possibility of being under contract with several employers or one employer according to a worker's desire throughout the period of his/her residence. The Government stresses the efforts made during the COVID-19 pandemic by, for example, not imposing the repatriation of migrant workers during the pandemic and freezing all fees related to the renewal of work permits.

Freedom to transfer to another employer. The Committee notes that, by virtue of Law No. 19 Regulating the Labour Market (2006), a migrant worker has the right to transfer to another employer without the approval of the current employer, *after* 12 months of employment with the current employer, while taking into account the specific period of 90 days' notice required. The Government explains that, considering the costs incurred by the employer in recruiting a worker from abroad, this 12-month period during which a worker is legally prohibited from transferring to another employer is reasonable. However, this condition does not apply where a worker has proved that he/she was exposed to exploitation or abuse by an employer such as the non-payment of wages, reduced wages, or a violation of a worker's legitimate rights in accordance with the Labour Law. In such a case, workers are authorized to transfer to another employer immediately without the approval of their current employer. During the years 2019–21, more than 186,000 workers were transferred with or without the approval of the employer.

The wage protection system (WPS). The Committee recalls that the WPS is a transparent means of securing the timely payment of employee salaries and regulating employer non-compliance, whereby employers are obliged to pay salaries in local currency at least once a month into a locally certified bank account. In that regard, the Government indicates that Ministerial Order No. 22 of 2021 sets down a gradual timeline for the full introduction of this system, starting with enterprises employing more than 500 workers and then to small and medium-sized enterprises. The Committee notes that the legislation also provides that an employer who fails repeatedly to meets their obligation in this regard may in future be denied a work permit for a migrant worker. The Committee takes note of the active steps taken by the Government to ensure better protection for migrant workers in general and in particular during the COVID-19 pandemic.

Noting that the Flexi permit system is only open to restrictive categories of migrant workers and is relatively costly, the Committee encourages the Government to consider reducing the fees and relaxing the eligibility criteria to enable a greater number of migrants to apply for a Flexi permit. It also asks the Government to provide statistical information on the number of migrant workers who have transferred to new employers before the expiry of the contract. The Committee also asks the Government to provide information on the impact of the Tripartite Domestic Workers contract on reducing migrant workers' vulnerability to exploitation.

Article 5. Special measures of protection for women. The Committee notes with ***satisfaction*** the repeal of Ministerial Order No. 32 of 2013 which prohibited women's employment in specific sectors and occupations in addition to that of Ministerial Order No. 16 of 2013 regarding the occupations in which, and the circumstances under which, the employment of women at night was prohibited. Decrees Nos 50 and 51 of 2021, on night work and occupations, respectively, have lifted restrictions on women's right to work at night. The Government also indicates that, in addition, several ministerial orders were adopted repealing all previous exceptions relating to women's employment at night and the prohibition of their employment in some occupations and roles, in undertakings prescribed by the Labour Law. The Government states that, as a consequence, women's employment has become possible in all economic sectors and in different occupations – without exception – in accordance with the principle enshrined in the Convention**.** While taking due note of this information, the Committee notes that Decrees Nos 50 and 51 of 2021 do not provide for any protection to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of the child. ***The Committee therefore asks the Government to indicate the measures taken to protect the health of pregnant or breastfeeding workers, as well as the health of their child, in these circumstances.***

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

Bangladesh

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1998)

Previous comment

Articles 1–4 of the Convention. *Assessing and addressing the gender wage gap and its underlying causes.* The Committee observes: (1) the wide gender pay gap that persists in both the public and private sectors and the formal and informal economy; and (2) the occupational segregation of women in elementary occupations and the increasing number of women who are working in the informal economy. The Committee notes the Government's indication that: (1) disaggregated statistical data on the earnings of men and women in the informal economy is not recorded by the Department of Inspection for Factories and Establishments (DIFE); and (2) according to the 2017 Labour Force Survey, 85 per cent of employed persons are in informal employment. The Committee further notes that 59.7 per cent of women and 32.2 per cent of men work in agriculture, forestry and fishing, and that the wage gap in agriculture was 31.51 per cent in 2018–19 (40.52 in 2010–11) (see Policy Brief of the Bangladesh Bureau of Statistics of 2 May 2021). The Committee also notes the Government's continued repetition that: (1) there is no gender pay gap in the formal sector both in public and private industrial and commercial enterprises; and (2) section 345 of the Labour Act, 2006, provides for equal wages for work of equal value. The Government adds that it is concerned about promoting women's access to the labour market and that several ministries are providing training for women on different skills. ***In this context, the Committee reiterates its request to the Government to adopt specific measures to assess and reduce the existing gender wage gap in both the formal and informal economy. The Committee also asks the Government to provide information on:***

(i) the steps taken to address occupational segregation, including by promoting women's access to the labour market and to jobs with career prospects and higher pay, and their results; and

(ii) the earnings of men and women, disaggregated by economic activity and occupation, in both the public and private sectors, as well as in the informal economy.

Article 1(a). Definition of remuneration. Legislation. The Committee notes that the Government has formed a Tripartite Labour Law Review Committee, which has started its work. It notes however with ***concern*** the Government's repeated statement that it considers that the definition of "wages" in section 2(45) of the Labour Act to be in line with the Convention. The Committee recalls that this definition excludes particular aspects of remuneration such as "the value of any house accommodation, light, water" or "any travelling allowance". In this regard, the Committee again draws the Government's attention to *Article 1(a)* of the Convention which sets out a broad definition of remuneration, including not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever … whether in cash or in kind". The use of "any additional emoluments whatsoever" requires that all elements that a worker may receive for his or her work, including accommodation and travel allowances, are taken into account in the comparison of remuneration. Such additional components are often of considerable value and need to be included in the calculation, otherwise much of what can be given a monetary value arising out of the job would not be captured (see the 2012 General Survey on the fundamental Conventions, paragraphs 686–687 and 690–691). ***Noting the Government's indication that a Tripartite Labour Law Review Committee was formed and started its work, the Committee reiterates its request to the Government to take appropriate steps so that the definition of "wages" provided under section 2(45) of the Labour Act is modified to encompass all the elements of remuneration, as defined in Article 1(a) of the Convention so as to ensure that the principle of equal remuneration for men and women for work of equal value can be fully applied.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1972)

Previous comment

The Committee notes the observations of the Trade Union Committee of International Labour Standards (TU-ILS Committee) of Bangladesh, received on 1 September 2022.

Article 1 of the Convention. Protection against discrimination. Definition and prohibition of discrimination in employment and occupation. Legislation. While noting the current humanitarian situation in the country, the Committee is bound to note that for a number of years, it has been drawing the Government's attention to the absence of legislative provisions providing protection against discrimination based on all of the grounds listed in *Article 1(1)(a)* of the Convention, with respect to all aspects of employment and occupation as defined in *Article 1(3)* of the Convention and covering all workers. The Committee notes the TU-ILS Committee's statement that there is discrimination in employment both in the private and public sectors. While noting the Government's repeated statement that the Constitution provides protection against discrimination in employment and occupation, the Committee recalls that the main non-discrimination provision of the Constitution (article 28) provides for non-discrimination by the State but does not address the situation of the private sector and does not prohibit all of the grounds of discrimination enumerated in *Article 1(1)(a)*. The Committee has repeatedly drawn the Government's attention to the fact that: (1) the constitutional provisions providing for equality of opportunity and treatment, although important, are generally not sufficient to address specific cases of discrimination in employment and occupation; and (2) a more detailed legislative framework addressing specifically discrimination in employment and occupation is required. Such a framework could include the following elements: coverage of all workers; provision of a clear definition of direct and indirect discrimination, as well as sexual harassment; the prohibition of discrimination at all stages of the employment process; the explicit assignment of supervisory responsibilities to competent national authorities; the establishment of accessible dispute resolution procedures; the establishment of dissuasive sanctions and appropriate remedies; the shifting or reversing of the burden

of proof; the provision of protection from retaliation; affirmative action measures; and provision for the adoption and implementation of equality policies or plans at the workplace, as well as the collection of relevant data at different levels (see 2012 General Survey on the fundamental Conventions, paragraphs 850–855). In this regard, the Committee notes that an Anti-Discrimination Bill, 2022, was submitted to Parliament in April 2022. ***Taking into account the difficult situation in the country and recalling that the absence of a clear and comprehensive legislative framework may prevent workers from availing themselves of their right to equal opportunity and treatment and non-discrimination, the Committee asks the Government to take steps to ensure that, in the framework of the current labour law reform, the Labour Act of 2006 is amended or the Anti-Discrimination Bill, 2022, is adopted with a view to: (i) prohibiting direct and indirect discrimination based on at least all of the grounds enumerated in Article 1(1)(a) of the Convention, with respect to all stages of employment and occupation, including recruitment; and (ii) covering all categories of workers, in both the formal and informal economy, including domestic workers. The Committee asks the Government to provide information on any progress made in this regard, as well as a copy of any new legislation, including the 2022 Amendment to the Labour Rules 2015. It further asks the Government to ensure the protection of men and women workers against discrimination in employment and occupation in practice, and particularly the categories of workers excluded from the scope of the Labour Act.***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. The Committee notes the Government's statement that section 332 of the Labour Act prohibits any kind of behaviour that is "indecent" or "repugnant to the modesty or honour" towards a working woman irrespective of her rank or status. The Committee notes from the National Review Report for Beijing +25 (2019), that with the increased participation of women in economic activities, workplace harassment has also become evident in many places and needs urgent prevention. In this regard, it notes with ***interest*** that the National Action Plan to Prevent Violence Against Women and Children (2018–2025) provides for a wide definition of sexual harassment which includes both quid pro quo and hostile environment sexual harassment. The Committee notes however that section 332 of the Labour Act and the Domestic Worker's Protection and Welfare Policy, 2015, do not contain such a comprehensive definition of all forms of sexual harassment. The Committee considers that without a clear definition and prohibition of both quid pro quo and hostile work environment sexual harassment, it remains doubtful whether the legislation effectively addresses all forms of sexual harassment and that the scope of the protection against sexual harassment should cover all employees both male and female, with respect not only to employment and occupation, but also vocational education and training, access to employment and conditions of employment (see 2012 General Survey on the fundamental Conventions, paragraphs 789, 791 and 793). ***The Committee asks the Government to take steps to ensure that: (i) a comprehensive definition and a clear prohibition of all forms of sexual harassment, including quid pro quo and hostile work environment sexual harassment, in employment and occupation is included in the Labour Act and/or the Ant-Discrimination Bill and covers all workers, both women and men; (ii) preventive measures are taken, including awareness-raising initiatives on the social stigma attached to sexual harassment, in cooperation with workers' and employers' organizations; and (iii) procedures and remedies are established. The Committee also asks the Government to provide information on the number, nature and outcome of any complaints or cases of sexual harassment in education, training and employment and occupation dealt with by labour inspectors, the courts or any other competent authority,***

Articles 2 and 3. Equality of opportunity and treatment for men and women. With regard to the promotion of non-traditional fields of study and occupations for women and girls and the reduction of the number of girls dropping out of school early, the Committee notes the Government's indication that: (1) primary and secondary education is free for girls and they are provided a stipend for higher studies; (2) in technical and vocational education, institutes have been established for women only; (3) the number of places reserved for women in technical and vocational institutes increased from 10 per cent

to 20 per cent during the reporting period; and (4) extensive training, job creation, labour market participation promotion and small and medium-sized enterprise support services for women have been undertaken. The Committee further notes that the Department of Inspection for Factories and Establishments (DIFE) has started a project entitled Gender Equality and Women's Empowerment at the Workplace, which includes training, advocacy programmes and policy. The Government also indicates that it is maintaining quotas in public sector employment, but the Committee notes that it has not reported on results achieved or how such quotas are implemented. The Committee notes the indication by the UT-ILS Committee that women are discriminated against and that it has provided examples of discriminatory job advertisements allowing only male applicants. It further notes the UT-ILS Committee's indication that: (1) the society is patriarchal in nature, and women feel less safe in performing certain jobs outside; (2) there is a problem with ensuring equality in women's employment, and there are still barriers for women in obtaining jobs in certain sectors and certain ranks (namely, managerial positions and mid-level management). The union adds that, while the activities of the Government to promote women's employment are appreciated: (1) the scope of this promotion should be widened; (2) the quota in the public sector is being applied and is having positive social impacts; and (3) the Government needs to ensure that the affirmative action policy that it has developed is applicable to the private sector as well. ***The Committee asks the Government to step up its efforts to: (i) address legal and practical obstacles to women's employment, including patriarchal attitudes and gender stereotypes regarding their aspirations and capabilities, and their lack of access to productive resources; (ii) enhance women's economic empowerment and promote their access to equal opportunities in formal employment and decision-making positions; and (iii) encourage girls and women to choose non-traditional fields of study and occupations while reducing the number of girls dropping out of school early. The Committee asks the Government to provide information on: (i) the content and implementation of the DIFE project on Gender Equality and Women's Empowerment at the Workplace, and its impact on women's employment; (ii) the implementation and results of the quotas in public employment (15 per cent) and primary school teaching (60 per cent); and (iii) the participation of men and women in education, training, employment and occupation, disaggregated by occupational category, if possible, in both the public and private sectors, as well as the informal economy.***

Domestic workers. The Committee recalls that the Labour Act, 2006, excludes domestic workers from its scope of application. It notes the TU-ILS Committee's indication that: (1) discussions on including domestic workers within the scope of law are ongoing; (2) the Government has established a committee called the "Central Monitoring Cell on Domestic Workers' Protection and Welfare Policy" which includes representatives of the Ministry of Labour, workers' and employers' organizations and civil society; and (3) there is only limited training for domestic workers within the country and there are not enough organizations and opportunities for skills development for domestic workers. The Committee notes the Government's indication that the Domestic Workers Protection and Welfare Policy, 2015, gives effect to the principle of equal rights and basic human rights for all citizens as enshrined in the Constitution. It notes, however, that the provisions of the policy do not provide domestic workers with the same protections as enshrined in the Labour Act 2006, and that the High Court, in a ruling of August 2022, deemed that the policy had so far failed to frame "proper and complete guidelines" to protect domestic workers. The Committee further notes that the policy does not prohibit direct and indirect discrimination on at least all of the grounds enumerated in *Article 1(1)(a)* of the Convention and does not cover both the formal and informal economy. The Committee once again recalls that all categories of workers, including domestic workers, should enjoy equality of opportunity and treatment irrespective of race, colour, sex, religion, political opinion, national extraction or social origin, in all aspects of employment (see 2012 General Survey on the fundamental Conventions, paragraph 778). In addition, the Committee notes from the Beijing +25 report that some 90 per cent of domestic workers are women and domestic workers are a category facing gender-based violence. The Committee recalls the 2016 concluding observations of the United Nations Committee on the Elimination of Discrimination against

Women (CEDAW) which highlighted the difficult situation of women domestic workers in the country and expressed concern that women domestic workers are subject to violence, abuse, food deprivation and murder; that such crimes go unreported; and that the victims have limited access to justice and redress (CEDAW/C/BGD/CO/8, 25 November 2016, paragraph 32). ***The Committee asks the Government to take the necessary steps to enact the Domestic Workers Protection and Welfare Policy, 2015, into law and include therein provisions defining and prohibiting direct and indirect discrimination based on at least all of the grounds enumerated in the Convention in all aspects of employment and occupation. In the meantime, it asks the Government to ensure that: (i) the policy is effectively implemented; (ii) domestic workers are protected, in practice, against any form of discrimination in employment and occupation, including all forms of sexual harassment; (iii) they enjoy full equality of opportunity and treatment with other categories of workers covered by the Labour Act; and (iv) they have effective access to procedures for redress and remedies. The Committee asks the Government to provide information on: (i) the work of the Central Monitoring Cell on Domestic Workers' Protection and the Welfare Policy regarding non-discrimination and equality, including stereotypes and prejudices; and (ii) the number, nature and outcome of complaints of discrimination filed by domestic workers, disaggregated by sex, race, national extraction and social origin.***

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

Barbados

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1974)

Previous comment

The Committee notes with ***deep concern*** that the Government's report, due since 2018, has not been received. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 1(b) and 2(2)(a) of the Convention. Equal remuneration for work of equal value. Legislation. With reference to its previous comments, the Committee notes, from the Government's 2019 report under the national-level review of implementation of the Beijing Declaration and Platform for Action, 1995 (Beijing+25 national report), that the National Gender Policy has not yet been adopted. The Employment (Prevention of Discrimination) Act having been adopted on 5 August 2020, the Committee notes with ***regret*** that it does not contain an equal pay provision. The Committee further notes that the Government, in its Beijing+25 national report, states that although there is no equal pay legislation it ensures that "equal pay for equal work" is guaranteed in the public service and that there is no disparity between the salaries paid to men and women doing the "same job". The Committee recalls, once again, that the principle of the Convention not only guarantees equal remuneration for equal, the same or similar work, but also addresses situations where men and women perform different work that is nevertheless of equal value. In this regard, it refers the Government to its 2012 General Survey on fundamental Conventions, paragraphs 672–675. ***The Committee once again asks the Government to take the necessary measures to ensure that the principle of equal remuneration for men and women for work of equal value is fully reflected in the National Gender Policy, and to provide a copy of the policy once it is adopted. It also asks the Government to provide information on any measures taken or envisaged to capture the principle of equal pay for work of equal value in its legislation.***

Gender pay gap and occupational segregation. The Committee notes from the statistics published by the Barbados Statistical Service (Labour Force Survey 2021) that of all women employed in 2021, 41.2 per cent earned less than 500 Barbadian dollars (BBD) per week compared with 36.2 per cent of men employed in that same year. The Committee notes that 31.2 per cent of women and 35 per cent of men earned between BBD500 and BBD999 per week, and that 17.4 per cent of women and 15.7 per cent

of men earned BBD1,000 per week or more. The Committee once again notes, from the Labour Force Survey 2021, the persistent occupational gender segregation between men and women, with women mostly employed as service workers and clerks while men are mostly employed as craft and related workers or plant and machine operators. The Committee notes that, when looking at economic sectors, women workers continue to be highly represented in "Accommodation and Food Services", "Finance and Insurance", "Education" and "Human Health and Social Work" and men continue to largely predominate in the "Construction" and "Transportation and Storage" sectors. The Committee also notes, from the concluding observations of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), the disproportionately high unemployment rate among women and the persistently wide and increasing gender pay gap in all sectors, continued occupational segregation in the labour market and the concentration of women in low-wage jobs in the formal and informal sectors (CEDAW/C/BRB/CO/5–8, 24 July 2017, paragraph 33). The Committee further refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). ***The Committee once again asks the Government to take measures to reduce the pay gap between men and women and to increase the employment of women in jobs with career opportunities and higher pay. The Committee once again recalls that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations, and therefore again asks the Government to provide information on the results achieved under the National Gender Policy, once adopted, to address occupational gender segregation and to increase the employment of women and men in sectors and occupations in which they are under-represented.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1974)

Previous comment

The Committee notes with ***deep concern*** that the Government's report, due since 2018, has not been received. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 1 of the Convention. Definition of discrimination. Legislative developments. The Committee notes that the Employment (Prevention of Discrimination) Bill 2020 appears to have been enacted; however, it has not received a copy of the Act but only has access to the Bill. ***The Committee asks the Government to provide a copy of the Act, if enacted, or to provide information as to why the Bill has not been brought into law.***

The Committee notes that, under section 3(1) of the above-mentioned Bill, "a person discriminates against another person where: (a) the person, on a ground specified in subsection (2), directly or indirectly, whether intentionally or not, makes a distinction, creates an exclusion or shows a preference, the intent or effect of which is to subject the other person to any disadvantage, restriction or other detriment; or (b) the person, directly or indirectly, whether intentionally or not, subjects the other person to any disadvantage, restriction or other detriment in the following circumstances: (i) a ground specified in subsection (2) applies to the other person; (ii) as a consequence of the ground the other person does not comply, or is not able to comply, with a particular requirement of the first-mentioned person; (iii) the nature of the requirement is such that a substantially higher proportion of persons to whom the ground does not apply complies, or is able to comply, with the requirement; and (iv) the requirement is not reasonable in the circumstances". The Bill also prohibits an employer from discriminating in relation to job creation and recruitment (section 4) and with regard to the terms and conditions of employment, disciplinary action or dismissal (section 5). While reiterating its concern at

the absence of a Government report, the Committee takes due note of this new definition which appears to cover both direct and indirect discrimination in employment and occupation. ***The Committee requests the Government to: (i) clarify whether the prohibition of discrimination applies to all aspects of occupation and employment, including access to vocational training; and (ii) if the Bill was passed, provide information on the application in practice of section 3(1) of the Employment (Prevention of Discrimination) Act, including by providing a copy of any related court decision.***

Article 1(1)(a). Discrimination on the grounds of sex. Sexual harassment. With reference to its previous comments, the Committee notes the adoption of the Employment Sexual Harassment (Prevention) Act, 2017, which defines and prohibits sexual harassment in the workplace, and sets out a clear grievances procedure. The Committee notes that section 3(1) of the Act defines sexual harassment as including a number of unwelcome sexual behaviours, listed in sub-paragraphs (a) to (g), "in circumstances where a reasonable person would consider the conduct to be offensive". Section 3(2) adds that a single incident can be considered as sexual harassment. The Committee also notes that section 5(1) of the Act provides that "[a]n employer or a supervisor of an employee shall not in any manner suggest to an employee that the prospects or working conditions of that employee are contingent upon the employee's acceptance or toleration of sexual advances". ***While reiterating its concern at the absence of a Government report, the Committee takes due note of this positive development and requests the Government to provide: (i) information on how sections 3 and 5 of the Employment Sexual Harassment (Prevention) Act are interpreted and applied in practice, for example by providing copies of any court decisions on claims brought under the Act; and (ii) the number of complaints filed under the Act, the sanctions imposed and remedies granted.***

Article 1(1)(a) and (b). Grounds of discrimination. The Committee notes that section 3(2) of the Employment (Prevention of Discrimination) Bill 2020 prohibits discrimination on the basis of race, origin, political opinion, trade union affiliation, colour, creed, sex, sexual orientation, social status, marital status, domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability, age and physical features. While welcoming the inclusion of a number of the grounds set out in *Article 1(1)(a)* of the Convention and additional grounds as foreseen in *Article 1(1)(b)*, the Committee notes with ***regret*** that the grounds of national extraction and social origin, specified in the Convention under *Article 1(1)(a)*, are not included as prohibited grounds of discrimination. ***The Committee requests the Government to indicate: (i) the measures envisaged to add to the legislation the grounds of national extraction and social origin in the list of prohibited grounds of discrimination; and (ii) how, in practice, workers are being protected against discrimination, in all aspects of employment and occupation, on the basis of these two grounds.***

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

Belgium

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1952)

Previous comment

The Committee notes the joint observations submitted on 1 September 2022 by the General Confederation of Liberal Trade Unions of Belgium (CGSLB), the Confederation of Christian Trade Unions (CSC) and the General Labour Federation of Belgium (FGTB).

Articles 1 and 2 of the Convention. Gender segregation in education and in employment and occupation. Pay gaps. Scope of comparison. The Committee notes the information provided by the Government in its report on the projects implemented in various regions to combat occupational segregation and, in particular, gender stereotypes in education, training and vocational guidance. It recalls that the Act of 28 July 2011 requires that each sex is guaranteed to be represented by at least one third of the members

of the boards of directors of autonomous public enterprises (EPAs) and the National Lottery (these provisions entering into force in January 2012), and also of private enterprises listed on the stock exchange (these provisions coming into force in 2017 for large enterprises and in 2019 for small and medium-sized enterprises). According to the third review of this Act, carried out by the Institute for the Equality of Women and Men (IEFH) in 2019 and cited by the Government, between 2008 and 2017 the proportion of women on the boards of all the enterprises examined rose from 8.2 to 26.8 per cent. In 2017, 66.1 per cent of these enterprises achieved the legally required one third representation of women. As for the federal administration, while the Government indicates that it has achieved the legal target (established by a 2012 Royal Decree) as 35.8 per cent of representatives were women in 2021, the Committee notes that an IEFH study for 2012–17 indicates that Belgium ranked last among the 28 European Union (EU) Member States in 2017 with 18.6 per cent of women at the two highest levels (the positions of chairpersons of management committees and managing directors) compared with 41.7 per cent for the EU. The Committee also notes that, in its "Report on the pay gap between women and men in Belgium" published in 2021, the IEFH recommends "tackling segregation at its roots" by combating gender stereotypes from early childhood onwards, and subsequently in training, vocational guidance and access to employment, both by encouraging girls to opt for traditionally "male" subjects and by raising the status of so-called "female" subjects and facilitating access for boys. The IEFH also notes that the comparative basis for work of equal value is circumvented by the Wage Gap Act of 22 April 2012 since, by focusing on job classifications, the comparison work is carried out at sub-sector level (joint committees) and, in practice, this narrows the comparative basis down to the same enterprise, the same job title and seniority, and so on. The Committee notes that the IEFH calls for the development of an instrument to compare one job of equal value with another, including between different sectors. Broadening the comparative basis for work of equal value is, in its view, a necessary step towards achieving the goal of eliminating the gender pay gap for work of equal value. In this regard, the Committee recalls that ensuring a sufficiently broad scope of comparison is essential for the application of the principle of equal remuneration for work of equal value, given the continued prevalence of occupational gender segregation. It refers to its comments in this regard in paragraphs 697 et seq. of its 2012 General Survey on the fundamental Conventions. ***The Committee encourages the Government to take steps to ensure that a broad scope of comparison is used when implementing the principle of equal remuneration for men and women for work of equal value. It requests the Government to continue providing information on developments in the gender pay gap, and on any measures to narrow it, in particular on the manner in which occupational gender segregation is addressed.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)

Previous comment

The Committee notes the joint observations submitted on 1 September 2022 by the General Confederation of Liberal Trade Unions of Belgium (CGSLB), the Confederation of Christian Trade Unions (CSC) and the General Labour Federation of Belgium (FGTB).

Article 1(1)(a) of the Convention. Discrimination on the basis of sex and/or gender. Pregnancy and maternity. The Committee notes with ***interest*** the adoption on 4 February 2020 of the Act amending the Act of 10 May 2007 to combat gender discrimination, extending the prohibition of discrimination to new protected criteria, namely, paternity, co-maternity, breastfeeding, adoption, medically assisted procreation and sexual characteristics, the main objective being to give greater visibility to situations relating to maternity or the desire for maternity. The Committee welcomes the publication of a leaflet to inform working parents and pregnant workers of their rights and the support they can obtain from

the Institute for the Equality of Women and Men (IEFH) and the labour inspectorate (the Social Legislation Supervisory Directorate) and notes the many court rulings following complaints lodged by or in collaboration with the IEFH (some of which resulted in an amicable settlement). In this regard, the Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern as to the high number of complaints about employment discrimination based on pregnancy and maternity (CEDAW/C/BEL/CO/8, 31 October 2022, paragraph 43). It notes that in 2020, 36 per cent of the 350 reports concerning work situations received by the IEFH involved discrimination related to pregnancy and maternity. As indicated by the IEFH in its 2020 progress report, cases of discrimination and unequal treatment on the grounds of pregnancy, maternity or the desire to have a child remain a major problem in Belgian society, a finding shared by the CGSLB, CSC and FGTB in their observations. ***The Committee requests the Government to continue to support and take practical steps to prevent and eliminate discrimination on the grounds of pregnancy, maternity and/or the desire for maternity, in particular by stepping up labour inspections and by conducting information and awareness-raising activities among workers, employers, their respective organizations and the general public. The Government is also requested to continue providing information on cases of discrimination in employment and occupation dealt with by the IEFH, the labour inspectorate and the courts, as well as on the outcome of any legal proceedings initiated in this regard, indicating the sanctions imposed and the compensation awarded.***

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

Bosnia and Herzegovina

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

Previous comment

Articles 1(b) and 2(2)(a) of the Convention. Work of equal value. Legislation. The Committee recalls that the definitions of "work of equal value" in both section 77(1) of the Law on Labour of the Federation of Bosnia and Herzegovina (FBiH) and section 120(2) and (3) of the Law on Labour of the Republika Srpska limit the concept of "work of equal value" to the same level of each of the evaluation factors enumerated, such as qualifications, capacity to work and responsibility, physical and intellectual work, skills, working conditions and results of work. The Committee notes with ***regret*** that the definition of "work of equal value" in section 89 of the Law on Labour of the Brčko District No. 34/19, which entered into force on 1 January 2020, has a wording similar to the Law on Labour of the Republika Srpska and is therefore too restrictive to give full effect to the principle of equal remuneration for work of equal *value* set out in the Convention. The Committee emphasizes once again that the concept of "work of equal *value*" must permit a broad scope of comparison. While factors such as skills, responsibility, effort and working conditions are clearly relevant in determining the value of the jobs, when examining two jobs, the value does not have to be the same with respect to each factor – determining value is about the overall value of the job when all the factors are taken into account. In this regard, the Committee wishes to point out that, for the purpose of the Convention, the relative value of jobs with varying content is to be determined through objective job evaluation on the basis of the work performed and is different from performance appraisal, which aims at evaluating the performance of an individual worker in carrying out his or her job. Objective job evaluation is therefore concerned with evaluating the job and not the individual worker. The Committee therefore underlines that factors such as "capacity to work" and "results of work" relate to the performance appraisal of the individual worker rather than to objective job evaluation (see the 2012 General Survey on the fundamental Conventions, paragraphs 673, 677 and 696). ***The Committee asks the Government to take the necessary steps to amend the provisions regarding the definition of "work of equal value" in the Law on Labour of the FBiH, the Law on Labour of the Republika Srpska, and the Law on Labour of the Brčko District in the near future, so as to ensure***

that the legislation: (i) provides for a definition of "work of equal value" which is based on objective criteria; and (ii) addresses situations where men and women perform different work requiring different qualifications and skills, levels of responsibility and efforts and with different conditions of work but that is of equal value overall. The Committee asks the Government to provide information on any initiatives taken to amend the labour legislation for this purpose.

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

Brazil

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)

Previous comment: direct request

The Committee notes the observations of: (i) the Single Confederation of Workers (CUT) received on 2 September 2022; and (ii) the International Organisation of Employers (IOE) and the National Confederation of Industry (CNI) received on 30 August 2022. ***The Committee requests the Government to provide its comments with respect to the observations of the CUT.***

Articles 1–4 of the Convention. Assessing and addressing the gender pay gap and its underlying causes. The Committee notes that, according to the Brazilian Institute of Geography and Statistics (IBGE), the gender pay gap has decreased slightly since 2017 but remains high, being estimated at 22.3 per cent in 2019 (compared with 22.5 per cent in 2017). The remuneration of women was systematically lower than that of men in all occupational categories, except for members of the armed forces, and the gender pay gap was as wide as 38.1 per cent in management positions, in 2019. The Committee notes the Government's indication that efforts are being made in relation to higher positions, where pay differences between men and women are still very large and women are still facing difficulties in accessing such positions. In that regard, the Committee notes that, in their observations, the CNI and the IOE indicate that in recent years, public policies combined with efforts from the private sector have resulted in an increased participation of women in the formal economy, more particularly in positions and economic sectors with higher pay, and their departure from informal work characterized by low remuneration. The Committee notes this information but regrets the lack of information provided by the Government on the concrete measures elaborated and implemented to address the persistent gender pay gap. ***The Committee asks the Government to strengthen its efforts to address the gender pay gap and its underlying causes, including by enhancing women's access to jobs with career prospects and higher pay. It also asks the Government to provide information on: (i) the content of the proactive measures taken and implemented to that end and their outcomes; and (ii) the levels of remuneration in the various economic sectors, disaggregated by sex and occupational category, so as to enable the Committee to assess the progress made.***

Articles 1(b) and 2(2)(a). Equal remuneration for work of equal value. Legislation. The Committee notes that section 461 of the Consolidation of Labour Laws (CLT), as amended by Law No. 13.467 of 2017, guarantees the right to equal remuneration without discrimination on the grounds of sex, ethnicity, nationality or age to workers "performing the same functions, for all work of equal value, rendered to the same employer, in the same business establishment". Section 461(1) further defines "work of equal value" as work "performed with the same productivity and technical perfection, among people working for the same employer with a difference of length of years of service for that employer of not more than four years and with a difference of length of tenure in the post of not more than two years". The Committee notes the Government's statement, in its report, that section 8 of Decree No. 9.571, of 21 November 2018, establishing the National Guidelines on Business and Human Rights, provides that companies should address discrimination and "ensure equal pay and benefits for positions and functions with similar attributions, regardless of gender". The Government adds that a "Questions and Answers Booklet on Discrimination at Work" was published in 2018 by the Ministry of Labour and

provides as an example of direct discrimination the payment of a lower salary to women "when the functions are identical and the service is provided for the same employer in the same establishment". In this context, the Committee wishes to draw the Government's attention to the fact that the provisions contained in its national legislation are narrower than the principle laid down by the Convention. The concept of "work of equal *value*" encompasses not only the same work, or work in the same occupation or activity, performed by men and women under the same conditions and specifications, but should also allow for the comparison of work performed by men and women that is of an entirely different nature, which is nevertheless of equal value. Furthermore, the application of the principle of equal remuneration for work of equal value is not limited to comparisons between the jobs of men and women in the same establishment or with the same employer. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or for different employers. The Committee also emphasizes that, while factors such as skills, responsibility, effort and working conditions are clearly relevant in determining the value of the jobs, when examining two jobs, it is important to note that the value does not have to be the same with respect to each factor – determining value is about the overall value of the job when all the objective factors are taken into account. In this regard, it wishes to point out that, for the purpose of the Convention, the relative value of jobs with varying content is to be determined through objective job evaluation on the basis of the work performed and is different from performance appraisal, which aims at evaluating the performance of an individual worker in carrying out his or her job. Objective job evaluation is therefore concerned with evaluating the job and not the individual worker. The Committee therefore underlines that factors such as "productivity" and "technical perfection" relate to the performance appraisal of the individual worker rather than to objective job evaluation (see the 2012 General Survey on the fundamental Conventions, paragraphs 673–679 and 695–709). ***The Committee urges the Government to take the necessary steps to amend the Consolidation of Labour Laws (CLT), so as to give full legislative expression to the principle of the Convention and include a definition of "work of equal value" based on objective criteria, such as skills and qualifications, effort, responsibilities and working conditions. It asks the Government to provide information on any steps taken in this regard and their outcomes.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)

Previous comment

The Committee notes the observations of the Brasilia Bank Workers Union (Bancários/DF), the National Federation of Caixa Econômica Federal Staff Associations (FENAE) and the Single Confederation of Workers (CUT) received on 1 September 2022. It also notes the observations from the CUT, received on 2 September. ***The Committee asks the Government to provide its comments thereon.***

Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment. The Committee notes that the Bancários/DF, FENAE and CUT express concern about the numerous cases of sexual harassment at work in the finance, banking and judicial sectors. They highlight that: (1) women suffer three times more sexual harassment than men at the workplace, while 97 per cent of victims do not report this situation; (2) data from the Higher Labour Tribunal shows that, between January 2015 and January 2021, approximately 26,000 persons filed cases for sexual harassment at work; (3) as regards the Federal Public Administration, there were 903 reports of sexual or moral harassment in the first half of 2022 through the Digital Ombudsman System (e-Ouv), which represent an 88.5 per cent increase in comparison with the first six months of 2021; and (4) a survey from the Office of the Comptroller General of Brazil (CGU) revealed that in the Federal Public Administration only one third of sexual harassment cases resulted in effective punishment. In their views, cases of sexual harassment at work are

characterized by victims' difficulties in accessing justice; long delays; and inadequate sanctions. The Committee notes with ***concern*** these allegations. ***The Committee asks the Government to provide its comments thereon.***

The Committee notes the Government's indication, in reply to its previous comments, that section 216-A of the Penal Code, as amended by Law No. 10.224 of 2001, criminalizes sexual harassment and establishes penalties of up to two years' imprisonment. The Committee recalls that criminal provisions are not completely adequate in discrimination cases because, *inter alia*, they do not always provide a remedy to the victim and are very unlikely to cover all forms of conduct that amount to sexual harassment. ***Considering the need to take into account the specificities of sexual harassment in employment and occupation and the wide range of behaviours to cover, the Committee asks the Government to take the necessary measures to include in the labour legislation or in legislation applicable to labour relations a clear definition and prohibition of both quid pro quo and hostile environment sexual harassment, including by co-workers, as well as preventive measures, redress mechanisms and appropriate sanctions.***

The Committee notes with ***interest*** the adoption of Law No. 14.457 of 21 September 2022 implementing the "Emprega + Mulheres e Jovens" programme, which provides that companies with more than 20 employees must adopt specific measures to prevent and address sexual harassment and other forms of violence at work (section 23). However, the Committee observes that the Bill on Equal Opportunities and Treatment for Women in Employment (PLS No. 136/2011) which included moral, physical, psychological and sexual harassment as a form of discrimination against women has been set aside. It further notes, that, in its 2021 national report to the United Nations (UN) Human Rights Committee (International Covenant on Civil and Political Rights) the Government acknowledges that violence against women remains one of the main challenges it currently faces (CCPR/C/BRA/3, 25 August 2021, paragraph 60). ***The Committee asks the Government to provide information on: (i) the implementation of the "Emprega + Mulheres e Jovens" programme in relation to the measures taken by companies to prevent and address sexual harassment at work; (ii) any other practical measures taken, both in the public and private sectors, including awareness-raising among employers, workers and their organizations; and (iii) the number of complaints or cases of sexual harassment dealt with by the competent authorities, including sanctions imposed and remedies granted.***

Articles 2, 3 and 5. Equality of opportunity and treatment irrespective of race, colour or national extraction. People of African descent. The Committee notes that, according to the National Household Sample Survey (PNAD) carried out by the Brazilian Institute of Geography and Statistics (IBGE) from 2012 to 2018, the average income of the Black population is equivalent to only 60 per cent of that received by the White population and this proportion remained mostly unchanged since 2012 (IBGE, 4th trimester, 2012–2018). Furthermore, according to the statistical information in the Government's report to the UN Committee on the Elimination of Discrimination against Women (CEDAW), the literacy rate for the Black population remains lower (91.1 per cent in 2019 compared with 96.4 per cent for the rest of the population). Only 2.8 per cent of the Black population occupied decision-making positions in 2019, compared with 7.1 per cent for the rest of the population, while Black workers were more concentrated in the informal economy (CEDAW/C/BRA/8-9, 17 March 2022, paragraph 87; and Annex to CEDAW report). The Committee recalls that several laws have been adopted to introduce employment quotas in the civil service and publicly-owned companies at the federal level for the Black population (Law No. 12.990/2014) and increase their access to federal universities (Law No. 12.711/2012). The Government indicates that other special measures of assistance have been adopted or are pending adoption, namely: (1) Decree No. 9.427 of 28 June 2018 which provides that 30 per cent of vacancies for internships in the Federal Public Administration are reserved for the Black population; (2) Bill No. 2.067 of 2021 to introduce in public procurement contract requirements clauses regarding quotas for employment for the Black population; and (3) Bill No. 33 of 2016 to amend the Federal Constitution in order to establish a fund for the promotion of racial equality in order to promote equal opportunities

and social inclusion of the Black population, including in education and vocational training. The Committee further notes the Government's indication regarding: (1) the adoption of Decree No. 10.933/22 of 10 January 2022 enacting the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance which now has constitutional status; and (2) the discussions that are under way to carry out a national campaign promoting equal opportunities for Black women in the labour market. The Committee however notes that the UN High Commissioner for Human Rights expressed specific concern at the structural racism, discrimination and violence that people of African descent face in Brazil and called for urgent reforms of laws, institutions and policies to overcome that situation (Press briefing note on Brazil, 24 November 2020). Furthermore, in the report on the universal periodic review, it is indicated that the United Nations country team reinforced the importance of comprehensive policies that confront racism and aggravated discrimination and reported that 70.8 per cent of out-of-school compulsory school age children were Black boys and girls (A/HRC/WG.6/41/BRA/2, 25 August 2022, paragraphs 8 and 43). The Committee further notes that, in its 2021 report on the situation of human rights in Brazil, the Inter-American Commission on Human Rights (IACHR) highlighted that people of African descent still face discrimination in their access to education, the formal labour market and management positions in the private sector (paragraphs 20 and 21). While welcoming the measures implemented by the Government to enhance equality of opportunity and treatment in education and employment for people of African descent, in particular through affirmative actions, the Committee notes with ***concern*** that such measures appear to have yielded few tangible results in practice so far. ***The Committee urges the Government to step up its efforts to adopt and implement both legal and practical measures with a view to promoting equality of opportunity and treatment of people for African descent in employment and occupation, including through public awareness-raising activities to address racial discrimination and promote tolerance among the public. It also asks the Government to provide information on: (i) any assessment carried out of the progress made to date in addressing the situation of people of African descent in employment and occupation, including results achieved through the quota system; (ii) any measures taken in law and in practice to enhance the access of people of African descent to education, vocational training and employment opportunities, including in the formal economy and in decision-making positions, and the results achieved; and (iii) the participation of people of African descent in education, training, employment and occupation, disaggregated by sex; and (iv) the combined effects of sex and ethnicity on the distribution and participation of workers in the various occupations and economic sectors, including on their remuneration rates.***

General observation of 2018. The Committee wishes to draw the Government's attention to its general observation on discrimination on grounds of race, colour and national extraction adopted in 2018.

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

Bulgaria

Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 2006)

Previous comment

Article 3 of the Convention. National policy. The Committee recalls that a number of measures aimed at facilitating the reconciliation of work and family responsibilities provided for in the Labour Code and the Civil Service Code are available only to women. In this regard, it also recalls the Government's previous statement that sections 140, 310 and 312 of the Labour Code should be amended to be made available to fathers as well as mothers. It therefore notes with ***regret*** that the Government, in its report, appears to reverse this opinion, stating that the prohibition on night work under section 140 is an "expression of the special protection of mothers laid down in article 47, paragraph 2, of the Constitution"

and that "the prohibition is therefore linked to established legal principles and the guarantee of the mother's rights, which is part of the overall legislation." The Committee further notes the Government's statement that "under Article 313 of the Labour Code, the mother's rights under articles 310 and 312 of the Labour Code may be enjoyed by the father when the mother is unable to enjoy them" including "both situations where the mother is objectively prevented from exercising these rights (e.g. illness) and where this would affect her professional development"; and that "the law leaves it to the parents themselves to decide which of the parents should benefit from the rights under Articles 310 and 312 of the Labour Code." It finally notes the Government's statement "that Bulgarian legislation grants equal rights to male and female workers or employees with family responsibilities, in accordance with general legal principles." The Committee recalls that the Convention has the dual objective of creating equality of opportunity and treatment in working life between men and women with family responsibilities, on the one hand, and between men and women with such responsibilities and workers without such responsibilities, on the other (1993 General Survey on workers with family responsibilities, paragraph 25). The Committee draws the Government's attention to the fact that the assumption that the main responsibility for family care and the household lies with women, thus reinforcing stereotypical attitudes regarding the roles of men and women and existing gender inequality, runs counter to the objectives of the Convention. The Committee therefore considers that the measures taken in favour of workers with family responsibilities should be made available to men and women equally. ***Consequently, the Committee reiterates its request that the Government, with the participation of workers' and employers' organizations, take steps to review and amend the legislation with a view to ensuring that the measures applying the Convention are available to men and women workers with family responsibilities on an equal footing, and to provide information on any progress made in this regard.***

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

Burundi

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(1)(a) of the Convention. Discrimination on the basis of sex or gender Gender-based violence. In its previous comment, the Committee asked the Government to provide information on the following points: (1) the implementation and application in practice of Act No. 1/13 of 22 September 2016 concerning the prevention and suppression of gender-based violence and victim protection (hereinafter "the Act of 2016"), which defines and punishes, inter alia, gender-based violence (GBV), including sexual violence, sexual harassment, traditional gender-hostile practices and economic violence, which is defined as denying a spouse access to family resources or forbidding a spouse to work, indicating the number and type of cases of gender-based violence dealt with by the labour inspectorate and the courts, as well as the penalties imposed; (2) the steps taken or contemplated to inform and raise the awareness of employers, workers and their respective organizations, labour inspectors, judges and also the general public with regard to action against gender-based violence, including the steps taken to publicize the content of the Act of 2016; and (3) the activities of the Independent National Human Rights Commission (CNIDH) against gender-based violence in employment. The Committee notes from the Government's report that: (1) the labour inspectorate has not identified any cases of gender-based violence in employment and occupation, but the courts dealt with 4,004 cases of gender-based violence between 2016 and September 2018, with penal servitude being imposed as a penalty; (2) the measures taken by the Government to raise awareness of the Act of 2016 include training of trainers at the Training Centre for Legal Personnel; the launching, by the Second Vice-President of the Republic, of an outreach campaign; the translation of the Act into the national language (Kirundi); raising the awareness of the different State services; broadcasting; community awareness-raising through community leaders and the Women's National Forum; and (3) the CNIDH

undertook a number of activities aimed at combating gender-based violence in employment. The Government adds that the CNIDH took part in activities led by various partners in the GBV field to hold exchanges with them, review their achievements and provide legal support. Finally, the Committee notes the Government's intention to compile an inventory of laws that discriminate against women with a view to amending them in accordance with the Constitution and ratified international instruments, following the recommendations of the CNIDH. ***The Committee requests the Government to provide information on the progress achieved and to provide copies of the amended texts while conducting the inventory.***

Sexual harassment. In its previous comment, the Committee requested the Government to: (1) examine the possibility of expanding the definition of sexual harassment by adding the notion of a hostile, offensive or humiliating work environment, and to specify the procedure to be followed and the penalties that apply in cases of sexual harassment, in the absence of any specific provision in that regard in the Act of 2016; and (2) provide information on the practical steps taken to prevent and eliminate sexual harassment in the public and private sectors, including measures designed to raise the awareness of employers, workers and their respective organizations with regard to the prevention and treatment of sexual harassment. The Committee notes the Government's indication that the Gender Commission of the National Assembly, meeting to review progress in raising awareness of the Act of 2016 and to make recommendations, has suggested amending the Act in view of its lack of compliance with the new Penal Code and with the Gender Commission's definition of sexual harassment. Regarding the procedure to be followed and penalties applied in cases of sexual harassment, the Government indicates that those are provided under section 586 of the Penal Code. Finally, in its Beijing+25 report, the Government adds that sexual harassment is included in the list of offences established in the Act of 2016, under section 61 of which all GBV offences cannot be amnestied and are imprescriptible with regard to both public action and the penalty imposed, which is irreducible and cannot be pardoned. ***The Committee hopes that the Government will take the opportunity provided by the revision of the Act of 2016 to complete the definition of sexual harassment by including the notion of a hostile, offensive or humiliating work environment and will provide information on the progress made in this regard. The Committee once again requests the Government to provide information on the practical steps taken to prevent and eliminate sexual harassment in the public and private sectors, including measures designed to raise the awareness of employers, workers and their respective organizations.***

Article 2. Equality of opportunity and treatment for men and women. In its previous comment, the Committee asked the Government to provide information on: (1) the increase in the rate of school enrolment and vocational training of girls, (2) women's access to productive resources and to employment, including to managerial posts in the public and private sectors; and (3) the adoption of a new national gender policy, replacing the one adopted in 2012, and to provide details on those sections relating to gender equality in employment and occupation.

With regard to the increase in the rate of school enrolment and vocational training of girls and women's access to productive resources and employment, the Committee notes from the Government's report, as well as from its Beijing+25 report, that the steps taken to increase the access of girls to primary and secondary school include: integrating the gender equity dimension in education into the National Development Plan 2018–27; the formulation of the Sectoral Plan for the Development of Education and Training (PSDEF) 2012–20; and the Transitional Plan for Education 2018–20 (PTE 2018–20), which was primarily aimed at basic education. The Committee also notes: the creation of a unit for inclusive education to take all vulnerable groups into account, such as persons with disabilities; the return to school of adolescent mothers; the 2018 launching of the "aunt/school and father/school" project to combat school drop-outs and unwanted pregnancies; the renewal of curricula and the eradication of gender stereotypes from text books and other scholastic tools; and the annual holding of the "Back to School" campaign. The school enrolment rate for girls stood at 87 per cent in 2018. Moreover, to encourage women and girls to take up sciences, engineering, technology and other disciplines, certificates were awarded to certain women and girls who excelled in the field of science during the celebration in February 2019 of International Day of Women and Girls in Science. With regard to women's access to productive resources and employment, the Committee notes an empowerment project for women which sets up guarantee funds to help women obtain microcredits. The project is already operating in eight provinces (Cibitoke, Bubanza, Bururi, Makamba, Rutana, Karusi, Bujumbura Marie and Bujumbura).

The Committee also notes the adoption of the National Development Plan (PND) 2018–27, the new frame of reference for planning, which also takes account of different social policies, such as the National

Gender Policy (PNG) and the 2017–2021 action plans for the PNG and for United Nations Security Council resolution No. 1325, which seek to encourage sectoral ministries to create gender units and to involve them in their sectoral planning and budgets to ensure effective ministerial programming and budgetary allocation for gender equity and equality. However, the Government indicates that it faces numerous challenges, including insufficient funds to implement the plans of action and the absence of coordination institutions. ***The Committee requests the Government to indicate the measures taken or envisaged to implement the action plans and the National Gender Policy.***

Indigenous peoples. In its previous comment, the Committee urged the Government to take the necessary steps to: (1) ensure equal access for the Batwa people to education, vocational training and employment, including to enable them to exercise their traditional activities; (2) combat stereotypes and prejudice against this indigenous community; and (3) to promote tolerance among all sections of the population. The Committee also asked the Government to provide information on: (1) the impact of Act No. 1/07 of 15 July 2016 revising the Forestry Code, which provides that the rational and balanced management of forests is based, inter alia, on the principle of participation by the grassroots communities; and (2) the exercise of traditional activities by the Batwa on the land where they live. The Committee notes the Government's indication that: (1) the cost of the schooling of Batwa pupils has been financed and that awareness-raising activities to encourage young Batwa to take up schooling have been carried out by various associations including Unite to Promote the Batwa (UNIPROBA); and (2) a secondary-level boarding school has been reserved exclusively for young Batwa (Gitega Province) and young Batwa have been helped to enter secondary education and university. The Government indicates that the measures taken to encourage adolescent mothers to return to school after pregnancy have not been welcomed by them. The Committee notes the information that young Batwa have received vocational training in car mechanics, carpentry, sewing, information technology, construction, etc. According to the Government, Act No. 1/07 of 15 July 2016 revising the Forestry Code has had a negative impact on the economic life of the Batwa people. They have lost an economic resource that enabled them to sell basketwork and traditional medicines based on wood and medicinal plants from the forest. Act No. 1/21 of 15 October 2013 issuing the Mining Code has also deprived the Batwa of access to clay to produce pottery to use or sell. To counter this problem, the Government has undertaken to mount forestry management projects in association with the Batwa people for the use of the forest under their control and subject to their permission. The Committee also notes that in its Beijing+25 report, the Government recognizes the Batwa community as the most marginalized group. It is for this reason that many legal, statutory and institutional mechanisms have been put in place so that the Batwa can participate fully in political, economic, social and cultural life and draw attention to their concerns. The Government refers, among the positive steps taken, to the distribution of land to the Batwa so that they can settle, and the training provided to Batwa community women from the Vyegwa locality, who are now able to build their own houses, or be employed on other construction sites. These training activities for Batwa women have also contributed to gender, social and sustainable development, by changing mentalities and improving social relations between the Batwa and other population groups, and by encouraging reflection on prejudice against the Batwa people. ***Taking into account the Government's assessment of the impact of the Forestry and Mining Codes on the ability of the Batwa to continue to practice their traditional occupations, the Committee requests the Government to: (i) intensify its efforts to ensure that indigenous peoples have the right to practice their traditional activities and retain their means of subsistence without discrimination; and (ii) provide detailed information on the forestry management projects developed in association with the indigenous peoples concerned and on the lands attributed to the Batwa.***

General observation of 2018. With regard to the above issues, and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills,

providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.

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

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

Cameroon

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1970)

Previous comment

Articles 1(b) and 2(2)(a) of the Convention. Equal remuneration for men and women for work of equal value. Legislation. The Committee notes the Government's indication that it took account of the Committee's request "in the negotiation of texts currently under discussion". ***In view of its repeated previous requests, the Committee hopes that the Labour Code (section 61) will be modified in the near future to include the principle of equal remuneration for men and women for work of equal value and requests the Government to provide information on any progress made in this respect.***

Articles 2(2)(c) and 4. Collective agreements. Cooperation with social partners. The Committee notes the Government's indication that, during the negotiation and elaboration of collective agreements, the Government representative on the committees in question makes certain that all discriminatory provisions, or those contrary to ratified texts, are removed. With regard to promoting the application of the principle of the Convention with the employers' and workers' organizations during wage fixing, the Committee notes that the Government is currently examining this point and will communicate the results of its reflection to the Committee. ***The Committee requests the Government to: (i) intensify its cooperation with the social partners to ensure that collective agreements, including those of the Cameroon Railway Company (CAMRAIL), mentioned in its previous comments, do not contain provisions that are discriminatory on the basis of sex and especially in respect of remuneration; and (ii) to supply extracts of the collective agreements that reflect the principle enshrined in the Convention. It also requests the Government to provide information on any proactive measures and follow-up measures taken to give effect to the principle of equal remuneration during the negotiation of collective agreements, such as, for example, the drafting of a standard clause on equal remuneration for men and women for work of equal value.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1988)

Previous comment

Articles 1(1)(a), 2 and 3(b) of the Convention. Definition and prohibition of discrimination. Legislation. National equality policy. Regarding the absence of provisions in the legislation that define and explicitly prohibit all forms of discrimination based on at least all of the grounds listed in the Convention in all aspects of employment and occupation, the Committee notes that the Government indicates in its

report that: (1) it has taken legal, regulatory and collective agreement-derived measures to prohibit all forms of discrimination; and (2) it regularly takes action to combat discrimination related, for example, to HIV in enterprises, in collaboration with the health and safety committees. The Committee nonetheless notes with ***regret*** that despite its repeated requests, no measure has been taken to define and prohibit all forms of discrimination based on race, colour, sex, political opinion, religion, national extraction and social origin at all stages of employment and occupation in the labour legislation. In respect of the national equality policy, the Committee notes that the Government again refers to the national gender policy. ***Consequently, the Committee once again urges the Government, in collaboration with the employers' and workers' organizations, to take the necessary measures to: (i) include in the national legislation, particularly in the Labour Code, provisions defining and explicitly prohibiting direct and indirect discrimination based on at least all of the grounds listed in the Convention (race, colour, sex, religion, political opinion, national extraction and social origin) in employment and occupation, including at the time of recruitment; and (ii) formulate and implement an overall national equality policy which includes plans or programmes of action and specific measures to promote equality of opportunity and treatment irrespective of race, colour, religion, political opinion, national extraction or social origin. The Committee requests the Government to provide detailed information on all measures taken in this respect and to communicate a copy of the relevant texts adopted, including any revised gender policy. In the absence of a reply from the Government, the Committee again requests it to provide information on the application in practice of section 242 of the Penal Code, which punishes any refusal of access to employment on the basis of race, religion, sex and medical status, including the number of complaints on this basis, and to specify the authorities responsible for enforcing the application of this provision (labour inspectors or others).***

Articles 1(1)(a) and 3(c). Discrimination based on sex. Legislation. ***Noting that the Government reiterates its commitment to bringing all legislative and regulatory texts and texts derived from agreements into line with the provisions of the Convention, the Committee once again urges the Government to take specific measures to: (i) abrogate the provisions of section 223 of the Civil Code and of section 74(2) of Ordinance No. 81-02 which gives a husband the right to object to his wife having an occupation that is separate from that of her husband; and (ii) more generally, remove from the national legislation any provision that has the effect of nullifying or impairing equality of treatment for women in employment and occupation. The Committee requests the Government to provide information on any measures taken in this regard and on progress made in the reform of the Civil Code to which the Government refers in a previous report.***

Article 5. Special protection measures. Restrictions on women's employment. The Committee notes the Government's indication that it has taken due note of the Committee's request that it review Order No. 16/MLTS of 27 May 1969 establishing a list of work prohibited for women. ***In the absence of any change in this regard, the Committee can only reiterate its request to the Government to take steps to review Order No. 16/MLTS of 1969.***

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

Chad

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(1)(a) of the Convention. Grounds of discrimination. The Committee notes with concern that the Labour Code has been awaiting adoption for many years. ***The Committee can only hope that the Government will soon be in a position to report on the adoption of the new Labour Code and requests it to ensure that it contains provisions explicitly prohibiting any direct or indirect discrimination based, as a minimum, on***

all the grounds enumerated in Article 1(1)(a) of the Convention, including race, colour, national extraction and social origin, at all stages of employment and occupation. The Committee requests the Government to provide a copy of the Labour Code as soon as it has been adopted, and of any implementing texts with respect to non-discrimination and equality in employment and occupation.

Discrimination based on sex and equality of treatment between men and women. The Committee recalls that, in a previous comment, the Government acknowledged that section 9 of Ordinance No. 006/PR/84 of 1984, which gives the husband the right to object to his spouse's activities, is completely outdated and that it would take measures to repeal this provision, which no longer corresponds to the current situation. The Government also specified that occupational segregation between men and women is due, inter alia, to the high levels of illiteracy and social factors. The Committee previously requested the Government to take the necessary measures in this regard. However, it notes that the Government has confined itself to referring once again to articles 13, 14, 33, 38, 39 and 42 of the Constitution and section 369 of the Penal Code. ***The Committee therefore urges the Government to take the necessary measures to formally repeal section 9 of the Ordinance of 1984 and to combat actively stereotypes and prejudices concerning the vocational capacities and aspirations of men and women. The Committee also requests the Government to take measures to raise awareness among parents and the population as a whole about the importance of girls and boys attending and remaining in school, and to promote the access of girls and women to a broader range of training courses and occupations, particularly those that are traditionally occupied by men. The Committee requests the Government to provide information on any measures taken in this regard.***

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

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

China

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2006)

Previous comments: observation and direct request

The Committee notes the observations made by the International Trade Union Confederation (ITUC), received on 1 September and 7 October 2022. ***The Committee requests the Government to provide its comments thereon.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (CAS) in June 2022 concerning the application of the Convention. The CAS deplored the use of all repressive measures against the Uyghur people, which has a discriminatory effect on their employment opportunities and treatment as a religious and ethnic minority in China, in addition to other violations of their fundamental rights. It expressed grave concern at the Government's efforts to impose "deradicalization" responsibilities on employers' and workers' organizations. The Conference Committee urged the Government to, in consultation with the social partners:

- immediately cease any discriminatory practices against the Uyghur population and any other ethnic minority groups, including internment or imprisonment on ethnic and religious grounds for deradicalization purposes;
- immediately cease the racial harassment of the Uyghur people, including physical, verbal or non-verbal conduct or other conduct based on their ethnicity and religion, which undermines their dignity and creates an intimidating, hostile or humiliating working environment;

- adopt national and regional policies with a view to eliminating all distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity and treatment in employment and occupation, particularly with regard to the Uyghur population;
- repeal provisions in the Xinjiang Uyghur Autonomous Region (Xinjiang) Regulation, and any other laws, regulations or other policies, that impose deradicalization duties on enterprises and trade unions that prevent enterprises and trade unions from playing their respective roles in promoting equality of opportunity and treatment in employment and occupation without discrimination;
- amend national and regional policies with a view to ensuring that the activities of vocational guidance, vocational training and placement services serve the purpose of assisting ethnic and religious minorities in the development and use of their capabilities for work in their own best interests and in accordance with their own aspirations;
- amend national and regional regulatory provisions with a view to reorienting the mandate of vocational training and education centres from political re-education based on administrative detention;
- bring the existing legal framework on sexual harassment in the workplace fully into line with the Convention and ensure that victims of sexual harassment have effective access to judicial mechanisms and legal remedies; and
- amend the Labour Law and Employment Promotion Law so as to bring this legislation fully into line with the Convention.

The CAS recommended that the Government accept an ILO technical advisory mission to allow the ILO to assess the situation with the support of the ITUC and the International Organisation of Employers (IOE). The CAS requested the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

In its concluding statement to the CAS and in its report, the Government considered the conclusions of the CAS to be groundless and biased, resolutely rejecting the accusations of repression of the Uyghurs in the conclusions as false and the existence of discrimination and harassment of the Uyghurs as unfounded.

While the Government has indicated that it will give serious consideration to some of the comments made in the CAS and welcomed technical consultations to facilitate further understanding of the actual implementation of the Convention in China, it has not confirmed its acceptance of an ILO technical advisory mission to allow the ILO to assess the situation with the support of the ITUC and the IOE. The Committee notes that the Government requested the Office to hold technical discussions on the application of the Convention before the end of 2022. In this respect, a schedule of work has been established, and the first meeting was held in November.

Articles 1(1)(a), 2 and 3 of the Convention. Definition and prohibition of discrimination in employment and occupation. Prohibited grounds of discrimination. National Equality Policy. Legislation. The Committee notes that, in its written statement to the CAS, the Government states that China's laws, regulations and practices are fully in line with the principles of the Convention and that Xinjiang's subnational administrative regulations, departmental rules, and normative documents are all in line with the principles of national laws and conform to the principles and requirements of the Convention. In respect of vocational training, it indicates that the Labour Law (section 3) guarantees workers equal rights to training in vocational skills, while the revised Vocational Education Law (2022) provides that citizens have the right to receive vocational education in accordance with the law (section 5); that the State practices a system whereby workers receive the necessary vocational education prior to employment or assignment (section 11); and that the State supports the development of vocational education in former

revolutionary base areas, ethnic minority areas, remote areas and underdeveloped areas, guaranteeing equal rights for women (section 10). In respect of other aspects of access to employment, the Government explains that China's Regulations on Employment Services and Employment Management guarantee workers equal employment rights in accordance with the law (section 4); that recruitment announcements by employing units must avoid discriminatory language (section 20); and that public employment service agencies are prohibited from releasing employment information that contains discriminatory content (section 58).

The Committee recalls that legal provisions providing for equality of opportunity and treatment, although important, have generally not proven to be sufficient to address specific cases of discrimination in employment and occupation. A more detailed legislative framework is also required. The Committee repeats its previous comments that there is a need for comprehensive legislation containing explicit provisions defining and prohibiting direct and indirect discrimination on at least all of the grounds set out in the Convention, and in all of the aspects of employment and occupation as set out *in Article 1(3)* of the Convention, in order to ensure the full application of the Convention.

The Committee therefore again urges the Government to include a clear and comprehensive definition of discrimination (both direct and indirect) in its labour legislation. With respect to vocational education, it asks the Government to clarify how compliance with the equal rights provisions in the Labour Law of 1994 and the revised Vocational Education Law (2022) is secured. With respect to the anti-discrimination legal provisions in force, the Committee also asks the Government to confirm that the Employment Promotion Law of 2007 prohibits discrimination based on colour, national extraction, social origin and political opinion even if such grounds are not explicitly mentioned, and to provide judicial interpretations or decisions to that effect.

Articles 1(1)(a), 3 and 4. Activities prejudicial to the security of the State. Allegations of discrimination based on race, religion, national extraction and social origin affecting ethnic and religious minorities in Xinjiang. Further to its previous comments and to the conclusions and grave concern expressed by the CAS, the Committee notes the call by the United Nation (UN) Committee on the Elimination of Racial Discrimination (CERD) on 24 November 2022 on China to immediately investigate all allegations of human rights violations in Xinjiang; to immediately release all individuals arbitrarily deprived of their liberty in Xinjiang, whether in vocational education and training centres (VETCs) or other detention facilities, and to provide relatives of those detained or disappeared with detailed information about their status and well-being. In this respect, and while being aware of its strong rejection by the Government, the Committee notes the finding of the UN High Commissioner for Human Rights in August 2022 that it is reasonable to conclude that a pattern of large-scale arbitrary detention occurred in vocational education and training facilities, at least during 2017 to 2019, affecting a significant proportion of the Uyghur and other predominantly Muslim ethnic minority community in Xinjiang (Office of the United Nations High Commissioner for Human Rights (OHCHR), Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, 31 August 2022).

The Government indicates that in response to the needs of workers of all ethnic groups, Xinjiang authorities have taken measures for the implementation of the Employment Promotion Law of the People's Republic of China in Xinjiang. The Xinjiang 14th Five-Year Plan (2021–2025) for Employment Promotion provides a solid institutional guarantee for economic development as well as support for flexible employment and for groups facing difficulties in finding employment, so that workers can fully enjoy equal rights and opportunities in employment and occupation. Employment of all ethnic groups in Xinjiang increased by 19.5 per cent between 2014 and 2020. Women from Uyghur and other ethnic minorities formed the vast majority of newly employed women, thus realizing the transition from having low education and skills to gaining employment, improved living standards and economic autonomy.

The Government further reports that deradicalization measures by the Chinese Government target a very small number of people and intend to protect the legitimate rights and interests of people

of all ethnic groups, including the vast majority of Uyghur people. The Xinjiang government had taken these deradicalization measures under special circumstances and in accordance with the law, with the objective of preventing acts of terror and educating and saving a small number of people under the influence of religious extremism or guilty of minor offences or violations of the law. Education and training centres established in accordance with the law in Xinjiang combated terrorism and pursued deradicalization in essentially the same way as countries around the world administered deradicalization centres, community corrections, transformation and disengagement programmes. The basic human rights of people of all ethnic groups, such as the right to life, health and development, had been protected to the greatest extent possible, and the sense of security of the people of all ethnic groups had been greatly improved as no violent terrorist incidents had occurred for six consecutive years. Allegations of political detention were a malicious smear.

The Government indicates that deradicalization efforts are aimed at promoting the reintegration of people who have engaged in extremist behaviour and that the role of trade unions and enterprises in this regard includes legal advocacy; educating and guiding workers to abide by the law; maintaining unity and harmony; opposing hate and extremist speech and opposing engaging in unlawful activity.

The Committee takes due note of the information provided by the Government as well as policy and regulatory directions set out in official documents. In respect of Xinjiang's 14th Five-Year Plan (2021–2025), it also notes that the Plan seeks to systematize the rule of law in countering terrorism and maintaining stability, with a view to maximizing unity and cohesion among the people and relying on ideological education, legal awareness-raising, psychological counselling and conflict resolution.

Further to the theme of promoting ethnic harmony in Xinjiang, the Committee also notes the Government's white paper on "Historical Matters Concerning Xinjiang" (2019), which expresses the view that religions could only be accommodated within Chinese society by adapting themselves to the Chinese context. Secular, modern and civilized ways of life had to be encouraged and backward and outdated conventions and customs abandoned. Only the fusion of religious doctrines with Chinese culture could lead religions, including Islam, onto the Chinese path of development. In that context, the Committee notes the Government's five-year plans for the sinification of Islam, Christianity and Catholicism (all for the period 2018–22) stating objectives such as "deepening patriotism, expressing faith using Chinese culture and strengthening the theological foundation of sinification".

The Committee further notes that the Xinjiang Regulation on Deradicalization (XRD) contains an open-ended list of "primary expressions of radicalization", including "wearing, or compelling others to wear, burqas with face coverings", "spreading religious fanaticism through irregular beards or name selection", and "generalizing the concept of halal".

Having considered the information at its disposal, the Committee recalls its long-held view that the elimination of distinctions in employment, occupation and education depends on a general context of equality of opportunity and treatment without which the full application of the Convention remains illusory. This general context will depend on respect for the rule of law and the development of a climate of tolerance which fully respects voluntary self-identification and actively supports the resilience of ethnic, religious and linguistic identity in the face of a dominant culture, rather than seeking to assimilate such identity into a homogeneous society. Without such general context, the coexistence between minorities and the majority, or even among the various minorities themselves, can be fraught with conflict.

The Committee is bound to note that the policy orientations repeatedly expressed by the Government in recent white papers, its plans for the sinification of Islam and other religions and regulatory documents lend credibility to allegations of its active pursuit of a policy seeking to assimilate ethnic and religious minorities within the dominant ethnic group thus compromising the success of a policy to effectively eliminate discrimination in employment and occupation. The fundamental objective of such policy, enshrined in the ILO Constitution, must remain that "all human beings, irrespective of

race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity".

As regards the policy's orientation towards deradicalization and counter-terrorism, the Committee recalls that *Article 4* of the Convention permits differential treatment of an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice. The Committee is, therefore, of the view that ensuring a counter-terrorism response compliant with the Convention requires a focus on individuals who are justifiably suspected of, or engaged in, activities prejudicial to the security of the State while avoiding stereotypes potentially casting groups identified by ethnic and religious traits in a negative light. A compliant response would not permit the use of labour or vocational education and training as a means of altering the political opinion and religious practice of individuals or groups protected by the Convention in the absence of violent conduct or conduct demonstrably aimed at propagating violence. While noting the Government's assurances that its deradicalization efforts affect a very small number of people, the Committee notes with ***regret*** not being offered any further details to assess the scope and the impact of such efforts. The open-ended definition of extremism in the XRD is supported by indicators ("primary expressions of radicalization") that might otherwise be construed as matters of personal choice in relation to religious practice. Such a regulatory approach to deradicalization may amount to racial and religious profiling and give rise to a focus on ethnic and religious minorities through the lens of "extremism". The extensive digital and personal surveillance apparatus in Xinjiang and the regulatory potential for administrative detention of suspected extremists, whether for the purpose of re-education or correction of minor offences that do not constitute a crime, further create a discriminatory climate in which the stated equal rights and opportunities in employment and occupation of ethnic and religious minorities cannot be effectively promoted or fully realized.

In respect of the role of trade unions and employers' organizations, the Committee recalls that the Convention requires the Government to seek the cooperation of employers' and workers' organizations and other appropriate bodies but that the purpose of such cooperation, rather than enlisting social partners in public deradicalization efforts should be to promote the acceptance and observance of a policy designed to promote equality of opportunity and treatment in respect of employment and occupation. Guidance in respect of the cooperation to be sought may be found in the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111). Paragraph 2(d) of the Recommendation recommends organizations to abstain from obstructing or interfering with employers in their pursuit of the principle of non-discrimination, while encouraging employers' and workers' organizations not to practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

Having duly considered the information provided by the Government, the discussions in the Conference Committee, ITUC observations and the findings of UN bodies, the Committee must reiterate its deep concern in respect of the serious allegations of discrimination against ethnic and religious minorities in Xinjiang, which appears to be based on policy directions expressed in numerous national and regional policy and regulatory documents. The Committee therefore once again urges the Government to: (i) review its national and regional policies with a view to eliminating all distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity and treatment in employment and occupation; (ii) repeal provisions in the Xinjiang Uyghur Autonomous Region (Xinjiang) Regulation that impose deradicalization obligations on enterprises and trade unions and prevent enterprises and trade unions from playing their respective roles in promoting equality of opportunity and treatment in employment and occupation without discrimination based on race, national extraction, religion or political opinion; (iii) revise national and regional policies with a view to ensuring that the activities of vocational guidance, vocational training and placement services serve the purpose of assisting ethnic and religious minorities in the development and use of their capabilities

for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society; (iv) amend national and regional regulatory provisions with a view to reorienting the mandate of vocational training and education centres from deradicalization based on ethnic and religious stereotypes and ideological education based on administrative detention towards the purpose set out in (iii); (v) provide detailed information on the allegedly small number of persons affected by the Government's deradicalization policy; the conditions under which they are subject to administrative detention and any programmes related to training, employment or occupation; and the conditions under which they are released as it affects their access to the labour market; (vi) provide information on the measures taken to ensure observance of the policy to promote equality of opportunity and treatment in vocational training activities carried out in Xinjiang's vocational training and education centres; and (vii) provide information on the measures taken to ensure observance of the policy to promote equality of opportunity and treatment for the Uyghurs and other ethnic minority groups when seeking to access employment outside the Xinjiang Autonomous Region.

Articles 1(1)(a) and 3(c). Discrimination based on sex. Sexual harassment. In response to the Committee's previous comments, the Government expresses the view that victims of sexual harassment can effectively obtain legal support and relief through judicial channels. Section 1010 of the Civil Code identifies the elements constituting sexual harassment; establishes civil liability for sexual harassment; and requires organizations to set up preventive mechanisms and provide timely remedies. The All-China Federation of Trade Unions and the China Enterprise Confederation jointly developed a Guidebook for Eliminating Sexual Harassment in the Workplace with technical assistance from the Office.

In the course of the CAS discussion, it was acknowledged that the new Civil Code covers sexual harassment of both men and women. Concern was expressed, however, that the law did not fully define sexual harassment; failed to prohibit both quid pro quo and hostile work environment sexual harassment in all aspects of employment and occupation, including vocational training and job placement; and that equal access to legal remedies, including for ethnic and religious minorities, was unclear in the absence of available data. Figures cited in the course of the discussion suggest that because alleged victims bear the burden of proof, only a small percentage of the lawsuits filed result in a conviction of the alleged perpetrator and rarely in compensation for the victim.

The Committee welcomes the protection against sexual harassment which section 1010 seeks to provide to both men and women. Experience suggests that the burden of proving discrimination, including sexual harassment, is often harder to meet, to the point of constituting an insurmountable obstacle to establishing liability and ensuring an appropriate remedy. This would be particularly so in relationships marked by an imbalance of power and if there are no witnesses, which is often the case. To prevent dissuading victims from seeking redress and correct a situation that could otherwise result in inequality, the Committee has consistently recommended considering procedural measures such as shifting or reversing the burden of proof. The Committee notes in this regard the Violence and Harassment Recommendation, 2019 (No. 206), which encourages complaint and dispute resolution mechanisms for gender-based violence and harassment to shift the burden of proof in proceedings other than criminal proceedings. The Committee is also of the view that a procedural requirement for the alleged victim to present physical evidence corroborating oral testimony would not be appropriate in cases of sexual harassment that do not amount to physical assault or do not imply physical contact.

The Committee asks the Government: (i) to include a clear and comprehensive definition of sexual harassment to ensure that it covers both quid pro quo and hostile work environment harassment; offers protection in vocational education, vocational training, access to employment, conditions of employment and performing work in any occupation; and protects workers outside formal employment relationships; (ii) to consider making procedural adjustments ensuring easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in sexual harassment cases; and (iii) to continue to provide information on any cases of sexual harassment dealt with by the courts and the competent authorities, including

on their outcome (sanctions imposed, court cases won as a proportion of lawsuits filed and remedies granted).

The Committee understands that the Law on the Protection of the Rights and Interests of Women was amended on 30 October 2022. Noting that the amended Law contains several provisions relevant to equality of opportunity and treatment for men and women, including sexual harassment, the Committee intends to examine the Law on the next occasion and asks the Government to provide information on its application.

Equality of opportunity and treatment for ethnic and religious minorities, including in the civil service. In its previous comments, the Committee had noted the continuation of workforce capacity-building in ethnic areas (including Inner Mongolia, Guangxi, Yunnan, Qinghai, Tibet, Guizhou, Ningxia, and Xinjiang) through special training programmes for ethnic talents, the recruitment of ethnic civil servants nationwide and capacity-building of civil servants in ethnic areas, including their active engagement in bilingual programmes.

In its statement to the CAS, the Government indicated that it was giving full play to the role of markets in regulating employment and promoting the free movement of workers between regions, industries and enterprises, causing urban employment to expand by 470,000 jobs annually between 2014 and 2020. It provided an example of a worker who had successfully challenged discrimination by his employer based on geographical origin winning compensation for emotional distress as well as an oral and written apology by his employer.

The Committee asks the Government to continue to provide information on the measures taken, and their results, to promote equality of opportunity and treatment for ethnic and religious minorities within China, including information on the current employment situation of various ethnic and religious minorities inside and outside the autonomous regions as well as employment data disaggregated by sex and ethnicity in the civil service.

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

Colombia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)

Previous comment

The Committee notes the observations of the National Employers Association of Colombia (ANDI), and those of the Confederation of Workers of Colombia (CTC), the Single Confederation of Workers of Colombia (CUT) and the General Confederation of Workers (CGT), communicated with the Government's 2022 report. The Committee also notes the observations of the International Organisation of Employers (IOE), of 31 August 2022, in which it refers to the current legislative framework and various judicial decisions in the country.

Articles 1–4 of the Convention. Assessing and addressing the gender pay gap and its underlying causes, including occupational segregation. The Committee welcomes the statistical data provided by the Government in its 2018 and 2020 reports, which show that: (1) the gender income gap fell from 17.2 per cent in 2017 to 15.4 per cent in 2019, and to 8.7 per cent in 2021; (2) between 2015 and 2021, the economic activities in which most employed women work have not changed, and include commerce, healthcare and education; and (3) according to data for the years 2014 to 2021, the higher the educational level of women, the higher their labour market integration and the lower the wage gap. It further notes the Government's explanation in its report that the gender wage gap must be understood as a multi-causal phenomenon that is not exclusively reduced to socio-economic variables or the work itself and is closely related to historical exclusions suffered by women in the past. The Committee notes

that, in their observations the CGT, CTC and CUT provide various types of statistical data and indicate that: (1) in the context of the COVID-19 pandemic, women with the lowest levels of income from work were those most affected by the loss of their jobs; and (2) rural and migrant women, and those over 55 years of age, with lower educational levels, those in free relationships, or who are separated or divorced, living with minors in the household and those who recognize themselves as being indigenous are most affected by the wage gap.

With reference to measures to address the pay gap, the Committee notes the information provided by the Government on: (1) the Gender Parity Initiative, which seeks to increase the participation of women in the labour market and in leadership roles, and to reduce the wage gap; and (2) the preparation, within the context of the cooperation between Latin America and the European Union (EUROSOCIAL+), of an analytical study of gender wage gaps and of a technical good practice tool for gender equity in the workplace, to reduce wage gaps and gender bias. The CGT, CTC and CUT indicate in their observations that, since the adoption of Act No. 1496 in 2011, it is not known whether affirmative action has been taken in this regard with a positive outcome. The Committee also notes that the Government, and the IOE in its observations, recall the implementation of the EQUIPARES certification programme, which requires enterprises to establish objective methods for the determination of remuneration. ***The Committee requests the Government to take measures to reduce the persistent occupational segregation between men and women, and in particular to broaden the labour market opportunities of women and their capacity to progress and obtain promotion in their respective occupations. The Committee also requests the Government to provide detailed information on any measures adopted and on their impact, including measures adopted within the context of the Gender Parity Initiative and EUROSOCIAL+ cooperation. Noting the significant reduction of the gender income gap in 2021 as well as the economic context due to the pandemic, in particular the loss of jobs by women, the Committee requests the Government to continue to provide data on the evolution of the gender pay gap over the years and to provide a detailed analysis of such data, taking into account changes in the labour force.***

Articles 1(b) and 2(2)(a). Equal remuneration for work of equal value. Legislation. With reference to the amendment of Act No. 1496 of 2011, the terms of which are more restrictive than the principle of the Convention, the Committee notes the Government's indication that it is working to amend the Act before adopting implementing regulations, with a view to facilitating understanding and the application of the principle of equal remuneration for work of equal value. ***The Committee hopes that the Government will take the necessary measures as soon as possible to make progress with the amendment of Act No. 1496 with a view to giving full legislative expression to the principle of the Convention.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

The Committee notes the observations of the National Employers Association of Colombia (ANDI), and those of the Confederation of Workers of Colombia (CTC), the Single Confederation of Workers of Colombia (CUT) and the General Confederation of Workers (CGT), communicated with the Government's 2022 report. The Committee also notes the observations of the International Organisation of Employers (IOE), of 31 August 2022, relating to the current legislative framework on gender equality at work and policies to promote youth employment.

Article 1(1)(a) of the Convention. Discrimination on the basis of sex. Sexual harassment. The Committee observes that, according to the Government's indications in its 2018 report, the Strategic Plan for the Prevention of Labour and Sexual Harassment at Work has been developed and implemented, certain elements of which had already been brought to the attention of the Committee, such as the survey of perceptions of sexual harassment, a protocol for action agreed with the Office of the Public Prosecutor

and the training of labour inspectors. The Committee also notes the adoption of capacity-building and awareness-raising measures for enterprises and other actors in the world of work, including through the *Equipares* equality label. In addition, the Committee notes the reference by the Government in its 2022 report to the Gender Equality Recognition Programme (PRIG *Equipares Rural*) intended for associations and cooperatives in the rural sector, the objectives of which include the promotion of a working environment free from discrimination and violence. However, the Committee ***regrets*** to note that section 3 of Act No. 1010 of 2006 on labour harassment, which provides for mitigating circumstances, is still in force. The Committee also observes that: (1) the information provided by the Government on the number of complaints of sexual harassment does not indicate the number of cases of sexual harassment; (2) Act No. 1010 defines ill-treatment at work as a form of workplace abuse which includes any act of violence against sexual freedom, but does not contain a clear and explicit definition of sexual harassment (either quid pro quo or hostile working environment harassment); and (3) in section 210-A of the Penal Code, sexual harassment is described as behaviour through which a person, taking advantage, inter alia, of their position at work, harasses, pursues, bullies or stalks another person for unwanted sexual purposes for the benefit of themselves or another person. ***The Committee requests the Government to: (i) indicate the manner in which Act No. 1010 of 2006 guarantees in practice adequate protection against sexual harassment, including both quid pro quo and a hostile working environment; (ii) if such protection does not exist, to take measures to provide explicitly for specific protection; (iii) report the penalties imposed under the Act and the measures envisaged to ensure that such penalties are effective and dissuasive; and (iv) provide information on the number of cases of work-related sexual harassment examined by the labour inspection services and by administrative and judicial bodies, the penalties imposed and the compensation granted.***

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

Congo

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)

Previous comment

The Committee notes with ***deep concern*** that the Government's report, due since 2018, has not been received. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 1 and 2(2)(a) of the Convention. Equal remuneration for men and women for work of equal value. Legislation. For a number of years, the Committee has been drawing the Government's attention to the need to amend sections 56(7) and 80(1) of the Labour Code, which limit the application of the principle of equal remuneration to "equal work" (section 56(7)) or "equal working conditions, qualifications and output" (section 80(1)), and do not fully reflect the concept of "work of equal *value*" set out in the Convention. It previously noted the Government's repeated statement that amendments of sections 56(7) and 80(1) of the Labour Code were foreseen and requested the Government to take the necessary steps to ensure that the principle set out in the Convention was incorporated in the Labour Code. The Committee notes that a preliminary draft Labour Code is being prepared and was transmitted to the ILO in February 2022. It also notes, from the information available on the website of the Ministry of Public Service, Labour and Social Security, that it is expected that this preliminary draft Labour Code would be soon submitted to the National Consultative Labour Commission for its prior opinion, before being sent to the General Secretariat of the Government for its approval. The Committee notes that section 20 of the preliminary draft Labour Code provides that "no clause of an employment contract may reserve the benefit of a measure to a worker in consideration of his or her sex, nor unequal remuneration for the same work or work of equal value". The Committee welcomes the explicit

reference made to the concept of "work of equal value" in the preliminary draft Labour Code. It observes, however, that section 20, which refers to "same work or work of equal value", read together with sections 195(10) and 246 of the preliminary draft Labour Code, which only refer to "equal work" or "equal working conditions, qualifications and output", may lead to a confusing and restrictive interpretation of the concept of "work of equal *value*". The Committee recalls that this concept permits a broad scope of comparison that includes, but is not limited to, equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. It further recalls that comparing the relative value of jobs in occupations which may involve different types of skills, efforts, responsibilities or working conditions, but which are nevertheless of equal value overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the value of work performed by women and men (see the 2012 General Survey on the fundamental Conventions, paragraphs 672–675). ***Recalling that, in its Decent Work Country Programme (DWCP) for 2018–22, the Government defines as a priority action to bring its labour legislation into line with international labour standards, the Committee requests the Government to: (i) take the necessary steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, in particular by aligning sections 195(10) and 246 of the preliminary draft Labour Code with section 20 which provides for equal remuneration for the "same work or work of equal value"; and (ii) consider the possibility of including in the preliminary draft Labour Code an explicit reference to the use of appropriate techniques for objective job evaluation to determine the value of jobs, comparing factors such as skills and qualifications, effort, responsibilities and working conditions.***

The Committee requests the Government to provide information on: (i) any progress made in that regard; (ii) any proactive measures taken to raise awareness of the principle of "equal remuneration for men and women for work of equal value" among workers, employers and their organizations, as well as among law enforcement officials; and (iii) the number, nature and outcome of any cases of pay inequality between men and women dealt with by the labour inspectors, the courts or any other competent authority.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

The Committee notes with ***deep concern*** that the Government's report, which has been due since 2018, has not been received. In light of the urgent appeal that it made to the Government in 2021, the Committee is proceeding with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 1 to 3 of the Convention. Protection against discrimination. Legislation. For many years, the Committee has been emphasizing the shortcomings of the Labour Code and the General Civil Service Regulations regarding the protection of workers against discrimination, as these texts do not cover all of the grounds of discrimination and all of the aspects of employment and occupation set out in the Convention. The Committee notes the adoption of the new Constitution on 25 October 2015, articles 15 and 17 of which provide, respectively, that "no one shall be favoured or disadvantaged by reason of their family or ethnic origin, social condition, political, religious, philosophical or other convictions", which therefore reduces the previous list of grounds of discrimination prohibited by the Constitution, and that "women shall have the same rights as men". It observes that the previous Constitution (of 20 January 2002) explicitly prohibited "any discrimination on grounds of origin, social or material situation, racial, ethnic or departmental background, sex, education, language, religion, philosophy or place of residence" and that it also provided that "women shall have the same rights as men". The Committee also notes that a preliminary draft of the Labour Code has been prepared, that it is currently

under examination and that it was sent to the ILO in February 2022. The preliminary draft of the Labour Code sent to the ILO provides that "any discrimination or exclusion based on grounds related to race, colour, sex, trade union membership, religion, ethnic origin, political or mutual opinions, family name, place of residence, state of health or disability, family situation or pregnancy, nationality or social origin, and physical appearance, are prejudicial to the principles of the labour legislation" and that "no employer may therefore make the recruitment of personnel subject to conditions relating to these circumstances". The Committee welcomes these provisions, which extend the list of prohibited grounds of discrimination and therefore constitute real progress in relation to the provisions of the Labour Code that is currently in force. However, it notes certain gaps, such as the absence of a definition and explicit prohibition of discrimination (both direct and indirect), the absence of a reference to discrimination on grounds of "national extraction" (which covers distinctions based on the place of birth and foreign extraction or origin of persons) and of a scope of application of the anti-discriminatory provisions not explicitly covering employment and occupation, as set out in *Article 1(3)* of the Convention.

With reference to the public sector, the Committee recalls that the General Public Service Regulations prohibit any distinction between men and women in relation to their general application and any discrimination on the basis of family situation in relation to access to employment (sections 200 and 201). In this regard, it notes the indication on the website of the Ministry of the Civil Service, Labour and Social Security of the Republic of the Congo that "progress towards a new legal framework for the public service, to take into account the many changes that have transformed the public sphere, is a major concern for the Government". It is also indicated that "a preliminary draft of the Bill issuing the General Public Service Regulations was validated by the National Labour Advisory Commission at its ordinary session on 9 October 2020". ***In light of the above, the Committee urges the Government to ensure that the future Labour Code and General Public Service Regulations, which are currently being revised, contain provisions defining and explicitly prohibiting any direct or indirect discrimination on, as a minimum, the seven grounds enumerated in the Convention (namely, race, colour, sex, religion, political opinion, national extraction and social origin), as well as on any other grounds that the Government considers it appropriate to include, in all aspects of employment and occupation, that is not only in relation to access to vocational training, employment and the various occupations, but also all terms and conditions of employment (working time, remuneration, conditions governing promotion and termination of employment, and so on). The Committee requests the Government to provide information on the progress made in this legislative process and in the adoption of the texts in question and hopes that it will soon be able to report progress. The Government is requested to provide copies of the texts when they have been adopted.***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. The Committee recalls that in its previous report the Government indicated that the preliminary draft of the Bill to amend and supplement certain provisions of the Labour Code contained measures to combat sexual harassment. The Committee notes that, in contrast with the current Labour Code, the preliminary draft of the Labour Code recently provided to the Office contains provisions explicitly prohibiting sexual harassment, which is defined as "repeated remarks or behaviour with a sexual connotation with the real or apparent aim of obtaining an act of a sexual nature, whether for the offender or for another person". The preliminary draft text also provides that employers shall take measures to prevent, inter alia, sexual harassment. The Committee welcomes these provisions, which constitute genuine progress in preventing and combating sexual harassment. However, it observes that these provisions only cover quid pro quo sexual harassment and require "repeated remarks or behaviour", and that the aspect of a hostile working environment is covered by the definition of moral harassment. The Committee considers that these limitations could have the effect of limiting protection against sexual harassment. The Committee also notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) recommends the Congo to continue to "strengthen the efforts of the National Statistical Institute to ensure an effective national system for the collection of data,

disaggregated by age and relationship of the victim with the offender, on gender-based violence and cases of sexual harassment, both in school and at work, against women and girls" (CEDAW/C/COG/CO/7, 14 November 2018, paragraph 27). Lastly, the Committee notes the Government's indication, in its national report to the United Nations Human Rights Council in the context of the universal periodic review, that the provisions of the draft Criminal Code cover, among others, the criminalization of trespass on domestic premises, violations of the confidentiality of correspondence and sexual harassment (A/HRC/WG.6/31/COG/1, 14 September 2018, paragraph 17). ***The Committee requests the Government to ensure that the future Labour Code contains provisions that: (i) define and explicitly prohibit both quid pro quo and hostile, intimidating or offensive working environment sexual harassment; (ii) do not require remarks or behaviour to be repeated to constitute sexual harassment; and (iii) envisage the adoption of prevention measures by employers and protection against reprisals for victims and penalties for offenders. The Committee also requests the Government to: (i) take measures at the national and local levels, in collaboration with workers' and employers' organizations, to prevent and eliminate sexual harassment, such as awareness-raising measures for employers, workers and education personnel, as well as labour inspectors, lawyers and judges; and (ii) establish information and complaint procedures that take into account the sensitive nature of the subject with a view to bringing an end to these practices and enabling victims to assert their rights without losing their jobs.***

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

Costa Rica

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)

Previous comment

The Committee notes the observations of the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP), communicated with the Government report.

Articles 1(b) and 2(2)(a) of the Convention. Equal remuneration for men and women for work of equal value. Legislation. The Committee notes the Government's indication in its report that: (1) Act No. 9677 of 2019 amends Act No. 7142 on promoting social equality for women, and that section 14, as amended, establishes that "[w]omen shall have the right to equal wages to men, in both the private and public sectors, for work of equal value for the same employer, whether it concerns the same position or different positions of equal value, or functions that are equivalent or equivalent to a reasonable degree"; (2) section 167 of the Labour Code and Act No. 9677 are understood to be interrelated and complementary, and the amendment of section 167 of the Labour Code is currently before the Legislative Assembly (draft Act No. 22522) for examination. The Committee notes the observations of the UCCAEP, that the amendment proposed in draft Act No. 22522 could result in legal uncertainty by failing to establish objective parameters for determining whether the tasks and functions performed are of equal value. While welcoming the Government's efforts, the Committee wishes to recall that the principle of the Convention is not limited to comparisons between men and women in the same establishment or enterprise but allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises or for different employers (2012 General Survey on the fundamental Conventions, paragraph 697). ***The Committee requests the Government to take measures to ensure that the principle of equal remuneration for work of equal value allows comparison between work performed for different employers. It further asks the Government to report on: (i) the amendment process for section 167 of the Labour Code; and (ii) how it envisages the process of objective evaluation of jobs in different sectors for the effective application of the principle of the Convention.***

Articles 1–4. Gender pay gap and occupational segregation. The Committee notes the information provided by the Government, that: (1) Costa Rica has joined the Equal Pay International Coalition (EPIC), and within that framework has requested ILO technical assistance to establish a method to measure the pay gap; (2) Act No. 9677 created the Inter-institutional Commission on Wage Equality for Men and Women and provides for the incorporation of the wage equality indicator into the National Statistics and Census Institute labour market studies in order to periodically evaluate the reasons for the wage gap between men and women and establish appropriate measures; (3) the gender perspective will be included in the labour market studies used to define occupational profiles, in order to classify the latter and place them correctly within the structure of the Decree on Minimum Wages; (4) the Wages Council applied additional increments to the minimum wage for women domestic workers, compared with that paid for unskilled workers, reducing the gap between the minimum wage paid to both groups from 31.92 per cent in 2014 to 24.23 per cent in 2022; (5) the Gender Equality Label is still functioning. The Committee also notes the observations of the UCCAEP that the Gender Equality Labels are burdensome, especially for micro, small and medium-sized enterprises. ***The Committee requests the Government to continue providing information on the measures adopted to reduce the pay gap between men and women, and to provide statistical information making possible an evaluation of progress achieved. The Committee also requests information on the specific measures adopted or envisaged to address occupational segregation.***

The Committee recalls that, in its previous observation, it had noted the Government's indication that the National Wage Council had agreed on a tripartite basis to amend the proposed list of minimum wages to incorporate inclusive terminology and a gender focus, without confusing activities with occupations. It observes however that the list of minimum wages for 2022 still maintains gender stereotypes by using the denomination of occupations with gender connotations (for instance, the Spanish terms "cerrajero" (locksmith), "conductor" (driver), "operario en construcción" (construction worker), "limpiador de piscinas" (swimming pool cleaner), "costurera" (tailor), "empleada doméstica" (domestic worker) and "secretaria" (secretary)). ***The Committee therefore once again encourages the Government to amend the denomination of occupations and employment in the list of minimum wages to eliminate gender connotations and use gender-neutral terminology.***

Application in practice. The Committee notes the information provided by the Government on the number of cases of wage discrimination identified by the National Directorate of Labour Inspection (DNI), disaggregated by region and sector. The Government also highlights certain measures to strengthen the capacity of the inspection service, such as: (1) the elaboration of inspection guidelines including a gender focus; (2) the inclusion of 18 gender-related violations in the Catalogue of Violations; and (3) the training of a team of women inspectors specialized in gender issues. The Committee also notes the draft Act to amend section 69(a) of the Labour Code (file No. 21170), which seeks to place an obligation on employers to report on wage gaps between men and women; and provides penalties for wage discrimination based on gender. ***The Committee requests the Government to provide information on: (i) the manner in which the gender-focused tools adopted address the principle of equal remuneration for men and women for work of equal value; and (ii) the cases identified and complaints received of wage discrimination, as well as any penalties imposed, and remedies granted.***

Côte d'Ivoire

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Previous comment

Articles 1 and 2 of the Convention. Protection against discrimination and promotion of equality. Public service. The Committee recalls that section 14(1) of Act No. 92-570 of 11 September 1992 issuing the

General Public Service Regulations, the reform of which, it noted, was in progress, prohibits any distinction being made between men and women only during recruitment and, under section 14(2), establishes that "specific arrangements may be made, on account of physical fitness requirements or constraints inherent in certain functions … to reserve access [to the public service] for candidates of one or other sex". The Committee notes that, according to the information available on the Government website, the Council of Ministers adopted, on 9 November 2022, a bill issuing general public service regulations. ***The Committee firmly hopes that the Bill issuing general public service regulations will include provisions that: (i) define and prohibit any direct or indirect discrimination made at least on the basis of race, colour, sex, religion, political opinion, national extraction and social origin, at any stage of employment (including in the conditions of employment); and (ii) limit the cases of access reserved for one or the other sex to the conditions inherent to the position in question. The Committee requests the Government to ensure that equality of opportunity and treatment without any distinction on the basis of the aforementioned grounds is one of the specific objectives of the public service reform, and to implement appropriate mechanisms for the prevention of discrimination and the handling of complaints. The Government is requested to provide a copy of the regulations as soon as they enter into force.***

Article 1(1)(a). Private sector. Prohibited grounds of discrimination. Legislation. Further to its previous comments, the Committee welcomes the adoption of Act No. 2019-574 of 26 June 2019 on the Criminal Code, and Act No. 2021-893 of 21 December 2021, which amends, inter alia, sections 226, 227 and 228 of the Criminal Code. Section 226, which also defines racism, xenophobia and tribalism, defines discrimination as "any distinction, exclusion, restriction or preference based on, inter alia, national or ethnic origin, race, colour, descent, sex, marital status, pregnancy, physical appearance, vulnerability resulting from an apparent or known economic situation, surname, place of residence, state of health, disability, morals, age, political, religious or philosophical opinions, or trade union activities, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". Section 227 establishes the penalties applicable in cases of discrimination (a prison sentence of one to two years, and a fine of between 500,000 and 2,000,000 CFA francs (XOF)) and, more specifically, aggravated penalties in cases of discrimination such as: (1) "hindering the normal exercise of any economic activity"; (2) "refusing to hire, sanction or dismiss a person"; (3) "making an offer of employment, an application for an internship or a period of work experience in an enterprise subject to a condition based on one of the [discrimination criteria]"; and (4) "refusing to accept a person for one of the internships provided for by the Labour Code". Lastly, section 228 provides for all possible exceptions (such as measures concerning foreign nationals, positive measures and essential and specific professional requirements).

The Committee observes, however, that criminal provisions are not completely adequate in discrimination cases because, inter alia, they do not always provide a remedy to the victim and are very unlikely to cover all forms of conduct that amount to sexual harassment. It notes that the Government has not amended section 4 of the Labour Code, which lists the grounds that an employer may not take into consideration in making decisions, and which omits colour from that list. ***The Committee requests the Government to, during the next reform of the Labour Code, take measures to incorporate: (i) a reference to colour in section 4; and (ii) an express definition and prohibition of any direct or indirect discrimination at any stage of employment. It also requests the Government to take measures to disseminate the provisions of articles 226, 227 and 228 of the Criminal Code on discrimination to employers, workers and their respective organizations. The Government is requested to provide information on their application in practice in the public and private sector, indicating the conditions of proof applicable, and giving examples of cases of discrimination handled (section 226) and exceptions (section 228) applied by labour inspectors or the courts.***

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

Croatia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1991)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 2 and 3 of the Convention. Gender equality and promotion of women's access to employment and occupation. In its previous comment, the Committee asked the Government to provide information on the measures taken to promote women's access to a wider range of jobs and to give them a wider choice of educational and vocational opportunities. The Committee also asked the Government for details of the number and proportion of female civil servants and civil service employees in posts of responsibility. The Committee notes the Government's reference to the National Employment Promotion Plan (NEEP) 2011–12, which was extended to 2013, and the fact that one of its priorities was the improvement of the employability of women. Measures in this plan included the revision of existing labour market policies in order to foster the labour market participation of women with few qualifications and to provide educational and training programmes adapted to the needs and circumstances of women (especially those with few skills) who are returning to the labour market. The Government indicates that in 2012, 36 per cent of new entrants to educational programmes (for unemployed persons) were women. That year, vocational training was introduced in the form of work-based training (occupational training without commencing employment) which, according to the Government, allows unemployed persons to gain professional experience in the occupational sector for which they were trained. In 2012, 5,456 persons benefited from this (72 per cent were women) and 14,445 new participants joined the programme (71 per cent women). The Committee notes the Government's statement that the Croatian Employment Service (HZZ) implemented a project entitled "Women in the Labour Market" in order to reduce unemployment and contribute to the elimination of all forms of discrimination against women in the labour market, but that it does not specify the time frame for the project. The Government also indicates that, in February 2012, a "Palette of new active employment policy measures for women who are unfavourably positioned on the labour market" was completed. As a result, 50 employees of the HZZ and social welfare centres were trained; a trainer manual was developed; a "Guide for gender-aware policy" and a "Handbook with examples of good practices in implementing active labour market policies for women unfavourably positioned in the labour market" were published; and a short documentary film was produced.

The Committee notes the concerns expressed by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) that the effectiveness of the Office for Gender Equality and the Ombudsperson for Gender Equality is hampered by the inadequacy of the human, technical and financial resources allocated to them (CEDAW/C/HRV/CO/4-5, 28 July 2015, paragraph 12). Noting that the National Gender Equality Policy 2011–15 has expired, the Committee notes the Government's indication in its report that the Office for Gender Equality is in the process of preparing a new policy for the period 2017–20 but that, to date, it has not been adopted. ***The Committee asks the Government to provide information on the adoption of a new National Gender Equality Policy, its content and the period it covers. It also requests information on the results achieved under the National Gender Equality Policy 2011–15. The Government is also asked to indicate during which period the project "Women on the Labour Market" was implemented; to provide information on results achieved and to indicate whether this project, or any similar project, has been renewed. The Committee asks the Government to provide information on the number and proportion of women in the labour force, in both the private and public sectors, if possible by sectors of activity.***

Equality of opportunity and treatment in employment and occupation of the Roma. In its previous comments, the Committee asked the Government to provide information on the measures taken to ensure access to education for Roma children without discrimination; to strengthen its efforts to promote employment opportunities and to ensure equal treatment of Roma people, particularly women, in employment and occupation; and to provide specific information on the impact of the job search assistance provided for the Roma people by the employment service. The Government indicates that the HZZ does not monitor unemployed persons according to their national extraction, but that it is estimated that, out of the 16,975 persons of Roma national minority living in Croatia (according to the census conducted in 2011), 4,499 were registered as unemployed with the HZZ in 2011 and 4,206 in 2017. In the period 2015–17, on

average, 48 per cent of Roma people registered with the HZZ were women. The Committee notes the Government's description of the regular activities of the HZZ to which all registered unemployed persons, including Roma, are invited as well as the activities directed exclusively at these persons, such as group counselling, targeted visits to employers to promote the employment of members of the Roma community, promotion of existing employment and self-employment measures and advice on starting a business. It also notes that the HZZ carries out a number of active labour market policy measures targeting disadvantaged unemployed persons, applying the "Guidelines for the development and implementation of active employment policy in the Republic of Croatia for the period 2015–2017", in order to increase the employment rate of disadvantaged groups, including the Roma. The Committee notes that the Annual Report of the Ombudsperson for 2017 points to discrimination in employment on the grounds of ethnicity, with the Roma national minority being particularly affected. According to the Ombudsperson, employers are still reluctant to employ persons belonging to the Roma community, mainly due to widespread stereotypes about their way of life and work habits. The Committee also notes the adoption of a National Roma Inclusion Strategy (NRIS) 2013–20 identifying employment as one of the four "crucial areas" of a comprehensive strategy. Regarding education, the Committee notes that, according to a report of the European Commission against Racism and Intolerance (ECRI) dated 21 March 2018, despite the introduction of free pre-school education in the year preceding enrolment in primary school which has contributed to an increase in the enrolment rate of Roma children, only 32 per cent of these children aged from 4 to 6 years attended pre-school in 2016 (compared to 72 per cent of the general population). Although the rate of enrolment of Roma children in compulsory primary school is as high as in the general population (95 per cent), this rate drops significantly at secondary school (35 per cent compared to 86 per cent of the general population). According to the ECRI, 77 per cent of young Roma people aged 16–24 years are neither in work nor in education or training. ***The Committee reiterates its requests to the Government to provide information on the measures taken to ensure access to education, including pre-school education for Roma children without discrimination. It also asks the Government to continue providing information on the measures specifically designed to promote employment opportunities and to ensure equal treatment of Roma people, and particularly women, in employment and occupation. The Government is also asked to provide more details on the impact of the job search assistance provided for Roma people by the employment service and to indicate the results achieved through the implementation of the National Roma Inclusion Strategy (NRIS) 2013–20.***

Article 3(d). Access of national minorities to employment under the control of a national authority. ***In the absence of information regarding the implementation of the Civil Service Employment Plan for persons belonging to national minorities for the period 2011–14, the Committee once again asks the Government to provide information on the following:***

- ***the action taken by the Government to promote and ensure access by members of national minorities to public employment in the framework of the Civil Service Employment Plan and the results achieved;***
- ***the progress made in achieving recruitment targets for minorities;***
- ***the current ethnic and gender composition of the civil service; and***
- ***any obstacles encountered in the implementation of the above-mentioned plan.***

Enforcement. The Committee notes that the Annual Report of the Ombud for 2017 underlines the issue of under-reporting of cases of discrimination, and the lack of awareness of the issue and of the available avenues for redress. It also pointed out that the currently available data on the number of court proceedings and their completion, the rate of success of documents and sanctions against the perpetrators of discrimination may be discouraging for victims, with protracted procedures, few claims upheld, low levels of compensation and sentences often below the legally required minimum. The Ombud recommended further improvements in the position of victims and the development of preventive action and better training on discrimination, as well as more dissuasive sentencing. ***The Committee once again asks the Government to provide information on the application in practice of the relevant provisions of the Labour Act, 2014, and the Anti-Discrimination Act, 2008, including the number and nature of cases of discrimination in employment and occupation reported to the Ombud or filed with the courts by the labour inspectorate. The Committee also once again asks the Government to clarify whether labour inspectors conduct any awareness-raising activities aimed at eliminating discrimination in employment and occupation on any of the grounds prohibited by the national legislation. The Committee reiterates its request for the Government to: (i) take the necessary measures to promote public awareness of the anti-discrimination legislation and***

the available remedies; (ii) indicate the measures taken to assist victims in bringing discrimination cases; and (iii) ensure that victims' rights are protected once they have filed a complaint.

Noting the concerns expressed by CEDAW that the effectiveness of the Office for Gender Equality and the Ombud for Gender Equality are hampered by the inadequacy of the human, technical and financial resources allocated to them, the Committee wishes to recall that a lack of human and material resources has an impact on the capacity of these bodies to perform their tasks and exercise their powers effectively. ***The Committee asks the Government to identify the steps taken or envisaged to ensure that these equality bodies have sufficient resources to achieve their full mission.***

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

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

Democratic Republic of the Congo

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

Previous comment

Articles 1 and 2(2)(a) of the Convention. Equal remuneration for work of equal value. Definition of remuneration. Legislation. The Committee recalls that: (1) section 7.8 of the Labour Code provides a general definition of remuneration and excludes certain benefits from it (accommodation and accommodation allowances, transport allowances, "benefits granted exclusively to facilitate workers' performance of their duties", and so on); and (2) section 86 does not reflect the principle of equal remuneration for men and women for work of equal value since it limits wage equality to "equal conditions of work, qualifications and output". The Government reiterates in its report that the exclusion of these benefits from remuneration enables workers to enjoy certain non-taxable emoluments, thereby improving their purchasing power, and that consequently no amendment of section 7.8 of the Labour Code is envisaged. As regards section 86 and the inclusion in the Labour Code of the principle of equal remuneration for men and women for work of equal value, the Committee notes that the Government does not provide any information in this regard. The Committee wishes to point out that, irrespective of the existence of a definition of "remuneration" for tax purposes as provided for in section 7.8, for the purposes of the application of the Convention the definition of the term "remuneration" must be expanded to apply not only to the ordinary, basic or minimum wage or salary but also to "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment". ***The Committee therefore once again requests the Government to take the necessary measures to incorporate in the Labour Code: (i) the principle of equal remuneration for men and women for work of equal value; and (ii) a definition of "remuneration" in accordance with Article 1(a) of the Convention for the purposes of the application of this principle.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

Previous comment

Article 1 of the Convention. Protection of workers against discrimination. Legislation. Public and private sectors. With regard to the legal protection of private sector workers and public officials against discrimination, the Committee notes the Government's indication that there are not yet any plans to incorporate the definition of direct and indirect discrimination in the Labour Code and in Act No. 16/013 of 15 July 2016 issuing the staff regulations for state civil servants. ***In order to expand the legal***

protection of workers in the public and private sectors against discrimination, the Committee requests the Government to take the necessary steps to ensure that an explicit definition of direct and indirect discrimination, based as a minimum on all of the grounds set out in the Convention and covering all aspects of employment and occupation, including recruitment, is incorporated in the Labour Code and in Act No. 16/013 issuing the staff regulations for state civil servants.

Article 1(1)(a). Discrimination on the basis of sex. Sexual harassment. The Committee notes that the Government does not provide any information in response to its request to incorporate provisions relating to hostile work environment sexual harassment in the legislation. ***The Committee therefore once again requests the Government to take steps as soon as possible to expand the legislation by incorporating provisions: (i) defining and prohibiting hostile work environment sexual harassment; and (ii) establishing preventive measures, mechanisms for handling complaints, and appropriate penalties. The Committee also requests the Government to provide information on the application in practice of the existing provisions of the Penal Code and the Ministerial Order of 2005, especially on the number of cases of sexual harassment handled by labour inspectors or the courts and the outcome thereof, and on any awareness-raising campaigns conducted or planned to combat all forms of sexual harassment, in collaboration with the social partners.***

Articles 1(1)(a) and 3(d). Discrimination on the basis of sex. Leave in the civil service. Recalling the Government's indication that the issue of section 30 of Act No. 16/013 – under which a woman public official who has taken maternity leave cannot claim her right to take "recreational leave" (paid annual leave) during the same year – was due to be discussed with the trade unions in a joint committee, the Committee notes the Government's indications that: (1) section 30 has been formulated on a consensual basis by representatives of the Government and representatives of the most representative public service workers' organizations; and (2) women public officials have not submitted any complaints. In this regard, the Committee wishes to emphasize that a restriction of this type constitutes discrimination on the basis of sex, since it amounts in practice to depriving women who have taken maternity leave from taking their paid annual leave during the same year. ***Recalling that the absence of complaints does not signify the absence of discrimination but may reflect the absence of an appropriate legal framework or of access to complaint mechanisms and remedial processes or even fear of reprisals, the Committee once again requests the Government to take the necessary steps to amend section 30 of Act No. 16/013 and bring it fully into line with the provisions of the Convention.***

Discrimination on the basis of race or ethnic origin. Indigenous peoples. The Committee welcomes the Government's indication that the Act to protect and promote the rights of indigenous pygmy peoples was adopted at first reading by the National Assembly on 7 April 2021 and that it will contribute to strengthening measures for the protection of indigenous peoples. The Committee notes that this Act was adopted at second reading by the Senate on 10 June 2022. ***In light of the above, the Committee trusts that the Act to protect and promote the rights of indigenous pygmy peoples will be promulgated and published in the Official Journal in the near future. It requests the Government to indicate the measures taken towards this end and to send a copy of the Act once it has been promulgated. The Committee also requests the Government to take practical steps to: (i) prevent and combat all forms of discrimination in employment and occupation, including with regard to pay, and combat prejudices and stereotypes to which indigenous pygmy peoples are exposed; and (ii) enable members of indigenous peoples to have access to all levels of education, vocational training and employment and to other resources which enable them to carry out their traditional and subsistence activities, including access to credit and land.***

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

Ecuador

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)

Previous comment

Articles 1(b) and 2(2)(a) of the Convention. Equal remuneration for work of equal value. Legislation. With reference to the need to give full expression in law to the principle of equal remuneration for men and women for work of equal *value*, the Government indicates in its report that: (1) it is aware that fundamental changes are needed in the field of labour legislation in general; (2) a national debate has been launched in the context of the National Opportunities Plan 2021–25, with the participation of civil society, workers, employers and academics, with a view to developing consensus proposals for reforms to the current Labour Code, including section 79, to reflect the provisions of the Convention and refer to work of "equal value" or, if not, develop proposed legislation that strengthens the field of labour and also includes non-restrictive precepts; and (3) throughout this process the legislative authorities play a fundamental role in formalizing these aspirations. The Committee welcomes the Government's disposition to take the necessary legislative measures to give effect to the request that it has been making for many years. While noting the difficulties involved in making an amendment to a Labour Code, the Committee recalls that, as recognized by the Government, it is necessary to amend section 79 of the Labour Code as it contains a more restrictive definition than the principle established by the Convention. ***The Committee trusts that the necessary legislative measures, including going beyond the reform of the Labour Code, will be adopted in the near future to give full effect to the principle established in Article 1(b) of the Convention, which refers to work of "equal value".***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1962)

Previous comment

Article 1(1)(a) of the Convention. Grounds of discrimination in employment and occupation. The Committee notes the Government's indication in its report that: (1) it is aware that fundamental changes are required in the field of labour legislation in general; and (2) on the basis of the National Opportunities Plan 2021–2025, a national debate has been launched, with the participation of civil society, workers, employers and academics, to develop consensual proposals for reforms of the current Labour Code, with a more integrated vision which takes into account the content of broader legislative frameworks. ***The Committee expresses the firm hope that the necessary measures will be taken without delay for the inclusion in the legislation of provisions prohibiting both direct and indirect discrimination based on at least all of the grounds envisaged in Article 1(1)(a) of the Convention in relation to access to employment, vocational training and promotion.***

Discrimination on the basis of sex. Sexual harassment. With reference to its previous comments, the Committee notes the information provided by the Government: (1) on the adoption of Ministerial Decision No. MDT-2017-0082 of 11 May 2017, containing the Standard for the Eradication of Labour Discrimination; (2) that the Ministry of Labour is revising Ministerial Decisions Nos MDT-2017-0082 and MDT-2020-244 with a view to including the criteria set out in Article 1(b) of the Violence and Harassment Convention, 2019 (No. 190), which Ecuador ratified in 2021; and (3) on the adoption of the Comprehensive Basic Act to Prevent and Eradicate Violence against Women, of 5 February 2018, which considers sexual harassment to be sexual violence. The Committee also notes the concluding observations of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), in which it calls on the Government to ensure the effective implementation of the provisions

of the Comprehensive Basic Act to Prevent and Eradicate Violence against Women and sections 141 and 142 of the Comprehensive Basic Criminal Code by allocating the necessary resources and providing systematic and recurrent training to judges, prosecutors, the police and other law enforcement officers on their strict enforcement and the strengthening of measures to prevent, combat and punish all forms of gender-based violence against women (CEDAW/C/ECU/CO/10, 24 November 2021, paragraph 22(a)). Accordingly, while noting these legislative and administrative initiatives, the Committee recalls the importance of adopting effective measures to prohibit sexual harassment at work. ***The Committee trusts that the Government will adopt without delay the measures within its power for the integration into the labour legislation, including the Ministerial Decisions referred to above, of a provision which defines and clearly prohibits sexual harassment (see the 2012 General Survey on the fundamental Conventions, paragraphs 789–794).***

Moreover, with regard to complaints of discrimination which include cases of sexual harassment, the Committee notes the Government's indication that between January 2019 and June 2022 the Ministry of Labour or Directorates of Labour and the Public Service and their national delegations received: (1) 144 complaints relating to the private sector; and (2) 420 complaints in the public sector. The Government adds that the significant difference between complaints in the public and private sectors is due to the Ministry of Labour undertaking various initiatives since 2019 to increase visibility of structural inequalities and violations of labour rights which have promoted the effective enjoyment of labour rights. The Committee takes note of these initiatives. ***The Committee requests the Government, in cooperation with workers' and employers' organizations, to continue taking measures to prevent sexual harassment in employment and occupation in both the private and public sectors. The Committee requests the Government to continue providing information on the number of complaints received, and on the number and type of penalties imposed and the compensation granted.***

Lastly, the Committee recalls that for several years the Government has been referring to a possible amendment of the Labour Code to address the issues raised, which has not been adopted in practice. The Committee considers that the legislative measures that it has been calling for to give full effect to the Convention should not remain pending while awaiting a possible revision of the Labour Code.

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

Egypt

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)

Previous comment

Articles 1(b) and 2(2)(a) of the Convention. Work of equal value. Legislation. The Committee had pointed out previously that, while section 35 of the Labour Law No. 12 of 2003 prohibits discrimination in wages based, among other grounds, on sex, and while section 88 is a general non-discrimination provision applying specifically to women workers where their working conditions are similar (or analogous), neither section gives effect to the principle of equal remuneration for men and women for work of equal *value* set out in the Convention. The Committee notes with ***regret*** that the Government's report does not contain any information in this regard and merely refers to its previous replies in which it referred to the Constitution (general prohibition of discrimination), and to pending draft amendments to the Labour Law. The Committee, once again highlights that the concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value as it permits a broad scope of comparison, including, but going beyond, equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value (see the 2012 General Survey on the fundamental Conventions, paragraphs 673–675). ***The Committee once again asks the Government to take the necessary steps to***

amend the relevant provisions of the Labour Law No. 12 of 2003, so as to provide not only for equal remuneration for men and women where their working conditions are similar or analogous but also to ensure equal remuneration for men and women in situations where they perform different work, requiring different skills, qualifications, efforts and responsibilities, and with different working conditions, that is nevertheless of equal value overall. It asks the Government to provide information on any steps taken in this regard.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1960)

Previous comment

Article 1 of the Convention. Protection against discrimination. Legislation. Private sector. With respect to the absence of comprehensive anti-discrimination provisions in the Labour Law No. 12 of 2003, the Committee observes that: (1) there is no definition and no explicit prohibition of discrimination; (2) sections 35 (discrimination in wages), and 120 (employment termination) of the Labour Law, while providing some protection against discrimination, do not cover all discrimination grounds enumerated by the Convention and do not apply to access to employment and all terms and conditions of work, and do not appear to address indirect discrimination; and (3) section 4(b) of the Labour Law explicitly excludes domestic workers from its scope of application. The Committee notes that, in its report, the Government merely refers to the same provisions of the Labour Law and the Constitution of 2014. In this regard, the Committee observes once again that: (1) article 53 of the Constitution provides that all citizens are equal before the law, without discrimination based on religion, belief, sex, origin, race, colour, language, disability, social class, political or geographical affiliation, or for any other reason; (2) the text of the Constitution excludes non-citizens from its application, while the Convention covers both nationals and non-nationals; and (3) the provisions of the Constitution do not appear to be directly invoked in civil proceedings by employees in the private sector. In this regard, the Committee highlights that constitutional provisions, while important, have generally not proven to be sufficient to address specific cases of discrimination in employment and occupation, and that a more detailed legislative framework is required (see 2012 General Survey on the fundamental Conventions, paragraph 851). The Committee further takes note of the draft Law on the Regulation of Domestic Workers' Employment of 2022, drafted with the technical assistance of the ILO, and welcomes the inclusion in section 4 of the prohibition of discrimination on the grounds of "religion, creed, gender, race, ethnicity, colour, language or asylum status or for any other reason resulting in a breach of the equal opportunity principle".

Public service. In the absence of relevant information in the Government's report and in the absence of explicit anti-discrimination provisions in Act No. 47 of 1978 on the Civil Service, the Committee recalls the obligation of ratifying States to ensure and promote the application of the principles of the Convention to all workers, including public servants (see 2012 General Survey on the fundamental Conventions, paragraphs 741 and 742). The Committee notes the information provided by the ILO Decent Work Technical Support Team for North Africa and Country Office for Egypt and Eritrea (DWT/CO–Cairo) that the draft new Labour Law was approved by the Upper House and will be submitted to the Lower House.

Consequently, the Committee urges the Government to take the necessary steps to ensure that the revised Labour Law will include provisions: (i) clearly prohibiting and defining direct and indirect discrimination based on at least the seven grounds listed in the Convention (namely, race, colour, sex, religion, political opinion, social origin and national extraction); (ii) covering all stages of employment, including recruitment, promotion and terms and conditions of employment; and (iii) specifying preventive measures and remedies available for victims and sanctions for authors of discrimination.

The Committee also asks the Government to take steps to include such provisions in the Civil Service Law (Act No. 47 of 1978). Furthermore, the Committee urges the Government to take the necessary measures to expedite the process of adoption of the Law on domestic workers to ensure their protection against discriminatory practices, in accordance with the Convention.

Article 1(1)(a). Discrimination on the basis of sex. Sexual harassment. The Committee recalls the absence in the Labour Law as well as in the Civil Service Law (Act No. 47 of 1978) of provisions protecting workers against sexual harassment and the importance of clearly defining and prohibiting sexual harassment in employment and occupation. It further recalls that, while the provisions of the Penal Code (Act No. 58/1937), as amended by Act No. 50/2014 (sections 306A bis and 306B bis) address certain forms of sexual harassment, they still define sexual harassment too narrowly and do not cover the full range of behaviours that may constitute sexual harassment in employment and occupation. The Committee recalls that criminal provisions are not completely adequate in discrimination cases because, inter alia, they do not always provide a remedy to the victim and are very unlikely to cover all forms of conduct that amount to sexual harassment. Noting that the Government's report is silent on this issue, the Committee notes with ***regret*** the absence of progress in developing an appropriate framework defining, prohibiting and addressing all forms of sexual harassment specifically in employment and occupation, and refers the Government to paragraphs 789 and 792 of its 2012 General Survey on the fundamental Conventions for more details on sexual harassment. The Committee wishes to recall that in its general observation of 2002, it highlights the importance of taking effective measures to prevent and prohibit sexual harassment at work. Such measures should address both: (1) any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job (quid pro quo); and (2) any conduct that creates an intimidating, hostile or humiliating working environment for the recipient (hostile work environment). The Committee further notes that, according to the information provided by the DWT/CO–Cairo, the draft Labour Law contains provisions on sexual harassment. ***In light of the above, the Committee urges the Government to take the opportunity of the revision of the Labour Law to ensure that it includes a clear definition and prohibition of all forms of sexual harassment and establishes mechanisms for prevention and redress, including appropriate sanctions and compensation. It also asks the Government to take steps to include such provisions in the Civil Service Law (Act No. 47 of 1978). Finally, the Committee asks the Government to provide information on any awareness-raising measures taken, in cooperation with the social partners, with a view to preventing and eliminating sexual harassment in employment and occupation both in the public and private sectors.***

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

El Salvador

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2000)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(a) of the Convention. Definition of remuneration. Legislation. In its previous comments, the Committee asked the Government to take the necessary steps to ensure that occasional bonuses, gratuities and reimbursements in kind referred to in section 119 of the Labour Code and which are not included in the definition of wages according to that legislative provision, are included in the concept of remuneration. In this regard, the Committee notes the Government's indication in its report that the National Labour Directorate is drawing up plans to carry out scheduled inspections to check the existence of labour discrimination relating, inter alia, to differences in wages between men and women in the same job or post. The Committee also notes that the Government reiterates that the emoluments provided for in section 119(2) of the Labour Code are often granted by employers outside the employment contract and/or collective

agreement so it is difficult for the labour inspectorate to carry out checks and impose penalties in relation to this provision. In this regard, the Committee wishes to recall that *Article 1(a)* of the Convention sets out a very broad definition of the term "remuneration", which includes not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers' employment". This broad definition of remuneration in the Convention seeks to encompass all forms of recompense that a worker may receive for his or her work, including payments in cash as well as in kind, and also payments made directly or indirectly by the employer to the worker for the work done. Such a broad definition is necessary since if only the basic wage were being compared, much of what can be given a monetary value arising out of the job would not be captured, and such additional components are often considerable, making up increasingly more of the overall earnings package. The words "directly or indirectly" were added to the definition of remuneration in the Convention with a view to ensuring that certain emoluments which were not payable directly by the employer to the worker concerned would be covered. The definition also captures payments or benefits, whether received regularly or only occasionally (see the 2012 General Survey on the fundamental Conventions, paragraphs 686–687). ***The Committee requests the Government to take steps to raise the awareness of the social partners regarding the principle of the Convention and its implications so as to ensure that occasional bonuses, gratuities and reimbursements in kind referred to in section 119(2) of the Labour Code are included in the concept of remuneration, in accordance with the principle established by the Convention.***

Article 1(b). Work of equal value. Legislation. The Committee has been referring for nearly two decades to the need to amend article 38(1) of the Constitution, section 123 of the Labour Code and section 19 of the Standard Work Regulations for the Private Sector so that the principle of equal remuneration for men and women for work of equal value is incorporated. In this regard, the Committee notes with ***regret*** that the Government simply reiterates that the content of article 38 of the Constitution promotes the principle of equal pay for equal work, and refers to the existence of the "Act on equality and the eradication of discrimination against women" and its National Equality Plan. The Committee recalls that the Convention's principle of "equal remuneration for men and women workers for work of equal value" includes, but goes beyond, equal remuneration for "equal", "the same" or "similar" work and also encompasses work of an entirely different nature which is nevertheless of equal value. ***The Committee once again urges the Government to take the necessary steps without delay to give full expression in law to the principle of equal remuneration for men and women for work of equal value, and to provide information on progress made in this regard.***

Article 2. Public sector. The Committee has been referring for more than a decade to section 65 of the Civil Service Act of 1961, which provides that "jobs shall be classified into similar groups in terms of duties, functions and responsibilities … so that they can be assigned the same level of remuneration under similar conditions of work", and which is more restrictive than the principle of equal remuneration for men and women for work of equal value. In its latest comments, the Committee asked the Government to take the necessary steps to incorporate the principle of equal pay for men and women for work of equal value in the Civil Service Act of 1961. The Committee also asked the Government to provide information on the methods used to determine job classifications and pay scales applicable to the public sector. The Government indicates that wages are assigned under the General Budget Act and Wage Act, and that this is done without distinction between men and women. It also states that it issued Directive No. 4025 establishing standards for the classification of posts, and which classifies posts by category and establishes criteria for analysis of the appointed staff. The Government indicates that there are no regulations for establishing salary structures but that each institution has criteria and internal policies for assigning salaries for officials and employees. At the government level, the criteria are: suitability for the post, hierarchical level, and reclassification of posts to be filled according to the duties involved, with the proviso that the salary concerned must not distort the pay scale. The Committee recalls that "historical experience has shown that insistence on factors such as 'equal conditions of work, skill and output' can be used as a pretext for paying women lower wages than men. While factors such as skill, responsibility, effort and working conditions are clearly relevant in determining the value of the jobs, when examining two jobs, the value does not have to be the same with respect to each factor – determining value is about the overall value of the job when all the factors are taken into account" (see the 2012 General Survey on the fundamental Conventions, paragraph 677). ***The Committee once again requests the Government to take the necessary steps to ensure that: (i) the principle of equal remuneration for men and women for work of equal value is incorporated in the Civil Service Act of 1961, and in the General Budget Act and the Wage Act; and (ii) Directive No. 4025***

establishing standards for the classification of posts, each institution's criteria and internal policies, and also government directives, respect the principle set forth in the Convention.

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1995)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(1)(a) of the Convention. Discrimination on the basis of sex. Pregnancy and maternity. In its previous comments, the Committee requested the Government to take the necessary steps to ensure that women workers enjoy effective protection against dismissal and any other acts of discrimination on the grounds of pregnancy or maternity in the public and private sectors, including in the *maquila* (export processing) sector, and to supply information on any developments in this respect. The Committee also requested the Government to continue providing information on the number of complaints filed, indicating the grounds for the complaints, sectors concerned, proceedings instituted, remedies granted and penalties imposed. The Committee notes the Government's indication in its report that, in June 2018, the Labour and Social Welfare Committee of the Legislative Assembly approved an amendment to section 113 of the Labour Code granting a six-month employment guarantee after the worker returns from the four months of maternity leave, in the public, municipal or private sectors, and establishes fines of three to six months of the minimum wage for non-compliance. The Government also indicates that labour inspections are conducted with the objective of providing protection for women against violations of their rights: in 2015, some 117 inspections were conducted in the private sector, and 23 in the *maquila* sector; in 2016, some 131 inspections were conducted in the private sector, and 30 in the *maquila* sector; and, in 2017, a total of 141 inspections were conducted in the private sector and 21 in the *maquila* sector. The Government adds that, 20 pregnant women were reinstated in their posts in 2015; 22 in 2016; 25 in 2017; and one in 2018. The Committee welcomes the reported legislative initiative that would grant greater job security to women up to six months after the period of maternity leave. ***The Committee requests the Government to provide information on the announced reform of section 113 of the Labour Code. In addition, observing that the Government reported the reinstatement of several pregnant women, the Committee requests the Government to provide information on the scope of the protection in law of pregnant women and to continue providing information on the number of complaints alleging discrimination on pregnancy or on maternity, the sectors concerned, violations found, remedies granted and penalties imposed.***

Sexual harassment. In its previous comments, the Committee requested the Government to take the necessary measures without delay to include in the Act on the prevention of work-related risks of 2010 provisions that: (i) define and prohibit both quid pro quo and hostile work environment sexual harassment; (ii) provide access to remedies for all men and women workers, men and women to report such harassment; and (iii) provide for sufficiently dissuasive sanctions and adequate compensation. In this respect, the Committee notes the Government's indication that section 7 of the Act of 2010 defines sexual harassment as a psychosocial risk, and section 29 of the Labour Code prohibits sexual harassment by employers. The Government reports that the labour inspectorate has a procedure to impose fines for acts of this nature, with the possibility of bringing charges against the offender, and a protocol on complaints of sexual and workplace harassment. The Government reports that, in 2015, one inspection was conducted into harassment; none in 2016; and five in 2017. Over the years, the Committee has consistently expressed the view that sexual harassment, as a serious manifestation of sex discrimination and a violation of human rights, is to be addressed within the context of the Convention. Given the gravity and serious repercussions of sexual harassment, the Committee recalls the importance of taking effective measures to prevent and prohibit sexual harassment in employment and occupation (see 2012 General Survey on the fundamental Conventions, paragraph 789). ***While noting the information provided by the Government, the Committee once again requests the Government to take the necessary measures to include in the Act on the prevention of work-related risks of 2010 provisions that: (i) define and prohibit both quid pro quo and hostile work environment sexual harassment; (ii) provide access to remedies for all men and women workers; and***

(iii) provide for sufficiently dissuasive sanctions and adequate compensation. The Committee also requests the Government to continue sending information on: (i) any measures adopted to prevent sexual harassment and to raise awareness among workers and employers; and (ii) the number of complaints concerning sexual harassment in employment and occupation received, the penalties imposed and compensation awarded.

Article 1(1)(b). Real or perceived HIV status. In its previous comments, the Committee noted that Decree No. 611 of 2005 reforming the Labour Code introduced a new section 30, which prohibits discrimination against workers on the basis of their HIV status and also prohibits compulsory HIV testing as a condition for acquiring or retaining employment. However, the Committee noted that the Public Service Act of 1961 provides that any person who suffers from an infectious/contagious disease may not enter the administrative career service. In this regard the Government indicates that, in December 2016, a Plan on monitoring the labour rights of people with HIV was launched with the slogan "Inspection with Inclusion". The Government reports that two inspections were conducted in this context in 2016 and none in 2015 and 2017. ***The Committee notes this information and requests the Government to take the necessary steps to amend the Public Service Act of 1961 in order to provide adequate protection for all workers in the public sector against discrimination on the basis of real or perceived HIV status, with such protection including the prohibition of compulsory HIV testing as a condition for acquiring or retaining employment. The Committee requests the Government to report the measures adopted to implement the "Inspection with Inclusion" plan and the results achieved.***

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

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

Fiji

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1(1) of the Convention. Protection against discrimination. Public service. Legislation. The Committee recalls that the Public Service Act of 1999 does not contain any provision linked to discrimination. In its previous comment, it noted that, following the adoption of the Public Service (Amendment) Decree, No. 36 of 2011, section 10B(2) and section 10C prohibit discrimination in all aspects of employment, based on ethnicity, colour, gender, religion, national extraction and social origin, but omitting political opinion. The Committee asked the Government to: (1) take the necessary measures to include political opinion among the prohibited grounds of discrimination listed in the Public Service (Amendment) Decree; and (2) indicate how public service employees and applicants for public service employment are protected against discrimination based on political opinion in practice. The Committee notes the Government's indication in its report that Decree No. 36 of 2011 was amended by the Employment Relations (Amendment) Act, 2016, and that Parts 2A and 2B, including sections 10B and 10C of the Public Service (Amendment) Decree, have been repealed. The Amendment Act also amended the definition of "workers" to include contractual civil servants under the Employment Relations Act 2007 (ERA).

The Committee recalls that section 6(2) of the ERA prohibits discrimination on the grounds listed in the Convention, including the ground of political opinion. It also notes that Part I (interpretation), section 4, of the ERA provides that a worker is employed under contract of service, and that the concept of employer includes the Government, other Government entities or local authorities and a statutory authority. The Committee observes that the Public Service Act, 1999, as well as Decree No. 36 of 2011, cover employees in the public sector who are civil servants (career public servants) and that workers in the public sector who are employed under a contract of service are covered by the ERA. In that regard, it stresses once again that sections 10B(2) and 10C of Decree No. 36 of 2011 do not prohibit discrimination on the ground of political opinion. It recalls once again that, where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention. ***The Committee once again asks the Government to take the necessary measures to ensure that***

political opinion is included among the prohibited grounds of discrimination listed in the Public Service Act 1999. The Committee also requests the Government to indicate how in the meantime public service employees and applicants to public service employment are protected against discrimination based on political opinion in practice.

Enforcement and access to justice. The Committee recalls that the Conference Committee on the Application of Standards (CAS) (International Labour Conference, 100th Session, 2011) noted that section 266 of Decree No. 21 of 2011 prohibits any action, proceeding, claim or grievance "which purports to or purported to challenge or involves the Government (...) any Minister or the Public Service Commission (...) which has been brought by virtue of or under the [Employment Relations Act]". The CAS urged the Government to ensure that government employees have access to competent judicial bodies to claim their rights and adequate remedies. Consequently, the Committee asked the Government to provide detailed information on the procedure and means of redress available to workers excluded from the scope of the ERA alleging discrimination in employment and occupation which purport to challenge or involve public authorities. The Government indicates that the Employment Relations (Amendment) Act 2016 repealed the Essential National Industries Decree 2011 (ENI) to allow civil servants and workers in statutory authorities and commercial banks to lodge their claims either through their trade unions as a trade dispute or as individual grievances. The Government adds that any worker, including civil servants, may file or lodge their employment grievance with the Mediation Services of the Ministry of Employment, Productivity and Industrial Relations, including for any matters pertaining to being discriminated against by their employer. According to the Government, in 2019, the Mediation Services received 22 grievances relating to discrimination, of which 13 were individual grievances reported by workers themselves and nine were reported by unions.

The Committee notes that, with regard to workers in the private sector, the ERA provides for a range of avenues of redress, such as the mediation services, the employment relations tribunal and the employment relations court. Regarding civil servants, the Public Service Regulations (L.N. 48 of 1999) provide in paragraph 28 that a chief executive must put in place, in his or her Ministry or department, appropriate procedures for employees to seek review of action that they consider adversely affects their employment. The Committee notes that section 266 of Decree No. 21 of 2011 may apply to both workers in the private and public sectors, as it prohibits any action, proceeding, claim or grievance "which purports to or purported to challenge or involves the Government (...) any Minister or the Public Service Commission".

The Committee further notes that the National Commission on Human Rights and Anti-Discrimination (CHRAD), established in 2009 under article 45 of the Constitution, can receive and investigate complaints of discrimination and seek to resolve them through conciliation. Where complaints remain unresolved, the CHRAD can refer these to a legal process. ***The Committee asks the Government to: (i) take the necessary measures to ensure that workers who purport to challenge the public authorities, in case of discrimination in employment or occupation have a formal avenue of redress; (ii) provide information on the application in practice of section 266 of the ERA; and to provide information on the anti-discrimination activities of the National Commission on Human Rights and Anti-Discrimination in employment and occupation; and (iii) report any cases brought before it and their outcome.***

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

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

Finland

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)

Previous comment

The Committee notes the observations of the Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA) and the Finnish Confederation of Professionals (STTK) (hereinafter referred to as "the trade unions"), and of the

Federation of Finnish Enterprises (SY), the Confederation of Finnish Industries (EK) and the Local Government and County Employers (KT), attached to the Government's report.

Articles 1–3 of the Convention. Gender pay gap. Scope of comparison. The Committee notes the Government's acknowledgement, in its report, that the gender pay gap has decreased very slowly, from 17.2 per cent in 2010, to 16.8 per cent in 2015 to 15.8 per cent in 2020. The Government explains that equal pay is promoted through legislation, the tripartite Equal Pay Programme (2020–23) and government research and development projects. It recognizes that previous Equal Pay Programmes (2007–10, 2010–15 and 2016–19) have not been very successful in reaching their main goal. The current Programme (2020–23) promotes gender impact assessments of collective agreements and pay systems that support equal pay and pay awareness, supports the reconciliation of work and family life and dismantles the gendered segregation of the labour market. The Committee notes that, on 1 September 2022, the Ministry of Social Affairs and Health launched an overall assessment of the equal pay measures introduced, including the tripartite Equal Pay Programme 2020–23. It also notes the Government's statement that one solution it is currently exploring is pay transparency. A tripartite working group, appointed under the auspices of the Ministry of Social Affairs and Health, prepared amendments to the Act on Equality between Women and Men in order to increase pay transparency in all sectors, the objective being to prevent gender-based pay discrimination and to promote equal pay. The Government indicates that, unfortunately, this process was interrupted due to diverging views on the proposal among government parties. It refers to ongoing initiatives on pay transparency at the European Union level. It also points out that the most challenging obstacle in combating the gender pay gap is the gender segregation of the labour market: in 2019, the proportion of workers in "even occupations" (meaning occupations with 40 to 59 per cent male or female wage earners) was only 10.1 per cent (it was 13.1 per cent in 2010). It cites two projects on the subject: (i) "Dismantling segregation – Tools for a more equal working life (2021–2023)", in the context of which a policy brief and toolbox for decision-makers on the more permanent methods of dismantling occupational segregation will be prepared; and (ii) "Working careers and occupational segregation behind the gender pay gap (2022–2024)", a research project which aims to map differences in careers and career paths and their effect on pay differences, with a view to laying the foundation for developing careers and occupational structures on a more equal basis. The Committee notes the Government's indication that there is considerable variation in the scope and quality of equality plans and pay surveys carried out in the public and private sectors. In most cases, comparisons are made between employees doing the same work. Comparisons between employees covered by different collective agreements are rare. The Committee also notes the Government's indication that an extensive research and development project, entitled "Work of Equal Value 2021–2022" is being carried out, which examines "how the assessment of demands of the work should be standardized between the different sectors and occupations", so as to better recognize the demands of female-dominated sectors and occupations, with a view to developing payroll systems that could better support equal pay for work of equal value.

The Committee notes that, in their observations, the social partners all agree that gender segregation of the Finnish labour market is a serious issue and mention the unequal uptake of family leave as a reason for the gender pay gap. The trade unions deeply regret the suspension of the process towards amending the Act on Equality between Women and Men and consider that increasing wage transparency and improving access to pay information in cases of suspected discrimination would help to ensure pay equity. SY considers that the main reasons for the gender wage gap are the fact that women and men work in different industries and that the annual working hours of men are higher than those of women; and it is of the view that the gap can only be reduced by influencing educational choices and attitudes. EK considers that pay discrimination is not a significant problem in Finland and that the principle of "equal pay (equal pay for equal work)" is well implemented. According to EK, the issue of the pay gap is different from the principle of equal pay or pay discrimination and increasing pay transparency or pay openness would have no effect on promoting equal pay; it is rather necessary "to

increase the attractiveness of different sectors and improve the position of women in the labour market, [and to ensure] a more even distribution of family leave and adequate day care services for children".

The Committee notes that, in its concluding observations, the United Nations Committee on Economic, Social and Cultural Rights noted that the implementation of the Equal Pay Programme without binding measures would not significantly accelerate the reduction of the gender wage gap. It recommended that the Government establish time-bound targets for closing the gender pay gap and legislate on remuneration transparency, with a view to making it easier to challenge unequal pay (E/C.12/FIN/CO/7, 30 March 2021, paragraphs 20–21). The Committee also notes that according to the national Action Plan for Gender Equality 2020–23: (i) the gender pay gap will be narrowed during that period by increasing pay transparency through legislation, by Government-led research and development projects and by joint efforts undertaken by the Government and the labour market organizations; and (b) Finland is in favour of promoting equal pay by increasing pay transparency through EU legislation and considers it important to clarify the concept of "equal pay for work of equal value".

Regarding the gender segregation of the labour market, the Committee refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). As for the gender pay gap and the scope of comparison taken into account, the Committee notes that the principle of equal remuneration for work of equal *value* seems to be understood and applied in a very narrow way in the labour market in Finland. It wishes to reiterate that comparing the relative value of jobs in occupations which may involve different types of skills, responsibilities, efforts or working conditions, but which are nevertheless of equal *value* overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the value of work performed by women and men free from gender bias (see the 2012 General Survey on the fundamental Conventions, paragraph 675). In order to address gender pay discrimination in a gender-segregated labour market where women and men are concentrated in different trades, industries and sectors, the reach of comparison between jobs performed by women and men should be as wide as possible, extending beyond occupational categories, collective agreements and enterprises. ***The Committee encourages the Government to take steps towards clarifying the meaning of "equal remuneration for work of equal value" and ensuring that a wide scope of comparison is being applied in all activities which affect the application of the principle of equal remuneration for men and women for work of equal value, including equal pay surveys. It also asks the Government to provide information on whether and how it assesses the "equal value" of public employment jobs. The Committee requests the Government to continue providing information on the evolution of the gender pay gap and any measures aimed at its reduction, especially how the issue of occupational gender segregation is being addressed. It also asks the Government to provide information on the results of the overall assessment of the equal pay measures launched by the Ministry of Social Affairs and Health on 1 September 2022, as well as on the concrete outputs produced by the following projects: "Work of Equal Value 2021–2022", "Dismantling segregation – Tools for a more equal working life (2021–2023)", and "Working careers and occupational segregation behind the gender pay gap (2022–2024)".***

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

Lebanon

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)

Previous comment

The Committee notes with ***deep concern*** that the Government's report, which has been due since 2019, has not been received. In light of its urgent appeal launched to the Government in 2021, the

Committee proceeds to the examination of the application of the Convention on the basis of the information at its disposal.

Articles 1–4 of the Convention. Evaluating the gender pay gap and identifying its underlying causes. The Committee notes the statistical data contained in the report *The Life of Women and Men in Lebanon: A Statistical Portrait*, published in 2021 in partnership between the United Nations Development Programme (UNDP) and the Central Administration for Statistics of Lebanon. It notes that, during the period 2018–19: (1) the overall pay gap between men and women was 3.6 per cent in favour of women, as workers who are not Lebanese nationals earn substantially less than nationals (under half as much) and the majority of those are men; and (2) when the data are disaggregated by nationality, for Lebanese nationals, the monthly wage gap between men and women was 6.5 per cent. The report also indicates that, over the same period 2018–19: (1) the earnings gap persisted in all professions; (2) the wage gap between men and women (in favour of men) was higher for operators of equipment and machinery and assembly workers (women earn 30 per cent less than men) and for professionals and technicians (women earn around 20 per cent less than men); and (3) the lowest wage gap (in favour of men) was for office employees (3.8 per cent) and craftworkers and industrial workers (4.4 per cent). ***The Committee requests the Government to take measures to: (i) continue gathering, compiling and analysing data on the remuneration of men and women with a view to identifying pay gaps, where possible, disaggregated by professional category and/or economic sector, including the public sector; and (ii) identify and begin addressing the underlying causes of these gaps. The Committee requests the Government to provide data and information on the conclusions of any studies undertaken on this subject.***

Articles 1(b) and 2(2)(a). Equal remuneration for men and women for work of equal value. Legislation. The Committee notes the information provided by the ILO Regional Office for the Arab States in Beirut, according to which a draft new Labour Code had been finalized by the Ministry of Labour at the beginning of 2021, forwarded to the Council of Ministers and referred back to the Minister following the formation of the new Government in September 2021. The Committee notes that as a consequence, the reform of the Labour Code is still ongoing. It recalls that section 26 of the Labour Code of 1946, as amended in 2000, provides that "it is prohibited for the employer to discriminate between men and women who work in relation to … the rate of the wage, employment, promotion, advancement …", but that it does not give expression to the concept of "work of equal value" which is at the heart of the Convention. The Committee further notes that, during the examination of the report of Lebanon by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), the Government representative indicated that the country was endeavouring to ensure equal pay for men and women workers, and various ministries were working, in cooperation with the National Observatory for Gender Equality, to facilitate all the reforms through the collection and analysis of information with a view to preparing recommendations aimed at parity and in support of parliamentary decisions (press release, Office of the United Nations High Commissioner for Human Rights, 18 February 2022). ***Recalling that it has been drawing the Government's attention to this matter for several decades, and although aware of the difficult situation prevailing in the country, the Committee urges the Government to take measures for the inclusion in the future Labour Code of provisions establishing equal remuneration for men and women for work of equal value and specifying how equal value is measured (objective job evaluation).***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)

Previous comment

The Committee notes with ***deep concern*** that the Government's report, due since 2019, has not been received. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 1 of the Convention. Protection of workers against discrimination. Legislation. The Committee recalls that section 26 of the Labour Code of 1946, as amended, prohibits employers from discriminating between men and women workers only in relation to certain aspects of employment: the type of work, the level of the wage, employment, promotion, advancement, vocational aptitude and dress. It notes with ***regret*** that this serious situation has not changed despite the fact that it has been drawing the Government's attention to this matter for over 20 years and has been requesting it to introduce into the Labour Code a definition and a general prohibition of direct and indirect discrimination on at least all of the grounds set out in *Article 1(1)(a)* of the Convention (namely, race, colour, sex, religion, political opinion, national extraction and social origin) and covering all aspects of employment and occupation within the meaning of *Article 1(3)* (namely, access to vocational training, access to employment and to particular occupations, and terms and conditions of employment). The Committee notes the information communicated by the ILO Regional Office for the Arab States in Beirut, according to which the draft text of the new Labour Code was finalized by the Ministry of Labour at the beginning of 2021 and then communicated to the Council of Ministers and referred to the Ministry when the new Government was formed in September 2021. The Committee notes that the reform of the Labour Code is therefore still under way and has not been completed. ***While recognizing the difficult situation prevailing in the country, the Committee once again urges the Government to: (i) take the necessary measures to ensure that the new Labour Code contains provisions defining and prohibiting direct and indirect discrimination on at least all of the grounds set out in Article 1(1)(a) of the Convention, and covering all aspects of employment and occupation, as defined in Article 1(3), and particularly access to vocational training, and access to employment and to particular occupations; and (ii) provide detailed information on any progress achieved with a view to adopting the draft Labour Code. In the absence of full legislative protection against discrimination, the Committee also once again requests the Government to adopt specific measures to ensure in practice the protection of all workers, including domestic migrant workers and non-nationals, in all sectors of the economy, against discrimination on grounds of race, colour, religion, political opinion, national extraction and social origin in employment and occupation, including awareness-raising and prevention measures for workers, employers and their respective organizations (national campaigns, tripartite seminars and so on).***

Article 1(1)(a). Discrimination on the basis of sex. Sexual harassment. While reiterating its concern at the absence of a Government report, the Committee takes due note of the following positive development: the adoption on 21 December 2020 of Act No. 205 on the criminalization of sexual harassment and the rehabilitation of victims, which covers all fields, including the workplace, public institutions and education establishments. The Committee notes that the Act defines sexual harassment as "any repeated behaviour with a sexual connotation, which is extraordinary and unwanted by the victim, and which prejudices the victim's physical safety, private life and feelings, whether it consists of words, acts, gestures, suggestions or insinuations with a sexual or pornographic connotation", including by electronic means. Sexual harassment also includes "any act or initiative, whether or not repeated, which makes use of means of pressure that are psychological, moral, material or have a racial connotation with a view to obtaining a favour of a sexual nature for the perpetrator or for another

person". The Act provides for heavier penalties, particularly in the case of sexual harassment in the context of a work relationship, and protection against reprisals for victims and witnesses, particularly in terms of remuneration, promotion, the renewal of the employment contract and the prohibition of disciplinary penalties. It also specifies that criminal prosecution does not prevent the imposition of disciplinary penalties on the perpetrator, and provides for the creation of a special fund to assist victims. While observing that the Act is a fundamental first step in combating sexual harassment in employment and occupation, the Committee notes that: (1) criminal provisions are not completely adequate in discrimination cases because, inter alia, they do not always provide a remedy to the victim and are very unlikely to cover all forms of conduct that amount to sexual harassment; (2) the Act is not specific to the fields of employment and occupation, in which sexual harassment may also have a significant impact on the economic situation of workers, including on their retention in employment and on their professional careers; (3) it does not explicitly cover one of the two forms of sexual harassment, namely, the creation of a hostile work environment; and (4) it does not contain any measures relating to prevention, particularly the evaluation of the risk of harassment, nor to information and training for workers, nor even to internal procedures for dealing with cases of sexual harassment, such as through the establishment of a complaint, investigation and penalty mechanism. The Committee also recalls that the sole section of the current Labour Code that could be applied in cases of sexual harassment is a provision that authorizes employees to leave their jobs without notice when "the employer or his representative commits an offence against the morals of the worker" (section 75(3)). The Committee observes that this provision does not afford sufficient protection for victims of sexual harassment as, in practice, it has a punitive effect on workers (who lose their employment) and could even dissuade them from making complaints. ***While noting the legal framework established by Act No. 205 of 2020 for the criminalization of sexual harassment and the rehabilitation of victims, and in light of the above, the Committee requests the Government to take measures to amend the Act accordingly and to include in the future Labour Code provisions: (i) defining and prohibiting sexual harassment in all its forms (quid pro quo and hostile environment) without requiring the acts to be repeated, and explicitly prohibiting it in relation to all aspects of employment, including recruitment; (ii) covering all workers, including domestic workers, in all economic sectors; and (iii) envisaging the adoption and implementation of prevention measures and complaint, investigation and penalty mechanisms at the enterprise level. In the meantime, the Committee also requests the Government to take measures for the dissemination of the provisions of Act No. 205 of 2020 to workers, employers and their respective organizations, as well as those responsible for their promotion and enforcement (labour inspectors, judges and so on). It also requests the Government to provide information on the number, nature and outcome of complaints lodged under Act No. 205 of 2020 and on any interpretation by the courts of the legal definition of sexual harassment, and particularly the term "extraordinary".***

Discrimination based on sex, race, colour, national extraction and social origin. Multiple discrimination. Foreign domestic workers. For nearly 20 years, the Committee has been examining the measures taken by the Government to address the lack of legal protection for domestic workers, most of whom are foreign women, since these workers are excluded from the scope of the Labour Code and are particularly vulnerable to abuse and discrimination, including harassment, on the basis of sex and other grounds, such as race, colour and ethnic origin. In this regard, the Committee also refers to its comments under the Forced Labour Convention, 1930 (No. 29). It recalls that in 2016, in its concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) noted with concern that "abuse and exploitation of migrant domestic workers continues to occur" despite the measures taken by the State party. It observes that, in its concluding observations in 2021, the CERD continues to express concern about "the sponsorship system *(kafala)*, which results in employers exercising excessive control over migrant domestic workers, rendering them vulnerable to abusive working conditions, in particular non-payment of wages, long working hours, confiscation of their passports, and psychological and physical abuse including sexual violence, treatment that has

intensified during the COVID-19 pandemic". It reiterated its "concern that domestic workers, who are mainly women from Africa and Asia, remain excluded from the protection guaranteed by the Labour Code" (section 5) (CERD/C/LBN/CO/23-24, 1 September 2021, paragraph 24). With regard to the access of migrant domestic workers to justice, the Committee refers to the report *The Labyrinth of justice: Migrant domestic workers before Lebanon's courts*, prepared in 2020 by the non-governmental organization Legal Agenda, in collaboration with the ILO Regional Office for the Arab States. It also notes the information provided to CERD by the Government in its national report concerning the establishment of a central office and a hotline for receiving complaints from migrant domestic workers, and the measures to raise the awareness of these workers of their rights under the labour legislation (CERD/C/LBN/23-24, 29 January 2019, paragraph 200). In this respect, it notes that, in its concluding observations, the CERD indicates that it remains deeply concerned by: (1) the fact that, despite those efforts, many foreign workers, notably domestic workers and in particular women, are unaware of the remedies available to them in the event of a violation of their rights; (2) the existence of obstacles that may hinder foreign workers' access to justice, for example reluctance to file complaints for fear of negative repercussions, such as expulsion from the country; and (3) the fact that perpetrators of violence go unpunished. The Committee also notes that the CERD recommended Lebanon to: (1) take measures to remove barriers to access to justice for foreign workers, notably domestic workers and in particular women; (2) ensure that foreign workers can submit complaints regarding abusive labour practices to independent and effective mechanisms, without fear of suffering negative repercussions; (3) enforce existing protective laws and policies for migrant workers and ensure that all reported cases of abuse against them are investigated and, where appropriate, prosecuted, and that perpetrators are punished appropriately and victims provided with reparation; and (4) ensure that labour inspectors are empowered to examine the working conditions of migrant domestic workers in the homes of private employers (CERD/C/LBN/CO/23-24, paragraphs 26 and 27).

With regard more specifically to the *kafala* (sponsorship) system, the Committee notes the information provided by the Government to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in response to a list of issues and questions in relation to its sixth periodic report (CEDAW/C/LBN/RQ/6, 18 February 2021). It notes that, following a decision taken in February 2021 by the General Directorate of General Security, employers are prohibited from filing criminal "flight" complaints against domestic workers when they leave their sponsors' homes. The criminal procedure has been replaced by an administrative procedure under which the employer may now file an administrative notification form at a General Security station reporting that the domestic worker has left the employer's home, thereby waiving any civil responsibility arising from the employment relationship. Moreover, the General Directorate of General Security is also prohibited from using in all official records terms such as "flee" or "escape", which have been replaced by the expression "left the workplace" (CEDAW/C/LBN/RQ/6, page 20).

Recalling its previous comments and noting with deep concern that the situation remains unchanged, and that it has even deteriorated due to the economic and health crisis suffered by the country, the Committee urges the Government to:

- ***(i) take the necessary measures, in cooperation with the social partners, to ensure that migrant domestic workers benefit from full and effective protection, in law and practice, against direct and indirect discrimination on all of the grounds set out in the Convention, including against sexual harassment, and in all areas of their employment, either through the adoption of a specific comprehensive Bill or in the framework of the future Labour Code;***
- ***(ii) in this context, consider the possibility of including domestic workers in the scope of application of the Labour Code through an amendment to section 7;***
- ***(iii) ensure that any new rule envisaged to regulate the right of migrant domestic workers to change employer does not in any event impose conditions or restrictions that are likely to***

increase their dependence on their employers and thereby increase their vulnerability to potential abuse and discriminatory practices;

(iv) provide information on the application and compliance with the decision of February 2021 of the General Directorate of General Security prohibiting employers from filing criminal complaints for "flight"; and

(v) improve the procedure for receiving and dealing with complaints by migrant domestic workers, including the hotline and, more generally, ensure that they have effective access to justice.

Model employment contract. In the absence of a report from the Government, the Committee notes the information concerning women migrant domestic workers provided by the Government in its report to the CEDAW in response to the list of issues and questions in relation to its sixth periodic report (CEDAW/C/LBN/RQ/6, 11 February 2021, page 20). It notes in particular the Government's indication that: (1) on 8 September 2020, the Minister of Labour issued a decree on the standard employment contract of domestic workers, although it has not brought an end to the *kafala* (sponsorship) system; and (2) "[o]n 21 September 2020, attorneys for the Syndicate of Owners of Domestic Worker Recruitment Agencies filed a lawsuit against the Lebanese State and the Ministry of Labour (case No. 24340/2020) before the State Shura Council, which decided to suspend implementation of the minister's decision because of fundamental irregularities" (CEDAW/C/LBN/RQ/6, p. 20). The Committee notes that, during the examination by CEDAW of the report of Lebanon in February 2022, the Government representative indicated, with reference to the model employment contract, that it was intended to achieve uniform working conditions for women domestic workers and provide them with greater protection. She added that the contract was also intended to combat the *kafala* system and, even if its implementation had been suspended, the project had not been abandoned and Lebanon was continuing to work with its international partners, including the ILO (press release of the Office of the United Nations High Commissioner for Human Rights of 18 February 2022). Lastly, the Committee notes the concluding observations of the CEDAW, in which it recommends Lebanon to: (1) amend the Labour Code to extend its protection to domestic workers; (2) strengthen labour inspections to monitor the working conditions of domestic workers effectively and to investigate and punish abuses; (3) ensure that migrant domestic workers have explicit, written terms of employment outlining their specific duties, hours, remuneration, days of rest and other conditions of work, in contracts that are free, fair and fully consented to, together with information on access to complaint mechanisms; and (4) ensure that women migrant domestic workers have adequate access to justice (CEDAW/C/LBN/CO/6, 1 March 2022, paragraph 50). The Committee recalls that the model employment contract on the rights and duties of men and women migrant workers and their employers was prepared in collaboration with the ILO Regional Office for the Arab States in Beirut and that, as the reform of the Labour Code has still not been completed, these workers are still excluded from its scope of application and are not therefore covered by its protective provisions. The Committee notes that, within the framework of its collaboration with the Government, the ILO Office in Beirut reactivated in February 2022 the working group on migrant domestic workers, established with local and international human rights organizations and with the participation of the International Organisation for Migration (IOM) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The Committee further notes a drastic reduction in the number of migrant domestic workers in the country over the past two years and that, according to the data provided by the Ministry of Labour to the ILO Regional Office, at the end of 2021, only 9,762 new migrant domestic workers had been recruited (compared with 33,075 at the end of 2019 and 67,793 at the end of 2017), and that the total number of such workers with a work permit was 65,825 in 2021 (compared with 184,196 in 2019 and 164,884 in 2017). ***In view of the serious consequences of the COVID-19 pandemic on migrant domestic workers, and particularly on women migrant domestic workers, and the increased risk of vulnerability to discrimination and exploitation that they have faced, and still are facing, the***

Committee requests the Government to take measures without delay to ensure that the model employment contract for men and women migrant domestic workers:

(i) is adopted and implemented as soon as possible;

(ii) establishes decent employment, labour and living conditions, in particular in relation to wages, hours of work, termination of employment, the right of workers to remove themselves in the event of danger, and freedom of movement, the prohibition for employers to retain their identity and residence documents, and their accommodation conditions;

(iii) contains no provisions liable to place domestic workers in a situation of vulnerability in relation to discrimination, exploitation and abuse.

Article 2. Equality of opportunity and treatment for men and women. Occupational segregation. Public service. The Committee recalls that it highlighted substantial gender disparities among higher categories of public employees and requested the Government to examine the causes and actively promote the access of women to a greater number of positions at all levels, including positions of responsibility. It also recalls that it emphasized the low proportion of women in the highest category of the public service (25.4 per cent in 2016). The Committee notes the Government's indication, in its report to the CEDAW, that: (1) the Basil Fleihan Institute of Finance and Economics of the Ministry of Finance offers training opportunities on an equal and ongoing basis to support career paths and trailblazing roles for women, particularly in economic and financial positions and departments; and (2) the proportion of women taking part in these training courses increased from 41.19 per cent in 2017 to 50.6 per cent in 2018 and to 58.7 per cent in 2019 (CEDAW/C/LBN/6, 27 July 2020, paragraph 98). ***In the absence of more recent information in this regard, the Committee is bound to reiterate its request to the Government to examine the reasons why women have such low representation among the highest category of public employees and, based on its conclusions, to take measures to eliminate obstacles to gender equality and actively promote the access of women to a greater number of positions at all levels, and particularly higher levels.***

Enforcement. ***In the absence of recent information on this subject, the Committee once again requests the Government to:***

(i) adopt the necessary training and awareness-raising measures to enable labour inspectors to better identify discriminatory practices against workers, including migrant workers, particularly with regard to recruitment (for example by examining vacancies, or the selection procedures used);

(ii) ensure that complaints procedures are established that are accessible to workers and based on the principles of confidentiality and protection against reprisals; and

(iii) provide information on any cases of discrimination detected by the labour inspection services or brought to the attention of the Ministry of Labour or referred to the courts.

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

Madagascar

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)

Previous comment

The Committee notes the observations of the Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE), received on 1 September 2022.

Articles 1(b) and 2(2)(a) of the Convention. Equal remuneration for work of equal value. Legislation. For several years, the Committee has been emphasizing that the provisions of section 53 of the Labour Code are more restrictive than those of the Convention, as they limit the application of the principle of equal

remuneration for work of equal value to persons engaged in the same job and with the same vocational qualifications. The Committee notes that a draft text to revise the Labour Code has been prepared by the Government and was forwarded to the Office in February 2022 for technical comments. The Office suggested that section 53(1) of the Labour Code should be reworded as follows: "[For equal work or work performed under equal conditions, and for work of a different nature but nevertheless of equal value], wages shall be equal for all workers irrespective of their origin, colour, national extraction, sex, age, trade union membership, opinion or status under the conditions set out in the present Chapter". The Committee also notes the Government's indication in its report that the amendment of section 53 of the Labour Code was discussed with the social partners during a tripartite consultation held in March 2021. The Government adds that a preliminary draft of the Bill to issue the new Labour Code was submitted in September and October 2021 to the National Labour Council (CNT) with a view to hearing the views of the social partners, and then in December 2021 and January 2022 to the Commission on the Reform of Business Law (CRDA). Moreover, with reference to the observations by the Autonomous Trade Union of Labour Inspectors (SAIT) received in 2021, the Committee recalls that, while the Convention applies to all workers, it exclusively covers wage inequalities or remuneration gaps between men and women for work of equal value. ***The Committee expresses the firm hope that the Labour Code will be amended in the near future and that the new wording of section 53 will give full expression to the principle of equal remuneration, not only for equal work or work performed under equal conditions, but also for work of an entirely different nature that is of equal value overall. It requests the Government to provide information on this subject and on any other measures adopted or envisaged to promote and ensure in practice equal remuneration for men and women for work of equal value.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Previous comment

The Committee notes the observations of the Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE), received on 1 September 2022.

Article 1 of the Convention. Protection against discrimination. Grounds of discrimination. Legislation. For several years, the Committee has been emphasizing that neither the Labour Code nor the Civil Service Regulations prohibit discrimination on all of the grounds enumerated in the Convention. Discrimination on the basis of colour and social origin is not prohibited by the Labour Code (see section 261) and discrimination on the basis of race, colour and social origin is not prohibited by the Civil Service Regulations (see section 5). The Committee notes the Government's indication in its report that a preliminary draft Bill to issue a new Labour Code has been submitted to the National Labour Council (CNT) and contains provisions that are in conformity with the Convention, as well as definitions of the concepts of direct and indirect discrimination and sexual harassment at the workplace. It notes, however, that the Government did not provide a copy of this draft text with its report nor has it provided the envisaged new wording of section 261 of the Labour Code. In this regard, the Committee observes that, in the Memorandum of technical comments on the draft revision of the Labour Code that it provided to the Government in March 2021, the International Labour Office (ILO) indicated that, in the version that had been submitted to it for comment in February 2021, the proposed revision of the Labour Code did not affect section 261 of the current Labour Code. It also notes the Government's indication that new General Regulations for Public Employees (SGAP) are being prepared, with a view to harmonizing the provisions of the Civil Service Regulations and the General Regulations for Contractual Public Employees. The Government specifies that, in accordance with section 14 of the draft SGAP, "there is no discrimination on the basis of gender, religion, opinion, origin, ancestry, political conviction,

disability, membership or not of a trade union". However, the Committee notes with ***concern*** that this provision still does not prohibit discrimination on the basis of race, colour and social origin and does not define indirect discrimination. The Committee also notes the general information provided by the Government on the penalties envisaged for violations of section 261 of the Labour Code and the indication that information is still being collected on administrative decisions relating to the prohibition of discrimination. In this regard, the Committee recalls that the monitoring and enforcement of anti-discrimination laws by the courts is an important aspect of the effective implementation of the Convention. It is therefore necessary to collect and publish detailed information on the number, nature and outcome of complaints to the courts and administrative bodies in order to assess the effectiveness of procedures and mechanisms (2012 General Survey on the fundamental Conventions, paragraphs 868 and 871). ***The Committee therefore requests the Government to: (i) provide precise updated information on the current revision of the Labour Code, and particularly section 261, to ensure that it explicitly prohibits discrimination on all of the grounds enumerated in the Convention, including colour and social origin, and that it explicitly covers indirect discrimination; (ii) take the necessary measures to amend section 14 of the draft General Regulations for Public Employees to ensure that it explicitly prohibits discrimination on all of the grounds enumerated in the Convention, including race, colour and social origin, and that it includes a definition of discrimination that explicitly encompasses indirect discrimination; and (iii) provide detailed information on the interpretation and effect given by the courts in practice to section 261 of the Labour Code and section 5 of the Civil Service Regulations (or section 14 of the General Regulations for Public Employees, if they have been adopted), with a copy of any court or administrative decisions handed down under these provisions.***

Discriminatory job vacancy announcements. In its previous comments, the Committee noted the Government's indication that it was envisaging the adoption of provisions to regulate, in conformity with the requirements of the Convention, vacancies advertised on the radio or through notices in public places, which impose affiliation to a certain religion as a condition for recruitment or specify that the job is solely for men or women. It notes that, although the Government recognizes that this is a common discriminatory practice in all sectors, it still does not refer to any specific measures that have been adopted or are envisaged to regulate this practice and does not indicate the role played by the labour inspection services in this regard. ***The Committee therefore expresses the firm hope that the Government, in collaboration with employers' and workers' organizations, will take all the necessary measures to ensure the application in practice of the national legislation and prohibit any form of direct or indirect discrimination on all of the grounds enumerated in the Convention, including religion and sex, in job vacancy announcements, including in advertisements on the radio or notices in public places. It once again requests the Government to provide information on any progress achieved in this regard.***

Domestic workers. The Committee previously invited the Government to take the necessary measures to ensure that the provisions of the Labour Code apply in practice to men and women domestic workers (some of whom work without a written employment contract) and to provide detailed information on the number and outcome of the controls carried out by the labour inspection services on this subject. In this connection, it notes that, in its Memorandum of technical comments of March 2021 referred to above, the Office recommended specifying in section 1 of the Labour Code that it applies to men and women domestic workers, particularly in relation to its provisions respecting non-discrimination and working conditions. The Committee welcomes the indication by the Government that, on 11 June 2019, Madagascar ratified the Domestic Workers Convention, 2011 (No. 189). It also notes the Government's reiterated indication that domestic workers enjoy the same rights as other workers, as the labour legislation is applicable to them. The Committee notes with ***regret*** that, according to the Government, no statistical data is available on the number and outcome of the controls carried out by labour inspectors concerning the working conditions of domestic workers. The Government specifies that the legislation in force does not yet permit effective intervention by labour inspectors in

this regard, due in particular to the principle of the inviolability of the home, which makes it impossible for labour inspectors to enter the homes of private individuals who employ domestic workers. ***The Committee expresses the firm hope that the Government will take all the necessary measures to ensure that men and women domestic workers benefit, not only in law, but also in practice, from the protection afforded by the provisions of the Labour Code, particularly in relation to non-discrimination and working conditions. It therefore requests the Government to: (i) provide specific information on any measures adopted or envisaged for this purpose; and (ii) provide information on any measures adopted or envisaged to facilitate the access of labour inspectors to the homes of private individuals employing men and women domestic workers.***

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

Malawi

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)

Previous comment

The Committee notes the observations of the International Organisation of Employers (IOE) received on 25 August 2022, which reproduce the statements made in June 2022 before the Conference Committee on the Application of Standards (CAS) by the Employer spokesperson and the national employers' representative, as well as the observations of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), received on 1 September 2022.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the detailed discussion which took place at the 110th Session of the CAS in May–June 2022 concerning the application of the Convention by Malawi, as well as the conclusions adopted. The Committee notes with ***interest*** the prioritization by Malawi of the follow-up to be given to the CAS conclusions and the Committee's comments. It also notes the multidisciplinary technical assistance provided by the ILO Decent Work Team for Eastern and Southern Africa (DWT-Pretoria) and the ILO Country Office for Zambia, Malawi and Mozambique (CO-Lusaka) in July and August 2022.

Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment. In its previous comment, the Committee made various requests following allegations of gender-based violence and harassment (including rape and sexual harassment) occurring in tea plantations and macadamia nut orchards.

The Committee takes note that the CAS noted with deep concern the trade unions' allegations of systematic sexual violence and harassment of women, including the rape, assault and discrimination suffered by women workers on tea and macadamia nut plantations. In its conclusions, the CAS urged the Government to take all necessary measures, in consultation with the social partners, to: (1) ensure existing legislation on sexual harassment is in line with the Convention; (2) organize dedicated tripartite discussions on the issue of sexual harassment and violence in the workplace with a view to taking further practical and concrete measures to ensure the effective protection of workers in this regard in law and practice; (3) ensure effective access to and the effective functioning of national judicial and non-judicial mechanisms that consider allegations of breach of workers' rights on grounds of discrimination, including sexual harassment and violence, and provide adequate legal remedies to victims; and (4) continue supporting existing initiatives undertaken by the Malawi Human Rights Commission and the Department of Human Resources Management and Development, including awareness-raising

campaigns and the dissemination of the Sexual Harassment Workplace Policy and related guidelines to ensure that employers develop and implement effective workplace harassment policies.

Evaluation of the existing legal framework on sexual harassment and its alignment with the Convention. The Committee notes the Government's indication in its report that a review of the existing legal and policy frameworks on sexual harassment in the tea sector covering existing gaps, scope of application, protection and prevention, enforcement and remedies, guidance, training and awareness-raising is being finalized with the technical assistance of the ILO and the results will be shared with the Committee. The Government also provides information about an agreement reached with the social partners to amend the Gender Equality Act (GEA) of 2013 in order to explicitly include hostile work environment in the definition of sexual harassment. Moreover, the inclusion of legal provisions on sexual harassment in the Employment Act, 2000 and the Occupational Safety Health and Welfare Act, 1997, is under consideration. In this last respect, the Committee refers to its detailed comments under the Occupational Safety and Health Convention, 1981 (No. 155), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and the Safety and Health in Agriculture Convention, 2001 (No. 184). Recalling that sexual harassment is a serious manifestation of sex discrimination, the Committee emphasizes that the review of the legal and policy framework on sexual harassment should take place in the context of a broader review of the legal and policy framework on discrimination in general.

Regarding the amendment of section 6(1) of the Gender Equality Act of 2013 to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser, but to an outside person, the Committee notes the Government's explanation that, under Malawian law, the term "reasonable person" provides an objective test that goes beyond the harasser. The Committee considers that the test of "reasonableness" gives inadequate weight to the experience of the victim. It recalls that sexual harassment includes: (1) (quid pro quo): any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job; and (2) (hostile work environment): conduct that creates an intimidating, hostile or humiliating working environment for the recipient. The lived experience of the recipient, that is to say the victim of sexual harassment, and the impact that third party's conduct has on her/him should thus form the basis of any assessment aimed at ascertaining whether or not sexual harassment occurred.

Tripartite discussion on the issue of sexual harassment and violence in the workplace. The Government also indicates that the question of sexual harassment has been included on the agenda of the Tripartite Labour Advisory Council (TLAC), which is expected to provide direction on how the Ministry of Labour's role in addressing violence and harassment in the workplace can be strengthened.

Capacity-building and awareness-raising on sexual harassment. The Committee notes that the Malawi Human Rights Commission (MHRC) is developing a model sexual harassment workplace policy with a view to promoting the adoption of sexual harassment policies and preventing the occurrence of sexual harassment in both the public and private sectors. At the same time, the Department of Human Resource Management and Development continues to promote the adoption of sexual harassment workplace policies in the public sector. The Committee furthermore notes that the MHRC undertook a situation analysis on engaging the private, public, and informal sector on addressing sexual gender-based violence (SGBV) and sexual harassment in the workplace. The analysis revealed that there is little knowledge about sexual harassment among enforcement officials, journalists and members of cooperatives, which hinders the realization of rights by victims as well as their access to justice. Consequently, the MHRC is developing an action plan to enhance awareness and build capacity to address sexual harassment effectively. The Government also indicates that the Ministry of Gender, Children, Community Development and Social Welfare conducted training sessions for police officers, chiefs (traditional leaders), court officials and the media on the enforcement of the Gender Equality Act.

In addition, the Government, in cooperation with the ILO, has planned to organize a strategic compliance workshop for all labour inspectors with a view to strengthening their capacity to prevent, identify and address cases of violence and sexual harassment in employment and occupation.

Access to judicial and quasi-judicial mechanisms and legal remedies for victims of discrimination, including sexual harassment. The Government states that action is being taken to enhance collaboration between all stakeholders – namely, the Ministry of Gender and the Ministry of Labour, the social partners, the courts, the MHRC, the police and relevant civil society organizations – with a view to addressing challenges related to access to legal remedies, as well as to enhancing cooperation with the social partners and relevant civil society organizations for the purpose of sharing information in order to jointly address these challenges. The Government also indicates that the Malawi Congress of Trade Unions (MCTU) has conducted investigations into alleged cases of workplace violence and harassment and reported them to the MHRC for action. The MHRC recorded 23 cases of sexual violence and harassment between January 2021 and April 2022. The Committee notes that no details are provided on the actions being taken to address challenges related to access to legal remedies or on the challenges identified. The Committee recalls that a number of obstacles may in practice impede victims' access to justice, including lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, fear of reprisals, issues related to representation and standing, the burden of proof, fear of victimization or physical, financial and linguistic obstacles, such as procedural costs and the lack of physical access to the remedial mechanisms when those are located only in main urban centres (see 2012 General Survey on the fundamental Conventions, paragraphs 870 and 884). The Committee also recalls that allowing trade unions to bring complaints is important as it reduces the risk of reprisals and is also likely to serve as a deterrent to discriminatory action (see 2012 General Survey on the fundamental Conventions, paragraph 886).

The Committee notes that, in its observations, the IUF refers to statements by different parties acknowledging that cases of trading sex for favours, or even for work, are found in the tea estates and are one of the factors contributing to the transmission of HIV and AIDS at work. The IUF also reports that the case filed by a London-based law firm on behalf of Malawian women alleging that they had been subjected to gender-based violence and harassment (including rape and sexual harassment) on tea plantations and macadamia nut orchards was settled out of court on a confidential basis without admission of liability. The Committee notes that, according to the IUF, sexual harassment on Malawi's plantations is an endemic problem. The IUF states that it appreciates the Government's commitment to addressing gender-based violence and harassment and other forms of discrimination in the workplace working closely with the social partners. It shared its concern about the lack of data on the effectiveness of the Malawian court system to deal with cases of sexual harassment. The IUF emphasized that trade unions must be actively involved in the design, negotiation, implementation and monitoring of any policies to eliminate gender-based violence and harassment in the world of work and clearly indicated its commitment to take part in any relevant and dedicated tripartite meetings in Malawi. Furthermore, it underscored the need for independent research on the causes of gender-based violence and harassment on Malawi's tea plantations, including work arrangements and non-standard forms of work which make women vulnerable.

The Committee notes that, in its response to the IUF's observations, the Government refers to several cases of sexual harassment addressed by the courts. The Government also reiterates its commitment to engage with workers' and employers' organizations to address sexual harassment and violence. It furthermore indicates that, once the findings of the "review of the existing legal and policy frameworks on sexual harassment in the tea sector" are validated with the relevant stakeholders, including the social partners, it hopes to use them to strengthen the policy and legislative framework on violence and harassment in all sectors of the economy in general and in the tea sector in particular. Should the report prove insufficiently comprehensive, the Government will request further ILO assistance.

The Committee notes that the African Commission on Human and Peoples' Rights (ACHPR) recommended that Malawi "should take steps to pass a law against sexual harassment" (Concluding Observations and Recommendations, adopted at the 70h session of the ACHPR, 2022, paragraph 86).

While welcoming the initiatives undertaken by the Government to strengthen the national legal and policy framework on sexual harassment at work, the Committee remains concerned by the alleged pervasiveness of the problem, especially on plantations, and requests the Government to develop a detailed road map, in cooperation with the social partners, outlining key actions and a precise timeline in order to allow for monitoring and evaluating progress. In particular, it requests the Government:

(i) to move expeditiously towards the alignment of the national legal and policy framework with the Convention in cooperation with the social partners, including by amending section 6(1) of the Gender Equality Act of 2013 to explicitly include hostile work environment harassment in the definition of sexual harassment and by reviewing the test of "reasonableness", and to provide information on all developments in this respect as well as on the results and recommendations of the evaluation exercise undertaken;

(ii) to supply details on the action being taken to address challenges related to access to legal remedies for victims of discrimination in employment and occupation, including sexual harassment, in collaboration with the social partners and other relevant stakeholders, including information on the challenges identified;

(iii) to step up its efforts to increase the capacity of the competent authorities, including labour inspectors, to prevent, identify and address cases of discrimination in employment and occupation, including sexual harassment, as well as workers' awareness of available remedies, to provide information on the number of cases of sexual harassment in the public and private sectors dealt with by the courts and the MHRC or detected by labour inspectors, the remedies granted to victims and the sanctions imposed on perpetrators. The Government is also asked to provide information on the action plan on awareness-raising being developed by the MHRC;

(iv) to continue to promote social dialogue on the issue of sexual harassment at work and how best to prevent and address it in practice, and to provide information on any recommendation formulated by the Tripartite Labour Advisory Council (TLAC) in this respect and the steps taken as a result, including information on any action taken by the TLAC to promote the adoption of a sexual harassment workplace policy and the directions provided on how the Ministry of Labour' s role in addressing violence and harassment in the workplace can be strengthened, or information on the timeline for discussing the adoption of these directions;

(v) to provide information on the uptake of the model Sexual Harassment Workplace Policy developed by the MHRC and its impact; and

(vi) to continue to supply information on relevant initiatives by the Malawi Human Rights Commission and the Department of Human Resources Management and Development.

The Committee also encourages the Government to consider undertaking a study, in cooperation with workers' and employers' organizations, on the underlying causes and risk factors for sexual harassment at work, placing the problem within the broader context of discrimination with a special focus on tea plantations and macadamia nut orchards, in order to design an appropriate strategy to tackle the problem at its roots.

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

Nicaragua

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1967)

Previous comment

Article 1(1)(a) of the Convention. Discrimination on the basis of sex. Sexual harassment. The Committee takes note of the labour legislation provisions (Labour Code, section 17(p)) and in the field of criminal justice (Criminal Code, section 174, as amended by Act No. 779 against violence towards women) which sanction sexual harassment and quid pro quo sexual harassment. The Committee also notes from the Government's report that: (1) in October 2020, the Supreme Court of Justice adopted the "Protocol to prevent and address labour and sexual harassment in the Nicaraguan legal system", which aims to prevent, address and eliminate all forms of violence arising from labour and sexual harassment throughout the legal system; (2) the Ministry of Labour has been implementing processes to address labour complaints, including complaints of labour harassment, with mechanisms providing immediate action and prompt investigation by the labour inspectorate, in strict compliance with the labour legislation, and without prejudice to action that the workers affected may take through appropriate judicial channels; (3) between 2018 and 2021 the Ministry of Labour received 111 complaints of ill-treatment, labour and sexual harassment (in 40, the complaint was not upheld; 36 were accepted; 15 were settled with an agreement between the parties; 5 were withdrawn; and 4 went to criminal proceedings); (4) the Ministry of Labour has a Technical Gender Unit, which promotes equality of treatment and opportunity for women and men; and (5) between April 2020 and March 2021, none of the 19 labour courts of the first instance recorded a complaint for sexual harassment at the workplace. The Committee welcomes the initiative taken by the Supreme Court of Justice and observes that the above-mentioned Protocol defines sexual harassment as including harassment that is assimilated to blackmail (quid pro quo harassment) as well as harassment derived from a hostile work environment.
The Committee requests the Government to:

- ***(i) indicate the extent to which the provision of the Labour Code (section 17(p)) also covers the "hostile work environment";***
- ***(ii) provide details of the penalties imposed where complaints submitted to the Ministry of Labour are upheld and identified as acts of sexual harassment;***
- ***(iii) provide details of any administrative complaint or legal action filed with the labour or criminal courts under the provisions of the Labour Code or Criminal Code in respect of sexual and quid pro quo harassment; and***
- ***(iv) continue to provide information on all measures adopted regarding awareness-raising and prevention of sexual harassment.***

Discrimination on the basis of political opinion. The Committee notes that the Government: (1) refers to the Political Constitution and its provisions on non-discrimination on grounds of political creed, freedom of expression and equality in the enjoyment and exercise of political rights; (2) reports that none of the labour lawsuits filed against the central State ministries arise from political discrimination against civil or public servants, who enjoy freedom to take up the ideas of any political ideology, as they see fit; (3) in the period between April 2020 and March 2021, the labour courts heard no cases of violations of fundamental rights related to discrimination on ideological or political grounds; (4) the Office of the Procurator for Human Rights is the national institution that promotes, defends and safeguards the constitutional rights of citizens, and conducts, by virtue of Act No. 212 of 1995, ex officio investigations or investigations at the request of the party, of complaints of alleged human rights violations (the Government reports that no complaints of pressure or reprisals for participation in any type of demonstration have been received, and that during the unsuccessful 2018 coup d'état, 47 public

servants denounced curtailed freedom of movement); and (5) in 2020, the Office of the Procurator for Human Rights initiated a direct approach and proximity strategy for Nicaraguans, promoting human rights education, and the receipt of complaints (the Government reports that more than 3,000 visits to urban and rural areas have been undertaken, and no complaints on grounds of political opinion have been received from the public).

The Committee notes with ***concern*** the serious situation of political discrimination in the country, as reflected in the reports from United Nations bodies and the Inter-American Human Rights System. This context explains the grounds that led to the adoption of resolution 49/3 on the promotion and protection of human rights in Nicaragua, adopted by the United Nations Human Rights Council on 31 March 2022, in which the Council, among other matters: (1) expressed grave concern "at the violations of civil and political rights in the context of the electoral process of 2021, in contravention of the obligations of Nicaragua to uphold the right of every citizen to take part in the conduct of public affairs and to vote and be elected in genuine periodic elections" as well as at "the adoption and use of legal provisions that explicitly aim, or may be used, to restrict the ability of Nicaraguan citizens to participate in the political process;" (2) condemned "the continuation of arbitrary detentions and new arbitrary detentions, including in the context of the electoral process of 2021, of, inter alia, opposition pre-presidential candidates and political leaders, human rights defenders, business people, journalists, peasant and student leaders and members of civil society organizations, and expressing grave concern for their integrity, treatment and detention conditions, including health conditions, which may constitute torture or cruel, inhuman or degrading treatment or punishment, and recognizing the particular vulnerability of older and sick persons, and women and girls, in detention"; (3) expressed "grave concern at the deterioration of democracy and the situation of human rights in Nicaragua, in particular with regard to the enjoyment of civil and political rights, continuing reports of human rights violations and abuses"; and (4) decided to "establish, for a period of one year, a group of three human rights experts on Nicaragua, to be appointed by the President of the Human Rights Council", which, among other activities, will "conduct thorough and independent investigations into all alleged human rights violations and abuses committed in Nicaragua since April 2018, including the possible gender dimensions of such violations and abuses, and their structural root causes" (A/HRC/RES/49/3, preambular paragraphs 9 and 12, substantive paragraphs 1 and 14(a)). The Committee also notes that the Human Rights Committee (United Nations Covenant on Civil and Political Rights (CCPR)) refers to a generalized repression to restrain the people (CCPR/C/NIC/CO/4, 3 November 2022, paragraphs 31, 35 and 37), and that the United Nations Committee on Economic, Social and Cultural Rights, in its concluding observations on the fifth periodic report of Nicaragua, expressed deep concern to note allegations that persons who oppose or criticize the Government are subjected to discrimination on the basis of political opinion that affects the exercise and enjoyment of their economic, social and cultural rights, in particular their right to work and their access to health services (E/C.12/NIC.CO/5, 11 November 2021, paragraph 17). Lastly, the Committee notes the press release from the Inter-American Commission on Human Rights (IACHR) of 4 November 2022 which notes the "recrudescence of repression and persecution of political opponents".

In the same vein, the Committee notes with ***concern*** that the Inter-American Court of Human Rights adopted on 22 November 2022 a resolution on provisional measures (Matter of Juan Sebastián Chamorro et al. and 45 inmates in 8 prisons, regarding Nicaragua) in which it declared the State of Nicaragua to be in permanent contempt of court for failing to comply with the provisional measures, whose purpose is precautionary and protective, in violation of its obligations under the American Convention on Human Rights. ***The Committee considers that a climate of violence, insecurity and intimidation, as described by the United Nations bodies or the IACHR is propitious for serious acts of discrimination in employment and occupation against persons who express their political opinion. The Committee urges the Government to adopt the necessary measures to comply with its observations on matters of non-discrimination in employment and occupation, and requests the Government to report***

on: (i) any additional measure taken to eliminate discrimination on political grounds and provide adequate protection for workers in the event of discrimination on the basis of political opinion; and (ii) the outcome of any investigation conducted into complaints against the administrative or judicial authorities for acts of discrimination on the basis political opinion.

Discrimination on the basis of race. Indigenous peoples. The Committee notes the Government's indication that the global registry of enrolment in higher education and vocational training for the 2020 and 2021 period shows a total of 308,699 students, of whom 49,911 were from indigenous or Afro-descendent peoples and of whom more than half were women. The Government provides detailed statistics disaggregated by sex, region and university, and reports on measures taken in them to prevent and eradicate discrimination in education. The Committee also notes the concluding observations of the United Nations Committee on the Elimination of Racial Discrimination (CERD), in particular that the Committee: (1) "urges the State to take the urgent action required to guarantee effective protection and respect for the rights of indigenous and Afro-descendent peoples, particularly in the Atlantic Coast region" and "urges the State Party to continue its efforts to effectively promote social inclusion, reduce the incidence of poverty and inequality affecting members of indigenous or Afro-descendent peoples, including through the adoption of specific or affirmative action to eliminate the structural discrimination that they continue to face"; and (2) "recommends that the State Party combat the multiple forms of discrimination faced by indigenous and Afro-descendent women, including through the incorporation of a gender perspective in all policies and strategies against racial discrimination". Equally, the CERD recommend that Nicaragua adopt measures ensuring that indigenous and Afro-descendent women have access to all of their rights, including education, employment and health, taking account of cultural and linguistic differences" (CERD/C/NIC/CO/15-21, 30 August 2022, paragraphs 17 and 39). ***In this respect, the Committee requests the Government to continue reporting on all measures adopted or envisaged to protect indigenous and Afro-descendent peoples against racial discrimination in employment and occupation.***

Article 2. National policy on equality of opportunity and treatment. Public service and private sector. With regard to its previous comments, the Committee welcomes and notes the detailed information provided by the Government on: (1) the legal framework recognizing equality as the starting point for promoting and obtaining non-discrimination; (2) various initiatives to generate employment for women; (3) statistical data on the employment of men and women in the public sector (in 2021, 59 per cent were women; in the judiciary, more than 60 per cent of administrative and managerial posts were occupied by women); (4) the constitutional decision on equality between men and women in posts assigned by popular election; (5) many programmes, strategies, plans and projects to eliminate gender stereotypes, and action to provide protection against discrimination in early childhood, adolescence and youth; and (6) continuous training processes for public servants in the area of legislation on equality. ***The Committee requests the Government to continue reporting on the outcomes of the many actions taken relating to the national policy of equality of opportunity and treatment.***

Enforcement. Labour inspection. The Committee notes the number of inspections undertaken relating to equality and non-discrimination at work as reported by the Government. ***The Committee requests the Government to provide information on the type of violations identified relating to the application of the Convention, the corrective measures introduced and the penalties imposed.***

In light of the situation described above, the Committee notes with deep concern the climate of violence, insecurity and intimidation in the country which is propitious for serious acts of discrimination in employment and occupation against persons who express their political opinion. In this context, the Committee notes the arbitrary detentions of political leaders, human rights defenders, business people, journalists, peasant and student leaders and members of civil society organizations. It further notes the continuing reports of human rights violations and abuses, including gender-based discrimination. The Committee considers that this case meets the criteria set out in paragraph 114 of its General Report to be asked to come before the Conference.

[The Government is asked to supply full particulars to the Conference at its 111th Session and to reply in full to the present comments in 2023.]

Pakistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

Previous comment

Legislative developments. Provinces. The Committee notes with ***interest*** the recent enactment of numerous labour laws in Balochistan, Punjab and Sindh provinces, such as the Sindh Payment of Wages Act, 2015 (Sindh Act No. VI of 2017), the Sindh Minimum Wages Act, 2015 (Act No. VIII of 2016), the Punjab Minimum Wages Act, 2019 (Act No. XXVIII of 2019), the Balochistan Minimum Wages Act, 2021 (Act No. X of 2021), the Balochistan Payment of Wages Act, 2021 (Act No. XIII of 2021), as a result of the 18th Constitutional Amendment adopted in 2010 devolving the subject of labour to the provinces while the responsibility of coordination of labour-related issues still lies with the Federal Government. ***The Committee asks the Government to continue to provide information on any legislative developments concerning wages and equal remuneration for men and women which give effect to the Convention.***

Articles 1–4 of the Convention. Assessing and addressing the gender pay gap. The Committee notes that, according to the Global Wage Report 2018/19 published by the ILO, the mean hourly gender pay gap in Pakistan is 34 per cent and women account for almost 90 per cent of wage earners in the bottom 1 per cent but just 9 per cent in the top 1 per cent. ***The Committee asks the Government to collect and compile information disaggregated by sex, on the levels of remuneration of men and women, if possible, by sector of the economy or occupational category, and provide them together with any available information on the gender pay gap. It further asks the Government to take the necessary measures to address the gender pay gap, in particular measures to address gender occupational segregation, and refers in this regard to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).***

Articles 1(a) and 2(2)(a). Definition of remuneration. Legislation. The Committee notes that section 2(1)(xix) of the Sindh Payment of Wages Act, 2015 and section 2(o) of the Balochistan Payment of Wages Act, 2021, define "wages" as including "basic pay and statutory and non-statutory allowances", but excludes any contribution paid by the employer to any pension fund or provident fund, any travelling allowance or the value of travelling concession, any sum paid to defray special expenses, any annual bonus or any sums payable on discharge. In its previous observations, the Committee also noted that the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Act No. IX of 2013) had a similar definition of "wages". The Committee recalls that *Article 1(a)* of the Convention, for the purpose of implementing the principle of equal remuneration for men and women for work of equal *value*, provides a broad definition of "remuneration" which includes not only the ordinary, basic or minimum wage or salary, but also "any additional emoluments whatsoever payable directly or indirectly by the employer to the worker and arising out of the worker's employment". This definition also captures payments or benefits whether received regularly or only occasionally. It covers among others cost-of-living allowances, dependency allowances, travel allowances, housing and residential allowances, vacation allowances as well as allowances paid under social security schemes financed by the undertaking or industry concerned (see the 2012 General Survey on the fundamental Conventions, paragraphs 686, 687 and 691–692). ***In order to fully apply the principle of equal remuneration for men and women for work of equal value, the Committee requests the Government to ensure that the provincial governments of Balochistan, Khyber Pakhtunkhwa and Sindh provinces: (i) take into account all the elements included in the definition of "remuneration", in accordance with Article 1(a) of the Convention, including emoluments "payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment"; and (ii) envisage amending the above laws accordingly.***

Articles 1(b) and 2(2)(a). Equal remuneration for work of equal value. Legislation. The Committee notes with ***interest*** that the Balochistan Payment of Wages Act, 2021, includes provisions on equal remuneration for the same work or work of a similar nature and work of equal value (section 7) and defines work of equal value (section 2(p)). The Committee notes however that other provincial labour laws previously adopted, such as the Khyber Pakhtunkhwa Payment of Wages Act, 2013, and the Sindh Payment of Wages Act, 2015, do not contain any provisions on equal remuneration for men and women for work of equal *value*. Further, the Committee notes that section 21 of the Punjab Minimum Wages Act, 2019, and section 18 of the Sindh Minimum Wages Act, 2015, prohibit wage discrimination based on sex. ***The Committee urges the Government to ensure that the Khyber Pakhtunkhwa Payment of Wages Act, 2013 and the Sindh Payment of Wages Act, 2015, as well as other any other provincial acts on wages, are amended to give full expression the principle of equal remuneration for men and women for work of equal value. The Committee asks the Government to provide information on the implementation of the Balochistan Payment of Wages Act, 2021, and its impact on the elimination of the gender wage gap in the province.***

Articles 2 and 3. Objective job evaluation. The Committee recalls that, in its previous observation, it encouraged the Government to take measures to ensure that objective job evaluation on the basis of the work performed is integrated into any new provincial labour legislation. In that regard, the Committee notes with ***interest*** that the Balochistan Minimum Wages Act, 2021, defines "job appraisal scheme" as "the scheme evolved and introduced by the industry concerned with the approval of the Government for objective appraisal for determination of wage differentials without regard to sex, to ensure the enforcement of the principle of equal remuneration for male and female workers for work of equal value". It also provides that a comprehensive objective job evaluation scheme "shall in particular take care of gender equality in matters regarding equal remuneration for male and female workers for work of equal value" (section 17). The Committee further notes the Government's indication that the reform of the Minimum Wages Ordinance, 1961, is planned. Concerning the Government's indication that job evaluation is the prerogative of the employer, the Committee recalls that objective job evaluation is concerned with assessing the relative value of jobs with varying content on the basis of the work to be performed, not the performance of an individual worker carrying out his or her job. It is a systematic process which, through analysing the content of different jobs, gives a numerical value to each job. Two jobs found to have the same overall numerical value are entitled to equal remuneration. Objective job evaluation is concerned with evaluating the job and not the individual worker (see the 2012 General Survey on the fundamental Conventions, paragraphs 696 and 700). ***The Committee requests the Government: (i) to take measures to ensure that the use of objective job evaluation methods based on work performed is provided for in the provincial labour legislation of Islamabad Capital Territory, Khyber Pakhtunkhwa, Punjab and Sindh; and (ii) to provide information on any developments in this regard, including on measures taken to develop and implement objective job appraisal methods for use in both the public and private sectors. It also asks the Government to provide information, including statistical data, on the implementation of the Balochistan Minimum Wages Act, 2021, sections 2(i) and 17 in practice.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Previous comment

Article 1 of the Convention. Protection of workers against discrimination. Legislative developments. The Committee recalls that following the 18th constitutional amendment of 2010, which devolved the power to enact laws related to labour from the federal Parliament to the provincial governments, Pakistani

provincial governments adopted a series of laws such as the Balochistan Payment of Wages Act (2021), the Balochistan Minimum Wages Act (2021), the Punjab Minimum Wages Act (2019), the Sindh Minimum Wages Act (2015) and the Sindh Payment of Wages Act (2015) which prohibit discrimination in remuneration on various grounds, including but not limited to, religion, caste, ethnic background, colour, creed and sect. The Committee welcomes the adoption of these laws, which constitutes progress in the application of the Convention. It notes, however, that the provincial laws do not include all of the prohibited grounds of discrimination set out in *Article 1(1)(a)* of the Convention as they notably omit the grounds of national extraction and social origin. The Committee also notes that the newly adopted laws do not appear to apply to all aspects of employment, namely, access to vocational education and training, employment and particular occupations, and terms and conditions of employment as provided for in *Article 1(3)* of the Convention. The Committee reiterates that clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur (see 2012 General Survey on the fundamental Conventions, paragraph 743). Recalling that it had noted in its previous observation that political opinion was not included as a prohibited ground of discrimination by the Khyber Pakhtunkhwa Provincial Government in 2013, the Committee notes that, in response, the Government has highlighted the inclusion of "political affiliation" in laws adopted in Khyber Pakhtunkhwa and Sindh provinces. The Committee notes that protection against discrimination on the basis of political opinion is broader than protection against discrimination based on "political affiliation" (see 2012 General Survey on the fundamental Conventions, paragraph 805). ***The Committee requests the Government to take the necessary measures to ensure, including through the tripartite consultation committee established at the federal level, that all of the labour laws adopted by the provinces include provisions explicitly defining and prohibiting direct and indirect discrimination, applying to all aspects of employment and occupation, including at the recruitment stage, and covering all workers and at least all of the grounds set out in Article 1(1)(a) of the Convention, including political opinion. The Committee also requests the Government to provide information on any legislative developments in this regard.***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. The Committee notes from the Government's report that all five Pakistani provinces have laws against harassment of women at the workplace. It further notes that the Protection against Harassment of Women at the Workplace Act (2010), which covers Islamabad Capital Territory, Khyber Pakhtunkhwa and Sindh provinces, requires all public and private organizations to adopt an internal code of conduct and to constitute a committee to adjudicate complaints against harassment. The Committee notes with ***interest*** the enactment of the Balochistan Protection Against Harassment of Women at Workplace Act (2016) which covers all forms of sexual harassment (quid pro quo and hostile work environment) committed not only by a person with authority but also by a colleague and a person or persons with whom women workers have contact through their work. The Committee also notes from the Government's report that the Government indicated that the Federal Ombudsman Secretariat for Protection against Harassment of Women at Workplace received 441 complaints and the Punjab and Sindh provincial Ombudsmen for Protection against Harassment of Women at Workplace received 98 and 350 complaints, respectively. However, it notes that the time frame in which those complaints were submitted remains unclear. The Committee also welcomes the information provided by the Government regarding the activities organized by the Federal Ombudsman and the Provincial Ombudsmen (Punjab and Sindh) to prevent and address sexual harassment, such as the awareness-raising activities for employers, workers and civil society representatives. ***The Committee asks the Government to consider extending to men the Protection Against Harassment of Women at the Workplace Act (2010), the Punjab Protection Against Harassment of Women at the Workplace Act (2012), the Balochistan Protection Against Harassment of Women at Workplace Act (2016) and any other relevant legislation adopted by the other provinces so as to protect men against sexual harassment in employment and occupation on an equal footing with women. It further asks the Government to take steps to train labour inspectors and judges on the issue of sexual***

harassment in employment and occupation and raise awareness of the laws on sexual harassment among workers and employers and their respective organizations as well as the public. Lastly, the Committee asks the Government to continue to provide information on: (i) the implementation of these laws in practice, in particular on the adoption by public and private organizations of internal codes of conduct and the constitution of complaints committees to adjudicate complaints against harassment; and (ii) the number and results (sanctions imposed and remedies granted) of complaints lodged for sexual harassment.

Transgender and intersex persons. The Committee notes with ***interest*** the adoption of Act No. XIII of 2018, the Transgender Persons (Protection of Rights) Act, which recognizes the right of persons to choose their gender identity and prohibits, inter alia, discrimination against and harassment of transgender and intersex persons based on sex, gender identity and gender expression, in relation to education, employment, trade and occupation, including termination of employment or occupation. ***The Committee asks the Government to take steps to raise awareness of the Transgender Persons (Protection of Rights) Act (Act No. XIII of 2018) among workers, employers and their respective organizations as well as enforcement authorities, and provide information on its implementation in practice, including any cases of discrimination based on gender identity dealt with by the labour inspectors or the courts.***

Discrimination based on social origin. The Committee recalls its observation expressing concern regarding the continuous de facto segregation and discrimination against Dalits. The Committee notes the Government's indication that it does not recognize any discrimination among individuals on the basis of their belonging to a specific caste. The Government further indicates that newly adopted provincial laws, such as the Sindh Payment of Wages Act (2015), the Punjab Minimum Wages Act (2019) and the Balochistan Payment of Wages Act (2021), prohibit discrimination based on caste. The Committee reminds the Government that proactive measures are also required to analyse and address the situation of the different groups in the labour market, in cooperation with workers' and employers' organizations, and to improve knowledge and awareness among ethnic and national minorities about anti-discrimination and equality legislation, enforcement mechanisms and procedures (see 2012 General Survey on the fundamental Conventions, paragraph 775). In this regard, the Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (CERD) recommended that measures necessary to end discrimination in employment against Dalits be taken (CERD/C/PAK/CO/21-23, 3 October 2016, paragraph 32). ***The Committee urges the Government to adopt the necessary measures at the federal and provincial levels to enforce the prohibition of and to eliminate discrimination based on caste with respect to Dalits and promote their inclusion in the labour market in a wider range of jobs. It also asks the Government to provide statistics disaggregated by sex on the employment of Dalits.***

Discrimination based on religion. The Committee reiterates its previous observation expressing concern regarding equality of opportunity and treatment in employment and occupation for religious minorities, in particular the members of the Ahmadi minority. It recalls article 260(3)(b) of the Constitution that defines a "non-Muslim" as "a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Quadiani Group or the Lahori Group who call themselves "Ahmadis" or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes". The Committee also recalls section 298C of the Penal Code ("blasphemy laws") that singles out members of the Ahmadi minority, as well as the practice which has the effect of denying the Ahmadi minority from obtaining passports identifying them as Muslims. The Committee notes that such provisions have a bearing on the opportunities of religious minorities regarding employment and that they are contradictory to the labour laws that Pakistani provinces have adopted over the past decade, such as the Balochistan Payment of Wages Act (2021), the Khyber Pakhtunkhwa Payment of Wages Act (2013) and the Sindh Payment of Wages Act (2015), which include "religion" as a ground for non-discrimination. The Committee notes with ***regret*** that the Government's report does not contain any information

regarding any steps taken or envisaged to review the discriminatory legislative provisions and administrative measures. It notes that, in a joint statement, United Nations Human Rights Experts have expressed their deep concern over the lack of attention to the serious human rights violations perpetrated against the Ahmadiyya Muslim community around the world, including in Pakistan. They have urged all States inter alia to: (1) repeal all laws that discriminate against Ahmadi Muslims; (2) ensure the equal and effective participation of Ahmadis in public life and in decision-making processes that affect them, including by guaranteeing their access to employment; (3) address the multiple and intersecting forms of violence and discrimination suffered by Ahmadi women; and (4) eliminate discrimination against Ahmadi children and their exclusion from education and vocational training (see special procedures, press release of 13 July 2021). ***The Committee once again urges the Government to take immediate steps to amend its discriminatory legal provisions and administrative measures, and to actively promote respect and tolerance for religious minorities, including the Ahmadi, and to provide information on any progress made in this regard. The Committee once again asks the Government to provide information on the access to employment of religious minorities, including those defined in article 260(3)(b) of the Constitution. It further asks the Government to provide information on any other measures taken or envisaged to promote tolerance and equality of opportunity and treatment in employment and occupation for religious minorities.***

Article 2. Equality of opportunity and treatment for men and women. The Committee notes that according to the Key Findings of Labour Force Survey 2020–21, female participation in the Pakistani labour market remains low at 21.4 per cent of the total workforce, of which 28 per cent work in rural areas. The Committee welcomes the adoption of the Sindh Home-Based Workers Act (2018), the Khyber Pakhtunkhwa Home-Based Workers (Welfare and Protection) Act (2021) and the legislative progress of the Balochistan Home-Based Workers Bill (2021) and the Islamabad Capital Territory Domestic Workers Bill (2021), which provide domestic workers with access to labour rights. The Committee further notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about: (1) "persistent discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society, exacerbated by the religious divisions in the State party, which perpetuate women's subordination to men"; and (2) "the persistence of discriminatory stereotypes faced by women and girls belonging to ethnic minority groups, in particular Ahmadi, Christian, Dalit, Hindu, Roma, scheduled caste, Sheedi and Sikh women and girls, who are sometimes the victims of abduction and forced conversion". The CEDAW also expressed concerns regarding: (1) the very low labour force participation rate for women; (2) the high concentration of women in the informal economy, particularly in the agriculture sector, where they are not covered by labour law and social security programmes, including minimum wage protection, overtime compensation and maternity leave; (3) the lack of reliable data on the number of women who are employed, including home-based women workers, women domestic workers, unpaid women care workers, women with disabilities and refugee women; (4) the very low level of participation of women in senior and middle management positions in 2018 (4.2 per cent); and (5) the very low percentage of women entrepreneurs (an estimated 1 per cent of entrepreneurs) (CEDAW/C/PAK/CO/5, 10 March 2020, paragraphs 29, 41 and 47(a)). ***In light of the above, the Committee asks the Government to take proactive measures to: (i) promote women's access to employment and a wide range of jobs, and to address their low participation in the labour market; and (ii) address discrimination against women, including those belonging to ethnic minority groups, and gender stereotypes regarding their role in employment and society.***

It also asks the Government to provide information on: (i) any measures, including those by the inspection staff under the provincial Labour Departments, taken in this regard; (ii) the adoption of the Balochistan Home-Based Workers Bill (2021) and the Islamabad Capital Territory Domestic Workers Bill (2021) and the impact of the new laws relating to home-based workers and domestic workers on their employment situation, in particular their access to their labour rights; and (iii) the participation of men

and women in the labour market and the informal economy, by sector and occupational category if possible.

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

Panama

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)

Previous comment

The Committee notes the observations of the National Confederation of United Independent Unions (CONUSI), received on 30 August 2021. The Committee notes the Government's response.

Articles 1(b) and 2(2)(a) of the Convention. Work of equal value. Legislation. The Government indicates in its report that it received technical assistance from the ILO in 2017 and 2019 regarding measures to harmonize its legislation with the principle of the Convention, in particular section 10 of the Labour Code (which provides for "equal pay for equal work in the service of the same employer, performed in the same job, working day, conditions of efficiency and seniority"). In its observations, CONUSI expresses the view that there is no justification for the legislative amendments not to have been carried out by the Government. The Committee notes the Government's response indicating that due to political elections and the change of government, it was not possible to follow-up on the assistance provided by the ILO, and that consideration is being given to requesting technical assistance again. The Committee recalls that on numerous occasions it has pointed out that the legislation should not only provide for equal remuneration for equal, the same or similar work, but should also prohibit pay discrimination in situations where men and women perform different work that is nevertheless of equal *value* (see the 2012 General Survey on the fundamental Conventions, paragraph 679). ***The Committee therefore once again requests the Government to take steps to expand the definition contained in its legislation of the principle of equal remuneration for men and women for work of equal value, in accordance with the provisions of the Convention. The Committee reminds the Government that it may continue to avail itself of the technical assistance of the Office on this matter if it deems it necessary.***

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

Philippines

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)

Previous comment

The Committee notes the Government's reports.

Articles 1(b) and 2(2)(a) of the Convention. Work of equal value. Legislation. For many years, the Committee has been noting the restrictive interpretation given to "work of equal value" referred to in section 135(a) of the Labour Code, through the 1990 Rules implementing the Republic Act No. 6725, which define it to mean "activities, jobs, tasks, duties or services which are identical or substantially identical". The Committee notes, from the Government's reports, that it is still working towards the adoption of amending guidelines that will bring the definition into conformity with the Convention. In this regard, the Committee refers the Government to its 2012 General Survey on the fundamental Conventions, paragraph 675. ***The Committee urges the Government to take all the necessary measures to ensure that the amending guidelines are adopted in the near future and that the new definition of "work of equal value" gives full legislative expression to the principle of equal remuneration for men and women for work of equal value, including but not limited to, "identical", "equal", "the same" or***

"similar" work, but also encompassing work that is of an entirely different nature, but which is nevertheless of equal value.

Article 3. Objective job evaluation. With reference to its previous comments, the Committee notes that the Government's reports do not provide any information on this point. The Committee thus refers to its general observation which states that in order to establish whether different jobs are of equal value, there has to be an examination of the respective tasks involved. This examination must be undertaken on the basis of entirely objective and non-discriminatory criteria to avoid an assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, it does presuppose the use of appropriate techniques for objective job evaluation. Whatever methods are used for the objective evaluation of jobs, particular care must be taken to ensure that they are free from gender bias. ***The Committee requests the Government to provide information on whether the Bureau of Local Employment has developed the Human Resources Development Plan and, if so, to provide detailed information on how it is ensured that the selection of factors used for comparison, the weighting of such factors and the actual comparison carried out are not discriminatory, either directly or indirectly. The Committee also requests the Government to supply information on any initiatives taken by the workers' and employers' organizations to determine wages on the basis of an objective evaluation of jobs.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

Previous comment

The Committee notes the Government's reports.

Article 1 of the Convention. Protection against discrimination. Legislation. The Committee recalls its long-standing comments urging the Government to introduce the necessary legal measures to ensure that women are protected against discrimination in all aspects of employment, more particularly over the lack of legislative prohibition of discrimination against women in hiring. The Committee notes with ***regret*** that, according to the Government's reports, Senate Bill No. 429 proposing to amend sections 135 and 137 of the Labour Code to prohibit discrimination based on sex in hiring and security of employment has not yet been adopted. It notes that the Bill was renumbered Senate Bill No. 829 (an Act Expanding the Prohibited Acts of Discrimination Against Women on Account of Sex, Amending for the Purpose Articles 135 and 137 of the Labour Code); it was referred to a committee on labour, employment and human resources development and has a counterpart in the House of Representatives, House Bill No. 675. ***The Committee urges the Government to take all of the necessary steps to see that Senate Bill No. 829 and House Bill No. 675 are adopted without delay, so as to ensure effective legal protection against discrimination based on sex in hiring and security of employment, in accordance with the Convention. It requests the Government to provide information on any developments in this respect.***

Article 3(d). Application in the public sector. In reply to its previous comment, the Committee notes the Government's indication that the principle of the Convention is applied, in practice, to the high-level positions exempted from the publication requirement of Republic Act No. 7041 through the 2017 Omnibus Rules on Appointment and other Human Resource Actions (CSC MC 24, s. 2017 and CSC resolution No. 1701009 dated 16 June 2017). Specifically, the Government refers to sections 83–103 of Rule IX which provide for the procedures and criteria applicable to appointments in government offices at all levels and state that: (1) there shall be no discrimination in the selection of employees on account of age, sex, sexual orientation and gender identity, civil status, disability, religion, ethnicity, or political affiliation (section 83); (2) the head of the agency shall, as far as practicable, ensure equal opportunity for men and women (section 89); and (3) the Selection Board shall maintain fairness and impartiality in

the assessment of candidates for appointment (section 97). To this end, the Selection Board may employ the assistance of an independent collaborator and all government agencies must comply with these requirements or non-compliance shall be considered as a ground for invalidation of the appointment, as well as a ground for action against the official who caused the violation (section 103). ***The Committee requests the Government to identify the institution or authority responsible for supervising the application of the 2017 Omnibus Rules on Appointment and other Human Resource Actions with regard to the appointment of high-level positions exempted from the publication requirement in Republic Act No. 7041. The Government is asked to provide information on the number of non-compliance cases identified, the consequences of such cases (invalidation of appointment and/or action against the official responsible for the violation), indicating the ground of discrimination involved. Noting that no reply is provided on this point, the Committee also reiterates its request that the Government provide an illustrative sample of procedures and criteria provided for in the Merit Promotion Plans.***

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

Qatar

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1976)

Previous comment

Legislative developments. Labour reforms. The Committee notes with ***interest*** the adoption of different sets of laws, regulations and practical measures in recent years and months. It that sense, the Committee notes the following laws and regulations since its previous comments: (1) Decision No. 95 of 2019 of the Ministry of Interior which provides that, with immediate effect, exit permit requirements have been removed for all expatriates who are not subject to the Labour Law of Qatar, such as domestic workers; (2) Law No. 17 of 2020 on the minimum wage which sets down the minimum wage for workers and applies to all categories of workers, regardless of their nationality or the sector in which they work, including domestic workers (see ILO Project Office for the State of Qatar, Progress report on the technical cooperation programme between the Government of Qatar and the ILO, November 2022); (3) Law No. 19 of 2020 amending Law No. 21 of 2015 regulating the entry, exit and residence of expatriates, supplemented by Ministerial Decision No. 51 of 2020, which removed the legal requirement for migrant workers to obtain a no-objection certificate from employers to change jobs; and (4) Ministerial Decree No. 17 of 2021 which specified measures to protect workers, including migrant workers, from heat stress.

The Committee also welcomes the adoption of the National Policy on Labour Inspection in 2019 and the National Policy on Occupational Safety and Health in 2020 which include the collection, analysis and publication of data as a specific objective. Where appropriate, the Committee will examine the provisions of these laws and policies under the relevant Articles of the Convention.

Article 1 of the Convention. Protection against discrimination. Legislation. The Committee notes that the Government refers once again to articles 34 and 35 of the Constitution (equality before the law and non-discrimination on the basis of sex, race, language or religion) and explains that the Labour Law does not contain discriminatory provisions. Referring to its previous detailed comments and to paragraphs 850–855 of its 2012 General Survey on the fundamental Conventions, the Committee recalls that the absence of a clear and comprehensive legislative framework may prevent workers from availing themselves of their right to equal opportunity and treatment and to non-discrimination. ***The Committee once again strongly urges the Government to take the necessary steps to introduce in the labour legislation (Labour Law No. 14 of 2004 and Law No. 15 of 2016 issuing the Civil Human Resources Law) or in any specific anti-discrimination legislation, provisions defining and prohibiting direct and indirect discrimination based on at least all of the grounds enumerated by the Convention, including political***

opinion, national extraction and social origin, covering all workers at all stages of employment and occupation, including recruitment and terms and conditions of employment.

Scope of application. Categories of workers excluded from the Labour Law. The Committee notes the Government's indication that: (1) the Civil Human Resources Law of 2016, which applies to public sector employees, provides for comprehensive protection against discrimination, because its provisions do not differentiate between employees; (2) members of armed forces, the police and other military bodies are covered by specific laws that do not discriminate; and (3) workers in agriculture are not excluded any longer from the scope of the Labour Law further to its amendment. The Committee wishes to underline that the absence of provisions differentiating between workers in the law is not sufficient to effectively protect all persons against discrimination in employment and occupation, as required by the Convention. The Committee also wishes to point out that, if the Convention leaves it to each country to decide which legislative measures are appropriate to implement the national equality policy, it requires the State to review whether legislation is needed to secure the acceptance and observance of the policy. The need for legislative measures to give effect to the Convention must thus be assessed within the framework of the national policy required by *Article 2* of the Convention, having regard in particular to the other types of measures which may have been taken, and to the effectiveness of the overall action pursued, including whether there are adequate and effective means of redress and remedies (see 2012 General Survey on the fundamental Conventions, paragraph 735). ***In light of the above, the Committee asks the Government to provide information on any measures taken to include in the specific laws and regulations applying to workers excluded from the scope of the Labour Law explicit provisions defining and prohibiting direct and indirect discrimination based on at least all of the grounds enumerated in Article 1(1)(a), including provisions addressing all forms of sexual harassment, at all stages of employment and occupation, especially recruitment.***

Article 1(1)(a). Discrimination based on sex. Follow-up to the representation under article 24 of the ILO Constitution. The Committee notes the Government's indication that the Ministry of Administrative Development, Labour and Social Affairs (MADLSA) closely follows up on all complaints received, through its periodic inspections. The Government adds that: (1) in 2018, 11 complaints were submitted by 9 airline workers, of whom 5 were women and 4 men, none of which related to discrimination in employment and occupation; and (2) to protect and safeguard the worker's health and the health of the child during pregnancy, pregnant women workers are transferred to appropriate jobs among the ground service staff. The Committee notes that the Government does not provide any information regarding the implementation of the rules regarding drop-off or pick-up of female employees from the company premises and rest periods, nor does it indicate how it is ensured that the application of rules and policies by the company does not create or contribute to an intimidating working environment and that the quality of life of cabin crew is improved. ***The Committee asks the Government to continue to follow up with the company concerned with regard to the implementation of the recommendations adopted by the Governing Body in 2015, and to monitor its practices, in order to ensure that: (i) there is no discrimination against pregnant cabin crew members; (ii) measures continue to be taken to provide them with alternative suitable work during pregnancy; (iii) rules governing rest periods are implemented in a non-discriminatory manner; and (iv) the application of rules and policies does not create or contribute to an intimidating working environment.***

The Committee asks the Government to continue to: (i) strengthen and monitor the effectiveness of prevention and enforcement mechanisms, including their capacity to detect and address discriminatory practices; and (ii) provide information on any complaints of discrimination filed and the results thereof.

Sexual harassment. The Committee notes from the progress report of the technical cooperation programme between the Government of Qatar and the ILO (TCP Qatar–ILO) that the MADLSA and the ILO have developed and delivered the first training activities on discrimination, violence and harassment for joint committees in September 2022. With respect to the insufficiency of the legislative framework

to ensure the prohibition and effective protection against all forms of sexual harassment in employment and occupation, the Committee notes that the Government refers once again to: (1) Law No. 14 of 2004 (Labour Law) which allows a worker to terminate his/her contract if the employer commits a physical assault, or an immoral act against him/her, or a member of his/her family (section 51(2)); and (2) sections 279 to 289 of Law No. 11 of 2004 issuing the Penal Code which punish "crimes of honour" and section 291 which provides for sanctions against any person who "offends a woman's modesty". With reference to its previous comments, the Committee points out once again that the provisions of the Labour Law and the Penal Code do not capture the full range of behaviours that constitute sexual harassment in the specific field of employment and occupation, which can materialize verbally, physically, visually, psychologically or electronically, and be committed by the employer or any other person related to work, at all stages of employment. The Committee also refers to its 2012 General Survey on the fundamental Conventions for more details on sexual harassment (paragraphs 789–794). ***The Committee once again urges the Government to take the necessary steps to: (i) explicitly define and prohibit in the labour legislation relating to the public and private sectors or any specific anti-discrimination legislation, all forms of sexual harassment at work committed not only by the employer but also by any other person in relation to work, at all stages of employment, against all men and women workers; (ii) include specific provisions for effective mechanisms to prevent, remedy and sanction sexual harassment; and (iii) provide specific training for labour inspectors on this subject. Lastly, the Committee once again asks the Government to provide information on the number of complaints of sexual harassment referred to the competent authorities, including criminal cases in application of sections 279 to 289 and 291 of Law No. 11 of 2004 issuing the Penal Code.***

Articles 1 and 2. Equality and non-discrimination. Migrant workers. The Committee notes the following information provided in the Government's report and the progress report on the TCP Qatar–ILO regarding another set of measures: (1) the removal of the legal requirement for migrant workers to obtain a no-objection certificate from employers to change jobs (Law No. 19 of 2020); and (2) the indication that, from November 2020 to August 2022, a total of 348,455 applications to change jobs were approved by the MADLSA, 16 per cent of which were submitted by women workers in the private sector (the overall proportion of women in the workforce being 15 per cent). The Committee also notes that the implementation of the programme for the rotation of expatriate workers and the retention of skilled workers has commenced and an electronic platform (the Labour Re-employment Platform) was launched to rotate skilled workers in the local market.

The Committee further notes with ***interest*** that: (1) in 2021, the MADLSA established an online platform for workers, including domestic workers, to submit complaints online, including anonymous whistle-blower complaints; (2) the electronic systems of MADLSA and the Ministry of Interior have been linked in an attempt to prevent employers from cancelling workers' residency permits (QIDs) or filing false charges of abscondment as a form of retaliation. With respect to the misuse of the abscondment report system as a retaliatory action, the Committee welcomes the procedural changes adopted to oblige the employer reporting a case of abscondment to provide additional information, such as on whether or not the employer owes any financial dues to the worker or whether or not there is a labour complaint, the worker's accommodation address and information on any witness(es) who can testify. It notes that a penalty was introduced in case of submission of false information by the employer; and (3) awareness-raising campaigns are carried out on a large scale to inform workers of the mechanisms available to them to file complaints and to make them aware of their rights, in multiple languages. Finally, the Committee notes from the progress report of the TCP Qatar–ILO that: (1) the ILO Doha Office has continued to receive queries from workers, giving thereby a direct insight into the challenges faced by migrant workers and where implementation challenges remain; (2) throughout 2022, most of the queries received concerned delays and cancellations of workers' applications to change employer, together with cancellations of QIDs and other similar forms of retaliation, which remains a challenge; (3) the number of cases per month and in total has declined substantially in the second half of the year;

(4) the Workers' Support and Insurance Fund has dramatically increased disbursements to workers up until 30 September 2022 to QAR1,165,316,181 (over US$320 million) of unpaid wages and benefits, which demonstrates the scale of this issue; and (5) Decision No. 2/2022 on the provisions and procedures for disbursing workers' entitlements was published in April 2022. The report adds that a booklet on the Labour Law will be published by the end of the year in English and Arabic and will be translated into multiple languages in 2023. ***Welcoming the important legal measures adopted recently and in the past years by the Government to facilitate the labour mobility of migrant workers and thereby reduce their vulnerability to discrimination and abuse, the Committee asks the Government to: (i) step up its efforts in monitoring and enforcing the new legal provisions; (ii) ensure that, where implementation challenges and obstacles remain, measures are taken so that migrant workers can avail themselves of their rights and do not suffer retaliation from their employer; and (iii) continue to undertake awareness-raising activities.***

The Committee also asks the Government to adopt proactive and comprehensive measures to promote substantive equality and combat prejudices and stereotypes against migrant workers.

Equality and non-discrimination. Domestic migrant workers. Legislative developments and practical measures. The Committee welcomes the adoption of Ministerial Decision No. 95 of 2019 according to which domestic workers now have the right to leave the country temporarily or permanently during their contract period without prior approval from their employers, with 72 hours' notice to the employer whose approval is not required. Furthermore, as stated at the beginning of this comment, the Committee notes the following developments: (1) the adoption by the MADLSA in 2021 of a revised standard employment contract; (2) the determination of maximum recruitment fees that agencies can charge employers; (3) the implementation of a public campaign to raise awareness on decent work for domestic workers; (4) the development of a *User Guide* for workers submitting employment change applications and an update of the communication on labour mobility legislation produced in 12 languages; (5) the dissemination of the *Know Your Rights* booklet for domestic workers in 12 languages and the publication of the *Guide to Employing Migrant Domestic Workers in Qatar* booklet for employers in two languages; and (6) the design and development of a training programme on decent work for domestic workers for licensed private recruitment agencies in Qatar, in cooperation with the ILO. In addition, the Committee notes that, as part of the TCP Qatar–ILO, the MADLSA and ILO are studying the feasibility of developing a voluntary wage protection system (WPS) for domestic workers which would allow the Government to monitor salaries and allowances paid to them and to detect violations, as the current WPS does not cover this category of workers. In this context, the Committee also observes that Decision No. 2/2022 on the provisions and procedures for disbursing workers' entitlements establishes limits on how much can be paid out and provides for a different limit for domestic workers. With respect to the revised employment contract, it notes that the contract: (1) specifies additional rights for domestic workers and provides clarity on the terms and conditions of their employment; and (2) aligns domestic workers' rights with those of other workers employed in the private sector in relation to overtime payment, termination of employment and sick leave entitlements. The Committee notes however with ***concern*** from the progress report of the TCP Qatar–ILO that: (1) challenges of full implementation of the reforms remain, especially due to limited inspection of working and living conditions of domestic workers; (2) there have been reports of employers of domestic workers seeking to recover the fees paid to recruitment agencies from the workers themselves, to compensate for the loss of the worker, and restricting workers' labour mobility by filing false charges of abscondment or cancelling workers' residency permits as a form of retaliation. ***The Committee asks the Government to take the necessary steps to: (i) ensure that domestic workers benefit from the same legal and practical protections against discrimination as other categories of workers, including with respect to disbursement of wages and all forms of sexual harassment, either by amending Law No. 15 of 2017 or through the adoption of comprehensive anti-discrimination legislation; (ii) adequately monitor and enforce the new legislation on the minimum wage (including to ensure that it does not***

discriminate on the basis of national origin), the removal of exit visas and change of employer, as well as compliance with the revised employment contract; and (iii) effectively combat stereotypical views and prejudices regarding domestic workers and the undervaluation of their work.

It also asks the Government to provide information on the measures taken to address the issues of inspection of working and living conditions of domestic workers and restrictions by the employer to labour mobility.

Article 2. Equality between men and women in employment and occupation. The Committee notes that the Government refers once again to the Qatar National Vision 2030, which calls for, inter alia, "improving women's capacities to enable them to participate fully in the country's economic and political process". It notes the Government's indication that: (1) women's participation in the labour market has increased significantly as a result of the inclusion of promotion of women's rights in national policies and laws which regulate the labour market; (2) Qatari women are holding several ministerial positions and leadership roles, and their presence is increasing in the honorary ranks of ministries, the judiciary, the public prosecution and the Shura Council. The Committee also notes from the statistics on the distribution of the labour force for 2019 provided by the Government that the labour market continues to be highly segregated, with a large majority of women in domestic services (40 per cent of all working women in comparison with 3.6 per cent of all working men), education (12.2 per cent of all working women in comparison with 1 per cent of all working men), and health and social work (7.6 per cent of all working women in comparison with 1.2 per cent of all working men). Most men work in construction (48.1 per cent of all working men in comparison with 2 per cent of all working women). The Committee also notes that, in reply to its previous comments, the Government indicates that it will look into the manner of undertaking an assessment and analysis of the gender situation in respect of employment under its direct control and to encourage such an initiative in the private sector. ***Noting the persistent gender occupational segregation and low participation of women in the labour market, the Committee reiterates its request to the Government to adopt proactive measures and remove obstacles, with a view to facilitating and increasing the participation of women – Qatari and non-Qatari – in employment and occupation. In particular, the Committee asks the Government to adopt measures aimed at: (i) promoting equal opportunities for men and women in employment and occupation, including through the promotion of neutral recruitment processes and the removal of obstacles to access to productive resources and equipment; and (ii) combating stereotypical views regarding women's aspirations and capabilities, their suitability for certain jobs or their interest or availability for full-time jobs.***

The Committee hopes that the Government will soon be able to undertake an assessment and analysis of the gender situation in respect of employment under its direct control and to encourage such an initiative in the private sector. The Government is also asked to continue providing up-to-date statistics, disaggregated by sex, concerning the participation of men and women in the various sectors of economic activity, in both the private and the public sectors, as well as statistics on the participation of both Qatari and non-Qatari women in education and vocational training.

Article 5. Special measures of protection and assistance. Women's employment. The Committee notes the Government's statement that: (1) there are no restrictions in law and in practice limiting the employment of women in certain professions; and (2) over time, a shift has occurred from a protectionist approach to women's employment to an approach based on the promotion of true equality between men and women and the actual elimination of discriminatory practices. The Committee also notes the Government's indication that Council of Ministers Order No. 26 of 2019 was promulgated, establishing the National Committee for the Affairs of Women, Children, the Elderly and Persons with Disabilities, which "reflects the official interest in the need for a supreme national government agency concerned with the family, in particular women, their needs and future aspirations, in line with the comprehensive vision of development "Qatar National Vision 2030"". ***The Committee therefore asks the Government to provide information on any steps taken to ensure that: (i) its approach regarding women's employment***

remains in line with the principles of equality and non-discrimination and addresses gender stereotypes regarding the role, capacity and aspirations of women; and (ii) any protective measures taken are strictly limited to maternity protection or based on occupational safety and health risk assessments and do not constitute obstacles to the employment of women, in particular their access to posts with career prospects and responsibilities.

Enforcement and awareness-raising. The Committee emphasizes the importance of enforcing the new legal provisions, in particular those concerning migrant workers, including domestic migrant workers. It also refers to the developments described above regarding the establishment of an online platform for workers, including domestic workers and whistle-blowers, to submit complaints. The Committee also notes from the progress report of the TCP Qatar–ILO that between October 2021 and October 2022, the MADLSA received 34,425 complaints, primarily through the online complaints platform, mainly concerning non-payment of wages and end-of-service benefits, as well as annual leave. Of the total number of complaints, 66.5 per cent (22,897) were settled, 30.7 per cent (10,565) were sent to the Dispute Settlement Committees (DSCs) and 2.8 per cent (963) are still under review. The Committee notes the Government's indication that no violations were detected relating to discrimination in employment and occupation during inspection visits in 2019–20 and no lawsuits were registered with the labour dispute settlement committees in relation to discrimination in employment and occupation. It further notes that specialized training programmes were held for labour inspectors to strengthen their competence on labour law and international labour standards, including their ability to detect any cases related to discrimination in employment and occupation. ***The Committee asks the Government to continue to increase the number and reinforce the capacities of labour inspectors and other enforcement authorities with a view to preventing, identifying and effectively addressing cases of discrimination and putting an end to discriminatory practices. It also asks the Government to continue to provide information on the number, nature and outcomes of any cases detected by labour inspectors and complaints examined by courts relating to discrimination in employment and occupation and on the functioning of the complaints system and any obstacles faced by workers in submitting their complaints.***

Romania

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Discrimination based on religion. Access to education, training and employment. The Committee notes, from the European Commission's website, that a draft bill to amend the Romanian Education Law was filed on 2 December 2017 and received a positive advisory opinion from the Economic and Social Council on 9 January 2018. The bill proposes the following additions to section 7 of the Education Law: "for the purpose of facilitating the identification of persons in educational units, institutions and all spaces used for education and professional training, it is prohibited to cover one's face with any material which make it difficult to recognize the face, except for medical reasons. Infringement of these provisions constitutes a reason to deny access to the perimeter of the educational units, institutions and spaces for education and professional training." The sanction, introduced as an amendment to section 360(1) of the Education Law would be a fine ranging from 5,000 to 50,000 Romanian Leu (RON) (approximately €1,100 to €11,000). The Committee notes that, if adopted, this new provision will be discriminatory towards those Muslim women and girls who wear a full face veil in terms of their access to educational or training institutions and might therefore limit their opportunities to find and exercise employment in the future – for reasons associated with their religious convictions, contrary to the Convention. ***Noting that this provision of the draft bill may have a discriminatory effect towards Muslim women who wear a full-face veil in terms of their possibilities of finding and exercising employment, the Committee requests the Government to provide information on: how it is ensured that this provision of the draft bill will not have the effect of***

reducing the opportunities of girls and women to access education and finding employment in the future; (ii) the progress of the draft bill in the legislative process; and (iii) to supply information on the number of girls and women who might be affected by the implementation of this new provision.

Articles 1(2) and 4. Discrimination based on political opinion. Inherent requirements of the job. Activities prejudicial to the security of the State. For a number of years, the Committee has been drawing the Government's attention to the fact that the restriction set by section 54(j) of Act No. 188/1999, which provides that "to hold public office a person shall meet the following conditions: … (j) shall not have been carrying out an activity in the political police as defined by the law", could amount to discrimination on the basis of political opinion because it applies broadly to the entire public service rather than to specific jobs, functions or tasks. In its previous report, the Government had explained that, in order to clarify the legal norm and remove any possible inconsistency with the Convention, it had proposed an amendment to the current text of section 54(j) of Act No. 188/1999 as follows:"… was not a worker of the Securitate or a collaborator thereof, as provided by specific legislation». According to the Government, "specific legislation" refers to section 2 of Ordinance No. 24/2008 which defines an "employee of Securitate" and a "collaborator of Securitate". While understanding the Government's concerns regarding the requirement for all government unit members to be loyal to the State, the Committee had drawn attention to the fact that, for such measures not to be deemed discriminatory under *Article 4* of the Convention relating to activities prejudicial to the security of the State, they must affect an individual on account of activities he or she is justifiably suspected or proven to have undertaken. These measures become discriminatory when taken simply by reason of membership to a particular group or community. They must refer to activities that are objectively prejudicial to the security of the State and the individual concerned must have the right to appeal to a competent body in accordance with national practice (see 2012 General Survey on the fundamental Conventions, paragraphs 832–835). The Committee therefore requested the Government to specify and define the functions in respect of which section 54(j) of Act No. 188/1999 would apply and to provide information on its application in practice. The Committee notes that the Government's report does not contain any information in this regard. It notes, however, that the European Court of Human Rights (ECHR) *(Naidin v. Romania,* No. 38162/07) held that the barring of a former collaborator of the political police from public service employment was justified by the loyalty expected from all civil servants towards the democratic regime. In this regard, the Committee recalls that, under *Article 1(2),* political opinion may be taken into account as an inherent requirement of a particular position involving special responsibilities in relation to developing government policy, which is not the case of section 54(j) given that it applies to any state civil service position, whatever the level of responsibility. Further, the Committee recalls that the principle of proportionality must apply and that the exception under *Article 4* should be interpreted strictly. ***The Committee urges the Government to take the necessary steps to amend section 54(j) of Act No. 188/1999 or to adopt other measures clearly stipulating and defining the functions to which this section applies. It also asks the Government to provide information on the application of section 54(j) of Act No. 188/1999 in practice, including information on the number of persons dismissed or whose application has been rejected pursuant to this section, the reasons for these decisions and the functions concerned, as well as information on the appeal procedure available to the affected persons and any appeals lodged and their results.***

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

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

Russian Federation

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

Previous comment

The Committee notes the observations of the Confederation of Labour of Russia (KTR) received on 31 August 2021.

Articles 1–4 of the Convention. Assessing and addressing the gender pay gap and its underlying causes (occupational segregation). The Committee notes that, according to the statistical information from the

Federal State Statistics Service (Rosstat) provided by the Government in its report, the average gender pay gap remained high at 27.9 per cent in 2019 (compared with 27.4 per cent in 2015). It observes that the gender pay gap was as wide as 40 per cent for mid-level professionals, where women represented 68.9 per cent of the total number of workers, and 30.1 per cent for top level professionals, where women represented 70.6 per cent of the total number of workers. Furthermore, in all economic sectors, wages of women were systematically lower than men's. In that regard, the Committee notes the persistence of occupational gender segregation, with women being still concentrated in hotel and restaurant services (66 per cent), education (79.9 per cent), healthcare and social services (79.9 per cent), while men were mostly working in construction (83.5 per cent), mining (81.7 per cent) and production and distribution of electricity, gas and water (66.9 per cent). It also notes that, in its observations, the KTR highlights that, in sectors where women are most concentrated: (1) the average monthly salary was systematically lower than the national average salary while the opposite applies for sectors where men are concentrated, except in construction where there is a significant percentage of migrant workers; and (2) men remain disproportionately represented in management. In that regard, the KTR adds that, while the share of women in management positions over two years grew by 1.2 per cent and was approaching parity (49.7 per cent in 2019), the gender pay gap in hourly earnings for managers was estimated at 31.6 per cent in 2019. Despite this situation, in KTR's view, the Government did not take any serious commitment to promote gender equality or elaborate and implement inclusive, comprehensive and gender-sensitive approaches in order to reduce the gender pay gap. The Committee notes with ***concern*** this information and regrets that the Government did not provide information on any measures elaborated or implemented in order to address the wide and persistent gender pay gap and its underlying causes. It notes that, in its 2020 conclusions, the European Committee of Social Rights (ECSR) concluded that the Russian Federation was not in conformity with Article 20(c) of the European Social Charter, which requires the implementation of appropriate measures regarding remuneration to ensure equal opportunities and equal treatment between men and women in matters of employment and occupation, on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled (March 2021, pages 32–33). Furthermore, in its 2021 concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed similar concerns (CEDAW/C/RUS/CO/9, 30 November 2021, paragraph 38). Finally, the Committee refers to its comments on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Workers with Family Responsibilities Convention, 1981 (No. 156) regarding prohibition of women's employment in specific occupational activities, as well as gender stereotypes regarding women's professional capabilities and their role in the family. ***The Committee therefore urges the Government to take the necessary steps, without delay, in order to address the gender pay gap and its underlying causes, such as persistent vertical and horizontal occupational gender segregation and stereotypes regarding women's professional aspirations, preferences and capabilities, and their role in the family. It asks the Government to provide: (i) information on the content of the proactive measures implemented to overcome occupational gender segregation in the labour market and reduce the gender pay gap, including by enhancing women's access to jobs with career prospects and higher pay; (ii) information on any assessment made of the results achieved by such measures; and (iii) statistical information on the earnings of men and women as well as any recent information on the gender pay gap, disaggregated by occupational category if possible, both in the public and private sectors.***

The Committee is raising other matters in a request addressed directly to the Government.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Previous comment

The Committee notes the observations of the Confederation of Labour of Russia (KTR) received on 1 September 2021.

Article 1 of the Convention. Protection against discrimination in employment and occupation. Legislation. The Committee notes that, in its report, the Government refers to sections 3 and 64 of the Labour Code without providing any additional information regarding the signification or scope of application of the term "convictions" (beliefs) as a prohibited ground of discrimination. It further notes that, in its observations, the KTR highlights: (1) the lack of legislative protection against indirect discrimination; as well as (2) the fact that, as a result of the inadequacy of existing regulations and the lack of definitions of the different types of discrimination, there is a lack of understanding of the nature of the phenomenon among workers and employers, as well as among judges. In that regard, the Committee points out that the Convention prohibits both direct and indirect discrimination in all aspects of employment and occupation (access to vocational training, access to employment and to particular occupations, and terms and conditions of employment). Furthermore, when legal provisions are adopted to give effect to the principle of the Convention, they should include at least all of the grounds of discrimination enumerated in *Article 1(1)(a)* of the Convention, among which "political opinion" (see 2012 General Survey on the fundamental Conventions, paragraph 749). ***In light of the above, the Committee urges the Government to take appropriate steps to ensure effective and comprehensive legal protection for workers against both direct and indirect discrimination on at least all of the grounds enumerated in Article 1(1)(a) of the Convention, including political opinion, and with respect to all aspects of employment and occupation as set out in Article 1(3). It asks the Government to provide information on the steps taken to that end and their outcomes.***

Article 1(1)(a). Discrimination based on sex. Sexual harassment. Regarding the absence of specific legal provisions protecting workers against sexual harassment at work, the Committee notes the Government's indication, in its report, that a Federal Bill on the Prevention of Domestic Violence is currently under preparation. The Government adds that, in the framework of the National Strategy for Women 2017-2022, seminars were held at regional level on models for preventing and combating violence against women, in cooperation with the Council of Europe. The Committee notes that, in its observations, the KTR highlights the lack of adequate legislative provisions and mechanisms to protect workers against sexual harassment. The Committee further notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern at: (1) the absence of legislation explicitly criminalizing sexual harassment at the workplace; (2) the lack of effective measures to ensure the protection of women and girls from gender-based violence, harassment and bullying in schools and universities and the lack of effective complaint and redress mechanisms; and (3) the introduction, through the amendment to the Criminal Code in December 2020, of more severe sanctions for defamation, applicable to cases in which victims bring charges of crimes against their sexual integrity and sexual freedom, which prevents victims of sexual violence from gaining access to justice owing to fear of prosecution (CEDAW/C/RUS/CO/9, 30 November 2021, paragraphs 24, 36 and 38). In that regard, it recalls that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, and the fact that criminal law does not cover the full range of behaviour that constitutes sexual harassment in employment and occupation. Given the gravity and serious repercussions of sexual harassment, as a serious manifestation of sex discrimination and a violation of human rights, the Committee emphasizes the importance of taking effective measures to prevent and prohibit sexual harassment at work, both quid pro quo and hostile environment sexual harassment (see 2012 General Survey on the fundamental Conventions, paragraphs 789 and 792). ***The Committee therefore again asks the Government to take steps to include, in its labour legislation: (i) a clear definition and prohibition of both quid pro quo and hostile work environment sexual harassment in employment and occupation; and (ii) appropriate preventive and remedial measures and procedures. It also asks the Government to provide information on: (i) any practical measures taken to prevent and address sexual harassment in***

employment and occupation, in the framework of the National Strategy for Women 2017-2022 or otherwise, including any awareness-raising activities carried out for employers, workers and their organizations; and (ii) the number of cases of sexual harassment dealt with by the courts or any other competent authorities, the sanctions imposed and remedies granted.

Articles 1(1)(a) and 5. Discrimination based on sex. Special measures of protection. The Committee notes the Government's indication that Resolution No. 162 of 25 February 2000, which excluded women from employment in 456 occupations and 38 branches of industry, was replaced by Order No. 512 of 18 July 2019 of the Ministry of Labour, which came into force on 1 January 2021. This Order updates the list of production processes, jobs and occupations with harmful and/or hazardous working conditions where the employment of women is restricted. The Committee notes, more particularly, that the new list reduces the number of restricted occupations for women from 456 to 100. It further notes that Order No. 313n of 13 May 2021 of the Ministry of Labour, which entered into force on 1 March 2022, amended Order No. 512 of 18 July 2019 by introducing further modifications to the existing list and providing that the list is valid until 1 March 2028. The Government states that the criteria for revising and updating this list included factors dangerous to women's reproductive health, affecting the health of future generations and having long-term consequences; besides, certain types of work that are not used in modern production were excluded from the list. The Committee notes the Government's repeated indication that section 253 of the Labour Code and the list of activities in which the employment of women is prohibited provide for a flexible approach as the employer may employ women when creating safe working conditions as confirmed by the result of a special assessment of working conditions. As a result of Order No. 313n of 13 May 2021, a State expert examination of working conditions is no longer required as confirmation of safe working conditions. The Committee notes with ***interest*** the amendments made by the Government to reduce the number of sectors and occupations in which women cannot be employed. It observes, however, that employment of women is still prohibited in a large number of sectors and occupations. In this regard, it notes that, in its observations, the KTR considers that the existence of even a reduced list of occupations from which women are prohibited: (1) establishes an overarching ban that affects all women in the country; (2) represents a violation of women's right to equal opportunities in employment and choice of occupation; and (3) perpetuates occupational gender segregation. The Committee further notes that, in its 2021 concluding observations, CEDAW expressed similar concerns (CEDAW/C/RUS/CO/9, paragraph 38). In that regard, the Committee recalls that a distinction shall be made between special measures to protect maternity in the strict sense, which come within the scope of *Article 5* of the Convention, and measures based on stereotypical perceptions of women's capabilities and their role in society, which are contrary to the principle of equality of opportunity and treatment (see 2012 General Survey on the fundamental Conventions, paragraph 839). Indeed, restrictions to the employment of women (who are not pregnant or are not breastfeeding) are contrary to gender equality of opportunity and treatment and may also create legal barriers preventing women to access well paid jobs, unless such measures are adopted to protect genuinely their health. This protection must be determined based on the results of a risk assessment showing that there are specific risks for the health and/or security of women. Therefore, any of these restrictions must be justified and based on scientific evidence and, where they exist, must be periodically reviewed in light of technological evolution and scientific progress to determine whether they are still necessary. Provisions regarding the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health. Moreover, with a view to repealing discriminatory protective measures applicable to women's employment, it may be necessary to examine what other measures, such as improved health protection of both men and women, adequate transportation and security, as well as social services, are necessary to ensure that women can access these types of employment on an equal footing with men (see also 2012 General Survey on the fundamental Conventions, paragraph 840). ***The Committee therefore urges the***

Government to pursue its efforts in order to revise Order No. 512 of 18 July 2019, as amended, so as to ensure that any restrictions on the work that can be undertaken by women are not based on stereotyped perceptions regarding their capacity, aspirations and role in society and are strictly limited to those aimed at protecting maternity and based on risk assessment. It asks the Government to provide information on: (i) any progress made in this regard, including in consultation with employers' and workers' organizations; and (ii) any specific measures taken or envisaged to address the legal and practical barriers to the employment of women, in particular by amending sections 99, 113, 253, 259 and 298 of the Labour Code which provide for restrictions regarding working time (overtime, night work, work in shifts, and so on) for women with children under the age of 3 years (or 1.5 years).

Articles 2 and 3. Equality of opportunity and treatment for men and women. The Committee notes the Government's indication that the proportion of women in public and civil service positions increased from 72 per cent in 2016 to 73.2 per cent in 2019. It notes however that, according to the statistical information available in ILOSTAT, in 2020, the labour force participation rate for women remained low at 55.1 per cent, compared to 70 per cent for men. It further notes, from the statistical information of the Federal State Statistics Service (Rosstat) forwarded by the Government with its report on the application of the Equal Remuneration Convention, 1951 (No. 100), the continuing occupational gender segregation, with women being still highly concentrated in hotel and restaurant services (66 per cent), education (79.9 per cent), and healthcare and social services (79.9 per cent), while their proportion in other sectors traditionally dominated by men has been decreasing (such as construction, mining and distribution of electricity, gas and water). Referring to its previous comments regarding the adoption of the National Strategy for Women 2017–22, the Committee notes the Government's statement that regional plans were adopted and coordinating councils were established in order to implement the strategy. The Government adds that, in order to advance women's economic situation, several incentive measures and training activities were carried out in this framework. As a result, in the 2019/20 academic year, 220,300 women were trained in higher and secondary vocational education in the sector of "creative industries", mainly in hairdressing, hotel services and design. The Government adds that there has also been an increase in the number of girls and women in natural sciences and mathematics, as well as in the number of women in research institutions (357 women more in 2020). While welcoming these efforts, the Committee would like to draw the Government's attention to the importance of ensuring that measures taken to promote gender equality do not in practice reflect stereotyped assumptions regarding women's aspirations and capabilities or suitability for certain jobs, thus reinforcing gender stereotypes by promoting women's participation in areas where they are traditionally highly concentrated, such as hotel services or hairdressing. In that regard, the Committee notes that, in its 2021 concluding observations, the CEDAW expressed specific concerns at: (1) the persistence of discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society; (2) the persistence of discriminatory gender stereotypes in school curricula and textbooks and the lack of education on gender equality; and (3) vertical and horizontal occupational segregation. The CEDAW further expressed specific concern at the situation of rural women, in particular regarding their limited access to education, formal employment, and credit and economic empowerment schemes (CEDAW/C/RUS/CO/9, paragraphs 22, 36, 38 and 42). ***In light of the persistent gender stereotypes and occupational segregation in the labour market and the absence of substantial progress made in the past years, the Committee urges the Government to step up its efforts to promote effective equality of treatment and opportunity between men and women in employment and occupation. It also asks the Government to provide information on:***

(i) the nature and impact of the measures taken to combat stereotypes regarding women's professional aspirations, preferences and capabilities, and their role and responsibilities in the family and society, including through the diversification of the fields of vocational education and training for women;

(ii) the concrete measures implemented to promote and enhance the participation of women in the labour market and in decision-making positions on an equal basis with men, both in the public and private sectors; and

(iii) the participation of men and women in education, training, employment and occupation, disaggregated by occupational categories and positions, in both the public and private sectors.

Equality of opportunity and treatment irrespective of race, colour and national extraction. Roma people. The Committee notes the Government's indication that a comprehensive action plan for the socio-economic and ethnocultural development of the Roma in the Russian Federation was approved in 2019 and is currently being implemented. It also notes that, in its 2019 report, the European Commission against Racism and Intolerance (ECRI) was concerned about: (1) the creation of separate "Roma classes" in certain schools is presented by the Russian authorities as a tool for responding flexibly to the situation and needs of Roma children; (2) reports from civil society organizations describing other cases of racial segregation in certain schools, for example in the Volgograd area, involving separating Roma children from others during school-meals, use of the school library or sports activities; and (3) allegations from NGOs that Roma pupils are sometimes asked by their school administration not to participate in celebrations to mark the beginning of the new school year (CRI(2019)2, page 10 and paragraph 76). The Committee further notes that, in its 2021 concluding observations, the CEDAW also expressed concern about reports of segregation and discrimination in access to education against Roma people (CEDAW/C/RUS/CO/9, paragraph 36). ***The Committee asks the Government to strengthen its efforts to combat stigma, prejudices and discrimination against Roma people in order to ensure effective equality of opportunity and treatment in education, training and employment. It asks the Government to provide information on:***

(i) the measures taken to that end, in particular in the framework of the Comprehensive Action Plan for the socio-economic and ethnocultural development of the Roma in the Russian Federation approved in 2019 or any follow-up strategy adopted, as well as on any study or report available on their impact;

(ii) any particular measures implemented to specifically address the segregation faced by Roma people in practice, including with regard to their access to education without discrimination; and

(iii) the participation of Roma people in education, professional and vocational training courses, as well as in the labour market.

Migrant workers. Referring to its previous comments where it requested the Government to take specific measures to strengthen the enforcement of the provisions of the Labour Code prohibiting discrimination based on grounds of race, ethnicity and national origin, the Committee notes with ***regret*** that the Government did not provide information in this regard. It notes that, in its 2019 report, the European Commission against Racism and Intolerance (ECRI) expressed specific concern about migrant workers from Central Asia and "others of non-Slav appearance" often becoming victims of police harassment and racial profiling, which is an obstacle to their integration, as such experiences alienate the individuals concerned and, by extension, the wider relevant groups they belong to, and diminish trust in the State authorities. Furthermore, Central Asians and "others of non-Slav appearance" as well as persons of African descent are also frequent victims of racial violence, including murder in some instances (CRI(2019)2, pages 10–11 and paragraph 87). The Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at: addressing gaps in education, training and skills; providing unbiased vocational guidance; recognizing and validating the qualifications obtained abroad; and valuing and

recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps – such as laws, policies, programmes, mechanisms and participatory processes, and remedies – designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population (general observation of 2019 on discrimination based on race, colour and national extraction). The Committee also refers to its 2020 observation on the Forced Labour Convention, 1930 (No. 29), where it noted allegations regarding the increased risk of falling into forced labour faced by migrant workers. ***The Committee urges the Government to adopt every necessary measure to: (i) prevent and address discrimination on the grounds of race, colour and national extraction, including by addressing prejudices and stereotypes and promoting tolerance; and (ii) ensure equality of opportunity and treatment in employment and occupation for migrant workers and students, in particular Central Asians and "others of non-Slav appearance", as well as persons of African descent.***

It asks the Government to provide information on: (i) any specific measures implemented to that end, such as awareness-raising through media campaigns, as well as any assessment made of their impact; and (ii) any measures taken to ensure that victims of discrimination on the grounds of race, colour and national extraction have access to effective protection and remedies, including information on the number, nature and outcome of cases or complaints of discrimination on such grounds dealt with by the courts or any other competent authorities.

The Committee is raising other matters in a request addressed directly to the Government.

Saint Kitts and Nevis

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2000)

Previous comment

Articles 1(b) and 2(2)(a) of the Convention. Work of equal value. Legislation. The Committee notes with ***regret*** the Government's statement, in its report, that there has been no new legislation or other measures adopted since the last report. ***In view of the above, the Committee reiterates once again its request that the Government give full legislative expression to the principle of the Convention, as soon as possible, and in particular that the new legislation include provisions explicitly guaranteeing equal remuneration for men and women for work of equal value.***

The Committee is raising other matters in a request addressed directly to the Government.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)

Previous comment

Legislative developments. ***Noting with regret that the Government has been providing the Committee with the same information for more than a decade now, the Committee firmly hopes that the new Labour Code will be enacted in the near future and that it will contain comprehensive provisions prohibiting:***

(i) direct and indirect discrimination,

(ii) at least on all of the grounds set out in Article 1(1)(a) of the Convention,

(iii) in all aspects of employment and occupation, and

(iv) for all workers.

It also asks the Government to provide information on any additional grounds of discrimination as foreseen under Article 1(1)(b).

The Committee is raising other matters in a request addressed directly to the Government.

Sao Tome and Principe

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1982)

Previous comment

Articles 1(b) and 2(2)(a) of the Convention. Equal remuneration for men and women for work of equal value. Legislative developments. The Committee notes that the Government affirms, in its report, its belief that the national legislative framework is now in conformity with the principle enshrined in the Convention, in response to the Committee's previous comments on section 234(5) of the Labour Code. It notes however that this section requires "identical contractual conditions" for the application of the principle of equal remuneration for men and women workers for work of equal *value*, and thus does not fully reflect the principle of the Convention. In this regard, the Committee notes that the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) requested the Government to inform it about steps taken to amend the Labour Code to ensure the principle of equal pay for work of equal value (CEDAW/C/STP/Q/1–5, 7 March 2022, paragraph 16(d)). ***The Committee requests the Government to consider amending section 234(5) of the Labour Code to ensure that the overall value of the job is considered without limiting the comparison to "identical contractual conditions" and that the definition allows for the comparison, free from gender bias, of jobs of an entirely different nature, not necessarily in the same enterprise, but which may be shown, after examination, to be of equal "value". The Committee also requests the Government to provide information on: (i) the application in practice of sections 22(1) and 234(5) of the Labour Code, including any cases or complaints concerning inequality of remuneration dealt with by the labour inspectorate, the courts or any other competent authority, specifying the penalties imposed and the compensation awarded; and (ii) the awareness-raising activities undertaken on the new legislative provisions and on the principle of the Convention, including in collaboration with employers' and workers' organizations.***

Articles 2 and 3. Reducing the gender wage gap. In response to the Committee's request for information on measures taken to assess and address the gender wage gap in the formal and informal economy, the Government states that it is above all focusing its efforts on the transition from the informal to the formal economy in order to extend social protection to the entire population, still largely affected by informality. The Government recalls in this regard that there are different minimum wages applicable in the private and public sectors, determined by Decree No. 24/2015 of 18 December 2015, and that no worker may be paid less than the wage defined in that Decree. The Committee also notes, from the data provided by the Government in its report to CEDAW, that the level of labour income is relatively higher for men than for women throughout the life cycle, and that the surplus labour income of men aged 22 to 76 is about 11 times that of women, resulting in low levels of empowerment of women and girls (CEDAW/C/STP/1–5, 29 November 2021, paragraphs 59 and 60). ***Recalling that a National Statistical Development Strategy, adopted in 2018, is under implementation, with a view to reinforcing the National Statistics Institute, the Committee again requests the Government to provide updated information on the pay gap between men and women, the distribution of men and women in the different economic sectors and occupations and their respective incomes, in the public and private sectors.***

Article 4. Cooperation with workers' and employers' organizations. The Committee notes the Government's indication that the social partners were unable to meet to discuss the draft revision of Act No. 1/99 on the National Council for Social Dialogue (CNCS) due to the COVID-19 pandemic. ***The Committee requests the Government to provide information on progress made in revising Act No. 1/99***

on the CNCS and on strengthening the capacities of the workers' and employers' organizations in respect of the principle of the Convention.

The Committee is raising other matters in a request addressed directly to the Government.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1982)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Legislative developments. The Committee has been requesting the Government to ensure that the draft General Labour Act, which was under preparation, would include a prohibition of direct and indirect discrimination at all stages of the employment process and on all the grounds listed in *Article 1(1)(a)* of the Convention. The Committee notes with ***satisfaction*** the adoption of the Labour Code, through Act No. 6/2019 of 16 November 2018, and more particularly sections 15–17, which define and prohibit both direct and indirect discrimination in access to employment, vocational training and promotion and working conditions, based on the grounds of ancestry and social origin, race, colour, age, sex, sexual orientation, marital status, family status, genetic heritage, reduced working capacity, disability or chronic illness, nationality, ethnic origin, religion, political or ideological beliefs and trade union membership. It further notes that section 18 of the Labour Code defines and prohibits both quid pro quo and hostile work environment sexual harassment, which is expressly defined as a form of discrimination. It notes that, in accordance with section 20, any employee or jobseeker adversely affected by discriminatory practices would be entitled to receive compensation. The Committee notes that, pursuant to section 3(1)(a) and (2) of Act No. 6/2019, the provisions on equality and non-discrimination and sexual harassment at the workplace apply to public employees. In that respect, it further notes the adoption of Act No. 2/2018 of 22 November 2017, amending Act No. 5/1997 on the Civil Service Statute, and more particularly new section 52(B)(1)(e), which provides that civil servants are prohibited from exerting pressure, threatening or harassing other officials or agents or subordinates that may affect the dignity of the person, or include malicious actions. ***The Committee asks the Government to provide information on the application in practice of sections 15–18 and 20 of the Labour Code, as well as section 52(B)(1)(e) of the Civil Service Statute. The Committee also asks the Government to provide information on any concrete measures taken to raise public awareness and understanding of the relevant new legislative provisions, the procedures and remedies available, in particular for employers, workers and the general public. It asks the Government to provide detailed information on the number and nature of cases of direct and indirect discrimination in employment and occupation dealt with by labour inspectors, the courts or any other competent authorities, as well as the sanctions imposed and compensation awarded.***

Articles 2 and 3. Equality of opportunity and treatment of men and women. Policies and institutions. The Committee previously noted the adoption of the National Strategy for Gender Equality and Equity (ENIEG) for 2007–12, dealing with issues relating to women's equality in the world of work, as well as the establishment of the National Institute for the Promotion of Gender Equality and Equity (INPG) under the Ministry of Labour to implement the ENIEG. Referring to its previous request concerning statistical information on the participation of men and women in vocational training and the labour market, the Committee notes the Government's general indication, in its report, that such information is not available so far, but that women's access to decision-making positions and vocational training has improved. The Committee however notes that, according to the latest available statistical information from the National Statistics Institute (2012): the women's unemployment rate was more than twice as high as that of men (19.7 per cent compared to 9.3 per cent for men), while women's labour force participation rate was nearly twice as low as men's (41.3 per cent and 75.4 per cent, respectively), with women being mostly concentrated in low-skilled jobs, such as the unskilled labour force (71 per cent of women), domestic workers (94 per cent) and services or trade (58.9 per cent). It notes that, according to the NSI, women mostly work in the informal economy, which accounts for 75.7 per cent of the economically active population. Furthermore, only 31.1 per cent of women have attained at least a secondary level of education (compared with 45.2 per cent of men). The Committee notes that the Decent Work Country Programme, 2018–21, adopted in July 2018, sets as a specific objective the promotion of productive employment for all, in particular for young persons and women, including by raising awareness and encouraging the transition from the informal to the formal

economy, enhancing women's entrepreneurship and access to vocational training, as well as strengthening the INE. The DWCP further explicitly aims at building this capacity of the tripartite constituents to promote, inter alia, gender equality and non-discrimination. The DWCP refers to the adoption of: (i) a Second National Strategy for Gender Equality and Equity (ENIEG II) for 2013–17 which highlights that one of the main challenges is that men and women benefit from equal opportunities to effectively achieve financial autonomy; and (ii) the National Employment Policy (PNE) in 2015, which highlights the importance of decent work and sets as specific objectives to strengthen technical education and vocational training and promote women's entrepreneurship, and its accompanying Action Plan on Employment and Vocational Training (PANEF), adopted in 2017, both developed in collaboration with the ILO. It also notes with ***interest*** the ratification of the Maternity Protection Convention, 2000 (No. 183), on 12 June 2017. ***The Committee asks the Government to provide information on any specific measures taken, particularly in the framework of the ENIEG II, the PNE, the PANEF and the DWCP 2018–21, to effectively enhance women's economic empowerment and access to the formal economy and vocational training, including in sectors where they are under-represented, and to improve equality of opportunity and treatment for men and women in employment and occupation, in both the public and private sectors, including in collaboration with employers' and workers' organizations. Noting that a National Statistical Development Strategy for 2018–21 is currently being implemented, the Committee hopes that the Government will soon be in a position to collect and provide updated statistical information on the participation of men and women in vocational training and the labour market, indicating the proportion of men and women in the various economic activities, disaggregated by occupational categories and positions, in both the public and private sectors, as well as in the informal economy.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Serbia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)

Previous comment

The Committee notes the Government's reports received in 2017 and 2022. The Committee notes the observations of the Serbian Association of Employers (SAE) and the Confederation of Autonomous Trade Unions of Serbia (CATUS), received with the Government's report.

Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment. The Committee previously noted that section 21(2) of the Labour Code of 2005 concerning sexual harassment did not cover quid pro quo sexual harassment. The Committee welcomes the adoption of the Law on Gender Equality 2021, which replaces the Law on the Equality of Sexes 2009. The Committee notes that the Law on Gender Equality 2021 defines and prohibits sexual harassment; however, it remains unclear if the definition prohibits both quid pro quo and hostile work environment sexual harassment. The Committee notes, from the 2020 Labour Inspection Report, provided by the Government, that no cases of sexual harassment at work were reported to the labour inspectorate that year. The Committee further notes, from the concluding observations of the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW), the lack of measures to address sexual harassment in the workplace, specifically with regard to young women and lesbian, bisexual and transgender women and intersex persons, and the disproportionately low number of convictions for sexual harassment, which adversely affects women's possibilities for employment and promotion (CEDAW/C/SRB/CO/4, 14 March 2019, paragraph 35). ***The Committee requests the Government to clarify: (i) which provisions of the Law on Gender Equality 2021 define and prohibit sexual harassment at work; and (ii) the definition given to sexual harassment at work, and if both quid pro quo and hostile work environment sexual harassment are covered by the new legislation.***

With a view to strengthening the protection against sexual harassment at work and harmonizing the legislation, the Committee once again requests the Government to consider amending section 21 of the Labour Code to also include protection against quid pro quo sexual harassment, and to provide information on any progress made in this respect. Finally, the Committee requests the Government to: (i) step up its efforts in ensuring the effective application of the provisions on sexual harassment, including through measures to address and prevent it in practice, such as awareness-raising and training activities; and (ii) provide information on any cases of sexual harassment at work addressed by the competent authorities.

Article 2. Equality of opportunity and treatment for men and women. The Committee welcomes the adoption, in 2021, of the Act to supplement the Prohibition of Discrimination. The Committee notes, from the statistical information provided by the Government that the rate of economic activity of women of working age (15–64 years old) has increased from 55.7 per cent in 2015 to 60.8 per cent in 2020, while the unemployment rate of women has decreased from 19.2 per cent in 2015 to 9.9 per cent in 2020. Despite the progress made, the Committee notes that, in comparison, in 2020, the rate of economic activity of men of working age was 74.6 per cent and the unemployment rate of men, 9.2 per cent. The Committee notes, from the 2021 annual report of the Commissioner for the Protection of Equality, the adoption of the new Gender Equality Strategy 2021–2030 and the Strategy for Preventing and Combating Gender-based Violence against Women and Domestic Violence 2021–2025. It notes, that among the 595 complaints received by the Commissioner for the Protection of Equality in 2021, 99 of them concerned cases of discrimination based on sex, most of them in relation to employment and occupation. The report establishes that one of the key causes of gender discrimination is the firmly rooted, traditional, patriarchal stereotypes about gender roles in the family and the wider community. In this regard, the Committee notes the report of the UN Entity for Gender Equality and the Empowerment of Women (UN Women) entitled "Economic Value of the Unpaid Care Work in the Republic of Serbia", which highlights that unpaid care work is the reason for inactivity among women in greater percentages than among men: in 2018, the inactivity rate for women amounted to 39.4 per cent, versus 24.9 per cent for men. Care for own children or others in need is the reason for inactivity for 7 per cent of women and 0 per cent of men, and family or personal reasons are the cause of inactivity for 9 per cent of women and 5 per cent of men. In this regard, the Committee refers to paragraph 783 of its 2012 General Survey on the fundamental Conventions. The Committee further notes, from the concluding observations of the CEDAW, that the Coordination Body for Gender Equality lacks adequate budget, staff, political independence and sustainability. The CEDAW also highlights that women are severely under-represented in local administration, the foreign service, the armed forces and in decision-making positions across all sectors (CEDAW/C/SRB/CO/4, paragraphs 15 and 27). ***The Committee welcomes the adoption of the Gender Equality Strategy 2021–2030 and requests the Government to provide information on measures taken by the Coordination Body on Gender Equality or by any other authority, to implement the Gender Equality Strategy 2021–2030, including measures to: (i) increase the access of women to formal employment; (ii) address occupational segregation between women and men including in recruitment and promotion; (iii) address the stereotypes and assumptions regarding women's aspirations and capabilities as well as regarding their suitability for certain jobs; (iv) promote the equal sharing of family responsibilities between women and men; and (v) increase compliance with legal provisions regarding maternity protection. The Committee welcomes the statistical information provided by the Government and requests it to continue to provide such information, disaggregated by sex, indicating the results of the measures taken above.***

Articles 1 and 3(d). Equality of opportunity and treatment for men and women. Retirement age of women in the public sector. ***The Committee refers to its previous comment and asks the Government to take the necessary measures, in cooperation with the social partners, to ensure that there is no direct or indirect discrimination based on sex with respect to the age of retirement in the public sector, and that the working life of women is not shortened in a discriminatory manner.***

The Committee is raising other matters in a request addressed directly to the Government.

Singapore

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Assessing and addressing the gender pay gap. The Committee recalls the lack of legislation requiring equal remuneration for men and women for work of equal value. The Committee previously noted the Guidelines issued by the Tripartite Alliance for Fair Employment Practices (TAFEP) on 3 May 2007, which include a section on remuneration stating that "[e]mployers should pay employees wages commensurate with the value of the job [...] regardless of age, gender, race, religion and family status, employees should be paid and rewarded based on their performance, contribution and experience". It notes, from the TAFEP's website, that as of September 2019, 7,144 organizations have signed the Employers' Pledge for Fair Employment Practices, which is a public commitment from employers to create fair and inclusive workplaces according to the TAFEP's Guidelines. The Committee notes the Government's statement, in its report that, in July 2017, Tripartite Standards (TSes) were introduced to enhance fair and progressive employment practices on flexible work agreements, recruitment practices and unpaid leave for unexpected care needs. Noting that the TAFEP continued training workshops to assist employers implementing fair and progressive employment practices, the Committee notes the Government's indication that the Human Capital Partnership (HCP) Programme was launched in 2017 by tripartite partners to "grow an inclusive community of progressive employers", and will be managed by the TAFEP. The Committee however observes that the Government does not provide information on any measures taken by the TAFEP to promote specifically the principle of equal remuneration for men and women for work of equal value. While noting the Government's statement that the gender pay gap was estimated at 11.8 per cent in 2017 with broad-based improvement across most occupational groups, the Committee notes, from the statistical information provided by the Government, that in 2017 the median gross monthly salary of women employed in the same occupational category as men was systematically lower than that of men, except for clerical support workers where it was slightly higher. It notes in particular that the gender wage gap was estimated at 12.2 per cent for managers and administrators; 18.7 for working proprietors; 14.4 for professionals and still remains wider for craftsmen and related trades workers (22.3 per cent) and plant and machine operators and assemblers (19.1 per cent). The Committee notes the Government's indication that the wage gap can be attributed to the fact that women are more likely to exit the workforce or have intermittent patterns of work, for reasons such as childcare and the care of the elderly. The Government adds that its approach to address the gender pay gap is to empower women with choices to stay in the workforce, instead of having to exit it to fulfil caregiving responsibilities. In this regard, the Committee welcomes the adoption and implementation of measures to assist women to enter, re-enter or remain in the workforce, including through flexible working arrangements and the introduction of measures to encourage shared parental responsibilities (such as a two weeks paid paternity leave and the possibility for fathers to share up to four weeks of their wife's maternity leave). The Committee however notes that, in its 2017 concluding observations, the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW) remained concerned about: (i) the persistent gender wage gap in all occupational categories, except clerical support; (ii) the continued vertical and horizontal occupational segregation in both the public and private sectors; (iii) the persistence of discriminatory stereotypes about the role of women as primary caregivers, including as caregivers of older persons; (iv) the fact that women still remain underrepresented in traditionally male-dominated fields of study, such as engineering, electronics and information technology, at the tertiary level; as well as (v) the underrepresentation of women on corporate boards, notwithstanding their high educational and professional achievements and qualifications. The Committee further notes that the CEDAW recommended that "the Government reduces the gender wage gap by regularly reviewing wages in sectors in which women are concentrated and by establishing effective monitoring and regulatory mechanisms for employment and recruitment to ensure that the principle of equal pay for work of equal value is adhered to in all sectors" (CEDAW/C/SGP/CO/5, 21 November 2017, paragraphs 18, 26, 28 and 29). The Committee notes that the CEDAW, as well as the UN Independent Expert on the enjoyment of all human rights by older persons, also expressed specific concern that older women

frequently lack sufficient savings to sustain a living as a result of the gender pay gap, a lack of employment opportunities and their caregiving responsibilities, and are therefore forced to continue to work beyond their retirement age in low-paid and low-skilled occupations (CEDAW/C/SGP/CO/5, 21 November 2017, paragraph 38 and A/HRC/36/48/Add.1, 31 May 2017, paragraphs 27 and 93). ***In light of the absence of a legislative framework providing for equal remuneration for men and women for work of equal value and the persistence of significant gender wage gaps, in particular in sectors where women are traditionally concentrated, the Committee asks the Government to take proactive measures, including legislative measures in the framework of the Tripartite Alliance for Fair Employment Practices, to establish the principle of the Convention and raise awareness among workers, employers and their respective organizations, as well as among law enforcement officials of the right to equal remuneration for men and women for work of equal value. It also asks the Government to continue to take measures to address the underlying causes of the gender wage gap, such as vertical and occupational gender segregation and stereotypes relating to the aspirations, preferences and abilities of women, including by encouraging girls and women to choose non-traditional fields of study and professions and promoting their access to jobs with career prospects and higher pay. The Committee asks the Government to continue to provide statistical information on the level of earnings of men and women, disaggregated by economic activity and occupational group, both in the public and private sectors.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Slovakia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

Previous comment

Articles 1(b) and 2(2)(a) of the Convention. Work of equal value. Legislation. For more than a decade, the Committee has been drawing the Government's attention to the fact that section 119a(2) of the Labour Code does not give full expression to the concept of work of equal value. The Committee notes that the Government, in its report, considers its legislation to be in line with the principle of the Convention and further states that the Labour Code cannot be a comprehensive tool for resolving different wages for different employers and in different sectors. The Committee notes with ***regret*** that the legislation continues to be narrower than the principle of the Convention and refers the Government to its 2012 General Survey on the fundamental Conventions, paragraphs 676–679 and 697–698. ***The Committee urges the Government to take the necessary steps to amend the definition of "work of equal value" provided for in section 119a(2) of the Labour Code, in order to give full legislative expression to the principle of the Convention. In doing so, the Committee requests the Government to ensure that, when determining whether two jobs are of equal value, the overall value of the jobs is considered and that the definition allows for jobs of an entirely different nature to be compared free from gender bias and that the comparison goes beyond the same employer. Noting the absence of information provided in this regard, the Committee again asks the Government to provide information on the application in practice of section 119a(2) of the Labour Code, including by providing concrete examples of the manner in which the term "work of equal value" has been interpreted in administrative or judicial decisions.***

The Committee is raising other matters in a request addressed directly to the Government.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

Previous comment

Articles 1 and 2 of the Convention. Discrimination on the basis of race or national extraction in education, vocational training, employment and occupation. Roma. For more than 15 years, the Committee has been referring to the discrimination faced by the members of the Roma Community and their difficulties in integrating into the labour market. The Committee notes, from the Government's report, the adoption of the Strategy for the Integration of Roma until 2030 ("the 2030 Strategy"). The Government indicates that "employment" is one of the four priority areas of the 2030 Strategy, and that sub-objective 4 aims to "reduce discrimination in the labour market and other forms of anti-Roma racism". The Committee notes that Action Plans for the period 2022–24 are to be adopted under the 2030 Strategy, including awareness-raising programmes for employees and employers on diversity in the workplace and the creation of counselling structures to assist with the identification and subsequent reporting of discrimination in the labour market. The Committee notes, from the Government's report on the application of the Workers With Family Responsibilities Convention, 1981 (No. 156), that the new Recovery and Resilience Plan aims to support and fund early care services for marginalized Roma communities to strengthen equality between women and men, and to develop the reading literacy and parental skills of mothers, with the aim of increasing mothers' self-confidence and commitment to the labour market after parental leave. However, the Committee notes with ***regret*** that, despite its numerous requests to assess the results of the existing programmes and to communicate the results of this assessment, the Government's report provides no information on this point. In this regard, the Committee refers to its 2012 General Survey on the fundamental Conventions, paragraph 858. The Committee also notes with ***regret*** the Government's statement that statistical information as well as data on cases of discrimination are not available. The Committee recalls that appropriate data and statistics are crucial to determine the nature, extent and causes of discrimination, including against Roma, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and to make any necessary adjustments (see the 2012 General Survey on the fundamental Conventions, paragraph 891). ***The Committee asks the Government to take the necessary steps to ensure that the results and impact of the actions and programmes implemented, including within the framework of the action plans to the Strategy for the Integration of Roma up to 2030 and the Recovery and Resilience Plan, are assessed, and asks the Government to communicate the results of this assessment. The Committee also asks the Government to continue to take proactive measures to ensure that acts of discrimination against Roma people in employment and occupation are effectively prevented and eliminated, including through active awareness-raising addressing stereotypes and prejudices, and to provide information on the Action Plans adopted under the 2030 Strategy. Noting the lack of information provided in this regard, the Committee once again strongly urges the Government to bring an end to the segregation of Roma pupils in schools. It asks the Government to provide information on: (i) the steps taken to end the above-mentioned segregation of Roma pupils in schools (and the results thereof); (ii) the steps taken or envisaged to obtain statistical information, disaggregated by sex, on the labour market situation of Roma people; and (iii) any discrimination cases dealt with by the labour inspectorate, the Ombudsperson or the courts, or other competent authorities, as well as the sanctions imposed and remedies granted.***

The Committee is raising other matters in a request addressed directly to the Government.

Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 2002)

Previous comment

Practical application. Lack of statistical information. With regard to its previous comments, the Committee notes with ***regret*** that the Government provides no information on the progress made towards the establishment of a new central statistics system and that once again it does not provide most of the statistical information requested. The Committee once again recalls the importance of collecting and analysing sufficiently detailed statistical information in order to determine and assess the

current situation of workers with family responsibilities, design appropriate responses and monitor and evaluate the impact of the measures which are being implemented. ***The Committee requests the Government to strengthen its efforts to collect comprehensive and sufficiently detailed data on the issues covered by the Convention, and to provide information in this regard, including on the progress made in establishing the new central statistics system. In the meantime, the Committee requests the Government to continue to provide all available information, including statistical data disaggregated by sex, any studies, surveys or reports that may enable the Committee to fully assess how the provisions of the Convention are applied in practice.***

Articles 4(a) and 7 of the Convention. Measures to promote free choice of employment and integration in the labour market. In reply to the Committee's previous comment on the impact of the presence of young children on the employment rate of men and women and on the barriers to women's access to employment, the Government indicates, in its report, that the "Reconciliation of Family and Working Life" national project started in September 2019. Its main objective is to improve the conditions for reconciling work and family life and increase the employment of people with parental responsibilities, especially women, by allowing employers who create jobs for workers with family responsibilities to apply for a financial contribution for a maximum of 12 months, depending on the duration of the contract, to cover up to 95 per cent of the total labour costs, not exceeding €844 (which represents 1.2 times the minimum wage). The Government indicates that the project is expected to provide employment to approximately 1,000 women and that, by 2020, 694 unemployed persons had been hired, 690 of whom were women, and 377 were women with children below 6 years of age. ***With reference to its previous comment and its general observation on workers with family responsibilities, which was adopted in 2019, the Committee requests the Government to continue and intensify its efforts to overcome the persistent obstacles faced by workers with family responsibilities, more particularly by mothers with young children, in exercising their right to free choice of employment and entering or re-entering into the labour market and participating in vocational training. It requests the Government to provide information on the concrete measures taken to this end and the results achieved in this regard, and to specify the number of women and men with children below 6 years of age and with children between 6 and 10 years of age who have accessed employment or received other benefits under these measures. The Committee also asks the Government to continue to provide up-to-date information on the results achieved under the "Reconciliation of Family and Working Life" project in giving effect to the provisions of the Conventions. Noting the absence of information in this regard, the Committee once again requests the Government to provide a copy of any collective agreements containing specific provisions in favour of workers with family responsibilities.***

Article 6. Educational programmes. ***With reference to its previous comments and in the absence of a reply from the Government on this point, the Committee once again requests the Government to strengthen its efforts to take effective and proactive measures, such as public awareness-raising campaigns and education initiatives, to promote a more equitable sharing of family responsibilities between men and women, as well as a broader public understanding of various aspects of employment of workers with family responsibilities. It requests the Government to provide information on any survey, studies or programmes undertaken to this end, as well as specific information on the impact of such initiatives and any follow-up measures implemented.***

The Committee is raising other matters in a request addressed directly to the Government.

Slovenia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1992)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Protection of workers against discrimination. Legislation. The Committee notes with ***interest*** the adoption of the Protection against Discrimination Act which came into force on 24 May 2016 and which replaced the Implementation of the Principle of Equal Treatment Act of 2004. It notes that the Act strengthens protection against direct and indirect discrimination and harassment and sexual harassment, irrespective of sex, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, sexual identity or sexual expression, social status, property status, education, or any other personal circumstance in various fields of social life including employment and occupation. The Committee notes that the Act does not explicitly refer to political opinion in the list of grounds covered. The Government reports that the Act's non-exclusive list of grounds which includes "any other personal circumstance", and the protection against employment discrimination provision on the ground of "belief" in the Employment Relationship Act of 2013, along with article 14 of the Constitution, which guarantees everyone equal human rights and fundamental freedoms irrespective of political or other conviction, among other grounds, provides protection against "inadmissible" unfavourable treatment on the basis of political conviction. The Committee further notes that the new Act established the new Advocate of the Principle of Equality as an independent body with enforcement powers. In the field of employment, the Committee notes that this Act overlaps and reinforces the existing non-discrimination provisions in the Employment Relationship Act of 2013, as amended. ***The Committee asks the Government to provide information on the measures adopted to promote and apply the Discrimination Act of 2016 as well as the non-discrimination provisions in the Employment Relationship Act of 2013, as amended, with respect to employment and occupation in the public and private sectors, including any steps taken to raise awareness among employers and workers. The Government is also asked to provide detailed information on the implementation of the protection against discrimination on the ground of political opinion. The Government is asked to provide information on the functioning of the office of the Advocate of the Principle of Equality and on any steps taken by the Advocate's Office to enforce the Discrimination Act in employment and occupation, including the number of cases dealt with and the ground of discrimination concerned, disaggregated by sex.***

Article 1(1)(a). Discrimination on the ground of national extraction. The Committee recalls its previous concerns regarding non-Slovenes from the former Socialist Federal Republic of Yugoslavia, namely "erased people" and the difficulties they face in terms of access to social and economic rights, including access to education and employment, because of the loss of their citizenship and by extension their right to remain in the country. The Committee recalls that, on 26 February 1992, 1 per cent of the population of Slovenia (25,671 people) was removed overnight from its registry of permanent residents, following the declaration of independence of Slovenia. "Erased people" are mostly of non-Slovene or mixed ethnicity, and they include a significant number of members of Roma communities. The Committee notes that the Act Regulating the Legal Status of Citizens of the Former Yugoslavia Living in the Republic of Slovenia, 1999, as amended in 2010, expired on 24 July 2017. It notes from the report of the Government that, between 1999 and 31 December 2013, 12,373 permanent residence permits were issued under this Act; and from 1 January 2011 to 31 August 2017, 316 additional residence permits were issued. It further notes that, following the judgment of the European Court of Human Rights in *Kuric et al v. Slovenia,* the Committee of Ministers decided in May 2016 that the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population Register, 2013, satisfied the judgment of the European Court of Human Rights and, thus, concluded the case. The Committee notes that this Act has begun to be implemented. However, it notes that the United Nations Special Rapporteur on minority issues, in its report following its visit to Slovenia (5–13 April 2018) highlighted that the situation of "erased people" (who for the most part are members of various ethnic, religious or linguistic communities of the former Socialist Federal Republic of Yugoslavia) – is still unsettled, as compensation is still being fought over – despite the judgements made by the European Court of Human Rights and a decision by the Constitutional Court in April 2018 ruling against the limitations for those who filed claims for damages in judicial processes on the amount of compensation awarded. The Committee notes also that the UN High Commissioner for Human Rights and the Commissioner for Human Rights of the Council of Europe, among others, have expressed their concern at this matter (A/HRC/40/64/Add.1, 8 January 2019, paragraphs 52–55). ***In light of the Constitutional Court ruling, the Committee urges the Government to take steps to provide a fair compensation scheme to "erased people" still awaiting to be compensated, to take into account losses such as property or employment and to continue to provide information on the steps taken and the results achieved.***

Article 2. Equality of opportunity and treatment. Roma. The Committee recalls that for a number of years it has highlighted that one of the main reasons for the high unemployment rate among Roma people is their

education level. Hence, its previous request to the Government to pursue its efforts to promote equal access for Roma to education and training, and to provide information on: (i) the measures implemented to promote access to employment and to particular occupations of Roma men and women, including a description of the community work programmes, and their concrete results; (ii) the reasons for focusing primarily on community work in the context of employment programmes; and (iii) the measures taken to prevent and address discrimination, stereotypes and prejudice against the Roma community. The Committee recalls that, under *Article 1(3)* of the Convention, "employment and occupation" explicitly includes "access to vocational training". Moreover, in paragraph 750 of its General Survey of 2012 on the fundamental Conventions, the Committee highlights that access to education and to a wide range of vocational training courses is of paramount importance for achieving equality in the labour market [as] it is a key factor in determining the actual possibilities of gaining access to a wide range of paid occupations and employment, especially those with opportunities for advancement and promotion. The Committee adds that not only do apprenticeships and technical education need to be addressed, but also general education, "on the job training" and the actual process of training.

The Committee notes the very detailed information provided by the Government on the labour market situation of the Roma people and the range of measures adopted to improve their situation in education and employment. The Government states that it places great importance on measures (systemic, specific, and project-based) for the effective integration of Roma children in education. The Committee notes that from 2015 to 2017 there has been a slight decrease in unemployment and a slight increase in the employment of Roma men and women, with men having higher employment rates than women. It notes that Roma people continue to be a target group of the Active Employment Policy and that over 2,400 Roma participate, annually, in programmes including formal and informal education, training, career counselling, job-seeking assistance and public works projects. The Committee further notes the adoption of the National Programme of Measures for the Roma for the 2017–21 period, which includes raising educational levels, reducing unemployment, elimination of prejudice, stereotypes and discrimination, preserving Roma culture, language and identity, among its objectives. The Committee notes that the Commissioner for Human Rights of the Council of Europe, in its 2017 report, recognized that Slovenia has a solid legislative and policy framework for promoting Roma rights and welcomed the recent adoption of a revised National Programme of Measures for Roma 2017–21, which includes a plan for strengthening the pre-school education of Roma children; the tutoring system for Roma pupils; Slovenian language learning; the inclusion of Roma in the apprenticeship system; and the training of education professionals who work with Roma children. The Commissioner however observed that, if officially segregation (schooling in separate classes) is no longer present, de facto the situation is still not satisfactory, for example: (i) Roma children continue to be underrepresented in pre-schools and overrepresented in special needs schools, with about 12.2 per cent of Roma children being directed to such schools in the school year 2017–18 in comparison with 6.18 per cent of other children; (ii) in kindergartens they can be placed together with other children in mixed kindergarten classes or in "special classes" (which is possible only in the regions with large Roma populations); (iii) there is still a high level of absenteeism from school and drop-out rates in some regions; and (iv) a very low number of Roma children who reach secondary and tertiary education in the country (over 60 per cent of Roma have not completed elementary school). The Commissioner noted that teachers, Roma children and parents generally acknowledge that many of the difficulties Roma children encounter in primary schools are due to language barriers as many Roma children have no or limited command of the language spoken by the majority population. He also identified the following additional reasons for this as: insufficient value placed on education by families; poor housing conditions that do not allow families to make school a priority; early marriages and pregnancies; and criminality among teenage boys. The Committee notes further that, in its 2019 Country Report on Non-Discrimination in Slovenia, the Network of legal experts in gender equality and non-discrimination of the European Commission, observed that "In Slovenia, there are specific trends and patterns (whether legal or societal) in education regarding Roma pupils, such as segregation." In addition, the Committee notes that, the United Nations Special Rapporteur on Minority issues commended Slovenia for the considerable efforts it has made in recent years to improve the situation of Roma and the protection of their human rights, including in key areas such as education and employment. The Special Rapporteur noted that Slovenia does not officially collect disaggregated data on ethnicity, language or religion, and for this reason, no one has a clear idea of the actual size of the country's most vulnerable and marginalized minorities; and that no disaggregated population data have been collected since 2002. The Special Rapporteur however observed that the Roma (and the Sinti) continue to be the most marginalized and

vulnerable minorities and recommended inter alia temporary affirmative action programmes in employment and increased awareness-raising campaigns to provide a more rounded view of members of the Roma community (A/HRC/40/64/Add.1, 8 January 2019, paragraphs 20, 29, 33, 62). While welcoming the various initiatives taken by the Government to promote non-discrimination, education and employment of Roma, women and men, the Committee wishes to stress that the unemployment rate for Roma people continues to be high and that improving access to education is key to combat marginalisation and poverty experienced by the Roma people. ***The Committee asks the Government to pursue its efforts to promote equal access for Roma people to education (in particular through a better access to pre-school education and the employment of suitably trained Roma teaching assistants), training and employment programmes. At the same time, the Committee asks the Government to increase its efforts to address discrimination and prejudice against the Roma community and to take steps to encourage Roma women and men to participate in programmes which will lead to their employment. Observing that there remains a fundamental gap between adopted policies and programmes on the one hand and reality as experienced by members of the Roma minority on the other hand, the Committee asks the Government to continue to provide detailed information on the results of the various initiatives taken to promote non-discrimination in education and employment of Roma women and men. Finally, recalling that appropriate data and statistics are crucial in determining the nature, extent and causes of discrimination, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and make any necessary adjustments, the Committee asks the Government to take steps to collect and analyse relevant data, including comparable statistics to enable an accurate assessment of changes over time while being sensitive to and respecting privacy.***

General observation of 2018. With regard to the above issues and in more general terms, the Committee would like to draw the Government's attention to its general observation on discrimination based on race, colour and national extraction which was adopted in 2018. In the general observation, the Committee notes with concern that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. Furthermore, the Committee considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population***. The Committee draws the Government's attention to its general observation of 2018 and requests the Government to provide information in response to the questions raised in that observation.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1992)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3 and 4 of the Convention. National policy, non-discrimination, leaves and benefits. Legislative developments. The Committee notes with ***interest*** the substantial amendments to the Parental Protection and Family Benefits Act in 2014, 2015, 2017 and 2018, which have the objective of transposing European legislation, including Council Directive 2010/18/EU, and of facilitating a more equal distribution of parental protection and childcare responsibilities between both parents. The Committee welcomes the various entitlements provided under the Act, including longer paternity leave, paternity leave benefit, parental leave

for both parents, parental leave benefits, the possibility of reduction from full-time to part-time work, and other family and child support allowances and assistance. The Committee also notes the adoption of the Protection against Discrimination Act 2016 which prohibits discrimination on the basis of a number of specified grounds and on the basis of "any other personal circumstance", and which covers all areas of social life, including employment. It further notes that explanatory information about the 2016 Act on the official website of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, indicates that an example of "any other personal circumstance" could be "parental or other family status". The Committee notes the adoption on 20 June 2019 of EU Directive 2019/1158 on work–life balance for parents and carers, repealing Council Directive 2010/18/EU on parental leave. ***Noting the recent adoption of EU Directive 2019/1158 on work–life balance, the Committee asks the Government to provide information on: (i) the steps taken to transpose it into its national legislation; (ii) the manner in which the Parental Protection and Family Benefits Act of 2014, as amended, has been implemented in practice by both men and women taking up the various entitlements provided under the Act; (iii) the impact of this Act on any increase in the use of these measures by men; and (iv) the manner in which the Protection against Discrimination Act 2016 has been implemented to promote application of the Convention with respect to non-discrimination in employment of persons with family responsibilities, including any action taken under the office of the Advocate of the Principle of Equality.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

South Africa

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)

Previous comment

The Committee notes the observations made by the social partners within the National Economic Development and Labour Council (NEDLAC) and communicated with the Government's report.

Articles 1 and 2 of the Convention. Discrimination based on race, colour and national extraction. Affirmative action. The Committee notes with ***interest*** the Government's indication, in its report, that it is implementing various initiatives in order to strengthen its efforts in promoting equality of treatment and opportunities of all designated groups, such as: (1) conducting annual employment equity workshops nationally with workers, employers and their representative organizations and other interested parties; and (2) forging strategic partnerships between the Commission for Employment Equity (CEE) and various key institutions such as the Commission for Gender Equality, the South African Human Rights Commission, the National Skills Authority, the Broad-Based Black Economic Empowerment Commission, the Department of Youth and Persons with Disabilities in the Presidency, the Commission for Conciliation, Mediation and Arbitration (CCMA), the Public Employment Services and the Inspections and Enforcement Services Branches of the Department of Employment and Labour. The main objectives of these partnerships are to raise awareness on the right to equality, dignity and fair treatment and to ensure there is coherence in the various policy instruments and implementation. The Government adds that the labour inspectors conduct employment equity inspections to assess the legal compliance with the Employment Equity Act, 1998 (EEA).

The Committee notes that the Government refers to the process of amending the Employment Equity Act 1998 with a view to: (1) empowering the Minister of Employment and Labour to regulate sector specific employment equity targets in order to address the slow pace of transformation in the labour market until now and achieve equitable representation of the designated groups, namely, black people, women, and persons with disabilities; (2) exempting employers with less than 50 employees from implementing Chapter III of the EEA on affirmative action; and (3) regulating assessment criteria

for the issuing of employment equity compliance certificates as a prerequisite for accessing state contracts (section 53 of the EEA). In this regard, the Committee further notes that the Employment Equity Amendment Bill was adopted by Parliament (National Assembly and National Council of Provinces) on 17 May 2022. The Committee notes that the workers' representatives within NEDLAC welcome the amendments of the EEA, but underline that the main issue is the non-implementation of section 53. The Committee also notes that the Chief Director of Statutory and Advocacy Services within the Department of Employment and Labour indicated in March 2022 that, in the past financial year, 60 per cent of employers had been referred to prosecution for failure to comply with the employment equity legislation; and that the review process of the Director-General of the Department of Employment and Labour (under section 43 of the EEA) revealed a 94 per cent non-compliance rate with the EEA. It further notes the information, shared by the Minister of Employment and Labour and the Chairperson of the CEE on the launch of the 22nd CEE Annual Report (April 2021-March 2022), that the labour market compliance levels with the EEA "remain[ed] regretfully low", echoing in this the findings of the CEE. White and Indian population groups remained over-represented at top management, senior management and professionally qualified/middle management levels, against their Economically Active Population (EAP) rate. White people represented 63.2 per cent of top managers and 51.4 per cent of senior managers whereas the African and Coloured population groups were grossly under-represented at these levels (even at the professionally qualified/middle management level, the African population group was approximately 33 per cent below their EAP rate). It is worth noting that, at the top management level, the representation of the White population group was approximately seven times their EAP rate in the private sector (and just below their EAP in the public service) whereas the African population group representation was nearly six times below their EAP rate in the private sector (and almost at their EAP rate in the public service). The same pattern is reproduced at senior management level. As for the representation of the Coloured population group at top management level, it was far below their EAP rate in the private sector and slightly above their EAP rate in the public service. The Minister also noted with concern "the continued and flourishing slave conditions in the labour market, wherein the immigrants were being exploited".

In view of the above, the Committee asks the Government to continue to strengthen its efforts in promoting equality of treatment and opportunities in employment and occupation of all the designated groups and to provide information on: (i) the results achieved in the transformation of the labour market towards a more equitable representation of the designated groups (including statistical data as shown in the annual report of the Commission for Employment Equity); and (ii) the assessment of its affirmative action measures with a view to determining whether they remain effective and are in line with the principle of non-discrimination.

It also asks the Government to provide information on: (i) the actions taken within the framework of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2019–2024, the obstacles identified and the results achieved; and (ii) the implementation of section 53 of the Employment Equity Act as amended (measures put in place to evaluate the assessment criteria for the issuing of employment equity compliance certificates and number of certificates denied based on this assessment).

The Committee is raising other matters in a request addressed directly to the Government.

Suriname

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2017)

Previous comment

Article 1(1)(a) of the Convention. Discrimination based on sex. Sexual harassment. The Committee refers to its previous comment and notes the Government's confirmation that the draft Violence in the Workplace and Sexual Harassment Act has been amended to include the prohibition of sexual harassment in vocational training, access to employment and performing work in an occupation. The Government also confirms that the protection against sexual harassment includes harassment by co-workers and clients and other persons met in connection with the performance of work as well as employers and supervisors. However, the Committee notes with ***regret*** that the draft Bill has not been adopted yet. ***The Committee therefore asks the Government to: (i) ensure that the draft Violence in the Workplace and Sexual Harassment Act includes a prohibition of both quid pro quo and hostile work environment sexual harassment; (ii) take all the necessary measures to ensure its adoption in the nearest future; and (iii) provide information on any developments in this respect, as well as a copy of the Act once adopted.***

The Committee is raising other matters in a request addressed directly to the Government.

Syrian Arab Republic

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the complexity of the situation prevailing on the ground and the armed conflict in the country.

Articles 1 and 2 of the Convention. Legislative developments. Work of equal value. The Committee previously noted that section 75(a) of the Labour Code of 2010 provides for the principle of equal remuneration for work of equal value as enshrined in the Convention. It notes however that section 75(b) defines "work of equal value" as "work that requires equal scientific qualifications and professional skills, as attested by a work experience certificate". The Committee points out that such a definition restricts the full application of the principle as set out in the Convention. The Committee recalls that the concept of "work for equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. This concept is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. Moreover, the Committee recalls that the principle has been applied to compare the remuneration received by men and women engaged in different occupations, such as wardens in sheltered accommodation for the elderly (predominantly women) and security guards in office premises (predominantly men); or school meal supervisors (predominantly women) and garden and park supervisors (predominantly men) (2012 General Survey on Fundamental Conventions, paragraphs 673 and 675). ***In light of the above, the Committee asks the Government to take the necessary measures to amend section 75(b) of the Labour Code in order to ensure equal remuneration for men and women not only in situations in which they perform the same work, but also in situations in which they carry out work which is different but nevertheless of equal value.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Tajikistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***regret*** that the Government's report once again contains no information in response to a number of its previous comments. The Committee wishes to reiterate that without the necessary information, it is not in a position to assess the effective implementation of the Convention, including any progress achieved since its ratification. ***The Committee hopes that the next report will contain full information on the issues raised below.***

Articles 1 and 2 of the Convention. Gender wage gap. Private sector. In its previous comments, the Committee noted the persistence of both the gender wage gap and occupational gender segregation. It also noted that agricultural workers were still paid the lowest wage in the economy (367.59 Tajikistani Somoni (TJS) for men and TJS211.34 for women, approximately US$39 and $22 respectively) and that women were concentrated in the informal economy and in low-paid jobs. The Committee therefore requested that the Government step up its efforts to address the gender wage gap, particularly in the agricultural sector, and that it provide information on the measures taken in this regard. It also requested that the Government provide information on the measures taken to improve access of women to a wider range of job opportunities at all levels to address the occupational gender segregation. The Committee notes, from the Government's report, the adoption of a national strategy to enhance the role of women and girls 2011–20 and a state programme on the education, selection and appointment of managerial positions in the Republic of Tajikistan from among capable women and girls 2007–16. With regard to the fact that workers with the lowest paid jobs are found in the agricultural sector, the Government indicates that trade unions intend to make proposals to amend the General Agreement for the period 2018–20. The Government also indicates, in its report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), that as a result of the state programme, in 2017, 1,002 women in need of special social protection were provided with employment and that 528 entrepreneurial initiatives from women received financial assistance. Further, the Committee notes, from the Government's sixth periodic report submitted under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the establishment of presidential grants to support and develop women's entrepreneurial activities in 2016–20, the Plan of Action of the National Strategy on promoting the role of women 2015–20 and the National Development Strategy of the Republic of Tajikistan for the period up to 2030, which includes a special section addressing existing problems of inequality and discrimination, particularly for women in rural areas, and ways of resolving them (CEDAW/C/TJK/6, 2 November 2017, paragraph 136). ***The Committee requests the Government to provide detailed information on the measures taken in the framework of the abovementioned policies to improve the access of women, especially women in rural areas, to job opportunities at all levels, including as managers of farms, and on the impact of such measures. The Committee further requests the Government to pursue its efforts to address the gender wage gap, particularly in the agricultural sector, and to provide information on the measures taken in this regard and the results obtained with regard to achieving pay equity. Finally, noting the absence of information provided in this regard, the Committee once again requests the Government to provide detailed and up-to-date statistics on wages of women and men, including sex disaggregated data by industry and occupational category.***

Civil service. ***In the absence of any information provided in this regard, the Committee once again requests the Government to indicate how it ensures equal remuneration for men and women for work of equal value in the civil service in practice and to provide statistical information disaggregated by sex on the distribution of men and women in the various occupations and grades in the civil service, and their corresponding earnings.***

Article 2. Legislation. In its previous comments, the Committee asked the Government to clarify whether section 102 of the Labour Code and section 13 of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005, both provided for equal pay for "work of equal value" or for "equal work". The Committee takes due note that the wording of section 140 of the new Labour Code 2017 and section 13 of the above-mentioned Framework

Law of 2005 both guarantee equal remuneration for work of equal value. Noting however that, once again, the report is silent on the application of these provisions in practice, the Committee stresses that the continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations take measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value (see 2012 General Survey on the fundamental Conventions, paragraph 669). ***Consequently, the Committee reiterates its request to the Government that it provide information on the practical application of section 140 of the Labour Code 2017 and section 13 of Framework Law No. 89 of 1 March 2005.***

Article 3. Wage determination. The Committee previously noted the adoption of Government Decree No. 98 of 5 March 2008, to approve the concept of wage reforms in the Republic of Tajikistan, which provides, among others, for mechanisms of state regulation of wage determination. In this context, it requested the Government to provide information on the measures taken to ensure that the principle of equal remuneration for men and women for work of equal value is being taken into account. The Committee notes that the Government has not provided any information in this regard. ***The Committee therefore once again requests the Government to provide information on the measures taken to ensure that the principle of equal remuneration for men and women for work of equal value is being taken into account in the context of state regulation of wage determination.***

Article 4. Collective agreements. The Committee previously requested the Government to provide examples of collective agreements covering different sectors, to indicate how these agreements promote the principle of equal pay for work of equal value, and to indicate the percentage of the workforce covered by collective agreements. The Committee takes note of the Government's indication that there are 20 sectorial trade union committees covering all sectors of employment. The Government also indicates that trade union committees work with employers on basic wage agreements and collective agreements. While taking due note of the information provided, the Committee notes that the Government does not indicate how collective agreements promote the principle of the Convention. ***The Committee therefore once again requests the Government to provide examples of collective agreements covering different sectors and to indicate how these agreements promote the principle of equal remuneration for men and women for work of equal value. It also requests the Government to indicate the percentage of the workforce covered by collective agreements, disaggregated by sex.***

Enforcement. The Committee previously noted that a Coordinating Council on Gender Issues has been established in the Ministry of Labour and Social Protection and the State Labour Inspectorate to monitor discrimination against women in the labour market and requested the Government to provide information on its activities regarding equal remuneration for men and women. The Committee also requested the Government to provide information on cases of violations of the principle of equal remuneration dealt by the labour inspectorate or the courts. The Committee notes the Government's indication that no complaints regarding remuneration have been recorded. ***The Committee once again requests the Government to provide information on the activities of the Coordinating Council on Gender Issues to monitor sex-based discrimination regarding remuneration. With regard to the lack of complaints, the Committee refers the Government to its comments under Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and requests the Government to indicate the measures taken or envisaged to ensure that the principle of the Convention is enforced by the courts and the labour inspectorate. Once again, the Committee requests the Government to provide information on the number of violations of section 140 of the Labour Code dealt with by the Ministry of Labour and Social Protection and the State Labour Inspectorate, and indicate whether the courts have dealt with any cases concerning the principle of equal remuneration for men and women for work of equal value.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee takes note of the supplementary information provided by the Government in light of the decision adopted by the Governing Body at its 338th Session (June 2020). The Committee proceeded with the examination of the application of the Convention on the basis of the supplementary information received from the Government this year, as well as on the basis of the information at its disposal in 2019.

The Committee notes the observations of the International Trade Union Confederation (ITUC), which were received on 11 September 2019.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 108th Session, June 2019)

Article 2 of the Convention. Equality of opportunity and treatment between men and women. The Committee notes the discussion in the Committee on the Application of Standards (CAS) of the International Labour Conference, at its 108th Session (June 2019), on the application of the Convention, and the conclusions adopted. The conclusions of the CAS called upon the Government to: (1) report on the concrete measures taken to ensure that direct and indirect discrimination on all grounds is prohibited in law and in practice; and (2) provide without delay information on the implementation in practice of the Framework Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights, No. 89 of 1 March 2005 (Law on State Guarantees of 2005).

The Committee welcomes the detailed information provided by the Government in its report regarding the legislative framework and the policies and programmes developed and implemented with respect to equality of opportunity and treatment between men and women. The Committee notes, in particular, that the Government acknowledges that gender equality cannot be achieved if laws and policies are not implemented in practice and indirect discrimination persists. The Government adds that in order to detect indirect discrimination the country's legislation in this area needs to be improved and the first priority is to amend the national legislation. It also indicates that to improve policy to ensure de facto gender equality, the National Development Strategy for 2030 provides for the following measures: (1) improving legislation in order to realize the State guarantees of creating equal opportunities for women and men; (2) developing institutional mechanisms to introduce national and international obligations to ensure gender equality and expand women's opportunities in sectoral policies; (3) activating mechanisms for the literacy and social inclusion of women, including rural women; (4) boosting the gender capacity and gender sensitivity of staff members at agencies in all branches of government; and (5) introducing gender budgeting setting in the budget process. The Committee welcomes the Government's indication that, with a view to achieving de facto gender equality, a working group on the improvement of laws and regulations to eradicate gender stereotypes, protect women's rights and prevent domestic violence has made proposals on introducing the concepts of direct and indirect discrimination, temporary measures, and compulsory gender analysis of laws. As regards the Law on State Guarantees of 2005, the Committee notes that in 2018, the Committee for Women's and Family Affairs (CWFA) monitored its implementation, by collecting and analysing data from central ministries and agencies, and selected local executive authorities. The Government further states that a report, which includes an analysis of the implementation of the law's articles, and conclusions and recommendations to improve its monitoring and implementation, was prepared in this regard.

The Committee notes from ITUC's observations that it regrets the lack of concrete information provided by the Government to the supervisory bodies, which would enable a more comprehensive assessment of the situation in the country. It further notes that ITUC emphasizes the need not only to draft laws but also to implement specific policies to eliminate all forms of discrimination and take proactive measures to identify and address the underlying causes of discrimination and gender inequalities deeply entrenched in traditional and societal values. The Committee notes ITUC's statement that the very name of the body responsible for the implementation of the national policy to protect and ensure the rights and interests of women and their families, the "Committee for Women's and Family Affairs", raises an issue because it appears to enshrine the idea that women are the only ones who have to assume responsibilities in relation to their families. In this regard, the Committee notes the Government's indication that, with the aim of eradicating stereotypes about the roles and duties of women and men in the family and society, and to boost awareness of and ensure equal rights and opportunities for men and women, a range of measures were implemented for different sections of society and the possibilities of the mass media are widely used. More than 200 programmes on understanding the importance of ensuring equal rights and opportunities for men and women were prepared and broadcasted by the members of the CWFA. In its supplementary

information, the Government also indicates that it is taking every measure to root out gender discrimination against women based on stereotyped ideas of their capabilities and role in society, which contradict the Convention and hinder women's recruitment and employment.

The Committee notes the Government's statement that expanding economic opportunities for women and their competitiveness in the labour market, and the development of their entrepreneurial activities play a key role in ensuring gender equality. In this regard, it notes the detailed information regarding measures adopted to support the development of women entrepreneurship, through the allocation of grants, access to microcredit and an inter-agency working group to support women's entrepreneurship operating under the State Committee for State Property Investment and Management. The Government also indicates that further to the adoption of concluding observations in 2018 by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW/C/TJK/CO/6, 14 November 2018, paragraph 37), it has formulated, through broad discussions with the civil society, and adopted in May 2019, a National Plan of Action to Implement the Recommendations of the CEDAW 2019–22. In this regard, the Committee notes that the CEDAW, while welcoming the measures taken to support women entrepreneurs and to regulate domestic work and work from home, expressed concern inter alia about the following: (1) the concentration of women in the informal sector and in low-paying jobs in the healthcare, education and agriculture sectors; (2) the low level of participation of women in the labour market (32.6 per cent) and the low employment rate among women (40.5 per cent), compared with men (59.5 per cent); (3) the absence of social security coverage, the shortage of preschool facilities and family responsibilities non compatible with paid work, which make women particularly prone to unemployment; (4) the adoption in 2017 of the list of occupations for which the employment of women is prohibited; and (5) the lack of access to employment for women with a reduced capacity for competitiveness, such as women with disabilities, mothers with several children, women heads of single-parent families, pregnant women and women who have been left behind by male migrants.

With respect to the employment of women in the civil service, the Committee welcomes the various steps taken by the Government. It notes the indication that, as at 1 July 2019, there were 18,835 active civil servants in total (19,119 as at 1 January 2019), including 4,432 women, which represented 23.5 per cent of civil servants (4,441 or 23.2 per cent as at 1 January 2019). In leadership positions, there were 5,676 persons representing 30.1 per cent of all civil servants and 1,044 of them were women (18.4 per cent in such positions). The Committee further notes, from the Government's additional information, that as at 1 April 2020, women represented 23.7 per cent of civil servants, and 19.1 per cent of leadership positions. With a view to promoting gender equality in the civil service, the Government adds that the Civil Service Agency (CSA) together with all State bodies is taking appropriate steps to recruit women to the civil service at all levels of public administration. The Committee notes the Government's indication that, in the first half of 2019, the CSA together with the Institute for State Administration held 24 professional training courses for civil servants, including four retraining and 20 professional development courses, which were attended by 977 persons – 236, or 24.1 per cent, of whom were women. In line with the requirements of State statistical report form No. 1-GS, "Report on the quantitative and qualitative composition of civil service", the CSA also conducts quarterly monitoring and draws up statistical reports on the number of civil servants, including women, the results of which are transmitted to the appropriate State bodies and discussed at board meetings for the necessary steps to be taken. The Government also mentions positive measures adopted to promote the employment of women in the civil service, through the implementation, since 2017, of the State Programme on the Development, Selection and Placement of Gifted Women and Girls as Leading Cadres of Tajikistan 2017–2022; the establishment of incentives and quotas for women; and, on first appointment to the civil service, the granting of three additional steps on the grading scale, pursuant to Presidential Decree No. 869 adopted in 2017. According to the Government, as a result of implementing those measures, 36 women were recruited to various civil service positions in the first half of 2019.

Welcoming the positive developments regarding the promotion of gender equality in employment and occupation both in the private and the public sectors, the Committee asks the Government to pursue its efforts to foster equality opportunity and treatment between men and women in employment and occupation and, in particular, to take appropriate steps, including through amending legislation, to address indirect discrimination and occupational gender segregation. The Committee asks the Government to provide information on the content, conclusions and recommendations of the report prepared to analyse

the implementation of the Law No. 89 on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of such Rights of 2005, as well as on any follow-up measures taken in this regard. The Committee also asks the Government to continue to provide detailed information on the situation of men and women in employment and occupation, both in the private and public sectors, as well as on the results of any positive measures taken to improve women's access to employment, and their results. Noting that the Government's report does not contain any information on any concrete measures taken, and their results, to address direct and indirect discrimination based on grounds other than sex, the Committee asks the Government to provide such information in its next report.

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Türkiye

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)

Previous comment

The Committee notes that the observations of the Confederation of Turkish Trade Unions (TÜRK-IS) transmitted by the Government with its report are identical to those communicated with its previous report, which were addressed in the Committee's 2019 comments.

Articles 1–4 of the Convention. Assessing and addressing the gender pay gap. The Committee welcomes the detailed information provided by the Government in its report on the various programmes and projects being implemented, which aim to increase women's access to employment and addressing vertical and horizontal occupational gender segregation, including the Project of Supporting Employment Policies Sensitive to Gender Equality 2019–22, the Project of Supporting Decent Jobs of the Future Approach with a Gender Equality Focus 2020–23, the Mother at Work Project, and the Project to Support Women's Access to More and Better Job Opportunities – second phase 2019–22. In this context, the Committee refers to its comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee notes from the Structure of Earning Survey of 2018 transmitted by the Government that, taking into account the remuneration of women at all education levels, the overall gender pay gap stood at 7.7 per cent in 2018, with the widest gap (28.8 per cent) recorded at the vocational high school level in 2018. The Committee also refers to the report "Measuring the Gender Wage Gap" prepared jointly by the Turkish Statistical Institute (TURKSTAT) and the ILO Office for Türkiye, which shows how and why the gender pay gap varies when alternative sources of data are used. The report provides detailed data on the gender wage gap, including by occupation, sector of the economy, type of economy (private, public, formal, informal) as well as information on the motherhood wage gap. According to this report, the wage gap between women with children, and those without, is 11 per cent; moreover, when comparing the median wage level of mothers to that of fathers, the wage gap rises to 19 per cent. The Committee also notes the indication that the Strategy Document and Action Plan on Women's Empowerment 2018–23 establishes a number of actions aimed at reducing the existing gender pay gap. The Committee recalls that occupational gender segregation, in which women are typically concentrated in lower paying jobs or sectors remains one of the main underlying causes of gender wage gaps between men and women. ***Accordingly***, ***the Committee asks the Government to intensify and expand its efforts to effectively address occupational segregation across the labour market, including through tackling gender stereotypes regarding women's professional aspirations, preferences and capabilities. The Committee asks the Government to provide detailed updated information on: (i) the nature and impact of specific measures taken or envisaged under the Strategy Document and Action Plan on Women's Empowerment 2018–23, as well***

as under any other frameworks, to reduce the gender pay gap; and (ii) statistical data on occupation by sector and level of occupation disaggregated by sex and on the gender pay gap, by sector if possible.

Article 1(a). Additional emoluments. Family allowances. Civil Service. The Committee recalls that section 203 of the Civil Servants Act, 1965, provides that family allowances are paid to the father if both parents are civil servants. It notes once again with ***regret*** the Government's indication in its report that no change was made in this regard. Once again, the Committee reiterates that the definition of remuneration in the Convention includes all elements that workers may receive in exchange for their work and arising from their employment, whether paid in cash or in kind, and directly or indirectly by the employer. ***The Committee asks the Government once again to take the necessary measures so that section 203 of the Civil Servants Act, 1965, is amended to ensure that men and women civil servants are entitled to family allowances on an equal footing and to provide information on the progress made to this end. In this regard, the Committee asks the Government to consider the possibility of allowing both spouses to choose who would benefit from such allowances, rather than starting from the principle that they should systematically be paid to the father.***

The Committee is raising other matters in a request addressed directly to the Government.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)

Previous comment

The Committee notes the observations from the Confederation of Public Employees Trade Unions (KESK), received on 1 September 2021 and the Government's reply thereto received on 19 November 2021. The Committee also notes the observations of the Turkish Confederation of Employer Associations (TİSK) received on 7 September 2021. Furthermore, The Committee notes that the observations of the Confederation of Turkish Trade Unions (TÜRK-IS) transmitted by the Government with its report are identical to those communicated with its previous report, which were addressed in the Committee's 2019 comments.

Articles 1 and 4 of the Convention. Discrimination based on political opinion. Activities prejudicial to the security of the State. The Committee notes that, in reply to its request regarding the practical application of the Anti-Terrorism Act and the Penal Code in cases involving journalists, writers and publishers, the Government merely refers to the existing legal provisions guaranteeing protection against anti-union discrimination in the Constitution, the Penal Code and the labour legislation. According to the Government, there is no restriction or prohibition on the use of trade union rights and the detention and conviction by a court of some unionists should not be associated with their trade union activities. The Government adds that judicial proceedings are carried out within the framework of human rights and that it continues to fight effectively and decisively against terrorist organizations threatening national security and public order, targeting the safety of life and property of its citizens. The Committee notes this information but also notes that the Government does not reply to its previous comment. While fully understanding the need for measures to protect the security of the State and recalling that they exist in almost all countries, the Committee is concerned that, depending on their application in practice, such measures could be used to limit the protection which the Convention seeks to guarantee against discrimination based on political opinion. ***Therefore, the Committee firmly urges once again the Government to provide information on the cases brought before the courts against journalists, writers and publishers under the Anti-Terrorism Act and the Penal Code, indicating the number of cases and the charges brought as well as their outcome. The Committee asks the Government to indicate how it is ensured that the application in practice of the Anti-Terrorism Act and the Penal Code in cases involving such workers does not lead to discrimination based on political opinion.***

Article 1(1)(a). Discrimination based on political opinion. Public Sector. Recruitment procedure. Oral exams and security investigations. The Committee notes that the KESK, in its 2021 observations, reiterates the serious concerns about the discrimination based on political opinion raised in its previous observations and reaffirms that there is a broad and vague interpretation of the Turkish Penal Code and the Anti-Terror Law as regards the recruitment of new public officers and the working life of public officers. The KESK also: (1) reiterates concern regarding the impartiality, neutrality and independency of those who serve in committees in charge of making decisions about new public officers' suitability for employment into the public sector, since the introduction of an oral interview phase; (2) alleges that oral exams are used to select those who are loyal to the Government rather than eligible for public services, and security investigations and archive screening (that are extended to family members) are used to block those who are not deemed suitable for public services; (3) indicates that until 2016, there were only a few professions which fell into the category of sensitive and high-level positions that required extra measures namely security investigations and archive screening; and (4) underlines that following the State of Emergency, these extra security measures have been applied to all sectors and dozens of people were not recruited on the ground that there was a judicial investigation against them in the past, even if they were acquitted. The Committee ***regrets*** to note that the Government's report does not contain information on the adoption and entry into force of any new legislation, further to the annulment of the regulation on "security investigation" and "archive screening" by the Constitutional Court. ***The Committee asks the Government to ensure that, during recruitment in the public sector, any new legislation providing for security investigation and oral exams does not lead to discrimination based on the grounds set out in the Convention, in particular discrimination based on political opinion. It also asks the Government to: (i) describe any new procedures of "security investigation" and "archive screening" put in place by law; and (ii) ensure that persons alleging discrimination in recruitment and selection in the public sector have effective access in practice to adequate and timely procedures for a review of their case and to appropriate remedies.***

Duties of loyalty, impartiality and neutrality. The Committee notes that, in its report, the Government emphasizes that, according to section 7 of the Civil Servants Law No. 657 on "Impartiality and Loyalty to the State", civil servants shall not become affiliated to political parties, or conduct themselves in any manner aimed at providing advantage or disadvantage for any political party, person or group, and they shall not under any circumstances make any declarations and pursue a course of action with political and ideological aims or participate in such actions. It adds that civil servants are, in all cases, obligated to protect the benefits of the State and shall not perform any activities which are contrary to the Constitution and the national laws, which prejudice the integrity and independence of the country, and which endanger the security of the Republic of Türkiye. The Committee recalls that, in accordance with *Article 1(1)(a)* of the Convention, discrimination based on political opinion is prohibited. The protection of political opinion applies to opinions which are either expressed or demonstrated but does not apply where violent methods are used. Furthermore, not all distinctions, exclusions and preferences are deemed to be discrimination within the meaning of the Convention, such as measures warranted by the security of the State under *Article 4* as mentioned above or inherent requirements of a particular job under *Article 1(2).* The Committee recalls that it is essential that such restrictions are not carried beyond certain limits, evaluated on a case-by-case basis, and in this regard, it refers the Government to paragraphs 801, 805 and 831 of its 2012 General Survey on the fundamental Conventions. ***In light of the above, the Committee asks the Government to consider: (i) defining further the duties of impartiality and loyalty of civil servants and limiting the restrictions regarding political activities to determined positions, thereby establishing clear rules of conduct, for instance through the adoption of a code of conduct in consultation with civil servants' organizations; and (ii) adopting a limited list of jobs in the civil service for which political opinion would be considered an inherent requirement.***

Massive dismissals: Civil servants, teachers and members of the judiciary. With regard to its previous comments, the Committee notes that the Government refers once again in detail to the legal framework applicable to the dismissals during the state of emergency and the appeal procedure against such decisions. With respect to the appeals lodged and examined by the Inquiry Commission on the State of Emergency Measures set up in 2017, the Committee notes the following information from its website to which the Government refers in its report: (1) by the decree-laws issued within the scope of the state of emergency, a total of 131,922 measures were taken, 125,678 of which were dismissal from public service; (2) the number of applications submitted to the Inquiry Commission was 126,783 as of 31 December 2021; (3) 120,703 decisions were delivered by the Commission and the number of pending applications was 6,080; (4) among the 120,703 decisions delivered between 22 December 2017 and 31 December 2021, 16,060 were accepted (61 of which were related to the opening of organizations that were shut down such as associations, foundations and television channels) and 104,643 were rejected; and (5) a total of 95 per cent of the applications have been decided. The Government further indicates that: (1) the applicants can acquire information on the stage of the applications filed with the Inquiry Commission and the outcome of the decision ("acceptance" or "rejection") through a dedicated App; (2) the Inquiry Commission delivers individualized and reasoned decisions as a result of the speedy and extensive examination; and (3) out of the 33.956 staff members of the Ministry of National Education who were dismissed from public service pursuant to the emergency decree-laws, 4.360 persons were reinstated into the public service.

The Committee also notes the allegations made by the KESK according to which, although the state of emergency was lifted on 19 July 2018, there are still practices that amount to de facto state of emergency and even martial law in some provinces and in certain periods. The KESK also recalls that there were 4,267 KESK members among these dismissed public employees and although almost 5 years passed, there were still 2,630 pending cases concerning KESK members to be examined by the Inquiry Commission, as of 28 May 2021. The KESK therefore alleges that there is a deliberate delay in examining the applications of its members and reaffirms that the examination by the Commission is not based on clear criteria. The Committee notes the Government's reply that KESK's opinion about the Inquiry Commission (that it is not a competent legal body and not an effective remedy) is biased and unfounded and reiterates that the Commission conducts the examination in terms of membership, affiliation, connection or contact with terrorist organizations or structures/entities or groups established by the National Security Council as engaging in activities against the national security of the State. It also indicates that decisions taken by the judicial authorities are monitored through the UYAP (e-Justice) System.

The Committee asks the Government to ensure that the review mechanism (the Inquiry Commission) continues its work in a timely and effective manner on the basis of clear, fair and transparent criteria. The Committee asks the Government: (i) to continue to provide information on the total number of appeals reviewed by the Inquiry Commission or by the courts, and their outcome; (ii) to indicate whether during the proceedings, dismissed employees have the right to present their cases in person or through a representative; and (iii) to provide its comments regarding the KESK's allegations on the length of the reviews concerning its members.

Articles 2 and 3. Non-discrimination and equality between men and women. Vocational education and training and employment. The Committee welcomes the detailed statistics provided by the Government regarding the representation of women in professions requiring expertise and the number of women who benefited from active labour force and training programmes from 2002 to the end of March 2021. The Committee notes the Government's indication that significant increases were recorded in female labour force participation and female employment rates between 2002 and 2019 and that several schemes and programmes were put in place to encourage the participation of women in training and employment, such as the "Additional Employment Incentive", the "Child Care Support", the "Mother at Work Project", the "Jobs Clubs" counselling programme, and the "Half Work Allowance" to reconcile work

and family responsibilities. The Government refers once again to the Strategy Document and Action Plan on Women's Empowerment (2018–2023) and its objectives, such as addressing gender occupational segregation. It also indicates that Phase II of the More and Better Jobs for Women Programme (2019–2022), funded by the Swedish International Development Cooperation Agency (SIDA) and implemented in collaboration with the ILO Office for Türkiye: (1) focuses on selected sectors including textiles, commerce and office, food, general services, domestic workers and home workers; and (2) addresses the prevention of violence and harassment in the world of work, the gender pay gap, work–life balance and women's leadership. Under the Program, it is envisaged to organize training, revise and implement the Women's Employment Action Plan, conduct an analysis to identify the obstacles to women's employment and provide business development training and support women entrepreneurs. The Committee notes that the KESK reiterates its observations regarding the decrease in women labour force participation and the "objective of the Government to keep women away from public, social, economic and professional life". The KESK also underlines that the withdrawal of Türkiye from the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), on 1 July 2021, is an extremely serious issue for women employees. In its response to the KESK's observations, the Government reiterated the information provided on the various programmes aiming at increasing women's employment as well as provided new information on the "Operation for the Empowerment of Women through Cooperatives" that started in September 2021. Noting all this information, the Committee observes however that the participation of women to the labour force decreased from 34.4 per cent in 2019 to 30.8 per cent in 2020 (ILOSTAT) and remained significantly low in comparison to 68.2 per cent for men. ***The Committee asks the Government to continue taking specific proactive measures to: (i) promote the effective access of women to adequate education and vocational training and to formal and paid employment, including higher level positions; (ii) enable both men and women to reconcile work and family responsibilities, including through the development of childcare and family facilities and support; and (iii) ensure that the results of the various programmes and projects aimed at empowering women and increasing their participation in education, vocational training and formal employment are effectively monitored, assessed and adjusted, if necessary.***

The Committee reiterates its request to the Government to take and implement measures to combat persistent gender stereotypes, for example through awareness-raising and information campaigns, in cooperation with the social partners, and provide information in this regard. The Committee also asks the Government to provide information on: (i) the findings of any studies assessing the legislative framework and the practical obstacles concerning women's employment; (ii) the impact of the COVID-19 pandemic on women's participation to the labour force; and (iii) any corrective measures envisaged or adopted.

The Committee asks once again the Government to provide its comments regarding the alleged dismissal or threats of dismissal of pregnant women because of their pregnancy or enjoyment of full maternity leave, and any impact of the childcare leave on women's employment.

The Committee is raising other matters in a request addressed directly to the Government.

United Republic of Tanzania

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2002)

Previous comment

Articles 1–4 of the Convention. Assessing and addressing the gender wage gap. The Committee notes that, in its report, the Government merely recalls the national legal framework on equal remuneration for men and women. In this regard, the Committee wishes to point out that, while giving legislative effect to the principle of equal remuneration for men and women for work of equal value is important,

it is not sufficient to achieve the goal of the Convention. The issue of the gender wage gap also requires positive measures aimed at tackling its structural and underlying causes, such as horizontal and vertical occupational segregation of women into lower paying jobs or occupations and lower-level positions without promotion opportunities (see the 2012 General Survey on the fundamental Conventions, paragraphs 669, 710 and 712). The Committee notes that, according to the 2021 and 2022 Global Gender Gap Reports of the World Economic Forum, the labour force participation rate of women is 79.5 per cent (compared with 87.1 per cent for men), with women being almost entirely concentrated in the informal sector (93 per cent), characterized by low wages. It also notes that, according to the Integrated Labour Force Survey 2020/2021, conducted by the National Bureau of Statistics (NBS) and the Office of the Chief Government Statistician Zanzibar (OCGS), only 2.1 per cent of women were employed in the central and local government sector, while 60.3 per cent were employed in the agricultural (own or family farm) sector, also characterized by significantly lower wages. The same survey shows that the average direct wages and salaries of women are lower than those of men in all areas and industries. More generally, the Committee notes that, according to the 2022 Global Gender Gap Report of the World Economic Forum, the gender pay gap is 25.5 percentage points. ***The Committee therefore urges the Government to take proactive measures to address the existing gender wage gap, both in the public and private sectors, by: (i) identifying and addressing the underlying causes of pay differentials in the country, such as vertical and horizontal job segregation and gender stereotypes, covering both the formal and the informal economy; and (ii) promoting women's access to a wider range of jobs with career prospects and higher pay, including through the elaboration and implementation by employers of plans to promote gender equality in the workplace. It further asks the Government to communicate updated statistical data on the earnings of men and women in all economic sectors and occupations to monitor any progress achieved.***

The Committee is raising other matters in a request addressed directly to the Government.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

Previous comment

Article 1(1)(a) of the Convention. Discrimination based on sex. Job advertisements. The Committee observes that, in its report, the Government provides no information on the concrete measures taken to address the high prevalence of sex discriminatory hiring and advertising practices in the country previously noted, and merely refers to the general provisions of the Employment and Labour Relations Act (ELRA), Cap. 366 2019, and the Employment and Labour Relations (Code of Good Practice) Rules, 2007, on prohibition of discrimination in the workplace. ***The Committee again urges the Government to take without delay, in cooperation with the social partners, all the necessary measures to ensure that the principle of non-discrimination on the grounds of sex is effectively applied in hiring and advertising practices, including through awareness-raising activities aimed at eliminating stereotyped assumptions by employers of women's or men's suitability for certain jobs. It also again asks the Government to communicate updated statistical data on the percentage of job vacancies still containing a sex preference.***

Article 1(1)(b). Additional grounds of discrimination. HIV Status. The Committee notes the Government's indication that the implementing regulations of the HIV and AIDS Prevention and Control Act No. 28 of 2008 were adopted in 2010. It observes, however, that the regulations mentioned by the Government do not concern specifically section 52(m) of Act No. 28 of 2008, which provides that "the Minister may make regulations prescribing the circumstances under which a person may be regarded to stigmatise and discriminate a person living with HIV and AIDS", but sections 52(a) to 52(e) on counselling and testing, use of antiretroviral medicines (ARVs) and disclosure. In addition, although the

Government provides no information on the implementation of the third National Multisectoral Strategic Framework for HIV and AIDS for 2013/14 to 2017/18 with respect to employment and occupation discrimination based on HIV and AIDS status in the public and private sectors, the Committee observes that, in November 2018, the Prime Minister's Office published a new National Multisectoral Strategic Framework for HIV and AIDS for 2018/19 to 2022/23, aiming at zero stigma and discrimination against persons living with HIV and AIDS. The Committee further notes the Government's indication that no cases of discrimination on the basis of HIV and AIDS status in employment and occupation were submitted to the labour officers, the courts or any other authority. In that regard, it wishes to draw the Government's attention to the fact that, where no cases or complaints are being lodged, this may indicate a lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals (see 2012 General Survey on fundamental Conventions, paragraph 870). ***Recalling that the effective application of the Convention is an ongoing process requiring a continual cycle of assessment, action, monitoring, further assessment and adjustment, the Committee asks the Government to provide information on: (i) the impact of the measures and initiatives adopted to implement the National Multisectoral Strategic Framework for HIV and AIDS for 2018/19 to 2022/23 with respect to employment and occupation discrimination based on HIV and AIDS status, both in the public and private sectors; (ii) its efforts to ensure effective access to remedies for victims of such discrimination, as well as sufficient resources and adequate training for relevant institutions; and (iii) the number, nature and outcome of cases of employment and occupation discrimination based on HIV and AIDS status examined by the labour inspectorate, the courts or relevant equality bodies.***

Articles 2 and 3. Equality of opportunity and treatment for men and women. The Committee notes the general information provided by the Government regarding the provisions of the Employment and Labour Relations Act (ELRA), Cap. 366 2019, and the Public Service Regulations, 2003, on promotion of equality between men and women at the workplace. It observes, however, that the Government provides no information on the specific measures taken to promote women's economic empowerment and access to formal employment and address vertical and horizontal segregation between men and women in the labour market. In this regard, the Committee notes that, according to the Integrated Labour Force Survey 2020/21 conducted by the National Bureau of Statistics (NBS) and the Office of the Chief Government Statistician Zanzibar (OCGS), the unemployment rate is significantly higher for women (12.7 per cent) than men (5.8 per cent). Furthermore, the 2021 Global Gender Gap Report of the World Economic Forum shows that women remain disproportionately concentrated in informal employment, as 93 per cent of working women are employed in the informal sector. The Committee also notes, from the Integrated Labour Force Survey 2020/21, the persistent gender occupational segregation of the labour market, with women still being over-represented in sectors such as the household and domestic worker's sector. ***In light of the persistent gender stereotypes and occupational gender segregation of the labour market and the absence of substantial progress made in the past years, the Committee urges the Government to strengthen its efforts to promote effective equality of treatment and opportunity for men and women in employment and occupation, in both law and practice. It asks the Government to provide information on the concrete measures implemented, including in collaboration with the social partners, in order to address both vertical and horizontal occupational gender segregation, for example: (i) by promoting women's economic empowerment, access to formal employment as well as to decision-making positions; and (ii) by raising public awareness, with a view to combating stereotypes regarding women's professional aspirations, preferences and capabilities and their role and responsibilities in the family and society. The Committee further asks the Government to provide updated statistical information on the participation of men and women in employment and occupation, disaggregated by occupational categories and positions, both in the public and private sectors, as well as in the informal economy.***

Access of women to education and vocational training. The Committee notes the various initiatives taken by the Government to increase the enrolment rate of children and adolescents in education, mainly through the National Strategy on Inclusive Education (2018–2021) and the Secondary Education Improvement Programme (2020-2025). It also notes that, according to 2021 statistics of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the gross enrolment ratio in primary and secondary education was higher for girls (98.99 per cent for primary and 29.81 per cent for secondary education) than boys (95.37 per cent for primary and 27.54 per cent for secondary education). UNESCO data shows, however, that the enrolment in technical and vocational education and training programmes remains lower for women (0.6 per cent) than men (3.1 per cent), and that the gross enrolment ratio in tertiary education is 7.1 per cent for women, compared to an enrolment ratio of 8.5 per cent for men. The Committee further notes the Government's indication that it instructed all education administrators to stop the practice of mandatory pregnancy testing of girls as a precondition for admission to lower and upper secondary education. The Government adds that pregnant girls can be readmitted to informal school centres, commonly known as "Open Schools". The Committee observes, however, that in its Decision No. 002/2022 of 15 September 2022, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) found the United Republic of Tanzania in violation of the African Charter on the Rights and Welfare of the Child, and recommended the Government to immediately prohibit mandatory pregnancy testing in schools, review the Education Regulations by indicating that the moral ground of expulsion should not apply in cases of pregnancy, and immediately readmit schoolgirls who have been expelled due to pregnancy. In this regard, the Committee recalls that mandatory pregnancy testing and discrimination on the basis of pregnancy constitutes a serious form of sex discrimination. ***The Committee therefore urges the Government to explicitly prohibit pregnancy testing as a precondition for admission to all levels of education and provide information on measures taken (including any sanctions imposed), to ensure that this prohibition is effectively applied in practice, meaning that all students expelled due to pregnancy are effectively readmitted to school. The Committee further reiterates its request to the Government to provide information on the measures taken to enhance access of girls and women to vocational training and higher education, in particular to professions where women are under-represented. Please also provide up-to-date information on the number of men and women enrolled in vocational training and education, including information on the share of men and women in the different areas of specialization.***

The Committee is raising other matters in a request addressed directly to the Government.

Uzbekistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1992)

Previous comment

The Committee notes the observations from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), received on 30 August 2021.

Articles 1–4 of the Convention. Assessing and addressing the gender pay gap and its underlying causes. The Committee notes that, according to the observations of the IUF, the issue of unequal remuneration of men and women for work of equal value is one of the components of discrimination and there are a number of manifestations of unequal payments between men and women in the country. According to the IUF, it is difficult to determine the gender pay gap accurately, because State bodies do not publish statistics that allow such an analysis, nor do they publish information about instances of discrimination against workers. The IUF adds that as women fulfil the role of mother and parent and bear primary responsibility for supervising and caring for children, employers perceive them as less attractive employees. It also emphasizes that women's participation in the labour market is limited by widespread

adherence to patriarchal stereotypes, in particular with regard to childcare responsibilities, and the manner in which parental leave is used – exclusively by women – increases the income gap between women and men. After their parental leave comes to an end, women continue to shoulder all child and family care duties, which impacts their involvement in paid work, their career growth and, undoubtedly, their wages. The organization adds that adherence to patriarchal stereotypes is manifested, inter alia, in the active promotion of "working from home" which is low-paid and serves to reinforce the perception that women's work needs to be adapted to their family responsibilities rather than encouraging equal distribution of such responsibilities. In addition, according to the IUF, horizontal segregation in the labour market reflects a clear division between "female" and "male" specialties and occupations, the latter being as a rule more highly paid, while women find themselves predominating in occupations with low wages. Horizontal gender segregation which hinders women's development and limits their future economic opportunities can also be explained by women's choice of field of studies and inadequate levels of education. The Committee also notes the IUF's indication that there is vertical gender occupational segregation in industries employing large numbers of women, with women being under-represented in leadership or senior positions even though they constitute the majority of the workforce. Finally, the IUF stresses that it is necessary to create a robust mechanism to collect data on a regular basis that can be disaggregated by gender, thereby providing useful statistics for monitoring and analysis and to inform policymakers.

The Committee welcomes the statistics disaggregated by sex provided by the Government and those available on the website of the State Committee on Statistics regarding the share of women in employment, by type of economic activity. These data show that the participation of women in employment has decreased from 45.7 per cent in 2016 to 41.4 per cent in 2020 (with more significant decreases in some regions) but the number of women individual entrepreneurs has increased from 69,756 in 2018 to 81,703 in 2020. The Committee also notes the Government's indication that it is clear that there is a significant gender gap in employment numbers in sectors such as construction (6.2 per cent women and 93.8 per cent men), shipping and storage (7.2 per cent women and 92.8 per cent men), education (75.7 per cent women and 24.3 per cent men), and healthcare and social services (76.8 per cent women and 23.2 per cent men). It also welcomes the establishment, in accordance with Presidential Decision No. 4235 of 7 March 2019, of a list of minimum gender indicators and the adoption on 8 August 2020 of the Presidential Decision No. 4796 on Measures to Further Improve and Develop the National Statistical System of the Republic of Uzbekistan, which covers the improvement of gender statistics. It further notes that a national census is planned for 2022 and the establishment of the Unified National Labour System (UNLS) in accordance with Presidential Decision of 31 October 2019. Furthermore, the Committee notes with ***interest*** the Government's indication that: (1) an analysis of men's and women's salaries disaggregated by the most common jobs and professions, in both the public and private sectors, was conducted using data from the UNLS, which showed that the percentage difference between the average monthly salary of men and women in equivalent jobs and professions was less than 10 per cent (for the first quarter of 2021); and (2) the State Committee on Statistics has determined, in line with ILO methodology, that the percentage difference between the average monthly salary of men and women was 34.5 per cent in 2016, 34.6 per cent in 2017, 38.6 per cent in 2018 and 36.2 per cent in 2019.

In light of the above, the Committee asks the Government to take steps to address: (i) pay differentials between men and women, including measures to remove the practical barriers regarding women's access to jobs with higher pay; (ii) horizontal and vertical occupational gender segregation, with a view to increasing the number of women in male-dominated sectors, including measures to combat gender stereotypes and promote the sharing of family responsibilities; and (iii) the undervaluation of female-dominated occupations resulting in lower remuneration.

In addition, welcoming the significant progress made in the collection and compilation of data disaggregated by sex, the Committee asks the Government to continue to collect, compile and analyse

such data, in particular with respect to men's and women's remuneration, if possible by economic sector, and to communicate them as well as any available statistics on the gender pay gap.

Articles 1(b) and 2(2)(a). Equal remuneration for men and women for work of equal value. Legislative developments. The Committee recalls that for a number of years it has been referring to the need to amend the Labour Code of 21 December 1995, which prohibits discrimination on the basis of sex with regard to remuneration, but which does not fully reflect the principle of equal remuneration for men and women for work of equal *value* as set out in the Convention. The Committee notes with ***satisfaction*** that section 244 of the new Labour Code, which was adopted in March 2022 and will enter into force on 30 April 2023, explicitly refers to "ensuring equal pay for men and women for work of equal value". The Committee also notes the adoption on 2 September 2019 of Law No. LRU-562 on guarantees with respect to equal rights and opportunities for women and men. It notes, however, that section 21 provides that the employer shall ensure "equal wages (remuneration) for women and men for equal labour, and an equal approach to assessment of the quality of work of women and men". The Committee observes that the law refers to "equal labour" (equal work) which is narrower than "work of equal *value*". It recalls that, in a context where there is a significant gender occupational segregation, the concept of "work of equal *value*" is fundamental to the promotion of genuine gender equality in remuneration as men and women do not perform the same or equal work. Therefore, the concept of "work of equal *value*" permits a broader scope of comparison between work typically (or mainly) performed by women and work typically (or mainly) performed by men. It includes "equal work" or work performed under "equal conditions", but also encompasses work that is of an entirely different nature, but which is nevertheless of equal value overall (for more detailed information on the concept of "work of equal value" (see the 2012 General Survey on the fundamental Conventions, paragraphs 673–681). ***The Committee asks the Government to take steps to amend Law No. LRU-562 of 2019 on guarantees with respect to equal rights and opportunities for women and men accordingly so as to give full legislative expression to the principle of equal remuneration for men and women for work of equal "value" and align the provisions of the Law with those of the new Labour Code. The Committee asks the Government to provide information on any legislative developments in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

Zimbabwe

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1989)

Previous comment

The Committee notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) received on 31 August 2019.

Articles 1(b) and 2(2)(a) of the Convention. Work of equal value. Legislation. With reference to its previous comments, the Committee notes the ZCTU's statement that it received the draft Labour Bill but that, at the time of its observations, no formal tripartite meeting had taken place to discuss whether the Bill gives effect to the principle of the Convention. The Committee notes the Government's indication, in its report, that the concept of equal remuneration for work of equal value is now fully reflected in the draft Labour Bill. It adds that the ZCTU was given the opportunity to present its proposals on the draft Labour Bill and that its views were taken into account for the final draft. The Government indicates that the Bill is currently being considered by Cabinet. ***The Committee requests the Government to ensure that the principle of equal remuneration for men and women for work of equal value is fully reflected in the draft Labour Bill to allow for the comparison not only of work that involves similar qualifications and skills, effort, responsibilities and conditions of work, but also of work of an entirely different nature which is nevertheless of equal value. Recalling that the draft Labour Bill has been pending for***

a number of years, the Committee trusts that the Government will endeavour to enact it in the near future and provide a copy of the legislation once adopted.

Article 2. Measures to address the gender pay gap. With reference to its previous comment, the Committee notes the adoption of the Revised National Gender Policy (2017), supported by the National Gender Policy Implementation Strategy Plan (2019). It notes, however, that the Government does not provide more in-depth information on any measures taken, under the National Gender Policies or otherwise, to effectively address the gender pay gap. The Committee notes the ZCTU's indication that the Government has not taken any action to address the gender pay gap and the situation of women in low-paying jobs. The ZCTU alleges that, in the agricultural sector, women receive lower wages than their male counterparts for the same jobs. The Committee also notes the ZCTU's statement that the situation for women working in the informal economy has worsened due to austerity measures, and that payments that were previously made in United States dollars are now made in local currency, the result being that women who before already earned as little as US$100 per month, now earn US$30. The ZCTU adds that no efforts have been made by the Government to implement the National Gender Policy (2013–17), and that there has not been any consultation with the social partners on the subject. The Committee also notes, from the concluding observations of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), the continuing horizontal and vertical occupational segregation, as well as the persistent gender pay gap and women's concentration in low-paying jobs, primarily in agriculture and domestic work (CEDAW/C/ZWE/CO/6, 10 March 2020, paragraph 37). ***The Committee requests the Government: (i) to take concrete measures, including under the Revised National Gender Policy (2017), to address the structural causes of the gender pay gap, including occupational gender segregation of the labour market and the very low rates of remuneration for jobs predominantly occupied by women; and (ii) to provide information on the progress achieved. Recalling that the National Gender Policy 2013–17 provided for a monitoring and evaluation framework, the Committee once again requests the Government to forward a copy of any report assessing the impact of the policy as well as to provide information on any follow-up measures envisaged.***

The Committee is raising other matters in a request addressed directly to the Government.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

Previous comment

The Committee notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) received on 31 August 2019 and 20 January 2020.

Article 1(1)(a) and (b) of the Convention. Grounds of discrimination. Legislation. Referring to its previous comment, in which it noted the Government's indication that section 5(1) of the Labour Act would be amended to incorporate all of the grounds enumerated in the Constitution, including the grounds of "place of birth" and "ethnic origin" which cover "national extraction", the Committee notes with ***regret*** the Government's indication, in its report, that the bill amending the Labour Act is still pending. In this regard, it notes the ZCTU's indication that the bill has been on the Parliament's agenda for the last three sessions. It further notes the Government's reply that the labour inspectorate gives the following interpretation to the expressions contained in the Constitution: "nationality: the country of origin of the person/citizenship"; "ethnic origin: the ethnic/tribe group one belongs to"; and "place of birth: area/region in which a person was born". ***The Committee urges the Government to take all the necessary steps with a view to: (i) enacting the draft Labour Bill in the near future; while (ii) ensuring that the Labour Act prohibits direct and indirect discrimination on at least all of the grounds enumerated in Article 1(1)(a) of the Convention, including national extraction and social origin, for all***

workers and with respect to all aspects of employment. It requests the Government to provide information on any progress made in this regard and to provide a copy of the Labour Act once adopted. Recalling that the concept of "national extraction" does not only cover distinctions made on the basis of a person's place of birth, ancestry or foreign origin, but also discrimination directed against persons who are nationals of the country in question, but who have acquired their citizenship by naturalization or who are descendants of foreign immigrants, the Committee requests the Government to provide information on the application in practice given to the expressions "nationality", "ethnic origin" and "place of birth" listed in article 56 of the Constitution, such as extracts of relevant court decisions.

Articles 2 and 3. National policy to promote equality of opportunity and treatment for men and women. The Committee notes the ZCTU's allegations that the National Gender Policy for 2013–17 has not been allocated a budget nor been implemented. The Committee also notes that the Government does not provide any information on the implementation of the National Gender Policy but states that the issue of gender has been mainstreamed as a cross-cutting issue in the National Development Strategy 1 (NDS1, 2021–2025). The Government indicates that, in order to enhance women's participation in decision-making positions, 60 seats (out of the 270 seats) of the National Assembly are reserved for women, and that, following the elections in 2018, 86 seats were held by women. The Committee notes, from the Government's report under the Equal Remuneration Convention, 1951 (No. 100), that it established the Zimbabwe Women Micro Finance Bank (ZWMB) in January 2017 to facilitate financial inclusion of women, and the Women Development Fund and Community Development Fund, a platform that provides loans to women's community projects at concessionary rates. The Committee further notes, from the Government's report under the United Nation's Universal Periodic Review, that the 2019 Labour Force and Child Labour Survey estimated that there were overall employment and unemployment rates of 84 per cent and 16 per cent respectively. Among those who were employed, 57 per cent were male and 43 per cent were female. The unemployment rate for females (17.2 per cent) was slightly higher than for males (15.7 per cent). There was also a wide disparity on the Employment to Population Ratio, being at 44.4 per cent for males and 28.5 per cent for females. Among people who were employed at management level in the country, the proportion of women had increased to 33.7 per cent (from 27.9 per cent in the 2014 Labour Survey) (A/HRC/WG.6/40/ZWE/1, 9 November 2021, paragraph 108). The Committee also notes, from the concluding observations of the United Nations Committee on the Elimination of Discrimination against Women, the insufficient level of human, technical and financial resources allocated to the implementation of gender equality policies and plans, the absence of sectoral targets, benchmarks and effective coordination arrangements to guide implementation as well as the lack of information on the results and impact of the national gender policy (CEDAW/C/ZWE/CO/6, 10 March 2020, paragraph 19). ***While taking due note of the information provided by the Government, the Committee requests it to: (i) intensify its efforts to fully implement the National Gender Policy, by allocating it the necessary budget and taking effective measures to address past gender discrimination and enhance women's economic empowerment and access to decision-making positions; and (ii) provide information on the measures taken and their impact in terms of equality of opportunity and equal treatment for men and women in employment and occupation. The Committee also asks the Government to provide: (i) detailed information on how equality of opportunity and treatment for men and women has been incorporated in the National Development Strategy 1, including on any relevant measures taken in its framework; (ii) information on the number of women who benefited from the Zimbabwe Women Micro Finance Bank or the Women Development Fund and Community Development Fund; and (iii) updated statistical information on the participation of men and women in education, training, employment and occupation, disaggregated by occupational categories and positions.***

The Committee is raising other matters in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 100** *(Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Bangladesh, Barbados, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Cameroon, Chad, Colombia, Comoros, Congo, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Equatorial Guinea, Finland, Grenada, Lebanon, Madagascar, Pakistan, Panama, Paraguay, Philippines, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, San Marino, Sao Tome and Principe, Serbia, Singapore, Slovakia, Slovenia, South Africa, South Sudan, Suriname, Syrian Arab Republic, Timor-Leste, Türkiye, Uganda, United Republic of Tanzania, Uzbekistan, Yemen, Zimbabwe);* **Convention No. 111** *(Albania, Algeria, Antigua and Barbuda, Argentina, Bahrain, Bangladesh, Barbados, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cameroon, Chad, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Denmark, Denmark: Greenland, Djibouti, Ecuador, Egypt, El Salvador, Fiji, Finland, Grenada, Lebanon, Madagascar, Malawi, Pakistan, Paraguay, Philippines, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, South Africa, South Sudan, Suriname, Syrian Arab Republic, Tajikistan, Timor-Leste, Türkiye, Uganda, United Republic of Tanzania, Yemen, Zimbabwe);* **Convention No. 156** *(Albania, Argentina, Belgium, Bosnia and Herzegovina, Bulgaria, Costa Rica, Paraguay, Russian Federation, San Marino, Serbia, Slovakia, Slovenia);* **Convention No. 190** *(Uruguay).*

Tripartite consultation

Antigua and Barbuda

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2002)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 5(1) of the Convention. Effective tripartite consultations. The Government indicates in its report that the National Labour Board is currently engaged in the revision of the Labour Code. The Committee notes that the Government envisages establishing a subcommittee composed of members of the National Labour Board, along with representatives of workers and employers, to review international labour standards, engage the public in consultations when necessary and to make recommendations to the Minister on actions to be taken. The Committee notes, however, that once again the Government's report does not contain information with regard to tripartite consultations on the matters related to international labour standards covered by *Article 5(1)* of the Convention. ***Recalling its comments since 2008 concerning the activities of the National Labour Board, and noting that section B7 of the Labour Code, which establishes the Board's procedures, does not include the matters set out in Article 5(1) of the Convention, the Committee once again requests the Government to provide detailed information on the activities of the National Labour Board on matters related to international labour standards covered by the Convention. It further requests the Government to identify the body or bodies mandated to carry out the tripartite consultations required to give effect to the Convention. The Committee reiterates its request that the Government provide precise and detailed information on the content and outcome of the tripartite consultations held on all matters concerning international labour standards covered by Article 5(1)(a)–(e) of the Convention, especially those relating to the questionnaires on Conference agenda items (Article 5(1)(a)); reports to be presented on the application of ratified Conventions (Article 5(1)(d)); and proposals for the denunciation of ratified Conventions (Article 5(1)(e)).***

Article 5(1)(b). Submission to Parliament. The Government reiterates information provided in April 2014, indicating that the 20 instruments adopted by the Conference from its 83rd to its 101st Sessions (1996–2012) were resubmitted to Parliament on 11 March 2014. It adds that a request would be made to the Minister by 15 November 2017 via the Labour Commissioner and Permanent Secretary concerning submission of the instruments to Parliament. ***The Committee refers to its longstanding observations on the obligation to submit and once again requests the Government to indicate whether effective consultations leading to conclusions or modifications were held with respect to the proposals made to the Parliament of Antigua and Barbuda in connection with the submission of the above-mentioned instruments, including information regarding the date(s) on which the instruments were submitted to Parliament. In addition, the Committee requests the Government to provide information on the content, agenda, discussions and resolutions and on the outcome of the tripartite consultations held in relation to the submission of instruments adopted by the Conference as of 2014: the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, as well as the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session.***

Article 5(1)(c). Examination of unratified Conventions and Recommendations. The Government reports that the unratified conventions noted in its report were submitted to the National Labour Board on 11 November 2017 for re-examination with the social partners. ***The Committee requests the Government to provide updated information on the outcome of the re-examination of unratified Conventions, in particular: (i) the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which is deemed a governance Convention; (ii) the Holidays with Pay Convention (Revised), 1970 (No. 132), (which revises the Weekly Rest (Industry) Convention, 1921 (No. 14); the Holidays with Pay (Agriculture) Convention, 1952 (No. 101), to***

which Antigua and Barbuda is a State party); and (iii) the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), (which revises the Seafarers' Identity Documents Convention, 1958 (No. 108), that has also been ratified by Antigua and Barbuda).

The Committee expects that the Government will make every effort to take the necessary action in the near future.

El Salvador

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)

Previous comment

The Committee notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2021. The Committee also notes the observations of the International Organisation of Employers (IOE), received on 10 November 2022, which contain allegations of serious and repeated violations by the Government of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as of the present Convention. Both observations provide information on matters dealt with in this comment, which is examined below. ***The Government is requested to provide its comments in this respect.***

Follow up to the conclusions of the Committee on the Application of Standards (110th Session of the International Labour Conference, May–June 2022)

The Committee notes the discussion on the application of the Convention held in the Conference Committee on the Application of Standards in June 2022. In its conclusions, the Conference Committee took note of the high-level tripartite mission, accepted by the Government, that took place in May 2022. However, the Committee regretted that five ILO Conventions were ratified without consulting the most representative employers' organizations. The Committee also noted with deep concern the multiple allegations of interference by the authorities in the appointment of employers' and workers' representatives in public tripartite and joint bodies.

Taking into account the discussion of the case, the Committee urged the Government to: (i) refrain from any aggression and from interfering in the establishment and the activities of employers' and workers' organizations, in particular the National Business Association (ANEP); (ii) ensure the effective operation of the Higher Labour Council (CST) and other tripartite entities, respecting the full autonomy of the most representative employers' and workers' organizations and through social dialogue, in order to guarantee their full functioning without any interference; (iii) refrain from unilaterally appointing workers' and employers' representatives for tripartite consultations and institutions, and to develop, in full consultation with the social partners, the appointment procedures of those representatives; (iv) repeal the legal obligation on trade unions to request renewal of their legal status every 12 months and the 23 decrees adopted on 3 June 2021; and (v) develop a time-bound road map to implement without delay all the recommendations made by the ILO high-level tripartite mission.

The Conference Committee requested the Government to present a detailed report on the application of the Convention in law and practice to the Committee of Experts before 1 September 2022, in consultation with the social partners. The Committee also encouraged the Government to continue to avail itself of technical assistance from the Office to ensure full compliance with its obligations under the Convention.

Articles 2 and 3(1) of the Convention. Adequate procedures. Reactivation of the Higher Labour Council. In its previous comments, the Committee requested the Government to continue to provide detailed and updated information on measures adopted to ensure the effective operation of the Higher Labour

Council (CST), as well as on the content and outcome of the tripartite consultations held within this tripartite body.

Reactivation and operation of the CST. The Committee notes that the Government reports that the CST is operating effectively. In this regard, the Government reiterates that the CST 2021-2023 was set up in December 2021, and that the workers' and employers' representatives were freely and independently elected, in conformity with section 4 of the CST Statute. The Government states that Mr José Agustín Martínez, Vice-President of the ANEP, was elected as CST Vice-President for the employers' sector, after being elected by the employer organizations; and Mr Jaime Ernesto Ávalos was elected as CST Vice-President for the workers' sector; while the Minister of Labour and Social Welfare, Mr Oscar Rolando Castro, was elected President of the CST. The Government adds that since its instauration, the CST has held five plenary meetings, and ten meetings of its board of officers, in accordance with section 11 of its Statute, which provides that the CST shall meet at least twice yearly. The Government indicates that one of the CST objectives was the tripartite construction of a strategy to generate decent work, for which the CST requested ILO technical assistance. In this connection, the Government indicates that it has held several meetings with representatives of the ILO Regional Office with a view to agreeing on a road map for the elaboration of such a strategy. The Government also reports that, on the basis of its Statute, the CST agreed to establish a Tripartite Technical Commission, the mandate of which would include following up and ensuring the functioning of the CST agenda. The Government indicates that the three groups have formed their delegations on the Tripartite Technical Commission, which is functioning regularly, and has followed up on the above-mentioned strategy, with the assistance of the employment specialist of the ILO Regional Office and has also carried out a review of the Act for the protection of children and adolescents.

The Committee takes note, however, of the ITUC's observations relating to the ILO tripartite mission which took place in the first week of May 2022. The ITUC indicates that the tripartite mission observed that the CST was back in operation, and that several meetings had been held, at which the ratification of several ILO Conventions was discussed. Nevertheless, the ITUC highlights the following persistent problems regarding the application of the Convention: (i) steps must be taken, by filling the empty seats on the body as soon as possible, to ensure representation of employers and workers on an equal footing within the CST; (ii) the administrative process for the designation of workers' representatives continues to be complex, and hampers the operation of the CST; and (iii) trade unions are obliged to renew the composition of their boards each year, making a legal obstacle and complicating the process of appointing workers still further.

The Committee also notes the IOE's observations to the effect that the CST has only been active for ten and a half months since 1 June 2019, that is, for only 25 per cent of the current presidential term, and only during brief periods of time: from September 2019 to March 2020, for a duration of 5.6 months, and between December 2021 and May 2022, for a period of 4.9 months. Moreover, at the end of the High-Level Tripartite Mission on 5 May 2022, the CST became inactive again. According to the IOE's observations, neither the officers, the plenary, nor the different CST commissions have met. On 5 September 2022, the Government convened a meeting of the officers of the CST, at which the Employer Vice-President and his alternate were present, but neither the President nor his alternate attended the meeting. Consequently, the meeting could not be held, for lack of a quorum. The IOE also indicates that although a plenary session had been agreed with Ministry of Labour officials for 4 October 2022, it was never convened. In this way, the IOE stresses, CST inactivity is disrupting the process of reforming the labour legislation. In this connection, the IOE refers to the approval process of the Act for the Overall Protection of Early Childhood, Childhood and Adolescence, and the adoption by the Legislative Assembly of various reforms to the Labour Code on 4 October 2022, where neither the CST nor the social partners were consulted.

The IOE indicates that the Government has, to date, submitted no document or correspondence to the ANEP on the reports it was due to send before 1 September 2022. The IOE claims that the

presentation of the five ILO Conventions before the National Assembly on 1 May 2022, and their adoption two weeks afterwards, without conducting prior consultations with the ANEP as the most representative employers' organization in the country, showed clear disregard for social dialogue and tripartite consultation, and thus constituted a violation of the Convention by the Government. The IOE adds that, six months after ratification of the five Conventions, neither the ANEP, nor its constituent organizations, have received information on how they are to be implemented. At the request of the ANEP, in July 2022, the ILO Regional Office gave a tripartite course on the content of the five ratified Conventions. The IOE highlights that although government representatives were present, the higher government authorities were not, and neither was it possible to conduct social dialogue regarding the proper implementation of the Conventions.

With regard to the road map requested by the Committee on the Application of Standards in June 2022, the IOE indicates that the CST has neither sat, nor been consulted in respect of elaborating, in a tripartite manner, a road map to implement, without delay, the recommendations formulated by the ILO High-level tripartite mission. In this regard, the IOE stresses that the free and independent Salvadoran employers grouped within the ANEP, the most representative employers' organization, were still fully disposed and willing to strengthen social dialogue and tripartite consultation.

The Committee observes that the Government does not indicate whether the CST sat during the months after the June International Labour Conference, nor whether it has adopted measures to resolve the difficulties in issuing credentials. The Committee also notes that the Government provides no information on the 23 decrees in question, or the road map requested by the Conference Committee.

Allegations of government interference. The Committee notes that, in response to the allegations of Government interference in the elections of the representatives for tripartite consultation, the Government reiterates that it recognizes the ANEP as one of the most representative employers' organizations in the country and points to the nomination of the President of the ANEP as Vice-President for the employer sector of the CST. The Government states that it has committed no acts of harassment and interference against the ANEP and adds that, within the framework of the CST, it has been working with the employers and workers in a harmonious, professional and technical manner. The Government also refers to the ANEP's participation in the five spaces for social dialogue in the country: the CST; the Social Housing Fund (FSV); the Salvadoran Vocational Training Institute (INFASORP); the Salvadoran Social Security Institute (ISSS) and the National Minimum Wage Board (CNSM). It indicates that the process to appoint the employer representatives on the Board of the ISSS is underway. The Government also refers to 20 autonomous, tripartite and joint bodies, in which the Government, trade unions and other actors participate. It also points to 23 autonomous, tripartite and joint institutions (including the CST and the CNSM) in which the ANEP is represented, with the exception of the ISSS.

The Committee notes however, that the IOE, in its observations, maintains that Government interference is ongoing, and highlights the following examples: in May 2022, the Government convened the election of the employer representatives of the INFASORP, which was suspended on 3 June, without a reason being given, during the discussion of the case of El Salvador at the International Labour Conference. On 23 June 2022, the Government reconvened the election, but altered the rules in a discretionary manner, to include individual enterprises among the electors, a move intended to distort the role of employers' organizations, and to disrupt their unity. The IOE maintains that the Government also contacted various enterprises with a view to coercing them into presenting a series of Government-preferred candidates. At the same time, the Government warned that any candidate put forward by professional associations belonging to the ANEP would be rejected. The IOE states that the INSAFORP case provides a clear indication of Government interference in the election process for employer representatives, which undermines social dialogue and tripartite consultation by marginalizing the representatives, and because of the potential lack of legitimacy of the supposed representatives. The IOE indicates that: (i) Despite several employer's organizations belonging to the ANEP registering as electors and putting forward candidates, to date the final ballot has not been counted and there has

been no election; (ii) for a number of tripartite and bipartite bodies, the Government has not conducted elections for persons to replace directors appointed by the employers' organizations whose mandate has expired. The IOE indicates that this is the case with the employer directors in the ISSS, whose mandates came to an end in December 2020. The IOE indicates that to date, elections have not been held to replace employer directors whose mandates have expired in the following institutions: the Maritime Port Authority (AMP); the International Centre for Fairs and Conventions (CIFCO); the Independent Executive Committee for Ports (CEPA); the Salvadoran Tourism Corporation (CORSATUR); the Salvadoran Environmental Fund (FONAES); and the National Fund for Public Housing (FONAVIPO). The IOE also indicates that, between April and July 2022, the Government held elections for the employer representatives on the CNSM, for which ANEP affiliated organizations submitted candidates. However, four months after the elections, the persons elected have still not been sworn in. The IOE states that the most serious interference has been in the reforms to the 23 laws, which have prevented employers from being able to elect their representatives to the boards of the 23 tripartite and joint bodies governed by the laws. That faculty has been transferred to the President of the Republic, who not only choses the employer representatives on the 23 public bodies, but is also empowered to dismiss them, in a discretionary and arbitrary manner. The IOE states that these reforms are still in force, despite the Committee of Experts' conclusions of February 2022, and the conclusions of the Committee on the Application of Standards of June 2022, which both state that these reforms should be repealed as they are contrary to obligations under international ILO Conventions.

The IOE also indicates that, after the President of the Republic' statement of 15 September 2022 announcing his intention to present his candidature for the Presidency in the upcoming elections, the ANEP issued a statement on 19 September, declaring that immediately consecutive presidential re-election is expressly prohibited in the Constitution of the Republic. The IOE claims that the Government representatives subsequently made use of social networks to attack and disqualify the ANEP. Furthermore, the same representatives approached the presidents of ANEP affiliated employers' organizations, and applied pressure on them to give public support to the presidential re-election, and to resign their ANEP membership. Finally, the IOE alleges that the Government has cancelled jointly scheduled and organized meetings and events.

The Committee expresses its ***deep concern*** regarding the new allegations of acts of interference, harassment and marginalization against the ANEP as from September 2022. ***In consequence, the Committee urges the Government to take the necessary measures to ensure the effective and immediate operation of the CST, respecting the independence of the social partners, including with regard to the appointment of their representatives. The Committee refers to its previous recommendations and requests the Government to report on any developments in this respect, as well as on the content and outcome of tripartite consultations held within the framework of this tripartite body. The Committee also urges the Government to take necessary measures to ensure without delay the repeal of the 23 decrees which transfer the function of electing employers' representatives from the employers to the President of the Republic, thus depriving the employers' organizations of the exercise of their right to freely elect their representatives, in conformity with the instruments ratified by the country. The Committee also urges the Government to take the necessary measures to put a stop to the delays in issuing the credentials of workers' organizations, and to make every effort to ensure the formulation and adoption of the road map requested by the International Labour Conference, without delay.***

Article 2. Ensure effective tripartite consultations. Issuance of credentials. The Committee notes that the Government recognizes that the legislation in force requires updating with a view to ensuring issuance of credentials to workers' organizations. In this regard, the Government reports that a study process has begun to propose amendments to the Labour Code in order to fluidify and accelerate the issuance of credentials. The Government adds that, having committed to providing immediate

responses, the MTPS has set up a Trade Union Service Office in the Directorate General for Labour, to provide legal assistance to union representatives.

In its observations, the ITUC identifies the requirement under the Labour Code that workers' organizations renew their executive boards every 12 months as a major obstacle to its participation in the CST and other tripartite organizations in the country. The ITUC indicates that the law requiring this renewal is unfounded and considers that it constitutes a form of interference in the functioning of the organizations in question. The ITUC recalls that *Article 3* of the Convention establishes that representatives shall be freely chosen, and that the legal requirement of annual renewal is thus a violation of that freedom. Finally, it indicates that the employers' organizations are subject to a two-year renewal period. The ITUC stresses that while progress has been made, all these considerations imply that the Government is still not fulfilling the requirements of the Convention. The Organization insists that the Government take the necessary measures to conform fully with the Convention: (i) ensure without delay the full composition of the CST; (ii) simplify and fluidify the process for designating workers' representatives and (iii) amend the provision of the Labour Code that provides for annual renewal of trade union executive boards. In this regard, the ITUC requests the Government to implement fully the recommendations of the tripartite mission, as well as the conclusions of the Committee on the Application of Standards. ***The Committee urges the Government to adopt without delay the necessary measures to repeal the legal obligation on trade unions to request renewal of their legal status every 12 months and requests the Government to provide detailed and updated information in its next report on all progress achieved in this respect.***

Article 5(1)(b). Effective tripartite consultations. Submission. The Committee notes the information provided by the Government regarding the ten instruments submitted for examination by the CST on 19 May 2022, before transfer to the Legislative Assembly in order to comply with the obligation of submission provided for in article 19(5) of the Constitution of the ILO. While the Committee welcomes the transmission of these instruments to the CST, it recalls that, to be effective, they must be submitted to the legislative body which, in the case of El Salvador, is the Legislative Assembly. ***The Committee trusts that the Government will report as soon as possible on the submission of the above-mentioned instruments to the legislative body, following their discussion within the CST. The Committee again reiterates that it hopes to see progress in full and sustained compliance with the Convention as soon as possible, including the regular holding of effective tripartite consultations within the CST, on the subjects provided in Article 5 of the Convention, as well as the promotion of stable and continuous social dialogue in the other tripartite entities in the country. In this regard, the Committee recalls that ILO technical assistance remains at the disposal of the tripartite constituents to support the efforts made by all the tripartite actors to ensure full compliance with the provisions of the Convention.***

Grenada

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 5 of the Convention. Effective tripartite consultations. The Committee recalls that, in its previous comment, it had requested the Government to provide detailed information on each of the tripartite consultations held on matters concerning international labour standards covered by the Convention. The Government indicates in its report that tripartism is working well in the country to the extent that it has moved towards establishing a Committee of Social Partners. The said Committee includes civil society

organizations and the conference of churches; it is responsible for the monitoring of the IMF Structural Adjustment Programme 2014–16 in Grenada, including labour reforms. Additionally, the Government specifies that a comprehensive review of the Labour Code was conducted during the 2014–15 period. Moreover, the Government recalls that, pursuant to section 21(2) of the Employment Act, the functions of the Labour Advisory Board reflect the provisions of *Article 5(1)* of the Convention. ***The Committee requests the Government to provide detailed information on the activities of the Labour Advisory Board on the tripartite consultations on international labour standards covered by the Convention, including full particulars on the consultations held on each of the matters listed in Article 5(1) of the Convention. The Government is also requested to indicate the intervals at which the abovementioned consultations are held, and the nature of the participation by the social partners during these consultations.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Ireland

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)

Previous comment

Article 5 of the Convention. Effective tripartite consultations. The Committee welcomes the information provided by the Government on the activities of the ILO Interdepartmental Group (IDG), established in 2017 to coordinate Ireland's national policy positions on agenda items relating to the ILO Governing Body and the International Labour Conference during Ireland's titular membership on the Governing Body. The Government reports that the quarterly meetings of the IDG are expected to be reduced to biannual meetings following the completion of Ireland's titular membership in June 2021. It adds that, in addition to the regular IDG meetings, the Irish Business and Employers Confederation (DETE) consults the Irish Confederation of Trade Unions (ICTU) and the Irish Business and Employers Confederation (IBEC) on all of the matters covered under *Article 5(1)*. The Committee notes the information provided in the Government's report on consultations held concerning reports to be submitted to the ILO *(Article 5(1)(a))*, proposals to be made to the competent authority in connection with article 19 submissions *(Article 5(1)(b)),* unratified Conventions and Recommendations to which effect has not yet been given *(Article 5(1)(c)),* reports to be submitted to the ILO under article 22 of the ILO Constitution *(Article 5(1)(d))* and proposals concerning the denunciation of ratified Conventions *(Article 5(1)(e)).* The Government adds that the DETE also consults with the social partners on ad hoc projects such as the ILO National Centenary Event in 2019. The Government reports that, following the outbreak of the COVID-19 pandemic in 2020, the IDG met virtually with the social partners. Tripartite consultations were held virtually in February 2021, prior to the March 2021 Governing Body, as well as prior to the June 2021 Conference. In addition, the Committee notes with ***interest*** Ireland's ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, in 2019, following tripartite consultations. It further notes the Government's indication that priority consideration is being given to the possible ratification of the Violence and Harassment Convention, 2019 (No. 190), and that tripartite consultations are envisaged in this respect once a review of the Convention's compatibility with the national legislation has been carried out. ***The Committee requests the Government to continue to provide detailed updated information concerning the activities of the ILO Interdepartmental Group relevant to the application of the Convention, as well as on the content and outcome of tripartite consultations held on each of the matters related to international labour standards set out in Article 5(1) of the Convention.***

Malawi

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1986)

Previous comment

Articles 2(1), 5(1) and 6 of the Convention. Effective tripartite consultations. Reports on consultations. In its previous comments, the Committee requested the Government to provide detailed updated information concerning the procedures put in place to ensure effective tripartite consultations. The Committee further requested the Government to provide updated information on the nature and outcome of tripartite consultations held during the period covered by the report on each of the matters concerning international labour standards set out in *Article 5(1)(a)–(e)*, including information as to the frequency of such consultations and to supply copies of reports produced on the working of the procedures provided for in the Convention *(Article 6)*. The Government reports that consultations regarding the Safety and Health in Mines Convention, 1995 (No. 176), have not yet taken place. The Government undertakes to keep the Committee informed of progress made in this regard. The Committee notes, however, that the Government does not provide information with regard to the procedures in place to ensure effective tripartite consultations concerning the measures to be taken at the national level in relation to international labour standards, as required under *Article 2(1)* of the Convention. Moreover, the Government does not provide copies of any reports produced on the working of the procedures provided for in the Convention *(Article 6)*. ***The Committee therefore reiterates its request that the Government provide updated detailed information on the procedures established to ensure effective tripartite consultations (Article 2(1) of the Convention). The Committee also once again requests the Government to communicate concrete information on the content, outcome and frequency of tripartite consultations held during the period covered by the report on each of the matters concerning international labour standards set out in Article 5(1)(a)–(e) of the Convention, particularly in relation to: questionnaires concerning items on the agenda of the Conference (Article 5(1)(a)); the submission of instruments adopted by the Conference to the National Assembly (Article 5(1)(b)), and reports to be made on the application of ratified Conventions (Article 5(1)(d)). In addition, the Committee reiterates its request that the Government supply copies of any reports produced on the operation of the procedures provided for in the Convention (Article 6).***

Mexico

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1978)

Previous comment

The Committee notes the observations of the Authentic Workers' Confederation of the Republic of Mexico (CAT) and the Confederation of Workers of Mexico (CTM), communicated by the Government in its report. The Committee also notes the Government's replies to the observations of the Confederation of Employers of the Mexican Republic (COPARMEX) in 2019, included in its report.

Articles 4 and 5 of the Convention. Effective tripartite consultations. The Committee notes with ***interest*** the detailed information provided by the Government on the tripartite consultations held during the period covered by the report on all matters related to international labour standards covered by *Article 5(1)* of the Convention. In this regard, the Government indicates that the social partners were consulted prior to the submission to the Senate of the Republic of the Violence and Harassment Convention, 2019 (No. 190) and its accompanying Recommendation (No. 206); as well as the Safety and Health in Agriculture Convention, 2001 (No. 184) and its accompanying Recommendation (No. 192). The

Committee also notes that, in reply to the 2019 observations of COPARMEX, the Government indicates its agreement that dialogue and information are the basis for gathering more information for opinions and improving decision-making. In this regard, the Government expresses its willingness to continue working to ensure that the most relevant labour policy decisions are adopted using social dialogue mechanisms. With regard to tripartite consultations on unratified instruments *(Article 5(1)(c)* of the Convention), the CTM points out that these are not effective, as only the instruments are sent to the workers' organizations, and the proposals are examined without taking into consideration their opinions during the discussions or when reports on the matter are drawn up. The CTM emphasizes that social dialogue mechanisms are needed that allow their comments, conclusions and responses to be heard. It also maintains that no support or financing is received for to the specialized training required for participants in these procedures, in accordance with *Article 4(2)* of the Convention. Therefore, intervention, where required, is spontaneous. It emphasizes the need for regular training for the tripartite partners with a view to ensuring their participation in consultations in a professional manner. The Committee also notes the Government's indication that no consultations have been held with the social partners regarding the manner in which the functioning of the procedures required by the Convention might be improved, so that the social partners have all the necessary information far enough in advance to formulate their opinions before a final decision is taken on the matter under consultation. Lastly, the Committee notes the information provided by the Government regarding the tripartite consultations held prior to the adoption of various legislative initiatives and measures relating to labour, such as the reforms introduced to the legislation to regulate labour outsourcing and to transfer the jurisdictional function in labour matters from the conciliation and arbitration boards to labour courts attached to the federal judiciary and state departments judiciaries. ***The Committee requests the Government to continue providing detailed and updated information on the specific content, frequency and outcome of the tripartite consultations held on all issues relating to international labour standards covered by Article 5(1) of the Convention. In the light of the observations of the CTM, the Committee requests the Government to provide information on the measures adopted or envisaged with a view to building the capacity of the tripartite partners and strengthening mechanisms and procedures, in accordance with Article 4 of the Convention and paragraphs 3(3) and 4 of Recommendation No. 152. It also encourages the Government to adopt the necessary measures to hold consultations with the social partners regarding the manner in which the functioning of the procedures required by the Convention might be improved, so that the social partners have all the necessary information far enough in advance to formulate their opinions before a final decision is taken on the matter under consultation, in particular concerning unratified instruments (Article 5(1)(c) of the Convention). Lastly, the Committee requests the Government to keep it informed of the result of the consultations held with the social partners relating to the possible ratification of Convention No. 184 and Convention No. 190.***

Nicaragua

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)

Previous comments

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2021, which were examined in the context of its observation of 2021 regarding the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Article 5 of the Convention. Effective tripartite consultations. The Committee notes that the Government once again indicates that it has informed the social partners of the questionnaires on the

issues included in the agenda of the International Labour Conference, the replies to the questionnaires under article 19 of the ILO Constitution and the reports on ratified Conventions under article 22 of the ILO Constitution. In this respect, the Committee once more reminds the Government that "… to fulfil their obligations under this provision of the Convention, it is not sufficient for governments to communicate to employers' and workers' organizations copies of the reports that they send to the Office, since any comments that these organizations may subsequently transmit to the Office on these reports cannot replace the consultation which have to be held during the preparation of the reports" (2000 General Survey on tripartite consultation, paragraph 92). The Committee highlights that consultation of the most representative employers' and workers' organizations implies the active participation of the organizations in the formulation and communication of their respective views. ***The Committee therefore requests the Government to provide detailed and updated information on the frequency, content and results of the tripartite consultations held on all questions related to international labour standards covered by Article 5(1)(a)-(e) of the Convention, in particular those related to the items included on the agenda of the Conference (Article 5(1)(a)); the submission of instruments adopted by the Conference (Article 5(1)(b)); the examination of unratified Conventions (Article 5(1)(c)); the reports that must be made on the application of ratified Conventions (Article 5(1)(d)); and the proposals for the denunciation of ratified Conventions (Article 5(1)(e)). Moreover, the Committee requests the Government to take measures to promote the active participation of the social partners in the tripartite consultations.***

[The Government is asked to reply in full to the present comments in 2023.]

Nigeria

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

Previous comment

Article 1 of the Convention. Consultations with representative organizations. In its previous comments, the Committee expressed the firm hope that the pending legislative reforms, particularly the National Labour Institutions Bill still pending before the National Assembly, would be finalized without further delay. It reiterated its request that the Government report on the results of the reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of association, as required under this Convention. In this context, since 2004, the Committee has also consistently reminded the Government that it is important for employers' and workers' organizations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation. The Committee also requested the Government to indicate the outcome of the meetings held with the stakeholders in April 2018 in relation to the reforms, and to provide a copy of the relevant legislation once adopted. The Committee notes the Government's reference in its report to the inauguration of the National Labour Advisory Council (NLAC) for 2021–25. According to information available on the Federal Ministry of Information and Culture website, during the inauguration, the Government indicated that, from 2nd to 4th March 2020, the Ministry of Labour had collaborated with the Nigeria Labour Congress (NLC), the Trade Union Congress (TUC) and the Nigeria Employers' Consultative Association (NECA) in reviewing the Draft National Labour Bills, which were withdrawn from the National Assembly for review and resubmission. At that time, the Government further indicated that the adoption of the pending legislative reforms would expand the scope and functions of the NLAC. ***The Committee therefore expresses once again the firm hope that the pending legislative reforms will be finalized and adopted without further delay. It also reiterates its request that the Government provide detailed information on the results of the reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of association, as required under the present***

Convention. The Committee further requests the Government to indicate the content and outcome of the meetings held with the stakeholders in March 2020 in relation to the reforms, and to provide a copy of the relevant legislation once it is adopted.

Article 5(1). Tripartite consultations required by the Convention. In reply to the Committee's previous comments, the Government reports that the social partners are consulted on issues related to international labour standards, particularly regarding the possibility of ratifying ILO Conventions, as well as in relation to reports on ratified Conventions submitted to the ILO pursuant to article 22 of the ILO Constitution. In addition, Conference preparatory meetings are held with the social partners to harmonize the country's position. The Committee notes with ***interest*** that, with the support of the ILO Office in Abuja, tripartite consultations were held within the NLAC in a two-day session from 23 to 24 March 2021. The Committee notes from the website of the Federal Ministry of Information and Culture, that the March 2021 session was the first session of the NLAC held since 2014. In addition, the Committee notes the ILO press release of 24 March 2021, according to which, during the March 2021 consultations, the tripartite constituents discussed the possible ratification of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Private Employment Agencies Convention, 1997 (No. 181); the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); and the Violence and Harassment Convention, 2019 (No. 190). The Committee notes that, according to the press release, all four Conventions discussed are to be ratified. Moreover, it was agreed during the March 2021 consultations that the regularity of NLAC meetings would be ensured in conformity with this Convention. Finally, the Committee notes that the ILO is currently supporting the development of the first National Industrial Relations Policy and the Decent Work Country Programme (DWCP) III for Nigeria. ***The Committee requests the Government to continue to provide updated, detailed information on the content, outcome and frequency of tripartite consultations held on all matters concerning international labour standards covered by the Convention, including in relation to: questionnaires on Conference agenda items (Article 5(1)(a)); proposals to be made to the competent authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the ILO Constitution (Article 5(1)(b)); the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given (Article 5(1)(c)); questions arising out of reports to be presented on the application of ratified Conventions (Article 5(1)(d)); and proposals concerning the possible denunciation of ratified Conventions (Article 5(1)(e)).***

Article 6. Operation of the consultative procedures. The Committee notes that the Government does not provide information in this regard. ***The Committee therefore reiterates its request that the Government indicate whether, in accordance with Article 6, the representative organizations have been consulted in the preparation of an annual report on the working of the consultation procedures provided for in the Convention and, if so, to indicate the content and outcome of these consultations.***

Peru

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2004)

Previous comment

The Committee takes note of the observations of the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers of Peru (CUT-Peru), the Autonomous Workers' Confederation of Peru (CATP), and the Confederation of Workers of Peru (CTP), as well as those of the National Confederation of Private Enterprise Institutions (CONFIEP), received on 1 September 2022. ***The Committee requests the Government to provide its comments in this respect.***

Article 2 of the Convention. Appropriate procedures. In its previous comments, the Committee noted that the National Labour and Employment Promotion Council (CNTPE) was no longer meeting because the trade union confederations had suspended their participation in the Council in May 2017 due to their disagreement with the approval of standards on collective stoppages and labour inspection and with the submission to the executive of a series of bills on voluntary arbitration, on the grounds that the bills failed to take account of the confederations' inputs. The Committee notes the Government's indication that tripartite consultations on minimum wages and their periodic adjustment were held within the CNTPE between 2018 and 2019. In a complementary manner, a wide-ranging process of social dialogue went ahead on various subjects, such as the National Plan on Competitivity and Productivity. Moreover, in 2019 roundtables were held on a range of social questions with each of trade unions that are CNTPE members. The Committee notes however that the confederations maintain that despite the agreement reached within the CNTPE to submit the National Plan on Competitivity and Productivity to tripartite dialogue, the Government approved the Plan on 28 July 2019 without prior consultations with the social partners. The Committee also notes the Government's indication that between 2020 and 2021, while the COVID-19 pandemic prevented the holding of CNTPE sessions, various bilateral meetings and working groups on social and labour issues took place in the context of the crisis. In that regard, the confederations assert that the social partners were not consulted regarding the above-mentioned measures, which also transferred the effects of the health crisis to the workers. They add that they were only convened to meetings at which a restricted range of the measures were presented and were given a very tight deadline to formulate their contributions. Finally, the Committee notes that the Government reports that the relaunching session of the CNTPE for 2021–26 took place on 13 November 2021, in the presence, among other government representatives, of the President of the Republic, as well as representatives of the confederations and of employers' organizations. ILO officials also attended. The Government reports that the CNTPE held two sessions between January and May 2022.

The Committee notes that the confederations, in their observations, claim that social dialogue and its supporting institution in the country, the CNTPE, are seriously debilitated. They argue that CNTPE activities have lacked continuity, and that between 2016 and 2021 only eight of the 72 ordinary sessions that should have been held took place, the CNTPE internal regulations stipulating one ordinary meeting per month. Moreover, the confederations stress that in Act No. 29.381 of 2009, establishing the organization and functions of the Ministry of Labour and Employment Promotion (MTPE), all references to the CNTPE as the consultative body of the MTPE were removed. They maintain that although the Regulation on the organization and functions of the CNTPE (Supreme Decree No. 01-2005-TR) remains in force, the CNTPE currently has no organic support guaranteed by a regulation having force of law. The confederations conclude that measures must be urgently adopted to ensure free enjoyment of trade union rights with a view to ensuring a genuine relaunching of the CNTPE.

The Committee notes that the CONFIEP also argues that the Government is not complying with the mechanisms and procedures for prior tripartite consultation established by the Convention. In the first instance, the CONFIEP indicates that the CNTPE is mandated to give opinions on draft legislation drawn up by the Government. In that connection, the CONFIEP accuses the Government of approving, without prior consultation with the social partners, a series of rules altering the regulations governing the outsourcing of services, and the Regulations of the Act on Collective Labour Relations, making structural changes to the regulation of freedom of association, collective bargaining and arbitration. The CONFIEP also indicates that Ministerial Decision No. 232-2021-TR established the Sectoral Commission for the formulation of the first draft of the Labour Code as a temporary body composed solely of representatives of the MTPE. The Sectoral Commission expressly ruled that the first draft would subsequently be submitted to the CNTPE. However, the CONFIEP states that the first draft was not submitted to the CNTPE but was published on the MTPE website, setting a deadline of only 20 days for the submission of general comments in relation to almost 500 proposed provisions. The CONFIEP reports that as a result of these facts, on 25 April and 28 July 2022, with the International Organisation

of Employers' (IOE) endorsement, it sent to requests for urgent intervention to the ILO, alleging serious non-compliance with the Convention and calling for the restoration of tripartite social dialogue in the country without delay. The CONFIEP states that on 26 July 2022, it suspended its participation in the CNTPE because of the serious damage inflicted by the Government on social dialogue and on the CNTPE itself as an institution. ***In light of the concerns expressed by both the trade union confederations and the CONFIEP, the Committee urges the Government to adopt the necessary measures to guarantee that effective tripartite consultations are held and that the CNTPE can begin functioning again without delay. It also requests the Government to send detailed and updated information on these measures. The Committee firmly hopes that the circumstances obstructing the functioning of the CNTPE can be rapidly resolved.***

Article 5. Effective tripartite consultations. In its previous comments, the Committee noted the observations of the CATP, in which the confederation maintained that the Government sent its reports to the workers' organizations with very little time for the latter to formulate their observations. In that connection, the Committee expressed the hope that the Government would take steps to establish an adequate time frame to give employers' and workers' sufficient notice to form their opinions and make any comments they consider appropriate on the drafts communicated by the Government. The Committee notes the Government's indication that during the period covered by the report tripartite consultations were held regarding the submission of the Violence and Harassment Convention, 2019 (No. 190), which was ratified on 8 June 2022. The Government reports that on 23 June 2022 a tripartite workshop on the Maritime Labour Convention, 2006, had been planned, with the participation of ILO and MTPE specialists and of the actors concerned. Regarding consultations on the draft reports on ratified Conventions, the Government indicates that these reports were communicated to the most representative organizations of employers and workers to allow them to formulate their comments thereon. For their part, the trade union confederations maintain that they received the drafts on 2 August 2022, which made the presentation of coherent, documented comments before the closing date for submission of reports (31 August) difficult. The confederations also refer to the MTPE "Guidelines for international affairs relative to the International Labour Organization", which allow a deadline of 20 working days to employers' and workers' organizations for the formulation of their opinions on the draft reports. Given the complexity of some of the issues covered by international standards, the confederations stress that the deadlines should be more generous to allow for the collection and processing of information, and should include a stage of face-to-face dialogue between the parties, prior to the sending of the reports. ***The Committee requests the Government to continue to provide detailed and updated information on the frequency, content and results of the tripartite consultations held on all questions related to international labour standards covered by the Convention. The Committee also requests the Government to indicate the manner in which account is taken of the representative organizations of workers' opinions on the functioning of the procedures for effective prior consultation required by the Convention, and also on the possibility of establishing modified procedures that answer to the concerns expressed by the trade union confederations in their observations.***

Portugal

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)

Previous comment

The Committee notes the observations of the General Workers' Union (UGT), transmitted by the Government in its report, which provide information on the issues addressed in this comment.

Article 5 of the Convention. Effective tripartite consultations. The Committee notes the indication in the Government's report that it has engaged in consultations with the most representative workers' and employers' organizations on each of the issues set out in *Article 5* of the Convention. The Committee also notes the Government's indication that, during the 107th, 108th, 109th and 110th Sessions of the International Labour Conference, the Government held information sessions and technical discussions with the social partners, in order to organize the Government delegation for the Conference. The Government also informs that a study is ongoing into the feasibility of ratifying the Violence and Harassment Convention, 2019 (No. 190). The Committee notes that Portugal ratified the Work in Fishing Convention, 2007 (No. 188), on 26 November 2019 and the Protocol of 2014 to the Forced Labour Convention, 1930, on 23 December 2020. The Committee also notes that, in its observations, the UGT reiterates that with respect to ratified Conventions and unratified Conventions and Recommendations to which effect has not yet been given consultation procedures are respected in a timely and appropriate manner. However, it considers that the procedure for the ratification of Conventions should be simpler and shorter, and that the information on the basis for the decision to ratify or not a given Convention should be clearer and shared in due time with the social partners. The Committee takes note of the Government's reply to these observations, in which it reiterates that studies on the feasibility of ratifying new Conventions are complex, since they involve the consultation of several departments of the public administration depending on the matters covered by the Conventions under consideration. In addition, it indicates that the possibility of making legislative amendments identified by the study as necessary must often be assessed and that this assessment varies depending on the content of the Convention. The Government reiterates that the public administration often lacks the necessary human resources to be able to carry out feasibility studies quickly. ***The Committee requests the Government to continue to provide detailed and updated information on the content and outcome of the tripartite consultations held on each of the matters covered by Article 5(1) of the Convention. In particular, the Committee requests the Government to provide updated information on the consultations held on the possibility of ratifying the Violence and Harassment Convention, 2019 (No. 190).***

Uganda

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 2 and 5(1) of the Convention. Effective tripartite consultations. In its 2016 observation, the Committee reiterated its request that the Government provide information on the consultations held within the National Tripartite Council and the other tripartite bodies on the matters set out in *Article 5(1)(a)–(e)* of the Convention. The Government indicates in its report that it has constituted a national task force on the review of the application of Conventions and reports on international labour standards to address the issues raised by the Committee in its previous reports. It adds that consultations were held on international labour standards covered by *Article 5(1)* of the Convention and on the implementation of the Decent Work Country Programme, minimum wages, and matters related to the Industrial Court. ***The Committee once again requests the Government to provide specific information on the content and outcome of tripartite consultations held within the National Tripartite Council, as well as other tripartite bodies on all matters concerning international labour standards as set out in Article 5(1)(a) through (e) of the Convention, in particular replies to questionnaires on Conference agenda items (Article 5(1)(a)); proposals to be made to the competent authority or authorities in connection with the submission of instruments adopted by the Conference to Parliament (Article 5(1)(b)); the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given (Article 5(1)(c)); and reports to be presented on the application of ratified Conventions (Article 5(1)(d)).***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Bolivarian Republic of Venezuela

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

Previous comment

The Committee notes the observations of the Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), received on 11 February 2022, and those communicated by the Government in its report. It also notes the observations of the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), received on 22 April 2022, and those communicated by the Government. The Committee further notes the observations of the Confederation of Workers of Venezuela (CTV), the Federation of University Teachers' Associations of Venezuela (FAPUV) and the Independent Trade Union Alliance Confederation of Workers (CTASI), which were communicated by the Government. The Committee also notes the observations of the National Union of State and Public Service Workers (UNETE), received on 5 September 2022. ***The Committee requests the Government to provide its response to the latter observations.***

Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

The Committee notes the discussions held at the 344th, 345th and 346th Sessions of the Governing Body (March, June and October-November 2022) on developments in relation to the Social Dialogue Forum concerning the implementation of the recommendations of the Commission of Inquiry in relation to the Government of the Bolivarian Republic of Venezuela, and the decisions adopted by the Governing Body in this regard. The Committee observes that the Governing Body will once again at its 347th Session (March 2023) examine the progress made by the Government in giving effect to the recommendations of the Commission of Inquiry, and will continue its examination of possible measures to achieve this objective.

Articles 2, 5 and 6 of the Convention. Effective tripartite consultations. The Committee welcomes the actions taken by the Government in the various dialogue mechanisms established with a view to giving effect to the Convention and reinforcing social dialogue in the country, and encourages the Government to continue these activities. In this regard, the Committee notes the Government's indication that progress continues to be made in the implementation of its national dialogue policy with all of the productive sectors in the country. The Government considers that broad and inclusive social dialogue is being reinforced with a view to improving the application of international labour standards, in accordance with the provisions of the Convention and the recommendations of the various ILO supervisory bodies. In this connection, the Government reports that, with ILO technical assistance and the virtual presence of the ILO Director-General, the Social Dialogue Forum was inaugurated virtually on 7 March 2022, and carried out in- person sessions from 25 to 29 April 2022. The following workers' and employers' organizations of the country participated in the Forum: CBST-CCP, CTASI, CTV, CGT, UNETE, the Confederation of Autonomous Trade Unions (CODESA), FEDECAMARAS and the Federation of Crafts, Micro, Small and Medium-sized Industries and Enterprises of Venezuela (FEDEINDUSTRIA). During the Social Dialogue Forum, subjects were discussed relating to the Conventions covered by the Commission of Inquiry. The Government indicates that the Social Dialogue Forum resulted in a plan of action and its respective timetable of activities, which were supported by the representatives of the tripartite constituents present (with the exception of CODESA and UNETE who, although they participated actively in the Social Dialogue Forum, refrained from supporting the plan of action). The Government indicates that, with a view to the implementation of the plan of action, bilateral meetings were commenced with the various social partners between 11 and 15 July 2022, with a view to

continuing to make progress towards the achievement of the general commitments, and those specific to each of the workers' and employers' organizations.

The Committee also notes the information provided by the Government in the Progress Report on Developments concerning the Social Dialogue Forum, which was adopted by the Government Body at its 346th Session (October-November 2022). It notes the follow-up session of the Social Dialogue Forum held in September 2022, with ILO technical assistance. Representatives of FEDECAMARAS, CBST-CCP, FEDEINDUSTRIA, CTASI, CTV and CGT participated in the second in-person session of the Social Dialogue Forum. The participants agreed to update the plan of action adopted during the first in-person session of the Social Dialogue Forum with a view to adopting and implementing an agreed timetable for effective annual consultations on international labour standards. In particular, it was agreed: (i) to hold training programmes on international labour standards (one of them focusing on Conventions for which reports are due); (ii) to hold a preparatory meeting for the Conference; (iii) that the Government would send the draft reports on ratified Conventions to the employers' and workers' organizations sufficiently in advance and grouped by subjects; and (iv) to organize thematic meetings with representatives of employers' and workers' organizations for consultation on the reports. The Government indicates that a third session of the Social Dialogue Forum will be held from 6 to 10 February 2023.

In this context, the Committee welcomes the various activities that the Government indicates that it has undertaken to carry out or has implemented with a view to giving effect to the Convention and reinforcing social dialogue, including those implemented within the framework of the plan of action and the timetable adopted as a result of the Social Dialogue Forum:

(i) The draft reports on ratified Conventions for the 2022 reporting period were sent to the social partners between 15 July and 10 August 2022. Then, on 9 and 11 August 2022, in-person meetings were held with the social partners to discuss the content of the draft reports before the final texts were sent to the ILO on 1 September 2022. During the consultations, it was agreed that the workers' and employers' organizations that wished to do so would provide their observations on the draft reports to the national Labour Office and these would be attached to the report.

(ii) In the context of the first session of the Social Dialogue Forum, at the urging of the Government, parallel meetings were held between employers' and workers' organizations with a view to reaching agreement on the composition of the national delegation which attended the 110th Session of the Conference (27 May to 11 June 2022).

(iii) Minutes were exchanged between the principal commissions of the National Assembly and the Ministerial Office for Labour with a view to promoting social dialogue and consultations with workers' and employers' organizations on draft legislation with a direct impact on the world of work. The Government indicates that, at the request of the social partners, the necessary coordination is being carried out for the holding of consultations on various draft legislative texts respecting special conditions of work supplementing or derived from the Basic Labour Act (LOTTT).

(iv) On 4 July 2022, a meeting was held between the Minister of the People's Power for Industry and National Production and the representatives of FEDECAMARAS and FEDEINDUSTRIA with a view to reviewing and developing various measures related to national production.

(v) The Government indicates that, on 23 August 2022, the inclusion was approved of the employers' organizations FEDECAMARAS and FEDINDUSTRIA in the National Productive Economy Council, which has the objective of achieving the structural transformation of the country to restimulate production.

The Committee encourages the Government to continue its efforts in this regard.

The Committee also notes the emphasis placed by the CBST-CCP in its observations on the measures intended to reinforce social dialogue, to which the Government refers in its report. FEDECAMARAS views positively the acceptance by the Government of ILO technical assistance and the holding of the Social Dialogue Forum. FEDECAMARAS nevertheless considers that, while there has been an improvement in 2022 in relations with the Government and meetings have been held between the partners which have been respectful and cordial, social dialogue in the country is still characterized by certain delays and weaknesses that require urgent attention. In this regard, FEDECAMARAS expresses concern at the fact that the Government has not formally accepted the recommendations of the 2019 Commission of Inquiry and has not yet established a structured tripartite consultation body, which would make the process of dialogue more effective. It adds that the meetings that have been held do not comply with the formalities recommended by the Commission of Inquiry and the ILO supervisory bodies, such as an independent chair or secretariat and a follow-up mechanism on compliance with the agreements reached, the adoption of an agreed schedule of meetings and the keeping of records. The Committee also notes that the CTASI, CTV and FAPUV consider that the tripartite consultations held have not been effective and, although the bilateral meetings held between the Government and the representative organizations are useful to promote social dialogue, they are not sufficiently effective to fully comply with the Convention. UNETE considers that effective tripartite consultations have still not been held on the subjects relating to international labour standards covered by the Convention. In this regard, the Committee notes the information provided by the social partners in their observations concerning the aspects of the tripartite consultations required by the Convention and the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), for which the adoption of additional measures is necessary to ensure their application and guarantee effective consultations:

(i) With regard to the tripartite consultations held on draft reports on ratified Conventions (*Article 5(1)(d)* of the Convention), the Committee observes that the workers' organizations CTASI, CTV and FAPUV as well as FEDECAMARAS indicate that there has been an improvement in the process of consultation, as the draft reports have been provided to the social partners for their subsequent tripartite discussion prior to their being sent to the ILO. However, they emphasize that it is still necessary for the reports to be provided to them earlier and for more meetings to be held for their review, in light of the high number of reports for which to comments should be made. In this regard, CTASI, CTV and FAPUV consider that the draft reports provided by the Government in 2022 were not received sufficiently early, with meetings in some cases being held with workers' organizations only one day after their receipt of the draft reports. UNETE complains that the draft reports were only received on 31 August 2022, one day before they were sent to the ILO. In this regard, the Committee observes that, within the context of the second Social Dialogue Forum, the tripartite constituents agreed to advance the beginning of the preparatory work for the sending of reports in 2023 and to provide the draft reports at least two weeks before the meetings for consultation with the social partners. In this respect, the Committee recalls that, in order "to be 'effective', consultations must take place before final decisions are taken, irrespective of the nature or form of the procedures adopted. [...] The effectiveness of consultations thus presupposes in practice that employers' and workers' representatives have all the necessary information far enough in advance to formulate their own opinions" (2000 General Survey on tripartite consultation, paragraph 31).

(ii) With reference to the holding of tripartite consultations on labour legislation and social and economic policies (Paragraph 6 of Recommendation No. 152), FEDECAMARAS emphasizes that mechanisms for the direct consultation of workers' and employers' organizations have not been adopted in practice. FEDECAMARAS indicates that the social partners were not consulted in relation to the adoption by the National Assembly of a series of laws (such as

the Basic Act on Special Economic Zones). FEDECAMARAS and the workers' organizations CTASI, CTV and FAPUV also indicate that they were not consulted in relation to their adoption in first reading in July and August 2022 of ten Bills on special labour systems under the LOTTT (such as the Special Bill on workers with disabilities). The Committee observes that, according to the report of the Governing Body of 2022, on 11 October 2022, a public consultation was held with employers' and workers' organizations on the Homeworkers' Act with the participation of the CBST-CCP, CTASI, CTV, CGT, FEDECAMARAS and FEDEINDUSTRIA.

(iii) The CTASI, CTV and FAPUV indicate that they have not received a reply from the Government concerning their call to ratify Conventions Nos 151, 154, 189 and 190 (*Article 5(1)(c)* of the Convention).

While taking due note of the action taken by the Government with a view to reinforcing social dialogue and tripartite consultations, the Committee once again refers to the recommendations of the Commission of Inquiry and requests the Government, in consultation with the social partners and with ILO assistance, to take additional measures to ensure the proper functioning of effective tripartite consultation procedures, including the establishment of mechanisms to institutionalize social dialogue and tripartite consultation. The Committee also requests the Government to continue providing updated information on the measures adopted in this respect to give full effect to the Convention, and to take into account the guidance contained in Recommendation No. 152, including in relation to the consultations undertaken, the nature and form of the procedures established, the measures taken to strengthen these mechanisms and the capacity-building measures implemented for the tripartite constituents, taking national circumstances into account, and the good practices and challenges that have been identified.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 144** *(Afghanistan, Angola, Barbados, Belize, Cabo Verde, Cameroon, Congo, Cook Islands, Dominica, Gabon, Georgia, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Indonesia, Iraq, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Liberia, Lithuania, Malta, Montenegro, Mozambique, Namibia, Nepal, Netherlands, Netherlands: Aruba, Netherlands: Curaçao, Niger, Republic of Korea, Romania, Rwanda, Saint Vincent and the Grenadines, Sao Tome and Principe, Singapore, Slovenia, Syrian Arab Republic, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Yemen).*

Labour administration and inspection

Albania

Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2007)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

COVID-19 measures. The Committee notes the Government's statement in its report regarding the labour inspection activities related to COVID-19. In particular, the Government indicates that the State Labour Inspectorate and Social Services (SLSSI), together with the State Health Inspectorate, is part of a task force responsible for monitoring the relevant protocols to reduce the transmission of infection among employees with a view to ensuring a safe and healthy working environment.

Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Staffing and material means of the labour inspection services; scope of inspections carried out. The Committee previously noted that the number of labour inspectors was not sufficient to perform fully the inspection tasks required by law and that the lack of financial resources limited the ability of inspectors to travel. The Committee notes with ***concern*** the Government's indication in its report that the number of employees of the SLSSI remains unchanged at 155, with 37 at the central level and 118 at the regional level. It also notes the Government's indication that the total budget of the SLSSI for 2020 amounts to 186,300,000 Albanian lek (ALL) (approximately US$1,781,000) of which ALL120,278,000 (approximately US$1,150,000) is the salary fund, ALL20,086,000 (approximately US$192,000) is the Social Insurance Fund and the rest are investments and operating expenses. Six vehicles are available, of which three are used by the Central Directorate. Only three out of 12 regional branches have a vehicle at their disposal. Moreover, the Government indicates that there are 46 tablets and 55 laptops available for inspectors. ***The Committee urges the Government to take the necessary measures to ensure that the budget allocated to labour inspection is sufficient to secure the effective discharge of the duties of the inspectorate, including the provision of suitably equipped offices and necessary transport facilities. The Committee also once again requests the Government to provide specific information on the staffing and material means of the SLSSI in performing inspections in agriculture, including transportation and local offices.***

Articles 12(1) and 16 of Convention No. 81 and Article 16(1) and 21 of Convention No. 129. Right of inspectors to free entry of workplaces and undertaking of inspections as often as is necessary to ensure the effective application of the relevant legal provisions. The Committee previously noted that 10 per cent of inspections were unscheduled and/or emergency inspections, for which an authorizing officer shall issue an authorization within 24 hours.

The Committee notes the Government's information that 13,079 entities were inspected in 2019, of which 78 per cent were planned inspections. Among the 2,823 unscheduled inspections, 197 were due to occupational accidents, 600 were in response to complaints and 2,026 were carried out following indications of flagrant violations. During the first three months of 2020, a total of 2,524 entities were inspected, of which 90 per cent were planned inspections. Among the 239 unscheduled inspections, 38 were due to occupational accidents, 135 were in response to complaints and 66 were carried out following indications of flagrant violations.

The Committee also notes the Government's reference, regarding inspection procedures, to Law No. 10433 of 2011 on inspection and Law No. 9643 of 2006 on labour inspection. Section 13 of the Law on labour inspection provides that the labour inspector and controller are authorized to enter the working premises of any entity without prior notice. According to section 26 of the Law on inspection, inspections shall be carried out in the implementation of the inspection programme as a principle, and "off-programme" inspections may only be carried out in prescribed situations. Section 27 of the Law on inspection also

provides that the administrative inspection procedure is initiated as a rule, upon the issuance of the authorization by the Chief Inspector or the chief inspector of the territorial branch. The inspection may only be initiated without authorization where a flagrant violation is found to be occurring or the occurrence of events, accidents or incidents that have affected or may affect life or health or the environment. The initiation of such an inspection shall be noted immediately in a special part of the inspection report, and the inspector is obliged to notify, without delay, the person responsible for the issuance of the authorization. Section 27 further provides that although the issuance of an authorization in violation of the relevant provisions shall not invalidate the decision of the inspection, it does constitute a disciplinary violation.

Referring to its 2006 General Survey, *Labour Inspection*, paragraphs 265 and 266, the Committee observes that, restrictions maintained on inspectors' free initiative in this regard, such as the requirement for a formal authorization issued by a higher authority, can only stand in the way of achieving the objectives of labour inspection as set out in the instruments. ***The Committee requests the Government to take the necessary legislative measures to ensure that labour inspectors are empowered to make visits to workplaces liable to inspection without previous notice*** ***in conformity with Article 12(1)(a) of Convention No. 81 and Article 16(1)(a) of Convention No. 129,*** ***and that they are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions, in conformity with Article 16 of Convention No. 81 and Article 21 of Convention No. 129. The Committee requests the Government to*** ***provide information on the measures taken in this regard and to*** ***continue to provide information on the undertaking of inspections in practice, indicating the number of scheduled and unscheduled inspections, as well as the total number of workplaces liable to inspection. Lastly, the Committee requests the Government to provide information on any disciplinary measures imposed on labour inspectors related to the procedures for the authorization of inspection under the Law on inspection.***

Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Conditions of service. The Committee notes the Government's indication, in response to the Committee's previous comments on the remuneration scale and career prospects of labour inspectors, that the transfer and promotion of labour inspectors, as civil servants, is subject to Law No. 152 of 2013 on the Civil Service, as well as Decision of the Council of Ministers (DCM) No. 243 of 2015 on admission, movement, probationary period and appointment in the executive category and DCM No. 242 of 2015 on filling vacancies in the lower and middle management category. Regarding the current levels of remuneration, the Government provides information on the current salary categories of labour inspectors, and indicates that field inspectors receive a basic salary of ALL38,000, with a supplemental salary related to educational level and seniority. The Government also indicates that it is unable to provide comparative information between labour inspectors and tax inspectors due to limited data. The Committee further notes the Government's indication that the issue of the payment of inspectors will be addressed in the framework of the salary and job classification reform in process. ***The Committee requests the Government to pursue its efforts to improve the conditions of service of labour inspectors within the framework of the current salary and job classification reform, and to provide information on any progress made or results achieved. It also requests the Government to strengthen its efforts to ensure the availability of comparative information on the actual remuneration scale of labour inspectors in relation to other comparable categories of government employees exercising similar functions, such as tax inspectors or police officers, and to provide this information, when available.***

Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12(1), 22 and 24 of Convention No. 129. Prosecutions and penalties. The Committee previously noted the Government's indication that the policy pursued by the SLSSI intended to reduce the number of fines in a rational way, and it requested the Government to provide statistical information regarding prosecutions and penalties.

The Committee notes the Government's indication, and the information in the Annual Reports on Inspection Activities for 2018 and 2019 (available on the Government's website), that 175 fines were imposed in 2018 and 160 fines in 2019 (compared with the 381 fines in 2011 previously noted by the Committee). Fines were collected with a total value of ALL26,138,600 (approximately US$249,900) and ALL559,268 (approximately US$5,340) in interest on arrears from fines. Moreover, in 2019, 53 inspections decisions were appealed to SLSSI, of which 45 were upheld. There were also 44 judicial processes related to the sanctions imposed on various entities, where the inspection decision was upheld in 23 cases (with an additional 18 cases still ongoing). The Committee also notes that, according to 2019 Annual Report on Inspection Activities, administrative measures (a warning, fine or a suspension of activities) were imposed following 27 per cent of the total inspections carried out. Moreover, a higher percentage of violations were detected

during unscheduled inspections, including in 78.6 per cent of inspections undertaken following accidents, 64 per cent of inspections following indications of flagrant violations and 48 per cent of those following complaints. ***Noting with concern the significant decline in the number of fines imposed since 2011, the Committee requests the Government to provide information on the measures it is taking to ensure the application of adequate penalties for violations of the legal provisions enforceable by labour inspectors. The Committee requests the Government to provide information on the reasons for this decline, and to continue to provide detailed information on the number and nature of fines imposed, the outcomes of the judicial appeals of inspection decisions and the percentage of violations detected during unscheduled and scheduled inspections respectively.***

Matters specifically relating to labour inspection in agriculture

Articles 6(1)(a) and (b) and (3), and 19 of Convention No. 129. Labour inspection activities in agriculture. The Committee previously noted that the number of inspections in the agricultural sector constituted 0.8 per cent of total inspections, and that nearly half of the workforce in Albania was employed in the agricultural sector.

The Committee notes the Government's indication that in 2019, 284 inspections were carried out in the agriculture, forestry and fishery sector (2.1 per cent of the total inspections carried out), covering 1,519 employees (0.5 per cent of the total number of employees in workplaces inspected). Nineteen administrative measures were imposed, including six suspensions of work (due to violations of legal provisions on employment), nine warnings and one fine. During the first three months of 2020, 67 inspections in agriculture, forestry and fishery (2.6 per cent of the total inspections carried out), covering 450 employees (0.8 per cent of employees in workplaces inspected). Ten administrative measures were imposed, including three suspensions of work, six warnings and one fine. The Government also indicates that there are no specific trainings targeting inspections in the agriculture sector, but the topics of trainings conducted in 2019 will have a direct impact on inspections in all economic sectors. ***Noting the continuing low percentage of the inspection visits carried out in agriculture, the Committee once again requests the Government to strengthen its efforts to ensure the enforcement of laws and regulations in agriculture, including with respect to occupational safety and health (OSH), and to continue to provide information on the number of inspections carried out in that sector. The Committee also requests the Government to provide information on measures undertaken or envisaged to ensure that training is provided to labour inspectors on agriculture-related subjects, and on any progress made in this respect.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Bahrain

Labour Inspection Convention, 1947 (No. 81) (ratification: 1981)

Previous comment

The Committee notes the observations of the General Federation of Bahrain Trade Union (GFBTU) received on 31 August 2022.

Article 3(1) and (2) of the Convention. Labour inspection activities concerning the enforcement of the legislation in relation to the employment of foreign workers. The Committee notes the Government's indication that the task of receiving notices by employers about foreign workers who have left their employment is assigned to the Labour Market Regulatory Authority (LMRA), according to the 2006 Labour Market Regulations Act No. 19. The Government indicates that the labour inspection service in the Ministry of Labour and Social Development has no functions or responsibilities in respect of the notices submitted by employers concerning expatriate workers who have left their employment in violation of the terms of the work permit. In this regard, the Government refers to Decision No. 77 of 2008 which provides that an employer is required to notify the LMRA in the event that a foreign worker leaves his employment in violation of the terms of the work permit, so that the work permit granted to

that worker can be cancelled. The Government indicates that the notices concerning the departure of expatriate workers were recorded by the labour inspection system until 2014, but that after that date the LMRA was assigned this task.

The Committee also notes that, according to the Government, in order to protect the rights of the worker in an irregular situation, the existence of an employment relationship must be proven, which is burdensome for foreign workers. The Government adds that workers are afraid to identify themselves to authorities such as labour inspectors. The Government indicates that the labour inspectors do not exempt employers from their responsibilities towards workers in their employment, requiring them to ensure all rights granted to workers by law. ***The Committee requests the Government to provide information on specific measures undertaken by labour inspectors to monitor and enforce the rights of migrant workers found to be in an irregular situation, including the provision of information and advice, in particular where these workers are subject to a deportation or expulsion order. In this regard, the Committee requests the Government to provide information on the number of cases in which foreign workers in an irregular situation have been granted their due rights, including unpaid wages and benefits.***

Articles 10, 11 and 16. Sufficient number of inspectors and effectiveness of the labour inspection system. The Committee notes that, according to the annual report for 2021, there are six labour inspectors for the commerce sector and six labour inspectors for the industry and construction sectors, resulting in a total of 12 inspectors, compared to 45 inspectors in 2011. In its observations the GFBTU indicates that the total number of inspectors is very low in comparison to the number of establishments. In particular, the GFBTU indicates that there are only ten inspectors while there are about 80.000 enterprises in the country, a proportion that highlights the urgent need to increase the number of inspectors to ensure sufficient coverage of all workplaces. Concerning the material means allocated to labour inspectors, the Government indicates that inspectors are provided with administrative offices equipped with modern means of communication and devices and other equipment required to perform their functions. The Committee also notes the Government's indication that labour inspectors receive a communication and travel allowance for the performance of their duties. ***The Committee urges the Government to take the necessary measures so that the number of labour inspectors is sufficient to ensure that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. The Committee requests the Government to indicate the reasons for the decrease in the number of inspectors and the specific measures taken or envisaged for the recruitment of new labour inspectors.***

Article 17. Effective enforcement of penalties for the violation of labour law provisions. The Committee notes the Government's indication that section 15 of the Ministerial Order No. 29 of 2013 provides that inspection visits must be repeated on a number of occasions before a violation report is issued. The Government indicates that in case of infringements the labour inspectors first issue a warning to the employer with a deadline for compliance of no more than one month from the inspection visit. A follow up inspection is then conducted at the expiration of such deadline and if no progress is recorded, the labour inspectors report the violation. The Government notes that the low number of violation reports issued in comparison to the number of inspections is due to the follow-up work of inspectors and to the corrective measures adopted by employers after the warning.

In this regard, the Committee notes from the Government report that labour inspectors carried out 2.727 inspection visits in 2021, but that only 74 violation reports were issued, and that the number of violations identified has been very low in relation to the number of inspections for several years. The Committee recalls that according to *Article 17(2)* of the Convention, it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings, but also that *Article 17(1)* provides for the possibility of prompt legal proceedings with respect to persons who violate or neglect to observe legal provisions enforceable by labour inspectors. ***The Committee requests the Government to take the necessary measures in order to ensure compliance with this***

Article of the Convention. In that regard, the Committee requests the Government to provide information on the number and type of infringements detected and the measures adopted by labour inspectors, including statistics on the number of warnings and violation reports issued.

Article 18. Provision of adequate penalties for violations of the legal provisions enforceable by labour inspectors. The Committee notes the Government's indication that the Labour Law in the Private Sector (Law No. 36/2012) provides for penalties for violations of Part Six of the law, concerning wages. The Committee notes that this law does not contain provisions for penalties in case of violations of Part Seven (Hours of Work and Periods of Rest) and Part Eight (Holidays) of the Labour Law. ***The Committee requests the Government to take the necessary measures to ensure that adequate penalties are provided for by national laws or regulations in relation to all violations of the legal provisions that are enforceable by labour inspectors***.

The Committee is raising other matters in a request addressed directly to the Government.

Bangladesh

Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)

Previous comment

The Committee notes the observations of the Trade Union's International Labour Standards Committee (TU-ILS Committee), received on 1 September 2022, referring to the matters addressed below. The Committee also notes the reply of the Government to the observations submitted by International Trade Union Confederation (ITUC) in 2021.

The Committee notes that the complaint submitted in 2019 under article 26 of the ILO Constitution, concerning non-observance by the Government of Bangladesh of the Convention as well as of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), is pending before the Governing Body. At its 346th Session (November 2022), taking note of the report submitted by the Government on 9 September 2022 on the progress made with the implementation of the road map of actions, the Governing Body, on the recommendation of its Officers, decided to: (i) request the Government of Bangladesh to report on further progress made in the implementation of the road map of actions to address all the outstanding issues mentioned in the article 26 complaint at its 347th Session (March 2023); and (ii) to defer the decision on further action in respect of the complaint to that session.

The Committee takes note of the additional information provided by the Government on 9 September 2022 on the progress made in the implementation of the road map to address all the outstanding issues mentioned in the article 26 complaint.

Legislative developments. The Committee notes the information provided by the Government in its report concerning the establishment of an 18-member Tripartite Law Review Committee (TLRC) headed by the Additional Secretary (Labour) in March 2022 to work on the labour law reform. A separate 12-member working committee was also formed in July 2022, headed by the Joint Secretary (Labour), to support the Law Review Committee. The Government indicates that these two new committees are tasked to identify the areas in the existing law that need to be reformed in order to bring them in line with international labour standards. The Committee also notes, in the additional information provided concerning the implementation of the first priority area of the road map of actions (labour law reform), that the Bangladesh Labour Rules, 2015 were amended and published through gazette notification on 1 September 2022. Concerning the amendment of the Bangladesh Labour Act, 2006 (as amended in 2018) (BLA), the Committee notes the Government's indication that the proposed revisions received by stakeholders (government, employers and workers organizations) will be compiled and sent to the TLRC by 30 October 2022. Upon completion of the work by the TLRC, the National Tripartite Consultative

Council (NTCC) will be in a position to take up the issue of the amendments of the BLA. The Committee also notes the adoption of the Export Processing Zone (EPZ) Labour Rules in October 2022. The Committee also notes the observation from the TU-ILS Committee which indicates that the TLRC has been recently reformed, but that the legislative reform process is not advancing at the expected speed. ***The Committee requests the Government to continue to provide detailed information on the progress made in the legislative reform process and on the measures adopted in order to ensure that such process takes into account the outstanding issues concerning the application of the Convention raised by the Committee.***

Articles 2, 4, 12 and 23 of the Convention. Labour inspection in EPZs and special economic zones (SEZs). The Committee notes that in reply to its previous request the Government indicates that pursuant to the preamble and section 3(A), 4(d), 7(k) and 5A(2) of the Bangladesh Export Processing Zone Authority (BEPZA) Act, 1980, the BEPZA is the only appropriate authority of the Government for development, operation, management and control of the EPZs. The Government indicates that the BEPZA has been successfully performing its duties and responsibilities of administration and inspection in EPZs for the last four decades. The Government indicates that nevertheless it has adopted measures in order to ensure the operation of the Department of Inspection for Factories and Establishments (DIFE) in the EPZs, namely: (i) modalities of DIFE inspections in the EPZs have been incorporated in the amended EPZ Labour Rules; (ii) an EPZ inspection checklist has been prepared and shared with DIFE on 1 December 2021; (iii) on 16 May 2022, a meeting was held between the BEPZA and DIFE under the chair of the Minister of Law, Justice and Parliamentary Affairs regarding a transparent and accountable mechanism of inspections; and (iv) as of August 2022, the DIFE inspected 25 factories in EPZs and found overall compliances of the factories inspected.

The Committee also notes that the TU-ILS Committee indicates in its observations that there has been no noticeable impact from the development of the EPZ inspection checklist. The TU-ILS Committee adds that pursuant to section 168 of the EPZ Labour Act, the DIFE is only empowered to carry out announced inspections in the EPZs, after the approval of the Executive Chairman of the BEPZA. The trade unions indicate that the legislation should be amended in order to ensure that DIFE is in charge of inspections in the EPZs and that, until then, reports on the inspection of factories within the EPZ area on safety issues should be submitted to the DIFE by BEPZA on a monthly basis.

The Committee notes with ***concern*** that, according to section 289 of the EPZ Labour Rules of 2022, the Executive Chairman of the BEPZA remains the authority responsible for inspections in the EPZs. While the Committee also notes that, according to section 290, the inspectors of the DIFE may inspect any industry of any zone established within their jurisdiction by giving an intimation to the Executive Chairman, the rules provide that inspection shall be carried out in accordance with the checklist prepared by the authority. ***The Committee requests the Government to take the necessary measures to ensure that labour inspectors are empowered to enter freely establishments in EPZs and SEZs without any restrictions. The Committee requests the Government to indicate whether, under the EPZ Labour Rules 2022, DIFE inspectors are required to receive approval from the Executive Chairman prior to the inspection of EPZs, as foreseen in section 168 of the EPZ Labour Act. If such approval is necessary, the Committee requests that the Government provide information on the number of requests made, the number of requests approved, the time elapsed between each request and approval, and any reasons given for each failure to approve. It also requests the Government to provide copy of the EPZ inspection checklist and to indicate its impact on EPZ inspections, including whether labour inspectors are free to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed. Further, the Committee requests the Government to indicate the progress made, in the context of the labour law reform mentioned above, in the amendment of section 168 of the EPZ Labour Act. Noting the information on the number of factory inspections undertaken by the DIFE in the EPZs, the Committee requests the Government to provide further details on the numbers of labour inspections undertaken in EPZs and***

SEZs that are in operation, disaggregated into inspections by the DIFE and inspections under the BEPZA, including whether the inspections were announced or unannounced, whether in response to a complaint or to an accident, and the number and nature of all violations detected and the measures taken as a result.

Articles 5(b) and 15(a). Cooperation with employers and workers. Impartiality of labour inspectors. The Committee notes that the TU-ILS Committee refers in its observation to allegations of corruption and undue pressure on DIFE inspectors in the performance of their duties. The trade unions indicate that labour inspectors are politically influenced or induced for various reasons to overlook safety and law enforcement issues. The trade unions refer in particular to the 2021 fire incident in the Hashem Food Factory where several workers died. According to the TU-ILS Committee, an inspection carried out two weeks before the incident considered the factory in compliance with safety rules. However, according to the trade unions, an investigation after the incident indicated a lack of fire safety measures. According to the trade unions, there is a lack of accountability in the inspection system and there are no penalties or departmental actions applied to labour inspectors when they fail to perform their duties. The trade unions also indicate that while inspections should be unannounced according to the law, there are times when an informal relationship is established between the factory management and the inspectors and, as a result, the establishment receives advanced notice of the inspection. The TU-ILS Committee also indicates that there is limited engagement of workers in the inspection process, noting that the quality of inspections should be ensured through tripartite accountability mechanisms established at the central, territorial and enterprise level. ***The Committee requests the Government to provide its comments in respect of these trade unions observations.***

Article 6. Status and conditions of service of labour inspectors. The Committee notes that in reply to its previous comment, the Government provides the structure of the current workforce of the DIFE with the indication of the number of positions filled and vacant at each grade. The Committee notes the Government's indication that inspectors normally enter into service at the 10th grade as labour inspector and at the 9th grade as assistant inspector general and that with satisfactory performance inspectors can be promoted to higher level. Concerning the condition of service of labour inspectors, the Committee notes the Government's indication that labour inspectors are appointed to permanent positions, and that the remuneration and employment tenure are similar to those of tax collectors and the police. ***The Committee requests the Government to continue to provide information on the structure of the DIFE workforce, including the number of officers appointed at each grade. Noting the absence of information on this point, the Committee requests the Government to indicate the number and grade of labour inspectors that left the DIFE. The Committee reiterates its request for detailed information comparing the remuneration and employment tenures of labour inspectors to those of tax collectors and the police.***

Articles 5, 7, 10, 11 and 16. Human and material resources of the labour inspectorate. Frequency and thoroughness of labour inspections. Cooperation with employers and workers organizations. The Committee notes that in reply to its previous comment concerning the staffing of the DIFE, the Government indicates that, as of 30 June 2022, out of the 575 sanctioned posts, 366 are filled (313 in 2020) while 209 remain vacant. The Government also indicates that police and medical checks for additional 54 new recruits are ongoing and that a request will be submitted to the Ministry of Labour and Employment (MoLE) for the recruitment of another 46 inspectors. The Committee notes the Government's indication that in 2022, the MoLE issued the final order for creation of an additional 136 posts of labour inspectors, and for the creation of eight new field offices. Concerning promotions, the Government states that 11 existing staff of DIFE were promoted to the post of labour inspectors general and that the gradations for the posts of deputy inspectors general and assistant inspectors general are underway. Finally, the Government indicates that a new organogram with 1,791 posts (currently 993 posts), of which 942 are for inspectors, was sent to the Ministry of Public Administration (MoPA) for approval and it is currently under consideration. The Committee notes that according to the TU-ILS Committee, there is a lack of

inspectors to cover all the factories in the country. Concerning the number of inspection visits, the Committee notes the Government's indication on the number of inspections conducted by the DIFE in the first seven months of 2022, disaggregated by sector. ***The Committee requests the Government to continue to provide information on the progress made in the recruitment and promotion of inspectors, as well as on the approval of the organigram of the DIFE. It also requests the Government to continue to provide information on the number of inspections undertaken by the DIFE, disaggregated by sector of economic activity.***

Concerning the material resources available to the DIFE, the Committee notes the Government's indication that labour inspectors have at their disposal five cars (previously one), three jeeps, 27 microbuses, 292 laptops and 339 desktop computers. The Committee notes that the 425 Android tablets, reported as available to labour inspectors in the previous Government report, are not listed in the material resources at the disposal of the DIFE. ***The Committee requests the Government to continue to provide information on the material resources of the DIFE, including any IT equipment available to the inspectors during inspection visits and how these material resources are distributed across different offices. The Committee also request the Government to provide information on the annual budget allocated to the DIFE.***

Articles 12(1) and 15(c). Inspections without previous notice. Duty of confidentiality in relation to complaints. The Committee notes that in reply to its previous comment, the Government states that: (i) according to the BLA, 2006 and the standard operating procedure (SOP) issued on the basis of the Act, inspectors are entitled to perform announced and unannounced visits; (ii) for special cases such as those involving child labour, complaints investigation, probabilities of hiding evidences etc, an unannounced visit is conducted; (iii) inspectors prefer to conduct unannounced inspections to check if there are concealed issues but that, in cases where a prior document is required, the visit would be announced; (iv) the labour inspector has the discretion to decide whether to conduct announced or unannounced visits. The Government also provides the number of announced (959) and unannounced inspections (4,855) conducted in 2021-2022, collected through the Labour Inspection Management Application (LIMA). In this respect, the Committee notes that the total number of inspections for 2021–22 collected through the LIMA and offline (43,644) is significantly higher than the total announced and unannounced inspections for the same period. Furthermore, the Committee notes that according to the SOP on Labour Inspection, regular inspections will usually be announced unless that is inconvenient for the performance of the duties of the inspectors. The SOP also provides that a minimum of 50 per cent regular visits should be announced, while special inspections (such as complaint investigation, accident investigation, etc.) are usually unannounced unless the announcement of the visit is necessary, for instance for ensuring the presence of witnesses. The Committee recalls once again the importance of undertaking a sufficient number of inspections that are unannounced to ensure that when inspections are conducted as a result of a complaint without prior notice, the fact of the complaint is kept confidential.

Concerning the confidentiality of complaints, the Committee notes the observation of the TU-ILS Committee indicating that: (i) the hotline provides an opportunity to file a complaint anonymously but sometimes it does not work; (ii) there is no information provided by the DIFE regarding the anonymity of the complaints and therefore workers are not aware that they can file a complaint without fear of retaliation; (iii) currently, an ID card is required to submit a complaint and DIFE should set up complaint boxes in factories to be inspected during inspection (out of the range of CCTV); (iv) there should be sanctions provided in the law for the disclosure of the details of a complaint by DIFE officials. The Committee also takes note of the Government's indication that the modalities to ensure confidentiality are provided in the relevant SOP. Moreover, the Committee notes that in the additional information provided by the Government concerning the implementation of the third priority area of the road map of actions (labour inspection and enforcement), the Government states that (i) the helpline activated in June 2020 continues to operate and to receive complaints that are now managed through a database;

(ii) the officials dealing with the helpline are being trained regularly; (iii) the complaint management cell, established at the DIFE in December 2020, was reorganized in January 2022 and consists of eight labour inspectors tasked to monitor the complaints received and addressed, update the number of complaints received and resolved, and arrange training for labour inspectors.

The Committee requests the Government to provide its comments to the observations of the trade unions. The Committee also requests the Government to continue to provide information on the number of announced and unannounced inspections conducted by the DIFE and to indicate the number of inspections conducted as a result of a complaint, and the outcome of all such inspections. With reference to the discrepancy noted between the total of announced and unannounced inspections and the total number of visits for the same period, the Committee requests the Government to provide more detailed information on the types of inspections conducted, including whether they were announced or unannounced.

Articles 17 and 18. Legal proceedings. Effectively enforced and sufficiently dissuasive penalties. The Committee previously noted that (i) the legal unit of the DIFE counts one officer and (ii) the Government planned to expand it to nine officers. The Committee notes the Government's indication that in August 2022 one additional post of legal officer was approved. The Government also indicates that, in order to improve the proceedings for the enforcement of legal provisions, two foundation training courses for 60 inspectors were completed in the financial year 2021–22. These courses trained labour inspectors on the main provisions of the BLA, 2006 and Bangladesh Labour Rules, 2015. Concerning the measures introduced or envisaged to ensure that penalties for labour law violations are sufficiently dissuasive, the Committee notes the Government's indication that there was an increase in the fines for the protection of women workers deprived of maternal welfare benefits and an increase in the amount of compensation in case of death or disability of workers following an occupational accident. In this regard, the Committee notes that, in their observation, the TU-ILS Committee indicates that penalties should be revised in consultation with trade unions. In addition, according to the trade unions, in cases of wage arrears, the existing 25 per cent interest for delayed payment is insufficient and should be increased to ensure effective deterrence. Concerning violations, the Government provides the numbers of cases filed and resolved for the period 2021-2022, including the number of cases of child labour identified. The Committee also notes that, in their observation, the trade unions indicate that labour justice in Bangladesh is long and cumbersome and that therefore it is discouraging for workers to file a complaint. The trade unions also indicate that there is a need to strengthen the enforcement process of labour courts decisions and that both the Department of Labour and the DIFE should be involved in the implementation of labour court judgments. ***The Committee requests the Government to continue to provide information on the progresses made in the established of a fully operational legal unit in the DIFE. Noting the observation from the trade unions and the limited progress reported by the Government on this matter, the Committee requests the Government to pursue its efforts to ensure that penalties for labour law violations are sufficiently dissuasive. Noting the absence of information in this respect, the Committee once again requests that the Government indicate the specific outcome of cases that are referred to the labour courts (such as the imposition of fines, the amounts collected from fines imposed, and also sentences of imprisonment) and to specify the legal provisions to which they relate. Finally, the Committee requests the Government to continue to provide up-to-date information on the number and nature of violations detected.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2023.]

Bulgaria

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

Previous comment

Article 3(1) and (2) of the Convention. Additional functions entrusted to labour inspectors. The Committee notes that in the report on the activities of the General Labour Inspectorate Executive Agency (GLIEA) in 2021, 288 inspections were carried out which aimed at establishing compliance with the legal requirements for employment of foreigners in the country. It also indicates that 375 violations were found (they were 66 in 2015, 123 in 2016, and 272 in 2017), of which 122 for providing labour without the corresponding permit or registration with the Employment Agency; 105 for not notifying the GLIEA of the date of commencement of the employment relation with a foreign worker; ten for hiring foreigners illegally staying in the country; eight for employment of foreign workers who do not have the right to access the labour market in the Republic of Bulgaria. The Government notes an increasing trend of foreigners working without a work permit or without registering their employment with the Employment Agency. The Government indicates that an important way to limit these violations is a close cooperation between GLIEA and the Employment Agency. The Government adds that it is unable, for technical reasons, to provide data on the number of applied criminal penalties for violations concerning the employment of foreign workers in an irregular situation, as well as for cases concerning migrant workers in an irregular situation who received their delayed wages. The Committee recalls that the enforcement of provisions regarding foreign workers that are illegally in the country does not fall within the primary functions of the labour inspectors under *Article 3(1)* of the Convention. ***Noting the absence of sufficient information in this regard and the indication of the Government concerning an increasing trend of foreigners working without a work permit or without registering their employment, the Committee requests the Government to indicate if the GLIEA continues to undertake joint inspection activities with the authorities in charge of national security. The Committee also requests the Government to continue to provide information on the number of foreign workers in an irregular situation detected by labour inspectors and to indicate the role of labour inspectors in informing migrant workers about their labour rights and in enforcing those rights, including improved data on the recovery of wage and social security credits specific to foreign workers without a residence permit.***

The Committee is raising other matters in a request addressed directly to the Government.

Central African Republic

Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3(2) of the Convention. Duties of labour inspectors. In its previous comments, the Committee noted that a third of labour inspectors had supervisory duties and that, under the Labour Code, labour inspectors were responsible for the conciliation of collective and individual labour disputes. It asked the Government to provide an estimate of the time spent on the primary functions as set out in *Article 3(1)* of the Convention as compared to the other functions of the labour inspectorate. In this regard, the Committee observes that, according to the technical memorandum on the National Strategy for the Development and Modernization of the Labour Administration System of the Central African Republic, prepared in 2017 with the support of the ILO and attached to the Government report, the conciliation of individual and collective labour disputes constitutes the majority of inspectors' work. The Committee also notes that, under the Labour Code, inspectors are assigned other duties relating to the exercise of freedom of association and collective bargaining (such as registering trade unions, supervising elections of staff representatives, facilitating the conclusion of collective labour agreements and receiving advance notice of strikes and lockouts). ***The Committee requests the Government to provide information on the measures taken or envisaged to ensure***

that any additional duties assigned to labour inspectors do not interfere with the exercise of their primary duties. It further requests the Government to provide information on the steps taken in this regard and on the time and resources spent by labour inspectors on their various duties.

Articles 11 and 16. Material means and transport facilities placed at the disposal of labour inspectors and reimbursement of necessary expenses. Frequency of inspection visits and effectiveness of the system. In its previous comments, the Committee noted: (a) the persistent lack of material means placed at the disposal of the labour inspection services, including for offices and transport facilities, as well as for the reimbursement of necessary expenses; and (b) the infrequency of inspection visits. The Committee notes in this regard the information provided by the Government in its report on its efforts in 2017 to provide every Regional Directorate of Labour with a motorbike. The Government points out that the prefectural services sometimes rely on employers to provide them with transportation and that the recently created prefectural services do not have their own facilities. The Committee also notes the information provided in the 2013 partial activity report of the Ministry of Labour, Employment, Vocational Training and Social Security, according to which various types of difficulties have hindered the effective realization of the objectives pursued by the General Directorate of Labour and Social Welfare, such as security problems and the plundering of the Directorate. The Committee also notes the Government's indication that the political and military difficulties that arose in 2012 continue to have a negative impact on several reform projects under way. ***While taking due note of the difficult situation in the country, the Committee requests the Government to continue its efforts to address the difficulties identified and to guarantee the effectiveness of the system, including by taking the necessary measures to provide labour inspectors with the means necessary for the effective performance of their duties. Recalling that the provision of transport facilities by employers may pose problems relating to the principles of impartiality and independence of labour inspectors, the Committee also requests the Government to continue its efforts to furnish labour inspectors with the transport facilities necessary for the performance of their duties, in accordance with Article 11(b) of the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

China

Macau Special Administrative Region

Labour Inspection Convention, 1947 (No. 81) (notification: 1999)

Previous comment

Article 3(1) and (2) of the Convention. Cooperation with the police in combating illegal work. In its previous comments, the Committee noted that inspection staff of the Labour Affairs Bureau (DSAL) continued to assist in joint operations with the police to combat illegal work by checking the papers of employed persons or by acting as eyewitnesses.

The Government once again states that the involvement of the inspection staff in these operations does not interfere with the performance of their duties to ensure the protection of the rights of workers. It indicates that when the DSAL receives a worker's complaint alleging a labour right violation and requiring assistance, even if the worker concerned does not have a proper work permit, the DSAL will in any case initiate an investigation and request the employer to pay the wage or compensation due to the de facto labour relationship. If the employer does not pay the amount due as requested, the case will be notified to the prosecutor. The Government also indicates in its report that, from 2014 to 2021, there are some cases transferred to the judicial authority involving irregular workers, namely two cases concerning wage arrears, one concerning medical expenses and compensation for work accident and two concerning death compensation due to work accident. The Government further clarifies that the offence of "illegal employment" committed by the employer under section 16 of Law No. 6/2004 on Illegal Entry, Illegal Stay and Deportation is a crime and is administered by the Special Administrative

Region Government Security Police. On the other hand, irregular work is an administrative violation punishable for both workers and employers and regulated by the Law No. 21/2009 on the Employment of Foreign Employees and the Administrative Regulation No. 17/2004 on the Prohibition of Irregular Work. The DSAL imposes penalties on the offenders according to the law, so there is no case of irregular worker transferred to the judicial authority.

The Committee notes, however, that according to the 2021 annual inspection reports, 453 inspection visits were carried out relating to the implementation of the Law No. 21/2009 on the Employment of Foreign Employees and the Administrative Regulation No. 17/2004 on the Prohibition of Illegal Work, in addition to 40 joint inspection visits together with other authorities. Fines of 6,487,500 Macanese pataca (approximately US$787,280) were imposed, involving 320 employers, as well as 117 workers without work permits, 103 non-residents performing lucrative activities and 61 migrant workers carrying out work outside permitted scope.

In this regard, the Committee once again emphasizes that workers in a vulnerable situation may not be willing to cooperate with the labour inspection services or report any labour rights' violation if they fear negative consequences, such as being fined, losing their job or being expelled from the country. ***The Committee once again urges the Government to take the necessary measures to ensure that any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties, that is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. The Committee also requests that the Government continue to provide statistical information on the inspection visits carried out relating to the enforcement of Law No. 21/2009 on the Employment of Foreign Employees and the Administrative Regulation No. 17/2004 on the Prohibition of Illegal Work, as well as the number of workers subjected to any sanctions and the number of fines imposed. It further requests the Government to provide information on the enforcement of outstanding rights of undocumented migrant workers (including outstanding wages and other benefits deriving from their employment relationship).***

The Committee is raising other matters in a request addressed directly to the Government.

Colombia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1976)

Previous comments on Convention No. 81: observation and direct request
Previous comments on Convention No. 129: observation and direct request

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), received on 1 September 2018, as well as the joint observations of the CUT, CTC and the General Confederation of Labour (CGT), communicated with the Government's reports, on the application of Conventions Nos 81 and 129. The Committee also notes the joint observations from the International Organisation of Employers (IOE) and the National Association of Employers of Colombia (ANDI), received on 31 August 2018, the observations of the IOE, received on 31 August 2022, and the observations of the ANDI, communicated with the Government's reports, on the application of Conventions Nos 81 and 129. In addition, the Committee takes note of the

Government's comments, received on 16 November 2018, relating to the observations of the CUT, CTC, IOE and ANDI of 2018.

Further to its previous comments, the Committee notes the Government's comments on the previous observations of the CTC, CGT, CUT, IOE and ANDI, received in 2015, on the application of Conventions Nos 81 and 129.

Articles 3(1), 9, 13, 14, 20 and 21 of Convention No. 81 and Articles 6(1), 11, 18, 19, 26 and 27 of Convention No. 129. Labour inspection functions in the area of occupational safety and health (OSH). Industrial accidents and cases of occupational disease. The Committee notes the Government's indication in its reports that, pursuant to Decisions No. 3029 and 3233 of 2022, internal working groups on occupational risks inspection were established in various territorial directorates and special offices in order to strengthen inspection in this domain. The Committee notes that, according to the aforementioned decisions, each group must include at least four officials, including a coordinator who must hold a valid licence for the design, administration and implementation of OSH management systems, as well as having had the necessary training in this regard. Furthermore, the Committee notes that the functions of each group include monitoring and supervising the application of OSH standards and ordering the immediate cessation of work in the event of failure to comply with the rules on the prevention of occupational hazards if there is a serious and imminent danger to the safety or health of the workers, until the failure is resolved. In respect of the latter function, the Committee recalls that *Article 13(2)(b)* of Convention No. 81 *and Article 18(2)(b)* of Convention No. 129 empower labour inspectors to adopt measures with immediate executory force, which may go as far as halting work, in the event of imminent danger to health or safety, without requiring the danger to be serious. ***Accordingly, the Committee requests the Government to take the necessary steps to amend Decisions Nos 3029 and 3233 of 2022 in order to ensure that they are consistent with these provisions of the Conventions.***

In addition, the Committee requests the Government to describe the composition of the internal working group on occupational risks inspection, and to specify whether the inspectors in that group perform only the functions assigned to it.

The Committee also requests the Government to provide information on the application in practice of the aforementioned decisions. In particular, the Committee requests the Government to provide statistical information on the preventive measures taken by inspectors: (i) in order to eliminate defects in workplaces (including in connection with the use of hazardous materials and substances in agriculture) which they may have reasonable cause to believe constitute a danger to the health or safety of workers (Article 13(1) of Convention No. 81 and Article 18(1) of Convention No. 129); (ii) to make or cause to make orders that such alterations to the installation, plant, premises, tools, equipment or machines are carried out, within a specified time limit, as may be necessary to ensure compliance with the legal provisions relating to health or safety (Article 13(2)(a) of Convention No. 81 and Article 18(2)(a) of Convention No. 129); and (iii) to make or have made orders requiring measures with immediate executory force, which can go as far as halting the work, in the event of imminent danger to the health or safety of workers (Article 13(2)(b) of Convention No. 81 and Article 18(2)(b) of Convention No. 129).

Noting that the CGT refers, in its observations, to a high rate of accidents in the mining sector and that the quarterly bulletins on inspection, monitoring and control do not contain relevant information, the Committee requests the Government to provide annual statistics, disaggregated by sector, on occupational accidents, including their causes, as well as on occupational diseases, including their causes.

Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. Additional functions of labour inspectors. The Committee notes that the Government indicates that by Decision No. 3445 of 2021, the Ministry of Labour, territorial directorates, special offices and labour inspectorates were assigned new responsibilities with regard to inspections, as well as conciliation and assistance to citizens. The

Government also refers to Decision No. 1043 of 2022 which details the remit of assistance to citizens. The Committee notes that these decisions provide for the establishment of different internal working groups for inspection, conciliation and/or assistance to citizens in various units of the Ministry of Labour.

With regard to its previous comments on assistance to citizen services, the Committee notes the Government's indication that such services: (i) are concentrated in the aforementioned assistance to citizen groups of territorial directorates and special offices; (ii) seek to supply technical information and advice to employers and workers on the most effective means of compliance with the legal provisions; and (iii) also include the issuance of authorizations, approvals and certificates and the administration of registrations and deposits provided for in the relevant legislation.

Further to its previous comments on conciliation functions, the Committee notes the Government's indication that these functions: (i) do not affect labour inspectors' activities relating to the management of inspections, monitoring and control of labour standards; and (ii) can be carried out not only by inspectors but also by regional and local representatives of the Office of the Ombudsperson, agents of the Public Prosecutor's Office dealing with labour issues (procurators delegated to labour courts) and, failing all of the above, by civil or mixed municipal judges, pursuant to section 28 of Law No. 640 of 2001.

The Committee notes that, in their observations, the CTC, CUT and CGT mention: (i) that labour inspectors are not performing their advisory function on labour matters sufficiently; and (ii) that they could be performing their conciliation function by reducing their preventive, investigative, disciplinary and advisory function. The Committee notes that the Government finds the position of workers' organizations in respect of the first question difficult to understand and acknowledges that they have previously indicated that they disagree with the assistance to citizen service functions entrusted to inspectors.

Lastly, the Committee notes that, according to the statistics contained in the quarterly bulletins on inspection, monitoring and control, in 2021 the labour inspectorate dealt with a total of 17,080 conciliations and 96,764 consultations in the context of assistance to citizens.

The Committee requests the Government to take the necessary steps to ensure that labour inspectors are primarily responsible for securing compliance with the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and, therefore, to consider entrusting the functions of conciliation and assistance to citizens (with the exception of those aimed at supplying technical information and advice to employers and workers on the most effective means of complying with the legal provisions) to other units authorized in this regard. The Committee requests the Government to provide information on these measures.

With reference to Decisions Nos 3445 and 1043 adopted in 2021 and 2022, respectively, the Committee requests the Government to describe the composition of the internal inspection, conciliation and assistance to citizen groups, indicate the precise number of labour inspectors and other officials involved in these groups, and specify whether the inspectors involved perform only the functions assigned to the group to which they are attached. The Committee also requests the Government to provide detailed information on the time and resources allocated by inspectors to assistance to citizens and allocated to conciliation activities, and on the combined amount of such time and resources as a percentage of the time and resources allocated by inspectors to the discharge of their primary functions, as envisaged under Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129.

Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129. Number of labour inspectors. Frequency of inspections. Further to its previous comments on the filling of vacant labour inspector posts and the assignment of inspectors to regions outside the capital, the Committee notes the Government's indication that: (i) in 2016, a competition was held to fill vacant posts in the public administration career system permanently, including labour inspector posts; (ii) there were

904 inspector posts in 2018 and 355 new posts were created in 2021; and (iii) there were 866 active inspectors in 2019 and 816 in 2021, specifying their geographical distribution at the national level (117 inspectors in the territorial directorate of Bogota D.C. and the remainder in other directorates and special offices). The Committee notes that the Government does not provide updated information on the number of existing labour inspector posts or on the number that remain vacant.

In addition, in response to its previous comments on the number of inspections undertaken, including the decrease in that number in previous years, the Committee notes the Government's indication that: (i) between 2011 and 2014, the total number of inspections carried out decreased both because the activities of the labour inspectorate focused on critical sectors of the economy (specifically, on mining, ports, flower growing, palm growing and sugar) and on detecting situations of unwarranted use of labour intermediation and also because additional formalities were introduced to the legislation on administrative procedure regulating these activities in 2012 and the procedure therefore takes longer to complete; and (ii) the number of inspections was 7,289 in 2015, 6,351 in 2016, 5,445 in 2017 and 762 in the first quarter of 2018. The Committee notes that the Government does not provide information on the number of inspections carried out subsequent to the latter date nor does it indicate the number of inspections that took place in agricultural enterprises.

Furthermore, the Committee notes that, in their observations, the CTC, CUT and CGT consider the number of labour inspectors to be insufficient and, in addition, indicate that the 355 new labour inspector positions are currently vacant. The Committee notes the Government's indication, in this regard, that the number of inspectors has been gradually increasing in recent years, which has resulted in their greater presence throughout the country, and that although the number of posts should remain under constant review, any adjustment must be made in accordance with the relevant technical and budgetary considerations.

The Committee requests the Government to adopt the necessary measures to ensure that the number of labour inspectors is sufficient to guarantee that establishments are inspected as often and as thoroughly as necessary in order to ensure the effective application of the relevant legal provisions.

The Committee also requests the Government to provide updated information on: (i) the number of labour inspector posts, specifying how many are currently occupied by active inspectors and their geographical distribution, as well as any measures taken or envisaged to fill the vacant posts; and (ii) the number of inspections carried out annually, disaggregated by sector.

Articles 11(1)(b), (2) and 15(a) of Convention No. 81 and Articles 15(1)(b), (2) and 20(a) of Convention No. 129. Transport facilities. Principle of the independence and impartiality of labour inspectors. Further to its previous comments, the Committee notes the Government's indication that: (i) the Constitutional Court declared inadmissible a constitutional claim filed in 2015 by the Ministry of Labour in respect of section 3(2) of Law No. 1610 of 2013, which allows labour inspectors to seek logistical assistance from employers or workers, where conditions on the ground so require, in order to access workplaces liable to inspection; (ii) the Ministry of Labour gave instructions to inspectors to refrain from applying the aforementioned provision until the matter was properly resolved; (iii) inspectors travel in vehicles supplied by the Ministry of Labour in order to provide their services in rural areas; and (iv) labour inspectors are entitled to reimbursement of the full cost of transport and the transport expenses that they incur in accordance with Circular No. 12 of 2018, which reorganized the distribution of the budget of territorial directorates with a view to ensuring that inspectors have all necessary financial resources to discharge their functions.

The Committee notes that, in their observations, the CTC, CUT and CGT: (i) indicate that labour inspectors are not independent with regard to transport, since the necessary resources may be provided by trade unions or by employers; (ii) note that because Colombia has inaccessible rural areas, many of which are war-torn, inspections are difficult when inspectors do not have reliable access to vehicles or security measures; (iii) consider that the Government should provide information on the

vehicles, among other resources, available to inspectors, in order to determine if they are sufficient. The Committee further notes that under the Public Policy for the prevention, inspection, monitoring and control of labour 2020–2030, it is envisaged that each region will carry out a transport study so that the minimum costs associated with the performance of labour inspection functions, including inspections, can be established in order to assign an appropriate budget.

The Committee urges the Government, in the interest of legal certainty, to consider amending section 3(2) of Law No. 1610 of 2013, with a view to excluding the possibility of labour inspectors seeking logistical assistance from employers or workers in order to gain access to workplaces liable to inspection. The Committee also requests the Government to indicate whether, in practice, inspectors are in fact disregarding the aforementioned provision, and to provide information on the percentage of inspection visits carried out using transport facilities provided by employers or workers. Furthermore, the Committee requests the Government to provide information on any study conducted relating to transport for inspectors, the findings and the actions taken or envisaged in this regard. In addition, the Committee requests the Government to provide information on any measures adopted or envisaged to ensure the safety of inspectors performing functions in regions where law and order could pose a problem.

Lastly, the Committee once again requests the Government to provide information on progress made with regard to the purchase of vehicles for labour inspection services and to describe the availability of means of transport in the different territorial labour inspection services.

Articles 17 and 18 of Convention No. 81 and Articles 22 and 24 of Convention No. 129. Adequate and effectively enforced penalties. Discretion to give a warning or advice. 1. *Fines imposed and collected.* Further to its previous comments on the body responsible for the collection of fines, the Committee notes that, according to the information provided by the Government, fines imposed by the labour inspectorate prior to 1 January 2020 continue to be collected by the National Apprenticeship Service (SENA) and incorporated in its budget, and fines imposed from that date are collected by the debt enforcement group of the legal advisory office of the Ministry of Labour and allocated to the Labour and Social Security Inspection, Monitoring and Control Strengthening Fund (FIVICOT), established in 2019 under section 201 of Law No. 1955 of 2019 (approving the National Development Plan 2018–2022), as a special State account, without legal personality, attached to the aforementioned Ministry. FIVICOT resources will be used to strengthen labour and social security inspection, monitoring and control functions.

Further to its previous comments on progress made in the effective collection of fines imposed, the Committee notes the Government's indication concerning activities carried out between 2015 and 2018 to improve the collection of fines allocated to the SENA, including the use of precautionary measures in collection procedures, the submission by the SENA of monthly reports to the Ministry of Labour on the management of fine collection at the national level and the introduction of a process linking the Ministry of Labour's Inspection, Monitoring and Control System (SISINFO) and the SENA's Information, Collection, Budget and Recovery System (SIREC), which will allow enforced penalties to be transferred directly to the SENA.

In their observations, the CTC and CUT indicate that there are consistently more unenforced than enforced penalties, that there are delays in the resolution of administrative sanctioning proceedings, that the Ministry of Labour forwards the decisions handed down in these proceedings to the SENA with unjustified delay and that the effectiveness of the SENA in the collection of fines is low. The Government indicates in this regard that: (i) unenforced penalties are not payable pending appeals against them, but will be collected once the appeals are resolved and the penalties become final; (ii) in order to comply with the terms of the resolution procedures for which the labour inspectorate has responsibility, these procedures have been clearly defined, a manual on the functions and competencies of inspectors was adopted in 2018, and inspectors have received training on compliance with the procedural terms; and

(iii) the effectiveness of the SENA with regard to the collection of fines increased from 32 per cent in 2013 and 56 per cent in 2015 to 77 per cent in 2017.

Further to its previous comments on statistics relating to violations detected, penalties imposed and the collection of penalties, the Committee notes the information provided by the Government for the period 2018–2021 in connection with: (i) the number of administrative investigations launched by the labour inspectorate; (3,056 in 2018, 2,584 in 2019, 1,376 in 2020 and 2,006 in 2021); (ii) the number of penalties (enforced and unenforced) imposed in all economic sectors (3,334 in 2018, 3,341 in 2019, 1,639 in 2020 and 3,432 in 2021), including in the agricultural sector (94 in 2018, 107 in 2019, 49 in 2020 and 135 in 2021), with disaggregated information on sugar cane, palm and flower industries; (iii) the total value of the aforementioned fines (124,458,958,537 Colombian pesos (COP) in 2018 and COP67,071,024,937 in 2021), including in the agricultural sector (COP5,305,600,134 in 2018 and COP2,210,211,035 in 2021), as well as with disaggregated information on the aforementioned industries; and (iv) the amount of the fines collected (COP15,157,812,093 in 2018 – collected by the SENA – and a total of COP6,561,296,813 in 2021 – collected by the SENA for FIVICOT). The Committee notes that the Government has not provided the statistics requested on either the number or the nature of the violations giving rise to all of the penalties imposed.

Furthermore, on the basis of the above information, the Committee notes that during the period 2018–21, while the total number of penalties increased in 2021 (after having decreased between 2018 and 2020 by approximately 50 per cent), the number of administrative investigations launched decreased by approximately 34 per cent, the amount of fines imposed decreased by approximately 45 per cent, and the amount of fines collected decreased by approximately 55 per cent; and that the proportion of fines collected to fines imposed was approximately 12 per cent in 2018 and approximately 10 per cent in 2021. In this respect, the Committee notes the indication in Chapter 3 of *OECD Reviews of Labour Market and Social Policies: Colombia 2022* that the decrease in sanctioning procedures and the consequent reduction in the number of penalties imposed by the labour inspectorate are the result of its shift in focus from reactive to preventive visits, which currently account for roughly 80 per cent of all inspections. ***The Committee requests the Government to provide detailed information on the reasons for the decrease in the number of administrative investigations launched, and the numbers and amounts of penalties imposed, as well as information on the low proportion of fines collected in relation to fines imposed.***

The Committee also requests the Government to provide updated information on the number and nature of violations detected, as well as on the penalties imposed and the matters concerned, including the size of the fines applied and collected, disaggregated by sector. Furthermore, the Committee requests the Government to continue providing information on the steps taken in order to improve the effective collection of fines, both with regard to the SENA and FIVICOT, including information on the state of progress of the interlinkage between SISINFO and SIREC and its impact on the collection of fines.

2. *Discretion of labour inspectors to give warning or advice*. The Committee notes that the Government reports the adoption of Decision No. 772 of 2021, which establishes guidelines for the exercise of the preventive function in the form of prior notice, with a view to further developing this function entrusted to labour inspectors under section 3(1) of Law No. 1610 of 2013. The Committee notes that, according to the information provided by the Government, this preventive function: (i) requires inspectors to carry out more information and awareness-raising work in relation to workers and employers; (ii) empowers inspectors to take steps to ensure compliance with workers' rights and avoid possible disputes between workers and employers, such as, for example, by the promotion and approval of a compliance and improvement plan with corrective and preventive measures agreed by the employer and the workers; (iii) is performed by inspectors automatically or in response to a complaint about an alleged violation of workers' rights and before carrying out preliminary inquiries or initiating administrative sanctioning proceedings, without being a prior stage for these; (iv) does not

seek to establish whether a violation has been committed (feasible only under administrative penalty proceedings), which is why the worker and employer concerned are not deemed parties; and (v) ceases to be exercised when the case is transferred to the competent authority, is archived having been expressly withdrawn by the complainants or when a preliminary investigation or administrative sanctioning proceedings are instituted when the inspectors deem that the events at issue in the proceedings have not been resolved and constitute a violation of labour standards. The Government indicates that the exercise of the preventive function under the above conditions aims to provide a prompt and timely response to claims of labour rights violations, as well as to rationalize the use of resources by avoiding the precipitous launch of preliminary inquiries or institution of administrative sanctioning proceedings.

In their observations, while the CTC, CUT and CGT express the wish that the activities of the labour inspectorate should centre on education and prevention, they also refer to the lack of information from the Government on the number of preventive actions taken, as well as the impact of such actions on reducing labour rights violations or promoting labour rights. In this regard, the Committee notes that section 11 of Decision No. 772 provides that actions taken in performance of the preventive function must be recorded on a digital platform in order to facilitate their monitoring and control.

In connection with the discretion of labour inspectors to give warning or advice, the Committee deems it useful to recall that the discretion provided for in this regard in *Article 17(2)* of Convention No. 81 and *Article 22(2)* of Convention No. 129 implies that inspection staff have the necessary capacity for judgement to be able to distinguish between serious or repeated wilful non-compliance, culpable negligence or flagrant ill-will, which call for a penalty, and an involuntary or minor violation, which may lead to a mere warning. ***The Committee requests the Government to provide information on the application in practice of the preventive powers of labour inspectors provided for in Decision No. 772 of 2021, specifying the cases in which labour inspectors may take such actions and the number of actions taken (as a percentage of total inspection activities). In addition, the Committee requests the Government to indicate the measures taken to monitor and control these preventive actions, as well as their outcomes.***

3. *Suspension or termination of administrative sanctioning proceedings.* The Committee notes that section 200 of Law No. 1955 of 2019 empowers the Ministry of Labour to suspend or terminate administrative sanctioning proceedings for violation of labour standards, other than those relating to the formalization of labour, by means of an agreement with the employers under investigation, provided that they recognize their failure to comply with the relevant labour standards and undertake to implement corrective measures within one year through an improvement plan which must be approved by the Ministry of Labour. Once the improvement plan is fully implemented, the administrative sanctioning procedure is terminated. With regard to the imposition of penalties, the provision in question stipulates that: (i) if the agreement between the Ministry of Labour and the employers concerned is concluded at the preliminary inquiries stage, no penalty shall be applied; (ii) if it is concluded between the filing of charges and the presentation of pleadings, the penalty shall be reduced by half; (iii) if it is concluded between the evidentiary stage and the submission of allegations, the penalty shall be reduced by one third; (iv) the penalty shall not be reduced in the event that the employer repeats the violations; and (v) if the improvement plan is not complied with, the suspension shall be lifted and the remaining stages of the procedure shall continue, without any reduction of the penalty. ***The Committee requests the Government to provide information on the application in practice of the power provided for in section 200 of Law No. 1955 of 2019, to specify the officers authorized to exercise it and the circumstances under which they may do so and to indicate the number of administrative sanctioning proceedings suspended or terminated pursuant to the exercise of that power (as a percentage of total current sanctioning proceedings). The Committee also requests the Government to provide a copy of any supplementary regulations adopted by the Ministry of Labour pursuant to the aforementioned provision.***

In addition, the Committee notes that, in their observations, the CTC, CUT and CGT contend that the aforementioned provision does not provide for: (i) the participation of the workers or workers' organizations concerned in the conclusion, implementation and monitoring of agreements to suspend sanctioning proceedings or in the associated improvement plans; or (ii) redress for harm caused to workers or their representatives by the conduct under investigation. These workers' organizations consider that this situation poses a risk of impunity and the possibility of concluding agreements that do not adequately protect the rights of workers who have filed complaints the investigation of which may eventually be suspended or terminated. ***The Committee requests the Government to provide its comments in this respect.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2023.]

Costa Rica

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)

Previous comment on Convention No. 81
Previous comment on Convention No. 129

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection), and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the Costa Rican Confederation of Democratic Workers (CCTD) of 2018 on the application of Convention No. 81, forwarded together with the Government's report, as well as the observations of the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) with the support of the International Organisation of Employers (IOE), received on 1 September 2018 on the application of Conventions Nos 81 and 129, and the Government's reply to these observations. The Committee also notes the observations of the UCCAEP of 2022 forwarded together with the Government's report on the application of Convention No. 81. The Committee also notes the joint observations of the Confederation of Workers Rerum Novarum (CTRN), the Costa Rican Workers' Movement Central (CMTC) and the Juanito Mora Porras Trade Union Federation (CSJMP), received on 5 September 2018, on the application of Conventions Nos 81 and 129, and the Government's reply to these observations, as well as the joint observations of the CTRN, the CMTC, the General Confederation of Workers (CGT) and the Workers' Unitary Confederation (CUT), received on 31 August 2022, concerning Convention No. 129.

Legislation. The Committee notes the Bill on the strengthening of the General Labour Inspectorate (file No. 21.706). The Committee also notes that, in their observations, the CTRN, CMTC, CGT and CUT refer to the Bill and forward a legal report prepared by the Studies, References and Technical Services Department of the Legislative Assembly, which analyses the Bill. According to the report, the Bill proposes reforms to the Organic Law of the Ministry of Labour and Social Security (MTSS), the Labour Code and the Childhood and Adolescence Code, in order to provide the General Labour Inspectorate with sufficient powers to enforce labour legislation, order corrective measures and even impose administrative penalties. ***The Committee requests the Government to provide an indication of any progress made in the adoption of the Bill. The Committee also requests the Government to take the necessary measures to ensure that any new legislation on labour inspection is in full conformity with the provisions of the Conventions. The Committee reminds the Government that, if it deems it necessary, it may avail itself of the technical assistance of the Office within the framework of this legislative process.***

Article 3 of Convention No. 81 and Article 6 of Convention No. 129. Duties of labour inspectors in the area of dispute resolution. The Committee notes the Government's indication that, with the implementation of the Labour Procedures Reform Act of 2017, significant changes were made to the structure and functions of certain departments of the Ministry of Labour and Social Security. In particular, the Government indicates that, with the adoption of Decree No. 41059-MTSS, published in Official Gazette No. 81 of 10 May 2018, a new organizational structure was established through which the Labour Relations Department of the Labour Affairs Department (DAL) has been subdivided into eight regional alternative dispute resolution units, which operate independently from the labour inspectorates in each region. The Government indicates that while conciliation activities used to be included among the duties of labour inspectors in regional offices, this practice no longer takes place. It also indicates that, while there are specific situations in the regional offices where inspectors assist in conciliation and administrative activities, inspection activities take priority. With the creation of this new structure, the Government also indicates that a recruitment and selection process was carried out to fill the 40 new positions for arbitrators, conciliators, notifiers, legal advisers and support staff. The Committee notes that, in order to implement the Labour Procedures Reform, Regulation No. 40875-MTSS-JP on the resolution of legal labour disputes was published, which grants the MTSS the competence to compile a list of arbitrators to attend arbitration proceedings, and the power to regulate the functioning of the alternative dispute resolution centres.

The Committee also notes that in their observations, the CTRN, CMTC, CGT and CUT indicate that inspectors perform other activities including conciliation and office work, making it inconceivable that labour and social rights could be protected. ***The Committee takes note of Decree No. 41059-MTSS of 2018 and requests the Government to ensure that in the application of this Decree, labour inspectors will not assume tasks that hinder the effective performance of their main functions or impair in any way the effective performance of the latter.***

Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129. Adequacy of the number of labour inspectors and measures necessary for inspection. The Government indicates that, as a consequence of the implementation of the Labour Procedures Reform, the human resources and budget of the National Labour Inspectorate (DNI) have been strengthened, thus increasing its staff by 40 per cent and its budget by almost 20 per cent. The Committee also notes that, according to the observations of the CTRN, CMTC, CGT and CUT, the number of labour inspectors in 2021 was 115, compared with 98 in 2015. The Government also indicates that in December 2021 the Ministry of Labour and Social Security initiated an internal competitions process enabling dozens of interim workers to become permanent in their posts, including in the labour inspectorate. The Government indicates that, while the Labour Procedures Reform Act doubtless involved the strengthening of human resources at the National Labour Inspectorate, over the last two years, due to the national fiscal context and the policy of reining in public spending, certain positions that were vacant due to retirement or transfers were frozen and subsequently cut. Additionally, a significant number of persons have retired over the last two years. Measures have also been implemented in the regional offices to improve the performance of inspection activities, including improvements in infrastructure, such as inspection rooms and rooms for alternative dispute resolution, audio and video equipment, as well as protective equipment and special accessories for the field work carried out by inspection staff. The Committee notes the Government's indication that on 13 January 2017, the National Insurance Institute (INS) and MTSS signed a vehicle loan agreement, thereby facilitating logistical support for workplace inspections.

In this regard, the Committee notes the indication by the CTRN, CMTC and CSJMP that: (i) inspectors do not have the materials, working tools or transport facilities necessary for the performance of their inspection duties; (ii) the number of inspectors is still insufficient given the new duties taken on by the National Labour Inspectorate following the Labour Procedures Reform, including involvement in the processing, monitoring and protection of workers affected by acts of discrimination. They also indicate that, despite the fact that the Ministry of Labour and Social Security appointed 30 new

inspectors since the entry into force of the Reform up to the beginning of September 2018, approximately the same number of inspectors retired. In light of the low number of inspectors, they indicate that it is materially impossible for them to monitor compliance in workplaces with regard to non-discrimination in wages between men and women, occupational safety and hygiene standards to prevent occupational accidents and diseases, and the payment of the minimum wage by employers, among other labour guarantees.

The Committee also notes that, according to the 2021 statistical yearbook of the Ministry of Labour and Social Security, the coverage rate of workers was 22.1 per cent in 2018, 30.1 per cent in 2019, 8.9 per cent in 2020, and 10.9 per cent in 2021.

The Committee notes that, in response to its previous comments concerning Convention No. 129 on the scheduling of inspection visits to undertakings with seasonal production, the Government indicates that the regional offices schedule inspections according to the harvesting and sowing season. ***The Committee requests the Government to take the necessary measures to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate, including in the agricultural sector, and that workplaces are inspected as often and as thoroughly as is necessary to ensure the effective application of the provisions of these Conventions. The Committee also requests the Government to continue providing information on the number of inspections carried out, the number of employers and workers covered by inspections, and the material means placed at the disposal of labour inspectors for the discharge of their duties.***

Article 12(1) of Convention No. 81 and Article 16(1) of Convention No. 129. Free access of labour inspectors to workplaces. The Committee once again notes that the right to enter freely at night workplaces liable to inspection is restricted by section 89 of the Organic Act of the Ministry of Labour and Social Security to workplaces in which night work is carried out. The Committee recalls that in accordance with *Article 12(1)(a)* of Convention No. 81 and *Article 16(1)(a)* of Convention No. 129, labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. ***The Committee urges the Government to ensure that appropriate measures are taken without further delay to bring national legislation into conformity with the requirements of the Conventions in this regard, in order that labour inspectors are empowered to enter at night all workplaces liable to inspection, regardless of the working hours of those workplaces. The Committee requests the Government to keep the ILO informed of any progress made in this regard, including in the context of the Bill on strengthening the labour inspectorate.***

Articles 12(2) and 15(c) of Convention No. 81 and Articles 16(3) and 20(c) of Convention No. 129. Notification of the inspector's presence to the employer when carrying out an inspection and the principle of confidentiality. With regard to the notification of the labour inspector's presence to the employer when carrying out a visit, the Committee notes the Government's indication that within the MTSS a committee led by the Deputy Minister for Labour is updating the Manual of Legal Procedures of the Labour Inspectorate (Directive DMT-014-2014). ***The Committee once again requests the Government to take the necessary measures to update the Manual of Legal Procedures of the Labour Inspectorate in accordance with Conventions Nos 81 and 129 and to give an indication of the progress made in this respect.***

The Committee is raising other points in a request addressed directly to the Government.

Croatia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1991)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1991)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the Union of Autonomous Trade Unions of Croatia (UATUC) and the Independent Trade Unions of Croatia (NHS) on Convention No. 81, received in 2016.

Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. Additional functions entrusted to labour inspectors. The Committee notes that the Government has not replied to its previous request regarding the role of the labour inspectorate and the justice system in the enforcement of the Foreigners Act (FA) and on joint activities involving the labour inspectorate in combating undeclared work. The Committee notes that pursuant to section 3(2) of the Labour Inspection Act (LIA), labour inspectors conduct inspections in connection with the implementation of other legislation whenever stipulated in specific legislation. The Committee also notes that the Annual Report of the labour inspectorate of 2017, referred to by the Government, contains information on the work of labour inspectors in the enforcement of the provisions of the FA, including measures relating to the work of foreigners without a permit or a work registration certificate (section 208 of the FA). The Committee recalls once again its previous comments that the Convention does not contain any provision suggesting that any workers be excluded from the protection afforded by labour inspection on account of their irregular employment status, and that the primary duty of labour inspectors is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers and not to enforce immigration law. It further recalls that pursuant to *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129, any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties. ***The Committee requests the Government to take measures to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors to ensure the protection of workers in accordance with labour inspectors' primary duties as provided for in Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. It also once again requests the Government to provide detailed information regarding the role of labour inspectors in the enforcement of the FA, as well as any other joint activities between the labour inspectorate and other state bodies aimed at combating undeclared work, including the scope of these activities, the proportion of labour inspection activities and resources directed to the enforcement of the FA or otherwise combating undeclared work, and the impact of these activities on the work of the labour inspectorate with regard to the enforcement of legal provisions on conditions of work and the protection of workers.***

Articles 3(2), 10, and 16 of Convention No. 81 and Articles 6(3), 14 and 21 of Convention No. 129. Number of labour inspectors for the effective discharge of the duties of the inspectorate and additional duties. The Committee notes the observations by the UATUC and the NHS that there is an insufficient number of labour inspectors, and that the existing inspection staff is burdened by the quantity of work related to workers' claims in cases of employer bankruptcy, which prevents them from discharging their primary tasks in the fields of employment relations and occupational health and safety (OSH). The UATUC and NHS further note the likely imminent retirement of many labour inspectors, and that the lack of inspectors has a significant influence on the regularity and quality of inspections in the field of OSH and labour relations. The Committee notes the Government's statement that, as of 31 December 2016, the labour inspectorate employed a total of 226 labour inspectors and 10 other civil servants in positions related to IT and analytical activities for the improvement of the work carried out by the labour inspectorate and that by 31 December 2017, the number of labour inspectors had increased to 229. Nonetheless, the Government also identifies the insufficient number of labour inspectors as one of the difficulties encountered in the application of the Convention. ***The Committee requests the Government to provide further information regarding the measures taken or envisaged to ensure that a sufficient number of labour inspectors is appointed, in accordance with Article***

10 of Convention No. 81 and Article 14 of Convention No. 129, and that existing labour inspectors' additional duties do not interfere with the effective discharge of their primary duties.

Articles 5(a), 17 and 18 of Convention No. 81 and Articles 12, 22(1) and 24 of Convention No. 129. Institution of legal proceedings and enforcement of adequate penalties. In its previous comments, the Committee noted a decrease in the rate of cases in which the legal proceedings initiated by labour inspectors were declared inadmissible by the misdemeanour courts due to the expiration of the statute of limitations (from 58 to 36.5 per cent), due primarily to the adoption of the Misdemeanours Act modifying the applicable time limits. The Committee notes an absence of information in response to its previous request regarding additional measures to give effect *to Articles 5(a), 17* and *18* of Convention No. 81. ***Recalling the importance of cooperation between the labour inspection system and the justice system, the Committee requests the Government to provide information regarding any measures taken or envisaged to accelerate the examination of cases referred by labour inspectors to the courts and to ensure effective enforcement of adequate and sufficiently dissuasive penalties, including detailed information on the progress achieved or the difficulties encountered as well as statistical information on the number of legal proceedings initiated by labour inspectors that were declared inadmissible, and the main reasons for their inadmissibility.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Cyprus

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

Previous comment

Article 3(2). Additional labour inspection duties entrusted to labour inspectors. In its previous comments, the Committee noted the Government's indication that the Department of Labour Relations (DLR) is not the competent authority for the enforcement of immigration law but that it cooperates, within its remit, with the Cyprus Police when dealing with such cases. In this respect, the Government reiterates that the DLR and the Centralized Labour Inspectorate (CLI) gathered detailed information on the number of migrant workers covered by inspection visits in 2015, 2016 and 2017, including the number of "unregistered foreign employees" and the number of "illegal foreign employees" detected. The Committee notes, however, that these statistics are not reflected in the labour inspection reports. The Government also indicates that there is a clear separation between police duties and those of labour inspectors. During an inspection, inspectors will inform employees about their rights and investigate any possible violation of the law, irrespective of the legal status of the worker and of police presence at the inspection. The Government indicates that police and other authorities are informed in case of illegal employment. The Committee recalls once again that, pursuant to *Article 3* of the Convention, the functions of the labour inspection system are to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and that any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties. In its 2006 General Survey on labour inspection, paragraph 78, the Committee indicated that any function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection, which is to protect the rights and interests of all workers and to improve their working conditions. ***The Committee once again requests the Government to take measures to ensure that the functions assigned to labour inspectors do not interfere with their main objective, which is to ensure the protection of workers while engaged in their work (as provided for in Article 3(1)), including taking further measures to separate labour inspectors from police activities related to migrant workers in an irregular situation. In this regard, the Committee requests the Government to provide information on the proportion of labour inspectors' time and resources that are spent on***

functions related to control of the regularity of employment of migrant workers. It also requests the Government to continue to provide information on specific measures undertaken by the inspectorate to ensure the enforcement of the rights of migrant workers found to be in an irregular situation. In this regard, the Committee requests the Government to provide information on the number of migrant workers in an irregular situation who have been granted their due rights (number of cases in which foreign workers have been paid outstanding wages and benefits) or where their situation has been regularized.

The Committee is raising other matters in a request addressed directly to the Government.

Djibouti

Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63) (ratification: 1978)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Technical assistance. The Committee notes the information provided by the Government in its brief report, including its request for ILO technical assistance to assist it in filling the gaps in implementation of the Convention. It recalls that the Government had not submitted information since October 2005. The Committee notes the information concerning the 2012Statistical Yearbook, which is available online, as well as the 2015Household Survey, to be published in June 2016. The Committee further notes that, according to the information available to the ILO Department of Statistics, labour market statistics in Djibouti are not compiled on a regular basis. ***The Committee requests that the Government provide information on the results and methodology of the 2015 Household Survey, as soon as it becomes available, and to regularly provide information on the application of the Convention.***

The Committee notes the recommendations of the Standards Review Mechanism Tripartite Working Group and the corresponding decision of the Governing Body at its 328th Session in October–November 2016 (GB/328/LILS/2/1) calling upon the Office to commence follow-up with Member States that are still bound by this Convention, encouraging them to ratify the Labour Statistics Convention, 1985 (No. 160), as the most up-to-date instrument in this area, and resulting in the automatic denunciation of Convention No. 63. ***The Committee reminds the Government of the availability of ILO technical assistance in this regard.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Ecuador

Labour Inspection Convention, 1947 (No. 81) (ratification: 1975)

Previous comment

The Committee notes the observations of the Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC), received on 24 January 2020 and 30 August 2022, and the joint observations of ASTAC and the Ecuadorean Confederation of Unitary Class Organizations of Workers (CEDOCUT), received on 1 October 2020 on the application of this Convention. Furthermore, the Committee notes the joint observations of the Ecuadorian Confederation of Free Trade Unions (CEOSL), the Ecuadorian Federation of Municipal and Provincial Workers (FETMYP), the National Federation of Education Workers (UNE) and the National Ecuadorian Federation of workers of provincial governments (FENOGOPRE), received on 1 September 2022 on the application of the Convention.

Articles 6, 10 and 16 of the Convention. Status and conditions of service of labour inspectors. Inspection staff and coverage of inspection needs. The Committee notes the Government's indication that, in 2020, there was a total of 160 inspectors at the national level, while, at 31 August 2022, this figure was 200 (99 with permanent appointments and 101 with temporary appointments). While it welcomes the

increase in the number of inspectors, the Committee also notes that the 31 labour inspectors recruited between 2020 and August 2022 were appointed on a temporary basis (8 in 2020, 7 in 2021 and 16 between 1 January and 31 August 2022) and that the majority of inspectors are appointed on a temporary basis. In this regard, the Committee notes the Government's indication that, due the COVID-19 pandemic, it was necessary to reduce public spending and remove public posts in 2020, with the exception of labour inspectorate positions. In particular, the Government indicates that it was vital to allocate resources to health, and to set aside the call for a merit-based competitive exam to fill labour inspector vacancies. Furthermore, the Government indicates that the low number of inspectors with permanent appointments in August 2022 is due to the fact that merit-based competitive exams involve considerable budgetary expenditure, and the regulations governing the examination processes are currently being amended. Despite the fact that there are inspectors with temporary appointments and occasional contracts, the Committee notes the Government's indication that the stability of employment of these inspectors is guaranteed and that this stability is not affected by government changes.

Concerning the observations of the social partners, the Committee notes the following: (i) ASTAC indicates that there were only four inspectors in the province of Los Ríos, which meant that it was impossible for them to carry out their work; (ii) ASTAC and CEDOCUT indicate that, in accordance with their analysis of personnel distribution data, there were 196 inspectors in August 2020, and that there is no transparency on the part of the Government regarding the number of labour inspectors. They also indicate that, in recent years, there has been evidence of setbacks in the duties of labour inspectors, and that the situation was exacerbated by the reduction and restriction of spending by public institutions, which enables labour inspectors to obtain sufficient resources to carry out their work; and (iii) the CEOSL, FETMYP, UNE and FENOGOPRE indicate that the increase in the number of inspectors is not sufficient for them to carry out their duties.

The Committee also notes the Government's indication that, between 1 January and 24 September 2020, the number of inspections was 6,446 (2,857 in progress, 3,222 archived and 367 that resulted in penalties). In this regard, the Government indicates that, with the aim of adapting labour inspections to the mobility restrictions resulting from the pandemic, telematic tools were adopted to carry out control and monitoring work in relation to workers' rights. The Committee also notes that the Government does not provide information on the inspections carried out in 2021 and 2022.

The Committee understands the impact and difficulties caused by the COVID-19 pandemic. The Committee requests the Government to make every effort to ensure stability of employment for labour inspectors with temporary appointments, in accordance with Article 6 of the Convention. The Committee also requests the Government to provide detailed information on the conditions of service of labour inspectors, including their levels of remuneration and their employment tenure in comparison to the remuneration levels and job tenure of other officials exercising functions of similar complexity and responsibility, such as tax collectors and the police. The Committee also requests the Government to provide: (i) information on the measures adopted or envisaged in order to ensure that the number of labour inspectors is sufficient for the effective performance of their duties; (ii) updated statistical information on the number of inspectors and of inspections carried out; and (iii) detailed information on the manner in which it is ensured that workplaces are inspected with necessary frequency and thoroughness to ensure the effective application of the provisions of this Convention.

The Committee notes that, in its observations, ASTAC indicates that, in the province of Los Ríos, acts of corruption of inspectors were reported, and that a higher body should be established to assess the performance of inspectors, as corruption comes predominantly from within enterprises. ***The Committee requests the Government to provide comments in this respect.***

Articles 12 and 17. Free initiative of labour inspectors to enter workplaces without prior notice, and discretion to initiate legal proceedings without previous warning. The Committee notes that the Government refers to four types of inspections: (i) targeted inspections; (ii) comprehensive inspections;

(iii) inspections by means of electronic verification; and (iv) random inspections. The Government indicates that, during comprehensive inspections, labour inspectors shall review and plan for the assigned inspections, according to the non-compliances established by the computer systems of the Ministry of Labour. Where there are potential cases of non-compliance, the employer is notified electronically in order for an inspection to be conducted after the 15-day period following the issuance of the notification. At the site of the field inspection, the employer shall be notified of the cases of non-compliance identified, in order for the employer to justify, correct or remedy the non-compliance observed, within a period of five days. Where the case of non-compliance has been justified or the facts have been disproved, within the time frame established, the proceedings are be closed. In the opposite case, if, within the five days following the notification issued during the field inspection, the cases of non-compliance have not been corrected or remedied, the employer shall be notified of a decision containing the date of a hearing, in order for the employer to justify the cases of non-compliance. If the hearing takes place, the inspector shall review the information submitted and draft a report within five days, which shall be brought to the attention of the regional labour director. The regional director has a period of 15 days to issue an administrative decision to impose a penalty or terminate the proceedings. The Committee notes that, according to the procedure described by the Government and established in Ministerial Decision No. MDT-2016-0303 of 29 December 2016, pursuant to which it was agreed to issue the "General Rules Applicable to Comprehensive Labour Inspections", and its amendment by Ministerial Decision No. MDT-2017-0110 of 10 July 2017, labour inspectors must give prior notice of the inspection to the employer. Labour inspectors are also required to give notice of compliance to the employer, while administrative decisions imposing penalties may only be issued by the regional director at the end of the hearing.

In their joint observations, the CEOSL, FETMYP, UNE and FENOGOPRE indicate that labour inspectors cannot enter, freely and without prior notice, establishments subject to inspections, as inspectors only conduct their activities during working hours, from 8 a.m. to 5 p.m., and are required to give prior notice of the inspection to the employer. In particular, they indicate that comprehensive field inspections require 15-days' notice to be given to the employer in accordance with section 12(1) of Ministerial Decision No. MDT-2016-0303 of 3 February 2017. In this regard, they also indicate that only inspections on request are conducted, as evidenced by the procedures for conducting targeted, electronic and comprehensive field inspections.

The Committee recalls that, in accordance with *Article 12(1)(a)* of the Convention, labour inspectors shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. The Committee also recalls that *Article 17* of the Convention provides that, with certain exceptions, persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings. ***The Committee requests the Government to adopt measures to ensure that labour inspectors are empowered, in law and practice and in line with Article 12(1)(a) and (b) of the Convention, to make visits without previous notice. The Committee also requests the Government adopt the necessary measures to ensure that labour inspectors are able to prompt legal proceedings without previous warning, where required, in accordance with Article 17 of the Convention. Furthermore, the Committee requests the Government to provide information on the number of announced and unannounced inspections conducted by labour inspectors, and to indicate in detail the number of violations detected and the specific sanctions imposed through both announced and unannounced inspections.***

Articles 19, 20 and 21. Periodic reports and the preparation, publication and transmission of an annual report on the work of the inspection services. The Committee notes that the Office has not received the annual report on the activities of the labour inspection services. In this regard, the Committee notes that the 2019 accountability report contains information on the total number of inspections carried out

and the penalties imposed. ***The Committee once again requests the Government to make every effort possible to ensure that the central authority on labour inspection transmits to the ILO an annual report on the work of the inspection services containing all the information required under Article 21(a)–(g) of the Convention. The Committee also requests the Government to provide information on the publication of the annual report in accordance with Article 20(1) of the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

Finland

Labour Inspection Convention, 1947 (No. 81) (ratification: 1950)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1974)

Previous comment on Conventions Nos 81 and 129

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the Central Organization of Finnish Trade Unions (SAK) on the application of Convention No. 81, communicated with the Government's report.

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Cooperation with the police in the control of immigration law. Following its previous comments, the Committee notes the indication in the report of the Government that the labour inspectorate still carries out joint inspections with the police and the Finnish Border Guard in industries such as agriculture, restaurants, and construction, as it has been established that there are workers without the necessary work permits in these sectors. According to the Government, cooperation between various authorities is considered an effective method to tackle the informal economy and allows the authorities to make effective use of their different powers. The Government indicates that, based on the feedback received, the cooperation between authorities does not cause fear in the workplace and instead, increases trust in the maintenance of a fair and harmonious labour market, encouraging employers to comply with their statutory obligations. The Government further states that labour inspection related to migrant workers aims to ensure that workers have safe working conditions and terms of employment that are compliant with legislation, and that the labour inspectorate provides guidance to workers on minimum terms of employment. The Government nevertheless indicates that that all matters related to unpaid wages and social benefits are handled by the Centre for Economic Development, Transport and the Environment (ELY Centre), and the labour inspectorate does not have any data regarding the wages or social security benefits paid to migrant labourers. Furthermore, the Committee observes that the Government also refers to the expectation of potential opposition and aggressive behaviour at certain inspections of this type, making the presence of the police and the Finnish Border Guard useful to ensure the safety of labour inspectors. The Committee refers the Government to its 2006 General Survey on labour inspection, paragraph 78, and underlines that the objective of labour inspection can only be met if workers are convinced that the primary task of the inspectorate is to enforce legal provisions relating to conditions of work and protection of workers. The Committee also notes the observations of the SAK, indicating that the current resources for occupational safety and health (OSH) enforcement are inadequate, and that addressing that enforcement in relation to labour abuses in the shadow economy should not be achieved at the expense of OSH enforcement. ***The Committee therefore urges the Government to take the necessary measures to ensure that labour inspectors' participation in joint inspections does not interfere with the effective discharge of their primary duties under Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129. The Committee requests the Government to provide further information on the measures taken to ensure that labour inspectors' participation in***

joint inspections does not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. In addition, the Committee requests the Government to provide further detailed information on the procedure for enforcing employers' obligations arising from the statutory rights of undocumented migrant workers for the period of their effective employment relationship, including information on the labour inspectorate's advisory role in directing such workers to the ELY Centre and to social security authorities.

The Committee is raising other matters in a request addressed directly to the Government.

Ghana

Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)

Previous comment

Articles 10, 11 and 16 of the Convention. Human resources and material means of the labour inspectorate and coverage of workplaces. In its previous report, the Government had stated that it faced challenges including an insufficient number of inspectors and inadequate logistical support for inspections and enforcement. In reply to the previous comment of the Committee, the Government indicates that it has recruited over 75 labour officers and inspectors to increase staffing levels. The Committee notes that according to the Government, the Labour Department counts 170 inspectors. The Committee notes, however, that this figure is similar to the one reported in 2017, when the Government indicated a total of 171 inspectors. Concerning the reasons for the decline of inspections undertaken by the Department of Factories Inspectorate between 2014 and 2016, the Government indicates that such decline was due to the attrition rate of workers, which the country witnessed between 2014 and 2016. The Government also indicates that, after this period, more inspectors have been recruited and that it is still recruiting additional staff to enable the Department to enhance its inspectorate work. The Committee notes that the Government does not provide information on the number of staff in the Department of Factories Inspectorate. Further, the Committee notes that, according to the Statistical Reports of the Ministry of Employment and Labour Relations for the years 2018, 2019 and 2020, the number of labour inspections undertaken by the Labour Departments were 284 in 2018, 202 in 2019 and 256 in 2020. The Committee also notes that the inspections in the field of occupational safety and health, undertaken by the Department of Factories Inspectorate were 2,147 in 2018, to 2,936 in 2019 and 2,676 in 2020. With respect to material resources available to the labour inspectorate, the Government indicates that office equipment and vehicles were provided to the Labour Department and the Department of Factories Inspectorate to enhance their operations. ***The Committee requests the Government to continue to provide information on the number of labour inspections undertaken by the Labour Department and the Department of Factories Inspectorate and the number of inspectors in each Department. The Committee also requests the Government to explain whether the current number of Labour Department inspectors is adequate to conduct effective inspections of workplaces in light of the Government's prior indication that it was not. Further, the Committee requests the Government to continue to provide information on the measures taken to ensure that the labour inspection services have at their disposal the required material resources to enable them to effectively carry out their duties.***

Articles 17, 18 and 21(e). Enforcement of the legal provisions relating to the conditions of work and the protection of workers. The Committee previously requested information on the application of penalties, as well as concerning the revision of penalties for labour law provisions. The Committee notes in this regard the Government's indication that it will provide the requested information in its next report. The Committee further notes that a training for labour inspectors and the Office of the Attorney General was organized in June 2022 under the Trade for Decent Work Programme (T4DW). The Committee notes that in its report under Convention No. 182, the Government indicates that such training resulted in

useful recommendations for improving the collaboration between the Office of the Attorney General and the labour inspectorate on the prosecution of cases of child labour and other violations at the workplace. ***The Committee renews its request for the Government to provide detailed statistics on the violations detected, the number and nature of penalties imposed and the amount of fines collected. It also requests the Government to indicate the follow-up actions for issues of non-compliance detected, including statistics on the outcome of the cases transmitted for prosecution. In addition, the Committee requests the Government to provide information on any revision of "penalty units", as defined pursuant to the Fines (Penalty Units) Act of 2000, with a view to ensuring that there are adequate penalties for violations of the legal provisions enforceable by labour inspectors.***

The Committee is raising other matters in a request addressed directly to the Government.

Greece

Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)

Previous comment

The Committee notes the observations of the Greek General Confederation of Labour (GSEE), received on 1 September 2021, the additional observations of the GSEE and the observations of the Federation of Associations of the Ministry of Labour (OSYPE), received on 13 May 2022, as well as the Government's reply.

Articles 3 and 4 of the Convention. Restructuring of the labour inspection system. Organization and effective functioning of the system of labour inspection. Supervision and control by a central authority. The Committee notes the adoption of Law 4808/2021, which establishes a new framework for the organization and operation of the labour inspectorate and envisages its transformation into an independent authority separated from the Ministry of Labour and Social Affairs (MLSA). The Committee notes that the GSEE and the OSYPE allege that the new law was adopted without consultations and foresees a far-reaching transformation of the governance, administration and operation of the labour inspectorate. In its reply, the Government indicates that the Minister held repeated meetings with employers' and workers' representatives prior to the adoption of the law, as well as before and after its submission to the Parliament. The Government indicates that the labour inspectorate's transformation into an independent authority aims to ensure the effectiveness of public administration in monitoring compliance with the labour and social insurance law through the creation of an adequate framework of independence, transparency and accountability, as well as the establishment of a climate of trust towards inspection institutions.

The Committee notes that under section 102 of Law 4808/2021, for the commencement of operation of the labour inspectorate, a relevant decision of the MLSA should be issued. Furthermore, according to the same section of the law, from the commencement of operation of the new labour inspectorate, the existing Labour Inspection Body (SEPE) is abolished, as the new labour inspectorate replaces it automatically in all rights, claims, obligations, legal relations and pending lawsuits. The Committee notes the Government's indication that the new labour inspectorate has started its operations as of July 2022, pursuant to Decision No. 67759 (G.G. 3795/Β΄/19.07.2022). The Government explains that in accordance with section 102(6) of Law 4808/2021, from the beginning of the operation of the new labour inspectorate, where SEPE is referred to in existing legal provisions, the new labour inspectorate shall be implied, and where the General Inspector is referred to, the Governor or the Administrative Board of the labour inspectorate shall be implied. In this respect, the Government refers to Decision No. 1955 (G.G. 14/ 13.01.2022) on the appointment of the Administration Board Members of the Labour Inspectorate and Decision No. 52272 (G.G. 455/02.06.2022) on the Appointment of the Governor of the Independent Authority of the Labour Inspectorate. The Committee notes that a new project entitled "Support to the Operational Modernisation of the Labour Inspectorate and the

Mediation and Arbitration Service (OMED) in Greece" will be implemented in close cooperation with the ILO and with funding from the European Union, with the aim to support the Greek authorities in the restructuring of the labour inspectorate into an independent body.

The GSEE indicates that the new law removes the institutional responsibility of the MLSA to oversee compliance with labour and social security standards by the labour inspectorate and creates an adverse impact in labour inspectorate's provision of services. According to the trade union, without the MLSA having the main supervisory and coordinating role, the uniform enforcement of the labour law will no longer be possible. Furthermore, according to the GSEE, separating the labour inspectorate from the central office of the MLSA, where all relevant employment policy departments are placed, will certainly disrupt the link to continuous information on all labour matters required for the design and fulfilment of the labour inspectorate mission. In its observations, the OSYPE indicates that the separation of the labour inspectorate from the MLSA signifies a separation from all directorates responsible for the interpretation of the rules of labour law, as well as from the information system ERGANI which belongs to the MLSA and is the most critical tool both for the identification of undeclared work and for the compliance of the terms of employment contracts by companies. In its reply, the Government clarifies that, under the new legislative framework, the labour inspectorate takes the role of the central authority, which has hierarchical structure and uniform administrative bodies (Administrative Board and Governor). It indicates that the bodies' term of office and the way they are selected ensure that they shall not be affected by any government change. Regarding ERGANI, the Government indicates that under section 8(1) "Access and management" of the Ministerial Decision No. 40331 (B' 3520/2019), which is currently in force, it is provided that SEPE (now replaced by the Labour Inspectorate) has access to all relevant forms and data submitted, which according to the Government also means full access to ERGANI.

The Committee notes that the GSEE also highlights the need for a nation-wide upgrading of the Labour Inspectorate that will: (i) increase regional directorates in line with the country's regions and spread their local departments in each regional unit; and (ii) institutionalize controls by inspectors in neighbouring regions other than the region in which they are based, with a view to enhancing transparency of controls. In its reply the Government indicates section 21(4) of Law 3996/2011, which refers to the Regional Committees for Social Inspection of the Labour Inspectorate (PEKEE), is still in force. Thus, the Committee understands that the internal structure of the labour inspectorate has remained the same. ***The Committee requests the Government to provide, information on the capacity of the new labour inspectorate to fulfil its functions under Article 3(1) of the Convention, including with regard to the period of transition between the SEPE and the new inspectorate. The Committee also requests the Government to continue to provide information on the structure of the labour inspectorate as an independent authority and to provide an organigram of the new structure.***

Article 3(1)(a), (b) and (2). Labour inspection activities in the area of undeclared work and illegal employment, including in relation to foreign workers. The Committee recalls that from 2016 to 2020 a development cooperation project on "Supporting the transition from informal to formal economy and addressing undeclared work in Greece" was implemented by the Government in close collaboration with the ILO and the social partners in Greece, supporting the implementation of the road map to tackling undeclared work in the country. The Committee notes that a series of legislative changes were adopted in the area of protection of workers' rights, including through law 4554/2018, as amended by Law 4635/2019, which includes a section entitled "combating undeclared work" providing for administrative sanctions for undeclared work and foresees the establishment of a "Register of Delinquent Employers in matters of Undeclared Work". The Government indicates that the said system is being developed at the ERGANI Information System of the MLSA. In its observations, the GSEE indicates that the implementation of the agreed road map on undeclared work, for which the joint action by the labour inspectorate and the competent departments of the MLSA is instrumental, has not been completed. It further indicates that undeclared work is the norm in the agricultural sector and states that the

secession of the labour inspectorate from the MLSA, introduced by the recent reform, will further intensify the reluctance of the Government to ratify the Labour Inspection (Agriculture) Convention, 1969 (No. 129), despite the commitments made in the context of the ILO technical assistance and the road map for undeclared work. In its reply the Government indicates that the new labour inspectorate has the competence to carry out inspections in the agricultural sector under article 2(2) of Law 3996/2011, which remains in force. The Government also indicates that, taking into account that trafficking in human beings for labour exploitation is directly related to undeclared work, the labour inspectorate assists the work of other authorities that are primarily responsible for identifying victims of human trafficking, such as the Hellenic Police. Furthermore, the Government indicates that in a meeting of the Supreme Labour Council in October 2022, the need to prioritize the consideration of ratification of Convention No. 129 was highlighted, taking into account the new legislative framework in force for the Labour Inspectorate. The Committee recalls that, pursuant to *Article 3(1) and (2)* of Convention No. 81 (and *Article 6(1) and (3)* of Convention No. 129), the functions of the system of labour inspection shall be to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties. ***The Committee requests the Government to provide information with regard to the development and the functioning of the Register of Delinquent Employers in matters of Undeclared Work. In addition, the Committee requests the Government to provide further information on the functions relating to the control of undeclared work entrusted to the new labour inspectorate, including its cooperation with the police, and to provide information on the specific measures taken to ensure that these functions do not negatively impact the mandatory functions of the labour inspection system concerning the protection of workers, including their safety and health. The Committee accordingly reiterates its request that the Government provide detailed information on the total number of labour inspections, including specifically the number of OSH inspections and those relating to undeclared work. The Committee once again requests the Government to indicate the role and activities of labour inspectors in relation to foreign workers where they are found to be in an irregular situation. In this regard, the Committee once again requests the Government to provide information on the number of foreign workers in an irregular situation who have been granted their due rights (number of cases in which foreign workers have been paid outstanding wages and benefits) or where their situation has been regularized.***

Article 6. Status and conditions of service of labour inspectors. Independence of inspectors. The Committee notes that section 104 of Law 4808/2021 provides for the functional independence of the Governor and the members of the labour inspectorate's Governing Board, while section 114 defines the powers of the Governor which include, inter alia, the authority to define the service status, the salary status, the disciplinary procedure, the organizational structure of the staff positions, as well as the power to set up the Executive and Disciplinary Boards and to lay down the rules for their decision making. The Committee notes the observations of the GSEE and the OSYPE according to which the guarantees on independence as enshrined in the Law 3996/2011, are undermined by the reform. More specifically the GSEE and the OSYPE indicate that: (i) section 104 does not provide guarantees of independence for all employees of the labour inspectorate; (ii) the way the Governor and the Governing Board are chosen does not guarantee in the first place the independence of inspectors themselves; (iii) the law allows for an overconcentration of powers in the Governor's person, and the exercise of the powers without any control; and (iv) the guarantees of the Civil Servants Code no longer exist since the Disciplinary and Service Boards fall under the uncontrolled power of the Governor, and courts do not have jurisdiction to judge the disputes in question. Regarding the status and conditions of service of labour inspectors, the GSEE and the OSYPE indicate that the law brings a complete dependence of the inspectors on the Governor for all matters concerning their employment status. The Committee notes that in its observations, OSYPE also indicates that the separation of the labour inspectorate from the

MLSA changes the regime and the terms of employment for inspectors specifically taking into account that the provisions of Law 4808/2021 make no explicit reference to "labour inspectors", but rather generally refers to "employees" of the independent authority, a working status which is unilaterally regulated by the Governor. In its reply, the Government indicates that according to section 114 of the law 4808/2021, the Governor shall establish or merge Personnel and Disciplinary Boards at the labour inspectorate, as well as Special Assessment Committees and determine the specific issues of their operation in accordance with the provisions in force. According to the Government, this means that the legislation does not authorize the Governor of the labour inspectorate to deviate from the general provisions on disciplinary control and the bodies thereof. With regard to the independence of the labour inspection authority, the Government indicates that in accordance with the Constitution, the provisions of Law 3051/2002 and the Standing Orders of the Hellenic Parliament, independent authorities, as administrative State bodies under a legal status similar to that of the Government, are subject only to judicial control and parliamentary scrutiny. The Committee also notes that section 117 of the new law provides that all existing staff of the SEPE are automatically transferred to the new labour inspectorate, with the same type of employment relationship they had under the SEPE. ***The Committee requests the Government to provide detailed information on the conditions of service of labour inspectors under the new labour inspectorate, including their levels of remuneration and their employment tenure in comparison to the remuneration levels and job tenure of other officials with similar functions, such as tax collectors and the police. The Committee also requests the Government to provide information on any decision adopted by the Governor of the labour inspectorate in the implementation of section 114 of the law 4808/2021 concerning arrangements for disciplinary and personnel matters.***

Article 10. Number of inspectors. The Committee takes note of a series of measures and legislation adopted to address structural and staffing problems, particularly staff reduction in SEPE. It notes particularly that through the Presidential Decree No. 134/2017 "Organization of the Ministry of Labour, Social Security and Social Solidarity" (OG 168/A'/06.11.2017), the number of directorates, departments, inspectors' statutory posts and special labour inspectors' posts increased. Furthermore, the Government indicates that SEPE was staffed via transfers and appointments of employees, including following the Law 4440/2016, on the basis of which 55 employees were transferred and posted to SEPE. The Committee notes that in 2018, the SEPE had a workforce of 732 employees, out of which 621 were labour inspectors and 372 labour relations inspectors. In its observations, the GSEE calls on the importance of taking measures to strengthen the human resources of the labour inspectorate by means of expedited procedures in the context of mobility or recruitment and to quickly staff the labour inspection offices operated by a single-person, with a view to enhancing the effectiveness of SEPE and also to discharge the inspectors from bureaucratic work so that they are able to perform their auditing unobstructed. ***The Committee requests the Government to provide its comments in this respect. The Committee also requests the Government to continue to provide information on the number of labour inspectors, including on the recruitment of additional staff, in order to ensure that there is a sufficient number for the effective discharge of the duties of the inspectorate, especially in the context of the new labour inspectorate.***

Article 11. Material resources of the labour inspectorate. Reimbursement of expenses incurred by labour inspectors in the exercise of their duties. In its previous comments, the Committee noted the observations made by the Union of Occupational Safety and Health Inspectors according to which: (i) the majority of travel expenses incurred by labour inspectors are not covered; (ii) there was a reduction in budget between 2009 and 2014, and the number of travel facilities is insufficient; and (iii) labour inspectors are not provided with the personal protective equipment required for inspections in high-risk workplaces. The Committee notes that the Government did not provide any relevant information on this matter. In its observations, the GSEE calls on the importance of taking measures to support and upgrade the logistical infrastructure of SEPE by ensuring appropriate building facilities, as well as the provision of service vehicles, modern work environment measuring instruments and personal protective equipment

to inspectors. ***The Committee requests the Government to provide its comments in this respect. The Committee also requests once again that the Government indicate the measures taken to ensure that labour inspectors are reimbursed for all expenses incurred in the performance of their duties, and that they are provided with the required personal protective equipment to ensure adequate protection against risks to their safety and health during the performance of their duties. It also requests the Government to provide information on the budget allocated to the labour inspection service, especially in the context of the creation of the new labour inspectorate, and to describe the availability of transport facilities and suitably equipped offices throughout the territorial structures of the labour inspection service.***

Articles 17 and 18. Adequate penalties imposed and effectively enforced. The Committee notes the information provided in the Government's report regarding the activities of the SEPE, in particular the violations detected, the number of cases brought to the courts, and the penalties imposed up to 2020. The Committee notes that Ministerial Decision 80016/2022 categorizes the types of violations and determines the amount of fines to be imposed by the labour inspectorate for violations of labour law. In its observations, the GSEE points to a significant and unjustified reduction of fines for breach of labour law, which benefits and encourages employers' infringements. In this respect GSEE places emphasis on the need to immediately re-evaluate the system of fines and their calculation involving representatives of SEPE. ***The Committee requests the Government to provide its comments in this respect and to indicate the measures taken or envisaged to ensure the establishment of adequate penalties for the violation of legal provisions enforceable by labour inspectors. The Committee requests the Government to continue to provide detailed information on the number of violations detected, the number of cases brought to the courts, and the penalties subsequently imposed.***

The Committee is raising other matters in a request addressed directly to the Government.

Guinea

Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)

Previous comment

The Committee notes that, in March 2021, the Governing Body declared receivable a representation submitted by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) under article 24 of the ILO Constitution, alleging non-observance by Guinea of the Convention, as well as of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the Protection of Wages Convention, 1949 (No. 95), and appointed a tripartite committee to examine it (GB.341/INS/14/6, March 2021). The Committee notes that the allegations contained in the representation refer to *Articles 3*, *6*, *9*, *10*, *11* and *12* of Convention No. 81. In accordance with its usual practice, the Committee has decided to suspend its examination of these issues pending the decision of the Governing Body in respect of the representation.

Article 7 of the Convention. Training of labour inspectors. Further to its previous comment, the Committee notes the Government's indication that, apart from the mandatory one-year training course provided for in the General Statute for Public Officials, labour inspectors do not receive any special training for the performance of their duties. However, in 2021, 36 officials newly placed at the disposal of the General Labour Inspectorate (IGT) benefited from three months of initial training at the initiative of the General Labour Inspectorate. In addition, in 2021, Guinea benefited from ILO technical assistance, which was provided through workshops held jointly with the IGT. A total of 10 inspectors participated in this training, which will serve to operationalize, at national level, the National Social Dialogue Council. Currently, a training programme on child labour and trafficking is planned for labour inspectors and certain officials of the labour administration using technical and financial assistance from the United

Nations Children's Fund (UNICEF). ***The Committee requests the Government to continue its efforts to ensure that labour inspectors are adequately trained for the performance of their duties. The Committee requests the Government to continue providing information on the progress made in this regard.***

Articles 20 and 21. Annual labour inspection report. The Committee notes the quarterly reports of the IGT for 2022, appended to the Government's report, providing information on activities related to inspection and other functions performed by labour inspectors, the types of violations detected and the measures taken in response. The Committee notes, however, that these reports do not contain the statistical information required in accordance with *Article 21* of the Convention. In particular, the Government indicates that information on workplaces liable to inspection can be collected through the systematic inspection of enterprises. The Government also indicates that the labour inspection reports will soon be published on the website of the Ministry of Labour and Public Service. ***While noting the Government's efforts to transmit an annual inspection report in accordance with Article 20 of the Convention, the Committee encourages the Government to adopt all the necessary measures to ensure that all the information required by Article 21 of the Convention is collected and published in the annual labour inspection report.***

Guyana

Labour Inspection Convention, 1947 (No. 81) (ratification: 1966)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

Previous comment on Convention No. 81
Previous comment on Convention No. 129

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Articles 6 and 10 of Convention No. 81 and Articles 8 and 14 of Convention No. 129. Status and conditions of service of labour inspectors and number of labour inspectors. The Committee previously noted from the annual report of the Labour and Occupational Safety and Health Department (LOSHD) that, due to resignations or non-renewal of contracts, the number of labour inspection staff significantly decreased, and that it was not possible to find suitable candidates to fill the vacant positions. The Committee further recalled its earlier observation, according to which the salary of labour inspectors was less than half that of tax inspectors and approximately half that of National Insurance Scheme Inspectors. The Government indicates that, in 2021, the Ministry of Labour filled all the vacancies for labour officers and that promotion from labour officer to senior labour officer is possible and is based on performance. The Government indicates that a total of 12 labour officers and nine occupational safety and health (OSH) officers were hired in 2021. The Committee notes the Government's indication that salary scales have not been revised, but are comparable with those in the public service. ***The Committee requests the Government to continue to provide information on the total number of labour inspectors and to indicate the number of new recruitments and promotions of incumbent staff. It also requests the Government to provide details on the salary scale and career stability of labour inspectors and to provide a comparison in relation to those of other similar categories of public officials, specifically including tax inspectors and National Insurance Scheme Inspectors.***

Articles 20 and 21 of Convention No. 81 and Articles 25, 26 and 27 of Convention No. 129. Annual labour inspection reports. Concerning the Committee's previous comment on the establishment of a register of workplaces liable to inspection and the number of workers employed therein, the Government indicates in its report that there is a requirement for industrial workplaces to register with the Ministry of Labour

on a yearly basis by, for example, indicating the number of workers being employed. The Government notes, however, that not all industrial establishments are registering with the Ministry and that efforts are being made to ensure that this registration takes place. The Government indicates that employers are informed that the failure to register with the Ministry of Labour is a breach of the OSH Act and that legal actions may be instituted against them. For the years 2020 and 2021, a total of 424 workplaces were registered, mainly for businesses located in Region 4. The Government notes that a strategy is being designed to establish a similar system in other regions to facilitate the registration process. The Committee notes the Government's indication that ILO technical assistance would be welcomed to establish a recording system to facilitate the registration of workplaces. The Committee notes that no labour inspection report was transmitted to the ILO and that the Government report contains limited information on the activities of labour inspectors for 2021, such as the number of inspection visits, the number of charges filed and the number of non-fatal occupational accidents in the agricultural sector. ***Therefore, the Committee requests the Government to pursue its effort to ensure that the labour inspection report is compiled and published in accordance with Article 20 of Convention No. 81 and Articles 25 and 26 of Convention No. 129 and that such report contains information on all the subjects listed in Article 21 of Convention No. 81 and Article 27 of Convention No. 129. The Committee hopes that the technical assistance requested by the Government will be provided in the near future, with a view to ensuring the establishment of a register of enterprises and full compliance with Articles 20 and 21 of Convention No. 81 and Articles 25, 26 and 27 of Convention No. 129.***

The Committee is raising other matters in a request addressed directly to the Government.

Haiti

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

The Committee notes the observations of the Confederation of Haitian Workers (CTH) and the Confederation of Public and Private Sector Workers (CTSP) received on 2nd of November 2022. ***The Committee requests the Government to provide its comments in this respect.***

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP) received on 1 September 2019, in which it reiterated its observations of 2016, 2017 and 2018 and adds that the situation has deteriorated.

Articles 3, 12, 13, 15, 16, 17 and 18 of the Convention. Discharge of primary duties of the labour inspectorate. Appropriate sanctions. In its previous comment, the Committee noted the Government's indications concerning the obstacles faced in applying the Convention in practice, particularly the inadequate numbers of labour inspectors, and requested the Government to supply detailed information together with statistics on the planning and implementation of systematic inspections throughout the country, including in the export processing zones, and also their results. The Committee notes the information provided by the Government concerning the planning and implementation of inspection visits in two of the ten departments in the country in several activity sectors, including: (i) in the western department: 64 inspections (32 initial inspections and 32 catch-up inspections) conducted in 2017; 16 inspections (11 of which in the textile industry), 31 unannounced inspection visits in enterprises and 24 investigations, conducted in 2018; and 42 visits planned and ten advice services carried out in 2019; and (ii) in the north-eastern department, ten initial inspections and ten follow-up inspections were conducted in 2018. The Government indicates that the main objective of labour inspection over this period has been redressing the inconformity identified, rather than imposing penalties. The Committee also notes that the CTSP in its observations indicates that inspectors do not provide technical advice to workers and employers, but limit themselves to calculating the statutory benefits due in disputes between employers and workers. The CTSP also indicates that there are no statistics on labour inspection in the country; to its knowledge, there is no planning or implementation of systematic inspections throughout the country; and, in practice, labour inspection was carried out only in the textile industry. ***While duly noting the progress achieved since 2017 by the labour inspectorate in the country,***

particularly concerning the planning and implementation of visits in two of the ten departments in the country, the Committee requests the Government to strengthen its efforts to progressively expand the planning and conducting of inspection visits to all regions and all economic sectors of the country. The Committee also requests the Government to continue to provide information on the measures taken in this regard, including the statistics concerning the number of inspections planned and conducted, disaggregated by sector, along with details of the results of these visits, including the warnings issues, legal procedures brought or recommended, and penalties imposed and applied. The Committee also requests the Government to ensure that, during their inspection visits, the inspectors perform their primary functions in conformity with Article 3 of the Convention.

Articles 6, 10 and 11. Human and material resources available to the labour inspectorate. The Committee notes the Government's indication in reply to its previous comments that: (i) between 2014 and 2017, thanks the project to build the capacities of the Ministry of Social Affairs and Labour (ILO/MAST), piloted by the ILO, a team was established of 20 officials, 12 of whom are inspectors in the field and eight are trainers; (ii) in 2018, means of transport (six motorcycles and a car) were provided to certain regional MAST offices and that efforts are envisaged to equip all inspection services with the means necessary to guarantee labour inspection in workplaces; and (iii) it planned to upwardly revise the salaries of labour inspectors in the same way as all other inspectors of the public administration. The Committee notes the CTSP's observations, according to which the Government has not made an effort to change the status of labour inspectors in order to provide them with better employment conditions, such as a decent salary, a guarantee of productive employment and social advantages, which could jeopardize the independence of inspectors. ***The Committee requests the Government to pursue its efforts towards progressively increasing the number of inspectors and the material means placed at their disposal to enable them to effectively discharge the functions of the inspection services. The Committee also requests the Government to take the necessary measures to improve the conditions of service of the inspectors, including increasing their remuneration. In this regard, it requests the Government to provide information on the salary scales and labour inspectors' career prospects, compared with public servants who carry out similar functions within other government services, such as tax inspectors and the police.***

Articles 6, 7(1) and Article 15(a). Recruitment of inspectors. Prohibition from having any direct or indirect interest in the undertakings. In its previous comment, the Committee noted that, in its observations, the CTSP indicated that recruitment of labour inspectors was carried out on the basis of clientelism. The Committee notes the Government's indication that, to ensure full application of sections 47 to 75 of the Decree of 17 May 2005, revising the general public service regulations, which regulate the recruitment procedure of public service agents, including labour inspectors, an administrative structure has been established for this purpose, entitled the Office for Human Resources Management (OMRH). The Committee also notes that the CTSP reiterated in 2019 its previous observations on this matter and indicated the further deterioration of the labour inspectorate's independence vis-à-vis employers. ***The Committee requests the Government to ensure that labour inspectors are recruited with sole regard to their qualifications for the performance of their duties and that their status and conditions of service are such that they are independent of changes of government and of improper external influences in conformity with Articles 6 and 7(1) of the Convention. The Committee also requests the Government to provide information on the composition of the OMRH as well as on its prerogatives.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Hungary

Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1994)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Additional functions entrusted to labour inspectors. The Committee notes that the Labour Inspection Act, which entrusted labour inspectors, among other things, with the control of the work and residence permits of foreign workers, and the notification to the immigration police of any decision concerning the infringement of the provisions on the employment of foreign workers, has been repealed. The Committee notes that the functions entrusted to labour inspectors are now defined in the Employment Supervision Act and the Decree No. 115/2021. Under this Decree, the employment supervision authority, in the context of the control of regularity of employment, is tasked to regulate and control the work permit of third-country nationals. The Government indicates that, as of 1 March 2021, section 10(2) of the Employment Supervision Act introduced a new rule to ensure further protection of employees' rights. If the employer fails to meet its reporting obligation related to the establishment of a legal relationship involving employment, the employment supervisory authority determines the existence of a legal relationship involving employment from the 30th day calculated retroactively from the start of the infringement, unless it is established during the administrative procedure, that failure to report employment exceeded thirty days. The Committee also notes that according to section 15 of the Decree No. 115/2021, if the employment supervisory authority establishes a violation of the legislation concerning the employment of a third-country national, it shall send its final decision to the immigration enforcement authority. The Committee notes that the proportion of workers in an irregular situation employed in agriculture increased noticeably from 2018 to 2020. Out of 5,267 employees checked in 2018, 1,065 were found to be in an irregular situation (20.22 per cent), while in 2020, out of the 3,613 employees checked, 859 were found to be in an irregular situation (23.78 per cent). The Committee notes that the Government does not provide information as to the number of cases in which such workers have been granted their due rights. Regarding the manner in which it is ensured that labour inspectors treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions, the Committee takes note of the provisions of the Act CLXV of 2013 on complaints and whistleblowing, the Employment Supervision Act, and the Code of General Administrative Procedure which set out rules relating to the confidential processing of data. ***The Committee once again requests the Government to take measures to ensure that, in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129, the additional functions assigned to labour inspectors do not interfere with the main objective of labour inspectors to ensure the protection of workers. In that regard, the Committee requests that the Government provide information on the proportion of labour inspectors' time that is spent on functions related to control of regularity of employment, including work permit regulation for third party nationals. In addition, the Committee requests the Government to provide further information on the manner in which the labour inspectorate discharges its primary duties in ensuring the enforcement of employers' obligations with regard to the statutory rights of workers found to be in an irregular situation (such as the payment of wages and any other benefits owed for the period of their effective employment relationship), especially in the context of the possibility of retroactive determination of the existence of a legal relationship provided for in the legislation. Noting the increased proportion of irregular***

workers employed particularly in the agricultural sector, the Committee reiterates its request that the Government provide specific information on the number of cases in which workers found to be in an irregular situation have been granted their due rights, such as the payment of outstanding wages or social security benefits.

Articles 10 and 16 of Convention No. 81 and Articles 14 and 21 of Convention No. 129. Number of labour inspectors and effectiveness of the labour inspection system. The Committee notes that the number of labour inspectors continued to decrease, from 368 in 2017 to 300 in 2021. At the same time the number of inspections conducted and violations detected also continued to decrease, from 14,298 inspections and 10,407 cases of irregularities in 2018 to 9,462 inspections and 6,649 cases of irregularities in 2020, and to 2,523 inspections and to 1,791 cases of irregularities in the first half of 2021. The Government indicates that the decline in the number of inspections in the years 2020 and 2021 are also attributable to consequences of the COVID-19 pandemic, reporting that employers suspended or reduced certain activities, and a substantial share of capacities of the occupational safety authority was allocated to investigation of suspected cases of occupational disease related to COVID-19. The Committee notes that the Government report and the labour inspection reports do not include statistics on accidents and diseases. ***Noting the continuing decline in the number of inspectors as well as the decrease in the number of inspections and detected violations over a four-year period, the Committee once again requests that the Government take the necessary measures to ensure that the number of labour inspections are adequate to ensure the effective protection of workers. The Committee requests the Government to continue to provide statistical information on the number of labour inspectors, inspection visits, violations detected and penalties imposed. The Committee requests the Government to provide information on the number of occupational accidents and diseases.***

The Committee is raising other matters in a request addressed directly to the Government.

India

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

Previous comment

The Committee notes the observations made by the International Trade Union Confederation (ITUC) and by the Indian Central Trade Unions (ICTUs), both received on 1 September 2022, as well as the Government's reply to the latter. The Committee also notes that the Government had provided written information, on a voluntary basis, in its submission of 20 May 2021 in connection with the proceedings of the Committee on the Application of Standards (CAS).

Furthermore, the Committee notes that, in reply to the points raised in previous ITUC observations, the Government indicates that the ordinances amending the labour law, which were adopted by some of the states in 2020 in response to COVID-19, did not enter into force as the central Government, which has concurrent legislative competencies on labour matters, did not concur with any of them. With regard to the executive order by the Madhya Pradesh Government, which exempted the application of several provisions of the Factories Act, the Government informs that the order had a limited validity of three months and was not extended. In addition, the Committee welcomes the information that in the case of Gujarat, the decision to increase overtime hours from 8 hours to 12 hours a day, without payment of overtime, was struck down by the Supreme Court of India.

With regard to the direct contacts mission requested by the CAS in 2019, the Committee notes that in the context of the COVID-19 pandemic, the Government organized a series of digital technical meetings with the Office to address the issues raised in the CAS and in the Committee's observations. The meetings were attended by senior representatives of the Government and the management of the Standards Department. The Committee also notes that in its observations, ITUC calls on the Government

to accept a direct contacts mission of the ILO to assess the implementation of Convention No. 81 in law and in practice and to provide the necessary technical assistance.

Articles 2 and 4 of the Convention. Labour inspection in Special Economic Zones (SEZs). The Committee notes the observations by the ITUC and the ICTUs expressing continuing concern about a lack of effective labour inspection, with continuous violations in the SEZs. ITUC also expresses concerns over the fact that inspections are being carried out by development commissioners, who also have a responsibility to promote investment in the SEZs. Moreover, the ICTUs indicate that trade unions are restricted in entering the SEZs and filing complaints, and that they are not informed of inspections conducted in these zones.

The Committee also notes the indication by the Government that the powers of labour inspectors in SEZs have been delegated to development commissioners merely due to administrative difficulties, as some SEZs have jurisdiction over more than one state. The Committee further notes the information provided by the Government that the current administrative arrangements in SEZs do not impede the conduct of independent inspections and that the implementation of safety provisions related to factories still rests with specialized labour inspectors. Furthermore, the Committee notes the information that, according to office memoranda issued in May 2019 and June 2021 by the Ministry of Labour, the SEZs' development commissioners have been advised that labour inspections should take place without prior notice. Finally, the Committee notes the Government's indication, in response to the Committee's request for statistical data concerning the conduct of inspections in the SEZs, that in light of disruptions during the COVID-19 pandemic the requisite information will be made available after resumption of normalcy in industries.

Welcoming the information already provided and acknowledging the difficulties regarding the generation of meaningful data for the period 2020–21, in light of the COVID-19 pandemic, the Committee requests the Government to provide in its next report detailed statistical information on the number of labour inspectors responsible for inspections in these zones, the number of inspection visits (indicating the inspections conducted by labour inspectors and by development commissioners), the number and nature of offences reported and the number of penalties and amount of fines imposed, in addition to information on criminal prosecutions, if any. It also requests the Government to indicate in which SEZs inspection has been delegated to development commissioners, and how often inspections carried out by development commissioners take place without notice. Finally, the Committee requests the Government to indicate the number and nature of any complaints filed with respect to labour inspection in the SEZs, and whether trade unions have access to the SEZs where complaints have been filed and where they have not been.

Articles 4, 20 and 21. Availability of statistical information on the activities of the labour inspection services at the central and state levels. Availability of statistics in specific sectors. The Committee notes that in reply to the Committee's request for annual labour inspection reports, the Government refers to the annual reports of the Ministry of Labour and Employment published on its website, which contain statistical information on inspection activities at the central level (including the number of labour inspections, the number of irregularities detected, the number of prosecutions and convictions, as well as the number of accidents in mines). The Committee also notes the information provided by the Government on the development of the Shram Suvidha web portal at the Ministry of Labour and Employment, which is to facilitate reporting and submission of returns, and the Government's broader efforts to expand and improve the registration of workplaces through the Employees Provident Fund Organization (EPFO) website, in addition to efforts undertaken for the registration of workers in the informal sector, through the e-Shram portal. At the same time, the Committee notes the observations made by ITUC and the ICTUs that the statistical data provided does not allow for an assessment of the effective operation of the labour inspection services. The Committee also notes the Government's reply to these observations, with additional information on the digital initiative taken by the Government to facilitate reporting of inspections and augment transparency. Furthermore, the Committee notes the

Government's indication that it is actively undertaking an All India Survey on migrant workers, domestic workers and transport sector workers, which is to inform the development of policies for the welfare of those workers.

The Committee requests the Government to pursue its efforts to ensure that the central authority transmits to the ILO annual reports on labour inspection activities containing all the information required by Article 21. The Committee encourages the Government to continue its efforts towards the registration of workplaces and the improvement of its data collection system in all sectors, and requests that the Government keep the Committee updated on progress made in this regard. Further, the Committee requests the Government to indicate in what specific ways the data generated by its new digital initiatives are used by the labour inspection services for the planning of inspections.

Articles 10 and 11. Material means and human resources. The Committee notes the Government's indication in its report, that sufficient resources have been at the disposal of Central Labour Inspection agencies and State Governments, including adequate transport facilities or allowances, and that facilities like mobiles and laptops are being provided to inspection personnel by the respective state governments. However, the Committee also notes the continuing concern expressed by ITUC, in its observations, that the human and material resources of the labour inspectorate remain inadequate. ***The Committee requests the Government to provide updated information on the number of labour inspectors and more concrete information on the material resources and transport facilities of the labour inspection services.***

Articles 12 and 17. Free initiative of labour inspectors to enter workplaces without prior notice, and discretion to initiate legal proceedings without previous warning. The Committee notes the Government's response to the Committee's request for information as well as the concerns expressed by ITUC and the ICTUs in relation to certain provisions in the occupational safety and health (OSH) and Working Conditions Code of particular relevance to labour inspection, including the use of the term 'inspector cum facilitator' instead of 'inspector', which had been opposed by the central trade unions, and the distinction between 'inspections' and 'surveys', as referred to in the Codes. With regard to the term 'inspector cum facilitator', the Government explains that the addition of the word 'facilitator' points to efforts to strengthen the rights of workers by extending advice and support regarding compliance with various provisions of the Code. Regarding the legal provisions on the prior announcement of visits related to 'surveys', the Government explains that section 20 of the OSH and Working Conditions Code dealing with 'surveys' does not relate to inspections, but rather aims at allowing the government to conduct examinations of facilities and the testing of plant and machinery, outside the inspection system. Finally, in response to the concern expressed by the ICTUs that the web-based randomized inspections referred to in sections 34 and 37 of the OSH and Working Conditions Code may confine inspections to a randomly computer-generated list, the Government indicates that the web-based allocation of inspections does not impede the powers of labour inspectors to conduct free and independent inspections, based on the requisite intelligence. More broadly, the Committee notes the Government's indication that the recently introduced labour Codes do not compromise the powers of inspectors and that all inspections carried out by Central government are unannounced. The Government indicates that the OSH and Working Conditions Code does not envisage any restriction to the powers of labour inspectors to enter freely and without prior notice, at any hours of the day or night, any workplace liable to inspection, and that any guideline framed under the Code on Wages will not include instructions which are in violation of *Article 12(1)(a)* of Convention No. 81. The Committee notes nonetheless that the Government did not provide an answer to the question related to section 110 of the OSH and Working Conditions Code, according to which prosecution proceedings against an employer for any offence shall not be initiated by inspectors-cum-facilitators before an opportunity is given to the employer concerned to comply with relevant provisions of the Code within a period of thirty days from the date of notice, except for the case of an accident or a violation of the same nature repeated within a period of three years from the date on which the first violation was committed.

The Committee further notes that the Code on Wages provides that inspectors-cum-facilitators shall, before the initiation of prosecution for an offence, give employers an opportunity to comply with the provisions of the Code within a certain time limit (section 54(3)).

The Committee recalls that under *Article 17* of the Convention, with certain exceptions, persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning, and that it must be left to the discretion of labour inspectors to give a warning or advice instead of instituting or recommending proceedings.

The Committee requests that the Government take the necessary measures to ensure that labour inspectors are able to initiate legal proceedings without previous warning, in conformity with Article 17 of the Convention. The Committee also requests the Government to transmit to the Committee examples of guidelines framed under the Code on Wages, as cited above, and examples of instances when inspectors-cum-facilitators have delayed or deferred inspections of establishments as well as examples when they have deferred initiation of prosecutions. Noting the Government's explanation regarding limitations on meaningful data collection over the past two years, due to the COVID-19 pandemic, the Committee requests that the Government provide detailed information in its next report on the number and nature of offences reported, the number of penalties and amount of fines imposed, and the criminal prosecutions initiated, if any.

The Committee is raising other matters in a request addressed directly to the Government.

Indonesia

Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)

Previous comment

Articles 1, 4, 10 and 11 of the Convention. Impact of decentralization on the effective functioning of the labour inspection system. Number of labour inspectors and material means placed at their disposal. The Government indicates in its report that the Ministry of Manpower has a policy on increasing the number of labour inspectors, based on the Minister of Manpower Regulation No. 4 of 2017. It adds that in 2020, 1,694 labour inspectors (1,169 men and 525 women) were employed across 34 provinces in the country, with the district of East Java employing most labour inspectors (182). The Committee notes that this represents an increase in the number of inspectors in comparison to 2018 when 1,574 inspectors were reported but that this number is still lower than the 1,927 inspectors reported in 2016. With respect to the improvement of facilities and infrastructure, the Government indicates that it is encouraging local governments to allocate their regional funds for labour inspection facilities and infrastructure in their respective regions. The Committee notes that, in 2020, the Labour Inspection Committee made recommendations to the Ministry of Manpower in order to accelerate labour inspection reforms, to initiate centralized implementation of labour inspection, and to provide facilities and infrastructure that meet health standards and protocols that allow labour inspectors to carry out their duties and functions. ***The Committee once again requests the Government to take the necessary measures to ensure that labour inspectors are appointed in sufficient numbers, in accordance with Article 10 of the Convention. It requests the Government to provide information on the total number of appointed labour inspectors (disaggregated by gender), and the allocation of resources to labour inspection officers by the provincial and city/district levels of government. The Committee also requests the Government to provide detailed information on the measures taken to follow up with respect to the recommendations of the Labour Inspection Committee concerning labour inspection reforms, centralized implementation of labour inspection, and improvement of conditions of work of labour inspectors.***

The Committee is raising other matters in a request addressed directly to the Government.

Italy

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1981)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Additional functions entrusted to labour inspectors related to immigration. The Committee previously noted the Government's indication on the actions taken by labour inspectors regarding the regularization of employment relationship of migrant workers in an irregular situation, as well as the related rights granted to them. The Committee also noted that inspection personnel shall notify the public security authorities of the presence of any irregular migrant workers, as "illegal entry to and residence in the State territory" remains a criminal offence.

The Committee notes that, according to the report of the Government, when inspections reveal failures to comply with contractual obligations, therefore creating financial credits for workers, the labour inspectors may, through a certified notice of findings, ensure the recovery of the credits (wages, social security, etc.) of the concerned workers, including foreign workers without regular residence permit. The Government indicates however, that the current system of collection of statistical data only allows for an overview of the total figures in this regard, without specific reference to workers without residence permit.

In reply to the previous Committee's comment, the Government also indicates that the current system for monitoring results of inspection activities by the National Labour Inspectorate's (INL) regional offices identifies the number of migrant workers without work permits encountered in the course of inspections (778 in 2020 and 739 in 2021), but does not record data specific to the delivery to those workers of the information sheet, introduced by the Interministerial Decree of 2007 and implementing section 1(3) of Legislative Decree No. 109/2012.

The Committee also notes that, pursuant to sections 18 and 22 (12-quater) of Legislative Decree No. 286/1998, residence permits may be granted to concerned workers in "special cases", for reasons of social protection and in cases of particular exploitation. The Committee notes that for granting such permit, the irregular migrant worker in an exploitative situation is required to file a complaint and cooperate in the criminal proceedings against the employer. The Committee also notes that according to section 22 (12-sexies) of the same Decree, this residence permit allows for work to be carried out and can be converted, upon expiry, into a residence permit for employment or self-employment. The Government indicates that this special residence permit is a useful tool to encourage migrant workers in an irregular situation to cooperate with inspection services, without fearing negative repercussions, such as losing their jobs or being deported. The Government also refers to inspection activities carried out within the three-year Plan against exploitation and gangmasters in Agriculture (2020–22), through two projects financed respectively by the European Commission (SU.PR.EME Italia) and the Ministry of Labour and Social Policy (A.L.T. Caporalato!). It states that the inter-provincial inspection task forces, the multi-agency working method and the collaboration between public and private entities contribute to improving the situation of migrant workers.

The Committee further notes that, as previously reported, the Government indicates that labour inspectors shall communicate the presence of migrant workers in an irregular situation to the public security authority and that illegal entry and stay in the country and the employment of workers without permit are defined as offences by sections 10bis and 22(12) of Legislative Decree No. 286/1998. ***The***

Committee requests the Government to continue to provide information on the number of migrant workers in an irregular situation detected by labour inspectors and on the role of labour inspectors in informing migrant workers about their labour rights and in enforcing those rights, including: (i) improved data on the recovery of wage and social security credits specific to foreign workers without a residence permit; and (ii) the number of "special case" residence permits granted and a result of cooperation by those individuals with inspection services. It also requests the Government to provide information on the time and resources of the labour inspectorate that are allocated to the task of verifying the legality of the immigration status in practice as a proportion of inspectors' overall time and resources.

The Committee is raising other matters in a request addressed directly to the Government.

Jamaica

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

Previous comment

The Committee notes the observations of the Jamaica Confederation of Trade Unions (JCTU) and the Jamaica Employers Federation (JEF), received on 1 January 2022.

Article 12(1)(a) and (c)(ii) of the Convention. Unannounced visits. Production of documents. The Committee notes the Government's indication, in response to the Committee's previous request concerning measures to give effect to *Article 12(1)(a)* and *(c)(ii)*, that in accordance with the requirements under section 13(2)(b) of The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, any power of entry of labour officers should not prejudice the rights and freedoms of others. The Government adds that, in this connection, legislation requiring the power of entry by labour inspectors has to have provisions requiring reasonable notice before a proposed entry, except in circumstances where the officer has a search warrant.

The Committee also notes that the JEF is in agreement with the Government's response and is particularly concerned about the proposed ability to enter premises at any time of the day or night. In addition, the Committee notes that, according to JCTU, in many reported circumstances, including in the construction industry, confining labour inspectors to giving notice before a proposed entry invalidates the intent of the inspection, as it facilitates the employer to artificially make adjustments or instruct responses that would affect the inspector's assessment. The Committee further notes that, according to JCTU, similar powers of "unannounced entry" are afforded to other arms of Government in situations where this is deemed necessary. The Committee emphasizes that the conditions for the exercise of the right of free entry to workplaces set out in the Convention are intended to enable inspectors to carry out inspections of workplaces in order to enforce legal provisions relating to conditions of work. On this understanding, unannounced visits enable the inspector to enter work premises without warning the employer, especially in cases where the employer may be expected to attempt to conceal a violation by changing the usual conditions of work, preventing a witness from being present or making it impossible to carry out an inspection (see the 2006 General Survey on labour inspection, paragraph 263). ***The Committee therefore requests the Government to take concrete measures, including in the context of a possible adoption of the new draft OSH Bill, to ensure, in accordance with Article 12(1)(a) and (c)(ii) of the Convention, that labour inspectors provided with proper credentials are empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection, and to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them.***

Article 13(2)(b). Measures with immediate executory force in the event of imminent danger to the health or safety of the workers. The Committee notes that the Government does not provide further information on this point. It notes that according to the information contained in the annual report of the Ministry of Labour and Social Security (MLSS) for 2017-2018, while the main operational activities of the Occupational Safety and Health Department (OSHD) focus on the administration of the Factories Act, 1943 and associated Regulations, other entities, including governmental organizations, are requesting the services of the OSHD to develop programmes and provide OSH auditing services. ***The Committee once again requests the Government to take prompt measures, including in the context of the drafting of the new OSH Bill, to ensure that labour inspectors are empowered to order measures with immediate executory force to eliminate imminent danger to the safety and health of workers in all industrial workplaces, and to provide information on the measures taken in this respect. It also requests the Government to provide statistical information on the preventive measures taken by labour inspectors with immediate executory force, in application of Article 13(2)(b) of the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

Japan

Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)

Previous comments: observation and direct request

The Committee notes the observations of the Japanese Trade Union Confederation (JTUC-RENGO) communicated with the Government's report. It also notes the observations of the National Confederation of Trade Unions (ZENROREN), received on 31 August 2021.

Articles 3(1)(b) and 13 of the Convention. Preventive measures for workers engaged in decommissioning work and decontamination work with radioactive materials. The Committee takes note of the detailed information provided by the Government on the number of inspections carried out with respect to business operators engaged in decommissioning and decontamination work by the Fukushima Labour Bureau by 2019, and the number and nature of violations detected. In 2018 and 2019, the number of inspections for business operators increased in both decommissioning work (from 290 business operators to 325) and decontamination work (from 267 business operators to 338), while the percentage of those operators where violations were detected increased from approximately 53 per cent to 58 per cent in decommissioning work and increased from approximately 61 per cent to 67 per cent in decontamination work. The Committee notes the Government's additional comment that figures for 2018 and 2019 on decontamination work are not strictly comparable.

The Committee further notes that the number of inspections of business operators engaged in decontamination works has decreased substantially over a longer period (from 1299 in 2015 to 338 in 2019). In addition, since the earthquake in 2011, five business operators engaged in decommissioning work and 17 business operators engaged in decontamination work have been referred to the Public Prosecutor's Office by the Fukushima Labour Bureau. Such cases included a failure to provide notification without delay of industrial accidents to the director of the competent Labour Standards Inspection Office, and a case where the operator exposed workers to machine-related dangers in the decontamination work. The Government provides information on the causes of the violations and the details of the guidance given to the business operators engaged in decommissioning work at Fukushima Daiichi Nuclear Power Station and decontamination work in the Fukushima Prefecture. The Government indicates that, regarding the health and safety-related measures at workplaces, the percentage of violation is low in workplaces engaged in decommissioning work and higher in workplaces engaged in decontamination work. The Government provides guidance to prevent similar violations from occurring once corrective action has been confirmed, noting that such guidance is an

important measure to prevent exposure to ionizing radiation. With regard to health management-related violations, a certain number of workplaces engaged in decommissioning and decontamination work were found to be in violation of the requirement to monitor working hours in order to provide interview-guidance by doctors, an important measure to ensure the health of workers who work long hours. In addition, in many cases the submission of reports of ionizing radiation medical examination of radiation workers to the director of the Competent Labour Standards Inspection Office was neglected. The Government provides guidance to ensure that both requirements are met. With regard to labour management, the Government indicates that since there are many violations due to lack of understanding of laws and regulations, the contents of laws and regulations are carefully explained during supervision and guidance. The Government will continue to provide necessary guidance to business operators engaged in decommissioning work to ensure that safety and health measures are implemented in accordance with related laws and regulations. In addition, necessary guidance will be provided to intermediate storage facilities and operators carrying contaminated soil, with a focus on measures to prevent industrial accidents associated with work, as well as to operators carrying out decontamination work in Designated Site Areas for Reconstruction and Revitalization. ***The Committee requests the Government to continue to provide information on the causes of violations and the measures taken to secure the enforcement of applicable labour standards in decommissioning and decontamination works, the number of inspections undertaken, as well as the number and nature of violations detected in these areas. It also requests the Government to provide information on the reasons for the substantial decrease of inspections of business operators engaged in decontamination works from 2015 to 2019. The Committee reiterates its request that the Government provide information on the number of anonymous complaints and how often these result in detection of violations. The Committee requests the Government to provide detailed information on the outcome of the five cases related to decommissioning work and the 17 cases relating to decontamination work referred to the Public Prosecutor's Office, including the penalties applied.***

Articles 10 and 16. Sufficient number of labour inspectors. In reply to the Committee's previous request, the Government indicates that, as of March 2021, the number of labour standards inspectors increased by 90 from March 2017 to March 2021. The Committee notes that as of March 2021 there were 3,018 inspectors in total with 238 inspectors having been appointed in 2020 including 72 female inspectors. In this respect, the Government indicates that it aims to make the best efforts to ensure the number necessary to strengthen the Labour Standards Inspection Offices. The JTUC-RENGO highlights the importance of improving the system of labour standards supervisory organizations, including by increasing the number of labour standard inspectors even further to achieve continuous and active implementation of labour standards-related laws and regulations, including strict supervision and guidance to ensure compliance with relevant regulations restricting overtime work. The Committee notes that, although the Government reports an increase of labour standards inspectors, ZENROREN highlights the need for drastic expansion and improvement of the structure of labour administration's set-up involved in inspections, including by increasing the number of inspectors, technical officers and clerical workers in the office in order to ensure and improve the inspectors' working conditions. ***The Committee requests the Government to provide information on the specific measures taken to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate related to labour standards laws and regulations as well as other laws, and to continue to provide information on the number of labour inspectors, disaggregated by both prefecture and gender.***

Article 18. Safety of labour inspectors. Obstruction in the performance of their duties. The Committee notes that according to ZENROREN, an opinion survey conducted by the All-Labour Ministry Workers' Union (Zenrodo) on labour inspectors showed that more than half of the labour inspectors in Japan have at some point felt threatened or have experienced physical violence or intimidation. The respondents in their comments identified a series of incidents of violence most of which occur during inspection visits

of business offices on short notice rather than when meeting business owners in the Labour Standards Inspection Office. ZENROREN is of the opinion that when inspectors feel threatened or suffer physical violence, they are obstructed in the performance of their duties. It indicates, that, while in the past, inspection was conducted in principle by one inspector alone, from 2019, in view of the need to ensure inspectors' safety and to train younger inspectors, inspection is performed in teams. It highlights however the difficulties arising from the fact that some inspection offices have fewer than ten (some even only two inspectors) which makes it very difficult to send more than one inspector to a business establishment at a time. ***The Committee requests the Government to provide its comments in relation to the observations related to violence, harassment and other external pressure faced by labour inspectors. It requests the Government to provide detailed information on cases of aggression against labour inspection staff and on the judicial follow-up to such situations, and also to provide details of penalties imposed under this Article in cases of obstruction of labour inspectors in the performance of their duties. The Committee requests the Government to provide information on the measures taken to ensure the safety of labour inspectors and the effective discharge of their duties in cases of obstruction.***

The Committee is raising other matters in a request addressed directly to the Government.

Kenya

Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1979)

Previous comment on Convention No. 81
Previous comment on Convention No. 129

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Articles 3(1), 4 and 5(b) of Convention No. 81 and Articles. 6(1), 7 and 13 of Convention No. 129. Structure of the labour inspection system, cooperation between inspection services and supervision and control by a central authority. In its previous comments, the Committee noted the absence of an individual or a department with oversight responsibility for the various inspection activities, as well as the limited cooperation between the two inspection systems under the Department of Labour (DOL) and the Department of Occupational Safety and Health (DOSH). In its report, the Government indicates that the two inspectorate services under the DOL and the DOSH were placed under a common oversight authority, the State Department of Labour, which is also the central authority for purposes of reporting. The Committee also notes that the Government refers to the development of more measures to centralise supervision and control of both departments but does not indicate whether the post of chief inspector has been established and filled. ***Therefore, the Committee requests the Government to provide information on additional measures taken toward the centralization of supervision and control of the two inspection systems, including the possibility of placing labour inspection under the responsibility of one chief inspector who would be responsible for the overall coordination of the Ministry of Labour's inspection services. In this respect, it requests the Government to indicate whether the post of chief inspector has been established and filled.***

Articles 10, 11 and 16 of Convention No. 81 and Articles 14,15 and 21 of Convention No. 129. Lack of human and material resources and appropriate means of transport. Efficiency of inspections. In its previous comments, the Committee noted that the resource constraints in budgetary allocation led to a lack of inspectorate staff, lack of material resources, including facilities, and lack of transport, which affected the efficient delivery of labour inspection services, including in the agricultural sector. It further noted

that the civil service was undergoing a reform and that subsequently, understaffed and under-resourced departments would benefit from the deployment of personnel from overstaffed agencies. In its report, the Government indicates that it has put in place measures to boost institutional capacity of the inspectorates to enhance resource allocation and effective enforcement of laws. The Committee notes that 40 officers were employed by the Ministry at the entry level of its inspectorate service in both the DOL and the DOSH in 2017. It further notes that the inspectorate staff has designated authorized officers under section 35 of the Labour Institutions Act (powers of labour officer), but the Government does not indicate the number of the nominated officers and the time of their appointment. The Committee notes the Government's indication that the geographical distribution of the inspectorate staff to all 47 counties aims at ensuring adequate representation and coverage of all sectors. The Government indicates that the labour inspectorate staff are provided with operational offices fully equipped for administration purposes and for the effective performance of their duties. Furthermore, according to the Government, staff reimbursements are adequately provided on instances where the labour inspectors need to use their own funds for the performance of their duties. However, the Committee notes that due to continued funding problems, the challenge remains of inadequate transport, in terms of required vehicles that would allow for movement to the various vast regions of the country. ***The Committee requests the Government to continue to provide information on the measures taken or envisaged, including within the framework of the civil service reform, to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate. It requests the Government to provide detailed information on the number of labour inspectors working for the DOL and the DOSH, indicating their years of experience, areas of specialization, and geographical distribution. Noting the funding constraints, the Committee requests the Government to provide information on the steps taken or envisaged to ensure that the labour inspectorate is provided with the material resources and transport facilities necessary for the effective performance of their duties.***

The Committee is raising other matters in a request addressed directly to the Government.

Kyrgyzstan

Labour Inspection Convention, 1947 (No. 81) (ratification: 2000)

Previous comment

Articles 12, 16, 17 and 18 of the Convention. Limitations and restrictions of labour inspection. Effective enforcement of penalties for labour law provisions. 1. *Moratorium on labour inspections.* Further to its previous comments on this matter, the Committee takes due note that the moratorium on inspections has expired on 1 January 2022. In this regard, it notes that Government Decision No. 586 of 2018 on the introduction of a temporary ban on the inspection of economic entities was declared null and void by virtue of Resolution of the Cabinet of Ministers No. 9 of 14 January 2022 on the invalidation of certain decisions of the Cabinet of Ministers (section 1, Annex, paragraph 2836). It also notes that the annual reports on the work of the labour inspectorate covering the period 2019–20 provide detailed statistics on the number of inspection visits carried out during the reference period.

The Committee also notes that the labour inspection system has been reorganized as set out in the Regulations on the Service for Control and Supervision of Labour Legislation under the Ministry of Labour, Social Security and Migration, approved by Government Decision No. 317 of 17 December 2021. According to these Regulations, the Service for Control and Supervision of Labour Legislation is now the body authorized to perform the functions of state supervision and control of compliance with labour legislation (sections 1 and 10). The Committee observes that, according to section 11(7) of Law No. 72 of 2007 on the conduct of inspections in enterprises, in exceptional cases the Government has the right to introduce a temporary ban (moratorium) on conducting inspections in order to improve the economic

situation. ***Recalling that a moratorium placed on labour inspection would substantially undermine the inherent functioning of the labour inspection system and would be contrary to the provisions of the Convention, the Committee urges the Government to take all necessary measures to amend the legislation and to ensure that no moratorium on labour inspections be placed in the future and that labour inspectors are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions, in compliance with Article 16 of the Convention.***

2. *Other limitations on labour inspection.* The Committee has repeatedly referred to the serious limitations on the powers of labour inspectors and on the undertaking of labour inspections set forth in Law No. 72 of 2007 on the conduct of inspections in enterprises. The Committee notes with ***deep concern*** that such limitations remain in force. It also notes the Government's indication concerning the provision of administrative penalties for violations of labour legislation contained in the Code of Offences, which was adopted on 28 October 2021 by Law No. 126. In this respect, it notes that sections 87 to 93 of this Code provide for fines for violations of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. The Committee notes that, despite the adoption of the Code of Offences, which penalizes violations to labour legislation, labour inspections continue to be hampered by the limitations established by Law No. 72 of 2007. Therefore, the effective enforcement of the penalties set out in sections 87 to 93 of the Code of Offences is also undermined.

Furthermore, the Committee notes with ***deep concern*** that the Government refers once again to its statements made in 2019, concerning the status quo of labour inspection in the country asserting that, under Law No. 72, the authorized state body may carry out unplanned on-site inspections only after the Ministry of Economy has given its consent, that this is the only form of inspection during which labour inspectors can check that employers comply with the requirements of labour legislation, and that if the organization has a qualified lawyer, any inspection with prior notice or limited to a review of documents provided by the employer has almost no chance of identifying actual breaches of labour legislation, even if they are serious.

Lastly, the Committee notes the information provided by the Government on the inventory and revision of laws carried out by the inter-agency expert group by virtue of Presidential Decree No. 26 of 8 February 2021 on the Conduct of an Inventory of the Legislation. ***With reference to its 2019 general observation on the labour inspection Conventions, the Committee urges the Government to bring its national legislation into full conformity with the Convention. Specifically, it requests the Government to take prompt measures to ensure that labour inspectors are empowered to make visits to workplaces liable to inspection without previous notice, in conformity with Article 12(1)(a) of the Convention, that they are able to undertake labour inspections as often and as thoroughly as is necessary to ensure the effective application of the legal provisions, in conformity with Article 16 of the Convention, and that they are able to initiate or recommend immediate legal proceedings without prior warning, where required, in conformity with Article 17 of the Convention.***

In this connection, the Committee requests the Government to provide information on the measures taken in order to ensure the amendment of Law No. 72 of 2007 on the conduct of inspections in enterprises, including consideration given to this issue within the National Tripartite Commission and in the context of the inventory and revision of laws carried out by the inter-agency expert group. It further urges the Government to intensify its efforts to ensure the effective enforcement of penalties for violations of the legal provisions enforceable by labour inspectors as set out in the Code of Offences, in conformity with Article 18 of the Convention. In addition, the Committee requests the Government to provide statistics regarding the number of inspection visits undertaken by labour inspectors without previous notice, as compared to inspection visits undertaken with prior notice, as well as statistics on the number of penalties effectively enforced.

Article 13(2)(b). Measures with immediate executory force to ensure the safety and health of workers. Further to its previous comments, the Committee notes the Government's reference to the inventory of policy frameworks, strategies, programmes and laws carried out by the inter-agency expert group by virtue of Presidential Decree No. 26 of 2021 on the conduct of an inventory of the legislation, as well as its indication that the public authorities are actively working to improve legislation, which will include revising existing laws. The Committee notes, however, that no concrete measures have yet been taken to empower labour inspectors to issue orders requiring measures with immediate executory force in case of imminent danger to the health and safety of workers. It also notes the information contained in the annual reports, according to which, in the period from 2018 to 2020, there were 75 fatal accidents. ***The Committee therefore urges the Government to intensify its efforts to bring the national legislation into conformity with Article 13(2)(b) of the Convention. In addition, it requests the Government to provide information on the number of orders requiring measures with immediate executory force issued by labour inspectors per year and to indicate the cause and outcome of such orders.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2023.]

Lebanon

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

Previous comment

The Committee notes with ***deep concern*** that the Government's overdue report on Convention No. 81 has not been received. In light of its urgent appeal launched to the Government in 2021, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Article 3(1) and (2) of the Convention. Primary functions and additional duties of labour inspectors. 1. *Supervision of union matters.* The Committee previously noted that, pursuant to section 2(c) of Decree No. 3273 of 26 June 2000, the labour inspectorate has the power to monitor vocational organizations and confederations at all levels in order to check whether the latter, in their operations, are exceeding the limits prescribed by law and by their rules of procedure and statutes. It recalls that for many years it had requested the Government to take steps to limit labour inspectors' intervention in internal trade union affairs. The Committee also noted the Government's reply in its report received in 2016 that the role of labour inspectors is limited to accessing union records, and only in cases where a union submits its final account or if a union council member files a complaint. The Committee nevertheless wishes to recall that, according to *Article 3(1)* of the Convention, the primary functions of the labour inspection system shall be to monitor and secure the conditions of work and the protection of workers while engaged in their work, and that in accordance with *Article 3(2)*, any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority or impartiality of inspectors in their relations with employers and workers. In this respect, the Committee had expressed reservations in its 2006 General Survey on labour inspection, paragraph 80, regarding an excessively close supervision by labour inspectors of the activities of trade unions and employers' organizations, to the extent that it may amount to interference in these organizations' legitimate activities. ***The Committee urges the Government once more to take the necessary steps to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspection, which is to provide for the protection of workers in accordance with Article 3(1) of the Convention. In this respect, it urges the Government to ensure that any supervision of trade union activities is carried out only in relation to the protection of the rights of trade unions and their members and does not take the form of interference in their legitimate activities and internal affairs.***

2. *Work permits for migrant workers.* While noting information in the 2022 follow-up Labour Force Survey for Lebanon concerning a possible out-migration of migrant workers, particularly domestic workers, from Lebanon since 2018, the Committee also notes indications provided by the ILO Decent Work Technical Support Team that the system for monitoring work permits through the labour inspectorate has remained unchanged in its essence. ***The Committee requests the Government to take measures to ensure that the functions assigned to labour inspectors to monitor work permits do not interfere with the main objective of labour inspection to secure the enforcement of legal provisions relating to conditions of work and the protection of workers, as required under Article 3(1) of the Convention. It requests the Government to provide information on the time and resources spent on labour inspection activities related to the issuance, renewal, and inspection of work permits, compared to activities aiming at the enforcement of legal provisions relating to conditions of work and the protection of workers.***

Article 12(1) and (2). Right of inspectors to enter freely any workplace liable to inspection. In its previous comments, the Committee requested the Government to amend Memorandum No. 68/2 of 2009, which requires prior authorization in writing for all unscheduled inspection visits, although according to section 6 of Decree No. 3273 of 2000 on Labour Inspection, labour inspectors shall have the authority to enter freely and without prior notice all enterprises under their supervision during hours of work at the enterprise. The Committee also noted the Government's indication in its report received in 2016 that written authorization is provided in order for an inspection to be carried out, and that inspections are carried out as part of an inspector's annual or monthly programme. In this regard, the Committee recalls once more *Article 12* of the Convention, which provides that labour inspectors provided with proper credentials shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. It recalls that the requirement to obtain prior permission to undertake an inspection in all cases constitutes a restriction on the free initiative of inspectors to undertake an inspection, including where they have reason to believe that an undertaking is in violation of the legal provisions. ***The Committee urges the Government to take measures to amend Memorandum No. 68/2 of 2009 to ensure that labour inspectors provided with proper credentials are empowered to enter freely any workplace liable to inspection, in accordance with Article 12(1) of the Convention, and to provide copies of any texts or documents showing progress in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

Lithuania

Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)

Previous comment

Article 3(1) and (2) of the Convention. Additional functions entrusted to labour inspectors. Labour inspection activities in the area of irregular work. In its previous comments, the Committee requested the Government to provide information on the actions undertaken by the labour inspectorate and the judicial authorities to ensure the enforcement of employers' obligations with regard to the statutory rights of workers found, in the course of inspections, to be working irregularly. The Committee notes the Government's indication regarding a series of activities aiming at the prevention and control of illegal work, undeclared work, undeclared self-employment and violations of the procedure for employing third-country nationals. The Committee notes in this respect that in 2020, the state labour inspectorate (SLI) carried out 4,161 inspections focused on illegal work, which resulted in the detection of 1,794 workers who were working illegally. The Government indicates that in 2020 the SLI undertook a series of consultations with employers, workers and their representative organizations on the issue of illegal work, focusing on the activities of small and medium-sized enterprises and first-year entities. The Government also provides details on the inspections of entities in the areas of the highest risk of

breaching the requirements of occupational safety and health and labour legislation and reports the establishment of inspection groups specialised in controlling illegal labour.

The Committee notes that the Government does not provide information on cases in which the statutory rights of workers found to be working irregularly have been reinstated. In addition, the Committee notes that section 56 of the Law on Employment provides for measures to be taken by labour inspectors in cases of illegal work. The Committee further notes that according to this section, when such cases concern foreign workers, the labour inspectors request the employer to terminate the labour relations and notify the immigration authorities. The Committee recalls that the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection, which is to protect the rights and interests of all workers and to improve their working conditions (see 2006 General Survey on labour inspection, paragraph 78). In this respect, the Committee also recalls that workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities (see 2017 General Survey on instruments concerning occupational safety and health, paragraph 452). ***The Committee requests the Government to take measures to ensure that the functions assigned to labour inspectors with regard to irregular work do not interfere with the main objective of labour inspectors to ensure the protection of workers in accordance with labour inspectors' primary duties as set forth in Article 3(1) of the Convention. It requests the Government to provide information on the time and resources that are allocated to the prevention and control of illegal or undeclared work as a proportion of inspectors' overall time and resources. It once again requests the Government to indicate how the SLI ensures the enforcement of employers' obligations with regard to the statutory rights of the workers found to be working irregularly, including migrant workers.***

The Committee is raising other matters in a request addressed directly to the Government.

Madagascar

Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

Previous comments: observation and direct request

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the General Confederation of Workers' Unions of Madagascar (FISEMA) and the Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE), received on 1 September 2022.

Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. Additional duties of labour inspectors. Further to its previous comment, the Committee notes the Government's indication that labour inspectors are making efforts to discharge duties other than their primary duties. The Committee notes the observations of FISEMA in this regard that the predominance of mediation and conciliation activities within the labour inspection services is to the detriment of inspections in enterprise, thereby giving employers more power to act as they wish in matters of industrial relations and occupational safety and health standards. The Committee recalls that, in accordance with *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129, any further duties entrusted to labour inspectors, including conciliation, should not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. ***The Committee once again requests the Government to take the***

necessary steps without delay to ensure that, in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129, duties other than primary duties assigned to inspectors do not interfere with the performance of the latter. It also requests the Government to provide detailed information on the time and resources dedicated to conciliation and mediation activities carried out by the labour inspectors, by percentage of total time and resources that inspectors dedicate to the discharge of their primary duties.

Articles 6, 10 and 11 of Convention No. 81 and Articles 8, 14 and 15 of Convention No. 129. Status and conditions of service of labour inspectors and controllers. Resources at the disposal of the labour inspectorate. Further to its previous comment, the Committee notes that the Government indicates that the protocol agreement signed on 10 April 2015 between the Ministry of Economy and Finance and the Autonomous Trade Union of Labour Inspectors (SAIT) providing for a compensation award in connection with the duties of labour inspectors has no legal scope because the decree issuing the regulations on compensation has not been adopted. While noting the Government's indication that the draft review of the General Civil Service Regulations has been delayed because of the priority given to the fight against COVID-19, the Committee notes with ***regret*** that no information has been provided on the adoption of special regulations for labour inspectors and controllers as part of this review. The Government also indicates that it is endeavouring to maintain dialogue with the labour inspectors' union and that efforts are being made to improve their conditions of service by increasing the material resources available to them, in particular through the provision of work vehicles for the regional labour directorates, computer equipment and the construction of administrative buildings for use as offices. The Committee notes that the staff numbers in the labour inspectorate have risen from 128 labour inspectors in 2017 to 189 inspectors and 193 controllers on duty in 2021, and that four regional departments are now equipped with work vehicles, namely Analamanga, Atsinanana, Diana and Upper Matsiatra. In this regard, the Committee notes the observations of FISEMA that the labour inspection services in industry and trade still suffer from insufficient human and material resources, which affects their effectiveness. In addition, despite announcements by successive governments to establish a labour inspection system in the agricultural sector, no specific information or draft text has been received by the trade union organizations, while fundamental rights, social protection, freedom of association and equality of treatment and remuneration of agricultural workers are not fully guaranteed, as the majority of them work in the informal economy. ***Recalling that Article 6 of Convention No. 81 and Article 8 of Convention No. 129 provide that inspection staff shall be composed of public officials whose status and conditions of service assure them stability of employment and make them independent of changes of government and of improper external influences, the Committee urges the Government to take the necessary measures, without delay, including the adoption of staff regulations specifically for labour inspectors and controllers in the context of the draft review of the General Civil Service Regulations. The Committee also requests the Government to continue to intensify its efforts to increase the resources at the disposal of labour inspectors and to provide information on the specific measures taken in this respect, including for inspection in the agricultural sector. It also requests the Government to continue to provide information on the number of labour inspectors, resources and means of transport assigned to the labour inspection services.***

Article 7(3) of Convention No. 81 and Article 9(3) of Convention No. 129. Training for labour inspectors. Further to its previous comment, the Committee notes the Government's indication that the General Labour Directorate has undertaken to organize training to strengthen the capacities of labour inspectors to ensure that inspection activities reach all current branches of activity. In this context, the introduction of a subject on inspection in the agricultural sector for labour inspectors in training at the National School of Administration of Madagascar (ENAM) is especially necessary. The Committee notes that under Order No. 10989/2021 on the opening of a direct competition and a vocational competition, the number of inspectors in training at ENAM has been doubled (from 25 to 50) to cover all activity sectors, including the agricultural sector. It also notes the subjects and the programme of the direct

competition and the vocational competition, in the annex to the above-mentioned Order but notes, however, that the Government has not provided any information on further training of labour inspectors. ***The Committee therefore once again requests the Government to take the necessary measures to ensure further training for labour inspectors, and to provide information on the duration of the training, the number of participants and the subjects covered. It also requests the Government to intensify its efforts to provide labour inspectors with specialized agricultural training.***

Articles 19, 20 and 21 of Convention No. 81 and Articles 25, 26 and 27 of Convention No. 129. Submission of periodic reports to the central inspection authority. Preparation, publication and transmission of the annual inspection report. Further to its previous comment, the Committee notes the Government's indication that the results of labour inspection activities and inspection reports are submitted periodically (quarterly and annually) to the central inspection authorities. The Committee notes the observations of FISEMA that the production of activity reports is still lacking, despite their previous observations in this respect. ***The Committee urges the Government to take all necessary measures to ensure the preparation and publication of an annual report on the work of the labour inspection services, in accordance with Article 20 of Convention No. 81 and Articles 25 and 26 of Convention No. 129, and to take the necessary steps to ensure that these reports contain information on all the subjects listed in Article 21 of Convention No. 81 and Article 27 of Convention No. 129.***

The Committee is raising other matters in a request addressed directly to the Government.

Malta

Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1988)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of ratified conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Articles 6, 10 and 16 of the Convention No. 81 and Articles 8, 14 and 21 of Convention No. 129. Numbers of labour inspectors and inspection visits. Conditions of employment. The Committee notes that in reply to its previous request concerning the decrease in the number of inspections, the Government indicates that the Department of Industrial Relations and Employment (DIER) carried out 1,022 inspections in 2019, 854 during 2020 and 1,107 between January and July 2021. The Committee also notes that with regard to its previous request concerning the condition of service of labour inspectors, the Government indicates that these conditions recently changed in order to retain staff by providing more opportunities for advancements. The Committee notes the Government's indication that there are currently ten inspectors and two overseeing managers within the DIER. The Committee notes that the staff composition of the DIER is the same as in 2019. The Committee also notes that according to the Government report, the inspectors of the Occupational Health and Safety Authority (OHSA) decreased from 14 to 12 from 2020 to 2021. ***The Committee requests the Government to provide details of the changes that have occurred in the conditions of service of labour inspectors and to indicate how such changes may serve to attract and retain a sufficient number of motivated staff. In this regard, the Committee requests comparative information on the remuneration scale and opportunities for advancement of labour inspectors in relation to other categories of government employees exercising similar functions, such as tax inspectors or police officers. The Committee also requests the Government to provide information on the reasons for the decrease in staff in the OHSA. In addition, the Committee requests the Government to continue to provide information on the number of labour***

inspectors working at the DIER and at the OHSA, as well as the number of inspections undertaken by these entities.

The Committee is raising other matters in a request addressed directly to the Government.

Morocco

Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1979)

Previous comment on Convention No. 81
Previous comment on Convention No. 129

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the observations of the Democratic Confederation of Labour (CDT) and the National Union of Labour in Morocco (UNTM), transmitted with the Government's reports in 2017 concerning both Conventions.

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Additional duties of labour inspectors. Further to its previous comment, the Committee notes that, according to the information contained in the annual labour inspection report in Morocco 2020 - 2021, labour inspectors play a very important role in the resolution of individual and collective disputes, under sections 532 and 551 of the Labour Code. In 2021, labour inspectors carried out 24,860 inspections compared to 33,362 in 2018. In addition, only 991 inspections were carried out in occupational safety and health, compared to 2,488 in 2018. However, labour inspectors examined 56,509 individual disputes and took measures to prevent the outbreak of 1,234 collective disputes in 2021. The UNTM indicates in its observations that the function of conciliator is performed to the detriment of law enforcement, and therefore tends to exacerbate the number of individual and collective labour disputes.

The Committee notes that the time spent by labour inspectors on conciliation may be to the detriment of the performance of their primary duties, especially when resources are limited. In this respect, the Committee recalls that, according to *Article 3(2)* of Convention No. 81 and *Article 6(3)* of Convention No. 129, other duties entrusted to labour inspectors should not interfere with the performance of their primary duties. ***The Committee requests the Government to take the necessary measures to remedy this situation and to ensure that, in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129, the additional functions of conciliation entrusted to labour inspectors do not interfere with the performance of their primary duties. In this respect, it requests the Government to continue to provide information on the time spent on the primary duties within the meaning of Article 3(1) of Convention No. 81 and Article 6(1) of Convention No. 129 in relation to the other functions of labour inspection.***

Article 6 of Convention No. 81 and Article 8 of Convention No. 129. Independence of labour inspectors of improper external influences. The Committee notes the Government's indication in its report that, between 2014 and 2016, there were six legal proceedings against labour inspectors' decisions and reports under section 17 of Dahir No. 1-58-008 on the general statute of the public service, one of which had been resolved by court of first instance with an acquittal, and the other five of which were before the competent courts. ***The Committee requests the Government to continue to provide detailed information on the practical application of section 17 of Dahir No. 1-58-008, in particular on the legal proceedings undertaken against labour inspectors in recent years (alleged offences, legal provisions invoked, duration of proceedings and so forth) and their outcome. It also requests the Government to***

specify the criminal penalties that labour inspectors may face relating to actions or measures taken in the performance of their duties, as well as the corresponding legal provisions that provide for such penalties.

Articles 12 and 15(c) of Convention No. 81 and Articles 16 and 20(c) of Convention No. 129. Confidentiality regarding the source of complaints during inspections; inspections without prior notice. The Committee notes that the Government has not provided any new information in this regard. ***The Committee therefore once again requests the Government to take measures to introduce a specific legal obligation of confidentiality, by providing that labour inspectors shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint, as stipulated in Article 15(c) of Convention No. 81 and Article 20(c) of Convention No. 129. Recalling that confidentiality is only possible in practice if the inspection method used includes a considerable number of routine inspections, the Committee once again requests the Government to provide statistics on the number of inspections, indicating the type of each inspection (routine visits, visits to monitor the application of enforcement orders, visits pursuant to a complaint and so forth).***

Articles 13, 17 and 18 of Convention No. 81 and Articles 18, 22, 23 and 24 of Convention No. 129. 1. *Prosecution of violations and effectively applied penalties.* Further to its previous comment, the Committee notes that, according to the statistics contained in the 2020–21 inspection report, the number of reports drawn up remains low compared to the number of violations detected. In 2021, there were 227,830 observations on the application of the legislation in the industry, trade and services sectors, with 76 reports drawn up noting 1,094 violations. The Committee also notes the observations of the CDT that there is a lack of follow-up to reports of violations. In addition, the UNTM indicates in its observations that there is a lack of information on the follow-up to legal actions and to the various obstacles to the performance of inspectors' duties. ***The Committee requests the Government to continue to provide statistical information on the observations made, the violations noted and the reports drawn up by labour inspectors. It also requests the Government to provide further information on the follow-up to these observations in cases where reports are not drawn up, including areas of compliance that were addressed and remedies applied, and the penalties imposed.***

2. *Supervisory activities of inspectors in agriculture and action taken on safety and health injunctions and breaches of the legislation.* Further to its previous comment on Convention No. 129, the Committee notes that the Government does not provide any information on the action taken on safety and health injunctions and breaches of the legislation, including for failure to execute injunctions issued to eliminate risk to the workers' safety and health (section 543 of the Labour Code), or the recommendation (section 545 of the Labour Code) for the prosecution of employers in breach of the regulations or an order to take preventive action. ***The Committee once again requests the Government to provide information on the results of the exercise of labour inspectors' powers of injunction and of initiating legal proceedings, as defined in the above legislation.***

The Committee is raising other matters in a request addressed directly to the Government.

Netherlands

Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1973)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

The Committee notes the joint observations of the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) on Convention No. 81, received in 2021, which reiterate the observations of the FNV, CNV and the Trade Union Federation for Professionals (VCP) received in 2017 and refer to the additional matters addressed below.

Articles 3, 10 and 16 of Convention No. 81 and Articles 6, 14 and 21 of Convention No. 129. Number of labour inspectors and the frequency of labour inspections to ensure the effective discharge of inspection duties. Workload of labour inspectors. Time spent on administrative tasks. Further to its previous comment on ensuring a sufficient number of labour inspectors and inspections to achieve adequate coverage of workplaces liable to inspection, the Committee notes that the Government indicates in its report that: (i) given the lack of information on the capacity of the labour inspectorate, in 2017 the inspectorate started with the Inspection Control Framework (ICF), which allows it to focus on certain risks or subjects, determine what it requires in terms of capacity (financially) to cover the chosen focus, as well as to use risk-based supervision and to be result-oriented; (ii) also in 2017, the coalitions parties in the Parliament made 50 million euros per year progressively available for strengthening the enforcement chain of the labour inspectorate in accordance with the ICF; (iii) between 2018 and 2020, the available resources of the labour inspectorate were mostly used for the recruitment, selection and supervision of new labour inspectors and investigators; (iv) in 2019 and 2020, the labour inspectorate had 1,335 and 1,348 full-time labour inspectors, respectively, and it is projected to grow to 1,541 full-time labour inspectors by the end of 2022 and to be at full capacity in 2023; and (v) in 2019 and 2020, 11,744 and 15,462 inspection visits were carried out, respectively. The Committee also notes the Government's indication that the labour inspectorate currently pursues four goals under the ICF, namely: (a) restoring the balance between reactive investigations and active prevention-oriented inspections in the field of OSH; (b) increasing the proportion of joint inspections of companies falling under the legislation relating to the control of major hazards involving dangerous substances; (c) increasing the extent to which the labour inspectorate works in an information-driven way; and (d) increasing the inspection coverage of fair working conditions. ***The Committee requests the Government to provide detailed information on the implementation of the Inspection Control Framework, the achievement of each of its four goals and its concrete impact on the work of the labour inspectorate, including on the inspectorate's capacity to carry out its primary functions as set forth in Article 3(1) of Convention 81 and Article 6(1) of Convention 129, and to inspect workplaces with the necessary frequency and thoroughness. Noting the above-mentioned increase in the number of labour inspectors, it requests the Government to continue to provide information on the total number of labour inspectors, inspection visits, workplaces liable to inspection and workers employed therein, violations detected and penalties imposed, as well as on the number of industrial accidents and occupational diseases. The Committee requests the Government to specify in the requested information the statistics relating to the agricultural sector.***

Furthermore, the Committee notes the information provided by the Government in reply to its previous comment on the meaning of the term "social impact" of the work of the labour inspectorate, which implies that the labour inspectorate tries to enforce regulations at workplaces where the risks are the highest and that by eliminating the highest risks it makes sure that the main harm is taken care of.

In this regard, the Committee recalls that the report of the tripartite committee adopted by the Governing Body at its 322nd Session (November 2014) concerning the representation made under article 24 of the ILO Constitution relating to Conventions Nos 81 and 129 and the Occupational Safety and Health Convention, 1981 (No. 155) requested the Government to ensure that the number and frequency of labour inspections is sufficient to ensure the effective discharge of inspection duties and compliance with the respective legal provisions in all workplaces, including enterprises that are not considered to be in high-risk sectors and small enterprises (paragraph 137). ***The Committee requests the Government to provide information on the measures adopted or envisaged to ensure that non-high-risk workplaces and small enterprises are inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.***

Lastly, with regard to the administrative tasks entrusted to labour inspectors, the Committee takes note of the Government's information indicating that multiple measures have been taken to facilitate labour inspectors in administrative tasks, such as the provision of standardized formats for letters and fine reports, the deployment of senior inspectors as peer review of, or support for, other inspectors in the drafting of reports, as well as the establishment of an inspection support desk ("Inspectieondersteuning") which assists inspectors in the administrative preparation of inspection projects by refining information, conducting preliminary research and selecting the correct addresses of companies to be inspected. The Government also indicates that the adoption of measures to facilitate the work of inspectors will continue to be one of the focuses of the labour inspectorate. ***The Committee takes note of the information provided and it requests once again the Government to specify the proportion of time spent by labour inspectors on administrative tasks, in relation to the primary functions of labour inspection.***

Article 3(1) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Functions of labour inspectors with regard to foreign workers. Further to its previous comment on inspections performed in conjunction with the police department that deals with residency issues, the Committee notes that the Government indicates in its report that when working jointly with the police department, while the police investigates whether there are migrants in an irregular situation, the labour inspectorate is concerned with compliance of the labour legislation with respect to migrant workers, who are entitled to fair work and wages irrespective of their legal status. The Committee recalls that the involvement of inspection staff in joint operations with the police is not conducive to the relationship of trust that it is essential to enlisting the cooperation of employers and workers. Workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as being fined, losing their job or being expelled from the country. ***The Committee requests the Government to provide further information on the concrete actions undertaken by labour inspectors in cases where, in the discharge of their duties, they encounter violations of the legal provisions related to conditions of work and protection of wages for migrant workers, including those in an irregular situation, specifying how it ensures that these workers are actually granted their statutory rights, such as the payment of unpaid wages, social security benefits or the conclusion of an employment contract, and further specifying the amounts recovered and the number of contracts concluded in this respect.***

The Committee notes that the FNV and CNV reiterate that migrant workers are especially vulnerable to abusive labour conditions and are very critical of the results of the work of the labour inspectorate in this respect, indicating that: (a) cases (i.e. accidents at work, physical abuse and unpaid wages) take so long to be inspected that, in the meantime, the workers concerned may be dismissed, feel victimized or are discouraged from filing again a complaint; (b) obvious infringements are not inspected, nor are they fined; and (c) inspections operate in a very fragmented manner, with the result that cases are not coordinated. ***The Committee requests the Government to provide detailed comments in this respect.***

The Committee notes that the FNV and CNV also reiterate that very few cases of non-compliance are actually brought to the courts by migrant workers without the required work permit or residence permit and that while these possibilities exist formally, the protection of undocumented migrant workers lacks substance. Moreover, the FNC and CNV state that the number of prosecuted cases of labour exploitation and convicted offenders decreases every year and therefore the prosecution of such cases is lagging behind and labour exploitation often remains unpunished in the Netherlands. In this respect, the Committee notes the Government's indication that several complaints are filed with the labour inspectorate on cases that may involve labour exploitation, but that only a few are brought to court because most cases either do not have the characteristics of labour exploitation or do not meet the high burden of proof established in this respect, although in such cases there may be a serious detriment to workers by employers that can be examined and investigated under administrative law. ***The Committee requests the Government to provide information on the number and outcome of judicial proceedings on all matters, including labour exploitation, resulting from inspections carried out or actions taken by labour inspectors.***

Lastly, the Committee also notes that the FNV and CNV indicate that the aforementioned vulnerability of migrant workers is sustained by the role of temporary employment agencies, which number 14,000 companies (22,000 if payrolling enterprises are included) and actively recruit migrant workers in the Netherlands, sometimes under deceptive pretentions. The FNV and CNV also indicate that migrant workers have become a business model for temporary employment agencies as well as for housing facilitators and transporting companies. In this regard, the Committee notes the Government's indication that an advisory team was set up to advise the Cabinet on the protection of migrant workers and actions to be taken with respect to them, including combating labour exploitation, and that in October 2020 this team recommended increasing the capacity of the labour inspectorate in order to strengthen supervision in the temporary employment agency sector. The Government states that if a new Cabinet decides to consider such a recommendation, the labour inspection's coverage of the temporary employment agency sector would increase and thus also the likelihood of detection of malpractices. ***The Committee requests the Government to provide information on the measures adopted or envisaged to strengthen labour inspection in temporary employment agencies, including the follow-up measures taken following the recommendation of the Cabinet's advisory team in 2020 on this matter.***

Noting that the FNV and CNV reiterate that the labour inspectorate is neither authorized nor sufficiently equipped to ensure the application of the collective agreements in relation to temporary posted workers, the Committee again requests the Government to provide its comments in this respect.

The Committee is raising other matters in a request addressed directly to the Government.

New Zealand

Labour Statistics Convention, 1985 (No. 160) (ratification: 2001)

Previous comment

The Committee notes the observations of Business New Zealand (BusinessNZ) and the New Zealand Council of Trade Unions (NZCTU), communicated together with the Government's report.

Part II. Application of the Articles of the Convention. The Committee welcomes the comprehensive report provided by the Government. It notes the Government's indication that there have been certain changes in the application of the Convention during the reporting period. The Labour Market Statistics series was changed as of June quarter of 2016, with the inclusion of additional questions in the Household Labour Force Survey. The Government explains that the change was made to improve the relevance and quality of the labour market statistics compiled through the Survey, as the new content

collects more information about the nature of people's employment conditions and work arrangements. The Government also notes that, as of June 2019, the sample size for the Household Economic Survey was expanded from 5,500 households to 28,500 households in compiling information on household income, housing costs and child poverty. This change is intended to reduce margins of error in the data, as well as to provide information at a sub-population level.

Articles 7 and 8 of the Convention. Employment, unemployment and underemployment statistics. Statistics on the structure and distribution of the economically active population. The Committee notes that the Government continues to provide statistics on the economically active population, employment and unemployment to the ILO Department of Statistics (ILOSTAT) for dissemination through its website. In this respect, the latest Labour Force Survey (LFS) figures relate to 2021. Moreover, in response to the Committee's previous comment, the Government indicates that changes made to the Labour Market Statistics series and Household Labour Force Survey questionnaire implement developments with respect to Resolution I adopted by the 19th International Conference of Labour Statisticians (ICLS) on Statistics of work, employment and labour underutilization (2013). With respect to *Article 8*, the Committee notes that the Government continues to provide data on the structure and distribution of the economically active population to ILOSTAT for dissemination on its website, most recently via the 2021 ILOSTAT questionnaire. The Government notes that the Census of Population and Dwellings was last undertaken in 2018 and data was supplied to ILOSTAT for dissemination. The Government points out that participation in the 2018 Census was lower than in previous censuses. As a result, data was used from alternative sources and different methodologies to produce a fit-for-purpose dataset. It adds that planning is currently underway for the next New Zealand Census of Population and Dwellings, which will take place in March 2023. In this context, the Committee notes the observations of BusinessNZ, which indicates that information under *Article 8* of the Convention is now considerably outdated, given that the most recent census was conducted in 2018. According to BusinessNZ the 2018 census was a 'digital first' census, which some 70 per cent of New Zealanders were expected to complete. This expectation was, however, not realized. ***The Committee invites the Government to continue to provide statistical data and methodological information relevant to the application of Articles 7 and 8 of the Convention, and to supply updated information in relation to the 2023 census once it becomes available. The Government is also requested to continue to provide information on any developments in relation to the implementation of the Resolution concerning statistics of work, employment and labour underutilization (Resolution I), adopted by the 19th International Conference of Labour Statisticians (October 2013), as well as in relation to the Resolution concerning statistics on work relationships (Resolution I), adopted by the 20th International Conference of Labour Statisticians (October 2018).***

Article 9. Current statistics of average earnings and hours of work. Statistics of time rates of wages and normal hours of work. The Committee notes that statistics on hours actually worked continue be collected in the Household Labour Force Survey and submitted to ILOSTAT through its annual questionnaire. The most recent statistics supplied refer to 2020. Current statistics on average hourly and weekly gross earnings, average weekly hours paid for, and the corresponding number of filled jobs, continue to be compiled quarterly, from the Quarterly Employment Survey (QES) conducted by Statistics New Zealand in March, June, September and December. In its reply to the observations of the NZCTU, the Government indicates that the QES has been revised, but that this revision does not include additional measures, nor does it affect the scope of the QES. Revisions to coverage related to sample redesign and increased coverage of industries, rather than to scope of coverage or definitions. The Government also notes that in preparation to make these changes, the Government consulted extensively with key users of the QES, as well as some data providers. It adds that the social partners were invited to be part of the consultation process. The Committee notes that, in its observations, BusinessNZ indicates that changes made to the QES appear to address the concerns raised by the NZCTU. At the same time, the Committee notes the NZCTU's indication that the sample size of the

Household Labour Force Survey (HLFS) is too small to allow for reliable disaggregation of statistics by ethnicity, or for cross-tabulation of regional data by industry. NZCTU therefore considers that the availability and reliability of statistics on earnings, hours of work, wage structure and distribution would be enhanced by carrying out a more regular survey with a larger sample size. Responding to the observations of the NZCTU indicating that the official statistics available on wage rates in collective agreements in New Zealand show only changes in wages (increases or decreases) from the quarterly Labour Cost Index Survey, the Government indicates that the Labour Cost Index does not measure average earnings or hours of work and thus falls outside the scope of *Article 9.* The NZCTU also observes that there is currently some uncertainty around arrangements for the collection and analysis of statistics derived from collective Agreements, but that discussions are currently underway on how this will be arranged and funded in the future. ***The Committee requests that the Government provide updated information on the concepts, definitions and methodology used in the statistics covered by Article 9 of the Convention to ILOSTAT through its annual questionnaire for dissemination. The Committee also requests the Government to continue to include information on the application in practice of Article 9 of the Convention by providing information on the consultations held and cooperation with the social partners when designing and revising such concepts, definitions and methodology.***

Article 14. Statistics of occupational injuries and diseases. The Committee notes that the Government continues to supply statistics on fatal and non-fatal occupational injuries disaggregated by economic activity via the ILOSTAT annual questionnaire on labour statistics. The latest statistics refer to 2019 and are published on the Government website. Responding to the Committee's previous comment, the Government provides information on the steps that it has taken during the reporting period to improve the quality of the statistics on occupational injuries and diseases. In addition, the Government notes that Stats NZ chairs an Injury Information Working Group, which is working across government units to improve the quality of injury data (including data on workplace injuries). The "Serious injury outcome indicators" series and the "Inquiry statistics – Work-related claims" series are published on the Stats NZ website and cover the years 2000–19.

The Committee notes the information provided by the Government on developments in relation to the quality and availability of data compiled under *Article 14.* In this regard, it notes with ***interest*** the Government's indication that the issue noted by the Independent Taskforce on Workplace Health and Safety concerning unreliability of data involving workplace fatalities has been resolved. The Committee also notes with ***interest*** that the recommendation issued by the Independent Taskforce on Workplace Health and Safety to "improve the quality and availability of data and information on workplace injury and occupational health performance by establishing a sector-leading research, evaluation and monitoring function within the new agency" has been picked up in the Government's 2013 response to the independent Taskforce Report known as 'Working Safer: A blueprint for health and safety at work'. Following the 2013 report, the Government set up a research, evaluation and monitoring function with WorkSafe. The Committee notes the Government's indication that WorkSafe collects and publishes a range of data on selected industries and types of work covering annual and monthly data on fatalities, injuries, accident types, notifications, and WorkSafe activities such as enforcement, investigations and assessment. The data comes from both WorkSafe's own registers and from the claims register of the Accident Compensation Corporation (ACC). This information is published on the WorkSafe Data Centre web page. The Committee notes that WorkSafe also commissions and publishes a range of research into particular industries and other aspects of the health and safety at work system. These publications are published on the Work Safe Research web page. In addition, WorkSafe and ACC both contribute data to the '"Safe Work Australia Comparative Monitoring Report" published by Safe Work Australia. In its observations, BusinessNZ indicates that WorkSafe's 2020 annual report provides information on progress made in addressing workplace health and safety. ***The Committee requests the Government to continue to provide updated information on any developments in relation to the collection, compilation and publication of statistics on occupational injuries and diseases, including in relation to any***

measures taken to implement the recommendations of the Independent Taskforce on Workplace Health and Safety. In addition, the Committee requests that the Government continue to supply up-to-date statistics to ILOSTAT through its annual questionnaire, taking into account the decision of the International Labour Conference at its 110th Session in June 2022 to include "a safe and healthy working environment" as a fundamental principle and right at work under paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work.

North Macedonia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1991)

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1991)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on labour inspection, the Committee considers it appropriate to examine Conventions Nos 81 (labour inspection) and 129 (labour inspection in agriculture) together.

Article 3(1)(a) and (2) of Convention No. 81 and Article 6(1) and (3) of Convention No. 129. Labour inspection activities with regard to foreign workers and the protection of foreign workers in an irregular situation. The Committee notes the Government's indication, in reply to its previous comments, that labour inspectors carry out the supervision of the implementation of the Law on Employment of Foreign Nationals (LEFN) during regular inspections in the areas of labour relations. The Committee notes that, pursuant to section 18(2) of the Law, the monitoring of its implementation shall be carried out by the State Labour Inspectorate (SLI) and pursuant to section 18(3), labour inspections related to work permits and illegal employment or work of foreign nationals may be carried out ex officio or at the request of the Employment Service Agency (ESA). The SLI is then obliged to submit reports every six months regarding the instituted procedures and imposed misdemeanour sanctions to the ESA pursuant to section 18(4) of the LEFN. Fines can be imposed not only on an employer or a facilitator of illegal work, but also on a foreign national if she or he does not present the work permit when requested by the SLI (section 27). The Committee recalls that, pursuant to *Article 3* of Convention No. 81 and *Article 6* of Convention No. 129, the functions of the system of labour inspection shall be to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work. Further, in its 2006 General Survey, Labour inspection, paragraph 78, the Committee indicated that any function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection, which is to protect the rights and interests of all workers and to improve their working conditions. Referring to paragraph 452 of the 2017 General Survey on certain occupational safety and health instruments, the Committee recalls that workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as the loss of their job or expulsion from the country. ***The Committee requests the Government to take specific measures to ensure that the functions assigned to labour inspectors do not interfere with the main objective of labour inspectors, which is to ensure the protection of workers in accordance with Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129. It requests the Government to provide information on action undertaken by the inspectorate to ensure the enforcement of the rights of foreign workers found to be in an irregular situation. It further asks the Government to provide information on the number of cases in which foreign workers found to be in an irregular situation have been granted their due rights, such as the payment of outstanding wages or social security benefits.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Republic of Korea

Labour Inspection Convention, 1947 (No. 81) (ratification: 1992)

Previous comments: observation and direct request

The Committee notes the observations of the Federation of Korean Trade Unions (FKTU), the Korean Confederation of Trade Unions (KCTU) and the Korea Enterprises Federation (KEF), communicated with the Government's report, as well as the Government's response.

Articles 6, 10 and 16 of the Convention. Conditions of service of labour inspectors. Number of labour inspectors and inspection visits. The Committee previously noted that the increase in the number of labour inspectors was not sufficient to cover the increase in the volume of cases handled by them, and that labour inspectors were likely to be exposed to overtime work of more than 12 hours a week.

In response to the previous requests of the Committee, the Government indicates that the number of labour inspectors continues to increase every year, from 1,694 in 2016 to 2,894 in 2019 (2,213 for labour standards and 681 for occupational safety and health) to 3,122 in 2021 and that additional recruitment is still ongoing. The Government also indicates that the monthly average amount of overtime was 18.71 hours in 2020, reduced by 16.6 per cent (3.72 hours) compared to 2016. The overtime allowances are paid per hour, calculated as 150 per cent of the hourly amount converted from the monthly wage based on each salary grade. The Committee also notes that, according to the salary table provided by the Government, labour inspectors receive similar remuneration with the police and firefighting officials. ***The Committee requests the Government to continue its efforts to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate. It also requests the Government to continue providing information on the number of labour inspectors, the amount of overtime worked by inspectors, and any updates on comparative remuneration between labour inspectors, police, and firefighting officials.***

Article 12(1)(a). Unannounced visits. The Government indicates that, while unannounced inspections were carried out from 2015 to 2017 regarding basic employment rules in small businesses and vulnerable sectors, since 2018 the inspection plans were communicated in advance to allow employers to voluntarily rectify faults, considering that small businesses need prior instructions and guidance as they are more likely to violate the law by ignorance. The Committee notes that, according to the statistics information provided by the Government, in 2017, 5,859 announced inspections were carried out in total, while 16,705 inspection visits were conducted without prior notice. As from 2018, the large majority of inspections were announced inspections. In 2019, there were 20,714 announced inspection and 4,700 unannounced inspections carried out. In addition, the number of violations detected increased substantially, from 45,955 (17,835 by announced inspection and 28,120 by unannounced inspection) in 2017, to 89,564 (71,350 by announced inspection and 18,214 by unannounced inspection) in 2019. The Committee also notes the Government's indication that, while the number of inspections decreased after 2019 because of reduced face-to-face contact in the context of COVID-19, it intends to rebound the target number of inspection visits and increase unannounced inspections. The Government indicates that unannounced inspections include planned inspections targeting vulnerable sectors to cover institutional blind spots, report-based inspections related to wage arrears and complaint-based inspections. ***The Committee requests the Government to take the necessary measures to ensure that labour inspectors are empowered to make visits to workplaces liable to inspection without previous notice in conformity with Article 12(1)(a). It also requests the Government to provide further information on the measures taken to ensure the compliance of SMEs with basic employment rules, including the number of inspections of different types carried out and the results achieved.***

The Committee is raising other matters in a request addressed directly to the Government.

Russian Federation

Labour Inspection Convention, 1947 (No. 81) (ratification: 1998)

Previous comments: observation and direct request

The Committee notes the observations of the Confederation of Labour of Russia (KTR), received on 31 August 2021.

Article 3(1) and (2) of the Convention. Additional functions entrusted to the labour inspectorate. Functions of the labour inspection with regard to undeclared work. In its observations, the KTR indicates that the number of cases in which the inspectors have identified workers in informal labour relations is insignificant compared to assessments of the scale of undisclosed labour relations in the Russian Federation. It observes that the reports of the Federal Service for Labour and Employment (Rostrud) do not refer to the number of criminal or administrative cases launched in connection with the identification of informal employment by inspectors, nor to the number of fines imposed. The Committee notes that KTR also indicates that Rostrud, aside from monitoring in the sphere of labour relations, is also responsible for monitoring and oversight in other social spheres. ***The Committee requests the Government to provide its comments in this respect. It also requests the Government to indicate whether labour inspectors are given additional duties other than their primary duties listed in Article 3(1) of the Convention. Furthermore, it requests the Government to provide data concerning the enforcement of the legal provisions relating to conditions of work and the protection of workers through the activities of the labour inspectorate with regard to undeclared work (the number of cases in which workers were registered with the social security authorities, the number of cases in which workers were paid outstanding salaries resulting from their past employment relationship, etc.). The Committee also requests the Government to provide information on the estimated numbers of unregistered workers and uninsured workers.***

The Committee notes the KTR's indication that the inspectorate does not monitor legislation determining the rights of trade unions, including guarantees of protection from discrimination based on trade union involvement, since the relevant legislation is not part of labour law. ***Concerning this matter, the Committee refers to its observation under the Convention on the Right to Organise and Collective Bargaining, 1949 (No. 98), concerning adequate protection against acts of anti-union discrimination and interference.***

Articles 6 and 10. Conditions of service. Number of labour inspectors. The Committee notes that in reply to its previous comment concerning the recruitment of an adequate number of inspectors, the Government indicates that at present, the maximum number of personnel at Rostrud is approved by Resolution No. 1724 of 2017. The Committee also notes that the Government report does not contain information concerning the number of labour inspectors. However, the Committee notes with ***concern*** that according to the reports on the activities of Rostrud as shared by KTR, the number of labour inspectors continued to decline from 1,820, in 2019, to 1,793 in 2020. According to these reports, as of August 2021, there were 44 vacancies for state labour inspectors.

Concerning the condition of service of the labour inspectorate, the Committee notes the Government's indication that the Decree No. 481 of 7 October 2019 increased official salaries of all civil servants by 1.043 times. The Government also reports on a series of activities to ensure professional development and integration of new employees in Rostrud's territorial bodies, such as mentoring of new recruits and targeted training for a pre-selected number of labour inspectors in order to promote their career progression.

The Committee also notes that in its observation the KTR states that, despite the extended duties of labour inspectors, the number of inspectors is not increasing, but rather, continues to fall. Regarding the conditions of service, the KTR indicates that the upper limit for salaries of labour inspectors did not

exceed the average Russian monthly wage in 2020 in any of the constituent entities that have vacancies. According to the KTR, the wage of state labour inspectors is not even half of the average wage of other federal civil servants at the regional level. ***The Committee requests the Government to provide its comments in this respect. Moreover, the Committee urges the Government to take the necessary measures to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspection service. In this regard, it requests once again the Government to provide information on the efforts made to recruit new labour inspectors and to fill the existing vacancies. It further requests the Government to provide information on the number of labour inspectors and on the career structure of the Rostrud, including grade and positions as well as the number of appointments made at each position. Noting the absence of information on this matter, the Committee requests once again that the Government provide detailed information on: (i) the levels of remuneration of labour inspectors in comparison to the remuneration levels of other officials exercising functions of similar complexity and responsibility such as tax inspectors and the police; and (ii) the reason for the high attrition rate of labour inspectors.***

Article 5(b). Collaboration with representatives of employers and workers. The Committee takes note of the KTR observations according to which national legislation provides only for a general indication of the need for the Inspectorate to cooperate with trade unions and does not provide for the right of trade unions to lodge a complaint with the Inspectorate, or for the Inspectorate's cooperation on the consideration of such appeals. ***The Committee requests the Government to provide its comments in this respect. The Committee also requests the Government to provide information on measures taken to promote collaboration between the labour inspectorate and employers and workers or their organizations.***

Articles 7(3), 17 and 18. Enforcement of labour law provisions. For many years the Committee has been noting a disparity between the number of cases reported by the labour inspectorate, the number of investigations initiated and the number of convictions. The Committee takes note of the information provided by the Government regarding the monitoring activities for 2019 and 2020. However, the Committee notes that the Government's report is silent on the number of criminal cases instituted and the actual convictions. The Committee notes that, in 2020, the courts annulled 942 decisions taken by labour inspectors. In its observations, the KTR indicates that although the reports of Rostrud provide general indicators for administrative proceedings against employers, there is a lack of information about all categories of violations for which employers have been subjected to administrative proceedings. The KTR also indicates that state labour inspectors' powers are confined to responding to undisputed cases of violations of labour law, although the official understanding of "undisputed cases of violations of labour law" and the limitations on the powers of state labour inspectors in such cases have not been formally established. The trade union adds that this approach to labour inspectors is due to ambiguous legal practices that consider unlawful the act of state labour inspectors issuing employers with binding orders or imposing fines for violations of the law, if by doing so the inspector is "resolving an individual labour dispute". According to the KTR, since the legislation does not establish clear criteria that would allow the differentiation of a "labour dispute" from a situation in which a state labour inspector is entitled to intervene, state labour inspectors' orders on any issue may in practice be declared unlawful by the court in connection with inspectors exceeding their authority and interfering in a "labour dispute". Regarding concrete measures taken to address the deficiencies identified, the Government reports a series of trainings but does not provide specific information regarding the training for labour inspectors on the establishment and completion of non-compliance reports, including the collection of the necessary evidence, as previously requested by the Committee. ***The Committee requests the Government to provide its comments with respect to the KTR observations. The Committee urges the Government to take the necessary measures to ensure the effective enforcement of the legal provisions enforceable by labour inspectors. It once again requests the Government to provide information on concrete measures taken to address the deficiencies identified,***

such as training for labour inspectors on the establishment and completion of non-compliance reports, including: (i) the collection of the necessary evidence; (ii) the improvement of communication and coordination activities with the judiciary on the required evidence to establish and effectively prosecute labour law violations; and (iii) the need for timely communication of the outcome of cases to the labour inspectorate. The Committee requests the Government to provide concrete statistics on the administrative and criminal cases reported by the labour inspectorate, the investigations and prosecutions initiated, and the penalties imposed as a result. In view of the KTR observations, the Committee also requests information on the reasons for the cancellations by the courts of the decisions taken by labour inspectors.

Article 12. Labour inspectors' powers and prerogatives. In reply to the Committee's previous comment, the Government indicates that the new Federal Act No. 248-FZ of 31 July 2020 provides for unannounced inspection visits, which shall be carried out without prior notification and during which the inspector has unimpeded access to documents, facilities and premises, as well as the right to perform a series of monitoring actions. In this respect, the Committee notes that the inspector can conduct an oral interview of the controlled person under section 78 of the Federal Act No. 248-FZ. The Committee notes that in its observations, the KTR indicates that Federal Act No. 248-FZ was adopted without regard to the view of the KTR and retained restrictions on the powers of state labour inspectors. In particular, it indicates that: (i) physical inspections are possible only if an inspector cannot verify the completeness and accuracy of the documents and explanations submitted by an employer, in order to assess the lawfulness of the employer's activity (inactivity) by another means (Act No. 248-FZ, section 73(3)); (ii) unplanned inspection visits are allowed only with the consent of the prosecutor, except in situations where they are conducted on special grounds, such as on the instruction of the Russian President or the Russian Government, at the request of the prosecutor, or in the absence of evidence of the execution by the employer of a previously issued order (Act No. 248-FZ, sections 73(5) and 57(1)(3–6), 57(3) and 66(12)); and (iii) employers must be given notice at least 24 hours prior to the start of an unplanned inspection visit (Act No. 248-FZ, section 73(6)). Furthermore, the Committee notes with ***concern*** that many of the restrictions on the powers of labour inspectors noted previously by the Committee remain in place, including restrictions on the free initiative of labour inspectors to undertake inspections without prior notice (sections 9(12) and 10(16) of Law No. 294-FZ) and on the free access of labour inspectors to workplaces at any hour of the day or night (sections 10(5) and 18(4) of Law No. 294-FZ), as well as the enumeration of limited grounds on which unscheduled inspection visits may be undertaken (section 10(2) of Law No. 294-FZ and section 10 of Regulation No. 875). The Committee also notes that, for a number of years it has been noting that pursuant to section 19(6)(1) and (2) of the Code of Administrative Offences, labour inspectors may incur administrative liability where they fail to observe certain restrictions. The Committee notes that the Government has not provided relevant information on this matter. ***The Committee requests the Government to provide its comments with respect to the KTR observations. Recalling and emphasizing the importance of fully empowering labour inspectors to make visits without previous notice in order to guarantee effective supervision, the Committee once again urges the Government to take the necessary measures to bring the national legislation into conformity with Article 12 of the Convention, particularly by ensuring that labour inspectors are empowered to make visits without previous notice, in line with Article 12(1)(a) and (b) of the Convention. The Committee reiterates its request that the Government provide further information on the cases brought against officials of the state labour inspectorates under section 19(6) of the Code on Administrative Offences, indicating the requirements of the legislation on state control that were violated, particularly specifying violations related to undertaking labour inspections on grounds other than those permitted in law, and any penalties assessed against inspectors based on such violations.***

Article 14. Notification of industrial accidents and cases of occupational diseases to the labour inspectorate. For a number of years, the Committee has been requesting the Government to provide

information on any legislative changes establishing the systematic notification of the labour inspectorate of cases of occupational diseases. The Committee recalls that according to the Order of the Ministry of Health No. 176 of 28 May 2001, the Sanitary and Epidemiological Supervision Centre shall inform the territorial state labour inspector only for acute diseases. In its observations, the KTR indicates that the Inspectorate does not have the authority to collect full information on industrial accidents and occupational diseases and refers to section 228.1 of the Labour Code, according to which, employers are only required to inform the Inspectorate of group industrial accidents, serious industrial accidents or fatal industrial accidents. The Committee emphasizes once again that the systematic notification of the labour inspectorate of industrial accidents and cases of occupational diseases is important to fulfil its functions and obligations, including the planning of labour inspection visits and the inclusion of such information in the annual reports on labour inspection. ***Therefore, the Committee requests once again that the Government provide information on any measures taken or envisaged to establish a procedure to ensure that the labour inspectorate is notified of all types of industrial accidents and cases of occupational diseases. It also requests the Government to ensure that representative statistics in this regard are included in the annual labour inspection report.***

Article 16. Frequency and thoroughness of labour inspections. In reply to the Committee's previous comment, the Government indicates that inspections visits using the risk-based approach are only carried out on a scheduled basis. The Government adds that, by 1 July of the year preceding the scheduled inspection year, certain information on employers whose activities are classified as high- and significant- risk is posted and kept up-to-date on the official Internet website of Rostrud. The Government also indicates that it developed a series of online tools to reinforce Rostrud's preventive work in the form of online consulting for employees and employers. This also includes the possibility for employers to conduct self-inspections through an electronic checklist. The Government adds that, the Federal Act No. 122-FZ of 24 April 2020 on Experimenting with the Use of Electronic Work Documents, will facilitate implementation of electronic oversight while avoiding direct interaction with employers, thereby substantially reducing inspectors' workload. In its observations, the KTR points to increased intervals between inspections; and indicates that the criteria for assigning employers to the various risk categories give rise to the following concerns: (i) regulations offer no instructions on the right of workers and trade unions to contact the Inspectorate with information on facts affecting the assignment of an employer to a risk category; (ii) the assignment of employers to risk categories is largely based on the formal criterion of the main type of economic activity indicated by the employer, with no consideration given to the fact that employers may at the same time in practice carry out activities assigned to a higher risk; (iii) one of the criteria influencing the establishment of employers' risk categories is the existence or absence of administrative proceedings for the violation of labour law which is taken into consideration irrespective of their number, and thus does not encourage unscrupulous employers to observe labour law if they have already been held administratively liable for its violation; (iv) the consideration of the criteria of the number of workers on a company's staff, and type of economic activity, means that the majority of small- and medium-sized enterprises are considered low-risk and thus excluded from planned inspections.

The Committee takes note of the number of inspections, including scheduled inspections carried out by the State Labour Inspectorate for the period 2016–20. It notes that the number of inspections significantly decreased from 131,286 in 2019 to 69,895 in 2020, a decrease which according to the Government was due to restrictions associated with adoption of decisions taken in the context of the COVID-19 pandemic. In this respect, the KTR refers once again to constraints on the work of the state labour inspectorate in the context of the pandemic through legislations adopted since 2020, and to an increase in workers' complaints about the non-observance by employers of labour law. ***The Committee requests the Government to provide its comments with respect to the KTR observations. It requests the Government to take measures, including legislative amendments, with regard to the criteria for assigning employers to the various risk categories to ensure that workplaces are inspected as often***

and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. The Committee requests the Government to continue to provide statistics on the number of labour inspections undertaken each year, including the number of scheduled and unscheduled inspections, and of inspections undertaken on-site and those conducted without a visit to the establishment. It requests once again that the Government provide the breakdown of inspections in small, medium-sized and large enterprises. Further, the Committee requests the Government to provide detailed information on the circumstances under which employers conduct self-inspections, and to indicate the number of self-assessments conducted and the number of follow-up inspection visits by labour inspectors in case of violations. The Committee also requests the Government to indicate whether any COVID-19 related restrictions to labour inspection are still in place.

Articles 20 and 21. Annual labour inspection report. The Committee takes note of the observations of the KTR according to which, although the Inspectorate's reports contain a range of statistical information on the number of complaints received by the Inspectorate and the distribution of visits by economic sector, they do not provide statistical information on occupational diseases and contain only some statistical data on serious industrial accidents rather than on all accidents. ***The Committee requests the Government to provide its reply in this respect and indicate any steps taken or envisaged in order to publish a consolidated labour inspection report containing detailed information on all the items listed in Article 21(a)–(g) of the Convention.***

Rwanda

Labour Inspection Convention, 1947 (No. 81) (ratification: 1980)

Previous comments: observation and direct request

Article 3(1) and (2) of the Convention. Additional functions entrusted to labour inspectors. Conciliation. With reference to its previous comment, the Committee notes the Government's indication that it adopted Law No. 66/2018 of 30/08/2018 regulating labour in Rwanda (the Labour Code), which revises Law No. 13/2009 of 27 May 2009 (the 2009 Labour Code). The Committee notes in particular that sections 102 and 103 of the Labour Code provide that labour inspectors are responsible for mediating individual and collective labour disputes. In addition, the Government indicates that section 3 of the Ministerial Order No. 001/19.20 of 17/03/2020 relating to labour inspection sets out the responsibilities of the labour inspectorate as including the conciliation of labour disputes. In this regard, the Committee notes that sections 10 to 16 of the Order provide for the procedure to be followed for the settlement of labour disputes when mediated by labour inspectors. The Committee notes that the Government did not make use of the review of the Labour Code undertaken in 2018 to bring its legislation in line with the requirements of *Article 3(2)* of the Convention. The Committee recalls that the time spent by inspectors on conciliation may be detrimental to the performance of their primary duties, as defined in *Article 3(1)* of the Convention, particularly in a context where resources are limited. Further, the Committee draws the Government's attention in this regard to the guidance provided in Paragraph 8 of the Labour Inspection Recommendation, 1947 (No. 81), stating that the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes. ***The Committee therefore asks the Government to: (i) take the necessary measures to discharge labour inspectors of any mediation functions regarding individual and collective labour disputes; (ii) amend the legal framework to this effect, in particular sections 102 and 103 of the Labour Code and sections 3 and 10 to 16 of the Ministerial Order No. 001/19.20 of 17/03/2020; and (iii) keep the Office informed of the progress made in this respect.***

Article 12(1)(a). Powers of labour inspectors to enter freely at any hour of the day or night any workplace liable to inspection. With reference to its previous comment, the Committee notes that section 6(2)(1) of the Ministerial Order No. 001/19.20 of 17/03/2020 relating to labour inspection provides that, upon

presentation of identification, a labour inspector can enter an enterprise of his or her jurisdiction during working hours, without notice for inspection purpose. The Committee notes that the new Ministerial Order continues to limit the power of labour inspectors to conduct inspection visits to the working hours of the undertaking. The Committee notes that, for many years, it has been requesting the Government to bring the provisions of national legislation in line with *Article 12(1)(a)* of the Convention. It recalls once again that labour inspectors should be empowered to enter workplaces liable to inspection at any hours of the day and night. In this regard the Committee once again refers to paragraph 270 of its 2006 General Survey on labour inspection, which refers, for example, to the appropriate timing of visits necessary to carry out technical inspections when machinery or production processes are stopped, or to check for abusive night conditions in a workplace officially operating during the daytime. ***The Committee therefore urges the Government to bring its legislation in line with Article 12(1)(a) of the Convention so as to ensure that the powers of entry of labour inspectors are extended to any hour of the day or night regardless of the working hours of the workplaces liable to inspection.***

The Committee is raising other matters in a request addressed directly to the Government.

Uganda

Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)

Previous comment

Article 4 of the Convention. Supervision and control by a central authority. The Committee notes the Government's response to its previous request, to place the labour inspection system under a central authority following its decentralization, that while the central government plays a supervisory role, the system of labour inspection is decentralized and local governments directly supervise the labour inspectors in their jurisdictions. The Government indicates that while no new legislation has been adopted, the Ministry of Gender, Labour and Social Development has developed a position paper to have the labour inspection system placed under the central inspections authority. The paper is in initial stages and will be subject to consultations. The Committee further notes the Government's indication that the decentralization poses a challenge for the undertaking of a sufficient number of inspections and for the preparation of the annual labour inspection report. ***The Committee urges the Government to strengthen its efforts to place the labour inspection system under a central authority with a view to ensuring coherence in the functioning of the system. It requests the Government to continue to provide information on the legislative and practical steps taken, including the consultations held in that respect.***

Articles 10, 11 and 16. Resources of the labour inspection system and inspection visits. The Committee takes due note of the Government's indication that it has increased the total number of inspectors to 231: 58 inspectors at the central inspection system (including 27 specialized occupational safety and health inspectors), and an additional 173 inspectors engaged for local governments, city authorities and municipal councils. The Government indicates that, at the central level, while 82 positions have been approved, only 71 per cent have been filled. The Government also indicates, in response to the Committee's previous request on human and material resources, that : (i) it has committed 5 per cent of the Government's Social Development Non-wage Recurrent Transfer Grant to the districts to reduce the financial constraints on the district's labour inspection; (ii) at the national level, the OSH Department at the Ministry of Gender, Labour and Social Development received funding for joint inspections between headquarters, district inspectors and other key inspection stakeholders; and (iii) it has put in place measures to enhance the operationalization of local offices for labour inspectors, including providing necessary equipment and developing projects and programmes for the construction of better offices. However, the Committee further notes the Government's indication that it is faced with administrative and financial constraints that include the decentralization of the labour department, and

that as this department is not a priority, it is inadequately financed and hence there are few inspections. In addition, the Government indicates that most labour inspectors lack necessary transport equipment such as motor vehicles and motorcycles that are necessary for the execution of their mandate, but that labour inspectors are reimbursed for travel and incidental expense in performing their duties. ***The Committee urges the Government to take further measures to ensure that there are a sufficient number of labour inspectors provided with adequate resources, in conformity with Articles 10 and 11 of the Convention. It also requests the Government to take immediate measures to ensure that workplaces are inspected as often as is necessary for the effective application of the relevant legal provisions, as required by Article 16 of the Convention. In this respect, it requests the Government to take measures to ensure the filling of the vacant positions, and to address the lack of necessary transport facilities for inspectors. Finally, the Committee requests the Government to continue to provide information on the measures taken, as well as information on the total number of inspector positions, the number of filled positions, and the number of inspection visits carried out.***

Articles 19, 20 and 21. Reports from local inspection offices and publication and communication of an annual report on labour inspection. The Committee notes the Government's indication, in response to its previous comment, that under the decentralized structures, labour inspectors report directly to the districts, which leads to irregularities of reporting to the central inspection authority. The Government indicates that it mostly receives reports from local labour offices only upon demand, but that the Ministry has communicated to the local authorities regarding the requirements to submit reports. The Government states that efforts are being made to ensure that annual inspection reports are developed, published and transmitted as required. ***In line with the requirements of Article 21 of the Convention, and recalling that section 20 of the Uganda Employment Act of 2006 also provides for the annual publication of a report, the Committee urges the Government to take the necessary measures to ensure that annual reports on labour inspection are published and communicated regularly to the ILO, and that they contain the information required by Article 21(a)–(g).***

The Committee is raising other matters in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 63** *(Chile, Cuba, Egypt, Nicaragua, United Republic of Tanzania);* **Convention No. 81** *(Albania, Algeria, Angola, Antigua and Barbuda, Austria, Bahrain, Bangladesh, Barbados, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Canada, Central African Republic, Chad, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Ecuador, Finland, Ghana, Greece, Guinea-Bissau, Guyana, Haiti, Hungary, India, Indonesia, Italy, Jamaica, Japan, Kenya, Kyrgyzstan, Lebanon, Libya, Lithuania, Madagascar, Malawi, Malta, Morocco, Namibia, Netherlands, Netherlands: Caribbean Part of the Netherlands, Netherlands: Sint Maarten, New Zealand, Niger, North Macedonia, Republic of Korea, Rwanda, Uganda, Uzbekistan);* **Convention No. 85** *(United Republic of Tanzania: Zanzibar);* **Convention No. 129** *(Albania, Belgium, Bosnia and Herzegovina, Burkina Faso, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Denmark, Finland, Guyana, Hungary, Italy, Kenya, Madagascar, Malawi, Malta, Morocco, Netherlands, North Macedonia, Uzbekistan);* **Convention No. 150** *(Central African Republic, China, Costa Rica, Côte d'Ivoire, Democratic Republic of the Congo, Denmark, El Salvador, Finland, Lebanon, Malawi, Morocco, Namibia, Niger, North Macedonia, Rwanda);* **Convention No. 160** *(Cyprus, Denmark, El Salvador, Lithuania, Mauritius, Mexico, Republic of Moldova).*

Employment policy and promotion

Armenia

Employment Policy Convention, 1964 (No. 122) (ratification: 1994)

Previous comment

Article 1 of the Convention. Employment trends and implementation of an active employment policy. The Committee notes the signing of the Decent Work Country Programme (DWCP) for 2019-2023, which sets priorities and key country outcomes that were developed in close consultation with the tripartite constituents and other national stakeholders. The Committee notes that, according to information available on the ILO website, despite large-scale reforms in the employment sphere over the past years, there are still pressing issues to be addressed. These include the gap between labour force supply and demand, existing barriers to employment for first-time labour market entrants, groups in vulnerable situations and skilled workers. Under the second DWCP priority, the national constituents undertake to develop a new National Employment Strategy (NES), addressing these and other issues, such as youth and rural employment, informality and entrepreneurship development. The NES, once developed and adopted, is to become a core national policy document for a comprehensive employment policy framework to support inclusive and sustainable economic growth in Armenia. The Committee further notes the Government's indication that the 2021 programme of the Government of the Republic of Armenia includes among its key priorities the eradication of poverty through the promotion of employment and education. In this context, the Government indicates that it is taking steps to review the employment policies, one of which is the wide-scale programme "Work Armenia!", which focuses on promoting employment among women and young persons. Lastly, the Government indicates that measures have been taken to introduce career guidance activities in vocational education and training (VET) institutions, including in the framework of the "Better Qualifications for Better Jobs 2017–2019 Budget Support Agreement between the Government of the Republic of Armenia and the European Union (EU).

With regard to employment trends, the Government reports that, as of 1 January 2021, 87,999 job seekers were registered in the regional centres of the United Social Service (former State Employment Agency) of the Ministry of Labour and Social Issues, representing an increase of 3.6 per cent in comparison with the same period of the previous year. In the same period, 10,109 people were employed (25.2 per cent less as compared to the previous year), 1,450 persons were not included in the employment regulation state programs (a decrease of 40 per cent as compared to the previous year). Moreover, there were 61,320 persons unemployed (a decrease of 0.7 per cent in comparison with the previous year). The Government adds that the number of unemployed women remained high (39,653 women), representing 64.7per cent of the total number of unemployed persons. Moreover, the Government indicates that regional disparities also remain and reports that in 2020, the highest employment was registered in Yerevan (2,253 jobseekers were hired in 2020) and the lowest in Vayots Dzor (only 273 jobseekers were hired). In this context, the Government refers to the implementation of the programme "Support for Livestock breeding" since 2019, with the objective of promoting employment and overcoming poverty in certain regions. The Government reports that in 2019, 1,098 persons participated in the program. The Committee further notes that, according to information derived from the Household Labour Force Survey available to the ILO Department of Statistics (ILOSTAT), in 2020, the labour force participation rate was 66.5 per cent (71.1 per cent for men and 62.6 per cent for women), the employment-population ratio was 58.4 per cent (60.5 per cent for men and 56.6 per cent for women). Finally, the unemployment rate was 12.2 per cent (14.9 per cent for men and 9.6 per cent for women). ***The Committee requests the Government to continue to provide detailed***

updated information on the nature, scope and impact of the measures taken to promote full productive employment, including those adopted in the framework of the Decent Work Country Programme (DWCP) 2019-2023. It also requests the Government to provide detailed updated information on progress made in respect of the development and adoption of the National Employment Strategy (NES), and to provide a copy once it is adopted. In addition, the Committee requests the Government to continue to provide detailed updated information, including statistical data disaggregated by sex and age, on employment trends in the country, particularly on employment, unemployment and underemployment.

Groups vulnerable to decent work deficits. The Committee notes the Government's indication that, in 2020, 5,675 persons were registered in state employment regulation programmes, of which 54.5 per cent were women, 22.4 per cent were young people aged 16 to 29 and 6.2 per cent were persons with disabilities. The Government adds that 1,162 of the participants in these programmes acquired stable employment or became self-employed during 2020, 62 of which were persons with disabilities. In addition, the Government reports that 3,256 people became temporarily employed in paid seasonal public works, including 265 persons with disabilities. The Committee also notes the information provided by the Government regarding the adoption of new programmes aimed at promoting women's employment. The Government indicates that support is provided for jobseekers with children under the age of three. Assistance for childcare is also provided to parents returning to work while the child is under the age of two years. These measures aim to facilitate the return to work of people on childcare leave. In addition, on-the-job training is provided to mothers who do not have a competitive professional qualification in the job market to enable them to acquire competitive work skills at the workplace. The Committee nevertheless notes that, in its concluding observations of 31 October 2022, the Committee on the Elimination of Discrimination against Women (CEDAW) noted with concern the limited access to stable and adequately remunerated employment for disadvantaged and marginalized groups of women, including women belonging to ethnic minorities, internally displaced women, women in a refugee-like situation, migrant women and women with disabilities (document CEDAW/C/ARM/CO/7, paragraph 35 (f)). Moreover, the Committee notes the information provided by the Government on the implementation and impact of different programmes aimed at promoting the employment of persons with disabilities, including the provision of financial assistance (reimbursement of 50 per cent of the monthly salary for one year) to employers of persons with disabilities. The Government also refers to the provision of a one-time compensation to employers hiring persons with disabilities to train them to support their acquisition of adequate skills and abilities, as well as for the adjustment of the workplace to their needs. The Government reports that, in 2020, there were 522 beneficiaries of financial support for training and 4 beneficiaries of the financial support for workplace adjustments. In addition, the Government refers to the adoption of Decision No. 1616-N of 14 November, 2019, which introduced amendments to several government employment programmes, with a view to expanding their scope and improving their implementation. For instance, the requirement of having the status of unemployed person for at least three months has been removed. The Government indicates that this conditional requirement was hindering the implementation of those employment programs which require a quick response to make the job seeker more competitive in the labour market and enable the jobseeker to rapidly meet the needs of the employer. Finally, the Government refers to the implementation of employment programmes to promote employment of the unemployed citizens of the Artsakh Republic, who were deported in 2020 due to the war with Azerbaijan: these targeted programmes include a three-month internship programme and a programme providing temporary employment through the paid public works system. The Committee nevertheless notes that the Government does not provide information on the measures taken in the area of vocational education and training aimed at promoting employment among young persons. ***The Committee requests the Government to continue to provide detailed updated information, including statistical data disaggregated by sex, age and region, on the nature, scope and impact of the measures and programmes implemented to promote the employment***

of groups vulnerable to decent work deficits, including women, young persons, persons with disabilities and persons vulnerable to intersectional discrimination. With regard to the active labour market measures directed at young persons, the Committee requests the Government to provide information on the nature, scope and the impact of the measures taken in the area of vocational education and training in relation to improving the employability of young persons.

Article 2. Implementation of active labour market measures. The Committee notes the Government's indication that no control mechanisms are established under the national legislation to monitor the activities of private employment agencies. ***The Committee therefore requests the Government to provide detailed information on any measures taken or envisaged, in consultation with the social partners, to regulate the activities of private recruitment agencies operating on Armenian territory. In this regard, the Committee invites the Government to consider the possibility of ratifying the Private Employment Agencies Convention, 1997 (No. 181), as the most updated instrument in this area.***

Undeclared work. The Government indicates that amendments were introduced to the Tax Code of the Republic of Armenia during the reporting period with a view to strengthening the requirements regarding the formalization of employees. The Government reports that these amendments have contributed to increasing the number of registered employees and to strengthen the efficiency of the accuracy checks carried out to formalize the employees recruited, in accordance with the legislation and/or submit a registration statement for the employee. The Government reports that, between 2018 and 2020, 6,235 unregistered employees were identified. In addition, the number of jobs held by taxpayers with declared income increased from 513 000 in January 2019 to 593 000 in January 2021. ***The Committee requests the Government to continue to provide updated disaggregated information on the impact of the measures taken to reduce the number of undeclared workers and facilitate their integration into the formal economy.***

Article 3. Consultation of the social partners. The Committee notes the Government's indication that the State Employment Agency has continued to actively cooperate with the Republican and Territorial Coordination Committees on labour market issues, annual employment programs, and providing information on the implementation of the annual state employment regulation programs. The Government points out that, each year, the Republican Harmonisation Committee discusses and submits its opinions on the draft annual programme to the Republican Tripartite Commission, which is responsible for ensuring the implementation of the Republican Collective Agreement. The final draft annual programme, containing the views expressed by both parties, is then transmitted to the Government of the Republic of Armenia for approval. ***The Committee requests the Government to provide concrete examples of the manner in which the views of the social partners are taken into account in the development, implementation and review of employment policies and programmes.***

Cameroon

Employment Policy Convention, 1964 (No. 122) (ratification: 1970)

Previous comment

The Committee notes the observations of the General Union of Workers of Cameroon (UGTC), received on 16 September 2021, concerning the application of the Convention. ***The Committee requests the Government to provide its comments in this regard.***

Article 1 of the Convention. Implementation of an active employment policy. The Government indicates that, as part of the promotion of self-employment, Framework Act No. 2019/004 of 25 April 2019 governing the social economy in Cameroon has been adopted and the corresponding decree has been signed. The Committee notes the UGTC's indication that it was not consulted on Act No. 2019/004 of 25 April 2019 and the related decree. Furthermore, the Committee notes the adoption, on 3 January

2020, of Decree No. 2020/0001 on the structuring and functioning of the network of social economy units. With regard to the development and implementation of an active employment policy, the Committee notes that in May 2017, the strategic components of the National Employment Policy (PNE) were developed with the technical and financial support of the ILO and approved by the interministerial committee responsible for monitoring employment in Cameroon. In this context, the UGTC observes that, despite the ILO's support, Cameroon has not yet adopted an act on employment policy. The Committee notes that, according to the ILO study, "Evaluation des besoins des unités de l'économie sociale et identification des chaines de valeur prioritaires pour la création d'emplois décents au Cameroun" (Assessment of the needs of social economy units and identification of priority value chains for the creation of decent jobs in Cameroon), the Government has embarked on a process of structural reforms and macroeconomic policies, set out in Cameroon's National Development Strategy 2030. This strategy is reflected in Cameroon's development policy documents for the next ten years, namely the National Development Strategy 2020–30 (SND 2020-2030), the Rural Sector Development Strategy/National Agricultural Investment Plan 2020-2030 (SDSR/PNIA 2020-2030), and in the main lines of the National Social Economy Development Programme (PNDES), offering decent and productive employment opportunities to all. ***While noting the efforts made by the Government in the context of structural reforms and macroeconomic policies, the Committee recalls that the main requirement of the Convention is to declare and pursue a national employment policy for the promotion of employment and decent work, and urges the Government to take the necessary measures to finalize the development of the new national employment policy, in consultation with the social partners and relevant stakeholders. The Committee requests the Government to keep it informed of the measures taken and progress made in this regard, and to provide a copy of the new policy once it has been adopted.***

Article 1(3). Coordination of education and training policy with employment policy. The Government indicates that, as part of the employment strategy, Act No. 2018/010 of 11 July 2018 governing vocational training has been adopted. The Government also indicates that the Act provides for the creation of the National Council for Vocational Guidance and Training, which is responsible for monitoring and evaluating the implementation of vocational training policy and strategies. It adds that eight regulatory texts establishing the modalities of application of the Act have already been signed. The Committee notes that, according to the provisions of Act No. 2018/010, in particular section 8(1) and (2), vocational training is governed by the principles of tripartism between the State, the employer and the worker (section 1), and that the State ensures that vocational training meets the needs expressed by socio-occupational groups, in order to minimize the mismatch between training and employment (section 2). It also notes that section 47(5) of the Act stipulates that the State shall ensure the relevance, quality and continuous adaptation of vocational training to national economic and socio-cultural realities, and to the international environment. ***Noting that the Government has not replied to the points raised previously, the Committee once again requests the Government to indicate how the State ensures consistency in the organization of vocational training as part of national or regional planning, in order to overcome the difficulty of coordinating education and training policy with employment policy. It also requests the Government to provide information on the consultations held with employers' and workers' organizations and to provide, in particular, specific examples of the manner in which the social partners' views are taken into account in the preparation and implementation of draft legislation, and in any other measures related to the development and implementation of a coordinated education and training policy. The Government is also requested to provide information on the impact of the implementation of the new Act on the occupational integration of categories of workers, particularly young workers, in the labour market.***

Informal economy. The Committee notes the information provided by the Government in its 2021 report under the Termination of Employment Convention, 1982 (No. 158), concerning the introduction of facilitation and support measures for workers in the informal sector. In particular, the Government

mentions support for small and medium-sized enterprises (SMEs) in the textile and innovation sectors, social safety net mechanisms with an increase in family allowances to 60 per cent, the waiving of penalties for the late payment of social security contributions, a three-month suspension of checks on the National Social Insurance Fund (CNPS), tax exemptions for informal production units, and the application of tax and customs reforms to lighten the burden on employers. In this regard, the Committee notes that, according to the ILO study, "Etude sur la migration de l'économie informelle vers l'économie formelle : proposition de stratégie pour le groupement inter-patronal du Cameroun" (Study on Migration from the Informal to the Formal Economy: Proposed Strategy for the Network of Employers' Organizations of Cameroon), the Government has implemented initiatives to reduce the size and expansion of the informal sector in Cameroon. In particular, it has created Enterprise Creation Formality Centres (CFCE) and fostered the creation of Approved Management Centres (CGA) to limit barriers to entry into the formal sector. ***The Committee requests the Government to provide up-to-date information on the impact of measures taken to facilitate the transition from the informal to the formal economy. In addition, it requests the Government to provide detailed information on the manner in which the facilitation and support measures taken contribute to the creation of decent jobs and provide adequate protection to workers in the informal economy.***

Article 2. Collection and use of data on employment. The Committee notes that the Government does not provide any information in this regard. ***Given that data collection allows the results of employment policies to be examined and evaluated, and the monitoring of progress towards full, productive and freely chosen employment, the Committee once again request the Government to specify the active employment policy measures adopted as a result of the establishment of the various bodies responsible for collecting information on employment. It also requests the Government to indicate to what extent and the manner in which labour market information is used as a basis for the establishment of the new employment policy (Article 2).***

Article 3. Participation of the social partners in the development and implementation of employment policies. The Committee notes the UGTC's observations that trade union organizations are not part of the National Council for Vocational Guidance and Training. In this regard, it also notes the observations forwarded by the UGTC under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), particularly concerning the lack of representativeness in the sectors of activity and the absence of a forum for inter-union reflection. ***Recalling the importance of the participation of the social partners and persons concerned in the consultation process with respect to the development and implementation of a national employment policy, the Committee once again requests the Government to provide information on the participation of the social partners in the development and implementation of the national employment policy. The Committee also requests the Government to take all the necessary measures to facilitate the consultation of representatives of workers, including rural workers and informal economy workers, in the development and implementation of employment policy, as provided for in Article 3 of the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

Canada

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

Previous comment

Articles 1 and 2 of the Convention. Employment trends and active labour market measures. In its previous comments, the Committee noted the concerns raised by the Canadian Labour Congress (CLC) with respect to the lack of an active policy to promote full, productive and freely chosen employment that is articulated and integrated into socio-economic decision-making, as required by *Article 1* of the Convention. The CLC indicated that the aims set out in *Article 2* are difficult to coherently implement

through measurable objectives that could lead to concrete reporting for the evaluation of programmes. The Committee requested that the Government indicate the manner in which active labour market measures are kept under review within the framework of an overall coordinated economic and social policy. The Government indicates that the Labour Market Development Agreements (LMDAs) and Workforce Development Agreements (WDAs) include a Performance Measurement Strategy. The data collected under the Strategy allow provincial and territorial governments to support the continuous improvement of programmes and services and ensure that investments are producing concrete results for the population, such as increased income and sustainable jobs. Under the Performance Measurement Strategy, provinces and territories provide the federal Government with data on the number of persons benefitting from employment measures and interventions completed under the LMDAs and the WDAs. The Committee notes that, according to the 2020-21 Employment Insurance Monitoring and Assessment Report, individuals that receive training and employment supports while receiving Employment Insurance (EI) income benefits earn more and reduce their dependence on EI and social assistance. The LMDAs provide labour market support measures to workers and employers across Canada. These supports range from less-intensive employment counselling and job search assistance to more intensive measures, such as skills training and experiential learning through targeted wage subsidies. Recent evaluations have examined the effectiveness of LMDA-funded supports and identified lessons learned for the efficient design and delivery of particular measures. According to the cited report, the incremental impact analysis demonstrated that Employment Assistance Services (EAS), Skills Development (SD) and Targeted Wage Subsidies (TWS) resulted in improvements in labour market attachments overall. These supports have also been shown to benefit sub-groups of participants: females, males, young persons, older workers, indigenous people, persons with disabilities, recent immigrants and visible minorities. The Committee notes that, according to the 2022 Budget, the federal Government provides more than 3 billion Canadian dollars (CAD) in funding annually to provinces and territories for the purpose of providing training and employment support through the Labour Market Transfer Agreements. These investments help more than 1 million Canadians every year prepare for their next job through programmes ranging from skills training and wage subsidies, to career counselling and job search assistance. Budget 2022 also proposes to amend Part II of the Employment Insurance Act to ensure that more workers are eligible to receive assistance before becoming unemployed, as well as to ensure that employers can receive direct support to re-train their workers. During the first months of the pandemic, the Canadian economy experienced its steepest output decline since quarterly data were first recorded in 1960. The Committee notes that the unemployment rate in February 2022 stood at 5.5 per cent, lower than prior to the COVID-19 pandemic. It further notes from Budget 2022 that, with the unemployment rate hitting near-record lows, some businesses are struggling to find workers, whereas many Canadians – women with young children, new graduates, newcomers, black and racialized Canadians, indigenous peoples, and persons with disabilities, among others – are facing barriers to securing meaningful and well-paid work. ***The Committee requests the Government to continue providing up-to-date information on the measures adopted or envisaged to achieve the objectives of the Convention and, in particular, on how these have helped the beneficiaries obtain full, productive and sustainable employment and decent work. It further requests the Government to continue to provide information, including statistical data disaggregated by sex, age and economic sector, on the current situation and trends regarding the active population, employment, unemployment and underemployment.***

Article 3. Participation of the social partners in the formulation and implementation of policies. The Government reports that, pursuant to the LMDAs and WDAs, the payment of annual funding to provinces and territories is tied to deliverables, including annual plans and reports in which provinces and territories are required to provide information on consultations undertaken with employers' and workers' organizations. More specifically, provinces and territories must provide a description of the consultation process and the results of the process in their annual plans and reports, as well as a list of

the stakeholders consulted. Broad-based consultations with provinces, territories and stakeholders provide an opportunity to identify ways to improve the labour market transfer agreements and guide future investments to strengthen labour market programming. The feedback received from labour market transfer agreement consultations held in 2016 with the Forum of Labour Market Ministers (FLMM) led to a significant reform of these agreements to expand and improve skills training and employment supports. Consultations also take place, on a needed basis, with federal, provincial, and territorial governments through the FLMM Working Group on Labour Market Transfer Agreements and Performance Measurement. This Forum enables partners to oversee and review the implementation of the performance measurement plan on LMDAs and WDAs, to ensure that it captures the key performance indicators required to fully capture the outcomes of programmes and services. The Committee recalls that *Article 3* of the Convention calls for measures and programmes to be adopted and implemented under the national employment policy through an inclusive process of consultation with the social partners and persons affected by the measures to be taken (2020 General Survey, *Promoting employment and decent work in a changing landscape*, paragraph 94). Paragraph 5 of Recommendation No. 169 indicates that policies, plans and programmes adopted in the framework of the employment policy should be drawn up and implemented in consultation and cooperation with employers' and workers' organizations and other representatives of the persons concerned. ***The Committee requests the Government to provide updated detailed information on the content and outcomes of effective consultations held with the social partners on the matters covered by the Convention, including the consultations involving representatives of the persons affected by the employment measures to be taken.***

The Committee is raising other matters in a request addressed directly to the Government.

Comoros

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations made by the Workers Confederation of Comoros (CTC), received on 1 August 2017. ***It requests the Government to provide its comments on the matter.***

Article 1 of the Convention. Implementation of an active employment policy. Youth employment. In its previous comments, the Committee requested the Government to indicate in its next report whether the Act issuing the national employment policy had been adopted and to indicate whether specific difficulties had been encountered in achieving the objectives set out in the national Poverty Reduction and Growth Strategy Paper (PRGSP). The Committee notes with ***interest*** that the national employment policy act (PNE) was adopted through the promulgation on 3 July 2014 of Decree No. 14-11/PR enacting Framework Act No. 14-020/AU of 21 May 2014 issuing the national employment policy. The Government indicates that this Act aims to provide a common and coherent vision of the strategic approaches for taking national action on employment, by increasing opportunities for low-income population groups to access decent work and a stable and sustainable income. The Government adds that in November 2014, with ILO support, it developed and adopted the Emergency Plan for Youth Employment (PUREJ), which is part of the process to implement the PNE. The PUREJ involves the adoption of programmes to promote youth employment which result from priority measures identified in the strategic framework of the PNE and integrated in the Strategy for Accelerated Growth and Sustainable Development (SCA2D). The Government adds that the overall objective of the PUREJ is to ensure strong employment growth in the short and medium term. In this context, the PUREJ focuses mainly on the promotion of youth employment in job-creating sectors for a period of two years, in order to contribute to the diversification of the economy, the production of goods and services and the building of social peace. The Government points out that the objective was to create 5,000 new decent and productive jobs for young persons and women by the end of 2016, through the development of skills in line with the needs of priority sectors of the Comorian economy and support for the promotion of employment and vocational integration. The Committee notes that in May 2015 the Government signed,

together with the constituents and the ILO, the second generation Decent Work Country Programme (DWCP), of which the main priority is to ensure the promotion and governance of employment. The Committee notes the observations of the CTC which indicate that the implementation of the PNE is not effective. It points out that the vocational training component, which is being conducted through a project with the European Union, is the only one being applied. In this regard, the provisions and mechanisms of the PNE have not been implemented and the text has not been disseminated to the public. The CTC also reports the dismissal of over 5,000 young persons without compensation. ***The Committee once again requests the Government to indicate whether specific difficulties have been encountered in achieving the objectives set out in the PRGSP. It requests the Government to provide more detailed information on the measures taken with a view to achieving the employment priorities established in the framework of the DWCP 2015–19, and on the impact of measures and programmes such as the PUREJ, which are aimed at increasing access to decent work for young persons. In this regard, the Committee requests the Government to indicate the number of young persons who have benefited from these programmes.***

Article 2. Collection and use of employment data. ***The Committee once again requests the Government to provide detailed information on the progress made with the collection of data on the labour market, and on the manner in which this data is taken into consideration during the formulation and implementation of the employment policy. It reminds the Government that it may avail itself of ILO technical assistance if it so wishes.***

Article 3. Participation of the social partners. ***The Committee once again requests the Government to include full information on the consultations envisaged in Article 3 of the Convention, which requires the participation of all of the persons affected, and particularly employers' and workers' representatives, in the formulation and implementation of employment policies. The Committee hopes that the Government will make every effort to take the necessary measures without delay.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Costa Rica

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

Previous comments

The Committee notes the Government's replies to the observations of the Confederation of Workers Rerum Novarum (CTRN) in 2017, which were included in its report. The Committee also notes the observations of the CTRN, received on 31 August 2021. ***The Committee requests the Government to send its reply in this respect.***

Article 1 of the Convention. Formulation and implementation of an active employment policy. The Committee notes the copy of the study by the Ministry of National Planning and Economic Policy (MIDEPLAN), provided by the Government, which presents the challenges identified during the implementation, in 2019, of the Bicentennial National Development and Public Investment Plan (PNDIP) 2019–22. The PNDIP provides for the adoption of measures to strengthen the productive capacity of the country and to promote employment. The Committee observes that, according to the study, the current challenges include the need to bring education into line with labour market requirements, as, although efforts have been made in this regard, the 2018 National Survey of Enterprises (ENAE) shows that there is a number of job vacancies due to the lack of skills required for those jobs among applicants. The study also shows that women and young persons have the lowest employment rates and limited access to employment opportunities due to lack of experience and training in non-traditional branches of activity (such as science, technology and engineering). The Committee also notes that, despite the implementation of various programmes and measures to consolidate and improve the competitiveness of small and medium enterprises (SMEs) (which constitute 97.5 per cent of the business environment), the COVID-19 pandemic has had adverse effects on the economy, including the contraction of economic activity, a decrease in employment and changes in employment contracts.

The Committee also notes that, in its observations, the CTRN reports a lack of employment policy in the country. It also states that the COVID-19 pandemic exacerbated the existing employment issues in the country. In this regard, the CTRN highlights the increase in unemployment and underemployment, and in violations of social and labour rights, such as failure to pay minimum wages and wage reductions. The CTRN also states that, between 2019 and 2020, levels of poverty (without taking into account revenue from the health emergency) increased from 21 per cent to 30.4 per cent, while levels of extreme poverty increased from 5.8 per cent to 11 per cent. In its reply to the 2017 observations of the CTRN, the Government refers to the continued implementation of the National Strategy for Employment and Productive Development (ENDEP), which aims to "increase opportunities to enable women and men to find decent and productive work, through a combined effort of economic and social policy, and the public and private sectors, which fosters inclusive growth and the reduction of poverty and inequality". The Government also provides information on the adoption of a project to support the implementation of this strategy with the help of the ILO Office in San José. However, the Committee notes the Government's indication that it does not have any information on the impact of the measures adopted to achieve the objective of the Convention, including those adopted under the ENDEP. In this regard, the Committee underscores the importance of having statistical information that allows for the evaluation of the impact of measures adopted to create jobs. The Committee recalls that "a comprehensive, participative and transparent monitoring and evaluation mechanism enables all the parties concerned to identify achievements and challenges in meeting policy objectives. The Committee emphasizes that it is essential to ensure that policies are (..) monitored and evaluated in relation to the established targets and indicators" (2020 General Survey, *Promoting employment and decent work in a changing landscape*, paragraphs 112 and 153). Lastly, the Committee notes the approval of Act No. 9635, Act on strengthening public finances, on 3 December 2018, which, among other measures, provides for the adjustment of the wages and benefits of public servants. The CTRN maintains that the above-mentioned Act was adopted despite being contrary to a number of ILO Conventions, such as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), as observed in a technical memorandum drafted by the ILO. ***The Committee once again requests the Government to provide information on the impact of the measures adopted to achieve the objectives of the Convention, including those adopted under the ENDEP and the Bicentennial National Development and Public Investment Plan (PNDIP) 2019–22. The Committee reminds the Government that it may avail itself of ILO technical assistance in that respect. Regarding the Act on strengthening public finances, the Committee refers to its 2020 observation on the application of Convention No. 98, in which, while it noted the repeated observations of the CTRN reporting that the Act was contrary to the Convention, the Committee requested the Government to provide its comments in that respect.***

Article 3. Participation of the social partners. The Committee notes the Government's indication that no consultations on employment policies and programmes were held with the social partners during the period covered by the report. Furthermore, the CTRN reports that the Higher Labour Council (CST) was not convened during this period to hold tripartite consultations on employment policies and programmes. In this regard, the Committee underscores that it is essential to ensure that policies are developed, implemented and evaluated through a consultative process with the social partners and representatives of those concerned by the measures to be taken (2020 General Survey, paragraph 153). ***The Committee requests the Government to indicate the manner in which representatives of workers' and employers' organizations have been consulted, as well as representatives of the parties involved in the design, development, implementation, monitoring and revision of the active labour market measures adopted, including the Act on strengthening public finances.***

The Committee is raising other matters in a request addressed directly to the Government.

Cyprus

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

Previous comment

Articles 1 and 2 of the Convention. Implementation of an active employment policy. Labour trends. The Committee notes the information on trends in employment and unemployment provided by the Government, derived from the Labour Force Surveys conducted by the Statistical Service of Cyprus in 2018, 2019 and 2020. The Government indicates that the labour market situation has deteriorated further in the period since the outbreak of COVID-19. In this context, the Committee notes that, according to the 2020 Labour Force Survey, the unemployment rate increased from 7.1 per cent in 2019 to 7.6 per cent in 2020. The employment rate (for the 20-64 age group) fell from 75.7 per cent to 74.9 per cent during the same period. The Government refers to the implementation of a number of active employment measures, including the Scheme Providing Incentives for the Employment of Unemployed Persons (2020-2024) and the new Subsidy Scheme Providing Incentives for the Employment of Persons with Chronic Diseases (2019-2024). The Government also refers to other employment promotion measures, such as steps taken to strengthen the public employment services and a programme to place Guaranteed Minimum Income (GMI) beneficiaries in employment for 6 months, to provide them with work experience opportunities in the public sector. In addition, the Committee notes the Government's indication that, from 2014 to 2019, Subsidy Schemes providing incentives to promote the employment of various categories of jobseekers have continued to implemented by the Department of Labour and that the Government also continues to provide incentives to promote employment in the private sector. ***The Committee requests the Government to continue to provide detailed updated information, including statistical information, disaggregated by sex and age, on the nature, scope and impact of employment measures implemented, including the various Subsidy Schemes in place, in particular on the number of jobs generated and the number of beneficiaries placed into employment. The Government is further requested to describe how the information compiled from the Labour Force Surveys is utilized in the design, implementation, monitoring and review of employment policies at the national level.***

Specific categories of workers. The Committee notes the information provided by the Government concerning the development and implementation of targeted employment measures for specific groups of persons in vulnerable situations. In particular, it notes with ***interest*** that the Government continues to provide targeted training and incentives to encourage private sector enterprises to employ workers belonging to the disadvantaged target groups, including the long-term unemployed, young persons, older workers, those with chronic diseases, detainees and persons with disabilities. ***The Committee requests the Government to continue to provide updated information, including statistical data disaggregated by age and sex, as well as by the target groups referenced above, on the nature, scope and impact of the active labour market measures implemented to increase the employability of persons in vulnerable situations and promote their access to sustainable and lasting employment opportunities.***

Women's employment. The Committee notes that, in 2020, the unemployment rate for men increased from 6.3 per cent to 7.6 per cent, whereas the unemployment rate for women decreased, falling from 8 per cent to 7.6 per cent. The Committee nevertheless notes that the Government does not provide information with regard to the measures taken or envisaged to promote women's employment, particularly women belonging to disadvantaged groups, who frequently face double discrimination. ***Noting that the rate of unemployment of women declined in 2020, the Committee requests the Government to provide information indicating the reasons for this decline, particularly given that it occurred during the COVID-19 pandemic. The Committee also requests the Government to intensify strengthen its efforts to promote the active participation of women in the labour market and***

their access to sustainable employment and decent work, particularly for those facing multiple and intersecting discrimination, such as women with disabilities. It requests the Government to provide information on the nature, scope and impact of measures taken in this respect.

Youth employment. The Government refers to subsidy schemes for youth employment, such as the Scheme Providing Incentives for the Employment of Unemployed Young People up to 25 years old, which operated between 2016 and 2019. It also refers to new schemes being implemented (2020-2024), which continue to provide incentives to encourage private sector enterprises to employ young people between 15–29 years old who are not in Employment or Education or Training (NEETs). The Committee also notes the information provided concerning various schemes for youth employment implemented by the Human Resources Development Authority. In particular, the Committee notes that the youth unemployment rate decreased in 2019, falling from 20.2 per cent in 2018 to 16.6 per cent in 2019 and to 18.2 in 2020. At the same time, youth employment increased from 31.3 per cent in 2018 to 32.4 per cent in 2019; however, the youth employment rate subsequently declined to 31.3 per cent in 2020. ***The Committee requests the Government to continue providing detailed updated information, disaggregated by sex and age, on the nature, scope and impact of incentives and other measures taken to promote the employment and lasting labour market integration of young people, including measures to support young women and men during school to work transitions.***

Education and training policies and programmes. The Committee notes the education and training measures implemented by the Human Resources Development Authority, including on-the-job training programmes with companies in Cyprus or abroad, six-month job placements accompanied by training allowances, job placements with Guaranteed Minimum Income (GMI) for the acquisition of work experience in the public sector, as well as training schemes for specific categories of workers who face difficulties in accessing the labour market, including young people, the long-term unemployed and persons with disabilities. In particular, the Committee notes the Small Units for Entrepreneurship Scheme, which has enabled 48 persons with disabilities to create their own small enterprises, as well as the Vocational Training Scheme for persons with disabilities, which has provided specific vocational skills to 41 applicants to help them keep their jobs or to enhance their employability with a view to improving their access to new employment opportunities. ***The Committee requests the Government to continue to provide updated detailed information on the impact of the measures taken to promote education and training and on the relation of these measures to prospective employment opportunities, as well as the number of persons placed in employment as a result of such measures.***

Article 3. Participation of the social partners. The Committee notes the information provided by the Government in reply to its previous request concerning the application of *Article 3*. ***The Government is requested to continue to provide updated information in this respect.***

Djibouti

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

The Committee notes the observations of the International Organisation of Employers (IOE), received on 25 August 2022. It also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2022. The Committee notes that both observations raise issues in relation to the application of the Convention.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 1 of the Convention. Adoption and implementation of an active employment policy. ILO technical assistance. In response to previous comments, the Government indicates in its report that, although the strategy for the formulation of a national employment policy was commenced in April 2003, and new structures have been established, the preparation of a national employment policy paper has still not been completed. The Committee notes that the National Employment Forum held in 2010 showed the need to

develop a new employment policy adapted to labour market needs, which will have to target as a priority the reform of the vocational training system and the improvement of employment support services. The Government indicates that, out of a population of 818,159 inhabitants of working age, recent estimates place the unemployment rate at 48.4 per cent. It also indicates that, following a mission for the evaluation of technical cooperation undertaken by the ILO in March 2011, the Government reiterated its commitment to developing a Djibouti Decent Work Programme. It adds that it is still awaiting Office support for this purpose. ***The Committee requests the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies, and on the progress made in the adoption of a national policy for the achievement of full employment within the meaning of the Convention.***

Youth employment. The Government indicates that in 2012, despite a certain improvement, unemployment particularly affected young persons with higher education degrees. Moreover, although the country does not currently have a formal strategy to promote youth employment, several initiatives have been established to improve the operation of the labour market, promote entrepreneurship and provide training adapted to labour market needs. ***The Committee invites the Government to provide information on the manner in which the measures adopted have resulted in productive and lasting employment opportunities for young persons, and on the collaboration of the social partners in their implementation.***

Article 2. Collection and use of employment data. In March 2014, the Government provided the summary of the employment situation prepared by the National Employment and Skills Observatory. The number of jobs is increasing (30,118 jobs created in 2007, 35,393 in 2008 and 37,837 in 2010). ***The Committee invites the Government to indicate the measures taken to improve the labour market information system and to consolidate the mechanisms linking this system with decision-making in the field of employment policy. It also requests the Government to provide updated statistical data disaggregated by age and sex, as well as any other relevant data relating to the size and distribution of the workforce, the nature and scope of unemployment and underemployment and the respective trends.***

Article 3. Collaboration of the social partners. ***The Committee recalls the importance of the consultations required by the Convention and once again requests the Government to provide information on the measures adopted or envisaged for the consultation of the representatives of the persons affected on employment policies.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Dominican Republic

Employment Policy Convention, 1964 (No. 122) (ratification: 2001)

Previous comment

The Committee notes the observations of the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Dominican Workers (CNTD) and the National Confederation of Trade Union Unity (CNUS), received on 1 September 2021. ***The Committee requests the Government to send its comments in this regard.***

Articles 1–3 of the Convention. Formulation and implementation of an active employment policy. Consultations. The Committee notes the Government's indication, in reply to its previous comments, that the National Employment Plan (PNE) adopted in 2014 was not implemented because of institutional and financial restrictions. The Government adds that, even though certain projects in the PNE were implemented, no evaluations of their impact were carried out. The Committee notes the information available on the Ministry of Labour's website concerning the process of preparing a new National Employment Plan (PLANE), with the support of "Eurosocial+", the European Union (EU) programme for social cohesion in Latin America. The objective of the new PLANE is to promote the creation of 600,000 new decent jobs for the 2021–24 period, which is 200,000 more than in the 2014 PLANE. The PLANE project measures include: economic incentives for investment; technical and vocational training

to promote the development of human talent and the employability of the population in situations of great vulnerability; the modernization of the Public Employment Service; and technical and financial support for independent workers, micro, small and medium-sized enterprises (MSMEs), and green job initiatives. The Committee also notes that the National Employment Commission, a tripartite advisory body, was reactivated in May 2021, after six years of inactivity, with a view to launching the consultation process for the development of PLANE. The resulting project is the product of a process in which numerous actors have participated, through virtual thematic forums and numerous electronic consultations, such as representatives of the social partners, various government entities, academic experts and members of civil society. On 17 February 2022, the proposal for the new PLANE was presented to representatives of the social partners and public bodies for their comments, before its final draft. With regard to labour market trends, the Government states that, according to information from the Dominican Labour Market Observatory (OMLAD), between 2018 and 2021 the employment rate fell from 59.5 per cent to 56.8 per cent (71.8 per cent for men and 42.9 per cent for women), the unemployment rate rose from 5.3 per cent to 8 per cent (4.6 per cent for men and 12.8 per cent for women). ***The Committee requests the Government to provide detailed, up-to-date information on the status of the preparation of the new National Employment Plan (PLANE) and to send a copy of it once it has been adopted. The Committee also requests the Government to send detailed, up-to-date information on the content and results of the consultations held with the social partners and representatives of stakeholders, in particular representatives of the workers in rural areas and in the informal economy, regarding employment policies and programmes. The Committee further requests the Government to send up-to-date statistical information, disaggregated by age, sex and region, on labour market trends, including employment, unemployment and underemployment rates.***

Coordination of training policies with employment policies. In its reply to the Committee's previous comments, the Government indicates that since 2016 there have not been any data on the impact of implemented training programmes owing to a lack of economic resources. The Government expresses the hope that after the implementation of employment recovery measures in the context of the COVID-19 pandemic, it will be possible to establish a basis to make it easier to conduct these studies. Moreover, the Government refers to the implementation of the Technical and Vocational Education and Training Support Programme (PRO ETP II), financed by the EU and the Spanish International Cooperation Agency (AECID). The general objective of the programme is to strengthen the technical and vocational education and training (EFTP) system to better respond to the demands of the education and production sectors and the training needs of the economically active population. As a specific objective, it is proposed to contribute to the strengthening of the institutional, normative and functional components of the national EFTP system. In this regard, it is planned to adopt measures aimed, inter alia, at: improving the capacities of the systems linked to the national vocational training system to ensure their participation in the preparation, implementation, monitoring and validation of the National Qualification Network; increasing the capacities of the competent institutions for improving the quality and relevance of the provision of EFTP in order to adapt it to the labour market; and linking the private sector to mechanisms for the design and implementation of EFTP policies through public-private partnerships for development. To achieve these objectives, it is planned, inter alia, to update the electronic employment exchange, and also to implement a labour information system which collates labour market indicators and statistics from various public institutions. Lastly, the Committee notes that the workers' confederations indicate in their observations that the National Institute for Vocational and Technical Training (INFOTEP) has expanded the provision of training and has conducted a survey to identify the requirements of the main occupations in demand and establish a skills and learning strategy to improve the country's competitiveness in the context of the digital era and the future of work. However, they point out that the training plans to promote employment are not coordinated. ***The Committee requests the Government to provide detailed information, including statistics disaggregated by age, sex and region, on the various training programmes implemented, including the Technical and Vocational***

Education and Training Support Programme (PRO ETP II), and also on their impact on securing lasting employment for men and women. With regard to the collection of data on the impact of these programmes, the Committee reminds the Government that it may avail itself of ILO technical assistance in this regard. Moreover, in the light of the observations of the workers' confederations, the Committee requests the Government to send detailed information on how the various programmes of training for employment are coordinated and in what manner consultations with the social partners are ensured.

Specific groups vulnerable to decent work deficits. The Committee observes that, according to ILOSTAT, in 2020, the overall unemployment rate of young persons was 14.9 per cent (11.6 per cent for women and 20.7 per cent for men), whereas 33.7 per cent of all young persons were either unemployed or not studying or receiving training (44.2 per cent for women and 31.1 per cent for men). The Committee notes the information supplied by the Government on the measures adopted to promote youth employment, such as the adoption in 2019 of the *Primer empleo* (initial employment) programme, which provides 6,200 young persons between 18 and 29 years of age with access to employment in the form of training for employment with formal enterprises, in particular promoting the participation of women and single mothers and persons with disabilities. The Government also refers to the implementation of the *Escuela taller* (workshop as school) programme, which provides young persons in vulnerable situations with job training in diverse areas such as crafts, carpentry, construction and electricity. The Government states that from 2015 to the first half of 2021 a total of 571 men and 265 women participated in the programme. Furthermore, the Government refers to the discussion on 25 May 2021 in the Chamber of Deputies of the bill on initial employment, which provides young graduates with the opportunity for internships or half-time work in various institutions so that they can develop acquired knowledge. The Committee notes that the workers' organizations claim in their observations that young persons who have finished higher education face major difficulties regarding access to the labour market because of the lack of job placement strategies for young persons. They also assert that bureaucratic obstacles and high demands regarding levels of previous experience make it difficult for young persons to secure their first job or a change of job. Moreover, they criticize the fact that many of the jobs on offer are precarious, temporary, offer low wages and do not provide opportunities for development. The Government, on the other hand, indicates that in order to promote jobs for women, adequate services with equal opportunities are provided in the programmes implemented by the Ministry of Labour and awareness-raising measures aimed at enterprises have been implemented to promote women's employment. In this regard, the Government states that it has requested enterprises to omit age and gender requirements in job vacancy profiles. Lastly, the Committee refers to its comments on the application of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), in which it notes the detailed information provided by the Government on the measures taken by the National Council on Disability (CONADIS) to promote employment for persons with disabilities, as well as on the implementation of Basic Act No. 5-13 on equal rights for persons with disabilities, section III of which establishes a quota of two per cent for hiring persons with disabilities in private enterprises (compared with five per cent in the public sector). ***The Committee requests the Government to continue providing detailed, up-to-date information on the measures taken or contemplated to promote access to formal and lasting employment for groups vulnerable to decent work deficits, in particular young persons, women and persons with disabilities. The Committee also requests the Government to send up-to-date statistical information on the impact of such measures. It further requests the Government to provide up-to-date information on the status of the adoption of the bill on initial employment and to send a copy of it once it has been adopted.***

Migrant workers. In its reply to the Committee's previous comments, the Government indicates that the labour legislation prohibits any kind of discriminatory practice in the hire of persons, whether national or foreign, in the context of an employment contract or a job application (principles IV and VII of the Labour Code). The Government states that a total of 3,931 persons, including workers, employers

and public employees, have received training on various aspects of equal opportunities and non-discrimination in employment and occupation. Moreover, it reports on the establishment of the Labour Migration Committee, which is composed of representatives of various national institutions such as the Social Security Treasury (TSS), the National Institute for Migration (INM) and the Ministry of External Relations (MIREX). In this regard, the Government indicates that it is receiving advice and support from the International Organization for Migration (IOM) and the ILO. The Committee notes the adoption on 22 January 2021 of Resolution No. 119-21 normalizing the irregular migration situation of Venezuelan nationals on Dominican territory. Through this resolution, Venezuelan nationals who entered Dominican territory using a tourist card or a visa issued by the Dominican authorities and who have stayed on Dominican territory beyond the authorized period of validity, are eligible for an extension of stay and can apply for a non-resident permit in the student or temporary worker subcategories. ***The Committee requests the Government to send detailed, up-to-date information on the nature and impact of the measures adopted to prevent abuse in the recruitment of foreign workers in the country, including Resolution No. 119-21, and of national workers who emigrate in search of job opportunities abroad, including those adopted within the Labour Migration Committee.***

Informal economy. The Committee notes that, on the basis of the "Eurosocial+" programme report of 28 September 2021 on the updating of PLANE, informality has become established in the country as a structural problem stemming from an economic model that maintains sustained growth in sectors which either do not create employment or do so in precarious forms. The Government also indicates that as a result of the pandemic, there has been an increase in informality, especially in the commerce and construction sectors. According to statistical information from OMLAD, the rate of informality in 2021 was 57.7 per cent (61.7 per cent for men and 51.5 per cent for women). In this regard, it is envisaged that PLANE will include measures for the development of passive employment measures, as well as the establishment of policies for the social protection of informal workers and the reduction of informality in the labour market. Moreover, the Government reports on the implementation of various measures aimed at combating informality in the context of the pandemic through support to MSMEs, such as the implementation of the recovery programme with DOP 4,100 earmarked for MSMEs. Lastly, the Committee notes the information provided by the Government, disaggregated by sex, age and region, on the number of formal workers who entered the labour market for the first time between 2012 and July 2021. ***The Committee requests the Government to continue providing detailed, up-to-date information on the nature and impact of the measures adopted to combat the high rate of informality in the country.***

Micro, small and medium-sized enterprises (MSMEs). The Committee notes the information supplied by the Government on the measures taken to facilitate the establishment of MSMEs and cooperatives in the country. The Government refers, inter alia, to the implementation since 2013 of the "formalization single window" (VUF) for facilitating the establishment of MSMEs in all provinces of the country. The Committee notes with ***interest*** the Government's indication that the functioning of the VUF has enabled the time and cost of registering enterprises to be reduced. The Government states that between 2014 and 2020 the percentage of enterprises registered through the VUF increased from 1.56 per cent to 66 per cent of all established enterprises. According to the MSME Policy Department, between 2012 and 2021 a total of 229,358 enterprises were established through in-person channels and between October 2013 and June 2021 a total of 36,695 enterprises were established through the FormalízateRD web portal. However, the Government indicates that it does not have any information on the number of jobs created by new enterprises. The Government also indicates that it is planned to amend Act No. 127-64 on cooperative associations and its implementing regulations, with the aim of modernizing the text and adapting the regulations to simplify the administrative procedures for setting up an enterprise. The Government adds that, between 2012 and 2021, a total of 479 cooperatives were created, with 133 in agriculture and two relating to commerce. As regards policies for the award of public contracts to SMEs, the Government indicates that, under sections 25 and 26 of Act No. 488-18, 15 per cent of purchases of

goods and services by public institutions must go to MSMEs, and 20 per cent to those headed by women (with over 50 per cent in shareholding or social capital). Lastly, the Government indicates that the 2016 analysis of the impact of the public procurement and contracts policy on MSMEs and women revealed a positive impact on beneficiary enterprises, which experienced greater economic benefits, greater professionalization and less staff rotation, as well as an increase in the average wages of their workers. The Committee notes the observations of the workers' organizations, which indicate that in July 2021 a tripartite agreement was reached to modify wage fixing, since the previous methodology used to fix wages did not include MSMEs, thereby generating precarity and job informality among their workers. The workers' organizations also point out that Act No. 688-16 on entrepreneurship was adopted without prior consultation of the social partners, and they state that under that Act the enterprises covered by it are exempt from paying pension contributions for the first three years from the date of formalization. They object to the fact that this obstructs the development of the workers' pension fund, pushing back the age at which they can access their pensions. ***The Committee requests the Government to continue sending detailed, up-to-date information on the measures taken or contemplated to facilitate the establishment of MSMEs and cooperatives, particularly in disadvantaged regions with the highest unemployment rates. In particular, it requests the Government to send information on the status of the amendment of Act No. 127-64 on cooperative associations and its implementing regulations. The Committee also requests the Government to send statistical information on the number and type of enterprises established. As regards the collection of statistical information on the number of jobs created by those enterprises, the Committee requests the Government to provide information on any progress made in this regard and reminds it that it may avail itself of ILO technical assistance in this regard. Lastly, the Committee requests the Government to continue providing information on the impact of policies for awarding public contracts to SMEs.***

Eswatini

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)
(ratification: 1981)

Previous comment

Part II of the Convention. Abolition of fee-charging employment agencies. The Committee notes the Government's indication that a new Employment Bill has been drafted with ILO technical assistance. The Government reports that the draft Employment Bill has been discussed on several occasions within the tripartite Labour Advisory Board (LAB). The Government makes particular reference to section 131 of the draft Employment Bill, which prohibits triangular forms of employment. It adds that the draft Bill will be forwarded to the Cabinet and subsequently to Parliament for its approval. The Committee nevertheless observes that the Government has not provided updated information on the manner in which the Convention is applied in practice. ***The Committee therefore reiterates its request that the Government provide updated information on the national legislation giving effect to Part II of the Convention. The Government is also requested to provide a copy of the new Employment Bill once it is adopted. The Committee also reiterates its request that the Government provide detailed updated information on the manner in which the Convention is applied in practice, including, for instance, extracts from official reports, information regarding the number and nature of the contraventions reported and any other particulars bearing on the practical application of the Convention.***

Revision of Convention No. 96. In its previous comments, the Committee requested the Government to provide information on any developments, in consultation with the social partners, concerning the possible ratification of the Private Employment Agencies Convention, 1997 (No. 181). In this regard, the Committee notes that the Government indicates that there is no information available on the outcome of the tripartite consultations held within the LAB with regard to the possible denunciation of

Convention No. 96 and ratification of Convention No. 181. The Committee notes the Government's indication that it commits itself to fully implement the provisions of Convention No. 96 until such time as it is officially denounced subsequent to the ratification of Convention No. 181. In this respect, the Committee recalls that the Governing Body of the ILO (at its 337th Session in October 2019), on the recommendation of the Standards Review Mechanism Tripartite Working Group (SRM TWG), classified Convention No. 96 as being in the category of instruments that are no longer up to date and placed an item on the agenda of the 119th Session of the International Labour Conference in 2030 for due consideration to be given to its abrogation. The Committee recalls that the Governing Body of the ILO, at its 273rd Session in November 1998, invited the States parties to Convention No. 96 to contemplate the possibility of ratifying Convention No. 181. Such ratification would entail the immediate denunciation of Convention No. 96. ***Recalling that the ratification and application of Convention No. 181 would contribute to strengthening vigilance with regard to the activities of private employment agencies and the protection of workers, the Committee encourages the Government to follow up on the decision adopted by the Governing Body at its 337th Session (October 2019) approving the recommendations of the SRM TWG and to consider ratifying the Private Employment Agencies Convention, 1997 (No. 181), which is the most up-to-date instrument in this subject area. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.***

Finland

Employment Service Convention, 1948 (No. 88) (ratification: 1989)

Previous comment

The Committee notes the observations made by the Federation of Finnish Enterprises (SY), the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK), the Confederation of Unions for Academic Professionals in Finland (AKAVA) and the Confederation of Finnish Industries (EK), transmitted together with the Government's report.

Article 1 of the Convention. Contribution of the employment service to employment promotion. The Government refers in its report to the Local Government Pilots on Promoting Employment (1269/2020), which began on 1 March 2021 and will end on 30 June 2023 and involve a total of 25 areas and 118 municipalities. The Government is transferring responsibilities for employment and economic development services (TE services) to municipalities and strengthening their role as strategic partners. The pilot projects aim to increase the effectiveness of employment promotion efforts through enhanced coordination of the resources, skills and services of the State and municipalities. In this regard, a funding model is to be created for municipalities to enable them to develop their employment promotion activities in order to increase employment by 7,000 to 10,000 people, including for all jobseekers under the age of 30 and all immigrants and foreign-language speakers. The Government also refers to temporary amendments made to employment legislation and regulations, in particularly amendments made to Chapter 2, section 4, subsection 2 of the Act (1456/2016), which requires the authorities to provide jobseekers with the interview opportunities at regular intervals. Regarding the activities of the public employment service, the Committee notes the information provided by the Government drawn from the annual Employment Service Statistics. In particular, it notes that, in 2020, the number of job vacancies decreased, while the monthly registration of unemployed jobseekers increased up to 30 per cent compared to the previous year. In respect of the "Nordic job search model", which seeks to reform both the provision of employment services and the criteria for receiving unemployment benefits as part of the implementation of labour market policy, the Committee notes the observations of EK, which emphasizes that the Nordic model should make use of private employment services, which play a significant role in matching labour supply and demand. The EK further observes that a portal should be

built for private providers of TE services to give them access to the pool of applicants in public TE services. With regard to the public employment service (PES) reform, the Committee notes the information provided by the Government in its report on the application of the Employment Policy Convention, 1964 (No. 122), in particular the implementation of the TE-Digi project, which aims to modernize the electronic service system of the TE public services to better respond to the future needs of the employment services and the investment plan of the Ministry of Economic Affairs and Employment and KEHA Centre for the development of new knowledge-based management and operating models in TE services. ***The Committee requests the Government to continue to provide updated, detailed information, including disaggregated statistical data, showing the impact of the reforms on effective recruitment and placement of workers and on specialization by occupation or branch of activity within the employment services to respond adequately to the needs of jobseekers, including for groups in vulnerable situations, such as persons with disabilities and other groups, particularly those vulnerable to intersectional discrimination. It further requests the Government to provide information on the measures adopted or envisaged to facilitate effective collaboration between the public employment service and private employment agencies in order to achieve the optimal functioning of the labour market and contribute to the objective of full employment.***

Article 9. Staff of the employment service. In response to the Committee's previous comments, the Government indicates that the human resources in the Employment and Economic Development Offices (PES) have increased since 2017. In this respect, the Committee notes the statistics provided by the Government, which show that, in 2021, 3,963 persons were working in employment and economic development services (TE services). It further notes that the local government pilots on employment launched in March 2021 will change the structure of the Employment and Economic Development Offices of the PES, by transferring TE staff to municipalities. With regard to PES staff, the Government indicates that the Nordic labour market service model, which entered into force in 2022 and is designed to streamline and customize the job search process, will increase the resources for TE services by €70 million a year. More than 1,000 experts will be hired to provide customer service, representing an increase of 40 per cent compared with the resources of TE Offices in 2019. In this regard, the Federation of Finnish Enterprises (SY) observes that, while the Nordic job search model could improve the efficiency of the PES, the operations of the PES must be closely monitored and evaluated. In addition, the SAK, the STTK and AKAVA observe that labour market organizations are concerned about how high-quality services can be guaranteed for the unemployed, even with the additional resources mentioned by the Government. They emphasize that it is the quality of services and not their quantity that matters in meeting the needs of unemployed persons. ***The Committee requests the Government to communicate updated information on measures taken or envisaged to provide specialized training to the new and existing public servants in the public employment service to allow them to ensure a service which responds to the concerns of all unemployed persons, including disadvantaged categories of persons such as young people, older workers, migrant workers, workers with disabilities and those belonging to groups vulnerable to intersectional discrimination.***

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1985)

Previous comment

The Committee notes the observations made by the Federation of Finnish Enterprises (SY), the Confederation of Finnish Industries (EK), the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK) and the Confederation of Unions for Academic Professionals in Finland (AKAVA), transmitted together with the Government's report.

Articles 3 and 7 of the Convention. Promotion of vocational rehabilitation and employment opportunities for persons with disabilities. The Government indicates that the Act on the Rehabilitation Benefits and Rehabilitation Allowance Benefits of the Social Insurance Institution of Finland (1097/2018) was amended in January 2019. The amendment introduced a new section 7a to the Act on the organization of vocational rehabilitation for young adults. Under the new provision, insured persons between the ages of 16 and 29 are entitled to vocational rehabilitation if their functional capacity is materially impaired and rehabilitation is appropriate to support or promote their functional capacity and life management skills, as well as their ability to study or to secure employment. The Government adds that the Social Insurance Institution shall arrange vocational rehabilitation services for young adults that determine and assess their needs for rehabilitation, rehabilitation opportunities, study and employment opportunities, together with coaching services (subsection 4 of section 7a). Young adults no longer need to submit forms or medical certificates at the stage of applying for rehabilitation and are more actively guided to Social Insurance Institution rehabilitation through their own networks, such as the Ohjaamo One-Stop Guidance Centres and Outreach youth work. The Government indicates that the number of unemployed people with disabilities and long-term illnesses declined until the beginning of the coronavirus pandemic in April 2020 and that the negative effects of the pandemic on unemployment were significantly less pronounced for these persons. The Committee notes that various measures have been taken and new projects, such as the Work Ability Programme and the "Career opportunities for people with partial work ability" (OTE) have been carried out to improve the labour market opportunities of persons with partial work ability. The Committee notes that, during the OTE project (2015–2018), the number of unemployed persons with partial work ability decreased by 30.2 per cent and persons with partial work ability found employment mostly in the open labour market and in all sectors. The Government indicates that, following the OTE key project, there were 12,000 fewer unemployed jobseekers with partial work ability than at the start of the project, which generated direct savings of €100 million per year, as unemployment costs were reduced. The Committee notes that, from 2015 to 2020, the unemployment rate of persons with disabilities and long-term illnesses declined from 52,654 to 46,799, respectively. The Government also refers to the IPS–Sijoita ja valmenna! project (Individual Placement and Support project), which was launched in different parts of Finland in early 2021 to ensure that services supporting work ability are equally available and accessible to persons with disabilities. The Committee notes that the Government plans to extend the IPS–Sijoita ja valmenna! operating model to a total of six hospital districts to support people with mental health disorders on an equal basis to assist them in entering, returning and remaining in the labour market. It further plans to increase the number of work ability coordinators in the Employment and Economic Development Offices (TE Offices) to support people with an impaired ability for work. With regard to people with partial work ability, the Government indicates that a Special Task Company (Välittäjä Oy) has been established to advance the employment of people with partial work ability who occupy a weak position in the labour market. The Välittäjä Oy offers a supported job, as well as the training and other support needed to enable people with partial work ability to secure employment in the open labour market. The Government also refers to subsection 3 of section 7 of the Act on the Rehabilitation Benefits and Rehabilitation Allowance Benefits of the Social Insurance Institution of Finland (566/2005), which governs a business subsidy for vocational rehabilitation. In this regard, the SY observes that wage subsidies for promoting the employment of persons with disabilities should not be used as a permanent solution for employing disadvantaged groups. In addition, the EK observes that the use of wage subsidies for the employment of people with disabilities is justified; however, it considers that wage subsidies must not be used in a way that distorts competition and must be limited to measures that support the employment of persons with disabilities who are facing the most severe employment-related difficulties. The SAK, the STTK and the AKAVA observe that employers' attitudes towards the employment of people with partial work ability have become more positive. They further observe that the 2021 report of the Ministry of Economic Affairs and Employment emphasizes that employers require

more information and support in relation to the recruitment of people with partial work ability and in planning the modifications these persons may require for work purposes. They also observe that vocational rehabilitation for persons already in employment must begin at a sufficiently early stage while the employee is still able to work. ***The Committee requests the Government to continue providing detailed and up-to-date information, including statistics disaggregated by sex, age and occupation relating to the impact of the measures adopted to promote employment opportunities for persons with disabilities in the open labour market. The Committee also requests the Government to provide information on the manner in which the organizations of workers and employers, as well as representative organizations of and for persons with disabilities, are consulted with regard to the implementation, monitoring and review of the vocational rehabilitation and employment policy for persons with disabilities.***

France

Employment Policy Convention, 1964 (No. 122) (ratification: 1971)

Previous comments

Article 1(2) of the Convention. Implementation of an active employment policy. In its previous comments, the Committee requested the Government to provide information on the active employment policy and its impact with regard to the creation of productive employment and combating unemployment and underemployment, and to indicate whether any other mechanism is envisaged to replace the "small and medium-sized enterprise recruitment bonus". The Government indicates in its report that since the entry into force of Act No. 2018-771 of 5 September 2018 on the freedom to choose one's professional future, the employment policy in France has continued to evolve particularly in terms of combating unemployment and increasing labour market dynamism. The Government also indicates that measures to facilitate both job retention and recruitment, particularly for the most vulnerable groups, such as young persons, have been established as part of the "Recovery France" plan. In addition, new comprehensive and integrated job search support measures have been established within public employment services, such as *Pôle emploi* or local branches. The Government indicates that additional resources will be allocated to *Pôle emploi* as part of the "National Recovery and Resilience Plan". Furthermore, the part-time economic activity scheme has been made more flexible and generous in order to contain the rise in unemployment. The retraining and skills enhancement schemes have also been strengthened with, inter alia, FNE-Training (a scheme dedicated to training for part-time employees or those in enterprises facing economic difficulties) or the scaling-up of the ProA scheme (work-study promotion or retraining schemes). A new scheme to anticipate economic change and retraining needs, entitled "Collective Transitions", has also been introduced. In this respect, the Committee notes the detailed statistics provided by the Government, particularly those relating to the number of people registered with *Pôle emploi* and required to seek employment (categories A, B, C), which stood at 5,688,700 in the second quarter of 2021. It also notes the INSEE annual data for 2021 on underemployment, disaggregated by sex (8.6 per cent for women and 4.3 per cent for men) and age (10.4 per cent for young persons aged 15–24, 6 per cent for those aged 25-49 and 6.1 per cent for workers aged 50 or over). With regard to employment trends, the Committee notes the data relating to labour market analyses and indicators (INSEE), in particular those relating to trends in salaried employment, excluding temporary work, by status and by activity sector from 2015 to 2020, and in temporary work by user sector from 2000 to 2020. Regarding bonuses and recruitment grants, the Government refers to the introduction of bonuses and recruitment grants with a view to promoting the integration of particular categories of workers who face obstacles in accessing the labour market, such as young persons, persons with disabilities, the long-term unemployed and older workers. In this respect, the Committee notes the establishment of specific measures to promote the integration of

older workers into the labour market, such as through the payment of a €2,000 grant to employers who recruit job seekers aged 45 or over. The Committee also notes the Government's indication that the French employment policy has been significantly affected by the health crisis and that several measures have been put in place to mitigate the impact of the pandemic on governmental employment policies, particularly within the framework of the "Recovery France" and "A solution for every young person" plans. ***The Committee requests the Government to continue to provide detailed and up-to-date information, including statistics, disaggregated by age and sex, on the nature, scope and impact of the active labour market measures taken to promote sustainable employment and decent work, particularly within the framework of the implementation of the provisions of Act No. 2018-771 of 5 September 2018 on the freedom to choose one's professional future and the implementation of the "Recovery France" plan and the National Recovery and Resilience Plan.***

Article 3. Participation of the social partners. The Committee notes the information provided by the Government in response to its previous request concerning the application of the provisions of *Article 3*.

The Committee is raising other matters in a request addressed directly to the Government.

Guatemala

Employment Policy Convention, 1964 (No. 122) (ratification: 1988)

Previous comment

The Committee notes the observations of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), supported by the International Organisation of Employers (IOE), received on 1 October 2020, and the Government's reply, received on 14 November 2020. The Committee also notes the observations of the Autonomous Popular Trade Union Movement, Global Unions of Guatemala, received on 16 October 2020. ***The Committee requests the Government to provide its comments in this regard.***

Articles 1 and 3 of the Convention. Implementation of a national employment policy. Consultations with the social partners. The Committee notes with ***interest*** the efforts made by the Government to achieve the objectives of the Convention within the framework of a coordinated economic and social policy. In this connection, the Committee notes the launching in February 2017 of the National Decent Employment Policy (PNED) 2017-32, which is articulated with the National K'atún Development Plan 2032. The PNED was developed with the technical support of the ILO and the participation of a broad range of actors at the national and regional levels, including representatives of workers' and employers' organizations, and of women, indigenous peoples and youth. The PNED envisages the adoption of measures in four thematic areas: employment generation, human capital development, a conducive environment for enterprise development and formalization. The PNED includes priority measures for: persons with disabilities, returning migrants, older persons, the indigenous population, the LGBTI community, young persons with a criminal record and refugees. The Committee also notes that the Government reports the establishment of the National Decent Employment Commission (CONED) as the body responsible for the implementation of the actions envisaged in each of the four thematic areas of the PNED through a Technical Institutional Round Table composed of four subcommittees which include representatives of employers' and workers' organizations. The thematic priority of employment generation includes among its priority actions the implementation of: (i) the National Plan for the Generation of Decent Employment, which envisages the adoption of measures with a view to the generation of decent jobs in sectors that make a greater contribution to the economic growth and competitiveness of the country; (ii) the National Programme of Migration for Development, which has the objective of putting to good use the knowledge acquired abroad by Guatemalan migrants which are applicable to national development; and (iii) the Programme for the Reinforcement of the Public Employment Service, which envisages the adoption of measures to improve the functioning of the

National Network of Employment Services. The Committee also notes the information provided by the Government on the measures implemented within the context of the reinforcement of public employment services, such as the organization of employment fairs and kiosks, the establishment of a window for returning migrants and the conclusion of agreements with organizations focusing on migrants. Finally, the Committee notes the statistical data provided by the Government on the number of persons in vulnerable groups who received guidance and were helped by public employment services to enter the labour market in 2019 and 2020.

However, the Committee notes that the Trade Union Movement, in its observations, considers that there is no effective national employment policy promoting decent work so that citizens have the opportunity to choose work in accordance with their capacities and experience. The Trade Union Movement indicates that, as a consequence, work in the informal economy is growing disproportionately and part-time work is increasing in the formal economy, which is resulting in a reduction in workers' rights, such as the right to social security and to receive the minimum wage. Moreover, the rise in unemployment and migration to departmental and local capitals is increasing further. ***The Committee requests the Government to continue providing detailed and updated information on the nature, scope and impact of the measures adopted to promote full, productive and freely chosen employment, including those adopted within the framework of the National Decent Employment Policy (PNED) 2017-32. It also requests the Government to provide information, including specific examples, on the manner in which consultations have been held, and their views taken into consideration, with employers' and workers' organizations and representatives of other groups affected (such as women, young persons, indigenous peoples and workers in the informal economy) with a view to the development and implementation of employment policies and programmes, as well as the nature, scope and outcome of the consultations.***

Education and training. The Committee observes that the thematic area of the PNED covering the development of human capital includes, among other priority action, the implementation of the National Youth Training Programme in Transversal and Specific Skills with the objective of promoting training for work. The Government indicates that, within this context, Ministerial Decision No. 3386-2018 was approved institutionalizing the National Labour Training System (SINAFOL) as the structure which manages and articulates the government institutions, the productive sector and the social partners with a view to determining and implementing technical education and training policies and strategies in the country. The objectives of the SINAFOL include the improvement of technical labour and vocational training, the reduction in the gap between the supply of training and productive demand, the design of training supply associated with occupational groups and vocational qualifications. The Government also refers to the creation of the National Vocational Training Commission with the objective of promoting the articulation and coordination of Government institutions, the productive sector and the social partners with a view to implementing and revising every five years the model of technical vocational training. In 2018, the Skills Certification System (SCC) was developed and its implementation was launched with the objective of recognizing and certifying the skills, knowledge, capacities, abilities and competences of persons engaged in trades and occupations learned over a lifetime. In this respect, the Government reports the establishment of various sectoral round tables for the development of national catalogues of families of occupations, vocational skills and training modules. The Government indicates that representatives of the productive sector and training related to each occupational family participated in these round tables. The Committee also notes the Government's reference to the implementation of various vocational education and training programmes, including the implementation of the Guatemala Vocational Training Threshold Programme, with the support of the United States of America, which provides for the adoption of reforms in the education sector and the mobilization of resources with a view to improving the quality and pertinence of middle-level education; and the Labour Skills Certification Programme, which promotes the certification of the competences of citizens who have knowledge or skills. With reference to the latter Programme, the CACIF proposes to

seek opportunities through other approaches, such as dual education. The Committee also notes the information contained in the Government's report on the number of participants in the Technical Capacity-building for Employment Programme, through which capacity-building opportunities are provided to vulnerable groups (such as young persons who are neither studying nor working, the unemployed and underemployed, persons with disabilities and returning migrants) with a view to strengthening their skills and competences through the provision of a technical background and vocational training with a view to their appropriate labour market integration. ***The Committee requests the Government to continue providing updated information on the nature and impact, including statistical data disaggregated by sex and age, of the measures implemented in the field of vocational education and training in relation to potential employment opportunities. It also requests the Government to provide information on the measures adopted to ensure the effective coordination of vocational education and training policies and programmes with employment policies and programmes.***

Labour market information. The Committee observes that, according to the data of the National Statistical Institute (INE), during the second half of 2019, the participation rate was 59.1 per cent (83.1 per cent for men and only 38.7 per cent for women) and the gross occupation rate was 58 per cent (81.7 per cent for men compared with 37.7 per cent for women). The Government adds that the open unemployment rate was 2 per cent (1.7 per cent for men and 2.5 per cent for women), while the visible underemployment rate was 6.5 per cent (6.2 per cent for men and 7.1 per cent for women). The Committee also notes that the PNED envisages the establishment of a National Labour Information System (SNIL) with a view to implementing an evaluation and monitoring system of the PNED and making available to labour market institutions, employers and the population in general all the available labour market information. ***Noting that the employment rate of men is more than twice that of women, the Committee request the Government to provide information on the measures taken or envisaged to promote productive, sustainable and decent work for women, as well as on the impact of these measures on women's employment. It also requests the Government to continue providing updated statistical data, disaggregated by sex and age, on labour market trends, including employment, unemployment and underemployment (visible and invisible) and informality rates, disaggregated by sex, age and rural and urban areas. The Committee further requests the Government to provide statistical data on the labour market situation and trends as a basis for identifying the impact of the measures adopted to promote the employment of specific categories of workers, such as women, young persons, older persons, migrant workers, persons with disabilities, indigenous peoples, and workers in the rural sector and the informal economy. The Committee also requests the Government to provide information on the progress made in the establishment of the National Labour Information System (SNIL)***.

Youth employment. The Committee observes, based on the National Employment and Income Survey (ENEI), that in 2019 the youth unemployment rate was 4.6 per cent (4 per cent for men and 5.7 per cent for women) and the rate of young persons who neither study nor work was 28.2 per cent (9.5 per cent for men and 45.8 per cent for women). The Committee notes the information provided by the Government on the implementation of various programmes to promote youth employment. The Government refers, among other measures, to the implementation of the Strategic Institutional Plan 2016-21 of the Technical Capacity-building and Productivity Institute (INTECAP), the objectives of which include the extension of the coverage of initial certifiable training, with emphasis on vocational training for youth. The Government indicates that 145,496 men and 88,983 women benefited from the INTECAP in 2018. The Committee also notes the information provided by the Government on the labour market integration of young persons following the certifiable training provided by the INTECAP. The Government adds that, through the Artisanal Social Grant Programme, conditional cash transfers are provided with a view to strengthening skills for the manufacture of artisanal products. The Government indicates that around 3,000 persons in 51 municipal areas have benefited from such grants, of whom

98 per cent were poor or extremely poor women. The Government also refers to the implementation of the National Workshop Schools Programme, which seeks to contribute to poverty reduction among young persons through training for employment, as well as the First Job Social Grant Programme, which has the objective of facilitating the formal labour market integration of unemployed young persons between 18 and 25 years of age living in poverty or extreme poverty through their temporary recruitment by enterprises as apprentices. Finally, the Committee notes the detailed information provided by the Government on the measures implemented by the National Employment Service to promote youth employment (such as employment guidance and mediation services, the organization of employment fairs, vocational training and capacity-building) and on the impact of these measures. ***The Committee requests the Government to provide updated information on the nature and impact of the measures implemented to promote youth employment, particularly for the most underprivileged categories of young persons. It also requests the Government to continue providing updated statistical data, disaggregated by age and sex, on youth employment trends.***

Persons with disabilities. The Committee notes the information provided by the Government on the number of persons with disabilities who found employment, and the numbers of enterprises and persons in the public and private sectors who received training on the subject of disability within the framework of the Social Inclusion Programme (*Empléate Inclusivo*), which promotes the access of persons with disabilities to decent work through the improvement of their employability. The Government also refers to the holding of consultation workshops on the proposed legislative initiative for the promotion of work, employment and entrepreneurship for persons with disabilities. Nevertheless, the Government indicates that statistical data is not available on the labour market situation of persons with disabilities as the employment surveys carried out by the INE do not cover the subject of disability. ***The Committee requests the Government to continue providing detailed and updated information on the measures adopted with a view to promoting the access of persons with disabilities to the open labour market. In this respect, the Government is requested to make every effort to compile, analyse and then communicate statistical data on the labour market situation of persons with disabilities so as to enable the assessment of the impact of the measures taken to increase access to the open labour market for persons with disabilities. It also requests the Government to provide information on the situation with regard to the proposed legislative initiative on the promotion of work, employment and entrepreneurship by persons with disabilities, and to provide a copy once it has been adopted.***

Informal economy. The Committee notes that, according to the data of the Labour Market Observatory (OML), during the second half of 2019, 65.3 per cent of the occupied population in the country were working in the informal economy (63.8 per cent of men and 68 per cent of women). The Committee observes that the PNED includes among its thematic areas the facilitation of the transition to formality of economic units and workers in the informal economy. In this connection, the Government indicates that in 2019, with the technical assistance of the ILO and the support of EUROSOCIAL, the National Formalization Strategy was designed and that it provides for the adoption of measures to increase the coverage of social protection, the facilitation of administrative procedures, the simplification of the tax system, vocational training and action to improve productivity. The Government also reports the establishment of the Subcommission for the Transition to Formality, which is composed of various national institutions, including the Guatemalan Social Security Institute (IGSS), the CACIF and workers' organizations. The Committee also notes the information provided by the Government on a series of measures adopted to promote the transition from informality to formality, including: the introduction of reforms to the Code of Commerce to facilitate and simplify the establishment of formal enterprises; the development of the "*Asi se hace*" ("This is how it is done") portal as a tool for carrying out administrative procedures for the registration of enterprises; and campaigns to promote formalization. In this regard, the CACIF emphasizes the need to take preventive action in relation to inspection with a view to reducing current deficiencies. In its response, the Government refers to the

development of a strategic plan for the reinforcement of the General Labour Inspectorate with a view to improving the enforcement of labour legislation. The Committee also notes the Government's indication that action has been taken since 2017, with ILO technical assistance, with a view to determining a National Wage Policy based on tripartite social dialogue and ensuring effective compliance with the minimum wage in both the formal and informal economies. However, the Committee observes the indication by the CACIF in its observations that there has been no progress in the development of the National Wage Policy. In this regard, the Government indicates that there is currently a proposed Bill and that a road map has been developed with a view to its adoption.

The Committee also notes that in December 2018 a paper was presented on the statistical definition of the informal sector and informal employment in Guatemala, with a view to establishing a concept of the informal economy in the country, in accordance with the most recent recommendations of the ILO International Conference of Labour Statisticians (ICLS). The Government also reports the implementation of a pilot plan for formalization involving traders in the informal economy in the municipalities of Tecpán and Chimaltenango. Finally, the Committee notes the measure taken for the provision of assistance to informal economy workers in the context of the COVID-19 pandemic. ***The Committee requests the Government to continue providing detailed and updated information on the scope of the informal economy and on the nature and impact of the measures adopted under the PNED to facilitate the transition to the formal economy, particularly in rural areas of the country, including those adopted within the context of the National Formalization Strategy.***

Rural employment. The Committee notes that, according to the ENEI, in the first quarter of 2019, 31.9 per cent of the economically active population were engaged in activities in the agricultural, stock-raising and forestry sector, and the open underemployment rate in the sector was 36.2 per cent. The Committee observes that the priority action set out in PNED includes the preparation of the "Rural Development Plan, An Agricultural and Stock-raising Revolution", with a view to promoting decent work in rural areas with the participation of producers' associations through the implementation of productive investment plans for rural areas and technological packages. The Committee also notes the information provided by the Government on the findings of the diagnosis of decent rural youth employment undertaken by the OML with the cooperation of the United Nations Food and Agriculture Organization (FAO). The objective of the diagnosis was to identify opportunities for the generation of employment and self-employment in rural areas, identify occupational trends and training needs and design proposals for interventions through active employment policies focusing on rural youth employment. The Government adds that progress has also been made in the accessibility of employment guidance and placement services in rural areas, as there is at least one employment manager in each of the 22 departments of the country. Moreover, a rural focus has been adopted for the Municipal Employment Single Windows (VUMES) located in municipal areas with a scarce network of enterprises with the objective of providing support to persons living in rural areas and engaged in agricultural activities. The CACIF considers that it is necessary to establish annual targets for the VUMES as a means of measuring their outreach and impact with a view to developing strategies to promote and generate formal employment in rural areas. In this regard, the Government indicates that the intervention strategy of the VUMES includes quality standards and follow-up and measurement indicators, as well as annual targets for the number of beneficiaries to be provided with support in relation to the needs of each area. The Government also refers to the implementation of the Rural Education Project V (PROEDUCV) with the support of the Development Bank of the Federal Republic of Germany (KfW). The objective of the project is to improve the supply of technical education with a view to promoting the access of young persons with few resources, and particularly rural and indigenous young persons, to training for quality employment adapted to the needs of the labour market. The Committee notes that the Trade Union Movement in its observations denounces the precarious conditions of workers in the agricultural sector. It also denounces the existence of child labour in the sector, including in palm oil enterprises, and irregularities in their investigation. ***The Committee***

requests the Government to continue providing information on the nature, scope and impact of the measures adopted to promote rural employment, including updated statistics disaggregated by sex, age, socio-occupational category, economic sector and region. With regard to the concerns expressed by the Trade Union Movement in relation to the precarious working conditions and existence of cases of child labour in plantations, the Committee refers the Government to its 2021 comments on the Plantations Convention, 1958 (No. 110), and requests the Government to provide detailed and updated information on the inspections carried out in plantations, including the violations of labour standards reported.

Nigeria

Employment Service Convention, 1948 (No. 88) (ratification: 1961)

Previous comment

Articles 1 and 3 of the Convention. Contribution of the employment service to employment promotion. The Committee notes that the attachments mentioned in the Government's report have not been provided. The Committee recalls the Government's previous indication that the revised National Employment Policy (NEP), adopted on 19 July 2017, provides for the establishment of at least two community employment centres (CECs) in all local government areas in the country, which are intended to provide a full range of employment services to jobseekers in both rural and urban areas, including training, referrals, career counselling and information on job vacancies. In this context, the Committee notes the Government's clarification that there are 774 local government areas in the country rather than 744, as previously reported. The Government also indicates that the labour offices in the country's 36 states (including in the Federal Capital Territory) each have a section that serves as a public employment centre. ***The Committee reiterates its previous request that the Government provide specific updated information on the nature, scope and impact of measures taken or envisaged to implement the provisions of the National Employment Policy (NEP) with respect to the structure and functioning of the employment service. It also once again requests the Government to provide statistical information disaggregated by age and sex, on the number and location of public employment offices that have been established and are in operation, the number of new staff recruited for these offices, the number of applications for employment received, the number of vacancies notified, and the number of persons placed in employment by such offices. The Committee also reiterates its request that the Government indicate the manner in which the employment service, in cooperation with the other public and private bodies concerned, ensures the best possible organization of the labour market with a view to the achievement and maintenance of full, productive and freely chosen employment.***

Articles 4 and 5. Consultations with the social partners. The Committee welcomes the Government's indication that a National Labour Advisory Council (NLAC) has been inaugurated, and that issues related to *Articles 4* and *5* of the Convention will be discussed at the NLAC's meetings. ***The Committee requests the Government to provide information on the procedures adopted for the appointment of workers' and employers' representatives to the National Labour Advisory Council (NLAC), as well as on the consultations held within the NLAC regarding the organization and operation of the employment service. The Committee also requests the Government to indicate whether and to what extent measures have been taken to establish committees at the regional or local level as contemplated in Article 4(2) of the Convention.***

Article 6. Organization of the employment service. The Committee had previously noted that some of the employment exchanges and the professional and executive registries in place had been upgraded to model job centres. ***Noting that the Government has not provided information in response to its previous comments, the Committee reiterates its request that it provide updated detailed information,***

including disaggregated statistical data, on the impact of the reorganization and restructuring of the employment service under the National Employment Policy (NEP), as well as up-to-date information on the operation of the job centres and their contribution towards meeting the needs of workers and employers, especially in regions with high levels of unemployment. The Committee also requests the Government to provide updated information in relation to the operation of the job centres in all 774 local government areas, including the number and location of community employment centres (CECs), the number and distribution of staff, the training provided to them, and the impact of their activities in ensuring the best possible organization of the national labour market. In addition, the Government is requested to provide information on any additional measures taken or envisaged to respond to the needs of workers and employers throughout the country, particularly in those regions of the country with high levels of unemployment.

Article 7. Particular categories of jobseekers. The Committee had previously noted the provisions in sections 4.7.3 and 4.7.4 of the NEP, which called for the Government to develop and implement a range of measures to ensure the increased participation of women and young persons in the workforce and the full employability of persons with disabilities. In this context, the Committee welcomes the adoption in 2018 of the Discrimination Against Persons with Disabilities (Prohibition) Act, as envisaged under section 4.7.4 of the NEP. It notes that the Act prohibits discrimination on the ground of disability by any person or institution in any manner or circumstance (section 1(1) of the Act), and provides that a person with a disability has the right to work on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen or accepted in an open labour market and work environment (section 28(1)). The Act also establishes the National Commission for Persons with Disabilities, whose powers include the establishment and promotion of inclusive school, vocational and rehabilitation centres for the development of persons with disabilities, as well as receiving complaints made by persons with disabilities with respect to the violation of their rights (section 37(j) and (n)). ***The Committee requests the Government to provide detailed information, including statistical data disaggregated by age and sex, on the impact of the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 on access to employment services, as well as any other measures adopted or envisaged to promote the employment of persons with disabilities on the labour market. Referring to its previous comments, the Committee also requests the Government to provide detailed updated information on the nature, scope and impact of measures taken to promote women's employment, including in the framework of the self-employment promotion programmes for women mentorship and the gender-specific career counselling services.***

Article 8. Employment of young persons. With respect to measures taken to promote youth employment, the Government reports that section 1(2) of the Finance Act of 2020 establishes an exemption from the payment of the tertiary education tax for small companies with a turnover of up to 25 million naira (approximately US$58,100), with the aim of encouraging youth entrepreneurship. It further indicates that the Nigerian Youth Investment Fund (NYIF) provides a sustainable pool of resources through which young people can access capital support for their businesses. The Committee notes with ***interest*** the adoption of the Nigerian Youth Employment Action Plan 2021-2024 (NIYEAP), developed with the support of the Office, and which is centred around four priority areas of intervention: employability, entrepreneurship, employment and equality of opportunity. It also notes that the NIYEAP is informed by the ILO Call for Action on Youth Employment and aligned with the Global Initiative on Decent Jobs for Youth. The NIYEAP's strategic lines of action in relation to employment include strengthening online and offline career information, counselling and guidance services, promoting availability of accurate up-to-date information on jobseekers and vacancies and increasing the capacity of resource and service centres. ***The Committee requests the Government to provide detailed updated information, including statistical data disaggregated by age and sex, on the impact of the measures taken by the employment services to assist young persons in securing lasting employment and decent work. The Committee further requests the Government to communicate information in relation to***

vocational guidance, education and training and employment placement services or other relevant services offered by the public employment service with a view to enabling young persons to acquire the necessary skills to enable them to access opportunities for sustainable, decent and freely chosen employment. It reiterates its request that the Government provide information on the specific services and activities provided by the employment service with a view to achieving the objectives set out in section 4.7.1 of the National Employment Policy (NEP), namely generating employment opportunities and promoting skills acquisition for young persons.

Article 10. Measures to encourage the full use of employment service facilities. The Committee notes that the Government does not provide information responding to its previous comments on this point. ***The Committee therefore once again requests the Government to provide detailed information on the measures taken or envisaged by the employment service in collaboration with the social partners to encourage the full use of employment service facilities, including specific examples of activities carried out to reach out to employed and unemployed persons throughout the country.***

Article 11. Cooperation between public and private employment agencies not conducted with a view to profit. The Government reports that there is effective cooperation between the public employment service and private employment agencies (PEAs). In this respect, it indicates that: (i) annual national workshops are organized for PEAs, in collaboration with the Human Capital Providers Association of Nigeria (HuCaPAN), on the topics of labour administration, decent work, labour market information and challenges faced by PEAs in the field; (ii) stakeholder meetings are organized with the aim of encouraging exchanges of ideas; (iii) the Ministry monitors PEAs on a yearly basis; and (iv) the HuCaPAN occasionally donates working materials to support the private employment services. ***The Committee requests the Government to continue providing up-to-date information on the measures adopted or envisaged to promote and maintain cooperation between the public employment service and PEAs not conducted with a view to profit, including with respect to the content and outcome of the annual national workshops held between the public employment service and PEAs.***

Republic of Korea

Employment Policy Convention, 1964 (No. 122) (ratification: 1992)

Previous comment

The Committee notes the observations of the Korea Enterprises Federation (KEF) submitted with the Government's 2019 and 2020 reports and the Government's responses thereto. The Committee also notes the observations of the Korean Confederation of Trade Unions (KCTU) received on 20 September 2019. ***The Government is requested to provide its comments in this respect.***

Articles 1 and 2 of the Convention. Overall labour market trends. The Committee notes the information provided by the Government on labour market trends, indicating that the labour participation rate for persons 15 to 64 years of age increased from 63.2 per cent in 2017 to 63.3 per cent in 2019. It adds that the overall employment rate for persons 15–64 increased year-on-year, from 66.6 per cent in 2017 to 66.8 per cent in 2019, whereas the overall unemployment rate increased slightly, from 3.7 per cent in 2017 to 3.8 per cent in 2019. The Committee notes that, according to data available to the ILO Statistics Department (ILOSTAT), as of 2021, the labour participation rate had declined only slightly from 2019 pre-pandemic levels, reaching 63.1 per cent (72.7 per cent men and 53.7 per cent women). It also notes that, while the overall unemployment rate remained relatively stable, declining to 3.6 per cent from 2019 to 2021, the unemployment rate for young persons aged 15-24 in 2021 was more than twice as high as that of the 15-64 age bracket, reaching 8.1 per cent during this period. In respect of active labour market measures, the Government refers to the adoption of the Plan to Develop Public Employment Service in June 2019. Currently, there are 989 public employment service centres operated by eight ministries and an additional 232 centres operated by local governments. In addition,

a plan to achieve innovation in vocational skills development was adopted in April 2019. The annual number of trainees among jobseekers and unemployed persons participating in vocational training programmes was 280,000 in 2019, while the number of employed persons participating in such programmes was 294,000. The Government indicates that the Minister of Employment and Labour formulates a basic employment policy plan every five years in accordance with the Basic Employment Policy Act. ***The Committee requests the Government to continue to provide comprehensive updated information on overall labour market trends, including statistical data disaggregated by sex and age, relating to employment, unemployment and underemployment. It further requests the Government to continue to provide detailed updated information regarding the nature, scope and impact of active labour market measures implemented to promote full, productive and freely chosen employment in the Republic of Korea.***

Measures addressing dualism in the labour market. The Government reports that the share of non-regular workers among wage workers increased by 3.9 per cent from 32.5 per cent in 2013 to 36.4 per cent in 2019. Among non-regular workers, the number of temporary and part-time workers increased, while the number of non-standard workers, such as dispatched and agency workers decreased. The Committee notes that the Policy Directions for Referral Workers in the Private Sector were adopted and came into force on 4 December 2019. Moreover, the Committee notes that, in the private sector, the Government provides subsidies to small and micro enterprises (SMEs) to assist them in converting non-regular workers into regular workers. The proportion of voluntary non-regular workers also increased. In this respect, the Committee notes the information provided by the Government on the measures taken to convert non-regular workers in the public sector into regular workers. As of May 2020, the converting process for 181,000 non-regular workers reached 95.4 per cent of the target number of 205,000. Moreover, in smaller organizations, 5,743 out of 6,195 non-regular workers were converted to regular status. Moreover, in the private sector, the Government provides subsidies to small and micro enterprises (SMEs) to assist them in converting non-regular workers into regular workers. However, the Committee notes that the Government does not provide information on the status of the proposed amendments to the Act on the Protection of Dispatched Workers. It notes that, according to the observations of the KCTU, a significant percentage of non-regular workers in the public sector were converted to regular status by newly established subsidiaries of public institutes, whose main function is to hire these workers to work for their parent companies. The KCTU points out that this leaves the converted workers in triangular employment relationships, in which they are classified as a category separate from that of regular workers and subject to a different system of wages. The KCTU expresses the view that the policy support provided by the Government to promote the voluntary conversion of non-regular workers in the private sector to regular workers to be limited and short-term in nature. The Committee notes that, according to the 2021 OECD Inclusive Growth Review of Korea: Creating Opportunities for All, despite the Government's efforts, labour market dualism remains a key challenge. The report indicates that the proportion of non-regular workers remains high, with women, young persons and older workers being disproportionately employed in non-regular employment, where they earn approximately one-third less than regular workers. Only 70.8 per cent of non-regular workers are covered by unemployment insurance. Temporary workers earn less than 60 per cent of the hourly wage of a regular worker and have lower probabilities of moving into regular employment than unemployed persons. In this context, the Committee notes that the Government does not provide information on the status of the proposed amendments to the Act on the Protection of Dispatched Workers. In addition, the Committee notes the observations of the KCTU, in which it notes that the Government's efforts to promote flexible working hours is one of the main reasons for the low-wage structure in Korea, leading to a decline in the quality of employment. It adds that, despite efforts made to reduce working hours in recent years, this has been offset by employers' recourse to flexible hours and special exceptions which allow employers in specific industries to have workers continue to work beyond the legally permitted maximum hours and/or to change the length of their breaks. ***The Committee requests the Government***

to intensify its efforts to reduce labour market dualism in both public and private sector with a view to creating full, productive and lasting employment opportunities for both regular and non-regular workers. It also requests the Government to continue to provide detailed updated information on progress made or results achieved in this regard, including information on the status of the amendments to the Act on the Protection of Dispatched Workers. In addition, the Committee requests the Government to indicate the measures taken to address the concerns raised by the Korean Confederation of Trade Unions (KCTU) with respect to the wage structure, working hours and quality of jobs in the industries eligible for special exceptions.

Job creation policy and the COVID-19 pandemic. The Committee notes the Government's indication that the "Five-year Job Policy Roadmap" was adopted in October 2017, establishing job creation as a national priority. As implementing measures taken under the Roadmap, the employment rate and the number of the employed for the overall population increased. The Government nevertheless indicates that the country is facing economic recession and employment shock due to the COVID-19 pandemic. In response to the difficulties in the labour market, the Government invested approximately 12 trillion won to develop and actively carry out additional measures to stabilize employment and create jobs, by expanding employee retention subsidy, designating sectors to receive special employment support, deferring the deadline for social insurance contributions, introducing emergency employment stability subsidies, a loan for the employment retention fund and providing subsidies under labour-management agreements to maintain employment. In addition, the Government established and implemented the "Korea New Deal Initiative" in July 2020 to protect jobs and to support domestic demand. In particular, the Initiative aims to expand the employment and social safety net to better protect those who are particularly vulnerable in time of crisis. The KEF indicates in its observations that, although the government estimates that employment indicators such as the employment-to-population ratio continue to improve since various measures to support employment have been implemented, the number of employed persons has been decreasing since the pandemic began. ***Noting the difficulties in labour market due to the COVID-19 pandemic, the Committee requests the Government to continue its efforts to create full, productive and sustainable employment opportunities for all, particularly the most vulnerable during the crisis. It also requests the Government to continue to provide information on the nature of the measures taken and results achieved in this regard. The Committee also requests the Government to provide information on the role of the social partners during the development and implementation of these measures.***

Youth employment. The Committee notes that, according to the observations of the KEF, it is necessary to improve the assessment of the employment impact of the measures taken in respect of youth employment, and to better manage and monitor the existing subsidies, such as allowances for young job seekers, so that they are used for their purpose. The Committee notes the Government's response to the KEF's observations, indicating that it recognizes the recent rise in the extended unemployment rate of young persons, from 21.7 per cent in 2016 to 23.8 per cent in 2019, and that market response to measures taken is lagging behind actual progress. The Government indicates that there has nevertheless been continuous improvement of the youth employment indicators year on year. It adds that the youth unemployment rate also shows an overall decreasing trend despite some fluctuations. The Government further states that it is facing the biggest challenge to youth employment over the next three to four years due to demographic changes, with a large number of young persons entering labour market. To address this challenge, a youth employment strategy was developed in March 2018, focusing on providing strong incentives for companies to hire young persons and addressing problems in the job-seeking process. The Government also refers to the implementation of various initiatives, including the K-Digital Training Programme, to provide training through business, universities and institutions equipped with innovative technologies and training capacity, with the aim of fostering 180,000 young persons in high-tech industries. In particular, tailored vocational training and employment support are provided to youth not in employment, education or training through the

Naeil Irum (achieve tomorrow) School Programme. The Committee notes that, on 27 August 2021, the Government introduced amendments to the Special Act on the Protection of Youth Employment, which extended the regulations on the employment of unemployed youth in public institutions for a two-year period. Pursuant to section 5 of the Special Act, public institutions are required to employ unemployed young persons (15-34), who must constitute 3 per cent of their total workforce. The Committee also notes steps taken by the Government to diversify the programmes offered by the Youth Advancement Support Project, which supports young persons who have given up on finding a job or are experiencing job anxiety and depression, as well as the Youth Job Leap Incentive, which provides support to SMEs to encourage them to employ young people facing difficulties in entering the labour market. In the context of the COVID-19 crisis, the Government increased the number of recipients of the youth job search allowance from 50,000 to 100,000 persons and the employment success package programme from 50,000 to 130,000 persons. Additional budgets have also been allocated through the additional youth employment subsidy program, providing support to 90,000 persons. ***Noting the increasing number of young persons seeking to enter the labour market, the Committee requests the Government to strengthen its efforts to promote the long-term integration of young persons in the labour market, including educated young persons and other categories of young people who encounter difficulties in finding employment. It also requests the Government to continue to provide information on the measures taken or envisaged in this regard, as well as any progress made or results achieved.***

Employment of women. The Committee notes the information provided by the Government on the adoption of the 6th Basic Plan for Equal Employment to improve the quantity and quality of employment of women in December 2017 and its implementation, by providing systematic support for maternity protection, promoting a discrimination-free working environment and supporting work-life balance. Various measures are being taken under the 6th Basic Plan, such as extending the scope of application of the Equal Employment Opportunity Act to all workplaces, strengthening protection and monitoring of sexual harassment at work, imposing obligations on employers to address the gender wage gap, promoting education that is free of gender stereotypes, providing re-employment support for women whose careers have been interrupted, as well as increasing parental leave benefits and extending the paid paternity leave from 3 days to 10 days. The Committee also notes the Government's indication that the employment rate of women is continuously increasing, notably among women in their 30s, from 55.5 per cent in 2013 to 60.7 per cent in 2019. However, the Committee notes that, despite the reduced gap, the overall employment rate of women 15 to 64 is still significantly lower than that of their male counterparts, increasing from 70.7 per cent in 2019 to 72.7 per cent in 2021 for men and from 51.6 per cent in 2019 to 53.7 per cent in 2021 for women. The Committee further notes that, according to the observations of the KCTU, women account for 55.6 per cent of all non-regular workers and this proportion has been steadily increasing since 2003. The KCTU indicates that, after their job breaks due to marriage and pregnancy, women re-enter the labour market through precarious and irregular jobs, working for limited terms or in part time in cleaning, domestic work and service jobs. The Committee notes that, according to the 2021 OECD report, while the gender wage gap has declined significantly since 1992, from 47 per cent in 1992 to 32 per cent in 2019, at 32 per cent it is still the highest among the OECD countries. Against this backdrop, the Committee notes that, pursuant to the revision of the Gender Equality Act and the Labour Relations Commission Act adopted on 21 May 2021, the Labour Relations Commission Correction system to Address Gender Discrimination in Employment came into effect on 19 May 2022. In addition to imposing penalties on employers for gender discrimination in employment, the correction system allows workers who have been subjected to discrimination to apply for and receive redress, including improvement of working conditions and appropriate compensation. ***The Committee requests the Government to strengthen its efforts to increase women's participation in the labour market, particularly in full, productive and sustainable employment, and to provide updated comprehensive information on the nature and impact of measures taken. Recalling its previous comments regarding the Workers with Family Responsibilities Convention, 1981 (No. 156), the***

Committee also requests the Government to continue to provide information on measures taken or envisaged to assist both female and male workers to reconcile their work and family responsibilities.

Employment of older workers. The Committee previously noted that retired employees continue to work in non-regular and part-time positions until their late sixties due to an inadequate social safety net, and that measures were taken to strengthen the outplacement and re-employment services to older workers with lifetime planning and vocational skills, including through the wage peak system. The Committee notes the Government's indication that an analysis of the employment effect of the subsidy for employing older workers and the mid-long term policy direction for employment stability of older workers, carried out by the Korea Labour Institute in 2017, shows that the wage peak system has an overall positive impact on employment of older workers. The Government also indicates that tailored training programmes are provided to older workers, however, it is hard to measure the number of persons placed in employment as a result of the customized training, due to the lack of accumulated data samples of trainees. The Committee also notes that the statistic information provided by the Government shows an overall increase from 2013 to 2018 in the employment rate of older workers, from 73.2 per cent to 75.2 per cent among those aged 50-59 and from 38.4 per cent to 40.1 per cent among those aged 60 and over. The Committee notes that, according to the 2021 OECD report, at 34 per cent, the employment rate of workers over 65 in Korea is twice the OECD average. The report also notes, however, that low job quality for older Koreans remains a significant challenge, with many retired workers finding new employment in precarious and low-paid jobs, or in self-employment. The 2021 OECD report notes that Korea is well above the OECD average, reaching 45.7 per cent of those over 65 years of age. ***The Committee requests the Government to continue to provide detailed information on the measures taken to promote productive employment opportunities for older workers and their outcomes. It also requests the Government to continue to provide statistical information on employment creation, job placement results and income levels of older workers.***

Migrant workers. The Committee notes the absence of information in this regard. ***Recalling its previous comments under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee once again requests the Government to provide information on the situation of migrant workers in the labour market.***

Article 3. Participation of the social partners. Following its previous comments, the Committee notes the Government's indication that social partners participate in the formulation and implementation of employment policies through meetings held within various tripartite structures. In particular, the ESLC was established in November 2018. A tripartite joint implementation monitoring group was formed at the ESLC to monitor the implementation of the Tripartite Jobs Pact. In July 2020, a tripartite agreement was concluded to overcome the COVID-19 crisis through the ESLC aiming to maintain jobs. The implementation of this agreement is monitored by a special committee established in August 2020. ***The Committee requests the Government to continue to provide information on consultations held with the social partners on the matters covered by the Convention. It also requests the Government to provide detailed information on consultations held with representatives of the persons affected by employment policy measures, and representatives of workers in non-standard forms of employment.***

Romania

Employment Policy Convention, 1964 (No. 122) (ratification: 1973)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Employment trends and active labour market policies. The Committee notes the Government's indication that the overall employment rate for the active population (15–64 years) reached 66.0 per cent in the third quarter of 2020, showing an upward trend compared to 63.9 per cent in 2017. It also notes the persistently lower employment rates for women in 2017 (55.8 per cent for women

compared to 71.8 per cent for men) and in the third quarter of 2020 (56.9 per cent for women compared to 74.9 per cent for men). The Committee notes that, according to ILOSTAT data, the overall unemployment rate in 2020 was 5 per cent (5.3 per cent for men and 4.7 per cent for women, respectively). The Government refers to the Human Capital Operational Program (HCOP) as an important tool for financing employment measures, structures in seven priority axes, including employment (axes 1, 2 and 3), social inclusion (axes 4 and 5), education (axis 6) and technical assistance (axis 7). The Government also indicates that Act No. 76/2002 on the unemployment insurance system and employment stimulation during the period 2016–18 was amended, with the aim of increasing employment opportunities for registered unemployed persons and jobseekers and stimulating employers to hire registered unemployed persons. The Committee notes that job subsides are provided to employers who offer employment opportunities to specific groups of workers, including new graduates, persons with disabilities, registered unemployed persons over the age of 45, long-term unemployed persons, young people in the NEET category (not in employment, education or training), youth at risk of social marginalization and unemployed single parents. ***The Committee requests the Government to continue providing updated detailed information on general employment trends, including statistical data disaggregated by sex and age. It further requests the Government to continue providing information on the impact of its employment policy measures in terms of the creation of productive employment and decent jobs, job creation, particularly for specific groups such as women, youth at risk of social marginalization, persons with disabilities, older workers and the long-term unemployed.***

Youth employment. The Committee notes that the unemployment rate of youth (15–24 years) stood at 18.3 per cent in 2017, rising to 19.2 per cent in the third quarter of 2020. Moreover, according to the 2020 European Commission Country Report for Romania (SWD (2020) 522 final), in 2018 the percentage of young people not in education, employment or training (NEET) was one of the highest in the European Union, with three times as many NEETs among the young rural resident population (15–24) compared to those living in urban areas. The Government indicates that, as part of its efforts to support the labour market integration of young persons, particularly those in the NEET category, the Ministry of Labour and Social Justice elaborated the Youth Guarantee Implementation Plan 2017–2020. The Government also reports that it approved a draft Youth Law on 5 July 2018 which was sent to Parliament. ***The Committee requests the Government to continue providing updated detailed information, including statistical data disaggregated by age, sex and rural/urban areas on the nature and impact of the measures taken to facilitate lasting employment opportunities for young people, especially those classified as NEETs. It also requests the Government to provide information on progress made regarding the adoption of the new Youth Law, and to provide a copy once adopted.***

Roma minority. The Committee notes the Government's reference to the Strategy for the Inclusion of Romanian citizens belonging to the Roma Minority 2012–2020 as well as to axes 4 and 5 of the HCOP, which focus on reducing social exclusion. The Government indicates that the National Agency for Employment is responsible for implementing measures taken to attain the employment objectives, based on annual employment programs. Measures taken include the provision of information on employment services in communities with large numbers of Roma, allocation of territorial budgets, job exchanges and development of collaboration with Roma representatives. The Committee notes that the Government exceeded its target of providing employment to 5,385 members of the Roma community in 2015, with 6,295 Roma being placed in employment; however, the targets set for 2016 and 2017 were not fully achieved. ***The Committee requests the Government to continue to provide updated detailed information, including statistical data disaggregated by sex and age, on the nature and impact of the measures taken to promote access to lasting employment and decent work for members of the Roma community.***

Article 3. Participation of the social partners in the formulation and implementation of policies. The Committee previously requested the Government to provide specific examples of how the social partners are effectively consulted and participate in decision making on the matters covered by the Convention. In this respect, the Committee notes the Government's reference to the development of the Youth Guarantee Implementation Plan, indicating that the social partners were consulted during this process. The Government also indicates that social partners and non-governmental organizations play an important role in the implementation of various programmes and projects related to employment, promotion of youth-related initiatives, training ventures, job placement, apprenticeship and traineeship programmes. The Committee further notes that the National Employment Program, developed each year by the National Agency for Employment since 2002, is formulated on the basis of proposals from the county employment

agencies and the Bucharest Municipality Agency, taking into account the economic and social situation at the territorial level and the strategic targets in the programmatic documents adopted at national level. The Government indicates that the National Employment Program targets specific groups that encounter difficulty in accessing the labour market, such as members of the Roma community, persons with disabilities, young persons covered by the child protection system, foreigners, refugees and beneficiaries of other forms of international protection, persons who have executed custodial sentences and victims of trafficking. ***The Committee requests the Government to provide updated information on the manner in which the social partners are effectively consulted and participate in the development of the National Employment Programme each year. It also requests the Government to provide information on the measures taken or envisaged to ensure that these consultations include representatives of other segments of the economically active population, including representatives of the Roma community, persons with disabilities, women and young persons, as well as of persons working in informal economy.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Uganda

Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. The Committee previously requested information on the second National Development Plan 2015/16–2019/20 (NDPII), including on the results of programmes aimed at stimulating growth and economic development, raising living standards, responding to labour force needs and addressing both unemployment and underemployment. The Government's report does not contain information on the NDPII, instead it refers to continued challenges such as the gender pay gap, lower wages in rural areas than in urban areas, and comparatively low labour productivity. The Committee notes with ***interest*** the adoption of the third National Development Plan 2020/21–2024/25 (NDPIII), whose principal goal is "Increased Household Incomes and Improved Quality of Life of Ugandans". According to the NDPIII, the proportion of the labour force in paid employment increased between 2011/12–2016/17, and enrolment in business, technical and vocational education and training increased significantly. The NDPIII nevertheless indicates that labour underutilization remains a challenge, as a large number of Ugandans are underemployed. The Committee notes that, according to the ILOSTAT database, as of 2017, the overall unemployment rate in Uganda stood at 9.8 per cent (8.4 per cent for men and 11.7 per cent for women, respectively). The labour force participation rate was 49.1 per cent in the same year, with a higher participation rate for men than for women (56.9 and 41.8 per cent, respectively). The ILOSTAT database also indicates that the composite rate of labour underutilization for 2017 stood at 30.9 per cent. In this context, the Committee notes that the five strategic objectives of the NDPIII include strengthening the private sector's capacity to drive growth and create jobs, as well as enhancing the productivity and social well-being of the population. ***Noting the continued challenges identified by the Government in its report, the Committee requests the Government to provide detailed updated information on the active labour market measures taken and the results achieved in the implementation of the NDPIII, in terms of stimulating growth and economic development, raising living standards, responding to labour force needs and addressing unemployment and underemployment. The Committee further requests the Government to provide up-to-date statistics on current trends regarding employment, unemployment and underemployment, disaggregated by sex, age, religion, economic sector and region.***

Impact of COVID-19. The Committee notes that, according to a 2020 report from the World Bank, fiscal year 2020 saw a real GDP growth of 2.9 per cent in Uganda, less than half of the 6.8 per cent recorded in fiscal year 2019, mainly due to the impact of the COVID-19 crisis. The World Bank further indicates that employment recovered following the easing of mobility restrictions, with an increase in the share of employment in agriculture, but that it had not returned to previous levels in urban areas. ***The Committee requests the Government to provide further information on the nature and impact of response and recovery***

measures taken in the context of the COVID-19 pandemic with a view to promoting inclusive sustainable employment and decent work. The Committee requests the Government to provide information on the challenges encountered and the lessons learned in this context.

Promotion of youth employment. The Committee previously requested information on the measures envisaged or adopted to reduce the unemployment rates of young people as well as the proportion of young people in informal employment. In this respect, the Committee notes that, as of June 2020, according to the NDPIII, the youth unemployment rate stood at 13.3 per cent, and that it seeks to reduce this rate to 9.7 per cent unemployment by the end of the five-year period. According to the NDPIII, there is a large youth population in Uganda (78 per cent); however, a mismatch exists between the skills required by the labour market and the knowledge taught by training institutions. The Committee notes the high proportion of young people in informal employment. The NDPIII indicates that most non-farming employment is in the informal sector (91 per cent), with young people occupying 94.7 per cent of these jobs. The NDPIII envisages various new projects related to youth employment for the period 2020/21–2024/25, including the Youth Livelihood Programme Phase 2 and the Micro, Small and Medium Enterprise Nurturing for Youth Employment Project. The Committee notes the adoption of the Technical and Vocational Education and Training (TVET) Policy in 2019, which aims to reform the TVET system. The TVET Policy establishes a number of objectives, including improving the quality of the TVET system and strengthening the role of employers and business communities in TVET delivery. The Committee notes that, to promote the economic relevance of TVET, the TVET Policy calls for establishing and linking the TVET Management Information System to the Labour Market Information System as well as to promote lifelong learning opportunities for TVET. ***The Committee encourages the Government to pursue its efforts to address the issues related to youth employment identified in the NDPIII, including the skills mismatch and measures to anticipate the future needs of the labour market in the provision of TVET. It requests the Government to provide detailed information on the nature of programmes and projects implemented to promote youth employment, including in the field of TVET and in the context of the NDPIII, and their impact on access for young people to sustainable employment and decent work. In this regard, the Committee requests the Government to provide up-to-date statistics on youth employment and unemployment rates, disaggregated by sex, age, urban versus rural areas and education level, where available.***

Promotion of women's employment. In its previous comments, the Committee requested information on measures to combat persistent occupational segregation on the basis of sex and to increase the participation rate of women in the formal labour market. The Committee notes that the Uganda Women Empowerment Programme supported 43,977 women beneficiaries through 3,448 projects in the fiscal year 2017–18. The Committee nevertheless observes that the information contained in the NDPIII, also indicates that many women do not have access to arable land, and suggests that gender inequalities persist in the country, including in employment and education. The Government also provides statistics from 2016 indicating that disparities exist in the share of women and men in employment, with men accounting for most of paid employment, while women constitute the majority of the self-employed population. The Committee notes that, in its concluding observations of 12 May 2016, the Committee on the Rights of Persons with Disabilities expressed concern that women with disabilities face multiple forms of discrimination, noting the lack of measures for the development, advancement and empowerment of women and girls with disabilities and expressing concern about the few opportunities open for employment for persons with disabilities (document CRPD/C/UGA/CO/1, paragraphs 10 and 52). ***As regards discrimination against women, including with respect to access to resources, the Committee refers the Government to its comments adopted in 2020 under the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In addition, the Committee requests the Government to continue to take the necessary measures, including in the context of the NDPIII, to promote access for women to full, productive and freely chosen employment. The Committee requests the Government to provide information on the results achieved through such measures, including statistics on the participation rate of women, including women with disabilities, in the informal and formal labour market.***

Informal economy. The Committee notes that the Government refers to exclusions from social protection and other critical challenges existing in the informal sector, including gaps in social dialogue, widespread labour rights violations and decent work deficits. The Government nevertheless states that there is political commitment and will to overcome these challenges. In this regard, the Committee notes that the

NDPIII includes a Private Sector Development Programme which has, as one of its key expected results, the reduction of the informal sector to 45 per cent in 2024/25. According to the NDPIII, the private sector in Uganda is dominated by about 1.1 million micro-, small and medium-sized enterprises (MSMEs), which altogether employ approximately 2.5 million people. Furthermore, most of the country's start-ups do not last more than two years, because of factors such as inadequate entrepreneurial ability and low-skilled labour. The Committee notes that, according to 2020 data from the UN Capital Development Fund , the COVID-19 crisis is also likely to have an impact on informal workers, with an estimated 4.4 million informal sector workers losing their earning or seeing it fall below the poverty line. ***The Committee requests the Government to provide further information on the impact of COVID-19 on employment in the informal economy in Uganda, the active labour market measures taken to tackle the challenges identified, and the measures taken to extend access to justice, property rights, labour rights and business rights to informal economy workers and businesses. It also requests the Government to provide information on the nature and impact of employment programmes developed and implemented in the context of the NDPIII, including the Private Sector Development Programme.***

Article 3. Participation of the social partners. The Committee notes from section 1.4 of the NDPIII (approach and formulation process) that its strategic direction was informed by an extensive consultation process, based on background analytical work on past industrialization efforts and strategies, trends in key growth areas (agriculture, ICT, minerals, oil and gas), export and import performances, and sector priority papers, among others. The NDPIII also indicates that sector, regional, district and community level stakeholders were consulted in the formulation process, and that other stakeholders, including industrial and business owners, civil society, faith-based organizations and non-governmental organizations also participated in the process. ***The Committee requests the Government to provide further information on consultations held with employers' and workers' organizations in the formulation, implementation and monitoring of the NDPIII.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Ukraine

Employment Policy Convention, 1964 (No. 122) (ratification: 1968)

The Committee notes the observations of the Confederation of Free Trade Unions of Ukraine (KVPU), as well as the observations of the Federation of Trade Unions of Ukraine (FPU), received on 6 October 2022, concerning the application of the Convention.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. Implementation of an active employment policy. In its previous comments, the Committee requested the Government to provide information on how measures taken in the framework of the Government's action plan have translated into the creation of productive and lasting employment opportunities, and the impact of such measures taken to increase the participation of specific groups in the labour market, including women, young people, older workers and persons with disabilities. The Government reports that the employment rate in 2017 stood at 56.1 per cent, while the unemployment rate was 9.5 per cent. It indicates that, in light of these figures, the employment situation in Ukraine remains complicated, but there are signs of gradual stabilization. The Government states that 2017 saw a drop in the unemployment rate in ten provinces. In addition, the number of self-employed persons rose by 0.3 per cent and the number of persons in informal employment dropped by 299,100 persons. The Committee notes that, in order to assist jobseekers to find jobs more quickly and to meet employers' recruitment needs, the State Employment Service (SES) introduced new methods of working with clients, which have led to better outcomes in its main areas of work, including improved use of information technology. The Committee notes that the Cabinet of Ministers, through its Directive No. 275-r of 3 April 2017, approved a medium-term Plan of Priority Actions through 2020, whose objectives envisage a system to support a highly-skilled workforce. The SES is undergoing reforms to transform it into a client-oriented agency providing a wide range of services, including training that meets the needs of the economy, and new forms of vocational training for the registered unemployed. The Government indicates that Cabinet of Ministers Directive No. 418-r of 27

May 2017 reoriented the SES toward employment promotion, adding that there has been a shift in focus from paying unemployment benefits to getting unemployed persons back into the work force as rapidly as possible. The Government reports that, in 2017, the SES helped 783,000 persons to secure jobs, including: 350,000 women; 297,000 young people under the age of 35, 13,000 persons with disabilities and 92,000 older workers (those with ten or fewer years until retirement). The Government adds that of those who found work in 2017, 45 per cent found a job before they had been officially registered as unemployed. ***The Committee requests the Government to continue to provide detailed, updated information, including statistical data disaggregated by sex, age and region, regarding the employment situation in the country. It further requests the Government to provide updated information concerning the activities of the SES, including with respect to the manner in which its placement activities have led to lasting employment opportunities. It also requests the Government to provide information on the manner in which those persons who found a job prior to registering with the SES as unemployed were placed in employment, whether this was through the SES or other channels. The Committee reiterates its request that the Government provide copies of legislation and regulations adopted or envisaged relevant to active labour market measures, including with respect to the nature and extent of State Employment Service Reforms. The Government is also requested to provide information on the impact of measures taken or envisaged to increase the participation of specific groups, including women, older workers, young persons, persons with disabilities, and the long-term unemployed.***

Coordination of education and training programmes with employment policy. The Committee observes that the Government's priority action plan emphasizes the need to modernize vocational guidance and training to increase the skills of the labour force and meet employers' needs, as well as to anticipate future labour market needs. In this respect, the Government reports that work began in 2017 to develop occupational standards to improve qualifications and enhance educational standards, bring training into line with employers' needs and validate informal education. The Committee also notes the information provided by the Government regarding measures taken to enhance the system of vocational training, retraining and skills development for unemployed persons to increase their employability. In addition, amendments were introduced in September 2017 to the Conceptual Framework of the State Vocational Guidance System to improve training for young persons. The Committee further notes the amendments to the Employment Act and the Arrangement for the Distribution of Vouchers to Support Employability, which expanded the categories of persons entitled to receive training vouchers. ***The Committee requests the Government to provide information concerning initiatives taken in collaboration with the social partners to facilitate skills training and increase employability, as well as information on the impact of such initiatives in assisting unemployed persons to enter and remain in the labour market. The Committee further requests the Government to supply information on the manner in which forecasting of labour market needs is carried out on a regular basis and the measures taken to improve the coordination of anticipated labour market needs with education and skills development with the aim of avoiding skills mismatches. It also reiterates its request that the Government provide a copy of the legislation on "Professional Education" once it is adopted.***

Youth employment. In its previous comments, the Committee requested the Government to provide information about the impact and sustainability of the measures taken to tackle youth unemployment and promote the long-term integration of young persons in the labour market. The Committee also requested the Government to provide information regarding the measures taken or envisaged to prevent the use of discriminatory restrictions in job vacancy announcements, including restrictions on the basis of age. With respect to the employment situation of young persons, the Government reports that a total of 431,000 young persons were registered as unemployed in 2017 – 87,000 less than in 2016. It adds that, in 2018, this number fell to 122,000. The Government further reports that the SES placed 297,000 young persons in employment in 2017, noting that half of them were placed in employment before being officially registered as unemployed. Moreover, vocational guidance services were provided to 410,000 unemployed young persons, as well as to over one million persons studying at various institutions. The Committee notes the Government's indication that, to match the skills of jobseekers as closely as possible to the needs of employers, and at the request of employers, the SES organized vocational training for 53,000 people under the age of 35. In this way, 297,000 young people were helped by the SES to find a job and 61,000 young people started to work in community or in temporary works. However, the Committee notes that the Government does not provide any information about any possible measures taken or envisaged concerning discriminatory restrictions in job vacancy announcements. ***The Committee requests the Government to***

continue to provide detailed information, including statistical data disaggregated by sex and age, concerning the employment situation of young persons in Ukraine. The Committee reiterates its request that the Government provide detailed information on measures taken to prevent and prohibit the use of discriminatory restrictions, including age restrictions, in job vacancy announcements, as well as on the manner in which such measures are implemented.

ILO technical assistance. The Committee notes the technical assistance provided by the Office with regard to the formulation of legislation on employment promotion as well as to the introduction of new definitions of jobseeker and unemployed in Ukraine's labour law. ***The Committee requests the Government to provide information on progress made in this regard, and to communicate a copy of the legislation when adopted.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Bolivarian Republic of Venezuela

Employment Policy Convention, 1964 (No. 122) (ratification: 1982)

Previous comment

The Committee notes the observations submitted jointly by the Confederation of Workers of Venezuela (CTV), and the Federation of University Teachers' Associations of Venezuela (FAPUV), the Independent Trade Union Alliance Confederation of Workers (CTASI), as well as the observations submitted by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), transmitted together with the Government's report**.**

Articles 1 and 2 of the Convention. Implementation of the employment policy within the framework of a coordinated economic and social policy. Measures to respond to the economic crisis. The Committee takes note of the information provided by the Government regarding the measures adopted with a view to promoting and guaranteeing the protection and generation of employment in the country. The Government refers to the continued adoption of various decrees establishing security of employment for public and private sector workers for a period of two years, with a view to protecting and preserving jobs in the country. The Government once again indicates that during this period no dismissals may be made without just cause and dismissals may only be carried out in accordance with the procedures established in the labour legislation. The Government informs that the security of employment policy was extended until 2022. The Committee also notes that, in their observations, CTASI, CTV and FAPUV argue that the security of employment decrees do not generate jobs, since they are not always effective due to the small number of workers in the formal sector. FEDECAMARAS argues that the security of employment policy has a negative impact on productivity, which has led to a loss of interest among employers in hiring workers. FEDECAMARAS adds that, in order to achieve more efficient results in terms of employment and productivity, the policy should be adjusted to offer greater protection only to those workers who are in a situation of greater vulnerability.

The Committee notes, on the other hand, the Government's indications that a series of measures have been adopted with a view to implementing an ongoing wage protection policy that is adjusted to the economic reality of the country. In particular, the Government indicates that, under the last salary increase, the minimum wage was set at 130 bolívares per month as of 15 March 2022 and the minimum monthly amount that workers must receive through the "socialist cestaticket" food subsidy was set at 45 bolívares. The Government indicates that together the minimum wage and the "socialist cestaticket" constitute the minimum legal income to be received by workers, which has been increasing progressively. The Government also refers to the implementation of various social programmes aimed at protecting vulnerable households, such as the *Hogares de la Patria* (Homes of the Motherland) programme, through which a monthly subsidy is granted based on the number of members of the

family group. The Committee notes that, in its observations, FEDECAMARAS points out that the national minimum wage policy is not adjusted to the economic reality of the country, since the inflation rate reported by the Central Bank of Venezuela is much higher than the nominal adjustments to the minimum wage. In this regard, FEDECAMARAS states that, although 13 salary adjustments were decreed from 2013 to 2022, the minimum wage has fallen by 45.3 per cent. FEDECAMARAS points out that, taking into consideration the high inflation and the devaluation of the national currency, the minimum wage is equivalent to only US$16 per month and the food subsidy to US$5.85 per month.

Finally, the Government indicates that, during the reporting period, discussions were initiated in the National Assembly on 10 special laws for the benefit of specific categories of workers that are intended to complement the provisions of the Basic Labour Act (LOTT), including an Act on Domestic Workers, an Act on the Work of Persons with Disabilities and an Act on Home Workers. The Government indicates that it is expected that, within the framework of the public consultations held by the National Assembly in relation to this draft legislation, priority will be given to consultations with employers' and workers' organizations through an effective, open and inclusive dialogue. ***The Committee requests the Government to continue to provide detailed and updated information on the nature, scope and impact of the specific measures taken to develop and adopt an active employment policy aimed at promoting full, productive and freely chosen employment in full compliance with the Convention. The Committee also requests the Government to provide information on the status of the adoption of the ten special laws concerning specific categories of workers and to send a copy of these laws once they have been adopted.***

Labour market trends. The Committee notes the Government's indications that, in the first half of 2021, the employment rate was 91.1 per cent. In addition, the Government indicates that, from 2011 to the first half of 2021, the employment rate of women increased by 20.2 per cent, with a total of 5,205,275 women in employment. The employment rate of men also increased by 20.2 per cent, with a total of 8,190,482 men in employment. The Government indicates that, in the same period, the number of persons employed in the formal sector increased from 6,774,123 to 7,042,956, and the number employed in the informal sector increased from 5,230,828 to 6,352,801. The Committee notes CTASI, CTV and FAPUV's allegations that the informal sector is growing disproportionately due to the lack of opportunities in the formal sector. In this regard, they point out that, according to data from the national survey of living conditions (ENCOVI), between 2014 and 2021, formal employment decreased by 21.8 percentage points. They indicate that only 40 per cent of those employed are in the formal sector. Regarding unemployment levels, the Government reports that, between 2019 and 2021, the unemployment rate increased from 6.6 per cent to 8.9 per cent. The number of unemployed persons aged 65 years and over increased from 59,789 in 2019 to 147,679 in 2020. The Committee notes that, in its observations, FEDECAMARAS highlights the need to reconcile the figures from the different official sources to effectively determine the impact on employment of the economic downturn, the exile of more than six million Venezuelan citizens and the COVID-19 pandemic. FEDECAMARAS stresses that it is also necessary to review, update and jointly discuss the statistical information from different sources, both official and private, to serve as a basis for defining employment policy. ***The Committee requests the Government to continue to provide detailed information, including updated statistics, disaggregated by sex, age and rural and urban areas, on the labour market situation and trends, including on employment, unemployment and underemployment rates (visible and invisible) and informality. It also requests the Government to provide detailed and updated information on the functioning of the labour market information system, including information on how the data collected are used to design, implement and review the employment policy measures that have been taken or are planned.***

Education and training. The Committee notes the Government's indication that, through the Meeting Centres for Education and Work (CEETs), together with the implementation of various Missions and the National Institute for Socialist Training and Education (INCES), measures are provided for the

professionalization of workers, such as certification, accreditation, and vocational education and training. The Committee also notes the statistical information provided by the Government regarding the number of workers served by the CEETs, as well as the number of certifications awarded for inventiveness, innovation and improved productivity. However, the Committee notes that CTASI, CTV and FAPUV maintain that the training programmes provided have limited scope. In this regard, they point out that, according to data from the 2021 ENCOVI, the proportion of unskilled workers had increased from 9.7 per cent to 36 per cent over the preceding five years. Likewise, CTASI, CTV and FAPUV allege that the educational system is deteriorating due to the closing or inactivity of educational institutions, the exodus of teachers and students and the steady and growing decline in the number of students enrolled. CTASI, CTV and FAPUV indicate that, according to data from a study by the Andrés Bello Catholic University (UCAB), between 2018 and 2022, some 1.2 million young people dropped out of education and the number of students enrolled in basic education decreased by 15.7 per cent. They also allege that 85 per cent of educational centres do not have access to the internet, 69 per cent have limited electrical services and 45 per cent do not have water. ***The Committee refers to its comments on the application of the Human Resources Development Convention, 1975 (No. 142), and requests the Government to provide detailed and updated information on the scope and impact, including statistical information disaggregated by age and sex, of the measures implemented in the field of education and vocational training and their relation to potential employment opportunities. The Committee also requests the Government to provide detailed information on the measures taken to ensure effective coordination between education and vocational training policies and programmes and employment policies and programmes.***

Youth employment. The Committee notes the Government's indication that, in the first half of 2021, the unemployment rate among young people aged 15 to 24 years was 17.2 per cent (20.6 per cent among women and 15.3 per cent among men), which is almost double the national rate (8.9 percent). The Government adds that young people represent 25.8 per cent of the total unemployed population, 12.6 per cent of the employed population and 33.1 per cent of the inactive population. The Committee also notes that the Government reports the continued implementation of the Major Youth Employment Mission with the objective of providing opportunities for young people to enter the labour market. The Government indicates that, in the framework of this Major Mission, 2,181,468 young people received assistance, more than 500,000 young people have been placed in different workplaces, and support has been provided to more than 38,000 young people through the *Emprender Juntos* platform. The Committee notes, however, that CTASI, CTV and FAPUV maintain that the work offered to young people through the Major Mission is precarious, low-paying, unstable and subject to political affiliation. FEDECAMARAS points out that it is necessary to review the labour regime and benefits granted to young people in order to stimulate their employment and stem the flow of young people to other countries. In this regard, CTASI, CTV and FAPUV note that, according to ENCOVI data from 2021, some 86 per cent of migrants are young people of working age who migrate in search of employment. Finally, the Committee notes that the Government has still not responded to its request, first made in 2016, to provide an evaluation, prepared with the participation of the social partners, of the active employment policy measures implemented to reduce youth unemployment and promote their sustainable integration into the labour market. ***The Committee therefore expresses its firm hope that the Government will present in its next report an evaluation, undertaken with the participation of the social partners, of the impact of the active employment policy measures implemented to reduce youth unemployment and promote their sustainable integration into the labour market, particularly for the most underprivileged categories of young persons. The Committee also requests the Government to continue providing updated detailed statistical data, disaggregated by age and sex, on youth employment trends.***

Development of small and medium-sized enterprises (SMEs). The Committee notes the Government's indication that, in accordance with Article 308 of the Constitution of the Bolivarian Republic of

Venezuela, the State is responsible for protecting and promoting, among other entities, small and medium-sized industries, cooperatives, micro-enterprises and any other form of community association. The Government indicates that the body responsible for the protection and promotion of SMEs is the Ministry of People's Power for National Commerce. The Committee also notes that the Government refers to the adoption, in the context of the COVID-19 pandemic, of the plan for assisting SMEs, which includes the adoption of measures to simplify the procedures for the creation of companies, establish a maximum time for the formalization of SMEs and provide them with advice. In addition, certain tax exemptions were introduced for these enterprises (such as exemption from the payment of taxes in relation to the registration of trademarks, patents and copyrights) and time frames were established for the payment of certain taxes. The Government indicates that, under the plan for assisting SMEs, 19,173 enterprises were formalized, of which 15,493 were involved in the sale of goods and 3,680 in production. The Government reports that a total of 27,818 SMEs are authorized to operate in the country. Finally, the Government refers to the implementation of programmes aimed at promoting SMEs in the footwear industry (*Plan Z*) and in the manufacture of school supplies and uniforms (*Plan Escolar*). ***The Committee requests the Government to provide detailed and updated information on the impact on job creations of the measures adopted to promote the establishment and productivity of small and medium-sized enterprises.***

Article 3. Participation of the social partners. The Committee notes that the Government refers to meetings held with various sectors of the country, such as the productive, social and labour and political sectors, in which topics related to the world of work have been addressed. In this regard, the Government indicates that, on 5 and 7 April 2022, it held meetings with members of various civil society organizations, in which the measures to be adopted to implement the agenda of citizen demands formulated through social dialogue were discussed. The Government also reports that the inaugural session of the Social Dialogue Forum was held virtually on 7 March 2022 and an in-person session was held from 25 to 28 April 2022. The Government indicates that, within the framework of the Social Dialogue Forum, it met with workers' and employers' organizations, and that it received technical assistance from the ILO. The Government reports that, following the Forum, it has continued to hold meetings with the social partners covering various social and labour topics. The Government reports that, on 4 July 2022, it met with several chambers of industry including the Federation of Craft, Micro, Small and Medium-Sized Business Associations of Venezuela (FEDEINDUSTRIA) and the Venezuelan Confederation of Industrialists (CONINDUSTRIA), with a view to exchanging ideas in relation to the strengthening of national production and the generation of decent jobs. In addition, on 20 July 2022, a meeting was held with, among other actors, representatives of the trade union and business sector, during which the Basic Act on Special Economic Zones (ZEEs) was signed and the first five ZEEs were established. The Commission notes, however, that CTASI, CTV and FAPUV emphasize that the Government only refers in a general manner to the holding of such meetings and does not provide information on their content or outcomes. They stress that, for the dialogue to be effective, the State must include independent social organizations in the consultations. The Committee also notes that FEDECAMARAS highlights the need to hold tripartite consultations with the aim of designing an employment policy coordinated among all social actors to promote and guarantee full, productive and freely chosen employment, in accordance with the requirements of the Convention. ***The Committee therefore urges the Government to take immediate steps to ensure effective consultations with and participation of the social partners in respect of employment policies, as required by this Article of the Convention. In addition, the Committee refers to its comments on the application of the Tripartite Consultations (International Labour Standards) Convention, 1976 (No. 144). It further requests the Government to provide information that includes specific examples of how account has been taken of the views of employers' and workers' organizations in the formulation and implementation of employment policies and programmes and the nature, scope and outcomes of those consultations.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 2** *(Colombia, Egypt, Estonia);* **Convention No. 88** *(Canada, China: Macau Special Administrative Region, Colombia, Costa Rica, Cuba, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Egypt, France, France: French Polynesia, Lebanon, Netherlands: Sint Maarten, Nicaragua);* **Convention No. 96** *(Costa Rica, Côte d'Ivoire, Egypt, Mexico*); **Convention No. 122** *(Albania, Algeria, Antigua and Barbuda, Austria, Azerbaijan, Barbados, Belarus, Belgium, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Costa Rica, Cuba, Czechia, Denmark, Denmark: Greenland, Ecuador, Fiji, Finland, France, France: French Polynesia, France: New Caledonia, Hungary, Iraq, Kazakhstan, Kyrgyzstan, Lebanon, Netherlands: Aruba, Netherlands: Curaçao, Netherlands: Sint Maarten, Niger, Papua New Guinea, Romania, Saint Vincent and the Grenadines, Slovenia, Sri Lanka, Tajikistan, Togo, United Kingdom of Great Britain and Northern Ireland: Guernsey, Yemen);* **Convention No. 159** *(Chile, China, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechia, Dominican Republic, Egypt, Fiji, France, Kyrgyzstan, Lebanon, San Marino, Tajikistan, Thailand, Uganda, Ukraine, Yemen);* **Convention No. 181** *(Czechia, Finland, France, Niger, Rwanda, Zambia).*

Vocational guidance and training

Bolivarian Republic of Venezuela

Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1983)

Previous comment

The Committee notes the observations of the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), received on 1 September 2022. ***The Committee requests the Government to provide its comments in this respect.***

Articles 2 to 6 of the Convention. Development and application of the policy to promote the granting of paid educational leave. Participation of the social partners. The Committee notes that the Government refers to articles 298 and 299 of the Basic Act concerning labour and men and women workers (LOTTT), which ascribes responsibility to the State for generating the opportunities for social, technical, scientific and humanistic training of workers, and for encouraging the development of their productive capacities to ensure their integration into the social process of work. In this connection, the Government reiterates that, as provided under section 316 of the LOTTT, "men and women employers may grant leave to men and women workers who are engaged in studies". Equally, the Government reiterates that employers are obliged to hire apprentices where required to do so by the technical training programme regulations (section 304 of the LOTTT) and may be called on to provide the necessary space and personnel for the development of training plans for their workers, in addition to the programmes undertaken by the National Executive (section 311 of the LOTTT). The Committee also notes that the Government once again indicates that paid educational leave is guaranteed when collective agreements are promoted, which sometimes include the right to such leave. The Government also repeats that the worker and employer decide on how the educational leave will be taken, in such a way that it has the least possible impact on working time. The Government adds that, for this purpose, it could be agreed to change the worker's hours and establish the manner in which the worker must make up the hours to achieve the work goals. In this regard, the Committee stresses that the obligation to make up hours of work is not compatible with the Convention and recalls once more "the essential requirement that educational or training activities should take place during working hours. The time devoted to these activities must be included in working hours if there is to be genuine educational leave …" (1991 General Survey on human resources development, paragraph 349). With regard to the implementation of policies to promote the granting of paid educational leave, the Government indicates in a general manner that measures have been adopted with a view to encouraging continuous and lifelong training for workers, through training centres and the implementation of trade union training programmes by the workers national federations. In this connection, the Government refers to the signing of agreements between higher education centres and non-governmental organizations working in the field of workers' rights and in international trade unionism with a view to promoting trade union organizations. The Committee nevertheless observes that once again the Government does not indicate whether these activities are carried out within the framework of paid educational leave. The Committee also notes that the Government reports that between 2017 and 2022, a total of 28 collective agreements were signed in the public and private sectors, within the framework of which 167,256 women and 90,039 men have benefited contractually from paid educational leave. However, once again the Government provides no information on the conditions that must be met by the workers to be eligible for paid educational leave, nor on the duration of the leave, and the amounts of financial benefits paid. Finally, the Committee notes that the CBST-CCP indicates in its observations that, through its principal federations, it has succeeded in promoting the training and education of workers, including educational leave granted to workers by employers. As an example, the CBST-CCP refers to two collective agreements in the educational and

petrol sectors that include clauses related to paid educational leave and the promotion of training for workers. ***The Committee urges the Government to provide detailed and updated information on the formulation and application, in collaboration with the social partners, of policies to promote the granting of paid educational leave for vocational training at whatever level, and also for general, social, civic and trade union education, in conformity with Article 2 of the Convention, and provide copies of the pertinent texts. Moreover, the Committee urges the Government to provide detailed and updated information on the manner in which paid educational leave is granted, and particularly: (a) the conditions that workers must fulfil to benefit from such leave; and (b) the duration of the leave; and (c) the level of the financial benefits paid. The Committee also requests the Government to provide updated statistics, disaggregated by sex, showing the number of workers granted paid educational leave.***

Human Resources Development Convention, 1975 (No. 142) (ratification: 1984)

Previous comment

Articles 1–5 of the Convention. Implementation of policies and programmes of vocational guidance and training. Cooperation with the social partners. The Committee notes that the Government reports that the National System for the Training and Self-Training of the Working Class was launched on 24 February 2021, with the objective of creating spaces for the academic training of workers. With a view to defining its course of action, round tables were set up with educational missions and universities and with the involvement of, among other actors, representatives of workers' organizations and the Meeting Centres for Education and Work (CEET). Technical working groups were also set up in each federal entity to identify the professional and academic training needs of the workers in the different workplaces involved. The Government indicates that the main purpose of these round tables is to develop and implement in practice the objectives related to training established in the agenda of the Presidential Council of the People's Government of the Working Class. These objectives include: accrediting and certifying the practical knowledge acquired by workers, systematizing the technical innovation projects carried out by workers, accrediting facilitators in workplaces to contribute to the training of their colleagues, and formulating formal and specific educational plans at the national and local levels in areas such as agriculture, fishing and mining. The Committee also notes that the Government reports that, as of 17 December 2021, in various cities 1,418 persons had graduated from training provided by the educational programmes ("missions") (the Robinson Mission and the Ribas Mission), universities and the National Institute for Socialist Training and Education (INCES). The Government adds that 2,642 workers received an accreditation. It also reports that, as of May 2022, eight innovations had been systematized, and 24 workers had been certified in relation to innovations and/or processes improving productivity in cement, cardboard and food workplaces. The Committee also takes note of the information provided by the Government regarding the number of the persons who took part in the different training programmes implemented by INCES in 2022. Regarding access to training for persons with disabilities, the Government reports that 839 workers with disabilities participated in training and self-training activities between 2021 and 2022. Finally, the Committee notes that the Government refers generally to the implementation through INCES of various collective, comprehensive, continuous and permanent training and self-training programmes for workers.

The Committee notes, however, that the information provided by the Government does not allow an assessment of the impact of the measures adopted in the area of vocational training and guidance on groups of workers in vulnerable situations, such as women, young persons, indigenous or tribal persons and persons in rural areas or remote communities. In this respect, the Committee recalls that *Article 1, paragraph 5* of the Convention provides that the "policies and programmes [of vocational guidance and vocational training] shall encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests

and in accordance with their own aspirations, account being taken of the needs of society." In the same vein, *subparagraphs 5(g)* and *(h)* of the Human Resources Development Recommendation, 2004 (No. 195) refer to the necessity of adopting measures to promote equal opportunities for women and men in education, training and lifelong learning; and promote access to such education for youth, low-skilled people, people with disabilities, migrants, older workers, indigenous people, ethnic minority groups and the socially excluded, and for workers in small and medium-sized enterprises, in the informal economy, in the rural sector and in self-employment. Finally, the Committee notes that the Government also fails to indicate how it is ensured that workers are free to choose the vocational guidance and training programmes they attend. ***The Committee therefore urges the Government to provide detailed and updated information on the nature and impact of the measures taken to guarantee access to vocational training and guidance for workers, particularly groups of workers in vulnerable situations, such as women, young people, older persons, persons with disabilities, indigenous or tribal peoples and persons in rural areas or remote communities. In addition, the Committee urges the Government to indicate how it is guaranteed that workers have the freedom to choose the vocational guidance and training programmes in which they participate, in conformity with Article 1(5) of the Convention.***

Article 5. Cooperation with the workers' and employers' organizations. The Committee recalls that for more than ten years it has been requesting the Government to provide information on the manner in which cooperation is ensured with the social partners and representatives of the private sector in the development and implementation of vocational training and guidance programmes and policies to achieve the objectives of the Convention. The Committee notes, however, that the Government has still not provided any information in this respect. ***The Committee therefore urges the Government to provide specific and detailed information on the manner in which the social partners and representatives of the private sector have been consulted on the development, implementation and follow-up of vocational training and guidance policies and programmes.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 140** *(Afghanistan, Belize, Chile, Czechia, Finland, France, Guinea, Guyana, Netherlands: Aruba, San Marino, Ukraine, United Kingdom of Great Britain and Northern Ireland: Jersey);* **Convention No. 142** *(Afghanistan, Central African Republic, Cuba, Cyprus, Denmark, Ecuador, Fiji, France, France: New Caledonia, Hungary, Kyrgyzstan, Lebanon, Tajikistan, Ukraine).*

Employment security

Cameroon

Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)

Previous comment

The Committee notes the observations of the General Union of Workers of Cameroon (UGTC), received on 20 September 2021. ***The Committee requests the Government to provide its comments in this respect.***

Article 2 of the Convention. Exclusions. The Committee notes the information provided by the Government in reply to its previous comments.

Articles 4 and 11. Valid reason for termination of employment. Period of notice. The Government indicates that the conditions of employment of public servants are defined in Decree No. 94/199 of 7 October 1994 issuing the General Public Service Regulations, which govern termination of employment on grounds of irreversible physical incapacity incompatible with the post occupied, unsatisfactory performance in terms of results and their evaluation, and termination based on special regulations providing for the reorganization of services and the elimination of posts, without the possibility of staff redeployment (Decree No. 94/199, section 119(a) and (b)). Moreover, section 121 governs the dismissal procedure further to misconduct by a public servant. However, the Committee notes that Decree No. 94/199 does not contain any provisions relating to the public employer's obligation to notify the official in writing of the reason for termination, or any provisions specifying invalid grounds for termination (*Articles 4* and *5* of the Convention). With regard to the private sector, the Committee notes the observations of the UGTC referring to an increase in the number of unfair dismissals in the wood sector, in sport (particularly at the Cameroonian Football Federation (FECAFOOT) and in domestic work. The Government indicates that domestic workers in Cameroon are governed by Decree No. 68/DF/253 of 10 July 1968, as amended by Decree No. 76/162 of 22 April 1976. The Committee notes that Decree No. 76/162 does not contain any provisions relating to the employer's obligation to inform a domestic worker of the grounds for the termination of employment. The Committee nevertheless welcomes the Government's indication that it has launched the process of revising the regulations governing domestic workers and that a draft decree is being finalized with the aim of further incorporate the provisions of the Convention. With respect to workers in the informal economy, the Committee refers the Government to its comments relating to the Employment Policy Convention, 1964 (No. 122). With regard to the period of notice of termination, the Government indicates that the notice period provided for in sections 34 ff of the Labour Code is clearly defined in terms of duration and conditions of eligibility through the provisions of Order No. 10/MTPS/DT of 19 April 1976. However, the Committee notes that the Order of 1976 was repealed by Order No. 15/MTPS/DT of 26 May 1993 determining the conditions and duration of the notice period, taking account of the category and seniority of the worker concerned. On the basis of this Order, employers and labour inspectors implement a reasonable period of notice of termination. The Committee also notes that, in cases of violations, labour inspectors send compliance notices to the employers concerned and, on the basis of section 4 of the above-mentioned Order, the competent court imposes the penalties provided for in section R 370, subparagraph 12 of the Penal Code. ***In light of the observations of the General Union of Workers of Cameroon (UGTC), the Committee once again requests the Government to provide detailed, up-to-date information on the manner in which it is ensured that all the workers covered by the Convention receive a reasonable period of notice, including a written notification of the reason for termination of employment, in accordance with Articles 4 and 11 of the Convention. The***

Committee also requests the Government to provide information on the revision of the regulations governing domestic workers and to send a copy of the decree once it has been adopted.

Articles 7 and 8. Procedure prior to or at the time of termination. Appeal procedure. The Government indicates that in practice section 34 of the Labour Code is enforced systematically through labour inspectors during inspections and even in the follow-up to labour disputes giving rise to attempts at conciliation. The Government indicates that nearly 4,500 inspections were carried out in 2020 by labour inspectors in enterprises. It adds that the inspection reports provide sufficient information on cases of termination of employment and the handling thereof. With regard to the termination procedure subject to authorization by the labour inspector, the Government indicates that this exclusively concerns staff delegates, whose function is protected by section 130 of the Labour Code. The Committee notes the Government's indication that the most recurrent findings, further to inspections and re-inspections, have related to non-observance by employers of the labour laws and regulations, particularly non-payment or irregular payment of wages, non-observance of clauses in contracts between parties which duly deal with the right to reclassification, to promotion and other benefits arising from the employment contract, the non-payment of social contributions, and the non-observance of health and safety measures in workplaces. The Committee also notes, with respect to labour disputes, that a total of 9,546 conciliation procedures were conducted by labour inspectors in 2019, of which less than 25 per cent resulted in non-conciliation reports leading to referral to the judicial authorities. ***The Committee requests the Government to continue providing information on the number and type of violations recorded by the labour inspection authorities. The Committee also requests the Government to send copies of relevant court decisions giving effect to Articles 7 and 8 of the Convention.***

Article 12(3). Definition of serious misconduct. Severance allowance and other income protection. The Government indicates that, in practice and following the texts in force, establishing misconduct is essentially a task for the judge. The Government adds that it is from this perspective that section 36(2) of the Labour Code stipulates that it shall be the competent court which assesses the seriousness of the misconduct in all cases of termination and it is for the employer to supply proof of the legitimacy of the alleged reason for termination (section 39(3) of the Labour Code). The Committee notes the examples of case law in this field provided by the Government. ***The Committee requests the Government to continue providing examples of case law relevant to the application of the Convention, and also information on the role of collective agreements in granting a severance allowance and other income protection to the worker concerned.***

Articles 13 and 14. Consultation of workers' representatives. Terminations of employment for economic, technological, structural or similar reasons. With regard to the consultation of representatives, the Government indicates that recourse to terminations of employment for economic reasons still involves in practice the participation of labour inspectors, who have competence for enforcing the provisions of section 40 of the Labour Code and those of Order No. 21/MTPS/SG/CJ of 26 May 1993 establishing procedures for termination for economic reasons, section 3(1) of which provides in particular that the employer must send the staff delegates a list of the workers that he proposes to dismiss and that the delegates are required to send their replies to the employer within eight days. The Government adds that a tripartite consultation framework, involving the employer and staff delegates backed by the competent labour inspector, is generally put in place to accompany the termination process in question, in accordance with the relevant rules in this field. With regard to termination, the UGTC reiterates its previous observations concerning the dismissal of 14,000 workers, which was announced during the COVID-19 pandemic by the Employers' Association of Cameroon (GICAM), without consultation with the UGTC or the Government. The Government indicates that the labour inspectors handled the requests for termination on economic grounds or for temporary lay-offs on a case-by-case basis in enterprises. Some requests were clearly refused on grounds of violation of the procedure. In this regard, the Committee notes that the GICAM, in its Bulletin No. 80 of November 2020, reported on the negative impact of the pandemic on Cameroonian enterprises and on employment, particularly with regard to

the temporary laying off of some 54,000 workers and the dismissal of some 14,000 persons. It also notes the observations of the UGTC indicating that the Government has not yet responded to the issues arising from these terminations, particularly as regards support measures for the dismissed workers. ***The Committee requests the Government to send detailed information on the consultations held with staff delegates and labour inspectors, particularly in the context of temporary lay-offs and terminations of workers' employment on economic grounds during the COVID-19 pandemic. The Committee also requests the Government to include in its next report statistics on the activities of the labour inspectorate and the courts with regard to terminations of employment, particularly the number of requests for termination examined by the labour inspectorate in relation to collective dismissals. The Committee also requests the Government to provide information on support given to dismissed workers and on the steps taken to mitigate the effects of terminations on economic or similar grounds, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166).***

Application of the Convention in practice. COVID-19 pandemic. ***The Committee requests the Government to continue providing detailed, up-to-date information on the manner in which the Convention is applied in practice, and on the consultations held with the social partners concerning issues relating to the application of the Convention. The Committee also requests the Government to send copies of recent court decisions concerning issues relating to the application of the Convention.***

Democratic Republic of the Congo

Termination of Employment Convention, 1982 (No. 158) (ratification: 1987)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Observations by the Labour Confederation of Congo (CCT). Abusive dismissals. In its previous comments, the Committee invited the Government to provide its own comments on the observations of the CCT, indicating whether the dismissal of around 40 employees of a private multinational enterprise governed by French law were based on valid reasons (Article *4* of the Convention) and whether the dismissed workers were entitled to severance allowances *(Article 12)*. It also requested the Government to provide information on the measures adopted to mitigate the effects of the dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). In its report, the Government indicates that section 78 of the Labour Code adopted in 2002 prohibits mass dismissals, and that the information held by the Government does not indicate that the dismissed workers did not receive severance allowances, as no complaint was noted. The Committee notes that, with regard to measures adopted to mitigate the effects of the dismissals, the Government indicates that the provisions of section 78 of the Labour Code guarantee priority hiring in the event of a resumption of activity. The Committee also notes that section 78 provides that mass dismissals on economic grounds are prohibited, "except for possible exceptions that will be determined by an order of the Minister responsible for labour and social security" and sets out the applicable procedure. ***Noting that the Government provides information of a general nature concerning the above-mentioned dismissals, the Committee requests the Government to provide information on the procedure followed in the case reported by the CCT, including copies of inspection reports, where possible. It once again requests the Government to provide specific information indicating whether the dismissals were based on valid reasons (Article 4 of the Convention) and whether the dismissed workers were entitled to severance allowances (Article 12). It also once again requests the Government to provide specific information on the measures adopted in this particular case to mitigate the effects of the dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166).***

In its previous comments, the Committee also requested the Government to provide a report containing information on the practice of the labour inspectorate and the decision of the courts on matters of principle relating to the application of A*rticles 4, 5* and *7* of the Convention. It also requested it to indicate the number of appeals against termination, their outcome, the nature of the remedy awarded and the average time taken for an appeal to be decided (Parts IV and V of the report form). The Committee notes

that the Government has provided inspection reports from 2014, 2015, 2016 and 2017 but that these reports do not contain information on the application of the above-mentioned Articles. ***The Committee therefore once again requests the Government to provide information on the practice of the labour inspectorate and the decision of the courts on matters of principle relating to the application of Articles 4, 5 and 7 of the Convention. It also reiterates its request to the Government to indicate the number of appeals against termination, their outcome, the nature of the remedy awarded and the average time taken for an appeal to be decided (Parts IV and V of the report form).***

Article 7. Procedure prior to, or at the time of, termination. In its previous comments, the Committee requested the Government to provide copies of collective agreements which provide for the possibility of a specific procedure to be followed prior to, or at the time of, termination, as required by the Convention, and to indicate the manner in which this provision of the Convention is given effect for workers not covered by collective agreements. The Government indicates that: (i) it ensures that collective agreements are in conformity with sections 63, 72, 73 and 75 of the Labour Code; and (ii) in addition to enterprise collective agreements, there is the national inter-occupational labour agreement, of which it provides a copy. The Committee nevertheless notes that the copy of the latter agreement was already provided by the Government in its 2013 report and that, in this regard, it considered that the above-mentioned collective agreement did not appear to envisage the possibility of a specific procedure to be followed prior to, or at the time of, termination. The Government adds that enterprises that have not concluded collective agreements are required to adhere to the sectoral collective agreement and the procedure to be followed prior to, or at the time of, termination is provided by the implementing measures, such as Order No. 12/CAB.MIN/TPS/116/2005 of 26 October 2005, determining the terms of dismissal of workers. The Committee notes with ***interest*** that Act No. 16/010 of 15 July 2016, amending and supplementing Act No. 015-2002 issuing the Labour Code, with respect to section 62, provides that "when the employer envisages dismissal for grounds related to the worker's aptitude or conduct, he or she is required, before any decision is taken, to allow the person concerned to defend himself or herself against the allegations made or to provide an explanation for the grounds put forward". ***The Committee requests the Government to provide up-to-date information on the application in practice of the Labour Code with regard to the possibility offered to workers to defend themselves against the allegations against them before any dismissal measures are imposed, as well as the application of the above Order. It also once again requests the Government to provide copies of the collective agreements which provide for the procedure to be followed prior to, or at the time of, termination.***

Article 12. Severance allowance and other income protection. In its previous comments, the Committee noted that national legislation does not provide for severance allowances or other forms of income protection for dismissed workers. The Committee therefore reiterated its request to the Government to indicate the manner in which effect is given to *Article 12* of the Convention. The Committee notes the Government's indication that in order to prevent workers from being adversely affected, tax deductions are limited to 10 per cent during the notice period. However, other categories are not taxed, except for non-statutory family benefits. ***Noting, once again, the absence of specific information in the Government's report in response to the Committee's request, it urges the Government to provide detailed information indicating the manner in which effect is given to Article 12 of the Convention.***

Articles 13 and 14. Terminations for economic or similar reasons. In its previous report in 2013, the Government indicated that the Ministry of Employment, Labour and Social Welfare signed 15 orders authorizing collective terminations for economic or similar reasons, covering 701 workers in 2012–13. The Committee invited the Government to indicate whether the dismissed workers were entitled to severance allowances *(Article 12)* and to provide information on the measures taken to mitigate the effects of terminations for economic or similar reasons, as envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). ***Noting that the Government's report does not contain information in this regard, the Committee once again requests the Government to provide the information requested.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

France

Termination of Employment Convention, 1982 (No. 158) (ratification: 1989)

Previous comment

The Committee notes the observations of the French Democratic Confederation of Labour (CFDT), received on 6 September 2021, and the Government's response, received on 7 October 2021. It also notes the observations of the French Confederation of Management – General Confederation of Professional and Managerial Employees (CFE-CGC) provided with the Government's report. The Committee notes that the observations concern in particular the application of *Article 10* of the Convention.

Follow-up on the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

Article 4 of the Convention. Valid reason for termination based on the operational requirements of the undertaking, establishment or service. The Committee notes the Government's indications that Act No. 2016-1088 of 8 August 2016 on work, the modernization of social dialogue and the safeguarding of career progression clarifies the definition of economic grounds for termination of employment, in order to make the applicable rules clearer, in particular in small and medium-sized enterprises. The Government indicates that the definition of termination of employment on economic grounds includes the grounds contained in the case law of the Court of Cassation, namely the cessation of the enterprise's activity and the restructuring of the enterprise in order to safeguard its competitiveness. In addition, the difficulties that can justify termination of employment on economic grounds are defined taking into account elements from case law, including a drop in orders or sales, operating losses, a significant deterioration in cash flow or any evidence of such difficulties. In its report, approved by the Governing Body in March 2022, the tripartite committee set up to examine the representation alleging non-observance by France of the Convention observed that the Convention and Recommendation do not define the concept of operational requirements of the enterprise and that the supervisory bodies have illustrated the concept on the basis of specific elements (paragraph 54 of the report). The tripartite committee considered that determining whether the concept of operational requirements has been respected within the meaning of *Article 4* of the Convention is a matter for the national courts. ***The Committee requests the Government to provide examples of judicial decisions on the effective application of Article 4 of the Convention, particularly decisions concerning dismissals on the grounds of the operational needs of the enterprise. In particular, it requests the Government to communicate the criteria used by the judges in these decisions.***

Articles 8 and 9. Reasonable period of time. Judicial review of the grounds for dismissal. The Committee notes that, according to section L. 2254-2 of the Labour Code, a "dismissal is based on specific grounds that constitute real and serious justification". It notes that the initial reference to the obligation to state, in the letter of dismissal, the specific grounds on which the dismissal is based has been removed (but not the obligation itself, as section L. 2254-2 (V) refers to section L. 1232-6). In paragraph 58 of its report, the tripartite committee considered that, beyond the explicit reference in section L. 2254-2 of the Labour Code to the real and serious nature of the termination of employment on the grounds of an employee's refusal to have his or her employment contract amended as a result of the conclusion of a collective performance agreement, the judge must be able to continue to conduct a genuine judicial review. The tripartite committee indeed considers that the provisions of section L. 2254-2 merely recall the requirement that any termination of employment must be based on real and serious justification. It is for the judge to determine as part of the judicial proceedings on termination based on section L. 2254-2 whether a valid reason exists within the meaning of *Article 4* of the Convention, that is, whether the reason for the termination is based on "the operational requirements of the undertaking, establishment

or service", it having been established that, during the judicial examination, the burden of proof must not rest on the employee alone. Referring to Order No. 017-1387 of 22 September 2017 concerning the predictability and security of employment relationships, the Government indicates that the time limits for appeals against the termination of an employment contract have been harmonized at one year. The Committee recalls that all parties concerned should seek to avert or minimize as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned (*Paragraph 19(1)* of the Termination of Employment Recommendation, 1982 (No. 166). ***The Committee requests the Government to provide information on the results of judicial reviews of dismissals based on section L. 2254-2, and on the impact of the change in the time limits for appeals.***

Article 10. Payment of adequate compensation or such other relief as may be deemed appropriate. The Committee notes that, in its observations, the CFDT refers to the scale setting limits for the compensation of employees who have been dismissed without real and serious justification and refers to the incompatibility of the limits set with the principle of adequate compensation, as set out in *Article 10* of the Convention. Indeed, the CFDT indicates that the compensation of the damage as provided for by this scale does not always make it possible to adequately compensate the employee for the unjustified termination of his or her employment, in particular when the damage is very significant and the employee's length of service in the enterprise is short. In its observations, the CFE-CGC states that it considers this scale to be in breach of *Articles 8* and *10* of the Convention. The Government points out that the scale mechanism provided for in Ordinance No. 2017-1387 and ratified by Act No. 2018-217 was submitted to the Constitutional Council, which declared section L. 1235-3 of the Labour Code establishing the compensation scale to be in conformity with the Constitution. The Government specifies that the scale system is a compulsory framework of compensation that the judge must use when declaring an employee's dismissal to be without real and serious justification. In no case does the scale system allow the employer to terminate employment without justification, as the amount set by the scale and proposed by the judge is the compensation for the damages suffered by the employee. Currently, when the employee's dismissal has no real and serious justification, the judge may order the reinstatement of the employee if neither party opposes it. If the employer or the employee refuse the reinstatement, the judge awards compensation. The judge may take into account elements related to the employee's particular situation (age, health, family situation, etc.) when setting the amount of compensation in compliance with the minimum and maximum limits of the scale. In its report, the tripartite committee considered – aside from cases of termination concerning a fundamental right, to which the principle of full compensation applies, and irrespective of the compensation for separate damage – that the compatibility of a scale, and the related upper limit, with *Article 10* of the Convention depends on whether sufficient protection is ensured for persons whose employment has been unfairly terminated and, in all cases, whether adequate compensation is paid (paragraph 80 of the report). Under these circumstances, the tripartite committee invited the Government to examine at regular intervals, in consultation with the social partners, the compensation procedures provided for in section L. 1235-3, to ensure that in all cases the parameters for compensation provided for in the scale ensure adequate compensation for damage suffered as a result of the unfair termination of employment (paragraph 81 of the report). The Committee notes the Court of Cassation rulings of 11 May 2022 (Appeal No. 21-15.247 (Ruling No. 1), and Appeal No. 21-14.490 (Ruling No. 2)). The Court holds that the provisions of section L. 1235-3 of the Labour Code are compatible with the provisions of *Article 10* of the Convention. It notes that the scale takes into account the gravity of the employer's misconduct by excluding from its scope of application terminations of employment that are set aside for one of the reasons listed in section L. 1235-3-1 of the Labour Code. The Court noted that the term "adequate" in *Article 10* of the Convention means that compensation for unjustified termination of employment must be sufficiently dissuasive to avoid unjustified termination of employment and must reasonably allow

compensation for the unjustified loss of employment. It affirmed that the provisions of section L. 1235-3 of the Labour Code, which provide for compensation ranging between minimum and maximum amounts, varying according to the amount of the employee's monthly salary and length of service, reasonably allow for compensation for unjustified loss of employment. The Committee also notes that, according to the European Committee of Social Rights (ECSR) (Complaints Nos 160/2018 and 171/2018, decision published on 26 September 2022) the upper limits set by section L.1235-3 of the Labour Code are not sufficiently high to provide adequate reparation for the damage suffered by the victim and be dissuasive for the employer. The ECSR also notes that the upper limit of the compensation scale does not allow for higher compensation to be awarded on the basis of the personal and individual situation of the worker, as the courts can only order compensation for unjustified dismissal within the lower and upper limits of the scale, unless the application of section L. 1235-3 of the Labour Code is excluded. The ECSR is of the opinion that the courts have a narrow margin of manoeuvre in deciding the case on its merits by considering individual circumstances of unjustified dismissals. For this reason, the real damage suffered by the worker in question linked to the individual characteristics of the case may be neglected and therefore, the worker may not be fully compensated. The Committee notes the December 2021 report of the Committee for the Evaluation of the Orders of 22 September 2017, mentioning that in the sample of appellate court decisions studied by the Committee, the amount of compensation paid is between the upper and lower limits of the scale in 90 per cent of the cases for dismissals after the application of the scale, whereas this was the case for 44 per cent before the reform. ***The Committee requests the Government to provide information on the review, in consultation with the social partners, of the compensation procedures provided for in section L. 1235-3, so as to ensure that the parameters of compensation provided for in the scale allow, in all cases, adequate compensation for the damages suffered as a result of unfair dismissal.***

Application of the Convention in practice. The Committee notes the observations of the CFDT on the legislative developments in the area of legislative developments in relation to the laws on termination of employment on economic grounds, in particular with regard to the need to have statistical data on the application of the Convention in practice. ***The Committee requests the Government to continue to provide any general information on how the Convention is applied in practice, including, for example, available statistics on the activities of the appeal bodies (such as the number of appeals against dismissal measures, the outcome of such appeals, the nature of the reparations granted, the average length of time taken for the appeal to be decided), and the number of dismissals on economic or similar grounds.***

Papua New Guinea

Termination of Employment Convention, 1982 (No. 158) (ratification: 2000)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 1 of the Convention. For a number of years, the Committee has requested information concerning the ongoing revision of the Industrial Relations Bill which, according to the Government's 2013 report, includes provisions on termination of employment with the objective of giving effect to the Convention. In its reply to the Committee's previous comments, the Government indicates that the draft Industrial Relations Bill is still pending with the Department of Labour and Industrial Relations and is undergoing final technical consultations. The Government adds that the Department of Labour and Industrial Relations Technical Working Committee has carried out various consultations with national stakeholders, such as the Department Attorney General's Office, the Office of the Solicitor General, the Constitution Law Reform Commission, the Department of Personnel Management, the Department of

Treasury and the Department of Planning, Trade Commerce and Industry, as well as with external technical partners, including the ILO. ***Referring to its previous comments, the Committee once again expresses the hope that the Government will take the necessary measures to ensure that the new legislation gives full effect to the provisions of the Convention. It also reiterates its request that the Government provide a detailed report to the ILO and a copy of the legislation as soon as it is enacted, so as to enable the Committee to examine its compliance with the Convention.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Bolivarian Republic of Venezuela

Termination of Employment Convention, 1982 (No. 158) (ratification: 1985)

Previous comment

The Committee notes the observations of the Confederation of Workers of Venezuela (CTV), the Federation of University Teachers' Associations of Venezuela (FAPUV) and the Independent Trade Union Alliance Confederation of Workers (CTASI), as well as the observations of the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), communicated together with the Government's report.

Article 8 of the Convention. Remedies against unjustified dismissal. In its previous comments, the Committee requested the Government to specify the manner in which it guarantees the impartiality of labour inspectors when effectively certifying a reinstatement order in cases of dismissal. It also requested the Government to indicate the number of occasions on which appeals had been made to set aside a dismissal, and the number of occasions on which appeals had been upheld. The Committee further requested the Government to indicate, with regard to the 972 workers in toll stations belonging to the Ministry of Transport, whether they had been reinstated. The Committee notes that the Government refers to sections 508 and 509 of the Basic Labour Act (LOTTT), setting out the competences of labour inspectors, who are called upon to ensure the correct application of the provisions of labour law. The Government indicates that, as a consequence, in their decisions they must uphold the rule of law and social justice in an impartial and balanced manner. Where appropriate, employers can be penalized in accordance with the provisions of the law. With reference to appeals to set aside dismissals, the Government indicates that the parties are entitled to pursue the necessary remedies through both administrative and judicial channels. The Government reiterates that, in accordance with section 425(9) of the LOTTT, in order to be able to give effect to an administrative appeal, labour inspectors are first required to certify the effective implementation of the reinstatement order and the restoration of the legal situation. The Government reports that between 2017 and the first half of 2022, labour inspectors certified 8,518 orders for reinstatement and the restoration of rights. In this regard, the Committee notes the renewed indication by FEDECAMARAS that the requirement to abide by reinstatement orders as a precondition for appealing against administrative instructions in practice raises an obstacle to access to justice for employers and has severe consequences on enterprise productivity. FEDECAMARAS emphasizes the need to adopt legal and practical measures with a view to ensuring that the procedure of termination of employment is more flexible and less traumatic, in order to improve efficiency and productivity.

The Committee notes the Government's indication that, due to the separation of powers, it does not have information on the number of occasions on which appeals were made to the national courts and on which they were upheld. The Government indicates that it is therefore only in a position to report the notifications that were effectively made to the labour inspection services to initiate the appellate procedure. In this regard, the Government indicates that, between 2017 and 2022, a total of 517 appeals were made against the commencement of the procedure. The Government adds that appeals for orders

to be set aside can themselves be appealed to the courts. Nevertheless, the rate of final decisions in which reinstatement orders are set aside is very low, as the majority of appeals against reinstatement orders are not upheld (between 2017 and 2020, only 73 appeals against reinstatement orders were upheld).

The Committee further notes that the CTV, FAPUV and CTASI in their observations indicate that the State does not abide by reinstatement orders. The workers' organizations report that decisions are awaited from the judicial system and the national executive authorities in relation to the dismissal, in violation of their trade union rights, of five union leaders. The CTV, FAPUV and CTASI add that, on 15 January 2021, a procedure was initiated for the mass dismissal of more than 1,000 officials and workers of the National Assembly (representing over one third of the total workforce), without fulfilling the prior steps required by law, such as the presentation of claims to assess the reasons for dismissal, the opening of disciplinary procedures and the establishment of working groups with the unions. The workers' organizations indicate that, in relation to the dismissals, there were not only infringements of the right to due process and the right of workers to defend themselves, but also of maternal and trade union protections, as the dismissed workers included pregnant women and trade union leaders. They add that the National Union of Men and Women Public Officials in the Legislative Career Stream and Men and Women Workers of the National Assembly (SINFUCAN) has denounced these acts and taken action in various national bodies for the reinstatement of the workers. They add that, in communication No. 191/2022 of 24 February 2022, the former Minister of Labour announced that the implementation of the reinstatement procedures for workers in the Legislative Assembly was set for 7 March 2022. However, the CTV, FAPUV and CTASI complain that the orders have still not been implemented and call for their application. Finally, with reference to the dismissal of 972 workers in toll stations belonging to the Ministry of Transport, the Committee notes the Government's indication that the reinstatement procedures have been set in motion. Moreover, in view of the high number of persons affected, technical working groups have been set up throughout the territory with a view to preventing industrial disputes. The Government adds that 862 workers have been reassigned in the various units of the Ministry of Transport and local authorities, while 110 workers have decided to accept cash payments in accordance with the law rather than reinstatement. ***The Committee requests the Government to provide detailed and updated information on the number of appeals against dismissal and the number of occasions on which appeals have been upheld. The Committee also requests the Government to provide detailed and updated information on the grounds on which a reinstatement order can be set aside, including extracts from relevant court decisions. With reference to the workers dismissed from the National Assembly, the Committee requests the Government to indicate whether they have been reinstated and the dates of their reinstatement.***

Application of the Convention in practice. The Committee notes the Government's indication that, between 2017 and 2022, a total of 125,438 appeals for reinstatement were submitted, of which 63,825 resulted in reinstatement orders. With regard to the number of occasions on which the courts upheld a reinstatement order, the Government indicates that, in accordance with the law (sections 8 and 79 of the Basic Act on Administrative Procedures and sections 512, 537 and 538 of the LOTTT), and with national case law (such as ruling No. 0845 of 11 July 2013 of the Administrative Policy Chamber of the Supreme Court of Justice), the judicial authorities are not competent to monitor the implementation of administrative instructions issued by the labour inspection services ordering reinstatement and the payment of wage arrears. The Government adds that there is a special procedure through which labour inspectors can enforce the execution of their administrative instructions, including those ordering reinstatement and the payment of wage arrears. The Committee notes the Government's indication that, between 2017 and 2022, labour courts at the national level handed down 318 decisions confirming reinstatement orders issued by the labour inspection services. Nevertheless, the Committee notes that the Government has not provided information on the number of procedures in the labour inspection services following complaints of dismissal, transfer or demotion and procedures to authorize dismissals.

The Committee also notes the Government's indication concerning the finalization of the plan for the restoration of rights and liabilities in cases of insolvency, and the updated plan for the prevention of procedural delays and situations of non-compliance, on which progress had been subject to difficulties encountered by the public administration. The Government adds that, as a result of the implementation of these plans, many administrative delays have been overcome. It adds that measures have been adopted to avoid situations in which procedures are not followed through and in order to be able to ensure greater efficiency and a more appropriate response to procedures that have been commenced, such as the transformation of sub-inspectorates into Labour Inspectorates, thereby extending their competence with a view to ensuring a greater response capacity. Moreover, a policy has also been implemented with a view to improving accessibility to administrative justice in remote areas through mobile inspection services. However, the Committee notes the indication by FEDECAMARAS that procedures for the confirmation of the reasons for dismissal and for reinstatement generally last months, and even years, as a result of delays in the process due to the lack of sufficient personnel to deal with the high volume of applications. ***The Committee requests the Government to continue providing detailed and updated information on the number of dismissals and the number of reinstatement orders issued by the labour inspection services. The Committee also requests the Government to provide detailed and updated information on the impact of the measures adopted in ensuring greater efficiency and increasing the capacity to deal with procedures that have been commenced.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 158** *(Central African Republic, Cyprus, Ethiopia, Lesotho, Luxembourg, Saint Lucia, Uganda, Ukraine, Yemen).*

Wages

Burundi

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)

Previous comment

The Committee notes the observations of the Trade Union Confederation of Burundi (COSYBU), received on 29 August 2022.

Article 3 of the Convention. Operation of the minimum wage-fixing machinery. Further to its previous comment, the Committee notes that the Government indicates in its report that the guaranteed inter-occupational minimum wage (SMIG) is currently under revision, and that an independent consultant has already been engaged to conduct an analysis of the evolution of the socio-economic situation. That analysis will be taken as a reference to fix the criteria for updating the SMIG and will provide a document containing the criteria for fixing the new SMIG. It further notes that the COSYBU indicates in its observations that the tripartite committee has just adopted the final report of the study conducted into updating the SMIG and that the next stages are its examination by the National Labour Council and by the Government. The COSYBU also indicates that the minimum wages applicable by category as fixed by collective agreements in the various branches of activity or in enterprises have not yet been fixed. The Committee observes with ***regret*** that, despite the steps taken to reactivate the minimum wage review process, the SMIG has not been readjusted since 1988 and minimum wages applicable by category through collective agreements in branches of activity or in enterprises have not yet been fixed. ***Therefore, the Committee again urges the Government to take the necessary steps to readjust the SMIG without delay, in consultation with the workers' and employers' organizations concerned so as to ensure that new minimum rates of wages are fixed for workers employed in certain trades in which no arrangements exist for the effective regulation of wages by collective agreements or otherwise and wages are exceptionally low. It also requests the Government to provide information on the minimum wages applicable by category in the various branches of activity or in enterprises, including home working trades, once these have been fixed by collective agreement.***

Cameroon

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1973)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 95 (protection of wages) and 131 (minimum wages) together.

The Committee notes the observations of the Cameroon Workers' Trade Union Confederation (CSTC), received on 31 August 2022, and the Government's reply to the observations of the CSTC on Convention No. 131, received on 15 November 2022.

A. Minimum wages

Article 5 of Convention No. 131. Measures to ensure effective application of the provisions of minimum wages. Further to its previous comments, the Committee notes the information provided by the Government in its report concerning the objectives set regarding labour inspections in enterprises. The

Committee notes, however, that, according to the observations of the CSTC, difficulties persist in the application of the guaranteed minimum inter-occupational wage (SMIG) in practice, and that the labour inspectorate has difficulties in ensuring that employers of domestic workers in private homes apply the SMIG. ***The Committee requests the Government to continue its efforts to strengthen monitoring of the application of the provisions of minimum wages, including in the informal economy, and to provide information on the results of the measures taken.***

B. Protection of wages

Article 8 of Convention No. 95. Deductions from wages. Further to its previous comments, the Committee notes that, according to the Government's report, section 75 of the Labour Code, under the terms of which deductions from wages, known as consignations, can be envisaged in the individual labour contract, has still not been revised. The Committee recalls that *Article 8(1)* of the Convention provides that deductions shall be permitted only under conditions and to the extent prescribed, not by individual agreement, but by national laws, or fixed by collective agreement or arbitration award. ***Recalling that this Article makes exclusive reference to national legislation, collective agreements and arbitration awards, and that provisions in national legislation permitting deductions by virtue of individual agreements or consent are not compatible with this Article (2003 General Survey on protection of wages, paragraph 217), the Committee requests the Government to take the necessary measures to bring section 75 of the Labour Code into conformity with Article 8(1). The Committee also requests the Government to indicate the way in which section 75(1) of the Labour Code is applied in practice, including by providing examples of consignations provided for in the individual labour contracts.***

Article 12(1). Regular payment of wages. Further to its previous comments, the Committee notes the Government's indication that, in the event of delays in the payment of wages, redress available to the workers comprises raising the matter with the employer for the payment of wages, or referring the matter to the labour inspectorate. The Committee also notes that, according to the Government, the number of enterprises concerned by wage arrears rose from 152 in 2017 to 289 in 2020, before falling by more than half, following the strengthening of labour inspection measures. The Committee notes, however, that the CSTC, in its observations, indicates that it has detected cases of workers who have accumulated up to 36 months of wage arrears. The CSTC also refers to situations where, after a case has been brought to the labour inspectorate and a conciliation procedure for the payment of a number of months of wages has been concluded, new wage arrears accumulate. ***The Committee therefore requests the Government to continue its efforts to remedy the problems detected relating to wage arrears to ensure the regular payment of wages, in accordance with Article 12(1) of the Convention. The Committee also requests the Government to provide detailed information on the measures taken, including any court decision or arbitration award issued in connection with this Article of the Convention, and the progress achieved in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

Central African Republic

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2006)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive review of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to consider Conventions Nos 131 (minimum wages) and 95 (protection of wages) in a single comment.

Minimum wages

Article 4 of Convention No. 131. Periodical adjustment of minimum wage rates. In its previous comments, the Committee noted that, according to the information available, the last decree fixing the guaranteed inter-occupational minimum wage (SMIG) and the guaranteed agricultural minimum wage (SMAG) was adopted in 1991. It notes with ***concern*** the Government's indication in its report that there has been no fixing or adjustment of minimum wages during the period covered by the report and that it does not provide information on the operation of the Standing National Labour Council (CNPT), a tripartite body whose functions include, under section 226 of the Labour Code, issuing an opinion when the SMIG and SMAG are being fixed. ***The Committee therefore urges the Government to take the necessary measures to review, without delay, the minimum wage rates and to adjust the SMIG and SMAG levels in the light of this review. The Committee requests the Government to provide information on the measures taken in this regard, including on any opinion issued by the CNPT in this context.***

Protection of wages

Article 12 of Convention No. 95. Regular payment of wages. In its previous comments, the Committee requested the Government to provide information on the settlement of wage arrears in the public sector. It notes that the Government's report does not contain information in this regard. The Committee recalls that the application in practice of *Article 12* comprises three essential elements: (i) efficient control; (ii) appropriate sanctions; and (iii) the means to redress the injury caused (see General Survey of 2003 on the protection of wages, paragraph 368). The Committee notes that the Labour Code contains provisions regulating these three elements, but that the Code excludes public employees from its scope of application. The remuneration of public employees is regulated by Act No. 09.014 of 10 August 2009 issuing the General Conditions of Service of the Central African Public Service, which does not contain provisions implementing the three elements mentioned above. ***The Committee therefore once again requests the Government to provide information on the settlement of wage arrears in the public sector. It also requests the Government to take the necessary steps to ensure the regular payment of wages in this sector through the provision of efficient control, the adoption of appropriate sanctions in cases of non-observance, and the existence of means to redress any injuries caused. The Committee requests the Government to provide information on the measures taken in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Comoros

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1978)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1978)

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1978)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 and 99 (minimum wages) and No. 95 (wage protection) together. The Committee notes the observations of the Workers Confederation of Comoros (CTTC), on the implementation of Conventions Nos 26, 95 and 99, received in 2017.

Minimum wages

Article 3 of Convention No. 26 and Article 3 of Convention No. 99. Minimum wage fixing machinery and the methods to be followed in its operation. In its previous comments, the Committee requested the Government to provide information on any decree or order adopted with respect to the minimum wage after obtaining the opinion of the Labour and Employment Advisory Council (CCTE), in accordance with section

106 of the Labour Code. The Committee notes the Government's indication in its report that in 2015, the CCTE examined seven regulatory texts including the decree fixing the inter-occupational guaranteed minimum wage (SMIG) for workers covered by the Labour Code. The Government adds that the tripartite members of the CCTE recommended that an expanded consultation framework should be established as soon as possible in order to examine the subject in greater depth through additional studies, taking into consideration the experience of other countries with regard to wage fixing as well as the country's socioeconomic situation. The Committee notes that according to the CTTC, despite the discussions held by the CCTE in 2015, no text setting minimum wages was adopted. The Committee further notes that sections 90–92 of the Labour Code provide that collective agreements concluded by joint committees, composed of representatives of the most representative employers' organizations and trade unions in the sector, may be extended and then determine the wages that must be applied for each occupational category. ***In this context, the Committee requests the Government to take the necessary measures to give effect to the provisions of section 106 of the Labour Code without delay and to provide information in this respect. It also requests the Government to provide information on the collective agreements in force fixing wage rates for specific categories of workers and their possible extension pursuant to sections 90 and 92 of the Labour Code.***

Article 4 of Convention No. 26 and Article 4 of Convention No. 99. System of supervision and sanctions. The Committee notes that the CTTC indicates that the agricultural sector, like other sectors of the informal economy, is beyond the control of the State with regard to wages. ***The Committee requests the Government to provide its comments in this regard.***

Protection of wages

Articles 8 and 10 of Convention No. 95. Deductions from wages, attachment or assignment of wages. Further to its previous comments, the Committee notes that the Government indicates in its report that it intends to submit a draft order to the CCTE to determine the parts of wages that are liable to progressive deductions, as well as the part that is exempt from any attachment or assignment. The Committee notes that such an order is provided for under sections 114 and 119 of the Labour Code, as amended in 2012. ***The Committee requests the Government to take the necessary measures to adopt the order without delay and to provide information in this respect.***

Article 12(1). Regular payment of wages. Application in practice. Further to its previous comments on the need to resolve the situation of wage arrears, including in the public service, the Committee notes that the Government indicates that efforts have been made to address this problem but challenges remain. The Government affirms its willingness to end the non-payment of wages, in particular in the public sector. The Committee also notes that the CTTC underscores the lack of progress with regard to the settlement of wage arrears, including in the public sector for the period from 1995 to 2009. The Committee recalls that workers shall receive remuneration for the work done and that the fundamental nature of wages stems from their essential role in ensuring workers' livelihood. ***The Committee requests the Government to intensify its efforts to resolve the question of wage arrears definitively, particularly in the public sector, and to provide information in this regard.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Costa Rica

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Previous comment

The Committee notes the observations of the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) communicated with the Government's report.

Article 3(1) of the Convention. Prohibition of the payment of wages in the form of vouchers, coupons or in any other form alleged to represent legal tender. With reference to its previous comments, the Committee notes that the Government reiterates that coffee payment vouchers are not used as a means

of payment, nor replace payment in cash, but rather constitute a monitoring mechanism so that pickers on poorer plantations have tangible evidence of the amount in cash that they should receive from their employer at the end of the week. The Government indicates that this method is also a security guarantee for the producer against the risk of crime involved in keeping legal tender on some plantations. The Committee notes with ***regret*** that section 165 of the Labour Code, which provides that coffee plantations may pay workers with tokens representing legal tender, has not yet been amended. ***While noting the information provided by the Government on the details and reasons for such practices in the coffee sector, the Committee requests the Government to take all necessary measures, including through the labour inspection system and the establishment of adequate penalties for any infringements, to ensure that all workers in the coffee sector receive the whole amount of their wage in legal tender, at the end of the week, in accordance with the requirements of the Convention. The Committee also requests the Government to adopt without delay the necessary measures to amend section 165 of the Labour Code to guarantee the prohibition of the payment of wages in the form of promissory notes, vouchers, coupons, or in any other form alleged to represent legal tender, in accordance with Article 3(1) of the Convention. It also requests the Committee to provide specific information on any legislative changes adopted in this respect, and on the inspections carried out in coffee plantations, the infringements detected, and the penalties applied.***

Article 4(2)(b). Fair and reasonable value attributed to allowances in kind. With regard to its previous comments, the Committee notes the Government's reference to various rulings of the Second Chamber of the Supreme Court of Justice concerning the requirements for allowances in kind, including the determination of the value of the wage in kind based on objective appraisal and wage-fixing parameters (ruling No. 00075-2004 of 11 February 2004) and the remunerative nature of allowances in kind (rulings Nos 00075-2004 of 11 February 2004 and 00611-2004 of 21 July 2004). The Committee also notes that section 166 of the Labour Code has not been amended to ensure that the value attributed to allowances in kind is fair and reasonable. The Committee recalls that *Article 4(2)* of the Convention imposes an obligation as to the result to be achieved and therefore requires the adoption of measures to ensure that any allowances in kind are attributed a fair and reasonable value, for example specific regulations establishing the value of the allowances in kind, or methods of determining or supervising the value attributed to them (2003 General Survey on protection of wages, paragraphs 153 and 160). ***In this regard, the Committee requests the Government to adopt the necessary measures to effectively guarantee that the value attributed to allowances in kind is fair and reasonable, in accordance with Article 4(2) of the Convention. It also requests the Government to provide information on the measures adopted in this respect.***

Democratic Republic of the Congo

Protection of Wages Convention, 1949 (No. 95) (ratification: 1969)

Previous comment

Article 8 of the Convention. Deductions from wages. Further to its previous comments on the absence of limits on the amounts of authorized deductions from wages, the Committee notes that the Government's report does not contain information on this subject. ***The Committee therefore requests the Government to take the necessary measures, on the basis of discussions in the National Labour Council, to establish limits on the permitted amount of deductions from wages, and to provide information in this regard.***

Djibouti

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1978)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1978)

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1978)

The Committee notes the joint observations of the General Union of Djibouti Workers (UGTD) and the Labour Union of Djibouti (UDT) received on 4 May 2021 on Convention No. 95.

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 and 99 (minimum wages) and 95 (protection of wages) together.

Minimum wages

Articles 1 to 3 of Convention No. 26 and Articles 1 and 3 of Convention No. 99. Minimum wage fixing machinery. Further to its latest comments on the need to reintroduce the guaranteed interoccupational minimum wage (SMIG), which was withdrawn from the legislation in 1997, the Committee welcomes the information provided by the Government in its report, particularly in respect of the approval by the National Council for Labour, Employment and Social Security of a draft amendment to the Labour Code aimed at reintroducing the minimum wage. The Committee notes with ***satisfaction*** that Act No. 221/AN/17/8th L of 2017, by amending section 60 of the Labour Code, effectively reintroduced the SMIG as from 1 January 2018.

Protection of wages

Articles 8(1) and 10 of Convention No. 95. Deductions from and attachments of wages. Further to its latest comments on the need to review the conditions in which wage deductions can be made and to limit the amount thereof, the Committee notes the Government's reference in its report to a draft text fixing portions of wages that are subject to progressive deductions and the related rates, which is under examination. The Committee also notes that by amending section 141 of the Labour Code, Act No. 221/AN/17/8th L of 2017 removed the possibility of allowing deductions from wages on the basis of an individual agreement. It also notes with ***satisfaction*** that the Code of Civil Procedure, adopted in 2018, fixes the portions of wages that may be subject to attachment. Lastly, it notes that a limit on the amount of deductions from wages made otherwise than by attachment is yet to be established. ***The Committee therefore requests the Government to indicate the progress made towards the adoption of a decree limiting the amount of these deductions, as provided for in section 142 of the Labour Code.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Ecuador

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1970)

Previous comment

The Committee notes the observations of the Ecuadorian Confederation of Free Trade Unions (CEOSL), the Ecuadorian Federation of Municipal and Provincial Workers (FETMYP), the National Federation of Education Workers (UNE) and the National Ecuadorian Federation of Workers of Provincial Governments (FENOGOPRE), received on 1 September 2022. ***The Committee requests the Government to provide its response in this regard.***

Article 3 of the Convention. Elements for the determination of the minimum wage. With reference to its previous comments, the Committee notes the Government's indications in its report that: (1)

Ministerial Decision No. MDT-2020-249 of 30 November 2020 provided that there was no wage adjustment for 2021 and maintained the minimum wage at US$400 a month; (2) the decision was adopted following several sessions of dialogue with representatives in the National Labour and Wage Council (CNTS) and with the technical support of the competent state institutions, in which analysis covered not only the consumer price index, but also various relevant indicators of the difficult economic situation faced by the country as a result of the COVID-19 pandemic; and (3) various indicators were analysed, including; the consumer price index, the needs of workers, the cost of living, economic factors and productivity levels, which are factors that are in conformity with the provisions of the Convention. The Government adds that when the wage increase for 2021 was analysed in 2020, Ecuador was experiencing an unprecedented economic crisis, despite which tripartite dialogue sessions were held in the CNTS on wage fixing, during which employer and worker representatives made their proposals and indicated their positions on wage adjustments and, even though consensus was not achieved among the representatives in the Council, each of the proposals, indicators and positions expressed by both partners were taken into consideration in the analysis for the purpose of issuing the aforementioned ministerial decision which maintained the 2020 wage level without adjustment in 2021. The Government adds that for 2022, giving effect to the provisions of the national legislation and Convention No. 131, the Ministry of Labour, through Ministerial Decision No. MDT-2021-276 of 21 December 2021, set the unified basic wage for workers in general, including workers in small industry, agriculture, export processing zones, paid domestic workers, craft operators and micro-enterprise collaborators, at US$425 a month. According to the Government, the unified basic wage was referred to the CNTS for consideration, as a result of which the 2022 adjustment was the subject of tripartite social dialogue, with the participation of state institutions, which reported the trends in the various indicators in relation to: (a) fluctuations in the cost of living; (b) economic growth; and (c) the employment situation in the country.

The Committee notes that in their observations the CEOSL, FETMYP, UNE and FENOGOPRE: (1) point out that, when determining the unified basic wage for 2022, the same legal parameters were not applied as those used for 2021; (2) indicate that Ministerial Decision No. MDT-2021-276, which determined the basic wage for 2022, indicates in its introductory paragraphs that "consensus was not reached in the CNTS between the representatives of workers and employers on the determination of the unified basic wage which will be in force as from 1 January 2022"; and (3) nevertheless, instead of setting the wage increase as a percentage rise equivalent to the projected consumer price index, as set out in the national legislation, the wage was increased by 6.25 per cent at the request of the President of the Republic. In this way, the wage for 2022 was increased by US$25. The trade union organizations provide explanations of the formula established in the legislation (Ministerial Decision No. MDT-2020-185) for the calculation of the adjustment in the unified basic wage and add that: (i) the formula may or may not be used by the Council for the determination of the wage; (ii) if it is followed, it does not include the cost of the basic family basket, nor the cost of the basic living basket; and (iii) these components are defined by the Ecuadorian Institute of Statistics and Census and, in July 2022, the basic family basket was US$753.62 a month and the basic living basket was US$793.33, which are far from the current basic wage of US$425. In the view of the trade union organizations, the State should establish a compulsory formula for the determination of basic wages which takes into account the value of the basic family and living baskets. The Committee notes all the information provided by the Government and the observations of the trade union organizations, concerning which the Government has not provided its response. The Committee notes the different positions on the elements taken into account to determine the level of minimum wages in 2022, and the proposed formula for determining the minimum wage to be considered for the future. ***The Committee hopes that tripartite dialogue with the representative organizations of workers and employers concerned, in which there is a sincere, technical and constructive exchange, will make it possible to determine a minimum wage which, in so far as possible and appropriate in relation to national practice and conditions, will take into consideration all the***

elements referred to in Article 3(a) and (b). It requests the Government to provide information on the progress made in this regard.

Article 4(2) and (3). Consultations. With reference to its previous comments, the Committee notes the Government's indication that: (1) in accordance with section 117 of the Labour Code, the unified basic wage in the country for private sector workers is established annually, for which purpose the National Labour and Wage Council holds sessions to analyse the employment policy and determine wage adjustments with the participation of representatives of both employers and workers; (2) the CNTS engages in exhaustive consultation with employers' and workers' organizations; (3) each partner in the CNTS has the right to speak and vote on a basis of equality and the resulting decisions and recommendations therefore require the support of the majority of representatives on the Council; (4) in 2021, five meetings were held to examine the labour situation and the annual wage adjustment, in which the representatives participated in an exhaustive discussion of the criteria and the proposals put forward by both partners; (5) the Ministry of Labour participated in these tripartite discussions with a view to reaching consensus between the partners; and (6) mechanisms have also been established in the national legislation to support the representatives of the partners in their decision-making, such as the option for the representatives to have technical advisors and the participation of public institutions.

The Committee notes the indications of the CEOSL, FETMYP, UNE and FENOGOPRE that: (1) the United Workers' Front (which represents 450,000 workers in the public and private sectors, rural areas and cities) and Public Services International in Ecuador, which have been present in Ecuador since 1989, were not able to participate in the tripartite discussions, despite their high level of representation among workers, or in the decisions taken by the CNTS; (2) the denial of the participation of these organizations is due to the lack of clarity in the parameters used by the Executive Secretariat of the CNTS in drawing up the list of the ten most representative organizations at the national level; (3) this lack of transparency enables the Ministry of Labour to nominate pre-Government organizations and the legislation should therefore be revised to clarify and make more transparent the criterion of most representative, in accordance with ILO guidance and, in short, allow other organizations to be part of the Council. Finally, the trade union organizations recall that the ILO provided technical assistance to the State at the end of 2019, when a road map was prepared which envisaged the strengthening of the CNTS and the broadening of its membership, but that it has not been implemented more than two years later. The Committee recalls that, when examining the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), by Ecuador, it requested the Government to adopt the measures necessary to ensure that all the country's "most representative organizations" of employers and workers can participate in the CNTS and other consultative bodies of a tripartite nature (2021 observation). ***The Committee trusts that appropriate measures will be taken to enable full consultations to be held with all the representative organizations of workers and employers concerned, in accordance with Article 4(2). It requests the Government to provide information on the progress made in this regard.***

The Committee recalls that the Government may, in relation to all the matters raised, have recourse to ILO technical assistance, if it so wishes.

Guinea-Bissau

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1977)

Previous comment

Article 3 of the Convention. Operation of the minimum wage-fixing machinery. With regard to its previous comment, the Committee notes with ***regret*** that the Government's report does not contain any new information in this respect and that a new updated minimum wage for the private sector has still not been fixed. ***Recalling that the minimum wage in the private sector has not been readjusted***

since 1988, the Committee once again requests the Government to take the necessary measures to fix an updated minimum wage for the private sector as soon as possible, on the basis of the proposals of the multidisciplinary commission established by the Prime Minister's Ordinance of 9 June 2021, after consultation with the workers' and employers' representative organizations, in application of the legislation in force. The Committee also requests the Government to provide information in this regard, in particular on the commission's composition, functioning, meetings and results.

Kyrgyzstan

Protection of Wages Convention, 1949 (No. 95) (ratification: 1992)

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2007)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Conventions No. 131 (minimum wage) and No. 95 (protection of wages) together.

Minimum wage

Article 2 of Convention No. 131. Sanctions. Further to its previous comments, the Committee notes that the Government's report does not contain information on the measures taken to give effect to this Article of the Convention. It also notes that in its 2021 report on Convention No. 81, the Government indicates that the new Code of Offences adopted on 28 October 2021 by Act No. 128, which provides for sanctions for violations of labour legislation (sections 87 to 95), does not contain sanctions for failure to apply the minimum wage. ***The Committee once again requests the Government to take the necessary measures to ensure that failure to apply the minimum wage makes the person or persons concerned liable to appropriate penal or other sanctions, in accordance with Article 2 of the Convention, and to provide information in this regard.***

Article 3. Elements to be considered in determining the minimum wage level. The Committee notes that in reply to its previous request, the Government reiterates that the minimum wage is set at 30 per cent of the minimum subsistence level, based on the principle of a progressive raise to the minimum subsistence level for a person of working age, and does not provide any information on the criteria used to determine this ratio. ***In this context, the Committee expects that at the next adjustment of the minimum wage, so far as possible and appropriate in relation to national practice and conditions, account will be taken of both the needs of workers and their families, and of economic factors, as provided for in Article 3 of the Convention. The Committee requests the Government to provide information on any progress made in this regard.***

Article 4. Consultation with the social partners. The Committee notes that in response to its previous comments, the Government indicates that the National Tripartite Commission has not been able to meet for a considerable time, albeit it will consider the issue of the minimum wage raise at its next meeting. ***In light of this information, the Committee requests the Government to take all necessary measures to ensure that full consultation with the employers' and workers' representatives is held in connection with the fixing and adjustment of the minimum wage level, and to provide information in this regard. The Committee also requests the Government to provide information on the composition, and functioning of the National Tripartite Commission, and its work in the context of the next examination of the minimum wage.***

Protection of wages

Article 12 of Convention No. 95. Regular payment of wages. Further to its previous comments on the persisting situation of wage arrears in the country, the Committee notes that the Government indicates in its report that this issue will be considered at a meeting of the National Tripartite Commission. ***The Committee requests the Government to intensify its efforts to address and remedy the issue of wage arrears in consultation with the social partners, including in the framework of the National Tripartite Commission, and to provide specific information on the measures adopted in this respect, including strict supervision, severe sanctions, and appropriate compensation to workers for the losses incurred.***

Libya

Protection of Wages Convention, 1949 (No. 95) (ratification: 1962)

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1971)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 131 (minimum wage) and 95 (protection of wages) together.

Minimum wage

Article 4 of Convention No. 131. Minimum wage-fixing machinery. The Committee notes that in reply to its previous comment, the Government indicates in its report that the Consultative Council for Wages to be appointed under section 19 of the Labour Relation Act (No. 12 of 2010) has not yet been established but that a committee on wages has been established to prepare a draft law on wages. ***Recalling that minimum wages were last adjusted in the country in 2011, the Committee urges the Government to take all necessary measures to ensure that full consultation with the employers' and workers' representatives is held in connection with the fixing and adjustment of the minimum wage level, and to provide information in this regard. The Committee also requests the Government to provide information on: (i) the composition, functioning and work of the committee on wages; and (ii) the progress made in the adoption of any draft law on wages.***

Protection of wages

Article 12 of Convention No. 95. Regular payment of wages and final settlement of wages due. Further to its previous comments, the Committee notes the Government's indication in its report that a wages release committee has been established within the Ministry of Civil Service Affairs to address the challenges that prevent the payment of wages by ailing firms and foreign companies that have withdrawn from the country. Moreover, the Committee notes that the Government does not communicate information on the implementation of Decision No. 20/2007, concerning the organization, import and employment of foreign labour, and Decision No. 56/2006, concerning the establishment of a multi-stakeholder committee to examine wage claims of migrant workers who had been expelled from the country as illegal immigrants. ***The Committee requests the Government to take the necessary measures to ensure that any situation of wage arrears or other difficulties experienced in the payment of wages to workers, including migrant and public sector workers, are effectively addressed, and to provide information in this regard. It also requests the Government to provide information on the mandate, composition and functioning of the wages release committee and on the implementation of Decisions Nos 20/2007 and 56/2006.***

The Committee is raising other matters in a request addressed directly to the Government.

Madagascar

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1960)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Previous comment

In order to provide an overview of matters relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine the application of Conventions Nos 26 (minimum wages) and 95 (protection of wages) in a single comment.

The Committee notes the observations of the Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE) and the General Confederation of Workers' Unions of Madagascar (FISEMA), received on 1 September 2022.

Minimum wages

Article 3 of Convention No. 26. Minimum wage-fixing machinery and consultation of the social partners. Further to its previous comments, the Committee notes the information provided by the Government in its report on the adoption of Decree No. 2022-626 of 4 May 2022 setting the minimum starting wage in the private sector, for which the implementing order is still being prepared. The Government adds that the new minimum starting wage was set taking into account the protocol containing the outcome of wage bargaining, submitted to the National Labour Council (CNT) for its views on 5 April 2022, and that it includes a supplement covered by the State. In this regard, the Committee notes the observations of the FISEMA and the FISEMARE, which indicate that: (i) the minimum wage-fixing machinery no longer takes into account the real situation and the minimum subsistence level for workers; and (ii) there is a significant period of time between the declaration of the new minimum starting wage and the publication of the corresponding order, which accentuates the difficulties faced by workers in meeting their living expenses, particularly in light of price rises. The Committee also notes the Government's indication that, within the context of the operationalization of the CNT, standing committees have been established to ensure the sound functioning of the CNT, including the purchasing power and wages committee. In this connection, it notes the observations of the FISEMA concerning the dysfunctionality of the CNT and that the purchasing power and wages committee has been created but is not yet operational. It also notes the emphasis by the FISEMARE that, despite the existence of regular dialogue between employers and workers on wage increases, in the last resort, the rates of minimum wages are set by employers. ***The Committee requests the Government to intensify its efforts to make the CNT operational, and to provide information on this subject, including on the establishment of the purchasing power and wages committee, its work and achievements. The Committee also requests the Government to take the necessary measures to adopt, as soon as possible, the implementing order of Decree No. 2022-626 of 4 May 2022, and to provide information on the progress made in this regard.***

Article 4. System of supervision and sanctions. Further to its previous comments, the Committee notes the Government's indication that, since 2019, the labour inspection services, together with the National Social Insurance Fund, have established a task force responsible for monitoring regularly the application of the Decree on the minimum starting wage, and that: (i) in the event of failure to apply the minimum starting wage, the labour administration makes time-bound recommendations with a view to ensuring effective compliance with the Decree on the minimum starting wage; and (ii) if these recommendations are not given effect, labour inspectors indicate the offences in a report referred to the Office of the Prosecutor-General of the Republic. ***The Committee requests the Government to continue providing information on the activities of the task force, including statistics on cases of failure to apply the minimum starting wage, and the measures adopted to resolve the issue.***

Protection of wages

Article 8 of Convention No. 95. Deductions from wages. The Committee notes that, in reply to its previous comment, the Government indicates in its report that: (i) no deduction from wages may be made without the consent of the worker; and (ii) labour inspectors organize information sessions and training for public institutions and the social partners with a view to preventing risks of abuse in this field. However, the Committee notes that the Government does not indicate the manner in which the deductions authorized in sections 69 and 71 of the Labour Code are limited. The Committee recalls that, in accordance with *Article 8(1)* of the Convention, deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations, or fixed by collective agreement or arbitration award. ***The Committee therefore requests the Government to indicate the measures adopted or envisaged that are necessary to establish precise and overall limits on the deductions from wages authorized in sections 69 and 71 of the Labour Code. It requests the Government to provide information on this subject***.

Article 12. Regular payment of wages and final settlement of all wages upon the termination of the contract. Further to its previous comment, the Committee notes that the Government has not provided information on delays in the payment of wages and of social security contributions, as well as cases of the non-payment of the remaining amounts due to workers on the termination of the employment relationship. It also notes that the FISEMA denounces the existence of several months of wage arrears, including social security contributions, in the public sector and considers that the labour inspection services have no authority in relation to this situation. ***The Committee once again requests the Government to take all the necessary measures, including action by the labour inspection services and the imposition of effective penalties in the event of non-compliance, to resolve these difficulties and to provide information on this subject.***

Nigeria

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1961)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 (minimum wage) and 95 (protection of wages) together.

The Committee notes the observations of the International Trade Union Confederation (ITUC) on the application of Conventions Nos 26 and 95, received on 1 September 2022.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 110th Session, May–June 2022)

The Committee notes the discussion that took place in the Committee on the Application of Standards (hereinafter Conference Committee) in June 2022 concerning the application of Conventions Nos 26 and 95. The Committee notes that the Conference Committee urged the Government to: (i) consult with the social partners on the issue of extending the minimum wage coverage to the categories of workers currently excluded by the National Minimum Wage Act 2019; (ii) ensure, in consultation with social partners, that men and women receive equal remuneration for work of equal value, including with regard to minimum wage coverage; (iii) establish, in consultation with social partners, an effective system of supervision and sanctions to ensure that the national minimum wage is applied at all levels; (iv) consult with social partners on the issue of the application of the scope of

wage protection to domestic workers; (v) consult with the social partners on the provisions of section 35 of the Labour Act that allow the Minister of Labour to authorize deferred payment of up to 50 per cent of workers' wages until the completion of their contract, in light of *Articles 6* and *12(1)* of Convention No. 95; and (vi) consult with social partners with a view to amending sections 6(1) and 7(1) of the Labour Act to come into line with Convention No. 95. In addition, the Conference Committee requested that the Government avail itself, without delay, of technical assistance from the Office to ensure compliance with the Conventions in law and practice.

The Committee notes the indication in the report of the Government that a tripartite meeting on the Conference Committee conclusions was organized on 10 August 2022, with the Government, the Nigeria Employers' Consultative Association (NECA), the Nigeria Labour Congress (NLC), the Trade Union Congress (TUC) and the ILO in attendance. The Government indicates that decisions were adopted at the meeting to ensure the full application of Conventions Nos 26 and 95, including a road map recommending a second tripartite meeting and the submission of recommendations to the National Labour Advisory Council (NLAC). The Committee notes that many of the decisions adopted refer to the Labour Standards Bill, pending its adoption, and the revision of the National Minimum Wage Act 2019. ***The Committee requests the Government to continue to take all necessary measures to ensure the appropriate follow-up to the conclusions of the Conference Committee as early as possible, in consultation with the social partners, and to provide information in this regard. The Committee also expresses the firm hope that the measures taken, including the adoption and revision of the relevant implementing legislation, will provide an adequate response to the following comments of the Committee.***

A. Minimum wage

Article 1 of Convention No. 26. Scope of minimum wage protection. Following its previous comments, the Committee notes the Government's indication that the scope of the minimum wage may be revisited in the next review of the National Minimum Wage Act 2019. The Committee also notes that a proposal for the extension of the minimum wage coverage is included in the road map adopted by the tripartite constituents on 10 August 2022. ***The Committee hopes that in the context of the initiatives referred to by the Government, all the necessary measures will be taken to fix minimum rates of wages for workers employed in certain trades or parts of trades in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and where wages are exceptionally low. It requests the Government to provide information on the progress made with regard to the road map's implementation.***

Article 4(1). System of supervision and sanctions. Following its previous comments, the Committee notes the Government's indication that the four states which have yet to apply the national minimum wage are being monitored by the state labour offices of the Federal Ministry of Labour and Employment, and by the National Salaries, Incomes and Wages Commission. The Committee also notes that, at the tripartite meeting on 10 August 2022, the constituents agreed: (i) to establish a tripartite structure to review sanctions, identify gaps and make proposals towards strengthening the supervision and enforcement of the National Minimum Wage Act 2019; and (ii) to recommend additional capacity building for labour officers on the need for effective and adequate monitoring and enforcement of sanctions. ***The Committee requests the Government to continue to take the necessary measures to ensure, by way of a system of supervision and sanctions, that wages are not paid at less than the minimum wage rates in cases where they are applicable. The Committee requests the Government to provide further information on the measures taken in this regard, including those taken to ensure that the four states that have yet to apply the national minimum wage, comply with the National Minimum Wage Act 2019.***

B. Protection of wages

Article 2 of Convention No. 95. Protection of wages of homeworkers and domestic workers. Following its previous comments, the Committee notes the Government's indication that the Labour Standards Bill, which focuses on domestic workers rather than homeworkers, has been reviewed and validated by the social partners and is awaiting further action. The Committee nevertheless observes an absence of information concerning the time frame for adopting this legislation. ***The Committee once again requests the Government to continue to make every effort to ensure the protection of wages of domestic workers, including through the adoption of the Labour Standards Bill, and to provide information on any progress made in this respect.***

Articles 6, 7(2), 12(1) and 14. Workers' freedom to dispose of their wages. Work stores. Regular payment of wages. Information on wages before entering employment and wage statements. Following its previous comments, the Committee notes the Government's indication that: (i) section 35 of the Labour Act has been raised during the National Tripartite Labour Bill Reviews and deleted from the Labour Standards Bill, and the protection of wages and of workers' freedom to dispose of their wages are covered under sections 11, 12 and 13 of the Labour Standards Bill; (ii) the recommended amendment concerning work stores and section 6 of the Labour Act has been executed in the Labour Standards Bill; and (iii) payslips are available on request retrospectively, and section 14 of the Labour Standards Bill would provide for written particulars of terms of employment to be provided before the start of employment. ***Taking due note of this information, the Committee encourages the Government to pursue its efforts to ensure the application in law and in practice of these provisions of the Convention, including through the adoption of the Labour Standards Bill. The Committee requests the Government to provide information on any court decision or arbitration award issued in relation to these Articles of the Convention.***

Article 12(1). Regular payment of wages. Following its previous comments on this issue, the Committee notes the observations of the ITUC, indicating that wage arrears have become an issue of great concern for workers and that wages are not paid regularly in several states. The Committee also notes the information provided by the Government on the measures envisaged in this regard, including its intention to utilise the NLAC to drive home the need to protect wages. ***The Committee requests the Government to continue to take all necessary measures to address this issue, including the strengthening of supervision and sanctions, and to provide information on the progress made.***

Rwanda

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1962)

Previous comment

Articles 1 and 3(2) of the Convention. Minimum wage-fixing machinery. Consultation of employers' and workers' organizations. Following its previous comments, the Committee notes with ***regret*** that the Government indicates in its report that the draft Ministerial Order determining the minimum wage has not yet been adopted. The Government also indicates that: (i) the draft Ministerial Order was discussed within the tripartite National Labour Council in 2018 and is presently still subject to consultation between all relevant stakeholders; and (ii) the negative impact of the COVID-19 pandemic on the labour market and the economy will also call for relevant assessments to be made. ***Recalling that the last adjustment to minimum wage rates was made in 1980, the Committee urges the Government to take the necessary measures to fix new minimum wage rates, including through the adoption of the Ministerial Order determining the minimum wage, without delay and in consultation with social partners.***

Article 4. Sanctions. Following its previous comments, the Committee notes that the Government indicates that section 23 of the Ministerial Order No. 001/19.20 of 17 March 2020 relating to Labour

Inspection establishes the modalities of application of administrative fines for obstructing the work of the labour inspectorate, as provided under section 120 of the Labour Code. The Committee observes that neither the Labour Code nor the Ministerial Order provide for sanctions in the case of violations of provisions concerning minimum wages. ***The Committee once again requests the Government to take the necessary measures to put in place a system of sanctions, to ensure that wages are not paid at less than the minimum wage rates determined.***

Tajikistan

Protection of Wages Convention, 1949 (No. 95) (ratification: 1993)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 7(2) of the Convention. Works stores. The Committee notes that the Government's report does not contain information in response to its previous request on this issue. ***The Committee therefore requests the Government once again to provide information on the measures adopted with the object of ensuring that goods at work stores are sold, and services provided at fair and reasonable prices, or that stores established and services operated by the employer are not operated for the purpose of securing a profit, but for the benefit of the workers concerned, as required by this Article of the Convention.***

Articles 12 and 15(b). Regular payment of wages. Control of compliance. Further to its previous comments concerning wage arrears in the country, the Committee notes that the Government indicates that the total amount of arrears of wages as of 1 May 2020, including arrears from previous years, increased by 78.8 per cent compared to the same period in 2019. The Government further indicates that local government authorities have adopted decisions and that the leaders of provinces, towns and districts have adopted decrees to establish the "Executive Unit for the Elimination of Wage Arrears". Concerning enforcement activities, the Committee notes that the Government's report does not contain information in response to its previous request. ***Taking note with concern of the continued situation of wage arrears in the country and its dramatic increase in 2020, the Committee requests the Government to step up its efforts to address this issue and to provide information on the results of the measures adopted and envisaged in this regard. The Committee also requests once again the Government to provide information on the number of inspection visits undertaken to ensure compliance with the timely payment of wages by sector, the number of cases of non-compliance detected and the measures taken to settle all outstanding payments, including adequate penalties or other appropriate remedies.***

Articles 14(b) and 15(d). Wage statements and record-keeping. Further to its previous comments requesting the Government to indicate how effect is given to these provisions, the Committee notes that the Government's report is silent on this issue. ***The Committee therefore once again requests the Government to: (i) specify how it is ensured that workers are informed at the time of each payment of the particulars of their wages for the period concerned, for example by means of payslips (Article 14(b)), and (ii) indicate any legislative or administrative provisions regulating the form and manner in which payroll records must be kept, as well as the specific wage particulars to be shown in those records (Article 15(d)).***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Uganda

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1963)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 (minimum wage) and 95 (protection of wages) together.

Legislative developments. The Committee notes that, according to information provided by the ILO Country Office for the United Republic of Tanzania, Burundi, Kenya, Rwanda and Uganda, the Employment Act 2006 is currently being revised in consultation with social partners. ***The Committee requests the Government to provide information on the developments in this regard, and to provide a copy of the amended Employment Act 2006, once adopted. The Committee also hopes that its comments on the Protection of Wages Convention, 1949 (No. 95) will be taken into account in the framework of the revision of the Act, and recalls that the Government can avail itself of the technical assistance of the ILO in this regard.***

Minimum wage

Article 3 of Convention No. 26. Operation of the minimum wage fixing machinery. The Committee recalls that, following the discussion of this case before the Conference Committee on the Application of Standards in June 2014, it had requested the Government to provide information with regard to the announced reactivation of the Minimum Wages Advisory Board and the subsequent fixation of a new minimum wage in the country. The Committee notes that the Government indicates in its report that a Minimum Wages Advisory Board was appointed in 2015 and that it undertook a comprehensive study of the economy with a view to providing advice to the Government on the feasibility of fixing a minimum wage in the country and the form that the minimum wage should take. The Government also indicates that the report of the Board was under discussion in the Cabinet. Despite the progress made with the reactivation of the minimum wage fixing mechanism in 2015, the Committee notes with ***concern*** that the minimum wage, which was last set in 1984, has yet to be adjusted. ***It therefore requests the Government to take the necessary measures to revise the level of the minimum wage without further delay. Recalling the importance of ensuring the close involvement of employers' and workers' organizations at all stages of this process, the Committee requests the Government to provide information on the composition of the Minimum Wages Advisory Board and on the consultations undertaken with the social partners in revising the level of the minimum wage.***

Protection of wages

The Committee notes with ***deep concern*** that the Government's report on Convention No. 95, due since 2017, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of Convention No. 95 on the basis of the information at its disposal.

Following its examination of the information at its disposal, the Committee notes that it is still missing important information on measures giving effect to *Articles 1, 4, 7(2), 8, 10, 12(1)* and *14(a)* of Convention No. 95. The Committee is therefore bound to repeat its previous comments with regard to those Articles.

Article 1 of Convention No. 95. Coverage of all parts of the remuneration. The Committee notes that the definition of "wages" in section 2 of the Employment Act excludes "contributions made or to be made by the employer in respect of his or her employee's insurance, medical care, welfare, education, training, invalidity, retirement pension, post-service gratuity or severance allowance". The Committee recalls that the definition of wages for the purposes of the Convention is very broad and that it intends to cover the benefits excluded under section 2 of the Employment Act. ***Since this Act is the main legislation implementing the Convention, the Committee requests the Government to indicate the measures taken to provide workers with the protection afforded in the Convention in relation to the elements of their remuneration which are excluded under section 2 of the Employment Act.***

Article 4. Partial payment in kind. The Committee notes that sections 41(3) and 97(2)(i) of the Employment Act address the issue of partial payment of wages in kind and provide that the Minister may adopt regulations on this matter. ***It requests the Government to indicate whether such regulations have been adopted.***

Article 7(2). Works stores. The Committee notes that section 41(4) of the Employment Act provides that an employee shall not be obliged to make use of any shops established by the employer for the use of his or her employees or services operated in connection with the undertaking. The Committee recalls that *Article 7(2)* requires that where access to other stores or services other than those operated by the employer is not possible, the competent authority shall take appropriate measures in order to ensure that goods and

services are sold at a fair and reasonable price and in the interest of the workers. ***The Committee therefore requests the Government to indicate what measures are in place in order to ensure the application of this provision of the Convention.***

Articles 8 and 10. Deductions from wages and attachment of wages. The Committee notes that section 46(1) of the Employment Act provides a list of authorized deductions from wages and that section 46(3) provides that attachment of wages shall be limited to no more than two-thirds of all remuneration due in respect of a specific pay period. The Committee therefore notes that, while there is an overall limit on attachment of wages, there is no such limit for deductions from wages. In this regard, the Committee recalls that, in addition to setting specific limits for each type of deduction, it is also important to establish an overall limit beyond which wages cannot be further reduced, in order to protect the income of workers in the case of multiple deductions. ***The Committee therefore requests the Government to take the necessary measures for the establishment of specific and overall limits to deductions from wages.***

Article 12(1). Regular payment of wages. With reference to its previous request concerning the issue of irregular payment of wages, the Committee notes that the Government merely repeats in its report the information previously provided. In relation to the lack of a functional Industrial Court, which had been noted in its previous comments, the Committee notes that information is available on the Court's website indicating that a number of awards have been adopted since 2015. It also notes that two judges and the registrar of the Court have participated in a training activity on international labour standards delivered by the International Training Centre of the ILO in Turin in June 2017. ***In this context, the Committee once again requests the Government to provide up-to-date information on the situation of wage arrears in the country, including data on the number of workers affected by non-payment or delayed payment of wages, the sectors concerned and the results of labour inspections on these issues, and to indicate whether the Industrial Court has been dealing with any such cases.***

Article 14(a). Information on wages before entering employment. The Committee notes that section 59 of the Employment Act provides that an employee shall receive from the employer information on wages not later than 12 weeks after the date on which employment commences. The Committee recalls that *Article 14(a)* requires effective measures to be taken in order to ensure that employees are informed of the conditions in respect of wages before they enter employment. ***The Committee therefore requests the Government to indicate which measures are in place in order to ensure full implementation of this Article of the Convention.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Bolivarian Republic of Venezuela

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1944)

Protection of Wages Convention, 1949 (No. 95) (ratification: 1982)

Previous comments

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on wages, the Committee considers it appropriate to examine Conventions Nos 26 (minimum wage) and 95 (protection of wages) together.

The Committee notes the observations concerning Convention No. 26 made by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 11 February 2022. The Committee also notes that the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP) sent observations concerning Convention No. 26 that were received on 24 April 2022. The Committee also notes the following observations communicated with the Government's report, formulated by: (i) FEDECAMARAS, on Convention No. 26; (ii) CBST-CCP, on Convention no. 26; and (iii) jointly, from the Confederation of Workers of Venezuela (CTV) the Federation of University Teachers' Associations of Venezuela (FAPUV) and the Independent Trade Union Alliance Confederation of Workers (CTASI), on Conventions Nos 26

and 95. The Committee also notes the observations formulated by the National Union of State and Public Service Workers (UNETE), on Convention No. 26, received on 5 September 2022.

Minimum wage

Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

Article 3 of Convention No. 26. Participation of the social partners in minimum wage fixing. With regard to its previous comment, the Committee notes the discussions at the 344th, 345th and 346th Sessions (March, June and November 2022) of the Governing Body on the progress report concerning the operation of the social dialogue forum in giving effect to the recommendations of the Commission of Inquiry, as well as the corresponding decisions adopted. In particular, the Committee notes that: (i) the inaugural session of the social dialogue forum (the forum) was held in a virtual format on 7 March 2022, chaired by the Minister of Popular Power for the Social Process of Labour, with the participation of the Director-General of the ILO and of the following employers' and workers' organizations: FEDECAMARAS; CBST-CCP; the Venezuelan Federation of Craft, Micro, Small and Medium-Sized Business Associations (FEDEINDUSTRIA); CTASI; CTV; UNETE; the General Confederation of Labour (CGT); and the Confederation of Autonomous Trade Unions (CODESA). The inaugural session adopted the terms of reference for the forum, which included addressing all pending questions concerning the application of Conventions Nos 26, 87 and 144; (ii) the first in-person session of the forum was held in Caracas from 25 to 28 April 2022, with ILO technical assistance. It produced a plan of action including a timetable of activities related to compliance with the cited Conventions; and (iii) a follow-up session of the forum was held in Caracas from 26 to 29 September 2022, with ILO technical assistance; it assessed the activities undertaken as part of the implementation of the plan of action adopted in April and agreed on updating the plan of action. The Committee notes that the Governing Body will again examine the progress made by the Government in ensuring compliance with the recommendations of the Commission of Inquiry at its 347th Session (March 2023).

Further to its previous comments on this matter, the Committee notes the Government's indication in its report that: (i) on 20 December 2021, formal written consultations were undertaken, that included relevant statistical data for analysis, as a basis for opinion and response, with FEDECAMARAS, FEDEINDUSTRIA, CBST, CTASI, CTV, UNETE, CGT, and CODESA; (ii) on 3 March 2022, the President of the Republic publicly announced the proposal for an increase in wages equivalent to half a Petro (cryptocurrency), and this was made effective by Decree No. 4653, published in Official Gazette No. 6691, Special Edition of 15 March 2022; and (iii) on 4 March consultations were held with the above-mentioned social partners regarding the impact of the President's announcement. The Government also indicates that, in line with undertakings made at the April and September 2022 meetings of the forum, the following activities related to compliance with the Convention were carried out: (i) in the week of 13 to 19 July, a round of dialogue meetings were held with the employers' and workers' organizations concerned regarding compliance with the Conventions, including Convention No. 26; (ii) on 7 and 12 September 2022, meetings were held with the workers' organizations (CBST-CCP; CTASI; and CTV) and employers' organizations (FEDECAMARAS and FEDEINDUSTRIA) respectively, to exchange views on the method for fixing minimum wages, including the criteria and source of the relevant economic, social and labour reference data; (iii) on 20 October 2022, a tripartite meeting was held to discuss the constitution of a working party with regard to fixing the minimum wage; and (iv) on 25 October a workshop was held on indicators related to the minimum wage, with the support of the Minister of Popular Power for Planning. The Government also indicates that it has drawn up a timetable, included as an annex to its report, for tripartite and bipartite activities to be conducted between the second half of November 2022 and February 2023, which include: (i) the holding of a tripartite workshop on minimum wage methodology with ILO technical assistance (22 November 2022); (ii) dispatching formal

invitations for consultations on minimum wage increases to the workers' and employers' organizations (15 December 2022); (iii) the organization of bipartite sectoral meetings to exchange views on proposals for the minimum wage (18 January 2023); and (iv) the holding of a tripartite meeting on methods of defining the minimum wage (25 January 2023). Lastly, the Government indicates that the third in-person session of the forum will be held in the week of 6 to 10 February 2023, with ILO technical assistance.

In this regard, the Committee notes that in its observations, FEDECAMARAS indicates that: (i) in November 2021, the Ministry of Popular Power for the Social Process of Labour (MPPPST) forwarded to FEDECAMARAS the rules established for the consultation process on the minimum wage (broad consultation once annually, meetings during the first quarter of each year with the social partners and relevant institutions and bodies, and a written communication accompanied by elements of the national and international context that impact on the socio-economic reality and relevant official indicators, such as the cost of the basic food basket); (ii) by a communication dated 20 December 2021, the MPPPST submitted several economic, poverty and labour force indicators to FEDECAMARAS; (iii) by a communication of 23 February 2022, the MPPPST requested FEDECAMARAS to present additional, updated information concerning the increase of the minimum wage; (iv) on 3 March 2022, without organizing the consultation and meetings foreseen for the first quarter of 2022, the President of the Republic announced publicly an increase in the minimum wage; (v) on 4 March 2022, the MPPPST sent a communication to FEDECAMARAS requesting the organization's opinion and recommendations on the impact and implications of the measures announced; on the same day, a meeting took place between the MPPPST with the participation of FEDECAMARAS and FEDEINDUSTRIA, at which FEDECAMARAS expressed concern at the failure to comply with the proposed methodology, and in particular at the lack of real discussion and effective dialogue between the tripartite actors on this matter; and (vi) the announced wage increase became effective after publication in the Official Gazette of 15 March 2022.

For its part, the CBST-CCP indicates in its observations that the Government regularly sends, once or twice annually, written communications to the workers' and employers' organizations regarding the minimum wage consultations.

The Committee also notes that in their joint observations, the CTV, the FAPUV and the CTASI indicate that by official letter No. 502/2021, the MPPPST requested their opinions, expectations, and suggestions on how the wages dynamic within the country should be aligned with the Convention; the CTASI, while considering this approach inappropriate, put forward a proposal, but received no response. In this regard, the above-mentioned organizations state that the steps taken are insufficient and cannot be considered as complying with the Convention, since in practice no account is taken of proposals and contributions made by the trade union organizations, and the national executive simply and unilaterally determines the increase in the national minimum wage.

The Committee also notes that FEDECAMARAS, the CTV, the FAPUV and the CTASI all concur that the meeting to discuss wage indicators, scheduled for July 2022 in the timetable annexed to the plan of action adopted in April 2022, did not take place.

Finally, the Committee notes that the UNETE indicates in its observations that the Government has not adopted a single measure requiring consultation with the employers' and workers' organizations on fixing the minimum wage.

Regarding the March 2022 wage increase, the Committee observes that: (i) while it was preceded by communications sent several months previously requesting the social partners' opinions on the issue, it did not comply with the methodology established previously by the Government, consisting of structured meetings intended to result in full compliance with the recommendations of the Commission of Inquiry; and (ii) FEDECAMARAS, the CTV, the FAPUV, the CTASI and also the UNETE all agree that their proposals and contributions are not truly taken into account in final decision taking. Regarding the plan of action for Convention No. 26 adopted in April 2022, the Committee notes that it did not follow the programmed time frame, since only two meetings were held on indicators, and those were out of sync

with the schedule that had been fixed, prior to the September forum meeting. Finally, the Committee observes that the plan of action adopted in September 2022 includes: (1) setting up a series of technical round tables to devise the methods of fixing the minimum wage, with ILO technical assistance; (2) implementing a timetable drawn up by the Government to that end, to be completed by February 2023; (3) dispatching of formal invitations to consult on increasing the minimum wage; (4) the holding of meetings to discuss proposals for the minimum wage; and (5) the holding of a tripartite meeting to devise methods for fixing the minimum wage. In light of the above, the Committee notes with ***regret*** the MPPPST's failure to comply with the proposed methodology for the consultation process on fixing the increase of the minimum wage that was decreed in March 2022. ***The Committee firmly hopes that, in the framework of opportunities opened up by the process begun with the establishment and follow-up of the social dialogue forum, all measures provided in the plan of action updated in September 2022 will be implemented, including the timetable of activities presented by the Government. It also hopes that these measures will yield tangible progress in the development and application of methods of fixing the minimum wage, as required by the Convention and in following the recommendations of the Commission of Inquiry. In particular, the Committee urges the Government, at the next increase of the minimum wage, to take the necessary measures to ensure that the increase is preceded by a thorough consultation process, conducted sufficiently in advance, within a framework of structured, informed and effective discussions, in which due account is taken of the proposals made on this matter by the employers' and workers' organizations.***

Protection of wages

Article 4 of Convention No. 95. Payment in kind. "Socialist cestaticket" (food voucher). With regard to its previous comments, the Committee notes from the Government's report that: (i) regarding payment of the "socialist cestaticket" benefit, roundtables have been set up with active participation of the employers' and workers' organizations, and these have concluded agreements that are beneficial for the workers; and (ii) as of 15 March 2022, the value of the "socialist cestaticket" was increased, without affecting the benefit provided by the Local Supply and Production Committees (CLAP) in the distribution of subsidized foodstuffs. The Committee also notes that the CTV, FAPUV and CTASI state in their joint observations that payment of wages with various types of vouchers or with food is common in the public and private sector. In this regard, the Committee notes with ***regret*** that, on the basis of the information presented by the Government, and the observations of the above-mentioned workers' organizations, it cannot be concluded that progress has been made in resolving this issue. ***While referring back to the analysis it has made in previous years on this matter (see in particular the observation adopted in 2017), the Committee once again requests the Government to take the necessary measures without delay, through dialogue with the representative organizations of the employers and workers, to examine solutions that allow the full application of Article 4 of the Convention. The Committee requests the Government to provide information in this respect, in particular with regard to the composition and operation of the above-mentioned roundtables, and the agreements reached following the debate held within them.***

Articles 5 and 14. Electronic payment of wages. Information on constituent elements of wages. The Committee notes the Government's indication, in response to its previous comment, that it is providing information and instructions to the workforce regarding the correct use of electronic means to obtain their wages. The Committee also notes that the CTV, the FAPUV and the CTASI indicate that the electronic payment of wages causes immense problems for workers, especially for those who live in localities where there are no banking services, no electricity and no transport to take them to another locality. The above-mentioned workers' organizations particularly stress that workers have serious difficulty in withdrawing sums sufficient to cover their most basic needs, and meanwhile the money that they are unable to withdraw from their accounts falls in value every day. The Committee notes with ***regret*** that no progress has been made regarding this issue. The same workers' organizations indicate

that the payrolls are managed by the "sistema patria", which makes it impossible for the worker to obtain a receipt detailing their income and payroll deductions, a method that is tantamount to an attack on the worker's wages, given the absence of an office to which to make claims regarding omissions or errors in the payment of wages. ***The Committee once more requests the Government to take effective measures in consultation with the social partners to address the issues both of the electronic payment of wages, and of providing information to workers concerning the constituent elements of their wages, in conformity with the Convention, and to provide information in this respect.***

Article 12. Delayed payment of wages. The Committee notes the Government's indication, in response to its previous comment, that the Constitutional Chamber of the Supreme Court of Justice, in ruling No. 5 of 19 January 2017, ordered the National Budget Office (ONAPRE) of the National Executive, to pay the wages owed to workers of the national legislative body, and the wage claims were subsequently settled through the Ministry of Finance.

[The Government is asked to reply in full to the present comments in 2023.]

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 26** *(Congo, Côte d'Ivoire);* **Convention No. 95** *(Central African Republic, Chad, Congo, Côte d'Ivoire, Lebanon, Libya, Niger, Saudi Arabia);* **Convention No. 99** *(Côte d'Ivoire);* **Convention No. 131** *(Cameroon, El Salvador, Lebanon, Morocco, Nepal, Niger).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 26** *(China: Macau Special Administrative Region, Colombia, Democratic Republic of the Congo, Myanmar);* **Convention No. 95** *(Colombia, Cyprus);* **Convention No. 99** *(Colombia);* **Convention No. 131** *(Netherlands).*

Working time

China

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1934)

Previous comment

Articles 4, 5 and 6 of the Convention. Exceptions to weekly rest. Compensation. Consultation. Following its previous comments on the flexible working time schemes provided for by the Measures for the Examination and Approval of Flexible Working Hours Arrangement and Consolidated Hours Scheme (No. 503), 1994 (hereinafter, Approval Measures), the Committee notes that the Government indicates in its report that: (i) in accordance with the provisions of section 39 of the Labour Law and the Approval Measures, if an enterprise cannot implement the standard working-hour system due to its production characteristics, with the approval of the labour administrative department, it can implement other work and rest systems such as the integrated working hour system; (ii) the integrated working hour system is mainly applicable to the positions that need continuous work within a certain period of time, such as those in transportation, railway, post and telecommunications, water transportation, aviation, fishery and other sectors, as well as the positions in the sectors that require to arrange concentrated work and concentrated rest due to seasonal and natural conditions, such as the positions in geological and natural resource exploration, construction, salt making, sugar making, tourism and other sectors; (iii) if an enterprise makes the workers who follow the integrated working hour system work on official holidays, they shall pay overtime wages according to the standard of extended working hours on official holidays; (iv) the departments of human resources and social security at all levels have strictly enforced the approval procedures, requiring enterprises to fully consult their employees and the trade union of the enterprise, failure to which will result in disapproval; (v) if an employer infringes upon the rights of workers to rest and remuneration, he or she will be punished according to law, and workers have the right to safeguard their rights and interests by complaining to the labour inspectorate and applying for arbitration of labour disputes; and (vi) from 2013 to 2021, labour inspectorates at all levels have investigated and dealt with a total of 120,000 cases of various violations of working hours and provisions on rest and vacation, including violations of the provisions on weekly rest. In this respect, the Committee observes that according to section 44 of the Labour Law, overtime compensation, including work during weekly rest, shall be paid if no compensatory rest is granted, and that the Approval measures do not seem to contain provisions regarding the granting of compensatory rest in case of work during the weekly rest period. The Committee recalls that *Article 5* of the Convention requires workers who are deprived of their weekly rest to be granted compensatory rest irrespective of any monetary compensation, in order to protect the physical and mental health of workers. ***The Committee therefore requests the Government to take the necessary measures to ensure that in law and in practice, compensatory rest is granted to workers who are required to work in their weekly rest day. It also requests the Government to continue making every effort to ensure that authorizations to work during the weekly period are granted, special regard being had to all proper humanitarian and economic considerations and after consultation with responsible associations of employers and workers. It finally requests the Government to provide information on any progress made in this respect, including regarding the activities of the labour inspectorate to prevent and sanction infringements to workers' weekly rest entitlements.***

China

Macau Special Administrative Region

Hours of Work (Industry) Convention, 1919 (No. 1) (notification: 1999)

Weekly Rest (Industry) Convention, 1921 (No. 14) (notification: 1999)

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (notification: 1999)

Previous comment on Convention No. 1
Previous comment on Convention No. 14
Previous comment on Convention No. 106

In order to provide a comprehensive view of the issues relating to the application of the Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 1 (hours of work (industry)), 14 (weekly rest (industry)) and 106 (weekly rest (commerce and offices)) together.

Hours of work

Articles 2(b) and (c), 4 and 5 of Convention No.1. Variable distribution of working hours. Further to its previous comments, the Committee notes that the Government in its report refers to section 33(2) of Law No. 7/2008, which provides that the employer may, depending on the characteristics of the operation of the undertaking, agree with the worker that the daily working period exceeds the limits of 8 hours per day, provided that the worker has 10 consecutive hours of rest per day, totalling not less than 12 hours, and that the working period may not exceed 48 hours per week. The Committee also notes that under section 40(3) of the Law No. 7/2008, the organization of shift work shall be subject to the maximum limits of the normal working period and shall guarantee the worker 10 consecutive hours of rest per day, totalling not less than 12 hours, and the working hours may be fixed with continuous or interspersed working periods. In this respect, the Committee recalls that the averaging of hours of work in general is authorized in the Convention only over a reference period of one week, and provided that a daily limit of nine hours is required *(Article 2(b))*; in all the other cases in which the averaging of working hours is allowed over reference periods longer than a week, the circumstances are clearly specified, as follows: (i) in case of shift work, it shall be permissible to employ persons in excess of 8 hours in any 1 day and 48 hours in any 1 week, if the average number of hours over a period of three weeks or less does not exceed 8 per day and 48 per week *(Article 2(c))*; (ii) in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, the daily and weekly limit of hours of work may be exceeded subject to the condition that the working hours shall not exceed 56 in the week on the average (*Article 4*); and (iii) in exceptional cases where it is recognized that the limits of 8 hours a day and 48 hours a week cannot be applied, but only in such cases, agreements between workers' and employers' organizations concerning the daily limit of work over a longer period of time may be given the force of regulations, provided that the average number of hours worked per week, over the number of weeks covered by such an agreement, shall not exceed 48 *(Article 5)*. ***Therefore, the Committee requests the Government to take the necessary measures to bring the above provisions of the Law No. 7/2008 into conformity with the requirements of the Convention, and to provide information on any progress made in this regard.***

Article 6. Temporary exceptions. Circumstances and limits. The Committee observes that section 36 of the Law No. 7/2008 providing for overtime: (i) only prescribes the circumstances under which an employer may request an employee to work overtime without the employee's consent and remains silent on the circumstances under which resort to overtime can be made with the employee's consent; and (ii) does not seem to fix any clear limits to additional hours. The Committee also observes that

section 37(2) of the Law No. 7/2008 provides that additional hours performed at the request of the employer with the consent of the worker or at the initiative of the worker with the consent of the employer are remunerated at a rate 20 per cent higher than normal hours. The Committee recalls that: (i) temporary exceptions to normal hours of work are authorized in the Convention in very limited and well-circumscribed cases; (ii) regulations shall fix the maximum of additional hours; and (iii) the rate of pay for overtime shall not be less than one and one-quarter times the regular rate. ***Therefore, the Committee requests the Government to take the necessary measures, including the revision of Law No. 7/2008, to: (i) define the exceptional circumstances under which normal hours of work may be temporarily increased in industrial establishments; (ii) fix the maximum of additional hours allowed; and (iii) provide a rate of pay for overtime at least one and one-quarter times the regular rate, in accordance with this Article of the Convention.***

Weekly rest

Articles 4 and 5 of Convention No. 14 and Articles 7 and 8 of Convention No. 106. Exceptions and compensatory rest. Following its previous comments on sections 42.2 (flexible weekly rest scheme) and 43.3 (work voluntarily performed by workers on their weekly rest day) of the Law No. 7/2008, the Committee notes that the Government indicates in its reports that: (i) due to the nature of the activities in industry and enterprises, and in order to promote the sustainable development of the society, a more flexible approach is adopted in the law to regulate the weekly rest days, while balancing the interests of both employers and employees; (ii) the 2020 amendment of Law No. 7/2008, adds the requirement of recording the workers' voluntariness to perform work on weekly rest day; (iii) the provision does not provide for overtime remuneration as compensation for work performed on weekly rest day, but rather the compensatory rest should take precedence; and (iv) since the compensatory rest must be taken within 30 days of work, if the compensatory time off cannot be taken, the provision provides for overtime remuneration instead. ***The Committee requests the Government to take the necessary measures, including the revision of Law No. 7/2008, to ensure that in case of exceptions to the principle of weekly rest, all workers working it their weekly rest day benefit in respect of each period of seven days, to rest of a total duration at least equivalent to 24 consecutive hours, irrespective of any monetary compensation.***

Colombia

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1933)
Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1933)
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1969)
Holidays with Pay Convention, 1936 (No. 52) (ratification: 1963)
Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1969)
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1969)

Previous comment on Convention No. 1
Previous comment on Convention No. 14
Previous comment on Convention No. 30
Previous comment on Convention No. 52
Previous comment on Convention No. 101
Previous comment on Convention No. 106

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on hours of work, the Committee considers it appropriate to examine Conventions Nos 1 (hours of work in industry), 14 (weekly rest in industry), 30 (hours of work in commerce and offices),

52 (holidays with pay), 101 (holidays with pay in agriculture) and 106 (weekly rest in commerce and offices) in the same comment.

The Committee notes the observations of the Single Confederation of Workers (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Workers (CGT) on the application of Conventions Nos 1, 14, 30 and 52, sent together with the Government's reports. The Committee also notes the observations of the International Organisation of Employers (IOE), received on 31 August 2022, and the observations of the National Employers Association of Colombia (ANDI), sent together with the Government's reports, on the application of Conventions Nos 1 and 14. ***The Committee invites the Government, in the context of the social dialogue established in the country, to analyse with the social partners the reported situation of non-observation of the Conventions in the specific sectors referred to by the trade union confederations in their observations, and if such non-observance is established, to take the necessary measures in this regard.***

Legislative developments. The Committee notes the Government's reference in its reports to the adoption of Act No. 2101 of 2021 amending section 161 of the Substantive Labour Code (CST) (Labour Code) in order to reduce weekly working time from 48 to 42 hours in the private sector. The Government also indicates that the aforementioned Act will be implemented gradually between 2023 and 2026, without any cut in wages for workers. The Committee also notes the Government's indication that the purpose of this reduction is to give workers more space for family, social, recreational and cultural activities. The Committee further notes that the CUT, CTC and CGT indicate in their observations that, in the context of the State National Agreement of 2021, it has been agreed to establish a commission with representatives from the Administrative Department of the Public Service, the Ministry of Labour and the signatory trade union organizations with a view to drawing up a proposal to reduce working hours for public sector workers, without undermining their rights relating to wages. The Committee also notes that the IOE and the ANDI refer in their observations to the adoption of Act No. 2191 of 2022 governing the right of workers to disconnect from work outside the working day, during their rest periods and when on holiday. Lastly, the Committee duly notes the Government's proposal to conduct a tripartite analysis of the regulations in force, in the context of the Standing Advisory Committee on Wage and Labour Policies, in order to seek alternatives that address the observations of the workers' organizations. ***The Committee requests the Government to provide information on progress achieved in relation to revision of the limits on hours of work and hours of rest in the public sector. The Committee also requests the Government to provide information on the results of any tripartite examination of the regulations on working time. The Committee reminds the Government that it may avail itself, if it thinks it necessary, of technical assistance from the Office with regard to the points raised below.***

Hours of work

Article 2 of Convention No. 1 and Article 3 of Convention No. 30. Limits on normal hours of work. The Committee notes that section 161(1) of the Labour Code, after its amendment by Act No. 2101, provides that maximum normal weekly working time is 42 hours, which, by joint agreement between the worker and the employer, can be spread over 5 or 6 days in the week, while still guaranteeing the weekly day of rest. The Committee observes that this provision does not establish a daily limit on hours of work. In this regard, the Committee notes that the CUT, CTC and CGT indicate that they consider it dangerous and disadvantageous that the maximum daily limit of eight hours of work, which existed before the adoption of Act No. 2101, has disappeared. ***Recalling that the Conventions establish a double cumulative limit on normal working hours of eight hours per day and 48 hours per week, the Committee requests the Government to take the necessary steps to ensure that a specific daily limit on normal hours of work is established in law and practice, in accordance with the requirements of the Conventions.***

Article 2(b) of Convention No. 1 and Article 4 of Convention No. 30. Variable distribution of normal hours of work within the week. The Committee notes the indication of the CUT, CTC and CGT that, in the context of flexible daily hours of work authorized by section 161(c) of the Labour Code (distribution of 42 weekly hours over a maximum of six days per week, with a minimum of four continuous hours and a maximum of nine hours per day, subject to agreement between the employer and the worker), some workers, especially in the flower industry, currently work up to ten hours per day and others, such as workers in the plastics industry, work days of 12 hours or more. The Committee observes that while the limits of 42 hours per week and nine hours per day established by section 161(c) of the Labour Code are in conformity with the above-mentioned Articles of the Conventions, the limits on daily hours of work applied in practice in some industries, as referred to in the observations of the CUT, CTC and CGT, are not in conformity. In this regard, the Committee recalls that, in cases of variable distribution of working hours in the week, Convention No. 1 establishes a maximum limit of nine hours per day for industry workers, and Convention No. 30 sets a maximum limit of ten hours per day for workers in commerce and offices. The Committee also notes the Government's indication that: (i) the labour inspectorate does not receive a significant volume of complaints relating to hours of work; (ii) there is a need to reinforce routine inspections to extend coverage and increase monitoring of working hours in certain sectors of the economy which, in the context of flexibilization of working hours, exceed the established limit on hours; and (iii) it is hoped that improvements will be made in the supervision of hours of work in the informal economy through the introduction of pedagogical initiatives and action by the labour inspectorate. ***While emphasizing the importance, when establishing flexible arrangements for hours of work, of ensuring the existence of reasonable limits on the maximum duration of daily and weekly hours of work so that these are not prejudicial to the health of workers or to the necessary work–life balance (2018 General Survey concerning working-time instruments, paragraph 178), the Committee requests the Government to continue taking the necessary steps to monitor compliance with the legal provisions on hours of work, particularly in the informal economy and in sectors of the economy where working hours apply that exceed the limits established in the Conventions. The Committee requests the Government to provide information on such measures and the results achieved.***

Articles 6(1)(b) and (2) of Convention No. 1 and Article 7(2), (3) and (4) of Convention No. 30. Temporary exceptions. Circumstances for and limits on additional hours of work. Remuneration. With regard to its previous comments on limits on additional hours of work, the Committee notes the Government's indication that the unnumbered section added to the Labour Code by section 22 of Act No. 50 of 1990 provides that additional hours, by day or by night, shall in no case exceed two hours per day and 12 hours per week; when working hours are extended, through agreements between employers and workers, to ten hours per day, additional hours shall not be worked on that day. In this regard, the Committee notes that *Article 7(3)* of Convention No. 30 requires not only a daily limit of additional hours of work undertaken by workers in commerce and offices, but also a yearly limit. In this connection, the Committee notes that the CUT, CTC and CGT indicate that the absence of monthly and annual limits on additional hours of work in the national legislation is one of the reasons for inappropriate use of such hours. The same organizations refer to individual cases of workers, mainly in the dock work sector, working exceptionally long hours (in some cases up to 18 hours a day), thus accumulating a high monthly and yearly number of additional hours. They further indicate that such hours are often unpaid. While recalling the impact that long hours of work can have on workers' health and work-private life balance, the Committee emphasizes the fundamental importance of prescribing clear statutory limits for the additional hours of work to be undertaken daily, weekly and yearly and of keeping the number of additional hours allowed within reasonable limits that take into account both the health and well-being of workers and the employers' productivity needs (2018 General Survey concerning working-time instruments, paragraph 151).

Regarding the circumstances in which recourse to additional hours of work is authorized, the Committee notes that section 162(1) of the Labour Code excludes certain categories of workers from

the limits established in section 161 (those holding management posts, domestic workers, workers who perform discontinuous or intermittent work, and driver-mechanics). The Committee also notes that section 162(2) also establishes that the activities not included in the preceding subsection shall only exceed the limits set out in section 161 with the expressed authorization of the Ministry of Labour. In this connection, the Committee notes that the CUT, CTC and CGT indicate, in their observations, that the legislation does not clearly establish the conditions in which additional hours of work may be authorized. In this regard, the Committee recalls the importance of national legislation and practice restricting recourse to exemptions from these maximum limits to cases of clear, well-defined and limited circumstances such as accident, actual or threatened, force majeure or urgent work to be done to plant or machinery (2018 General Survey concerning working-time instruments, paragraph 119). ***In light of the above, the Committee requests the Government to take the necessary measures to ensure that: (i) recourse to additional hours of work is limited to clear, well-defined circumstances; (ii) reasonable limits to additional working hours are established and respected; and (iii) additional working hours are effectively remunerated in conformity with the Conventions. The Committee also requests the Government to provide information on the application in practice of section 162(2) of the Labour Code, giving details of the number of authorizations issued by the Ministry of Labour by virtue of this provision, the activities and sectors concerned, the approximate number of workers affected by its application, and the maximum number of authorized additional working hours.***

Weekly rest

Article 4 of Convention No. 14 and Article 7(1) and (4) of Convention No. 106. Permanent exemptions from the principle of weekly rest. With regard to its previous comments, the Committee notes that the Government provides no information on the regulation of section 175(1) of the Labour Code, which authorizes special weekly rest schemes for work that cannot be interrupted due to its nature or for technical reasons, and for work to meet urgent needs, such as public services or the preparation and sale of food. In this connection, the Committee notes that the CUT, CTC and CGT indicate that the principle of weekly rest does not apply to private security workers, who generally work 12-hour rotating shifts (12 hours of work followed by 12 hours of rest, without enjoying weekly rest of 24 consecutive hours); they also indicate that such special weekly rest regimes need urgent regulation, as provided for under section 175(2) of the Labour Code. ***The Committee requests the Government, taking special account of all relevant social and economic considerations, and in consultation with the representative organizations of employers and workers, to adopt the necessary measures to regulate section 175(1) of the Labour Code to ensure that such exceptions remain within the limits established by these Articles of the Conventions. The Committee also requests the Government to indicate the categories of workers to which section 175(1) of the Labour Code applies in practice. The Committee further requests the Government to provide its comments on the observations of the CUT, CTC and CGT concerning the absence of weekly rest for workers in private security work.***

Article 5 of Convention No. 14 and Article 7(2) of Convention No. 106. Compensatory rest. In relation to its previous comments on sections 180 and 184 of the Labour Code, the Committee notes the Government's indications that, in order to establish whether workers have the right to compensatory rest and/or monetary remuneration, it is necessary to determine whether the work on the usual weekly rest day is regular or occasional. The Government also indicates that, under section 180 of the Labour Code, a worker who undertakes work on the weekly rest day on an occasional basis (up to two Sundays per calendar month, according to section 179(2)) may choose either a compensatory cash payment or compensatory rest. In this respect, the Committee reiterates the importance of granting compensatory rest in all cases to workers deprived of their weekly rest, irrespective of any monetary compensation. ***The Committee once again requests the Government to take the necessary measures to ensure that compensatory rest is granted to all workers who work on their weekly rest day, including those who***

undertake work on an exceptional basis or work that cannot be suspended, irrespective of any monetary compensation, in accordance with these Articles of the Convention.

Paid annual leave

Articles 2(1) and 4 of Convention No. 52 and Articles 1 and 8 of Convention No. 101. Right to paid annual leave. Relinquishment. The Committee notes that, in response to its previous comments, the Government indicates that, under section 189 of the Labour Code, the employer and the worker may agree in writing, upon the worker's request, that up to half of the 15 working days of paid annual leave be paid in cash, which implies that the worker must enjoy at least seven and a half days of leave for each year of service and that the remaining days of leave (seven and a half days or less) may be paid in cash. The Committee recalls that *Article 4* of Convention No. 52 and *Article 8* of Convention No. 101 provide that any agreement to relinquish the right to an annual holiday with pay, or to forgo such a holiday, shall be void, it being understood that this principle applies to the duration of annual holiday with pay as established by each ratifying Member State, whatever its length. ***The Committee requests the Government to take the necessary measures to bring section 189 of the Labour Code into line with these Articles of the Conventions.***

The Committee also notes that the CUT, CTC and CGT indicate that: (i) the successive hiring of workers for a determined period by cooperatives, temporary work agencies and outsourcing agencies makes it impossible to effectively enjoy annual leave, since at the end of each one-year contract, annual leave is paid in cash to the workers, who are immediately hired again on a temporary basis; and (ii) Ministry of Labour Circular No. 21 of 2020 established the possibility of granting annual leave in advance during the health emergency caused by the pandemic; however, since no limits have been set in this respect, workers who took advance annual leave that was allocated for subsequent years will not be able to take this entitlement again for several years. ***The Committee requests the Government to provide its comments in this respect and to take the necessary measures to guarantee in practice that all workers enjoy a period of annual leave which is paid after one year of continuous service, in accordance with the Conventions.***

Costa Rica

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1982)

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1984)

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1959)

Previous comment on Convention No. 1
Previous comment on Convention No. 14
Previous comment on Convention No. 106

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 1 (hours of work in industry), 14 (weekly rest in industry) and 106 (weekly rest in commerce and offices) together.

The Committee notes the observations submitted jointly by the Confederation of Workers Rerum Novarum (CTRN), the Costa Rican Workers' Movement Central (CMTC), the General Confederation of Workers (CGT) and the Workers' Unitary Confederation (CUT) and the Costa Rican Trade Union and Social Unity Bloc (BUSSCO), on Convention No. 1, received on 21 August 2022. The Committee also notes the observations of the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) on Conventions Nos 1, 14 and 106 submitted together with the Government's report.

Legislative developments. The Committee notes that, in their observations, the CTRN, CMTC, CGT, CUT and BUSSCO indicate that the Legislative Assembly is currently debating the draft Bill No. 21182 on the amendment of sections 136, 142 and 144 and the addition of sections 145 *bis* and 145 *ter* of the Labour Code, to update the exceptional periods of work and safeguard the rights of workers. The workers' organizations claim that the draft Bill, among other things: (i) fixes mandatory 12-hour days, which would affect the balance between work, rest and family life; (ii) eliminates the guarantee of pay for overtime; and (iii) incorporates annualized working hours into work that is seasonal, temporary or a continuous process, which would make workers' periods of work more intense.

The Committee notes that, in December 2021, the Office provided technical assistance regarding the Bill, at the request of the Permanent Committee on Fiscal Affairs of the Legislative Assembly. ***The Committee trusts that the Act to be adopted on working time will be in full conformity with the provisions of the Convention and requests the Government to provide information on the progress made in the process of adopting the draft Bill. The Committee recalls that the Government may avail itself of ILO technical assistance if it so wishes.***

Hours of work

Articles 3 and 6(1)(b) and (2) of the Convention. Temporary exceptions. Circumstances and limits to additional hours. Pay. Bus drivers. Regarding the circumstances in which recourse to overtime is authorized (sections 139 and 140 of the Labour Code), the Committee observes that: (1) neither section 139 nor section 140 of the Labour Code fixes in a precise and exhaustive manner the circumstances in which recourse to overtime is authorized; and (2) section 139(2) provides for unpaid overtime under one circumstance (errors committed by the employee) which is not covered by the Convention. The Committee recalls that the Convention only allows exceptions to the limits on periods of work in case of accident, actual or threatened, or in case of urgent work to be done to machinery or plant, or in case of "force majeure" or to deal with exceptional cases of pressure of work.

Further to its previous comments on bus drivers, the Committee notes the Government's indication in its report that: (i) according to the information provided by the National Labour Inspectorate of the Ministry of Labour and Social Security, 64 infringements of normal hours of work and 107 infringements related to overtime were identified in the road transport sector in general between 2015 and 2021; (ii) with regard to bus companies, during the same period, 309 cases of infringements of all kinds were detected; (iii) as a result of the actions carried out by the National Labour Inspectorate, 257 cases were resolved at the administrative level, 9 cases were resolved at the judicial level, 34 cases are being processed at the judicial level and 9 cases are being processed at the administrative level; in addition, in 191 cases the labour inspectorate's warnings were complied with, while in 42 cases they were not complied with. In this regard, the Committee also notes that in their joint observations, the CTRN, CMTC, CGT, CUT and BUSSCO indicate that: (i) while the regular period of work for bus drivers is eight hours a day, in most bus companies, drivers negotiate 12 hours a day or more with their employers; (ii) in some bus companies, drivers are required to perform tasks related to vehicle maintenance and the management of the money collected, outside their regular period of work, for which they are not paid; and (iii) during an inspection of a road transport company, in response to a number of complaints of labour exploitation, it was found that drivers' period of work exceeded 12 hours a day, reaching up to 19 hours a day in some cases; it was also found that the company did not pay overtime. In this regard, the Committee notes the UCCAEP's indication that: (i) since the adoption of Act No. 7679 of 1997 repealing section 146 of the Labour Code, the activity of bus drivers has been adjusted to a period of work of eight hours a day; (ii) the cases of infringements detected by the labour inspectorate have been resolved at administrative or judicial level, or are still in process, and therefore there is no evidence of a widespread practice of infringement of periods of work and overtime pay; and (iii) the problem of a lack of bus drivers results in the use of overtime to ensure continuity in the public service.

In this regard, recalling the impact that long hours can have on workers' health and work-private life balance, the Committee refers to the 2018 General Survey concerning working-time instruments, paragraphs 119 and 151.

Consequently, the Committee requests the Government to continue taking the necessary measures, including by revising these provisions of the Labour Code and monitoring compliance with the legislation in force, to ensure that both in law and in practice: (i) recourse to overtime is limited to clear and well-defined circumstances; (ii) reasonable legal limits on overtime are established and enforced; and (iii) such hours are effectively paid, in accordance with the provisions of the Convention. The Committee requests the Government to provide information in this respect, including statistics on labour inspection activities related to hours of work and rest in the road transport sector, including violations found and penalties assessed.

Weekly rest

Articles 4 and 5 of Convention No. 14 and Articles 7 and 8 of Convention No. 106. Permanent or temporary exemptions to weekly rest – Compensatory rest. Further to its previous comments, the Committee notes the Government's indication in its reports that no amendments have been made to section 152(3) of the Labour Code, which provides that work shall be permitted on the weekly rest day, by agreement between the parties, in the case of work which is not arduous, unhealthy or hazardous, and which is carried out in agricultural or livestock breeding grounds, industrial undertakings which require continuity of work owing to the nature of the needs which they satisfy or for obvious public or social interest. The Committee also notes that section 152(5) of the Labour Code provides that in the case of activities of obvious public or social interest and where the worker does not agree to work on rest days, the employer may apply to the Ministry of Labour for authorization to grant rest periods on a cumulative monthly basis, and the Ministry may grant or refuse the authorization requested. The Committee observes that: (i) section 152(5) of the Labour Code does not guarantee the granting of compensatory rest in case of work on the weekly rest day, as the Ministry of Labour may refuse the requested authorization; and (ii) for other activities set out in section 152(3) of the Labour Code, no compensatory rest is provided for. ***Consequently, the Committee requests the Government to take the necessary measures, including by amending this section of the Labour Code, to ensure that, in the case of exemptions from the principle of weekly rest, all workers are entitled in respect of each period of seven days to compensatory rest of a total duration comprising not less than 24 hours, regardless of any monetary compensation. The Committee also requests the Government to provide information in this regard.***

Czechia

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1996)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 9 of the Convention. Postponement or accumulation of annual holidays. Further to its previous comments, the Committee notes with ***satisfaction*** that by Act No. 365/2011 Coll., sections 218 and 222 of the Labour Code have been amended and now provide that where leave cannot be taken until the end of the subsequent calendar year because the employee has been recognized as temporarily unfit for work, the employer shall grant such leave after the termination of the employee's incapacity to work. The Committee notes the Government's explanations that Act No. 365/2011 Coll. was adopted with a view to improving the position of employees in cases where paid leave cannot be taken in the calendar year in which it falls due, and guarantees that the right to leave does not expire by the mere lapse of time.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Haiti

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1952)

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1952)

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1952)

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1958)

The Committee notes the joint observations of the Confederation of Haitian Workers (CTH) and of the Confederation of Public and Private Sector Workers (CTSP) received on 2 November 2022 on the application of the Conventions.

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it will proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 1, 14, 30 and 106 in a single comment.

The Committee notes the observations of the Confederation of Public and Private Sector Workers (CTSP), received on 29 August 2018, the Association of Haitian Industries (ADIH), received on 31 August 2018, and the International Trade Union Confederation (ITUC), received on 1 September 2018.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 107th Session, May–June 2018)

The Committee notes the discussion which took place in the Conference Committee on the Application of Standards (Conference Committee), including with regard to the impact of the 2017 Act to organizing and regulating work over a 24-period divided into three segments of eight hours (hereinafter: Act on working time) on the application of the ratified Conventions on working time. In its conclusions, the Conference Committee asked the Government to: (i) review in consultation with the most representative employers' and workers' organizations the conformity of the Labour Code and the Act on working time, with respect to the ratified ILO Conventions on working time; (ii) strengthen the labour inspectorate and other relevant enforcement mechanisms to ensure that workers benefit from the protection afforded by the Conventions; (iii) report to the Committee of Experts on these measures; and (iv) avail itself of technical assistance to address these matters.

The Committee notes that, at the end of the discussion in the Conference Committee, the Government recalled that the Conventions that Haiti had ratified were part of its body of domestic law under article 276-2 of the Constitution of Haiti, and took precedence over national laws in the hierarchy of standards and could be invoked without reserve before the courts. Taking note of the observations of the Committee of Experts concerning the application of the Act on working time, the Government indicated that it was planning to hold tripartite consultations to identify and overcome the main difficulties encountered in the application of the Act, and to issue orders or regulations. The Government also indicated that it was aware of the delay in finalizing the process of reforming the Labour Code. Discussions had begun at the level of the Prime Minister's Office and would be continued within a tripartite framework, in the spirit of the San José Agreement of 21 March 2018 signed by the social partners, taking into account the Office's recommendations.

Furthermore, the Committee notes that the CTSP, in its observations, expresses regret at the lack of progress on working time issues since the discussion in the Conference Committee. However, the CTSP indicates that discussions on the reform of the Labour Code have resumed. The Committee also notes that the ADIH confirms that tripartite discussions on the reform of the Labour Code resumed in August 2018. According to the ADIH, the Act on working time should be repealed and the employers' and workers' organizations should be consulted on the application of the Conventions ratified in this field. The Committee further notes that the ITUC refers to the discussion of the case during the Conference Committee and

indicates in particular that: (i) the Act on working time, which liberalizes the regulations on this subject, is giving rise to serious abuses; (ii) the Act was adopted without consultation and outside the process of negotiation of a new Labour Code; and (iii) the situation is aggravated by the lack of resources for labour inspection. The ITUC refers in particular to: (i) workers in the informal economy and in domestic work who are subjected to indecent working conditions in terms of both working time and leave entitlement; (ii) security personnel and subcontracted workers in the textile sector, where there is a regrettable lack of fixed working hours and a refusal by employers to pay overtime; and (iii) workers in export processing zones who are particularly subjected to abuses. ***The Committee requests the Government to send its comments on all the above observations.***

Lastly, the Committee notes the Government's communication received on 30 October 2018 in which it informs the Committee that, further to the conclusions of the Conference Committee, it has requested ILO technical assistance to help it, inter alia, to submit the reports due, to strengthen the inspection services, to consolidate social dialogue with a view to pursuing social reforms, and to address the other matters raised by the Conference Committee. The Government also indicates that it hopes to receive this assistance before the next session of the International Labour Conference. ***The Committee hopes that this technical assistance will be made available without delay. The Committee requests the Government to provide detailed information on the results of the planned technical assistance, and also on the measures taken to ensure the effective application in law and practice of the ratified Conventions on working time.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Lithuania

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1931)

Forty-Hour Week Convention, 1935 (No. 47) (ratification: 1994)

Previous comment on Convention No. 1
Previous comment on Convention No. 47

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on working time, the Committee considers it appropriate to examine Conventions No. 1 and 47 (hours of work) together.

Legislative developments. The Committee notes the adoption of a new Labour Code (Law No. XII-2603) on 14 September 2016, which entered into force on 1 July 2017 and repealed the previous Labour Code (Law No. IX-926), with all amendments and additions.

Hours of work

Articles 2(b), 2(c), 4, and 5 of Convention No. 1 and Article 1 of Convention No. 47. Variable distribution of working hours. Circumstances. The principle of a 40-hour week. The Committee notes that sections 113 to 116 of the Labour Code regulate working time arrangements which include the averaging of working hours. Specifically, it notes that section 113(1) provides that the reference periods for these arrangements may not exceed three consecutive months; while section 114(2) sets as maximum limits for these arrangements 12 working hours per day and 60 per week, which is to include overtime and work done according to an agreement on additional work. In this respect, the Committee observes that none of these provisions sets any precise circumstances under which resort to averaging of working hours is allowed. The Committee recalls that the averaging of hours of work in general is authorized in the Convention only over a reference period of one week, and provided that a daily limit of nine hours is required *(Article 2(b))*; and that in all the other cases in which the averaging of working hours is allowed over reference periods longer than a week, the circumstances are clearly specified, as follows:

(i) in case of shift work, it shall be permissible to employ persons in excess of 8 hours in any one day and 48 hours in any one week, if the average number of hours over a period of three weeks or less does not exceed 8 per day and 48 per week *(Article 2(c))*;

(ii) in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, the daily and weekly limit of hours of work may be exceeded subject to the condition that the working hours shall not exceed 56 in the week on the average *(Article 4)*; and

(iii) in exceptional cases where it is recognized that the limits of 8 hours a day and 48 hours a week cannot be applied, agreements between workers' and employers' organizations may fix a longer daily limit of works, provided that the average number of hours worked per week, over the number of weeks covered by any such agreement, shall not exceed 48 *(Article 5)*.

Therefore, the Committee requests the Government to take the necessary measures to bring the above provisions of the Labour Code in conformity with the requirements of Convention No. 1.

Regarding the principle of the 40-hour week, the Committee notes that, in response to its previous comments, the Government indicates that section 112(3) of the Labour Code provides that an employee's standard working hours shall be 40 per week. The Committee observes however that by virtue of section 121 of the Labour Code, Government Resolution No. 534 of 28 June 2017 determines the peculiarities of working time and rest time in transport, electronic communications, postal, agricultural, peat excavation, agricultural processing, energy companies, medical and social care, educational institutions, fishing vessels and other economic activities, and provides for a list of jobs for which working hours of up to 24 hours a day may be applied. The Committee also observes that section 114(2) of the Labour Code prescribes, in cases of averaging in working time arrangements, maximum limits of 12 and 60 daily and weekly working hours respectively, in a context of undefined circumstances for resorting to averaging and over reference periods that extend up to three months. ***Recalling that these provisions authorize practices that would possibly lead to unreasonably long hours of work, in direct contradiction to the principle of progressive reduction of hours of work, the Committee requests the Government to take the measures necessary to ensure that the principle of a 40-hour week provided for by Convention No. 47 is fully applied both in law and in practice.***

Article 6 of Convention No. 1. Temporary exceptions. Circumstances. The Committee notes that section 119(2) of the Labour Code stipulates that the employer may only instruct an employee to perform overtime work with the employee's consent, except in cases where:

(i) unplanned work critical to society must be performed or action must be taken to prevent calamities, dangers, accidents or natural disasters or to eliminate the consequences thereof that require prompt eradication;

(ii) it is necessary to complete a job or eliminate a failure due to which a large number of employees would have to cease work or materials, products or equipment would be damaged; and

(iii) this is stipulated in the collective agreement.

In this respect, the Committee observes that section 119 only prescribes the circumstances under which an employer may request an employee to work overtime without his or her consent, while remaining silent on the circumstances under which resort to overtime can be made with the employee's consent and by collective agreement. The Committee recalls that temporary exceptions to normal hours of work are authorized in the Convention in very limited and well-circumscribed cases. ***Recalling the impact that long hours of work can have on workers' health and work–private life balance, the Committee requests the Government to take the necessary measures to define the exceptional circumstances under which normal hours of work may be temporarily increased in industrial establishments, in accordance with this Article of the Convention.***

Madagascar

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1960)

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1972)

Previous comment on Convention No. 14
Previous comment on Convention No. 132

In order to provide an overview of matters relating to the application of the ratified Conventions on working time, the Committee considers it appropriate to examine the application of Conventions Nos 14 (weekly rest in industry) and 132 (holidays with pay) in a single comment.

The Committee notes the observations of the Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE) and the General Confederation of Workers' Unions of Madagascar (FISEMA), received on 1 September 2022. It also notes the observations of the FISEMA and the Christian Confederation of Malagasy Trade Unions (SEKRIMA), received with the Government's report.

A. Weekly rest

Articles 4 and 5 of Convention No. 14. Total or partial exceptions – Compensatory rest. Further to its previous comments, the Committee notes the Government's indication in its report that no new legislative measures have been adopted to bring sections 13 to 15 of Decree No. 62-150 of 28 March 1962, which envisage exemptions from weekly rest without any compensatory rest, with *Article 5* of the Convention. In this regard, the Committee notes the observations of the FISEMA according to which no draft decree to amend Decree No. 62-150 has been discussed in the National Labour Council. It also notes the denunciation by the FISEMA that the weekly rest of certain employees in textile and industrial enterprises is not respected and that measures should be taken to penalize those enterprises. ***The Committee requests the Government to take the necessary measures to ensure that compensatory rest is granted to the workers covered by the Convention who are required to work on their weekly rest day and to provide information on any progress achieved in this regard.***

B. Holidays with pay

Article 9(1) and (3) of Convention No. 132. Postponement and accumulation of paid holiday. In its previous comments, the Committee noted that section 88(5) of the Labour Code, under the terms of which workers have the possibility to accumulate their whole holiday entitlement over a period of three years preceding retirement, is not in conformity with the Convention. The Committee notes the Government's indication in its report that no measures have been adopted to bring the current legislation into conformity with *Article 9(1) and (3)* of the Convention. The Committee recalls that *Article 9* of the Convention provides that an uninterrupted part of the annual holiday with pay consisting of at least two working weeks shall be granted and taken each year, and the remainder may be postponed for a limited period. ***The Committee requests the Government to take the necessary measures to bring the legislation and practice into conformity with the Convention on this point.***

Article 12. Prohibition of relinquishing annual holiday in exchange for financial compensation. Further to its previous comments, the Committee notes the Government's indication that it is compulsory to take annual holiday and that it is prohibited to relinquish this right in exchange for financial compensation. The Committee notes that the FISEMA once again reports cases in which workers relinquish their annual leave in exchange for financial compensation. The FISEMARE observes a significant decrease in practices of "buying back holidays" in recent years, but indicates that the limitation to three years of the right to take annual holidays is problematic. ***The Committee requests the***

Government to reply to these observations and to provide details on the number of workers involved and the length of the annual leave period which is exchanged for financial compensation.

The Committee is raising other matters in a request addressed directly to the Government.

Malta

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1988)

Previous comment

Article 2 of the Convention. Limits to hours of work. Further to its previous comment on the opt-out clause contained in section 20 of the Organisation of Working Time Regulations, 2004, the Committee notes that the Government's report does not contain any new information in this regard. The Committee recalls that this section of the Regulations which provides that the statutory limits on working time shall not apply in relation to a worker who has agreed with his employer in writing that these limits should not apply, allows for exceptions to the standards of 8 hours a day and 48 hours a week under conditions that go far beyond those prescribed by the Convention. ***It therefore requests the Government to take the necessary measures to bring section 20 of the Organisation of Working Time Regulations into full conformity with the requirements of the Convention.***

Articles 2(b) and (c), 4, and 5. Variable distribution of working hours. The Committee notes that the Government does not communicate any new information regarding its previous comments on section 7 of the Organization of Working Time Regulations, 2004, which foresees the averaging of working hours over reference periods going up to 52 weeks, with no specified exceptional circumstances for resorting to it. The Committee recalls that the averaging of hours of work in general is authorized in the Convention over a reference period of one week, provided that a daily limit of nine hours is respected *(Article 2(b))*; in all the other cases in which the averaging of working hours is allowed over reference periods longer than a week, the circumstances are clearly specified, as follows: (i) in case of shift work, it shall be permissible to employ persons in excess of 8 hours in any one day and 48 hours in any one week, if the average number of hours over a period of three weeks or less does not exceed 8 per day and 48 per week *(Article 2(c))*; (ii) in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, the daily and weekly limit of hours of work may be exceeded subject to the condition that the working hours shall not exceed 56 in the week on the average *(Article 4)*; and (iii) in exceptional cases where it is recognized that the limits of 8 hours a day and 48 hours a week cannot be applied, but only in such cases, agreements between workers' and employers' organisations concerning the daily limit of work over a longer period of time may be given the force of regulations, provided that the average number of hours worked per week, over the number of weeks covered by any such agreement, shall not exceed 48 *(Article 5)*. ***Recalling that calculating hours of work as an average over a reference period of up to one year allows for too many exceptions to normal hours of work and can result in highly variable working hours over long periods, long working days and the absence of compensation (2018 General Survey on working time instruments, paragraph 68), the Committee requests the Government to take the necessary measures to bring section 7 of the Organization of Working Time Regulations, 2004 in conformity with the requirements of the Convention.***

The Committee raises other questions in a request addressed directly to the Government.

Myanmar

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1954)

Previous comment

Article 2(1) and (4) of the Convention. Postponement and division of annual holidays with pay. In its previous comments, the Committee requested the Government to take measures for the timely revision of section 4(3) of the Leave and Holidays Act, which allows for the accumulation of holidays over a period of three years. The Committee notes that the Government's report does not contain any information in this respect. ***In this context, the Committee once more requests the Government to take the necessary measures to ensure that the minimum annual holiday with pay prescribed by Article 2(1) of the Convention is not divided or postponed so that all workers effectively enjoy at least six uninterrupted days of holidays with pay per year.***

Article 2(2). Annual holiday with pay for persons under 16 years of age. In previous comments, the Committee requested the Government to take the necessary measures to bring in line with the Convention section 4(1)(a) of Leave and Holidays Act 1951 which grants ten consecutive days of holidays with pay to employees aged 15 years, while *Article 2(2)* of the Convention requires 12 days for workers under 16 years of age. The Committee notes that the Government does not provide any relevant information in this respect. ***The Committee requests the Government to take the necessary measures to ensure that workers aged 15 years enjoy at least 12 consecutive days of annual holidays with pay as required by the Convention.***

Article 2(3). Public and customary holidays and interruptions of attendance at work due to sickness. The Committee notes that section 3(2) of the Leave and Holidays Act prescribes that if any public holiday falls on any weekly day of rest or on any other holiday, an alternative holiday shall not be allowed. The Committee observes that this provision is not in conformity with *Article 2(3)(a)* of the Convention which prescribes that public and customary holidays shall not be included in the annual holiday with pay period. Moreover, the Committee notes that no provision of the Leave and Holiday Act seems to provide that interruptions of attendance at work due to sickness shall not be included in the annual holiday with pay, as required by *Article 2(3)(b)* of the Convention. ***The Committee requests the Government to take the necessary measures to ensure that public and customary holidays and interruptions of attendance at work due to sickness are not counted as part of the annual holidays with pay period as required by the Convention.***

Article 2(5). Increase of the duration of the annual holiday with pay with the length of service. The Committee notes that no provision of the Leave and Holidays Act seems to prescribe the increase of the duration of the annual holiday with pay with the length of service as required by *Article 2(5)* of the Convention. ***The Committee requests the Government to take the necessary measures to give effect to this provision of the Convention.***

New Zealand

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1938)

Forty-Hour Week Convention, 1935 (No. 47) (ratification: 1938)

Previous comment on Convention No. 14
Previous comment on Convention No. 47

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 14 (weekly rest) and 47 (40-hour week) together.

The Committee notes the observations of Business New Zealand and the New Zealand Council of Trade Unions (NZCTU) on the application of Conventions Nos 14 and 47, communicated with the Government's report.

A. Hours of work

Article 1 of Convention No. 47. Forty-hour week. The Committee notes that section 11B(2) of the Minimum Wage Act 1983, as amended up to 2021, prescribes that the maximum number of hours (excluding overtime) to be worked by any worker in any week may be fixed at a number greater than 40 if the parties to the individual agreement agree. The Committee observes that no weekly or daily limits to the working hours seem to be provided for in the above-mentioned Act for the cases contemplated in section 11B(2). Moreover, the Committee notes that, according to the statistics included in the report of the Government, on average: (i) for the year starting in March 2020, 11.70 per cent of people employed worked between 41 and 49 hours per week, 9.9 per cent worked between 50 and 59 hours per week and 6.20 worked more than 60 hours a week; and (ii) for the year starting in March 2021, 11.5 per cent of employed people worked between 41 and 49 hours a week, and 15.1 per cent worked between 50 and 59 hours a week, with no data on workers working more than 60 hours a week. The Committee further notes the observations of the NZCTU, reiterating its concerns that the national legislation does not provide for effective protection of the 40-hour week principle as enshrined in the Convention, and indicating that this situation is exacerbated by the relative weakness of New Zealand's institutions and mechanisms for collective bargaining. The Committee recalls that provisions such as section 11B(2) of the Minimum Wage Act 1983 authorize practices that may lead to unreasonably long hours of work, in direct contradiction to the principle of progressive reduction of hours of work. ***Therefore the Committee requests the Government to take the necessary measures as may be judged appropriate, such as the fixing of reasonable limits to the extension by individual agreement of the 40-hour week, to secure the full application, in both law and practice, of the principle of a 40-hour week provided for by the Convention. The Committee also requests the Government to provide information on the progress made in this respect.***

B. Weekly rest

Article 2 of Convention No. 14. Right to 24-hour weekly rest. Following its previous comments on the absence of national legislative provisions expressly setting out a weekly rest of 24 hours, the Committee notes the Government's indication in its report that no legislative measures affecting the application of the Convention have been taken since then. In this respect, the Committee notes the observations of the NZCTU urging the Government to initiate a consultation process with social partners on how to bring laws and regulations into compliance with the Convention. ***Accordingly, the Committee requests the Government to take the necessary measures without delay to ensure that, in practice as well as in law, all workers employed in any industrial undertaking, public or private, or in any branch thereof, effectively enjoy an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days, as required under the Convention.***

Nicaragua

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1934)

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1934)

Previous comment on Convention No. 1
Previous comment on Convention No. 30

In order to provide an overview of the issues relating to the application of the ratified Conventions on working time, the Committee considers it appropriate to examine Conventions Nos 1 (hours of work in industry) and 30 (hours of work in commerce and offices) in the same comment.

Articles 3 and 6(1)(b) of Convention No. 1 and Article 7(2) of Convention No. 30. Exceptions to the limit on hours of work. In relation to its previous comment, the Committee notes that the Government does not provide any information in its report on section 57 of the Labour Code, which provides that work done outside normal working hours constitutes additional hours (overtime) but work done to rectify errors that can be attributed to the worker does not. The Committee recalls that the Conventions in question only allow exceptions to the limit on working hours: in case of accident, actual or threatened, force majeure, or urgent work to machinery or plant; in order to prevent the loss of perishable goods or avoid endangering the technical results of the work; in order to allow for special work such as stocktaking and the preparation of balance sheets, settlement days, liquidations, and the balancing and closing of accounts; and in order to deal with cases of abnormal pressure of work. ***The Committee therefore urges the Government to take the necessary steps to ensure that the above-mentioned section is amended, in order to guarantee that the national legislation only allows the limits on daily and weekly hours of work to be exceeded in the circumstances specified in the Conventions, and to provide information on the measures taken in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 1** *(Chile, Comoros, Czechia, Djibouti, Equatorial Guinea, Lebanon, Libya, Malta, Myanmar, Nicaragua);* **Convention No. 14** *(Central African Republic, Chad, Chile, China: Hong Kong Special Administrative Region, Côte d'Ivoire, Czechia, Democratic Republic of the Congo, Denmark: Faroe Islands, Djibouti, Ethiopia, Equatorial Guinea, Libya, Lithuania, Myanmar, Netherlands: Caribbean Part of the Netherlands, Netherlands: Sint Maarten);* **Convention No. 30** *(Chile, Equatorial Guinea, Lebanon, Nicaragua);* **Convention No. 47** *(Finland);* **Convention No. 52** *(Central African Republic, Comoros, Denmark: Faroe Islands, Djibouti, Lebanon, Libya, New Zealand);* **Convention No. 89** *(Comoros, Costa Rica, Democratic Republic of the Congo, Djibouti, Lebanon, Libya);* **Convention No. 101** *(Central African Republic, Djibouti, Ecuador, Netherlands: Caribbean Part of the Netherlands, New Zealand);* **Convention No. 106** *(Cyprus, Denmark: Faroe Islands, Djibouti, Ethiopia, Lebanon, Netherlands: Caribbean Part of the Netherlands, Netherlands: Sint Maarten, North Macedonia,);* **Convention No. 132** *(Cameroon, Chad, Finland, Madagascar);* **Convention No. 153** *(Ecuador);* **Convention No. 171** *(Côte d'Ivoire, Czechia, Madagascar);* **Convention No. 175** *(Finland).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 14** *(Cameroon, Denmark: Greenland, Finland, France: French Polynesia, Malta, Nepal, Niger);* **Convention No. 30** *(Morocco);* **Convention No. 89** *(Cameroon, France: French Polynesia);* **Convention No. 101** *(Netherlands: Sint Maarten)* **Convention No. 106** *(Cameroon, Denmark: Greenland, France: French Polynesia, Malta);* **Convention No. 132** *(Malta);* **Convention No. 171** *(Cyprus).*

Occupational safety and health

Belize

Radiation Protection Convention, 1960 (No. 115) (ratification: 1983)

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1999)

The Committee notes that the Government's reports have not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep concern*** that the Government's reports, due since 2015, have not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Conventions on the basis of the information at its disposal.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 115 (radiation protection) and 155 (OSH) together.

A. General provisions

Occupational Safety and Health Convention, 1981 (No. 155)

Articles 4, 7 and 8 of the Convention. Formulation and review of the national OSH policy. Legislation. The Committee previously noted the Government's reiterated reference to an OSH Bill developed in 2003. The Committee observes that a draft OSH Bill was introduced in 2014, but has not been adopted. In its previous comments, the Committee also noted that the National OSH Policy was approved in 2004, which set up both general and specific objectives, including the principle of prevention and the promotion and maintenance of OSH standards at all workplaces. However, the Committee notes that the 2004 Policy has not been reviewed or updated. ***The Committee requests the Government to provide information on the status of the OSH Bill, and on any new legislation adopted which relates to the application of the Convention. The Committee also requests the Government to indicate the measures taken for the review and update of the 2004 National OSH Policy, including any consultation held with social partners. Furthermore, the Committee requests the Government to provide information on any measures taken or envisaged to review the situation of OSH and the working environment in the country, either overall or in respect of particular areas, with a view to identifying major problems and effective methods for dealing with them.***

Article 5. Main spheres of action affecting OSH and the work environment. The Committee notes that the 2004 National OSH Policy provides for training and education in the field of OSH and defines the role and responsibilities of different stakeholders in this regard, putting emphasis on communication and cooperation (in accordance with *Article 5(c)* and *(d)).* The Committee notes, however, that the 2004 National OSH Policy does not address other elements required by *Article 5* of the Convention, including the design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work *(Article 5(a))* and the relationships between the material elements of work and the persons who carry out or supervise the work *(Article 5(b)).* ***The Committee requests the Government to provide information on any measures taken or envisaged to give effect to Article 5(a) and (b) of the Convention.***

Article 11(c) and (e). Notification of occupational accidents and diseases. Production and publication of annual statistics. The Committee notes that the Social Security Board publishes annual statistical reports, including information on occupational injuries due to accidents. The Social Security's Statistical Report of 2019 contains information on the number, nature and causes of occupational injuries for 2015–19, and the sectors in which they occurred. ***The Committee requests the Government to provide information on any applicable procedures regarding the notification by employers of occupational accidents and diseases to the competent authority. It also requests the Government to indicate whether statistics on occupational diseases are collected and published, in addition to those on occupational accidents.***

Article 11(f). Introduction of systems to examine chemical, physical and biological agents in respect of the risk to the health of workers. The Committee previously noted that, in November 2010, the Government launched the Strategic Approach to International Chemicals Management (SAICM), entailing the

implementation of a chemicals management system in two phases through a multi-sectoral approach. Phase II of this project was launched in June 2012, aiming at the development of a legal and institutional framework for the management of chemicals, including market surveillance measures. ***The Committee requests the Government to provide information on any developments in chemical management, including legal and institutional initiatives taken in this regard. It also requests the Government to indicate whether there are any similar management frameworks regarding physical and biological agents.***

Article 12. Obligations of persons who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use. ***The Committee requests the Government to provide information on any measures taken or envisaged, in law and in practice, to ensure the responsibilities of those who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use with regard to the safety and security of concerned persons, as required by Article 12 of the Convention.***

Article 17. Collaboration where two or more undertakings are engaged in activities simultaneously at one workplace. ***The Committee requests the Government to provide information on any measures taken to ensure collaboration in applying the requirements of the Convention, whenever two or more undertakings are engaged in activities simultaneously at one workplace.***

Article 18. Emergencies and first aid. The Committee notes that both the Factory Act (section 12(1)(c)) and the Labour Act (section 155(b)) provide for the development of regulations on the provision of first-aid equipment. ***The Committee requests the Government to indicate whether there are any laws or regulations adopted (including under the Factory Act or the Labour Act) to provide for measures to be taken in case of emergencies and accidents, including adequate first-aid arrangements.***

Article 21. Expenditure on OSH measures. ***The Committee requests the Government to provide information on any measures taken to ensure that OSH measures do not involve any expenditure for workers.***

B. Protection against specific risks

Radiation Protection Convention, 1960 (No. 115)

Article 3(1) of the Convention. Protection measures. The Committee notes that, according to section 94 of the Labour Act, the Minister of Labour may adopt regulations regarding any operation involving the exposure of workers to ionizing radiations, to: (i) prohibit the employment of, or modify or limit the hours of employment of all persons or any class of persons in connection with any such operations; or (ii) prohibit, limit or control the use of any material or process in connection with any such operation, and may impose duties on owners, employers, employed persons and other persons, as well occupiers. In addition, while reiterating its concern at the absence of a government report, the Committee notes with ***interest*** the adoption of the Radiation Safety and Security Act in October 2020, following technical assistance from the International Agency for Atomic Energy (IAEA). It notes that the Radiation Safety and Security Act establishes the Office of Radiation Safety and Security within the Ministry responsible for the environment (the Office). Pursuant to section 42 of this Act, this Office shall prescribe requirements for radiation protection to be met before any activity or practice can be licensed, including all steps that shall be taken by the licensee for the protection and safety of workers by keeping doses below the relevant threshold. ***The Committee requests the Government to indicate whether any regulations have been adopted by the Minister of Labour pursuant to section 94 of the Labour Act. It also requests the Government to provide detailed information on the requirements prescribed for licensees under section 42 of the Radiation Safety and Security Act, regarding the protection of workers against ionizing radiation.***

Article 3(2). Data collection. The Committee notes that, according to section 9(1)(l), (m) and (n) of the Radiation Safety and Security Act, the Office shall establish and maintain a national register of radiation sources, persons licenced to carry out activities or practices under the Act, as well as other registers as necessary. ***The Committee requests the Government to provide information on the implementation in practice of these provisions, such as the information required for the purpose of the register and the method of data collection.***

Articles 6 and 8. Determination and review of maximum permissible doses. The Committee notes that, according to section 41(2) of the Radiation Safety and Security Act, the Office shall prescribe dose limits for persons that may not be exceeded in conducting activities or practices involving, among others, the

production or use of radiation sources. Section 41(3) further provides that any dose limits prescribed shall take into account the recommendations of the IAEA and the International Commission on Radiation Protection. The Committee observes that there do not seem be any dose limits prescribed by the Office following the adoption of the Radiation Safety and Security Act in October 2020. ***The Committee requests the Government to indicate the measures taken to ensure that the maximum permissible doses or amounts are determined without delay. It also requests the Government to provide information on any mechanism ensuring the review of such dose limits.***

Article 9. Warning of the presence of hazards from ionizing radiations and instructions for workers directly engaged in radiation work. ***The Committee requests the Government to provide information on any measures taken to ensure that: (i) appropriate warnings are used to indicate the presence of hazards from ionizing radiations; and (ii) adequate instructions are provided to all workers directly engaged in radiation work before and during such employment.***

Article 12. Medical examination. The Committee notes that, according to the 2004 National OSH Policy, the employer is required to make provisions for pre-employment, pre-placement and periodic medical examinations for the persons they employ, while the Ministry of Health shall work towards the establishment of an occupational health unit, which will, among other functions, provide medical assistance in this regard. ***The Committee requests the Government to provide further information on the medical examinations prescribed and provided in practice to workers directly engaged in radiation work, including examinations prior to or shortly after taking up such work, and their subsequent examinations at appropriate intervals.***

Article 13. Measures in case of irradiation or radioactive contamination. The Committee notes that Part VIII of the Radiation Safety and Security Act provides for emergency preparedness and response. However, the Committee notes that it does not contain any provisions addressing the protection of workers as required by *Article 13(a), (c)* and *(d)* of the Convention. ***The Committee requests the Government to provide information on any measures taken or envisaged, in law or in practice, in case of exposure of workers to ionizing radiations with regard to the protection of workers as required by the Convention, including appropriate medical examination of affected workers, examination of the conditions in which workers' duties are performed and any necessary remedial action.***

Article 14. Employment involving exposure to ionizing radiation contrary to medical advice. ***The Committee requests the Government to provide information on the measures taken to ensure that workers are not employed or engaged in work liable to expose them to ionizing radiations contrary to qualified medical advice, including measures for the provision of alternative employment.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Cabo Verde

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2000)

Previous comment

Article 11(e) of the Convention. Annual publication of information on measures taken in pursuance of the national policy and application of the Convention in practice. The Committee notes the detailed information included with the Government's report on occupational accidents between 2017 and 2021. The Committee notes with ***concern*** the recent increase in the number of occupational accidents: from 238 in 2019 (of which 5 were fatal) to 782 in 2020 (of which 9 were fatal) and 1,112 in 2021 (of which 3 were fatal). The Committee also notes that, as the Tripartite OSH Commission is not functioning, the Commission has not been able to make public the results obtained with regard to the National OSH Policy. The Committee also notes that, while hospitals are required to collect and report to the General Labour Inspectorate data on the diagnosis of occupational diseases, the reports of the labour inspection offices do not contain statistics on this subject. ***Noting the increase in the number of occupational accidents, the Committee urges the Government to take all necessary steps to strengthen preventive OSH measures and to provide information on the reasons for this increase. In addition, it requests the***

Government to provide information on any measures taken or envisaged to ensure the annual publication of information on the measures taken under the National OSH Policy. With regard to occupational diseases, the Committee refers to its comment in relation to the Labour Inspection Convention, 1947 (No. 81), on the elements to be included in the reports of the labour inspectorate.

Articles 13 and 19(f). Protection of workers who have removed themselves from situations presenting an imminent and serious danger. In response to the Committee's previous comment, the Government indicates that Decree-Laws Nos 55/99 and 64/2010 set out the OSH obligations of the different stakeholders and that the General Labour Inspectorate, which has carried out several awareness-raising activities on OSH, is obliged to verify compliance with these provisions. In addition, the Committee notes the Government's indication that the labour inspection services have the power to suspend the activities of any enterprise that endangers the safety and health of workers and reserve the right to impose a fine. The Committee notes that while section 241 of the Labour Code provides that workers may terminate the employment relationship in the event of a serious threat to their health or physical integrity and receive compensation, there is no provision for the protection of workers who have withdrawn from a work situation which they had reasonable cause to believe presented an imminent and serious danger to their life or health, as required by *Articles 13 and 19(f)* of the Convention. ***The Committee reiterates its request to the Government to give effect to the above-mentioned Articles of the Convention and to provide information on any progress made in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

Cameroon

Asbestos Convention, 1986 (No. 162) (ratification: 1989)

Previous comment

Articles 6(3), 9 and 12 to 22 of the Convention. Application of the Convention in law and in practice. Further to its previous comments, the Committee notes the absence of information on specific legal or practical measures aimed at the prevention and control of health hazards related to asbestos and at giving effect to a certain number of Articles of the Convention, that is, *Articles 6(3), 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22*. ***The Committee urges the Government to take steps to adopt specific laws and regulations expressly aimed at the prevention and control of, and protection of workers against, health hazards due to occupational exposure to asbestos. It requests the Government to provide information on the steps taken in this connection, in particular with respect to the application of Articles 6(3) (preparation of procedures for dealing with emergency situations), 9 (adequate work practices, special rules and procedures), 12 (spraying of asbestos), 13 (notifying the competent authority of certain types of work involving exposure to asbestos), 14 (responsibility of producers and suppliers of asbestos and of makers and suppliers of products containing asbestos), 15 (limits for the exposure of workers to asbestos), 16 (practical measures for the prevention and control of the exposure of workers to asbestos), 17 (demolition work), 18 (special protective clothing, personal protective equipment and washing facilities), 19 (responsibility of the employer for the disposal of waste containing asbestos), 20 (workplace monitoring), 21 (monitoring of workers' health) and 22 (measures for education and training).***

[The Government is asked to reply in full to the present comments in 2025.]

Central African Republic

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2006)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 4, 5 and 8 of the Convention. National policy. Spheres of action. Further to its previous comments, the Committee notes that the Government reiterates in its report that the Directorate of Occupational Medicine has launched a project on the national policy on occupational health and safety (OSH). ***While taking due note of this information, the Committee requests the Government to take the necessary measures to formulate, implement and periodically review a coherent national policy on OSH and the working environment, in consultation with the most representative organizations of employers and workers, and to take such steps as may be necessary, by laws or regulations, to give effect to this policy, in accordance with Articles 4, 5 and 8 of the Convention.***

Article 7. Periodic review of the situation regarding OSH and the working environment. Further to its previous comments, the Committee notes that the Government reiterates that the situation regarding OSH and the working environment is not reviewed neither systematically nor at appropriate intervals, due to a lack of material, human and financial resources. ***While noting the Government's indications concerning the lack of resources, the Committee requests the Government to take the necessary measures to ensure that the situation regarding OSH and the working environment is subject to an overall review at appropriate intervals.***

Articles 13 and 19(f). Situation of imminent and serious danger to life or health. Further to its previous comments, the Committee notes that the Government's report does not contain information on: (a) the measures taken or envisaged to ensure that any worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences of such an action, in accordance with *Article 13* of the Convention; and (b) the arrangements that have been made to ensure that an employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health, in accordance with *Article 19(f)* of the Convention. ***The Committee requests the Government to take the necessary measures to give effect to Articles 13 and 19(f) of the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

China

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2007)

Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2002)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 155 (OSH) and 167 (OSH in construction) together.

Occupational Safety and Health Convention, 1981 (No. 155)

Article 11(c) and (e) of the Convention. Production of annual statistics on occupational accidents and diseases and application of the Convention in practice. Following its previous comment, the Committee notes the Government's response in its report that 17,064 cases of occupational disease were reported in 2020, including 14,408 cases of pneumoconiosis, while 15,407 cases were reported in 2021, including 11,809 cases of pneumoconiosis. Moreover, 29,519 fatal occupational accidents were reported in 2019, while 27,412 such accidents were reported in 2020. The Committee also notes that, according to the 14th Five-Year National Plan for Occupational Safety (2021–2025), from 2015 to 2020 there was a decrease in all types of accidents by 43.3 per cent, in large accidents by 36.1 per cent and in very serious accidents by 57.9 per cent respectively, and the number of deaths decreased by 38.8 per cent. The Government further indicates that targeted measures were undertaken to control and eliminate occupational diseases at the source, including the implementation of the pneumoconiosis prevention

and control campaign in key industries, such as construction, metallurgy, coal mines and non-coal mines. Awareness-raising activities continue to be organized, aimed at disseminating relevant policies and laws, scientific knowledge, and good practices. ***Taking due note of the continued decrease in the number of occupational accidents and cases of occupational disease, the Committee requests the Government to continue its efforts with regard to the prevention of such accidents and diseases, and to continue to provide information on specific preventive measures taken in this regard, including those in the context of implementing the 14th Five-Year National Plan for Occupational Safety, and the impact of such measures. The Committee also requests the Government to continue to provide detailed statistics on occupational accidents and diseases at the national level, indicating the causes and consequences.***

Safety and Health in Construction Convention, 1988 (No. 167)

Article 8 of the Convention. Cooperation between two or more employers undertaking activities simultaneously at one construction site. Following its previous comment, the Committee notes the Government's indication in its report that accident prevention was a priority in the 14th Five-Year National Plan for Occupational Safety. Measures envisaged include enhancing the management of recruitment and qualification of subcontractors, as well as strengthening the enforcement of related legislation and regulations. The Government also refers to the Notice on further strengthening the safety management of construction projects with higher risk issued by the Ministry of Housing and Urban-Rural Development (MoHURD) in 2017, which stresses that the main contractor is responsible for the safety of the entire project, while subcontractors are responsible for the safety within the scope of the subcontracted parts, as provided for by section 24 of the Administrative Regulations on Work Safety in Construction Projects. The Committee further notes that, according to the 2019 Circular on Safety Accidents in Housing and Municipal Engineering, in terms of serious accidents, 82.61 per cent were related to large construction projects with multiple parts and operators, particularly in earthwork and foundation excavation, formwork support systems and construction crane machinery. ***The Committee requests the Government to pursue its efforts to ensure the implementation of prescribed safety and health measures under the responsibility of the principal contractor whenever two or more employers undertake activities simultaneously at one construction site, particularly with respect to construction sites with several tiers of subcontracting. Noting that a large proportion of accidents occurred in construction projects with multiple parts and operators, the Committee once again requests the Government to provide information on the enforcement of section 24 of the Administrative Regulations on Work Safety in Construction Projects in practice, including inspections undertaken, violations detected, and penalties applied for non-compliance.***

Article 18(1). Work at heights including roof work. The Committee notes the Government's reference to the Circular on the Governance Action of Occupational Safety in Construction issued by the MoHURD in March 2022, which further specifies the requirements of safety measures for work at heights, including the identification of risks and prevention actions, as well as the use of both collective and individual protection equipment. Moreover, the MoHURD updated the Criteria for Determining Major Hazards and Accident Risks in Construction in April 2022, which identifies some types of work at heights as a major accident risk. The Government also indicates that the number of deaths due to falls from height in construction continues to decrease (441 in 2019, 428 in 2020 and 413 in 2021). The Committee notes, however, that according to the 2019 Circular on Safety Accidents in Housing and Municipal Engineering, falls from heights remained the main cause of accidents in construction, representing 53.69 per cent of total accidents in 2019, increased from 52.2 per cent in 2018. The Committee also notes that there was only one accident due to fall from height falling into the categories of large, serious and very serious accidents (defined as accidents causing more than three deaths or with a particularly significant economic impact). ***The Committee urges the Government to pursue its efforts to enforce safety measures for work at heights and to promote the use of safety equipment at all construction***

sites. It also requests the Government to continue to provide information on the enforcement measures implemented in this regard (including the number and nature of violations detected and penalties applied) and the number of occupational accidents reported due to falls from heights.

Article 35. Effective enforcement of the provisions of the Convention and application in practice. The Committee notes the information provided by the Government, in response to its previous request, on the measures taken by the MoHURD to improve the implementation of the Convention, including: (i) the elaboration of guidelines for workplan design in construction projects with higher risks consisting of multiple components and operators in 2021; (ii) the development of a list of work process and techniques, equipment and materials to be eliminated in building construction and infrastructure projects in 2021; and (iii) the implementation of targeted measures to strengthen occupational safety in housing and municipal engineering projects. The Government also indicates that 1,530 cases of occupational disease were reported in the construction industry from 2019 – 2021, mostly related to civil engineering projects (1,256 cases). Moreover, the most prevalent occupational disease remains pneumoconiosis (1,257 cases). The Committee further notes with ***concern*** that, according to the 2019 Notification of Safety Accidents in Housing and Municipal Engineering, in 2019, there were 773 work safety accidents with 904 deaths, an increase from 2018 by 39 cases and 64 persons respectively. About 80 per cent of the accidents could be attributed to violations of OSH-related rules and regulations when performing work, 60 per cent were related to violations of statutory construction procedures, while 40 per cent were due to neglect of duties by key personnel responsible for OSH. ***The Committee urges the Government to reinforce its efforts to ensure the application of the Convention in practice, and to continue to provide information on the concrete steps taken to reduce the number of occupational accidents in the construction sector. It also urges the Government to continue to take measures to ensure the effective enforcement of the Convention through the provision of appropriate inspection services in the sector, as well as appropriate penalties and corrective measures. Lastly, the Committee requests the Government to continue to provide detailed information on the application of the Convention in practice.***

The Committee is raising other matters in a request addressed directly to the Government.

Colombia

Asbestos Convention, 1986 (No. 162) (ratification: 2001)

Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1994)

Chemicals Convention, 1990 (No. 170) (ratification: 1994)

Prevention of Major Industrial Accidents Convention, 1993 (No. 174) (ratification: 1997)

Previous comment on Conventions Nos 162, 170 and 174
Previous comment on Convention No. 167: direct request

In order to provide a comprehensive view of the issues relating to the application of ratified occupational safety and health (OSH) Conventions, the Committee considers it appropriate to examine the application of Conventions Nos 162 (asbestos), 167 (OSH in construction), 170 (chemicals) and 174 (major industrial accidents) together in a single comment.

The Committee notes the joint observations of the International Organisation of Employers (IOE) and the National Employers Association of Colombia (ANDI), received on 31 August 2018, on the application of Convention No. 162, as well as the Government's comments on these observations, received on 20 November 2018.

A. Protection against specific risks

1. Asbestos Convention, 1986 (No. 162)

Legislation. The Committee notes with ***satisfaction*** the adoption of Act No. 1968 of 2019, which prohibits the use of asbestos on the national territory as from 1 January 2021 and establishes guarantees for the health protection of nationals of Colombia.

Articles 3(2) and 14 of the Convention. Periodic review of national laws and regulations. Labelling of containers and products. With reference to its previous comments, the Committee notes with ***interest*** the adoption of Decision No. 534 of 2020 issuing specific measures respecting the labelling of products containing asbestos, giving effect to a judicial ruling of 2020, which ordered the Ministry of Labour to issue regulations on this matter. The Committee notes that the Decision: (i) provides that all products manufactured, put up for sale, imported, exported or distributed which contain any type of asbestos in any proportion shall be marked with a visible label with the wording "warning this product contains asbestos", without prejudice to the labelling and information requirements set out in other relevant standards (section 3); and (ii) contains specific provisions requiring that the label is visible immediately, truthful and adequate (section 4). The Committee notes this information, which responds to its previous request.

Articles 4 and 17. Consultations with employers' and workers' organizations. Demolition and removal. With reference to its previous comments, the Committee notes that Act No. 1968 of 2019 provides for: (i) the formulation of a public policy for the replacement of previously installed asbestos within a period of five years of its promulgation (section 3); and (ii) the creation of a National Commission for the Replacement of Asbestos, which the Committee observes includes representatives of five ministries and other actors, but does not appear to include representatives of the social partners among its members (section 6). The Government specifies that the policy will be focused on promoting the overall management of installed asbestos products and their waste, and the strengthening of technical capacities, information management, communication and awareness-raising of strategic actors, based on the implementation of a plan of action for the period 2022–30.

The Committee also notes the Government's indication that the public policy for the replacement of asbestos is being drawn up by the chemical safety working group of the National Technical Intersectoral Commission for Environmental Health (CONASA), under the leadership of the Ministry of the Environment and Sustainable Development and with the participation of the Ministry of Labour, other Ministries, Government bodies, various actors from the private sector, academics and social organizations. The Government emphasizes that in June 2021 consultations were held and the progress made in drawing up the policy was presented to the various actors, including the National Association of Public Service and Communication Enterprises of Colombia (ANDESCO), the Colombian Fibre Association (ASCOLFIBRAS) and the Colombia Free from Asbestos Foundation (FUNDCLAS). The Committee observes that it appears that workers' organizations have not been participating in the process of drawing up the public policy for the replacement of asbestos.

The Committee also notes that the ANDI and the IOE indicate in their observations that the materials present in constructions are fibre-cement materials in which the fibres are coated in cement as a binder and there is no indication that friable asbestos has been used in construction in Colombia. With reference to these observations, the Government reiterates that, due to the environmental and geographical conditions in Colombia, asbestos and friable insulation materials containing asbestos have not been used in construction. ***The Committee requests the Government to adopt the necessary measures to ensure that, within the framework of the public policy for the replacement of installed asbestos it is guaranteed that: (i) both the demolition of installations or structures containing friable asbestos insulation materials, and the removal of asbestos from buildings or structures in which asbestos is liable to become airborne, may be undertaken only by employers or contractors who are***

recognized by the competent authority as qualified to carry out such work in accordance with the provisions of the Convention and who have been empowered to undertake such work (Article 17(1) of the Convention); (ii) before starting demolition work, the employer or contractor shall be required to draw up a work plan specifying the measures to be taken, including measures to provide all necessary protection to the workers, limit the release of asbestos dust into the air and provide for the disposal of waste containing asbestos (Article 17(2) of the Convention); and (iii) the workers or their representatives are consulted on the work plan referred to above (Article 17(3) of the Convention). The Committee requests the Government to provide information on the results of these measures.

The Committee also requests the Government to provide information on: (i) the process of the preparation and implementation of the public policy for the replacement of installed asbestos; and (ii) the functioning and activities of the National Commission for the Replacement of Asbestos. Moreover, while noting the Government's indication that it plans to strengthen consultation mechanisms with the most representative organizations of employers and workers with a view to giving effect to the provisions of Act No. 1968 of 2019, the Committee requests it to specify whether the most representative organizations of employers and workers concerned have been consulted in relation to the public policy for the replacement of installed asbestos, including within the framework of the activities of the National Commission for the Replacement of Asbestos.

2. Chemicals Convention, 1990 (No. 170)

Legislation. The Committee notes with ***satisfaction*** the promulgation of Decree No. 1496 of 2018 adopting the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The Government indicates that the draft text of the Decree was circulated in the National OSH Committee, which is a technical body composed of representatives of workers, employers and Government bodies.

Articles 9, 10 and 11 of the Convention. Responsibilities of suppliers. Responsibilities of employers for the identification and transfer of chemicals. With reference to its previous comments, the Committee notes that Decree No. 1496 of 2018 (sections 8, 9, 15 and 17), Decree No. 1076 of 2015 issuing the consolidated regulations for the environment and sustainable development sector (sections 2.2.7B.1.3.2(2) and 2.2.7B.1.2.6) and Decision No. 773 of 2021 determining the action to be taken by employers for the application of the GHS in the workplace (sections 5, 6 and 21(2), (4), (5) and (9)) contain provisions which give effect to these Articles of the Convention.

Article 18(1) and (2). Right of workers to remove themselves from danger and to be protected against undue consequences. ***The Committee once again urges the Government to adopt the necessary measures to ensure that workers have the right to remove themselves from danger resulting from the use of chemicals when they have reasonable justification to believe there is an imminent and serious risk to their safety or health and to be protected against undue consequences for doing so, in accordance with Article 18(1) and (2) of the Convention.***

3. Prevention of Major Industrial Accidents Convention, 1993 (No. 174)

Article 4 of the Convention. National policy and consultation of employers' and workers' organizations. With reference to its previous comments, the Committee notes with ***satisfaction*** the adoption of Decree No. 1347 of 2021 amending Decree No. 1072 of 2015 issuing consolidated labour regulations, with a view to establishing provisions relating to the Programme for the Prevention of Major Accidents (PPAM). The Committee notes that, under the terms of sections 2.2.4.12.1 and 2.2.4.12.6 of the Decree, the PPAM includes all the comprehensive measures, procedures and interventions undertaken to increase the levels of protection of workers, the population and the environment through the management of the risk of major accidents in classified installations. The Committee also notes the Government's indication that the draft text of the Decree was referred to the National OSH Committee in order to receive its

comments. The Committee further notes that sections 2.2.4.12.21 to 2.2.4.12.23 provide for the creation, composition and functions of an interinstitutional technical working group in support of the PPAM composed permanently of representatives of various Government bodies, the responsibilities of which include the preparation of the necessary technical measures for the implementation of the PPAM. In this regard, the Committee recalls that *Article 4* of the Convention provides that, in consultation with the most representative organizations of employers and workers, and in light of national conditions and practices, a coherent national policy concerning the protection of workers, the public and the environment against the risk of major accidents shall be implemented and periodically reviewed. ***The Committee therefore requests the Government to indicate the measures adopted for the implementation and periodic review of the PPAM in consultation with the representative organizations of employers and workers.***

The Committee also notes the Government's indication concerning the preparation of draft decisions to regulate specific aspects of Decree No. 1347 of 2021, including: the design, implementation and monitoring of the management system for the prevention of major accidents; the identification of hazards, analysis, evaluation and action to deal with risks of major accidents, and the notification, reporting and investigation of major accidents. ***The Committee encourages the Government, during the process of the adoption of any supplementary regulations under Decree No. 1347 of 2021, to take into account the matters addressed in its direct request on Convention No. 174 with a view to ensuring the conformity of the legal framework for the prevention of major industrial accidents with the Convention.***

B. Protection in specific branches of activity

Safety and Health in Construction Convention, 1988 (No. 167)

Article 12(1) and (2) of the Convention. Right of workers to remove themselves from a situation of imminent and serious danger to their safety and health, and the employers' obligation to stop the operation and evacuate workers. ***The Committee once again requests the Government to adopt the necessary measures to ensure that: (i) national laws or regulations provide that workers shall have the right to remove themselves from danger when they have good reason to believe that there is an imminent and serious danger to their safety and health, and the duty to inform their supervisor immediately (Article 12(1) of the Convention); and (ii) where there is an imminent danger to the safety of workers, the employer shall take immediate steps to stop the operation and evacuate workers as appropriate (Article 12(2) of the Convention).***

The Committee is raising other matters in a request addressed directly to the Government.

Comoros

White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1978)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1, 2 and 3 of the Convention. Prohibition of the use of white lead and sulphate of lead in the internal painting of buildings. The Committee notes the information provided by the Government in its report that there are no specific provisions in national legislation applying the Convention, but that the Labour Code contains general indications in this respect. ***The Committee hopes that the Government, in its next report, will be able to provide detailed information on the measures taken in law and practice to regulate the use of white lead and sulphate of lead and of all products containing these pigments, in accordance with the provisions of the Convention.***

Application in practice. The Committee notes the Government's indication that there is no report of the inspection services which would provide information on the manner in which the Convention is applied in

practice or which would provide statistical data relating to it. ***The Committee requests the Government to provide information when it is available on the application of the Convention in practice, including statistical information on cases of lead poisoning among working painters, indicating, in particular, morbidity and mortality due to lead poisoning.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Croatia

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1991)

Occupational Health Services Convention, 1985 (No. 161) (ratification: 1991)

Asbestos Convention, 1986 (No. 162) (ratification: 1991)

The Committee notes that the Government's reports have not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 155 (OSH), 161 (occupational health services) and 162 (asbestos) together.

The Committee notes the observations of the Union of Autonomous Trade Unions of Croatia (UATUC) and the Independent Trade Unions of Croatia (NHS), received in 2016.

A. General provisions

Occupational Safety and Health Convention, 1981 (No. 155)

Application of the Convention in practice. The Committee notes the information in the registry of the Croatian Institute for Health Protection and Safety at Work (CIHPSW) for 2017, and notes with ***concern*** that the total number of recorded cases of occupational diseases increased between 2016 and 2017, from 153 in 2016 to 172 in 2017. It also notes the information that, according to the Annual Report in 2017 of the labour inspectorate, there were 22 fatalities at work in 2017. ***The Committee requests the Government to continue to provide information on the manner in which the Convention is applied, and to continue to provide the number, nature and cause of occupational accidents and cases of occupational disease reported.***

Occupational Health Services Convention, 1985 (No. 161)

Articles 5(a), (b), (c), (d), (e), (g), (h), (i) and (k) and 6 of the Convention. Establishment and functions of occupational health services. The Committee notes the repeal of the former Occupational Safety and Health Act by the OSH Act 2014, and recalls that sections 22 and 82 of the repealed legislation gave effect to *Article 5* of the Convention. The Committee notes that section 80 of the OSH Act 2014 requires the employer to provide employees with occupational medical services so as to ensure health surveillance appropriate to risks, hazards and exertions during work with a view to protecting the health of employees. Section 81 of the OSH Act 2014 further provides that occupational medicine activities, as well as the plan and programme of health protection measures, shall be prescribed by special regulations on health protection and health insurance, and that the minimum hours that the occupational medicine specialist is required to be present at the workplace shall be stipulated in an Ordinance. In this respect, the Committee notes the observations of the UATUC and the NHS, stating that, as of 2016, the Ministry of Health had not adopted regulations prescribing elements such as the minimum hours the occupational medicine specialist has to spend at the workplace, or the procedures for administering first aid. The Committee also notes the Government's indication that the occupational medicine specialist's participation in risk assessments at the workplace is not prescribed by national legislation, and that experience indicates that the employer rarely consults occupational medicine specialists during such assessments in practice, even though *Article 5(a)* of the Convention prescribes that the functions of occupational health services shall include the identification and assessment of the risks from health hazards in the workplace. In addition, section 20 of the Health Care Act (as amended) sets out types of healthcare that fall within the category of specific healthcare for workers, but provides that the content of measures on specific healthcare of workers and the method for implementing them shall be laid down by the Minister of Health in an Ordinance at the proposal of the CIHPSW, subject to

prior approval by the Minister of Labour and the Pension System. The UATUC and NHS indicate, however, that these measures have not been prescribed. ***Noting that the OSH Act 2014 does not directly give effect to the majority of the provisions of Article 5 and requires the adoption of special regulations that have yet to be adopted, the Committee urges the Government to provide the information on the measures taken to give full effect to Articles 5 and 6 of the Convention. The Committee further requests the Government to indicate whether measures have been taken to adopt special regulations concerning occupational health activities and the plan and programme of health protection measures, as envisaged by section 81 of the OSH Act 2014, as well as the Ordinances referred to in section 20 of the Health Care Act. The Committee requests the Government to provide the list of such regulations where they have been adopted.***

B. Protection from specific risks

Asbestos Convention, 1986 (No. 162)

Effective compensation of workers of the Salonit factory. In its previous comments, the Committee requested information regarding the application in practice of the Law on compensation of workers employed with Salonit d.d. (No. 84/11), pursuant to which workers employed in the Salonit factory (which manufactured asbestos products) when it declared bankruptcy in 2006 could apply for compensation within 60 days (section 2). In this regard, the Committee notes the Government's indication in its report that the payment to the workers of compensation due to job loss was planned in instalments over two years in 2011 and 2012. The Committee notes with interest the Government's indication that all requests for compensation have been resolved, with all 170 workers from the Salonit factory being compensated where they were eligible for compensation and had submitted a request to the Fund for Environmental Protection and Energy Efficiency. The Committee also notes the information provided by the Government regarding the establishment of an Ad-hoc Commission for Complaints to deal with appeals against the decisions taken by the Fund, consisting of representatives from the Ministry for Environmental Protection, Physical Planning and Construction, Ministry of Economy, Labour and Entrepreneurship, Ministry of Finance, Ministry of Justice and Fund for Environmental Protection and Energy Efficiency. ***The Committee requests the Government to continue to provide information on any developments regarding this issue, including the number of appeals launched, and on the decisions taken by the Ad-hoc Commission for Complaints.***

The Commission for Settling Claims for Compensation by Workers Suffering from Occupational Diseases Due to Exposure to Asbestos (the Commission). The Committee notes the information provided by the Government that, since the establishment of the Commission in 2007 until mid-2016, 1,318 claims had been resolved (1,072 resulting in compensation), 22 were pending before the courts, and 245 were yet to be resolved. The Committee notes the observations by the UATUC and the NHS, which provide different statistics regarding resolved and unresolved claims for compensation. The Committee also notes an absence of information regarding measures taken to raise the awareness of workers regarding possibilities for seeking redress. ***The Committee requests the Government to continue to ensure that all claims and requests for compensation by workers suffering from an occupational disease due to exposure to asbestos during the course of their employment are handled as expeditiously as possible. It requests the Government to provide information on progress in this respect, as well as on the measures taken to raise the awareness of such workers regarding the possibilities for seeking redress.***

Application of the Convention in practice. The Committee notes the information provided by the Government regarding the registry of the CIHPSW on asbestos-induced occupational diseases, which are published annually online and includes up-to-date data and statistics on asbestos-induced diseases, broken down by geographical distribution, types of disease, gender, age, types of education and training and other metrics. The Committee notes that, according to the data of the CIHPSW, 89 cases of asbestos-induced occupational illnesses were registered in 2017, of which 79 (88.8 per cent) were men and ten (11.2 per cent) were women. In addition, the Committee notes that, according to the data of the CIHPSW, the percentage of occupational diseases caused by exposure to asbestos in 2017 was 52 per cent (89 out of 172 recorded cases). ***Noting the percentage, which remains high, of occupational diseases caused by asbestos, the Committee urges the Government to strengthen its efforts to ensure the medical surveillance in practice of workers that are or have been exposed to asbestos. The Committee further requests the Government to continue to provide information regarding the application of this Convention in practice, including any measures taken at the institutional level in the application of the Convention. In addition, the Committee requests the Government to provide information regarding the application in practice of the prohibition on***

the usage of asbestos and asbestos-containing materials in Croatia, which entered into force on 1 January 2006.

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Ecuador

Radiation Protection Convention, 1960 (No. 115) (ratification: 1970)

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1978)

Asbestos Convention, 1986 (No. 162) (ratification: 1990)

Previous comment on Convention No. 115
Previous comment on Convention No. 148
Previous comment on Convention No. 162

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on occupational safety and health, the Committee considers it appropriate to examine Conventions Nos 115 (radiation protection), 148 (air pollution, noise and vibration) and 162 (asbestos) together.

A. Protection against specific risks

1. Radiation Protection Convention, 1960 (No. 115)

Article 3(1) and Article 6(2) of the Convention. Protection measures adopted in the light of current knowledge. The Committee notes that the Government indicates in its report, in reply to its previous request, that the Ministry of Labour, in coordination with the Ecuadorian Atomic Energy Commission, is to organize technical working parties to update the Regulations on radiological safety, issued under Decree No. 3640 of 8 August 1979, and that it will communicate a copy of the regulations following their adoption. In this connection, the Government indicates that consideration will be given to current knowledge in the area of ionizing radiation summarized in the general observation of 2015, as well as other measures established by the International Commission on Radiological Protection (ICRP) and the International Atomic Energy Agency (IAEA). ***The Committee urges the Government to take the necessary measures to update its legislation in line with the Convention, taking account of the 2015 general observation, and to communicate a copy of the amended regulations once they are adopted.***

2. Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)

Article 8(1) and (3) of the Convention. Air pollution and vibration. The Committee notes with ***regret*** the Government's indication in its report that the criteria and exposure limits to air pollution and vibration are still not specified in national law. ***The Committee urges the Government to take the necessary measures, including in the framework of the updating of the Regulations on occupational safety and health and improvement of the working environment, to update its national legislation to establish the criteria and exposure limits to air pollution and vibration, and to communicate a copy of the relevant legal text, once adopted. It also asks the Government to indicate the manner in which these limits shall be periodically revised, in conformity with Article 8(3) of the Convention.***

Article 12. Notification to the competent authority of processes, substances, machinery and equipment which involve exposure. The Committee notes that Decision No. 2 of the Ecuadorian Standard-setting

Service (INEN) provides for the obligation to notify the INEN regarding chemical substances that cause damage to the central nervous system, vision, brain, and other organs of the human body. However, the Committee notes the Government's indication that the national legislation does not specifically provide for notification to the competent authority in respect of other types of air pollution, nor of noise and vibration. The Committee also notes that the Ministry of Labour will proceed to update the Regulations on occupational safety and health and improvement of the working environment to bring them into compliance with *Article 12* of this Convention. ***The Committee requests the Government to take the necessary measures to update its legislation in conformity with the provisions of this Convention and to communicate progress made in this respect.***

3. Asbestos Convention, 1986 (No. 162)

Article 17(1) and (2) of the Convention. Demolition of plants and structures containing friable asbestos insulation materials. The Committee notes the Government's indication that, by virtue of section 149 of the Regulation on security in construction and public works, builders and contractors shall establish procedures that guarantee and monitor the treatment and safe elimination of waste, effluents and emissions in a manner that does not present a hazard to workers or to the environment. However, the Government indicates that it is not established that such procedures must be carried out by builders and contractors recognized by the competent authority. Equally, the Committee notes that under section 152 of the Regulation, plans for the construction, refurbishment or rehabilitation of work centres shall be approved by the Ministry of Labour through its safety and health units. In this respect, the Government indicates that this section does not require the production of a work plan specifically for demolition in case of asbestos. ***The Committee requests the Government to adopt the necessary measures to ensure that: (i) the work involving demolition and disposal provided for under Article 17 of the Convention is undertaken only by employers or contractors recognized by the competent authority as qualified to carry out such work; and (ii) that such employers or contractors shall draw up a work plan specifying the measures to be taken before starting demolition work.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2024.]

Ethiopia

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1991)

Previous comment: direct request

Articles 13 and 19(f) of the Convention. Protection of workers who have removed themselves from a situation presenting an imminent and serious danger. The Committee previously noted that section 93 of the Labour Proclamation provided an obligation for workers to report to the employer any situation which they have reason to believe could present a hazard, but that the legislation did not refer to the protection of workers who had removed themselves from such danger.

The Committee welcomes the Government's indication, in response to the Committee's request, that it will examine section 93 in the future with a view to its amendment. ***Noting the ongoing process to revise the national OSH legislative framework, the Committee urges the Government to take the necessary measures to ensure that workers who remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health, are protected from undue consequences and cannot be required to return to a work situation where there is a continuing imminent and serious danger to life or health.***

Article 17. Collaboration between two or more employers at the same workplace. The Committee notes the Government's indication, in reply to its previous request concerning the absence of legislative

provisions giving effect to *Article 17* of the Convention, that collaboration between two employers at the same workplace is not prescribed by the Labour Proclamation. The Government indicates that two or more undertakings working in the same workplace usually have a subcontracting or joint work agreement between them, including safety and health duties and responsibilities. The Government indicates that labour inspectors dealing with such situations will usually examine the specific circumstances and operations of the two undertakings engaged in activities at the same workplace in the course of inspections. ***The Committee requests the Government to take the necessary measures to ensure that whenever two or more undertakings engage in activities simultaneously at one workplace, they shall collaborate in applying OSH measures. It requests the Government to provide information on the measures taken in this respect, including any measures prescribed in the context of the ongoing process to strengthen the national OSH legislative framework.***

The Committee is raising other matters in a request addressed directly to the Government.

Lebanon

Radiation Protection Convention, 1960 (No. 115) (ratification: 1977)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 3(1) and 6 of the Convention. All appropriate steps to ensure the effective protection of workers, in the light of available knowledge and maximum permissible doses of ionizing radiation. 1. *Lens of the eye.* The Committee notes that table 2 of Decree No. 11802, regarding the organization of prevention, safety and professional hygiene, sets the dose limitation to the lens of the eye as 150 mSv per year. ***With reference to paragraph 32 of its 2015 general observation on the application of Convention No. 115, the Committee requests the Government to take measures to ensure that the dose limits to the lens of the eye are set as 20 mSv per year, averaged over defined periods of five years, with no single year exceeding 50 mSv per year.***

2. *Protection for pregnant and breastfeeding workers.* ***With reference to paragraph 33 of its 2015 general observation on the application of Convention No. 115, the Committee once again requests the Government to provide information on any measures to establish the maximum permissible dose for workers who are pregnant or breastfeeding.***

Articles 6(1), 7(1)–(2) and 8. Dose limits for persons between 16 and 18 years. The Committee previously requested the Government to indicate whether Decree No. 700 of 1999 had been revised with a view to setting limits for workers under the age of 18 years involved in ionizing radiation work and prohibiting the engagement of workers under the age of 16 in such work. The Committee notes the Government's indication, in response, that Decree No. 700 has been repealed and replaced by Decree No. 8987 of 2012. Decree No. 8987 provides that engaging workers under the age of 18 in activities where they are exposed to carcinogenic substances, radiations or substances that may cause infertility or birth defects is totally prohibited (section 1 and Annex 1). It also notes that section 21 of Decree No. 11802 sets general dose limits for workers over 18 years of age in the terms of table 2 of the Decree's Annex. However, the Committee notes that Annex 2 of Decree No. 8987, concerning a list of work activities which are likely to harm the health, safety or morals of workers under the age of 16 years, and are allowed for workers aged 16 and over, includes those exposing workers to atomic or ionizing radiation, provided that these workers are offered full protection of their physical, mental and moral health and that these minors receive special education or appropriate vocational training, with an exception of the works totally banned in the terms of Annex 1. With reference to its 2015 general observation on the application of Convention No. 115, the Committee recalls that for occupational exposure of apprentices aged 16 to 18 years of age who are being trained for employment involving radiation and for exposure of students aged 16 to 18 who use sources in the course of their studies, the dose limits are: (a) an effective dose of 6 mSv in a year; (b) an equivalent dose to the lens of the eye of 20 mSv in a year; and (c) an equivalent dose to the extremities (hands and feet) or to the skin of 150 mSv in a year. ***The Committee***

once again requests the Government to take the necessary measures, including in the course of the ongoing labour law reform, to ensure that specific dose levels are fixed for workers between the ages of 16 and 18 engaged in radiation work.

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Madagascar

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)

Previous comment

Articles 2 and 4 of the Convention. Obligations relating to the hire, transfer and exhibition of machinery. Legislation. Further to its previous comments, the Committee notes with ***regret*** the Government's indication that no steps have been taken to revise Order No. 889 of 20 May 1960 establishing general measures for occupational hygiene and safety and health. In this regard, the Committee recalls that, under *Article 4* of the Convention, the obligation to ensure compliance with the provisions of *Article 2* shall rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor and, where appropriate under national laws or regulations, on their respective agents. ***The Committee once again requests the Government to take all necessary measures without delay to ensure the application of Articles 2 and 4 of the Convention, prohibiting the vendor, the person letting out on hire or transferring the machinery in any other manner, the exhibitor or the manufacturer, to sell, let out on hire, transfer in any other manner or exhibit machinery without appropriate guards. The Committee also requests the Government to take the appropriate steps to include in the applicable legislation the list of dangerous parts of machinery specified in Article 2(3) and (4).***

Articles 6 and 11. Prohibition on the use of machinery without appropriate guards. ***The Committee requests the Government to take measures to: (i) prohibit the use of machinery any dangerous part of which, including the point of operation, is without appropriate guards; (ii) prohibit the use of machinery by any worker without the guards provided being in position and prohibit any worker being required to use machinery without the guards provided being in position.***

The Committee is raising other matters in a request addressed directly to the Government.

Morocco

Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 2013)

Previous comment: direct request

Article 5(4)(a) of the Convention. Requirements established in laws and regulations. Mine rescue. The Committee notes that sections 304, 305 and 315-319 of the Labour Code provide requirements concerning medical services and sections 37, 161 and 162 of the General Regulations on the operation of non-fuel producing mines (the General Regulations) provide requirements for first aid. However, there do not appear to be specific provisions concerning mine rescue. ***The Committee requests the Government to take the necessary measures to establish in national laws and regulations the requirements to be followed in relation to mine rescue.***

Article 5(4)(b). Self-rescue respiratory devices. The Committee notes the Government's indication in reply to its previous comment that section 161 bis of the General Regulations broadens the coverage of first aid from victims of electrical accidents to persons at risk of asphyxia. However, the Committee notes

that it does not cover the provision of self-rescue respiratory devices, as envisaged in *Article 5(4)(b)* of the Convention. ***The Committee once again requests the Government to take the necessary measures to ensure that national laws and regulations include the requirement to provide and maintain adequate self-rescue respiratory devices for workers in underground coal mines and, where necessary, in other underground mines.***

The Committee is raising other matters in a request addressed directly to the Government.

Netherlands

Asbestos Convention, 1986 (No. 162) (ratification: 1999)

Previous comment

The Committee notes the joint observations of the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV) received on 31 August 2021 and the comments provided by the Government in this respect.

Article 5 of the Convention. Adequate and appropriate system of inspection. Effective enforcement and compliance. Further to its previous comment, the Committee notes that the Government refers to the asbestos supervision programme of the labour inspectorate which aims to increase compliance with the relevant legislation by companies holding certificates for asbestos removal work. The Government specifies that under this programme: (i) there is the objective of inspecting certified companies at least once every three years; (ii) in practice 90 per cent of these companies were inspected in this period; (iii) notorious non-compliant companies are visited several times a year and may have their activities temporarily suspended (three suspensions were issued in 2020 following the detection of serious and frequent violations); (iv) awareness-raising of employers and workers about the dangers and risks of asbestos is carried out in asbestos removal companies; and (v) in 2020, the programme focused on targeting illegal asbestos removals as well as on occupational groups working in installation and plumbing companies. The Government also refers to the increased capacity of the labour inspectorate and to the development of new assessment tools for certified companies engaged in asbestos removal and for workers. The Government further indicates that, in 2020 violations were identified in about 55 per cent of the companies inspected, most of which had committed serious violations, including the absence of risk assessments and the illegal removal of asbestos and that there is an ongoing criminal investigation in relation to illegal asbestos removal.

The Committee notes that the FNV and CNV reiterate observations on the functioning of the certification system for asbestos removal companies, stating that those that systematically fail to comply with the legislation can continue to operate and their certificates are very rarely removed. In their view, following serious violations where workers are exposed to asbestos beyond the limit value of 2000 fibres/m3, the companies' operations should not be stopped temporarily, but permanently.

In this regard, the Committee takes note of the Government's indications that: (i) the measures adopted by the labour inspectorate with respect to offending certified companies should be proportionate to the seriousness of the violations detected and it would not be proportionate to ban the operation of these companies following the detection of one serious violation; (ii) ordering a temporary halt of all activities of such companies is a serious measure applied by the labour inspectorate that can have direct and major consequences; (iii) the labour inspectorate reports suspicions of non-compliance by a certified company to the certification bodies, which determine whether this is the case and then take action; (iv) when non-compliance with the requirements of the certification system is detected, the certification bodies take appropriate measures against certified companies, including issuing a warning, unconditional or conditional suspension of activities and, as a final measure, withdrawal of the certificate (after giving the certified company the opportunity to

implement the required improvements); and (v) the labour inspectorate supervises the certification system, including the manner in which certification bodies carry out their tasks and is authorized, if necessary, to impose measures on certification bodies, including suspension or revocation of their designation where there are serious shortcomings. ***The Committee requests the Government to continue to provide information on specific measures taken in practice by the labour inspectorate to ensure compliance with the provisions of the Convention, including information on the number of inspectors dedicated to asbestos-related inspections, inspection visits, violations detected, and penalties imposed, as well as activities to supervise the certification system for asbestos removal. The Committee also requests the Government to provide further information on certified companies whose certificates to work with asbestos have been withdrawn by the competent certifying bodies, following inspections carried out or actions taken by the labour inspectorate.***

Nicaragua

Benzene Convention, 1971 (No. 136) (ratification: 1981)

Occupational Cancer Convention, 1974 (No. 139) (ratification: 1981)

Previous comment on Convention No. 136: direct request
Previous comment on Convention No. 139

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on occupational safety and health, the Committee considers it appropriate to examine Conventions Nos 136 (benzene) and 139 (occupational cancer) together.

Protection against specific risks

1. Benzene Convention, 1971 (No. 136)

Article 8 of the Convention. Provision of adequate means of personal protection and limitation of the duration of exposure to concentrations of benzene which exceed the maximum limit. With reference to its previous comments, the Committee notes the Government's indication that workers have adequate means of personal protection at their disposal, which reduces the risk of occupational exposure. In this connection, the Committee notes that sections 137 and 138 of Act No. 618 of 2007, provide that work clothing and personal protective equipment shall be adequate and ensure effective protection.

With reference to its earlier comments on the obligation of the employer to limit the duration of workers' exposure to concentrations of benzene which exceed the maximum limit, the Committee notes with ***regret*** that the Government has failed to respond to the request that the Committee has been formulating for several years. ***The Committee therefore urges the Government to take the necessary measures in the near future to guarantee that the duration of workers' exposure to concentrations of benzene in the air of places of employment that exceed 25 parts per million (80 mg/m3) is limited, in accordance with Article 8(2) of the Convention.***

Article 11. Prohibition of the employment of pregnant women and nursing mothers in work processes involving exposure to benzene. With regard to its previous comments, the Committee notes the Government's indication that, given the existence of specific legal standards to protect working conditions of pregnant women and nursing mothers, this category of workers is not prohibited from working. The Government adds that pregnant women and nursing mothers are monitored and supervised by the General Directorate of Occupational Safety and Health, the General Labour Inspectorate, the Ministry of Health, the National Commission for the Registration and Monitoring of Toxic Substances (CNRCST) and the Nicaraguan Social Security Institute. ***The Committee urges the Government, once again, to take the necessary measures to ensure that women medically certified as***

pregnant, and nursing mothers are not employed in work processes involving exposure to benzene or products containing benzene and to provide information on the specific measures adopted in this respect.

2. Occupational Cancer Convention, 1974 (No. 139)

Article 2(1). Obligation to have carcinogenic substances and agents replaced by non-carcinogenic substances or agents. With reference to its previous comments, the Committee observes that the Government provides general information on the process of authorization, restriction, prohibition and registration of chemical substances, which includes thorough toxicological assessments of their environmental, sanitary, agricultural, and domestic effects and those of substitute substances, carried out by the CNRCST, but makes no reference to the replacement of carcinogenic substances or agents by non-carcinogenic or less harmful substances or agents. ***While noting that the Government indicates that the CNRCST is mandated to regulate chemical substances, pesticides and other toxic substances, the Committee urges the Government to adopt the necessary measures to identify the carcinogenic substances and agents that must be replaced and to take the steps required for their replacement within the framework of the CNRCST or any other institution competent in the matter.***

Article 5. Medical examinations during or after employment. The Committee notes that sections 23 to 27 of Act No. 618 of 2007, the General Act on Occupational Safety and Health, provide for medical examinations before and during employment but do not include the post-employment examinations required by the Convention. ***The Committee requests the Government to adopt measures to ensure that such medical examinations, or investigations of a biological or other nature, as may be required to assess workers' exposure or state of health in respect of occupational hazards are provided following a period of employment.***

The Committee is raising other matters in a request addressed directly to the Government.

Niger

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2009)

Occupational Health Services Convention, 1985 (No. 161) (ratification: 2009)

Previous comment on Convention No. 155: direct request
Previous comment on Convention No. 161: direct request

In order to provide an overview of the issues relating to the application of the ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 155 (OSH) and 161 (occupational health services) in the same comment.

Occupational Safety and Health Convention, 1981 (No. 155)

Articles 13 and 19(f) of the Convention. Protection of workers who have removed themselves from a situation presenting an imminent and serious danger. The Committee previously noted that the obligation in section 139 of the Labour Code to notify the employer of any work situation presenting a danger did not give full effect to *Articles 13 and 19(f)* of Convention No. 155. In this regard, the Committee notes the Government's indication in its report that workers can inform the OSH committees, which in turn inform the labour inspectors, who refer the matter to a judge for an urgent application, if the employer asks the workers to resume work in a situation where there is continuing imminent and serious danger to life or health. However, the Committee notes an absence of information on the manner in which it is ensured that any workers who have removed themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health are protected from undue consequences, in accordance with *Article 13* of Convention No. 155. ***The***

Committee therefore once again requests the Government to take the necessary measures to ensure that any workers who have removed themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health are protected from undue consequences, in accordance with Article 13 of Convention No. 155. Also noting that OSH committees are not established in all enterprises, the Committee also requests the Government to provide information on the manner in which it is ensured in practice that workers cannot be required to return to a work situation where there is continuing imminent and serious danger to life or health, until the employer has taken remedial action (Article 19(f)).

Occupational Health Services Convention, 1985 (No. 161)

Article 2 of the Convention. Formulation, implementation and periodic review, in consultation with the most representative organizations of employers and workers, of a coherent national policy on occupational health services. Further to its previous comments, the Committee notes the adoption of the national OSH policy on 30 June 2017, and observes that this policy contains information on occupational health services but not on any strategy devoted to these services. ***The Committee therefore requests the Government to take the necessary steps to formulate, implement and periodically review a coherent national policy on occupational health services, in consultation with the most representative organizations of employers and workers.***

Article 3. Progressive development of occupational health services for all workers. The Committee previously asked the Government to indicate the extent to which workers benefit in practice from health services. It notes the Government's reply that enterprise health services do not exist in sectors other than mining. In this regard, section 362 of Decree No. 2017-682/PRN/MET/PS issuing the regulatory part of the Labour Code establishes the possibility for establishments with fewer than 250 workers to adopt healthcare agreements, laying down obligations regarding visits, medical examinations, and urgent and first aid treatment, in medical centres and official dispensaries. However, the Government indicates that even though the healthcare agreement system is widespread, the services covered by these agreements are not occupational medical services. ***The Committee hopes that the Government will take the necessary steps to progressively develop occupational health services for all workers. It requests the Government to continue to provide information on the extent to which workers benefit in practice from health services in all sectors and on the steps taken to develop occupational health services for all workers.***

The Committee is raising other matters in a request addressed directly to the Government.

Uganda

Asbestos Convention, 1986 (No. 162) (ratification: 1990)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep concern*** that the Government's report, due since 2018, has not been received. In light of its urgent appeal launched to the Government in 2020, the Committee proceeds with the examination of the application of the Convention on the basis of the information at its disposal.

Articles 3–18 and 20–22 of the Convention. Application of the Convention in law and in practice. Following its examination of the information at its disposal, the Committee notes that important information on measures giving effect to *Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21* and *22* of the Convention has not been submitted, namely:

– specific laws or regulations for the prevention and control of, and protection of workers against, health hazards due to occupational exposure to asbestos;

– specific regulations, if any, adopted in application of the National Environment Act 2019 (pursuant to section 71 of the Act) and repealing the National Environment (Waste Management) Regulations S.I No. 52/1999; and

– the application of measures taken to prevent, control, and to protect workers against, asbestos-related health hazards in practice.

The Committee requests the Government to provide detailed information on the points listed above without delay, including copies of the relevant pieces of legislation.

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Ukraine

Radiation Protection Convention, 1960 (No. 115) (ratification: 1968)

Occupational Cancer Convention, 1974 (No. 139) (ratification: 2010)

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2012)

Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 2011)

Previous comments on C115
Previous comments on C139, C155 and C176

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on occupational safety and health (OSH), the Committee considers it appropriate to examine Conventions Nos 115 (radiation protection), 139 (occupational cancer), 155 (OSH) and 176 (safety and health in mines) together.

The Committee notes the joint observations of the Confederation of Free Trade Unions of Ukraine (KVPU) and the Federation of Trade Unions of Ukraine (FPU), received 6 October 2022, concerning the Draft Law on Labour and the Draft Law on Safety and Health at Work.

The KVPU and the FPU indicate that the Draft Law on Labour is not in conformity with Convention No. 155, with respect to *Articles 4* (consultation with the most representative organizations of employers and workers in the development, implementation and review of the national OSH policy), *5(e)* (the protection of workers and their representatives from disciplinary measures), *8* (implementation of the national policy) and *10* (measures to provide guidance to employers and workers). The KVPU and FPU further state that the Draft Law on Safety and Health at Work is not in conformity with Convention No. 155, and in particular, *Articles 4, 5(e), 8, 10, 13* (protection for a worker that has removed themself from a dangerous work situation) and *Article 19* (arrangements at the level of the undertaking relating to rights and duties of workers and their representatives, and cooperation). The unions indicate that the Draft Law on Safety and Health at Work has been developed to replace the current Labour Protection Act, and that it will significantly narrow the content and scope of existing guarantees and rights of employees related to safe and healthy working conditions. The unions allege that this Draft Law will remove the right to benefits and compensation for work in difficult and harmful working conditions, currently contained in the Labour Protection Act, and that the Draft does not stipulate minimum funding for preventive measures. ***The Committee requests the Government to provide its comments in this respect. The Committee also requests the Government to take the necessary measures to ensure that any legislation adopted on safety and health is in conformity with ratified OSH Conventions, and it recalls that the Government can avail itself of the technical assistance of the ILO in this regard. Lastly, recalling the importance of consultations with the representative organizations of employers and workers in the implementation of Convention No. 155, it requests the Government to provide***

information on the consultations held with the organizations of employers and workers on the development of the Draft Law on Labour and the Draft Law on Safety and Health at Work.

Application of Conventions No. 115 and No. 155 in practice. Nuclear power plant workers. The Committee notes that the Report on developments relating to the resolution concerning the Russian Federation's aggression against Ukraine from the perspective of the mandate of the International Labour Organization, presented to the Governing Body at its 346th Session, October–November 2022 (GB.346/INS/14), noted rising concerns about the safety of workers in the occupied Zaporizhzhya Nuclear Power Plant. The Report highlighted concerns regarding the deteriorating working conditions and the safety of workers, mainly due to potential increased exposure to radiation, which would require continuous on-site and off-site monitoring and emergency preparedness measures. In a report published on 6 September 2022, the International Atomic Energy Agency (IAEA) underlined that substantial risks remain to the safety and integrity of the plant. In a statement released 20 November 2022, the Director General of the IAEA reiterated the urgent need for measures to help prevent a nuclear accident at the Zaporizhzhya Nuclear Power Plant. ***The Committee urges that all necessary measures be taken to protect the safety and health of nuclear power plant workers. In particular, it urges the strengthening of the implementation of Convention No. 115 with a view to ensuring the effective protection of workers against ionising radiations in the course of their work.***

The Committee notes the extremely difficult situation in the country since 24 February 2022, and notes that in this context, no reports have been sent from the Government on the application of ratified OSH Conventions. The Committee therefore repeats its previous comments:

The Committee takes note of the observations of the International Trade Union Confederation (ITUC) on the application of Conventions Nos 155 and 176, received on 16 September 2020, alleging that there is a lack of preventive and protective measures to protect workers against the spread of COVID-19 and a shortage of personal protective equipment throughout the country, but especially in the healthcare and mining sector. ***The Committee requests the Government to provide its comments in this respect.***

The Committee also notes the observations of the Confederation of Free Trade Unions of Ukraine (KVPU) on the application of Conventions Nos 155 and 176, received in 2019.

Occupational Safety and Health Convention, 1981 (No. 155)

Article 11(c) of the Convention. Notification of occupational accidents and diseases. The Committee notes that, according to the observations of the KVPU, employers do not follow, in practice, the notification procedures established by Decision No. 337 of the Cabinet of Ministers of Ukraine of 17 April 2019 approving the Procedure for Investigating and Recording Accidents and Occupational Diseases. The KVPU alleges that employers transmitted the notifications in violation of the deadlines, for 120 out of the 209 accidents registered by the State Labour Service (SLS) in the first half of 2019. ***The Committee requests the Government to provide its comments in this respect, and to take the necessary measures to ensure that Decision No. 337 is fully applied in practice with a view to ensuring the notification of occupational accidents and diseases by employers.***

Occupational Cancer Convention, 1974 (No. 139)

Articles 2, 3 and 4 of the Convention. Replacement of carcinogenic substances and agents, measures to be taken to protect workers, record keeping, and provision of information. The Committee notes that the Government's report does not respond to its previous comments on the issues covered by *Articles 2* (replacement of carcinogenic substances and agents), (measures taken to protect workers and for record keeping) and *4* (providing workers with information on the dangers involved and the measures to be taken) of the Convention. The Committee also notes with ***concern*** that the Government: (1) reiterates previously raised difficulties in the application in practice of those Articles, including lack

of funding, leading to the absence of measures to replace carcinogenic substances and agents by non-carcinogenic or less harmful substances or agents, and of an appropriate system to record the number of workers exposed to carcinogenic substances and agents; and (2) indicates that there are currently no special measures to ensure that workers who have been, are or may be exposed to carcinogenic substances and agents, are provided with all possible information regarding the dangers involved and the measures that should be taken. ***Taking into account the difficulties raised, the Committee urges the Government to take all the necessary measures to ensure that full effect is given to Articles 2, 3 and 4 of the Convention in the near future, and to provide information on the measures taken in this respect.***

Safety and Health in Mines Convention, 1995 (No. 176)

Articles 5(1), (2)(e) and 16 of the Convention. Supervision of safety and health in mines, suspension of mining activities, corrective measures and enforcement. In response to its previous comments on inspections undertaken in mines, the Committee notes the statistics provided in the Government's report regarding the number of inspections conducted, violations detected and total amount of fines imposed. The Committee also notes the observations of the KVPU, alleging that the application of Act No. 877-V of 2007 on Fundamental Principles of State Supervision and Monitoring of Economic Activity restricts inspection in mines. The KVPU also refers to an incident in 2017–18 in which there were two fatal accidents at the same mining workplace within a year of each other, due to the failure to respect an order prohibiting the use of certain equipment, issued by the administrative court following an application by the State Labour Service (SLS). ***Referring to its comments concerning restrictions on the powers of labour inspectors, adopted in 2020 under the Labour Inspection Convention, 1947 (No. 81), and the Inspection (Agriculture) Convention, 1969 (No. 129), the Committee requests the Government to take all the necessary measures to ensure the effective enforcement of the provisions of this Convention, in accordance with Article 16. In this regard, the Committee requests the Government to continue to provide statistics on violations detected during inspections, and detailed information on the measures taken by inspectors in such cases, including penalties imposed and other corrective measures. In addition, the Committee requests the Government to provide further information on the application in practice of Article 5(2)(e), regarding the power of the competent authorities to suspend or restrict mining activities on safety and health grounds, until the condition giving rise to the suspension or restriction has been corrected.***

Articles 5(2)(c) and (d), 7 and 10(d). Measures to eliminate or minimize the risks to safety and health in mines. Procedures for investigating fatal and serious accidents and the compilation and publication of statistics. Appropriate remedial measures and measures taken to prevent future accidents by employers as a result of investigations. Further to its previous comments, the Committee notes the Government's reference to the procedure for investigating accidents in enterprises in the coal industry, pursuant to Decision No. 337 of the Cabinet of Ministers of Ukraine of 17 April 2019 approving the Procedure for Investigating and Recording Accidents and Occupational Diseases. The Committee notes, however, that, according to the Government, 23 per cent of investigations mandated in 2018 are still outstanding, along with 5 per cent of the ones mandated in 2017 and 5 per cent of those mandated in 2016, due primarily to the lack of conclusions that should result from the investigation procedure. The KVPU also alleges that the established notification procedures for occupational accidents and diseases are not followed in practice. As regards measures taken to address the causes of such accidents, the Government indicates that the SLS established a commission to review regulatory documents on removing gases, ventilation and combating gas-dynamic phenomena, but does not refer to measures taken in mines in general. The Committee nevertheless notes the observations from the ITUC, which refers to the high rate of occupational accidents and diseases in the mining sector, and alleges that occupational fatalities and diseases in mining are underestimated as there is scant data in the industry. The ITUC further alleges that, according to the SLS, 68.7 per cent of workers in mining have been

working in conditions which fail to meet sanitary and hygienic standards, that 53.5 per cent work with excessive dust, 42.3 per cent with excessive noise, 14.2 per cent with excessive vibration, and 9.8 per cent with excessive exposure of harmful chemicals. ***The Committee requests the Government to provide its comments in respect of the ITUC's observations. The Committee also requests the Government to take the necessary measures to ensure that full effect is given to Article 10(d) of the Convention, requiring that employers shall ensure that all accidents and dangerous occurrences are investigated and appropriate remedial action is taken in practice. As regards Article 5(2)(d) on the compilation and publication of statistics on accidents, occupational diseases and dangerous occurrences, the Committee refers to its comments adopted in 2020 concerning Article 11(c) of Convention No. 155. The Committee also requests the Government to provide further detailed information on the measures taken to ensure the application, in mines, of the employers' duties contained in Articles 7 and 10.***

Article 5(2)(f). Rights of workers and their representatives to be consulted on and participate in OSH measures. Further to its previous comments on procedures to implement the rights of workers and their representatives to be consulted on and participate in OSH measures *(Article 5(2)(f))*, the Committee notes that section 42 of the Labour Protection Act provides that OSH representatives may apply for assistance to the bodies in charge of state supervision over OSH, and have a right to participate and make appropriate proposals during inspections. The Committee also notes, however, the observations of the KVPU, alleging that the national legislation does not provide for mandatory and documented procedures to secure real forms of participation by workers' and their representatives in consultations on OSH at the workplace. ***The Committee requests the Government to provide its comments in this respect and to provide further information on the establishment of effective procedures to ensure the implementation of the rights of workers and their representatives to be consulted on OSH matters, and to participate in measures, relating to safety and health at the workplace in accordance with the provisions of the Article.***

The Committee is raising other matters in a request addressed directly to the Government.

Bolivarian Republic of Venezuela

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)

Previous comment

The Committee notes the observations on the application of the Convention submitted jointly by the Independent Trade Union Alliance Confederation of Workers (CTASI), the Confederation of Workers of Venezuela (CTV), and the Federation of University Teachers' Associations of Venezuela (FAPUV), received on 1 September 2022. The Committee also notes the observations submitted by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 2 September 2022. ***The Committee requests the Government to provide its comments in this respect.***

Articles 4, 7 and 8 of the Convention. Implementing and periodically reviewing a coherent national policy on occupational safety and health and the working environment, and measures to give effect to the above-mentioned national policy in consultation with the most representative organizations of employers and workers concerned. In relation to its previous comments, the Committee notes that section 11 of the 2005 Basic Act on prevention, conditions of work and the working environment (LOPCYMAT) sets out 12 elements to be included in the national occupational safety and health (OSH) policy, which include the mechanisms and policies for coordination between the competent bodies and entities in occupational health and safety and prevention. In this respect, the Committee notes the information provided by the Government in its report on the various measures to implement the national OSH policy though the training of prevention delegates by the National Institute for Occupational Safety, Health and Prevention (INPSASEL), the undertaking of a considerable number of investigations into

occupational accidents and diseases, and the carrying out of 90,523 occupational safety and health inspections from 2016 to July 2022.

The Committee notes with ***regret*** that the Government has not provided information on the implementation and periodic review of the national policy or the manner in which consultations are held on the implementation measures for the policy with the most representative employers' and workers' organizations concerned. ***The Committee requests the Government to take the necessary measures without delay to ensure that consultations are held with the most representative workers' and employers' organizations concerned regarding the implementation and periodic review of its national policy, as well as on the necessary measures adopted to give effect to this policy in accordance with Articles 4 and 8 of the Convention, and to provide specific information on the measures taken in this respect, including the employers' and workers' organizations consulted and the results of such consultations. The Committee also requests the Government to provide information on the measures taken to ensure that the occupational safety and health situation and working environment is reviewed at appropriate intervals, as well as information on the outcomes of this review, including the main problems identified, the means of resolving them and priorities for action.***

Article 5(e). Protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the national OSH and working environment policy. In relation to its previous comments on the dismissal of prevention delegates, the Committee notes with ***concern*** the joint observations of CTASI, CTV and FAPUV alleging the dismissal of union leaders in the cement industry for reporting the occurrence of occupational accidents. The Committee notes that, in accordance with section 11(5) of the LOPCYMAT of 2005, the national OSH policy must include safeguards and other protections for workers who act individually or collectively in defence of their rights. ***The Committee urges the Government to examine, together with the trade union organizations concerned, the situation of the trade union leaders who have been adversely affected and, in the event that they have been dismissed as a result of actions justifiably taken by them in accordance with national policy, to reinstate them immediately in their jobs without loss of benefits in compliance with section 11(5) of the 2005 LOPCYMAT and Article 5(e) of the Convention. The Committee requests the Government to provide information on the measures taken in this respect, including the conclusions of the examination carried out together with the trade union organizations and the measures taken as a result. The Committee also requests the Government to provide specific information in relation to the review of the unjustified dismissal of prevention delegates to which the Committee referred in its previous comments and the measures adopted as a result of this review.***

Articles 6 and 15. Functions and responsibilities and coordination between the various authorities and bodies. In relation to its previous comments in which it took note that the National Council for Occupational Safety and Health was not operational, the Committee notes with ***regret*** that the Government has not provided information regarding making the Council operational or on the measures taken or envisaged to ensure the necessary coordination between the various authorities and bodies responsible for giving effect to the provisions of the Convention. ***The Committee requests the Government to take the necessary measures to ensure that the National Council for Occupational Safety and Health, established pursuant to section 36 of the 2005 LOPCYMAT, becomes operational. The Committee also once again requests the Government to provide information on the measures taken or envisaged to ensure the necessary coordination between the various authorities and bodies responsible for giving effect to the provisions of the Convention, as well as on the consultations held with the most representative organizations of employers and workers concerning these measures and on their outcomes.***

Article 11(d). Holding of inquiries where cases of occupational accidents appear to reflect serious situations and application of the Convention in practice. The occupational safety and health situation in the electricity, petroleum, cement and healthcare sectors. In relation to its previous comments, the Committee notes the Government's indication that, in accordance with the protocol established by INPSASEL on the

investigation of occupational accidents, serious, very serious and fatal occupational accidents notified to the State-level Departments of Occupational Safety and Health (GERESAT) are investigated immediately. The Government adds that, in relation to occupational diseases, the investigation protocol establishes that they must be investigated according to the order in which they are presented, notified or recorded. The Committee notes that under the 2005 LOPCYMAT, the OSH services, which are multidisciplinary and preventive in nature (section 39), have the obligation to investigate occupational accidents and diseases in order to explain what happened and take the necessary corrective measures (section 40(14)).

With regard to the measures taken in relation to OSH conditions in the cement and petroleum sectors, the Committee notes the Government's indication that INPSASEL receives and records notifications of occupational accidents and then carries out the related investigations and inspections. In this regard, the Government reports the number of occupational accidents notified to INPSASEL between 2017 and July 2022 in the petroleum sector (2,467 accidents) and in the cement sector (489 accidents), as well as the number of inspections carried out between 2021 and July 2022 in the petroleum sector (18 inspections) and in the cement sector (4 inspections).

The Committee also notes with ***concern*** the information provided by CTASI, CTV and FAPUV in their joint observations on OSH conditions, in which they allege that: (i) in the electricity sector, a lack of minimum safe working conditions poses a serious danger to workers and led to the death of six workers between March and June 2022: three workers died after an electrical tower on which they were working collapsed and three workers were electrocuted while attempting to correct electrical faults; (ii) in the oil sector, fires, explosions and gas fumes have caused occupational accidents, and oil spills have damaged nets and boat engines, preventing fishermen from working, and have caused farmers to lose animals and crops; (iii) in the cement sector, OSH conditions, including a lack of provision of adequate work equipment and tools, led to the death of two workers while performing their duties in 2022; and (iv) in health centres, the lack of water and disinfectant for cleaning facilities, the reuse of masks due to insufficient supplies, and the failure to provide protective barriers have led to the infection and death of medical personnel, as well as the closure of 80 per cent of health centres nationwide. ***Taking due note of the information provided by the above-mentioned organizations, the Committee urges the Government to establish a forum for dialogue with these organizations in order to discuss the necessary measures to be taken in relation to OSH conditions in the electricity, petroleum, cement and healthcare sectors. The Committee also requests the Government to provide information on the investigations carried out into serious and fatal occupational accidents in the electricity, petroleum, cement and healthcare sectors.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2024.]

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 13** *(Cameroon, Central African Republic, Chad, Chile, Colombia, Côte d'Ivoire, Djibouti, Madagascar, Morocco, Nicaragua, Bolivarian Republic of Venezuela);* **Convention No. 45** *(Cameroon, China, Costa Rica, Côte d'Ivoire, Croatia, Ecuador, Guinea-Bissau, Morocco, Nicaragua, Nigeria, Bolivarian Republic of Venezuela);* **Convention No. 62** *(Central African Republic, Democratic Republic of the Congo, Malta, Netherlands);* **Convention No. 115** *(Chile, China, China: Macau Special Administrative Region, Djibouti, Finland, France: French Polynesia, Lebanon, Lithuania, Netherlands, Nicaragua, Ukraine);* **Convention No. 119** *(Central African Republic, Democratic Republic of the Congo, Ecuador, Finland, Madagascar, Malta, Morocco, Nicaragua, Niger, North Macedonia, Ukraine);* **Convention No. 120** *(Central African Republic, Costa Rica, Democratic Republic of the Congo, Djibouti, Finland, Lebanon, Madagascar, Saudi Arabia, Ukraine, Bolivarian Republic of Venezuela);* **Convention No. 127** *(Chile, Costa Rica, Lebanon,*

Lithuania, Madagascar, Malta, Nicaragua, Bolivarian Republic of Venezuela); **Convention No. 136** *(Chile, Colombia, Côte d'Ivoire, Ecuador, Finland, Lebanon, Malta, Morocco, Nicaragua);* **Convention No. 139** *(Croatia, Ecuador, Finland, Lebanon, Netherlands, Nicaragua, North Macedonia, Ukraine, Bolivarian Republic of Venezuela);* **Convention No. 148** *(China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Costa Rica, Croatia, Ecuador, Finland, Lebanon, Malta, Netherlands, Niger, North Macedonia);* **Convention No. 155** *(Cabo Verde, Central African Republic, China, China: Macau Special Administrative Region, Côte d'Ivoire, Croatia, Cyprus, Ethiopia, Finland, Malawi, Netherlands, New Zealand, Niger, Rwanda, Ukraine, Bolivarian Republic of Venezuela);* **Convention No. 161** *(Chile, Colombia, Côte d'Ivoire, Croatia, Finland, Niger, North Macedonia, San Marino, Ukraine);* **Convention No. 162** *(Cameroon, Chile, Colombia, Croatia, Cyprus, Ecuador, Finland, Morocco, Netherlands);* **Convention No. 167** *(China, China: Macau Special Administrative Region, Colombia, Finland, Guinea, Russian Federation);* **Convention No. 170** *(China, Colombia, Côte d'Ivoire, Cyprus, Finland, Lebanon, Netherlands);* **Convention No. 174** *(Colombia, Finland, Lebanon, Netherlands, Ukraine);* **Convention No. 176** *(Finland, Lebanon, Morocco, Ukraine);* **Convention No. 184** *(Finland, Malawi, Serbia, Ukraine);* **Convention No. 187** *(Chile, Côte d'Ivoire, Cyprus, Finland, Iceland, Malawi, Morocco, Niger, Philippines, Rwanda).*

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 13** *(Finland).*

Social security

Central African Republic

Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1964)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Articles 1 and 2 of the Convention. List of recognized occupational diseases. With reference to its previous comments, the Committee once again notes with ***concern*** that the list of occupational diseases envisaged in section 91 of the Social Security Code of 2006 and section 81 of Decree No. 09-116 of 27 April 2009, on the application of the Social Security Code, has still not been adopted by the Ministers responsible for social security and public health. The Government indicates in this regard that in 2013 a national delegation participated in the work of the technical committee responsible for finalizing the harmonized list of occupational diseases at the Inter-African Conference on Social Insurance (CIPRES) and that the committee responsible for preparing the list has taken up its work once again. The recurrent crises experienced by the country in recent years have however prevented the Government from finalizing the process of the preparation of the list of occupational diseases. The Committee wishes to emphasize that, without a list of occupational diseases, it is impossible to implement not only compensation, but also the prevention of such diseases. ***The Committee therefore once again expresses the hope that the technical committee responsible for the adoption of the list of occupational diseases will be in a position to complete its work in the very near future and that the Ministries concerned will be able to adopt the schedules of occupational diseases envisaged in the Social Security Code and Decree No. 09-116, taking duly into consideration the Schedule annexed to the Convention.*** In this regard, the Committee draws the Government's attention to the List of Occupational Diseases Recommendation, 2002 (No. 194), which contains the most up-to-date list of occupational diseases at the international level.

Recommendations of the Standards Review Mechanism. The Committee notes that, according to the recommendations made by the Tripartite Working Group of the Standards Review Mechanism, as approved by the ILO Governing Body, Member States which have ratified the Convention are encouraged to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and/or the Social Security (Minimum Standards) Convention, 1952 (No. 102), and accept the obligations in its Part VI, as the most up-to-date instruments in this subject area (GB.328/LILS/2/1). The Committee reminds the Government of the possibility of having recourse to ILO technical assistance in this regard.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1964)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee recalls that, following the adoption of Act No. 06-035 of 28 December 2006 issuing the Social Security Code, Decree No. 09-116 of 27 April 2009 implementing that Act, and Decree No. 09-115 of 27 April 2009 determining the legal and institutional status of the National Social Security Fund, the national law and regulations continue to be based on the principle that equality of treatment is subject, contrary to *Article 4(1)* of the Convention, to the condition of the residence of foreign nationals in the national territory. The provision of benefits abroad is only possible if it is provided for by a bilateral or multilateral social security agreement, which is contrary to the provisions of *Article 5(1)* of the Convention. In the Central African Republic, this provision of the Convention requires the provision of old-age benefit and employment injury pensions, without other conditions, to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of these benefits. The Committee notes that the Government, in its report, does not indicate any measures adopted or envisaged with a view to amending the national legislation to bring it into conformity with these provisions of the Convention. In light of the

information available, the Committee concludes once again that the national legislation continues not to give full effect to the essential provisions of the Convention. ***The Committee expects that the Government will take the necessary measures to make appropriate amendments to the legislation so as to give full effect to the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Chile

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1931)

Sickness Insurance (Agriculture) Convention, 1927 (No. 25) (ratification: 1931)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on social security, the Committee considers it appropriate to examine Conventions Nos 24 (sickness insurance, industry) and 25 (sickness insurance, agriculture) together.

Article 7(1) of the Conventions. Contribution to the establishment of the sickness insurance fund. With regard to its previous comments, the Committee notes from the Government's report that, in accordance with sections 158 and 184 and following. of Legislative Decree No. 1 of 2006, the public health system and the private health scheme are financed with a 7 per cent contribution from workers' pay or income, besides additional contributions by workers in the private scheme. The Committee notes that the State contributes to both schemes in certain circumstances. One of the circumstances in which the State shall contribute is established by Act No. 20850 of 2015, which envisages a financial protection system for high-cost diagnoses and treatment. Another circumstance is provided for by Act No. 21010 of 2017, which has created a fund to finance the Insurance to Support Children (SANNA), which benefits working parents of children under the ages of 15 or 18 years with serious health conditions. In addition, the Committee notes that the SANNA also receives the monthly contributions paid by the employer or the self-employed worker, the amount of which is 0.03 per cent of taxable income. While noting the employers' contribution to the establishment of the sickness insurance fund in respect of compensation to support children with serious health conditions, the Committee observes that the sickness insurance, which includes medical care and sickness benefits, is mainly financed by insured persons, with the State's participation in certain circumstances. ***In this regard, the Committee recalls the importance of fulfilling the basic principle provided for in Article 7(1) of the Conventions, under which workers and employers shall share in providing the financial resources of the sickness insurance fund. The Committee requests the Government, in consultation with the social partners, to ensure the full application of the principle provided for in these Articles of the Conventions and to provide information in this respect.***

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM tripartite working group), the Governing Body decided that Member States for which Conventions Nos 24 and 25 are in force should be encouraged to ratify the more recent Medical Care and Sickness Benefits Convention, 1969 (No. 130), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting Parts II and III (see GB.328/LILS/2/1). Conventions Nos 130 and 102 reflect the more modern approach to medical care and sickness benefits. ***The Committee therefore encourages the Government to follow up the Governing Body decision at its 328th Session (October–November 2016) approving the recommendations of the SRM tripartite working group and to consider ratifying Convention No. 130 or No. 102 (Parts II and III), as the most up-to-date instruments in this subject area. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office in this regard.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Finland

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1976)

Previous comment

Article 25, in conjunction with Article 21 of the Convention. Duration of payment of survivors' benefits. The Committee notes from the Government's report that, pursuant to the 2022 reform of the survivors' pension scheme, the duration of the surviving spouse's pension is limited to a period of ten years, or until the youngest child reaches the age of 18. The Committee recalls that *Article 25* of the Convention requires survivors' benefits be granted throughout the contingency, which is the loss of support suffered by the spouse or child as the result of the death of the breadwinner, as per *Article 21(1)*. While the entitlement of spouses to survivors' benefits may be conditional upon them being incapable of self-support, the Convention does not allow such entitlement to be based on other conditions such as caring for a dependent or to be limited in time, without this limitation being justified by a change in their own circumstances. ***The Committee therefore requests the Government to take the necessary measures to ensure that survivors' benefits are paid throughout the contingency, in line with Article 25 of the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

Lebanon

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1977)

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1977)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on workmen's compensation, the Committee considers it appropriate to examine Convention No. 17 (accidents) and No. 19 (equality of treatment) together.

Convention No. 17. Application of the Convention in practice. In its previous comments, the Committee hoped that the Government would make every effort to complete the reforms required to guarantee the protection afforded by the Convention to injured workers. The Committee notes the information provided by the Government in its report according to which, issues in the application of the Convention were due to the delayed implementation of the Occupational Accidents and Occupational Diseases Branch, established by the Social Security Code (Decree No. 13955 of 1963) but not yet established in practice. The Committee notes with ***concern*** that compensation in case of work-related accidents is still regulated by Legislative Decree No. 136 of 1983, which it has previously found not to be in compliance with the requirements of the Convention in many respects: *Article 2* – the necessity to make the above Legislative Decree applicable to apprentices; *Article 5* – the necessity to provide in the event of employment injury that the compensation shall be paid in the form of periodical payments to the injured worker or his or her dependants, provided that it may only be paid in the form of a lump sum where there are guarantees that it will be properly utilized; *Article 6* – the payments of compensation in case of temporary incapacity from the fifth day following the accident at the latest and throughout the duration of the invalidity, that is until the worker is cured, or up to the date of the commencement of the periodical payments for permanent incapacity; *Article 7* – necessity to provide additional compensation where the worker requires the constant help of another person; *Article 8* – provision for review of the periodical payments either automatically or at the request of the beneficiary in the event of a change in the condition of the worker; and *Article 11* – making provision for guarantees in the event of the insolvency of the insurer, inter alia. The Committee observes that, despite the comments it has been making for many years, the measures necessary to bring the national legislation into conformity with

the Convention have still not been taken. ***The Committee once again requests the Government to report on measures envisaged or taken with a view to giving full effect to the Convention, including measures related to the amendment of Legislative Decree No. 136 of 1983 and the implementation of the Occupational Accidents and Occupational Diseases branch of the Social Security Code.***

Article 1(1) and (2) of Convention No. 19. Equality of treatment for survivors. In its previous comments, the Committee recalled that, for many years, it has been drawing the Government's attention to the issue of the right of survivors of foreign workers, originating from a country party to Convention No. 19, to receive a pension even if they did not reside in Lebanon at the time of the accident causing the death of their breadwinner, and hoped that the new Labour Code would guarantee this right in law and practice and would not forestall the corresponding amendment of the legislation governing compensation for employment injuries, namely section 10 of Legislative Decree No. 136 of 1983 and sections 9(3), subparagraphs (2) and (4) of the Social Security Code. The Committee notes the Government's indication that it would be necessary to amend the relevant provisions in the Social Security Code once the Occupational Accidents and Occupational Diseases Branch is enacted to give effect to the Convention. ***Recalling that the Convention guarantees equality of treatment between the dependants of nationals and those of foreign workers from a country which has ratified the Convention without any requirement as to residence and irrespective of any reciprocity condition, the Committee once again requests the Government to take necessary measures to bring the national legislation in conformity with the Convention.***

The Committee has been informed that, based on the recommendations of the Standards Review Mechanism Tripartite Working Group (SRM tripartite working group), the Governing Body has decided that Member States for which Convention No. 17 is in force should be encouraged to ratify the more recent Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), or the Social Security (Minimum Standards) Convention, 1952 (No. 102), accepting its Part VI (see GB.328/LILS/2/1). Conventions Nos 102 and 121 reflect the more modern approach to employment injury benefits. ***The Committee therefore encourages the Government to follow up the Governing Body's decision at its 328th Session (October–November 2016) approving the recommendations of the SRM tripartite working group and to consider ratifying Conventions Nos 102 (Part VI) or 121 as the most up-to-date instruments in this subject area. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office in this regard.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Libya

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1975)

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1975)

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1975)

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1975)

Previous comment

In order to provide a comprehensive view of the issues relating to the application of ratified Conventions on social security, the Committee considers it appropriate to examine Conventions Nos 102 (Social Security (Minimum Standards)), 121 (Employment Injury Benefits) and 128 (Invalidity, Old-Age and Survivors' Benefits) together.

Article 65, 66 or 67, of Convention No. 102, Article 19 or 20 of Convention No. 121, Article 26, 27 or 28 of Convention No. 128. Review of the level of social security benefits. Since 2004, the Committee has been requesting the Government to take measures to give full effect to the provisions of the above-

mentioned Conventions, in law and in practice. In this regard, the Committee takes note of the indication by the Government in its report that the level of social security benefits provided in Libya in accordance with Law No. 16 of 1985 must not be less than the minimum wage, currently set in 450 dinars per month, and that pursuant to a Council of Ministers Decision No. 1 of 2021, a study is being conducted to evaluate the possibility of increasing the level of social security benefits up to a maximum of 800 dinars per month for low-income families. The Government also indicate its intent to request ILO's technical assistance in this regard. ***The Committee requests the Government to: (i) indicate which are the benefits concerned by this evaluation; (ii) provide information on the findings and recommendations of the study; and (iii) supply information on any measure taken or envisaged to increase the level of benefits provided in application of Conventions Nos 102, 121 or 128, as the case may be, together with the statistical information necessary for the Committee to assess the conformity of the benefit levels with the requirements of the Conventions concerned. The Committee strongly encourages the Government to avail itself of ILO technical assistance.***

Application of Conventions Nos 102, 121 and 128 in law and in practice. Since 2004, the Committee has been requesting the Government to provide information on developments in respect of measures taken to give full effect to the provisions of the above-mentioned Conventions, including statistical data as to the coverage and adequacy of benefits provided by the Social Security Fund. ***In order to be able to resume the examination of the pending technical issues under the above-mentioned Conventions, the Committee*** ***requests the Government to supply, without further delay, detailed statistical data and information in the manner provided by the report forms, particularly concerning information in conformity with Title I of Article 76 of the report form for Convention No. 102, Title V of Article 12 of the report form of Convention No. 118, Titles I to V of the Articles 13, 14, and 18, and Article 21 of the report form of Convention No. 121, Titles under Parts V and VII of the report form of Convention No. 128.***

Article 3(1) of Convention No. 118. Equality of treatment. For over 20 years, the Committee has found that several provisions of the national legislation are not in conformity with *Article 3(1)* of the Convention, since they establish different conditions and requirements for the entitlement of non-Libyan workers to social security benefits. The Committee recalls that this concerns, in particular:

(i) section 38 of Social Security Act No. 13 of 1980 and Regulations 28–33 of the Social Pensions Regulations of 1981, which provide that non-Libyan workers receive a lump sum for premature termination of work, while nationals are guaranteed the maintenance of their wages or remuneration;

(ii) sections 5(c) and 8(b) of the Social Security Act that, which do not provide for the compulsory affiliation of self-employed non-Libyan workers or those working in the public administration to the social security scheme;

(iii) Regulation 16(2) and (3) and Regulation 95(3) of the Social Pensions Regulations, under which non-Libyan nationals who have not completed the minimum period of ten years of contributions to the social security scheme are not entitled to an old-age pension or to a pension for total incapacity due to a non-occupational injury, while Libyan workers are;

(iv) Regulation 174(2) of the Social Pensions Regulations, under which the minimum qualifying period of ten years of contributions is also required for benefits due to survivors of a non-Libyan national, as opposed to Libyan nationals.

The Committee recalls that *Article 3(1)* of the Convention requires Member States for whom the Convention is in force to grant within their territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention. ***Consequently, it urges the Government to make the***

necessary amendments to its national legislation, and in particular to the provisions mentioned above to ensure the full application, in law and in practice, of this Article.

Articles 5 and 10 of Convention No. 118. Payment of benefits abroad. The Committee notes that section 161 of the Social Pensions Regulations of 1981 expressly provides that pensions or other cash benefits may be transferred to beneficiaries resident abroad only where that is envisaged by agreements to which Libya is a party. The Committee recalls once more that, in accordance with *Article 5* of the Convention (read in conjunction with *Article 10*), each Member which has ratified the Convention must guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations of the Convention in respect of the branch in question, as well as to refugees and stateless persons, when they are resident abroad, the provision of invalidity benefits, old-age benefits, survivors' benefits, death grants and employment injury pensions. ***The Committee requests the Government to take the necessary measures to give effect to Articles 5 and 10 of the Convention by ensuring that pensions and cash benefits can be paid to workers and their survivors, including refugees and stateless persons, residing abroad regardless of the existence of bilateral agreements between Libya and the other Member State in which they reside.***

Netherlands

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1966)

Previous comment: direct request

The Committee notes the observations of the National Federation of Christian Trade Unions (CNV), the Netherlands Trade Union Confederation (FNV), and the Trade Union Federation for Professionals (VCP), received on 31 August 2021 and 31 August 2022 and requests the Government to provide its reply to them

Article 14 of the Convention. Minimum degree of loss of earning capacity. The Committee previously observed that a minimum degree of 35 per cent incapacity for the entitlement to the cash benefits under the Work and Income (Employment Capacity) Act of 2006 (WIA) was set too high to comply with *Article 14.* The Committee notes the indication by the Government in its report that the minimum degree of 35 per cent incapacity was set in an agreement with the trade unions and the employers' organizations. The Government further indicates that according to the financial assessments, the reduction of the minimum degree would lead to higher costs and entail major adjustments of the scheme which requires a complex and thorough analysis.

The Committee notes the observations of the CNV, the FNV, and the VCP indicating that: (1) for many years, they have been proposing that the minimum degree of incapacity should be lowered from 35 per cent to 15 per cent; (2) contrary to the original purpose of the WIA according to which persons with less than 35 per cent of incapacity were supposed to stay on the labour market, it appears in practice that the loss of 35 per cent capacity for work or less often constitutes an obstacle for employers to keep such workers; and (3) a substantial group of people fall outside the income protection provided under the WIA requiring the minimum degree of 35 per cent incapacity.

The Committee recalls that according to *Article 14* of the Convention, the degree of loss of earning capacity for which cash benefits become payable shall be prescribed in such a manner as to avoid hardship. The Committee further recalls that according to *Article 14* of the Convention, cash benefits in excess of such minimum degree may take the form of periodical payments or lump-sum payments if partial loss of earning capacity is not substantial. In this respect, the Committee previously observed that incapacity below 25 per cent could be regarded as not substantial and compensated by lump-sum payments, in line with Paragraph 10 of the Employment Injury Benefits Recommendation, 1964

(No. 121). The Committee also pointed out to the fact that, depending on the existence of other complementary income guarantees, lump-sum compensation had been considered by the Committee to be in compliance with the Convention in certain cases for incapacity up to 35 per cent. However, the WIA provides for neither periodic cash benefits, nor lump-sum payments in case of incapacity below 35 per cent.

While taking due note of the explanations provided by the Government, the Committee recalls its earlier position and analysis and is still of the opinion that the minimum degree of 35 per cent incapacity for the entitlement to cash benefits is not in compliance with the provisions of *Article 14* of the Convention. ***The Committee urges the Government, without further delay, to take the necessary measures in full consultation with the most representative trade union and employers' organizations to bring the national legislation in line with Article 14 of the Convention by ensuring that persons with incapacity below 35 per cent are entitled to cash benefits in case of employment injury, and to report on the measures taken for that purpose.***

Article 14(2), in conjunction with Articles 6(c) and 22(1). Total loss of earning capacity likely to be permanent. The Committee previously observed that a person who is completely (at least 80 per cent) and permanently incapable for work shall be entitled to the benefits under the Income Provision for Persons with Full Occupational Disability Scheme (IVA benefits), as per section 47 of the WIA. The IVA benefit amounts for 75 per cent of the previous monthly wage but it is subject to reduction if a beneficiary earns an income (sections 51-52 of the WIA). In this respect, the Committee observes that the Convention does not authorize any reduction of cash benefits in case a fully incapacitated person earns additional income from any gainful occupation, leaving him or her free to combine invalidity benefit with work. The Committee recalls that according to *Article 6(c)* of the Convention, the definition of the contingency of total or partial loss of earning capacity likely to be permanent does not include actual suspension of earnings in comparison with, for example, the definition of temporary incapacity for work, as per *Article 6(b)* of the Convention. The Committee further recalls that the provisions of the WIA allowing the reduction of the IVA benefit in case a beneficiary earns income from a gainful occupation go beyond the requirements of *Article 22(1)* of the Convention which limits the grounds for suspension of benefits. ***The Committee requests once again the Government to take the necessary measures, without further delay, to ensure that the IVA benefit is not subject to reduction when a beneficiary earns income from any gainful occupation, in line with Articles 14(2) and 22(1) of the Convention.***

Article 14(3), in conjunction with Article 9. Substantial partial loss of earning capacity likely to be permanent. (i) Entitlement conditions for the WGA wage-related benefit. The Committee previously noted that to be entitled to the benefits under the Resumption of Work for Persons with Partial Disability Scheme, WGA (WGA wage-related benefit), a person with incapacity for work of between 35–80 per cent was obligated to register as a jobseeker, make sufficient attempts to obtain suitable work, and accept an offer of such work (section 30 of the WIA). The entitlement to the WGA wage-related benefit depends on the insured being also entitled to unemployment benefit (section 58 of the WIA). Those not eligible for unemployment benefit can get the WGA wage supplement benefit or the WGA follow-up benefit (section 54(4) of the WIA).

The Committee recalls once again that subjecting the entitlement to the benefit to an obligation to make use of the remaining earning capacity is not foreseen by the Convention *(Articles 9 and 14(3))*. The Committee therefore considers that under the conditions prescribed by section 30 of the WIA, the WGA wage-related benefit is not in conformity with the requirements set out in the above-mentioned Articles of the Convention. ***Considering that the WGA wage-related benefit shall not be subject to the conditions set out by section 30 of the WIA to be considered for the purpose of the application of the Convention, the Committee requests the Government to take the necessary measures to ensure the compliance of the entitlement conditions for the WGA wage-related benefit with Articles 9 and 14(3) of the Convention.***

(ii) Qualifying period for the entitlement to the WGA wage-related benefit. The Committee notes that the entitlement to the WGA wage-related benefit is subject to the qualifying period of employment for at least one working hour per calendar week in at least 26 calendar weeks (section 58 of the WIA). In this respect, the Committee recalls that under *Article 9(2)* of the Convention, eligibility for benefits may not be made subject to the length of employment, to the duration of insurance or to the payment of contributions. ***The Committee requests the Government to take the necessary measures to ensure that the entitlement to the WGA wage-related benefit is not subject to a requirement of completion of certain length of employment or the duration of insurance, in line with Article 9(2) of the Convention.***

(iii) Duration of the WGA wage-related benefit. The Committee notes that the WGA wage-related benefit is paid for at least three months and at most 24 months (section 59 of the WIA). It further observes that the duration of the WGA wage-related benefit is subject to the length of the previous employment period. In particular, one month of the payment of benefit is equal to one calendar year of employment (section 59 of the WIA). In this respect, the Committee recalls that the Convention does not permit the benefit to be affected by the length of employment and requires that the benefit is granted throughout the contingency *(Article 9(2)* and *(3))*. The Committee therefore considers that the WGA wage-related benefit may only be taken into account for the purpose of the application of the Convention in its minimum duration of three months. ***The Committee thus requests the Government to take the necessary measures to ensure the compliance of the duration of the WGA wage-related benefit with Article 9(2) and (3) of the Convention, should the Government wish to consider the WGA wage-related benefit beyond its minimum duration for the purpose of the application of the Convention.***

Article 14(3), in conjunction with Article 9. Substantial partial loss of earning capacity likely to be permanent. Entitlement to the WGA wage supplement benefit. The Committee previously noted that the WGA wage supplement benefit was provided after the payment of the WGA wage-related benefit, or in case a person was not entitled to the WGA wage-related benefit (section 60 of the WIA). The Committee further observed that the WGA wage supplement benefit was subject to the income requirement that a person partially capable of work must earn per calendar month an income from work which is at least equal to 50 per cent of his or her remaining earning capacity (section 60 of the WIA). The Committee recalls once again that the requirement to use the residual earning capacity as a condition for entitlement is not in conformity with the Convention, which guarantees entitlement to benefits at the prescribed level without regard to the residual earning capacity and additional income which could be earned by the workers with partial incapacity *(Articles 9 and 14(3))*. ***The Committee thus requests the Government to take the necessary measures to ensure the compliance of the entitlement conditions of the WGA wage supplement benefit with Articles 9 and 14(3) of the Convention, should the Government wish to consider the WGA wage supplement benefit for the purpose of the application of the Convention.***

Article 14(3), in conjunction with Article 19. Level of the WGA follow-up benefit. The Committee previously observed that the WGA follow-up benefit was a flat rate benefit calculated on the basis of the legal minimum wage and not as a percentage of the beneficiary's previous wage. The Committee, however, recalls that according to *Article 14(3)* of the Convention, the benefit for partial incapacity shall represent a suitable proportion of the benefit for total incapacity the level of which shall be at least of 60 per cent of the standard's beneficiary earnings *(Article 19* and *Schedule II)*. The Committee notes that the IVA benefit which is provided in case of total incapacity is determined as 75 per cent of the previous monthly wage (section 51 of the WIA). The Committee therefore considers that the WGA follow-up benefit does not represent a suitable proportion of the IVA benefit, particularly as regards persons with income above the legal minimum wage. ***The Committee requests the Government to take the necessary measures, without further delay, to ensure that the level of the WGA follow-up benefit is in line with the requirements of Articles 14(3) and 19 of the Convention.***

Based on the above, the Committee notes with ***deep concern*** that the cash benefits provided under the Work and Income (Employment Capacity) Act of 2006 (WIA) do not ensure the level of

protection set out in the Convention on a range of issues and that, despite its comments on the non-compliance of the provisions of the WIA since 2007, no change has been made to the national legislation to bring it in line with the requirements of the Convention. ***The Committee reminds the Government of the possibility to avail itself of ILO technical assistance in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2025.]

Nicaragua

Workmen's Compensation (Agriculture) Convention, 1921 (No. 12) (ratification: 1934)

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1934)

Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1934)

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1934)

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1934)

Sickness Insurance (Agriculture) Convention, 1927 (No. 25) (ratification: 1934)

Previous comment

In order to provide an overview of matters relating to the application of the ratified Conventions on social security, the Committee considers it appropriate to examine the application of Conventions Nos 12, 17, 18, 19, 24 and 25 in a single comment.

Article 1 of Conventions Nos 12, 17, 18, 19, 24 and 25. In its previous comments, the Committee emphasized the need to extend the coverage of the social security system and requested the Government to provide information on the progress made in this regard. As the Government's report does not contain specific information on this subject, the Committee notes the information contained in the Statistical Yearbook 2020, published in February 2021 by the Nicaraguan Social Security Institute (INSS), which shows that the numbers of persons registered with the social security system have fallen constantly since 2016, with a reduction of 27 per cent in the number of insured persons as a proportion of the economically active population and 35 per cent as a proportion of the population that is actually employed. The total number of insured persons fell from 914,196 in 2017 to 714,465 in 2020 (page 328). The Committee also observes that the proportion of the population covered by sickness insurance has decreased, as has the number of newly insured persons, falling from 124,802 to 59,603 (page 327). Moreover, according to the continuous household survey, published by the National Development Institute of Nicaragua in April 2021, the informal employment rate was around 45 per cent. The Committee also observes that, according to the ILO Social Protection Platform, in 2021, only 14.5 per cent of the population was effectively covered by at least one social protection benefit.

The Committee expresses ***concern*** at the above statistics, which point to a constant reduction in social insurance rates and in the number of persons protected, and an accelerating increase in the informal employment rate. In this regard, the Committee draws the Government's attention to *Article 1 of Conventions Nos 12, 17, 18, 19, 24 and 25*, which guarantee the effective coverage and protection of workers and their families in the event of disease and accidents, whether occupational or of any other type. ***In light of the above, the Committee urges the Government to:***

(i) provide comprehensive statistical data on the current coverage of the social security system, disaggregated by branch in the various sectors of activity (industry, agriculture,

informal economy, etc.) in relation to the total number of workers, in accordance with the questions contained in the report forms for the various Conventions concerned; and

(ii) indicate the priorities adopted for the progressive extension of the coverage of the social security system and the measures envisaged or adopted, including in export processing zones and the agricultural sector.

Conclusions and recommendations of the Standards Review Mechanism. The Committee recalls the recommendations of the Tripartite Working Group of the Standards Review Mechanism (SRM), on the basis of which the Governing Body decided that Member States for which Conventions Nos 17, 18, 24 and 25 are still in force should be encouraged to ratify the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980 (No. 121), and the Social Security (Minimum Standards) Convention, 1952 (No. 102). ***The Committee encourages the Government to give effect to the decision adopted by the Governing Body at its 328th Session (October-November 2016) and to consider the ratification of the most up-to-date social security instruments.***

The Committee recalls that the Government may avail itself of ILO technical assistance in this respect.

[The Government is asked to reply in full to the present comments in 2025.]

Norway

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1954)

Previous comment: direct request

Article 36(3) of the Convention, in conjunction with Article 72. Employment injury benefits for incapacity of less than 30 per cent. Following its previous comments, the Committee notes from the Government's report that persons with incapacity for work above 30 per cent due to employment injury are entitled to periodic cash benefits under the National Insurance Scheme. In addition, lump-sum payments for loss of future income and for non-economic losses (reduced quality of life) are provided to persons with incapacity for work, including those with incapacity below 30 per cent, under the mandatory Occupational Injury Insurance Scheme *("yrkesskadeforsikringsloven")*, which is outside the framework of the National Insurance Scheme.

The Committee recalls that *Article 36(1)* and *(2)* of the Convention pursues the primary aim to ensure a permanent compensation, i.e. a periodical benefit in case of permanent total or partial loss of earning capacity caused by an employment injury. As an exception, *Article 36(3)(a)* of the Convention allows for the conversion of a periodical benefit into a lump-sum payment where the degree of incapacity is slight. The Committee has previously admitted incapacity below 30 per cent as a slight degree and allowed the conversion of periodical benefits into lump-sum payments which should bear an "equitable relationship" to the periodical payment otherwise due. In this respect, the Committee observes that the National Insurance Scheme does not provide any cash benefits in case of incapacity below 30 per cent. The Committee further observes that the compensation provided by the Occupational Injury Insurance Scheme constitutes a different additional payment, which is not made in lieu of a periodical payment otherwise due by the National Insurance Scheme, as in fact it bears no relationship to such a payment.

The Committee also recalls that according to *Article 72(1)* of the Convention, where the administration is not entrusted to an institution regulated by the public authorities or to a Government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions. In this respect, the Committee observes from the information provided by the Government that the Occupational Injury Insurance Scheme is administered by private insurance companies. The Committee

however observes that the Occupational Injury Insurance Act of 1989 does not indicate whether and how representatives of the persons protected may participate in the management of the Occupational Injury Insurance Scheme.

The Committee further takes note of the statement by the Government that improving the Norwegian Occupational Injury Scheme is part of its political platform. The Government considers the question of whether the National Insurance Scheme should provide disability benefit in the event of occupational injuries when the degree of incapacity is lower than 30 per cent to be a natural part of this work, and this would include considering the question of whether a disability benefit granted at low degrees of incapacity should be commuted into a lump-sum.

In view of the above, the Committee firmly hopes that, in the course of the intended reform, the Government will take the necessary measures to give full effect to Article 36 of the Convention by reducing the minimum threshold for the payment of periodic cash benefits under the National Insurance Scheme below 30 per cent of incapacity, subject to the possibility of commuting such benefits into a lump sum.

The Committee is raising other matters in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 17** *(Cabo Verde, Central African Republic, Myanmar);* **Convention No. 18** *(Niger);* **Convention No. 19** *(Cabo Verde, Lithuania, Myanmar, Nigeria);* **Convention No. 42** *(Myanmar, Netherlands: Sint Maarten);* **Convention No. 102** *(Benin, Cabo Verde, Chad, Costa Rica, Croatia, Cyprus, Czechia, Ecuador, Luxembourg, Netherlands, Niger, Norway, Russian Federation);* **Convention No. 118** *(Cabo Verde, Central African Republic, Ecuador, Netherlands: Sint Maarten);* **Convention No. 121** *(Croatia, Cyprus, Ecuador, Finland, Netherlands);* **Convention No. 128** *(Cyprus, Czechia, Ecuador, Finland, Netherlands, Norway);* **Convention No. 130** *(Czechia, Ecuador, Finland, Netherlands, Norway);* **Convention No. 168** *(Finland, Norway).*

Maternity protection

Chile

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1994)

Previous comment

The Committee notes with ***regret*** that the Government's report does not contain information in reply to its previous comments. The Committee therefore refers to its previous comments and once again addresses the following requests to the Government.

Article 4(3) of the Convention. Medical benefits. ***The Committee requests the Government to take the necessary measures to ensure the provision of medical benefits, including care during confinement, free-of-charge, and the freedom of choice of doctor and medical establishment, irrespective of income level or State contribution, for women in groups B (persons receiving the minimum wage), C and D (persons receiving income higher than the minimum wage).***

Article 4(5). Social assistance benefits. ***The Committee requests the Government to adopt the necessary measures to ensure the provision of maternity benefits to women who fail to meet the conditions for eligibility set out in section 4 of Legislative Decree No. 44 of 1978, which specifies the requirement of six months contributions for eligibility for maternity benefits. For that purpose, the Committee invites the Government to consider the possibility of extending the coverage of the family subsidy and SUF Maternal benefits to these women, and requests the Government to provide information in this regard.***

[The Government is asked to reply in full to the present comments in 2025.]

China

Hong Kong Special Administrative Region

Maternity Protection Convention, 1919 (No. 3) (notification: 1997)

Previous comment

Articles 3(c) and 4. Payment of maternity cash benefits and prohibition of dismissal during maternity leave. The Committee takes note of the information provided by the Government in reply to its previous comments, concerning the provision of maternity leave pay and maternity medical benefits to women workers who have been dismissed during maternity leave. It notes that, according to the Government, maternity leave pay is provided by employers to women who have been dismissed, unless it is proven by the employer that the dismissal was related to the workers' misconduct, as set out in section 9 of the Employment Ordinance. The Committee recalls that *Article 4* of the Convention affords full protection to women against dismissal during maternity-related leave.

The Committee observes that making employers directly liable for the costs of maternity benefits interrupts the provision of those benefits in case of unlawful termination of employment, and, therefore, may well lead to discrimination on the labour market. In allowing the dismissal of workers during maternity leave, section 9 of the Employment Ordinance is not only inconsistent with *Article 4,* but also with *Article 3(c)* of the Convention, once it results in the cessation of payment of maternity cash benefits to women for the full and healthy maintenance of herself and her child, which is not connected to the modality of possible dismissals during this period. ***The Committee requests the Government to take the necessary measures to bring the national legislation into conformity with the Convention, by amending, as soon as possible, section 9 of the Employment Ordinance to expressly prohibit employers***

from giving notice of dismissal to their workers for whatever reason during maternity-related leave, and to guarantee that, during this period, maternity benefits will be provided.

The Committee is raising other matters in a request addressed directly to the Government.

Ecuador

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1962)

Previous comment

Article 4(5) of the Convention. Women who fail to qualify for benefits. The Committee notes with ***regret*** that the Government's report does not provide any information in reply to its previous comments, which it has been making since 2011, concerning benefits paid out of social assistance funds for women who have not completed the minimum qualifying period or paid 12 uninterrupted monthly contributions in order to receive maternity benefits through the social security system. ***The Committee requests the Government to indicate the measures taken or envisaged to ensure the payment of maternity benefits: (i) paid out of social assistance funds for women who are still not covered by the social security system; (ii) in the context of social assistance for women who do not meet the conditions established by the Social Security Act, and to indicate the type and the amount of benefits provided in these two settings.***

Article 4(4) and (8). Financing of maternity benefits. The Committee notes the Government's indication in its report that, under section 22 of the "General regulations on cash subsidies" (Resolution No. C.S. 318 of 1978), social security institutions and funds are partially responsible for cash maternity benefits and that the responsibility for paying these benefits is shared between employers (up to 25 per cent) and the Government (funded up to 75 per cent through social security). The Committee recalls that, under *Article 4(4)* and *(8)* of the Convention, the benefits shall be provided either by means of social insurance or through public funds. The Committee also recalls that the direct payment of maternity benefits by employers, even partially, imposes a financial burden on employers and may create a possible source of discrimination against women. ***The Committee encourages the Government to analyse and consider the possibility of moving gradually from a hybrid system in which employers also bear part of the cost of cash maternity benefits to a system totally supported by social security, and to share the results of such analysis and consideration.***

[The Government is asked to reply in full to the present comments in 2025].

Libya

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1975)

Previous comments

Article 3(2), (3) and (4) of the Convention. Maternity leave and cash benefits duration. In its previous comments, the Committee requested the Government to harmonize the legislative provisions governing maternity leave in the Labour Relations Act (No. 12) and maternity benefits in the Social Security Act (No. 13) to guarantee that maternity benefits were secured throughout the statutory duration of maternity leave, i.e. 14 weeks, in application of *Article 3* of the Convention. The Committee notes the information provided by the Government in this regard, according to which action had been taken by the Social Security Fund (letter No. 39 mim/ta'/2021 of 24 August 2021), to request the legislative authorities to address this issue by amending the Social Security Act. ***The Committee hopes that the legislative amendments needed to ensure that maternity benefits are provided to women workers throughout the entire period of maternity leave, i.e. 14 weeks, will be enacted without further delay, and requests the Government to take the necessary measures for that purpose, to give full effect***

to Article 3(2), (3) and (4) of the Convention. The Committee further requests the Government to provide the text of the relevant legislative provisions once adopted.

Article 4(4) and (8). Cash benefits. The Committee notes the indication provided by the Government, in reply to its previous request, that the establishment of a separate maternity branch within the social security system was accepted and that the Social Security Fund would be informed about such changes. ***The Committee welcomes this development and hopes that the measures necessary to give effect to Article 4(4) and (8), will be taken without further delay, with a view to ensuring the provision of cash and medical benefits by means of compulsory social insurance or by means of public funds, and to ensure that employers are not individually liable for the cost of maternity benefits. The Committee requests the Government to provide information on the legislative provisions and other measures taken for this purpose.***

Article 6. Employment protection. In its previous comments, the Committee requested the Government to amend the Labour Relations Act (No. 12) to ensure that it would be prohibited to give notice of dismissal or terminate the employment relationship during maternity leave and any supplementary leave granted in case of illness medically certified as arising out of pregnancy or childbirth, as well as at such a time that the notice would expire during such absence. The Committee takes note of the information provided by the Government that the Labour Relations Act would address issues related to maternity leave, pregnancy and breastfeeding complications. The Committee notes, however, that section 25 of the Labour Relations Act, which allows for notice of dismissal and termination of employment relationships during pregnancy or maternity leave in cases when there is a justifiable reason not related to pregnancy or maternity, has not been amended and, that it is still not fully compliant with *Article 6* of the Convention, which does not allow for such exceptions. ***The Committee therefore hopes the Government will shortly enact amendments to section 25 of the Labour Relations Act, ensuring that the national legislation expressly prohibits employers from giving notice of dismissal to workers during pregnancy or maternity related leave. The Committee further requests the Government to provide the text of the legislative provisions to that effect.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2025.]

Netherlands

Maternity Protection Convention, 2000 (No. 183) (ratification: 2009)

Previous comment

The Committee notes the observations of the National Federation of Christian Trade Unions (CNV) and the Netherlands Trade Union Confederation (FNV) communicated with the Government's report.

Article 9(1) of the Convention. Discrimination in employment, including access to employment. With respect to its previous request to take measures to effectively tackle the problems of application in practice of the prohibition of discrimination based on maternity, the Committee takes note of the adoption in 2017 of the Action Plan against Pregnancy Discrimination, which aims to strengthen labour inspections, increase pregnant women's knowledge and awareness of their rights, and increase the willingness to report cases of pregnancy discrimination. According to the Government, the measures taken under the Action Plan against Pregnancy Discrimination included the launch by the Netherlands Institute for Human Rights of a hotline to report cases of discrimination and conduct of the anti-discrimination campaign in the labour market. The Government further indicates that, pursuant to the 2020 report of the Netherlands Institute for Human Rights on the impact of pregnancy and parenthood on women's employment opportunities, the incidence of pregnancy discrimination is persistent. In this respect, the Committee notes the observations of the CNV and the FNV indicating that 43 per cent of

pregnant women experience some form of discrimination and that women in temporary employment are particularly vulnerable to the discriminatory treatment. While acknowledging the efforts undertaken by the Government under the Action Plan against Pregnancy Discrimination of 2017, the CNV and the FNV allege the lack of sanctions imposed on employers for discrimination on the grounds of pregnancy and maternity. ***The Committee requests the Government to continue to take measures to ensure that maternity does not constitute a source of discrimination in employment, pursuant to Article 9 of the Convention. The Committee further requests the Government to provide information on the impact of the Action Plan against Pregnancy Discrimination of 2017 in reducing discrimination in employment on the ground of maternity. It also requests the Government to provide detailed information on the number of cases involving discrimination in employment based on maternity detected by or reported to labour inspectors or the courts, as well as the sanctions imposed on employers and remedies provided to victims.***

The Committee is raising other matters in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 3** *(Cameroon, Central African Republic, China: Hong Kong Special Administrative Region, Côte d'Ivoire, Nicaragua, North Macedonia);* **Convention No. 103** *(Libya, Tajikistan);* **Convention No. 183** *(Czechia, Lithuania, Netherlands, Niger, North Macedonia, Norway, Sao Tome and Principe).*

Social policy

Dominica

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1983)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 6 of the Convention. Legislation giving effect to the Convention. The Committee notes that the Government has never supplied any information of a practical nature concerning the application of the Convention. ***It would therefore be grateful if the Government would collect and transmit together with its next report up-to-date information on the average number of public contracts granted annually and the approximate number of workers engaged in their execution, extracts from inspection reports showing cases where payments have been retained, contracts have been cancelled or contractors have been excluded from public tendering for breach of the Fair Wages Rules, as well as any other particulars which would enable the Committee to have a clear understanding of the manner in which the Convention is applied in practice.***

Moreover, the Committee understands that the Government has entered into a World Bank-financed technical assistance project for growth and social protection with a view to improving, among other things, the transparent operation and the efficient management of public procurement. ***In this connection, the Committee would appreciate receiving additional information on the implementation of this project and the results obtained, in particular as regards any amendments introduced or envisaged to public procurement laws and regulations which might affect the application of the Convention.***

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Egypt

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)

Previous comment

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes the information provided by the Government regarding amendments to the Financial and Administrative Regulation (Ministerial Decision No. 162 of 2019) for the employment and protection of informal workers (contractors, agricultural, seasonal and temporary workers and similar) and Act No. 182 of 2018 on Agreements Concluded by Public Entities, which regulates the conclusion of public contracts. The Government refers in its report to sections 21, 29 and 32 of Ministerial Decision No. 162 of 2019 regulating the wages and conditions of work of informal workers, as well as to section 32 of the Labour Code, No. 12 of 2003 regarding the terms and conditions of employment contracts for all workers (wages, hours of work, etc.). The Committee nevertheless notes that none of the above-mentioned legislation contains any provisions ensuring the application of the core requirement of the Convention, namely the insertion in public contracts of labour clauses of the type prescribed by *Article 2*. In this regard, the Committee refers to its 2009 comments on the application of the Convention, in which it noted the concrete steps taken by the Government of Egypt to give effect to the core requirement of the Convention under General Circular No. 8 issued by the Minister of Finance (23 June 2008). That Circular added two new bidding terms to the Public Tenders Law (No. 89/1998), stipulating that: (i) workers engaged in the execution of the (public) contract must receive wages and bonuses not lower than those received by workers carrying out similar work in the same governorate; and (ii) they must

enjoy the same working hours and conditions prevailing in the region, according to a general agreement or custom. ***Noting the Government's expressed commitment to take the necessary measures to ensure the full application of the Convention, the Committee reiterates its hope that the necessary measures will be taken by the Ministry of Manpower and Migration to ensure that the two bidding terms set out in the General Circular No. 8 of 2008 will be incorporated as standard clauses into all future public procurement contracts. The Committee requests the Government to communicate, together with its next report, copies of standard bidding documents currently in use, sample tender letters and concession agreements used in public procurement procedures, to enable the Committee to more fully appreciate and assess the manner in which the Convention is implemented in both law and practice. The Committee reminds the Government that it may avail itself of technical assistance in this regard.***

Malaysia

Sarawak

Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

Previous comment

Article 2 of the Convention. Insertion of labour clauses in public contracts. In its previous comments, initially made in 2013, the Committee requested the Government to indicate the measures it intended to take to bring its national legislation into full conformity with the requirements of the Convention. The Government reports that the provisions of the Convention are given effect through the general terms of contracts issued by the Public Works Department, which is the main implementer of public projects in Sarawak. It adds that the contracts specify, among other things, the engagement of workers and labour, the removal of workers and other personnel, days and hours of work and insurance for workers. The Government further indicates that requirements governing the payment of wages, hours of work and other working conditions are provided under the Labour Ordinance of Sarawak (Amendment) Act 2005. The Committee notes that the Labour Ordinance does not address public contracts and that the Government does not provide specific information regarding the manner in which *Article 2* of the Convention is given effect. In this respect, the Committee draws the Government's attention to paragraph 45 of the 2008 General Survey on labour clauses in public contracts, in which it pointed out that the essential purpose of the Convention is to ensure that workers employed under public contracts shall enjoy the same conditions as workers whose conditions of employment are fixed not only by national legislation but also by collective agreements or arbitration awards, and that in many cases the provisions of the national legislation respecting wages, hours of work and other conditions of employment provide merely for minimum standards which may be exceeded by collective agreements. Therefore, the Committee emphasized that the mere fact of the national legislation being applicable to all workers does not release the States which have ratified the Convention from the obligation to take the necessary steps to ensure that public contracts contain the labour clauses specified in *Article 2* of the Convention. ***Recalling** that it has been commenting for a number of years on the Government's failure to fully implement the core requirements of the Convention, the Committee reiterates its request that the Government clarify whether the public procurement legislation currently in force addresses in any manner the question of labour clauses in public contract. The Committee urges the Government to take all necessary measures without delay to bring its national legislation into full conformity with Article 2 of the Convention. It further requests the Government to keep the Office informed of progress made and recalls that the Government may avail itself of the technical assistance of the ILO in this regard, should it wish to do so.*

Application of the Convention. Part V of the report form. ***The** Committee requests the Government to provide a detailed report with full particulars on each of the provisions of the Convention, to enable*

the Office to assess the extent to which the provisions of the Convention are applied in law and practice, and to transmit copies of any relevant bidding documents currently in use.

Uruguay

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1954)

Previous comment

Article 2 of the Convention. Inclusion of labour clauses in public contracts. For over 14 years, the Committee has been requesting the Government to take the necessary measures to ensure that the scope of the provisions of Decree No. 475/005 on public contracts for services is extended to cover all types of public contracts envisaged by the Convention. Equally, since 2012, the Committee has been requesting the Government to amend Act No. 18.098 to bring it into full compliance with the requirements of *Article 2* of the Convention, as it only requires compliance with wage rates fixed by wage boards, and not with the more favourable conditions (including working hours, holidays, and sick leave) provided for in legislation, collective agreements, or arbitration awards, in conformity with the Convention.

The Committee notes that the Government once again refers, with reference to public works contracts, to Decree No. 257/015, approving the single document setting out the regulations and general conditions of public works contracts. Section 38, on compliance with the single document labour legislation, establishes that the contractor shall comply with the legislation and regulations on risk prevention applicable to the work undertaken. In particular, the contractor is required to: respect the wage rates fixed by the wage boards; hold valid insurance for occupational accidents and diseases for workers; and comply with the provisions of Acts Nos 18.099 of 24 January 2007 and 18.251 of 6 January 2008 on occupational liability in enterprise decentralization processes. The Committee notes that section 5 of Act No. 18.099 provides that "workers supplied by temporary employment enterprises shall receive benefits no less favourable than those fixed by wage boards, collective agreements or executive decree, according to their category and in concordance with the area of activity of the enterprise by which they are employed". The Committee notes, however, that this provision is applicable only to workers supplied by temporary employment enterprises. The Government also indicates that the above-mentioned section is included in the standard documents produced, and placed at the disposal of institutions, by the Regulatory Agency for State Procurement (ARCE). In this connection, the Government gives the example of the Framework Agreement, Proclamation and Consulting Contract.

Regarding supply and service contracts, the Government refers to the single document setting out the regulations and general conditions of supply and non-personal service contracts (Decree No. 131/014). The Government indicates that although the said single document does not include clauses on compliance with labour, social insurance, and occupational safety obligations, it is governed by the regulations in force, in particular Acts Nos 18.099 and 18.251. In this regard, the Committee recalls that the mere application of general labour law is not sufficient to guarantee the application of the Convention. The Convention requires bidders to be informed in advance, by means of standard labour clauses included in tender documents, that, if selected, they would have to observe in the performance of the contract wages and other labour conditions not less favourable than the highest minimum standards established locally by law, arbitration or collective bargaining (A practical guide to Convention No. 94, pages 15 and 20). Lastly, the Committee notes the adoption of Act No. 19.889 of 9 July 2020, which introduces sections 329 to 339 of the Labour Code, on the establishment of the Regulatory Agency for State Procurement (ARCE). The Agency's mandate includes: providing advice on matters related to procurement or contracts involving the expenditure of public funds; and the completion, in specific circumstances, of the administrative contracting procedures for the acquisition of goods and services, in compliance with the regulations in force. ***The Committee once again points***

out that it has been commenting for a number of years on the fact that the Government has not given effect to the Convention. In this regard, it recalls that the inclusion of the labour clauses identified in Article 2 of the Convention in all contracts concluded by the public authorities covered by the Convention, does not necessarily require the enactment of new legislation, but can also be achieved through administrative instructions or circulars. The Committee hopes that the Government will adopt without delay all the necessary measures to bring its national legislation into full conformity with the fundamental requirements of the Convention. The Committee requests the Government to keep it informed of the progress achieved and again recalls that the Government may, if it so wishes, avail itself of ILO technical assistance in this respect.

Bolivarian Republic of Venezuela

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1983)

Previous comment

The Committee notes the observations of the Confederation of Workers of Venezuela (CTV), the Federation of University Teachers' Associations of Venezuela (FAPUV), the Independent Trade Union Alliance of Workers (CTASI), as well as those of the Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP), received together with the Government's report. The Committee also notes the observations of the National Union of State and Public Service Workers (UNETE), received on 5 September 2022. ***The Committee requests the Government to provide its comments in this respect.***

Parts I and II of the Convention. Improvement of standards of living. The Committee notes the information provided by the Government on the measures adopted in respect of food security, housing and healthcare, including access to medicines. The Government recalls the creation in 2004 of the People's Ministry for Food (MINPPAL) to guarantee supply to the population and access to the food basket through the formulation, implementation, follow-up and assessment of policies for commerce, industry, merchandise and food distribution. The Government also reports that the Food Production and Distribution Company (PDVAL) has been affiliated to MINPPAL since July 2008, with a view to providing foodstuffs and basic products. Since 2016, the Local Supply and Production Committees (CLAPs) ensure the distribution and commercialization of food and products of prime necessity. The Government also refers to the holding of various fairs with the aim of ensuring that the population has access to animal and fish protein. With regard to housing, the Government again refers to the implementation since 2011 of the "Major Mission for Housing in Venezuela", which aims to construct 5 million decent dwellings. In this connection, the Government reports that production at the PetroCasa enterprise has been relaunched, with a view to ensuring the supply of materials for the construction of new housing. Moreover, the modalities for access to financial resources of that Mission have been widened, in particular through credits (the "Manage your credit" programme) and new financial instruments (the "Invest, save and build your own home" programme). The Government also refers to the "New Neighbourhood, Tricolour Neighbourhood" mission, the goal of which is to provide decent housing for families in high risk or high vulnerability areas, through the rehabilitation or replacement of housing, in collaboration with communities. The Government reports that as of June 2022, a total of 4,100,000 dwellings had been delivered under the Major Mission and, through the New Neighbourhood, Tricolour Neighbourhood programme, 1,923,458 dwellings had been rehabilitated and 1,221,145 land titles had been granted. On another matter, the Committee notes the Government's indication that access to health is ensured for the entire population via the 593 Areas of Integrated Community Health (ASIC). The Government also refers to the "Within the Neighbourhood Mission", which provides medical care to low-income neighbourhoods. The Community Pharmacies were set up in 2019, with the goal of ensuring free access to medicines to all sectors of the population, in partnership with the Social

Pharmacy Network "FarmaPatria". The Community Pharmacies guarantee access to pharmaceuticals in a timely, effective and controlled manner, especially for persons suffering from chronic diseases. The Government adds that the Mobile Community Pharmacies programme brings medicines and basic necessities to municipalities and parishes and also promotes health prevention campaigns. In this connection, the Committee notes that the CBST-CCP, in its observations, indicates that COVID-19 vaccines have been administered to 95 per cent of the population of the country. Finally, the Government indicates that between 2018 and 2022 a total of 4,039 retirements and 1,629 pensions were granted. The Committee also notes the information provided by the CBST-CCP in respect of the clauses on paid social benefits included in collective agreements signed in the university, educational and petrol sectors by affiliated trade unions and federations.

Nevertheless, the Committee once again expresses ***deep concern*** regarding the worsening living conditions of the Venezuelan population, which the CTV, the FAPUV, the CTASI and the UNETE denounce in their observations. The workers' organizations particularly criticize the social food programmes implemented by the Government for serious defects in terms of their planning, management and assessment. The CTV, the FAPUV and the CTASI indicate that the distribution of foodstuffs, carried out through the CLAPs, is not universal in coverage and they maintain that the quantities have been reduced so that they currently supply only 17 per cent of the nutritional requirements of the population. Equally, the UNETE denounces acts of corruption in the distribution of food. The CTV, the FAPUV, the CTASI and the UNETE stress that, as a result of the expropriation of the agri-food enterprises by the Government (these enterprises represented 80 per cent of national food production), they have been abandoned or have become non-operational. This has resulted in thousands of workers losing their jobs and has increased the food sector's dependence on imports, which amount to 82 per cent of food in the country. In the same manner, the CTV, the FAPUV and the CTASI indicate that, according to a February 2020 report on food security by the World Food Programme (WFP), one in three Venezuelans is in a situation of food insecurity and needs humanitarian aid. According to the same report, approximately nine million Venezuelans have insufficient income to purchase the basic basket of goods. They add that, as a result of this, and due to the deficiencies of the CLAP food distribution, 60 per cent of the population have had to reduce the quantity of their meals, 24 per cent are in a situation of moderate food insecurity and 7.9 per cent are in a situation of serious food insecurity. The CTV, the FAPUV and the CTASI affirm that the situation of children is even more alarming, stating that, according to certain figures provided by Caritas in October 2020, a total of 73 per cent of children under five years of age were suffering from malnutrition.

Regarding access to health, the CTV, the FAPUV and the CTASI indicate that, according to the 2021 Global Health Security Index, Venezuela occupies the worst position in Latin America for health capacity and is ranked among the ten worst countries in the world. The CTV, the FAPUV, the CTASI and the UNETE all denounce the scarcity and high cost of medicines and the precarious conditions of work of health workers, especially in respect of safety and health, which were clearly shown and greatly worsened during the COVID-19 pandemic. The UNETE further denounces cases of persecutions, disappearances and assassinations of health workers.

The Committee also notes that the CTV, the FAPUV and the CTASI indicate that, as of 24 August 2021, the minimum wage was situated between US$0.5 and 0.6 per day, far below the minimum income considered as extreme poverty (US$1.90 per day). The worker organizations stress, referring to data from the National Survey of Living Conditions (ENCOVI) as a basis, that extreme poverty in Venezuela increased from 67.7 per cent to 76.6 per cent between 2019 and 2021. They point out that the situation was worsened by the COVID-19 pandemic. Furthermore, the UNETE denounces the wage cuts and less favourable work and contractual benefits for workers in the public administration. The CTV, the FAPUV and the CTASI also point to difficulties faced by regime opponents in gaining access to employment, as well as dismissals and other anti-trade union practices, including criminal prosecutions against trade union leaders in the public sector.

Finally, the Committee notes that the CTV, the FAPUV, the CTASI and the UNETE stress that the political, economic and social condition of the country has led to the exile of more than 6 million citizens, fleeing extreme poverty. They underline that this is the greatest human exodus in Latin America and the second greatest in the world. In this regard, the CTV, the FAPUV and the CTASI indicate that the International Organisation for Migration (IOM) and the United Nations Agency for Refugees (UNHCR) estimated that, as of June 2020, there were 5,082,170 Venezuelan migrants, refugees and asylum seekers. The UNETE denounces the disintegration of many families as a consequence of this situation. ***The Committee refers to its comments regarding the application of the Employment Policy Convention, 1964 (No. 122), the Paid Educational Leave Convention, 1974 (No. 140), and the Human Resources Development Convention, 1975 (No. 142), in respect of the present Convention, and urges the Government to provide detailed and updated information in its next report on the application of the provisions of the Convention in practice, in particular with regard to the impact of the measures taken to improve the quality of life of the whole population. The Committee also requests the Government to indicate the manner in which such measures are guaranteed to take account of essential family needs, such as food and its nutritional value, housing, clothing and medical care, and access to medicines and education.***

Part III. Migrant workers. The Committee notes that, in its concluding observations of 4 October 2022, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) expressed concern regarding the situation of indigenous peoples living in border districts between Venezuela, Colombia and Brazil, who regularly cross the border for work. The CMW indicated in its observations that such indigenous migrant workers were especially vulnerable and in danger of abuse, forced labour, trafficking in persons and debt slavery. Indigenous migrant workers in the mining and agricultural sectors were particularly at risk. The CMW expressed special concern at the situation of the indigenous Yukpas, Wayuu, Warao, Pemones, Bari and Yanomami peoples (CMW/C/VEN/CO/1, paragraph 48). ***The Committee urges the Government to send detailed and updated information without delay on the measures adopted or envisaged with a view to guaranteeing the conditions of work of migrant workers obliged to live away from their homes, taking account of their normal family needs (Article 6). In particular, the Committee urgently requests the Government to provide information on the impact of these measures in respect of migrant workers coming from the Yukpas, Wayuu, Warao, Pemones, Bari and Yanomami indigenous peoples.***

Part IV. Remuneration of workers. Advances on wages. For 13 years, the Committee has been asking the Government to provide specific examples of court or administrative decisions that address the maximum amount and manner of repayment of advances on wages. The Committee observes that once again the Government has not provided the requested examples and restricts itself to referring once more to section 91 of the Constitution of the Bolivarian Republic of Venezuela and to section 103 of the Basic Act concerning labour and men and women workers (LOTTT) which establishes that wages cannot be seized. The Government also reiterates that, under section 154 of the LOTTT, "… the debts that men and women workers agree with their employer shall only be repayable, on a weekly or monthly basis, in amounts that may not exceed one third of the equivalent of a week or month of work, as appropriate". The Government also reiterates that debts are repaid, but not advances on social benefits granted to cover the basic needs of housing, education and health, which can reach up to 75 per cent of their salaries. ***The Committee therefore expects that, in its next report, the Government will provide specific examples of court or administrative decisions that address the maximum amount and manner of repayment of advances on wages.***

Yemen

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1969)

The Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Government reports that a draft Labour Code has been prepared in coordination with the ILO, and that it is in compliance with international labour standards. The Government adds that issues raised in the Committee's previous comments with regard to the insertion of labour clauses in public contracts as prescribed by *Article 2* of the Convention will be brought to the attention of the Supreme Commission on Auctions and Bids. The Committee notes the Government's indication that it requires the technical assistance of the ILO in relation to the measures to be taken to ensure that all public contracts contain labour clauses that comply with the provisions of the Convention. ***The Committee once again requests the Government to take the necessary measures to ensure that all public contracts contain labour clauses and hopes that the Government will be soon in a position to report progress in giving full effect to this core requirement of the Convention. The Committee encourages the Government to avail itself of the technical assistance of the Office in this regard.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 82** *(France: French Polynesia, France: New Caledonia, United Kingdom of Great Britain and Northern Ireland: British Virgin Islands, United Kingdom of Great Britain and Northern Ireland: Falkland Islands (Malvinas));* **Convention No. 94** *(Costa Rica, Eswatini, Finland, France: French Polynesia, Netherlands: Sint Maarten, United Kingdom of Great Britain and Northern Ireland: British Virgin Islands, Uganda);* **Convention No. 117** *(Central African Republic, Costa Rica, Ecuador, Ukraine).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 94** *(Cuba, Denmark);* **Convention No. 117** *(Romania).*

Migrant workers

Benin

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
(ratification: 1980)

Previous comment

Article 14(a) of the Convention. Restrictions concerning employment and geographical mobility within the country. The Committee notes that the Government states, once again, that although Decree No. 77-45 of 4 March 1977, regulating the movement of foreign nationals, subjects foreign workers to special authorization to leave their town of residence in Benin, the Decree is in fact no longer applied and that in practice foreign nationals can move freely throughout the national territory. ***The Committee again urges the Government to take the necessary measures to formally repeal the restriction on the movement of migrant workers provided under Decree No. 77-45 of 4 March 1977, and also to indicate the obstacles to the repeal of the said Decree.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2024.]

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 97** *(Brazil, Morocco, Philippines, Serbia, Slovenia);* **Convention No. 143** *(Benin, Madagascar, Philippines, San Marino, Serbia, Slovenia).*

Seafarers

Albania

Maritime Labour Convention, 2006, as amended (MLC, 2006) (ratification: 2016)

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fourth consecutive year even if it has benefited from the technical assistance provided by the Office for the elaboration of a gap analysis and through participation in courses on reporting provided by the ILO Training Centre. As the requested report was not received, the Committee examined the application of the Convention on the basis of publicly available information.

Article I of the Convention. General questions on application. Implementing measures. The Committee notes that, while ratification of the Convention gives the force of law to its terms in Albania, relevant regulations still need to be adopted to implement the Convention. ***The Committee requests the Government to adopt without further delay the necessary measures to give effect to the provisions of the Convention and to provide information on any developments in this regard. It further requests the Government to supply copies in English of the relevant legislation, or a summary of the relevant provisions thereof, as well as full information on the implementation of the Convention, including updated statistics on the number of seafarers who are nationals or residents of Albania or who work on board ships flying the Albanian flag.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2023.]

Congo

Maritime Labour Convention, 2006, as amended (MLC, 2006) (ratification: 2014)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fourth consecutive year. As the requested report was not received, the Committee examined the application of the Convention on the basis of publicly available information.

Article I. General questions on application. Implementing measures. The Committee notes that the provisions of the Convention are mainly implemented by Act No. 30-63 of 4 July 1963 issuing the Merchant Shipping Code, amended by Act No. 63-65 of 30 December 1965; by orders and decrees of the Ministry of Transport, Civil Aviation and Merchant Shipping; and by Regulation No. 08/12-UEAC-088-CM-23 of the Central African Economic and Monetary Community (CEMAC) adopting the Community Merchant Shipping Code of 22 July 2012 (CCMM), which is directly applicable in the Congo and is one of the documents that must be carried on board ships flying the Congolese flag and foreign ships operating in Congolese territorial waters. The Committee also notes that the Labour Code does not exclude seafarers from its scope of application. Having reviewed the available information, the Committee notes the inconsistency between certain national provisions and between these and the CCMM, as well as the absence of available information on the implementation of several provisions of the Convention. The Committee underscores the need to avoid any inconsistency in the applicable provisions. It recalls that, in accordance with *Article I* of the Convention, each Member which ratifies the Convention undertakes to give full effect to its provisions in order to secure the right of all seafarers to decent employment. ***The Committee therefore requests the Government to adopt without delay the necessary measures to implement the Convention, taking into account the matters raised in the request addressed directly to the Government. It further requests the Government to provide a copy of any legislative texts or other regulatory instruments once adopted, as well as full information on the implementation of the Convention, including updated statistics on the number of seafarers who are***

nationals or residents of the Congo or who work on board ships flying the Congolese flag. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Dominica

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 2004)

The Committee notes with ***deep concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments. The Committee informs the Government that, if it has not supplied replies to the points raised by 1 September 2023, then it may proceed with the examination of the application of the Convention on the basis of the information at its disposal at its next session.

Article 2 of the Convention. Implementing legislation. The Committee notes the Government's indication that a special Tripartite Committee has been appointed to advise the Government on all matters relating to legislation and institutional changes necessary for the ratification of the Maritime Labour Convention, 2006 (MLC, 2006). It also notes that a National Action Plan has been prepared in order to formulate recommendations to the Government on matters of maritime laws and administration. While welcoming the Government's active steps towards the ratification of the MLC, 2006, the Committee is bound to observe that the Government's first report on the application of Convention No. 147 does not contain any information on the laws or regulations and other measures giving effect to the specific requirements of the latter Convention. ***The Committee therefore requests the Government to indicate in detail how each of the Articles of the Convention is applied in national law and practice, and explain in particular in what manner the provisions of the International Maritime Act, 2002, and of the Dominica Maritime Regulations, 2002, are substantially equivalent to the Conventions mentioned in the Appendix of the Convention relating to safety standards, social security measures and shipboard conditions of employment and shipboard living arrangements, as required under Article 2 of the Convention.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Gabon

Maritime Labour Convention, 2006, as amended (MLC, 2006) (ratification: 2014)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fourth consecutive year. As the requested report has not been received, the Committee examined the application of the Convention on the basis of publicly available information.

Article I. General questions on application. Implementing measures. The Committee notes that the provisions of the Convention are mainly implemented through Regulation No. 08/12-UEAC-088-CM-23 of the Central African Economic and Monetary Community (CEMAC) issuing the Community Merchant Shipping Code of 22 July 2012 (hereinafter, CCMM), which is directly applicable to Gabon and is one of the documents that must be carried on board ships flying the Gabonese flag and foreign ships operating in Gabonese territorial waters. The Committee also notes that section 1 of the Labour Code does not exclude seafarers from its scope of application. The Committee notes the lack of available information on the implementation of several provisions of the Convention. It recalls that, in conformity with *Article I* of the Convention, each Member which ratifies it undertakes to give complete effect to its provisions in order to secure the right of all seafarers to decent employment. ***The Committee therefore requests the Government to adopt without delay the necessary measures to implement the Convention, taking into account the matters raised in the request addressed directly to the Government. It further requests the Government to provide a copy of any***

legislative texts or other regulatory instruments once adopted, as well as full information on the implementation of the Convention, including updated statistics on the number of seafarers who are nationals or residents of Gabon or who work on ships that fly the Gabonese flag. The Committee reminds the Government that it may avail itself of the technical assistance of the Office in this regard.

The Committee is raising other matters in a request addressed directly to the Government.

The Committee expects that the Government will make every effort to take the necessary action in the near future.

Mauritius

Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1969)

Previous comment

Article 2 of the Convention. Seafarers' identity documents. In its previous observation, noting the Government's statement that the basic requirements of the Convention were still not implemented in law or practice, the Committee urged the Government to take the necessary steps to ensure compliance with the Convention. The Committee notes the Government's indication in its report that the process for the issuance of seafarers' identity documents (SIDs) resumed in 2016. The Ministry of Blue Economy, Marine Resources, Fisheries and Shipping is currently working on the review of the "Continuous Discharge Book" and is exploring the possibility of incorporating the features laid down in the Convention in the new format of the "Continuous Discharge Book". The Committee recalls that it has been expressing concerns for a number of years regarding the discontinuation of the issuance of SIDs, which is a serious failure on the part of the Government in implementing the Convention. ***The Committee therefore urges once again the Government to take the necessary steps to ensure that its obligations under the Convention are fully respected and to provide a specimen (not a copy) of the seafarers' identity document once it has been issued.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 22** *(Mauritania, Netherlands: Aruba);* **Convention No. 23** *(Mauritania, Netherlands: Aruba);* **Convention No. 68** *(Equatorial Guinea);* **Convention No. 69** *(Netherlands: Aruba);* **Convention No. 71** *(Djibouti);* **Convention No. 92** *(Equatorial Guinea, Republic of Moldova);* **Convention No. 108** *(Latvia, Liberia, Saint Lucia);* **Convention No. 133** *(Republic of Moldova);* **Convention No. 146** *(Netherlands: Aruba);* **Convention No. 147** *(Dominica, Netherlands: Aruba);* **Convention No. 185** *(Congo, Madagascar, Marshall Islands, Montenegro, Nigeria, Republic of Moldova, Tunisia);* **MLC, 2006** *(Albania, Argentina, Bangladesh, Brazil, Cabo Verde, Congo, Djibouti, Ethiopia, Gabon, Gambia, Ghana, Iceland, India, Kenya, Kiribati, Latvia, Liberia, Malta, Marshall Islands, Morocco, Netherlands: Curaçao, New Zealand, Nicaragua, Samoa, Slovakia, Tunisia, Tuvalu, United Kingdom of Great Britain and Northern Ireland: British Virgin Islands, United Republic of Tanzania).*

Fishers

Congo

Work in Fishing Convention, 2007 (No. 188) (ratification: 2014)

The Committee notes with ***deep regret*** that the Government has failed to submit its first report on the application of the Convention for the fifth consecutive year. As the requested report was not received, the Committee examined the application of the Convention on the basis of publicly available information.

General questions on application. Implementing measures. The Committee notes that the issues covered by the Convention are mainly addressed by Act No. 30-63 of 4 July 1963 issuing the Merchant Shipping Code, amended by Act No. 63-65 of 30 December 1965, and by orders and decrees of the Ministry of Transport, Civil Aviation and Merchant Shipping. It observes that the Merchant Shipping Code has not been revised in order to take into account the requirements of the Convention. The Committee also notes that the Labour Code does not exclude fishers from its scope of application, and that Regulation No. 08/12 UEAC-088-CM-23 of the Central African Economic and Monetary Community (CEMAC) adopting the Community Merchant Shipping Code of 22 July 2012 (CCMM), which is directly applicable in the Congo, also applies to fishing navigation. Having reviewed the available information, the Committee notes certain contradictions between national provisions and between these and the CCMM, as well as the absence of available information on the implementation of numerous provisions of the Convention. Noting that the Constitution of the Congo enshrines the supremacy of ratified international Conventions over national legislation, the Committee underscores, however, the need to avoid any contradiction in the applicable provisions, and recalls that the Convention includes requirements for which Member States have to take the necessary measures to ensure the conformity of national law and practice. ***The Committee therefore requests the Government to adopt without delay the necessary measures to implement the Convention, taking into account the matters raised in the request addressed directly to the Government. The Committee also requests the Government to provide detailed information on consultations held with the representative organizations of fishing vessel owners and fishers concerned, as prescribed by the Convention. It further requests the Government to provide a copy of any legislative texts or other regulatory instruments once adopted, as well as full information on the implementation of the Convention, including updated statistics on the number of fishers who are nationals or residents of the Congo or who work on fishing vessels that fly the Congolese flag. The Committee reminds the Government of the possibility to avail itself of the technical assistance of the Office in this regard.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2023.]

Liberia

Minimum Age (Fishermen) Convention, 1959 (No. 112) (ratification: 1960)

Medical Examination (Fishermen) Convention, 1959 (No. 113) (ratification: 1960)

Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1960)

The Committee notes that the Government's reports have not been received. It is therefore bound to repeat its previous comments.

The Committee notes the Government's reports on the application of Conventions Nos 112, 113, and 114 on the fishing sector. In order to provide a comprehensive view of the issues relating to the application of the ratified Conventions on fishing, the Committee considers it appropriate to examine them together.

The Committee requested the Government to clarify whether the Liberian Maritime Law, RLM 107 and the Liberian Maritime Regulations, RLM-108 were applicable to fishers. The Committee notes with ***regret*** that the Government has not provided the clarification requested in this regard. ***Therefore, recalling that for numerous years the Government has been requested to provide information on the applicability of existing legislation to fishers, the Committee once again requests the Government to indicate the measures adopted to give full effect to the provisions of the Conventions, taking into account the points raised in previous observations.***

Impact of the COVID-19 pandemic. The Committee notes with ***deep concern*** the impact of the COVID-19 pandemic on the protection of fishers' rights as laid out in the Conventions. ***In this regard, the Committee refers to the resolution adopted by the Governing Body in its 340th Session (GB.340/Resolution) concerning maritime labour issues and COVID-19 disease, which calls on Member States to take measures to address the adverse impacts of the pandemic on fishers' rights, and requests the Government to provide information in its next report on any temporary measures adopted in this regard, their duration and their impact on fishers' rights.***

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Mauritania

Minimum Age (Fishermen) Convention, 1959 (No. 112) (ratification: 1963)

Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1963)

Previous comment on Convention No. 112
Previous comment on Convention No. 114

In order to give an overview of the issues relating to the application of the Conventions on fishing, the Committee deems it appropriate to examine them in a single comment, as set out below.

Minimum Age (Fishermen) Convention, 1959 (No. 112)

Article 2 of the Convention. Minimum age for admission to work on fishing vessels. The Committee noted that section 413(1) of Act No. 2013-029, issuing the Merchant Shipping Code, prohibits the employment, engagement or work on board a vessel of any person under the age of 16 years. Section 413(2) provides that the maritime authority may authorize persons aged 15 years to work on fishing vessels when they are engaged in vocational training in fishing or performing light work. Section 413(4) provides that the maritime authority may authorize exceptions to section 413(2), without specifying the minimum permissible age for this exception, where the effective training of fishers in the context of established programmes and schedules would be impaired. The Committee had recalled that *Article 2(3)* of the Convention authorizes exceptions to the minimum age of 15 years, while setting a permissible limit at 14 years for children employed on board fishing vessels and requested the Government to provide clarifications on the minimum age authorized by section 413(4) of the Merchant Shipping Code. The Committee notes the Government's reiteration in its report that, while the exception established to the above section does not specify the minimum age authorized, this age is in fact set at 14 years. It adds that this issue will be taken into account in the implementing regulations. ***Noting that the legislation currently in force does not set an age limit of 14 years for authorized exceptions, the Committee asks the Government to take the necessary measures without further delay to bring its legislation into full conformity with Article 2 of the Convention.***

Fishermen's Articles of Agreement Convention, 1959 (No. 114)

Article 6(3). Particulars to be contained in the agreement. In its previous comment, the Committee requested the Government to indicate the measures adopted to give full effect to *Article 6* of the

Convention, namely regarding the inclusion of the following particulars in the fisher's articles of agreement: (a) the surname and other names of the fisher, the date of his birth or his age, and his birthplace; (b) the place at which and date on which the agreement was completed; (c) the name of the fishing vessel or vessels on board which the fisher undertakes to serve; (d) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement; and (e) the amount of his wages, or the amount of his share and the method of calculating such share. The Committee notes that the new Merchant Marine Code does not set out a list of particulars to be contained in the agreement. In its response, the Government indicates that there have been no changes to the legislation since the adoption of Act No. 2013-029 of 15 October 2013 issuing the Merchant Marine Code. ***The Committee requests the Government to take, without further delay, the necessary measures to bring its legislation fully into conformity with this provision of the Convention.***

Trinidad and Tobago

Fishermen's Competency Certificates Convention, 1966 (No. 125) (ratification: 1972)

Previous comment

Implementing legislation on fishers' competency certificates. Noting the absence of laws and regulations giving effect to the requirements of the Convention, the Committee urged the Government to adopt the necessary measures without delay to regulate fishers' competency certificates. The Committee notes the Government's indication in its report that it seeks to address such issues in the new draft Shipping Bill, which was completed in 2020 and which is presently before a Joint Select Committee of Parliament. The Bill specifically provides at Clause 135 (as presently numbered) for the issuance of Certificates of Competency to all seafarers on all Trinidad and Tobago ships, inclusive of fishing vessels. The Clause further provides for the manner of application, the evidence of experience and training requirements needed for applicants, and the conditions and endorsements issuable by the Maritime Administration upon issue. The Government adds that with the passage of the Bill, this enabling clause shall form the basis upon which regulations implementing the provisions of the Convention can be drafted and formally promulgated. Finally, the Government indicates that upon recent examination of the Bill, it was noted that while provision is made generally for a "master", that is "a person in command or charge of a ship", there is no specific reference to a "skipper", being the term used in the Convention as "a person in charge of a fishing vessel". In this regard, a recommendation shall be made to the Joint Select Committee of Parliament that the definition of "master" be expanded to include the skipper of a fishing vessel. ***The Committee notes this information and expects that all necessary measures will be adopted without any further delay to give full effect to the provisions of the Convention. The Committee requests the Government to provide a copy of the relevant provisions once adopted.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 113** *(Montenegro);* **Convention No. 114** *(Montenegro);* **Convention No. 126** *(Montenegro);* **Convention No. 188** *(Congo, Morocco, Namibia, Netherlands, Poland, United Kingdom of Great Britain and Northern Ireland).*

Dockworkers

Direct requests

Requests regarding certain matters are being addressed directly to the following States: **Convention No. 27** *(Montenegro, Viet Nam);* **Convention No. 32** *(Malta, Mauritius, New Zealand, Nigeria, Tajikistan);* **Convention No. 137** *(Mauritius, Nicaragua, Nigeria, United Republic of Tanzania);* **Convention No. 152** *(Lebanon, Mexico, Montenegro, Netherlands, United Republic of Tanzania).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 27** *(Morocco).*

Indigenous and tribal peoples

Bangladesh

Indigenous and Tribal Peoples Convention, 1957 (No. 107) (ratification: 1972)

Previous comments

Article 2 of the Convention. Coordinated and systematic action. Implementation of the Chittagong Hill Tracts Peace Accord, 1997. The Committee previously noted the Government's commitment to fully implement the 1997 Chittagong Hill Tracts Peace Accord. It notes that the Government indicates in its report that a total of 48 out of the 72 clauses of the Peace Accord have been implemented, while 15 have been partially implemented and nine are still being implemented. In this respect, the Government points out that there are still some critical issues, such as the settlement of land disputes, the holding of elections of the Hill District Councils and the Chittagong Hill Tracts Regional Council, and the harmonization of the Chittagong Hill Tracts Regulation, 1900 and related laws with the 1989 Hill District Council Acts. The Committee further notes the Government´s indication that, pursuant to section D paragraph 8 of the Peace Accord, the cancellations of land allocation for rubber and other plantations to non-tribal and non-local persons have been implemented, and the lease of conditional allotments for rubber plantations has been cancelled for those who violated the conditions. ***The Committee requests the Government to continue taking the necessary measures to fully implement the 1997 Chittagong Hill Tracts Peace Accord and to continue to provide information in this respect, including on the sections of the agreement pending implementation and the difficulties encountered in this respect.***

Article 3. Protection of indigenous persons. The Committee notes that in its 2019 concluding observations, the United Nations Committee against Torture (CAT) expressed its concern at reports of intimidation, harassment, and physical violence, including sexual violence, committed against members of indigenous communities, including by or with the cooperation of State officials. The CAT also noted the reported rape and sexual assault of two teenage women by members of the army in the Chittagong Hill Tracts, and the disappearance of an indigenous rights activist in that region (CAT/C/BGD/CO/1, paragraph 23). The Committee further notes that in her statement of 17 August 2022 on her official visit to Bangladesh, the United Nations High Commissioner for Human Rights referred to continued allegations of human rights violations in the Chittagong Hill Tracts linked with land disputes and the need for demilitarization.

The Committee notes this information with ***deep concern*** and recalls the importance of ensuring an environment conducive to the full exercise of the rights of indigenous and tribal populations. ***The Committee urges the Government to take the necessary measures to protect the physical integrity of persons belonging to indigenous communities, including of those living in the Chittagong Hill Tracts, and to address the root causes of violence in the areas they inhabit. It also requests the Government to conduct, as a matter of urgency, thorough investigations of reported cases of intimidation, violence, including sexual violence, and disappearance of persons belonging to indigenous communities and to ensure that perpetrators are identified, prosecuted and punished. The Committee requests the Government to provide detailed information in this respect.***

Articles 11 to 14. Land rights. The Committee previously noted that, pursuant to the Chittagong Hill Tracts Peace Accord, amendments to the 2001 Chittagong Hill Tracts Land Dispute Resolution Commission Act were under consideration. The Committee notes the Government's indication that the Chittagong Hill Tracts Land Dispute Resolution Commission (Amendment) Act was enacted by the Parliament in 2016 to ensure and protect the land rights of indigenous groups, including of the permanent residents of the Chittagong Hill Tracts region. It notes that, according to the Government's Eighth Five Year Plan July 2020–June 2025, an appropriate land policy will be formulated to deal with

land disputes involving ethnic groups and that measures will be taken to establish a separate land commission for ethnic minorities in the plains.

The Committee urges the Government to take the necessary measures to ensure the effective recognition and protection of the rights of indigenous communities over the land they have traditionally occupied, both in the Chittagong Hill Tracts and the plains. Recalling that the Chittagong Hill Tracts Land Dispute Resolution Commission was established in 2001 for the speedy settlement of land related disputes in the Chittagong Hill Tracts region and the formulation of rules to that effect, the Committee requests the Government to ensure that the Commission has the necessary resources and capacities to fulfil its mandate. The Committee hopes that the amendments to the Chittagong Hill Tracts Land Dispute Resolution Commission Act will contribute to the resolution of existing land-related conflicts in the Chittagong Hill Tracts and requests the Government to provide concrete information in this regard. Finally, the Committee requests the Government to provide information on the progress made towards the adoption of a land policy and the establishment of a land commission for indigenous communities in the plains, as envisaged by the Eighth Five Year Plan.

Prospects for the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No.169). The Committee notes that the Eighth Five-year Plan July 2020–June 2025 contemplates as an area of future action the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Committee recalls in this regard that, at its 328th Session in November 2016, the Governing Body requested the Office to commence follow-up with the Member States bound by Convention No. 107, encouraging them to ratify Convention No. 169, as the most up-to-date instrument in this subject area. In this regard, the Committee observes that, in the context of the implementation of the ILO Strategy for indigenous peoples' rights for inclusive and sustainable development, the Office can provide the appropriate support to countries that so wish, including by conducting preliminary assessments and building capacities to establish a legal, strategic and institutional framework to facilitate the implementation of Convention No. 169. ***Therefore, the Committee encourages the Government to continue considering the possibility of ratifying of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which is the most up-to-date instrument in this subject area. In this respect, it reminds the Government of the possibility of availing itself of ILO technical assistance.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in full to the present comments in 2024.]

Brazil

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2002)

The Committee notes the observations of the Single Confederation of Workers (CUT), received on 2 September 2022, which contain new information concerning issues already raised by the Committee in its previous comments***. The Committee requests the Government to provide its response to these observations***. Furthermore, the Committee notes that the Government's report has not been received. It is therefore bound to repeat its previous comments.

The Committee notes the observations of the International Organisation of Employers (IOE), received on 2 September 2019, which contain general comments on the application of the Convention; the joint observations of the IOE and the National Confederation of Industry (CNI), received on 31 August 2018; the observations of the National Confederation for Typical State Careers (CONACATE), which include general comments on the application of the Convention received on 28 August 2017, and the observations of the General Confederation of Workers of Peru (CGTP), received on 23 March 2017, which include a report by COICA (a Peruvian indigenous peoples' organization) on the application of the Convention in various countries.

Representation made under article 24 of the ILO Constitution. Right of Quilombola communities to the lands they traditionally occupy. Alcântara space launch centre. For many years, the Committee has been examining

the question of the impact of the establishment of the Alcântara space centre (CEA) and the Alcântara launch centre (CLA) on the rights of the Quilombola communities of Alcântara. The Committee notes that the Governing Body at its 337th Session (October–November 2019) decided that the representation made under article 24 of the ILO Constitution by the Union of Rural Workers of Alcântara (STTR) and the Union of Family Agriculture Workers of Alcântara (SINTRAF), alleging non-observance by Brazil of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), was receivable. The Committee observes that the allegations in the representation refer to the consequences of the extension of the area covered by the Alcântara space launch centre on the rights of the Quilombola communities and the lands traditionally occupied by them. ***In accordance with its usual practice, the Committee has decided to defer the examination of this issue until the Governing Body adopts its report on the representation.***

Article 3 of the Convention. Human rights. The Committee observes that certain United Nations bodies and the Inter-American Commission on Human Rights (IACHR) have expressed concern in recent years at the situation of conflict surrounding territorial claims and at threats and attacks on the rights and integrity of the indigenous peoples of Brazil. The Committee notes the press release of 8 June 2017 of the Office of the United Nations High Commissioner for Human Rights (title: "Indigenous and environmental rights under attack in Brazil, UN and Inter-American experts warn") in which three UN Special Rapporteurs and a IACHR Rapporteur stated: "In the last 15 years, Brazil has seen the highest number of killings of environmental and land defenders of any country. […] Indigenous peoples are especially at risk". The Committee notes that the IACHR, in its preliminary observations of 12 November 2018 concerning its visit to Brazil, emphasized that harassment, threats and murders characterized land disputes and forced displacements. The IACHR noted with concern that the impunity surrounding these acts of rural violence was contributing towards their perpetuation and increase. Furthermore, at the time of its travel to Mato Grosso state, the IACHR observed the grave humanitarian situation faced by the Guarani and Kaiowá peoples, largely due to violations of their land rights. The IACHR visited the Dorados-Amambaipeguá indigenous lands, and received information on the victims of the "Caaraó massacre", during which one person was killed and another six members of the community were injured, as well as reports of frequent armed attacks by militias. The Committee also notes that the IACHR granted precautionary measures on 29 September 2019 in favour of members of the Guyraroká community of the Guarani Kaiowá indigenous people, since they had prima facie evidence that families of the community are in a serious and urgent situation because their rights to life and physical integrity are at serious risk. The IACHR takes into consideration reports concerning the high level of conflict between members of the community and landowners and concerning death threats (Resolution 47/19, Precautionary Measure (PM) 458/19). The Committee notes this information with ***concern***. ***The Committee urges the Government to take all the necessary measures to protect the life, physical and psychological integrity, and all the rights guaranteed by the Convention to indigenous and tribal peoples. The Committee considers that indigenous and tribal peoples can only assert their rights, particularly with regard to possession and ownership of the lands they traditionally occupy, if adequate measures are adopted to guarantee a climate free of violence, pressure, fear and threats of any kind.***

Articles 6, 7, 15 and 16. Consultations. In its previous comments, the Committee referred to the process for regulation of the indigenous and Quilombola peoples' right to consultation which had been under way since 2012. In this regard, the Government indicated that the process of negotiation with the peoples concerned had encountered certain difficulties and that the Secretariat-General of the Government was endeavouring to restore the dialogue. The Government was considering the possibility of proposing a potential consultation mechanism on the basis of a practical case. The Committee also noted that the CNI and the IOE had emphasized that the absence of regulation on the consultations required by the Convention was generating legal uncertainty for enterprises. In its report, the Government indicates that in recent years a number of indigenous peoples have taken initiatives in this area, indicating to the State the manner in which they wish to be consulted. In this context, they have drawn up their own protocols for prior consultation in which they formalize the diversity of procedures for building dialogue enabling effective participation in decision-making processes that can affect their lives, their rights or their lands. The Government refers in particular to the support given by the National Foundation for Indigenous Affairs (FUNAI) for drafting protocols for consultations involving the Xingu indigenous peoples in 2016, the Krenak indigenous people in 2018 and the Tupiniquim people in 2018, and to discussions under way in the Roraima Indigenous Council (CIR). In this regard, the Committee observes that, according to information on the website of the Public Prosecutor's Office, other communities have adopted protocols of this type. Moreover, regarding policies, programmes, actions and projects relating to social assistance for indigenous peoples,

the Government indicates that FUNAI is intensifying efforts to sign agreements with provider institutions in order to ensure respect for the particular social and cultural characteristics of these peoples and to respect their right to free and informed prior consultation where appropriate. The Government also points out that there is growing demand for infrastructure from indigenous communities (for electric power, water storage and distribution or road construction). In this regard, FUNAI ensures that all actions, activities or projects respect the right to free and informed prior consultation, so that relations between the Brazilian State and the indigenous communities are not vertical. The Government indicates that FUNAI, through its decentralized units, supplies technical, logistical and at times financial support to partner bodies and municipalities under whose jurisdiction indigenous lands are located in order to organize the necessary meetings. The Committee welcomes the drawing up of consultation protocols by certain communities and the role played by FUNAI in this respect. ***The Committee requests the Government to provide further information on the status of these protocols and to indicate how it is ensured in practice that the protocols are applied in a systematic and coordinated manner through the country whenever consideration is being given to legislative or administrative measures which may affect indigenous peoples directly. The Committee also encourages the Government to continue its efforts with a view to the adoption of a regulatory framework on consultations which will enable the indigenous and Quilombola peoples to have a suitable mechanism guaranteeing them the right to be consulted and to participate effectively whenever consideration is being given to legislative or administrative measures which may affect indigenous peoples directly, and which will be conducive to greater legal certainty for all stakeholders. The Committee recalls the need to consult the indigenous and Quilombola peoples as part of this process and to enable them to participate fully through their representative institutions so as to be able to express their views and influence the final outcome of the process. It requests the Government to provide information on the consultation processes undertaken, including on the basis of the consultation protocols developed by the various indigenous communities and the results thereof.***

Article 14. Lands. The Committee recalls that the two bodies responsible for the identification and demarcation of lands and the issuing of land titles are FUNAI (for lands traditionally occupied by indigenous peoples) and the National Institute for Settlement and Agrarian Reform (INCRA) (for lands traditionally occupied by the Quilombola peoples). The procedures are regulated by Decree No. 1775/96 and Decree No. 4887/03, respectively. The Government describes the various stages of the procedure, including: the request to open an administrative procedure for regularization; the preparation of a zone study (containing anthropological, historical, cartographic, land ownership and environmental elements); the declaration of limits; the opposition phase; the physical demarcation; the publication of the recognition order establishing the limits of the territory; and the registration and concession of the titles of collective ownership to the community by decree. The Committee notes the statistical information sent by the Government on land demarcation procedures in the states of Mato Grosso and Rio Grande do Sul. It observes that in Rio Grande do Sul, of a total of 48 procedures, 20 have resulted in regularization and 28 are in progress (at the study, declaration or demarcation stage). Regarding Mato Grosso, of a total of 50 procedures, 24 have resulted in regularization and 26 are in progress. The Committee also notes that, according to information on the FUNAI website, 440 lands have been regularized in the country as a whole. Moreover, 43 lands have had their limits identified, 75 lands have had their limits declared and nine lands have had their limits certified. Lastly, for 116 lands, the procedure is at the study stage. The Committee notes that CONACATE refers in its observations to Constitutional Amendment Proposal No. 215/2000, under examination by the National Congress, the aim of which is to confer exclusive authority on the National Congress to approve the demarcation of lands traditionally occupied by indigenous peoples and also to ratify demarcations which have already been certified. CONACATE indicates that the final decision on any new demarcation of these lands would no longer be under the authority of the competent ministry but under the authority of the National Congress, where agri-industry is heavily represented. The Committee also observes that, according to the information available on the website of the Federal Supreme Court (STF), in September 2019 FUNAI filed an extraordinary appeal (1.017.365/SC) with the Supreme Court on the issue of the "time frame". The "time frame" approach followed by certain jurisdictions means that only lands actually occupied on 5 October 1988, the date of promulgation of the Constitution, should be recognized as lands traditionally occupied by indigenous peoples. Since the STF recognized the general scope of the constitutional issue under examination, its final decision will have binding force in all instances of the judiciary. Moreover, the Committee notes that, according to information on the Congress website, two interim measures were adopted in 2019 aimed at transferring the authority to identify, delimit, demarcate and register indigenous

lands from FUNAI to the Ministry of Agriculture, Livestock and Supplies (MPO 870/2019 and MP 886/2019). The first measure was rejected by the National Congress and the second measure was deemed unconstitutional by the Supreme Court. The Committee observes that the IACHR, in its preliminary observations of 12 November 2018 relating to its visit to Brazil, stated that it had received various testimonies concerning the difficulties and long delays which indigenous communities face regarding access to land ownership. The result of these difficulties was that public lands intended for these communities were occupied by landowners or private mining enterprises, and this gave rise to conflicts involving expulsions, displacements, invasions and other forms of violence. The IACHR also expressed concern at the weakening in recent years of institutions such as FUNAI. The Committee recalls that *Article 14* of the Convention provides that the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. In this regard, the Committee emphasized in its General observation of 2018 that recognition of traditional occupation as the source of ownership and possession rights is the cornerstone on which the land rights system established by the Convention is based. ***The Committee trusts that the Government will continue taking all necessary measures to ensure the full application of the Convention with regard to the ownership and possession rights of indigenous and tribal peoples over all the lands which they traditionally occupy. It requests the Government to take the necessary measures to follow up in the very near future on the procedures pending before FUNAI concerning the delimitation, demarcation and registration of indigenous lands and before INCRA concerning lands traditionally occupied by Quilombola communities. The Committee in particular requests the Government to provide information on the measures taken regarding the situation of the Guarani and Kaiowá peoples. The Committee further requests the Government to provide information on the human and material resources allocated to both FUNAI and INCRA to fulfil their mandate at every stage of the procedure – studies, delimitation, demarcation and registration of lands.***

The Committee is raising other matters in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Paraguay

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1993)

Previous comment

The Committee notes the observations of the Central Confederation of Workers–Authentic (CUT-A), received on 30 August 2021.

Articles 2 and 33 of the Convention. Coordinated and systematic action. Further to its previous comments, the Committee notes the Government's reference in its report to the adoption of the National Plan for Indigenous Peoples 2020–30 (PNPI) by Decree No. 5897 of 25 August 2021. The Committee welcomes the fact that the formulation of the Plan was the result of a participatory process to which over a thousand men and women leaders and focal points from indigenous organizations contributed via 18 regional workshops in all departments of the country. The PNPI comprises four strategic components aimed at: (i) strengthening forms of indigenous identity and world views; (ii) guaranteeing rights; (iii) ensuring access to economic, social, cultural and environmental rights; and (iv) catering for groups requiring special attention. The Committee duly notes, with regard to the participation of indigenous peoples, that the PNPI envisages: strengthening the Paraguayan Indigenous Institute (INDI); institutionalizing and coordinating mechanisms for the effective participation of indigenous peoples, agreed upon with them, at the levels of national and local government; and establishing an entity for the participation of indigenous peoples at the political level of decision-making with regard to implementation of the Plan. Moreover, a body will be created to ensure inter-institutional coordination at the highest political level, headed by the INDI, in which budgets and priorities will be

agreed upon for the progressive implementation of the plan. The PNPI also envisages the setting up of a system to monitor and evaluate its implementation with a matrix of indicators and stakeholder institutions, including a community monitoring body. ***The Committee trusts that the adoption of the National Plan for Indigenous Peoples 2020–30 (PNPI) will make it possible to strengthen coordinated and systematic action to implement fully the rights enshrined in the Convention, and requests the Government to take the necessary steps to ensure the effective implementation of the Plan in all its strategic areas, ensuring the due budget assignment for that purpose. The Committee also requests the Government to provide information on the establishment and functioning of the entities for the participation of indigenous peoples envisaged by the Plan and on the results of the evaluation of the implementation of the Plan.***

Articles 6 and 15 of the Convention. Consultation. The Committee notes with ***interest*** the adoption of the Protocol governing the process of prior informed consent and consultation with the indigenous peoples of Paraguay (Decree No. 1039 of 28 December 2018). The Protocol provides that the coordination of consultation processes will come under the responsibility of the INDI. It stipulates that the indigenous peoples and the proponents of the project for consultation must reach an agreement on reasonable periods and deadlines for the different stages of the consultation process, ensuring that the indigenous peoples have sufficient time to understand the information received and acquire any additional information or clarification. The information supplied to the community must include: the nature, size, setting and duration of the project; the location of the areas and resources which will be affected; a preliminary study of the possible positive and negative impacts of the project; procedures to alleviate possible damage; and all foreseeable implications, including the benefits for the community. The INDI is responsible for adopting regulations for the implementation of the Protocol. The Committee notes the Government's indication that some 120 consultation sessions have been held in various indigenous communities, most of them relating to housing construction projects. ***The Committee requests the Government to continue its efforts to ensure the implementation of the consultation processes with the indigenous peoples with regard to all legislative or administrative measures which may affect them directly. In this regard, the Committee requests the Government to provide information on the measures taken, firstly, to allocate the necessary resources to the Paraguayan Indigenous Institute (INDI) to coordinate the implementation of the Protocol on consultation and, secondly, to instruct the indigenous peoples on the content of the Protocol and its regulations in order to ensure their effective participation in the consultation processes. Lastly, the Committee requests the Government to continue providing information on the consultations held in the framework of the Protocol on consultation, indicating the number of instances in which agreements have been reached.***

Article 7(2). Improvement of living conditions. The Committee notes that the CUT-A indicates in its observations that there are deep inequalities separating the indigenous population and the rest of the population, since 75 per cent of the indigenous population lives in poverty and 60 per cent in extreme poverty, which is above the national average. In this regard, the Government indicates that the Tekopora Programme of the Ministry of Social Development, aimed at the protection and promotion of vulnerable families living in poverty, has benefited 29,517 indigenous families totalling 91,007 persons. The resources provided not only make it possible to cover basic needs but also to invest through cooperative schemes in consumer stores that benefit the whole community. Programmes have also been implemented for the provision of sanitation and drinking water services for the Chaco region, with the aim of supplying 87 indigenous communities in the region. ***The Committee requests the Government to continue taking measures, in collaboration with the indigenous peoples, to reduce the inequalities and the rates of poverty and extreme poverty faced by the indigenous communities, including through national and departmental development plans, and to provide information on the results achieved further to the adoption of these measures.***

Article 14. Lands. In its previous comments, the Committee emphasized the need to continue making progress on the regularization of lands that indigenous peoples have traditionally occupied and

on the titles granted to them. The Committee notes the information provided by the Government on progress made in the processes of expropriation and transfer of lands to the following indigenous communities: Sawhoyamaxa (14,404 hectares), Xákmok Kásek (7,701 hectares) and Yakye Axa (11,312 hectares), in compliance with the judgments handed down by the Inter-American Court of Human Rights. The Committee also notes the declaration of expropriation of 219 hectares in the district of Carlos Antonio López, department of Itapúa, to the INDI, for subsequent assignment to the Y'aká Marangatu indigenous community.

The Committee further notes the Government's statement that there are many disputes regarding lands because of a clash between private third-party ownership and indigenous collective ownership. In this regard, it notes that the INDI emphasizes that an impact on the rights of third parties is not sufficient grounds for denying the rights of indigenous peoples to their ancestral lands, given that these rights cover a wider concept relating to the collective right to survival. The INDI adds that if land rights are viewed from the perspective of productivity and the agricultural system, this takes insufficient account of the particular features of indigenous communities. The CUT-A, for its part, refers in its observations to land disputes arising from occupations of indigenous lands by landless peasant farmers (*campesinos*) and to attempted forced evictions and harassment of indigenous communities, including with the intervention of armed non-government agents, as was the case with the Veraró community (department of Canindeyú), the Guyra Payu and Huguá Po'i communities (department of Caaguazú), and the Jacuí Guasú community (department of Itapúa). It underlines the lack of a public policy for tackling this problem. In this regard, the Committee observes that the United Nations Human Rights Committee, in its concluding observations of 2019, expressed concern at the slow progress made in registering and returning land and the consequent lack of comprehensive access for indigenous communities to their lands and natural resources (CCPR/C/PRY/CO/4, paragraph 44).

While the Committee understands the complexities related to the recognition of lands that indigenous peoples have traditionally occupied and the grant of title to them, it requests the Government to intensify its efforts to move forward in the appropriate processes in this regard and to provide information on progress made. In view of the existence of legal disputes between indigenous peoples and third parties regarding the ownership of lands, the Committee urges the Government to take the necessary steps to resolve the disputes and to reach agreements with the parties involved. In this regard, the Committee requests the Government to take the necessary steps without delay to investigate the facts relating to the occupation of lands by landless peasant farmers (campesinos) and also relating to forced evictions and harassment of indigenous communities, and to provide information in this respect.

Article 20. Recruitment and conditions of employment. For a number of years, the Committee has been urging the Government to strengthen the State's presence in the Chaco region in order to put an end to economic exploitation, in particular debt bondage involving indigenous workers. The Committee notes the Government's reference to the Paraguay Okakuaa project aimed at enhancing compliance with the labour legislation and improving decent working conditions, with the emphasis on preventing and combating forced labour. In this context, awareness-raising activities regarding labour rights have been carried out, with a particular focus on indigenous populations in the department of Boquerón. Talks have also been held with local actors and indigenous leaders to discuss concepts, regulations, indicators and vulnerabilities relating to forced labour.

The Committee notes that the CUT-A refers to the working situation of indigenous workers in the Chaco region, emphasizing that pay negotiations are conducted verbally and hence the workers have no means of demanding fulfilment of the agreed conditions. On livestock farms, indigenous workers are unpaid and only receive food and permission to live on the farm, in precarious conditions and without social protection. The CUT-A also indicates that the Ministry of Labour, Employment and Social Security (Ministry of Labour) does not have the necessary resources to carry out periodic controls of the situation of these workers through intervention by labour inspectors.

While recognizing the action taken by the Government to combat exploitation and forced labour of indigenous workers in the Chaco region, the Committee requests the Government to intensify its efforts to ensure that the offices of the Ministry of Labour in the Chaco region, including the labour inspectorate, have the necessary resources to monitor the observance of the labour rights of these workers, particularly those located on remote farms, to respond to complaints and to penalize violations. In addition, the Committee requests the Government to provide information on progress made in this respect. The Committee also refers to its comments on the application of the Forced Labour Convention, 1930 (No. 29).

The Committee is raising other matters in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 107** *(Angola, Bangladesh, Belgium, Pakistan, Syrian Arab Republic);* **Convention No. 169** *(Argentina, Brazil, Luxembourg, Paraguay).*

Specific categories of workers

Cuba

Plantations Convention, 1958 (No. 110) (ratification: 1958)

Previous comment

Part IV of the Convention. Wages. Articles 24–35. The Committee notes that the Government refers to the adoption of Resolution No. 29 of 25 November 2020, establishing the national minimum monthly wage at 2,100 pesos (CUP) (approximately US$87.55) and approving the wage scales and rates applicable to all workers. The Government indicates that representatives of the workers and employers participated in all the processes for the adoption of measures. However, the Committee notes that the Government does not provide specific examples of the manner in which representatives of employers' and workers' organizations were consulted in the context of determining the minimum wage for plantation workers, as required by *Article 24* of the Convention. The Government adds that, according to the National Statistics and Information Office, in 2020 the average monthly wage in agriculture, livestock farming and forestry was CUP1,043 (approximately US$43.49). However, the Committee notes that the Government does not provide any specific information on the wages received by plantation workers, or on the manner in which it is ensured that they receive at least the established national minimum wage. Nor does the Government provide information on the number and results of inspections carried out regarding the payment of wages on plantations. ***The Committee once again requests the Government to provide specific examples of the manner in which representatives of the workers' and employers' organizations in the plantations sector were consulted during the process of determining the minimum wage, in accordance with Article 24 of the Convention. The Committee also once again requests the Government to provide detailed, up-to-date information on the manner in which it is ensured that workers in the plantations sector receive at least the established national minimum wage, and also statistical information on the number and results of inspections conducted on plantations in relation to this matter.***

Part V. Annual holidays with pay. Articles 36–42. For nearly 20 years the Committee has been asking the Government to give effect to *Article 41* of the Convention. The Committee recalls that, in its 2018 comment, it expressed the hope that the new Labour Code would take due account of its previous comments on the need to amend section 98 of the Labour Code, which provided for cash compensation to be paid in lieu of holidays under certain conditions. The Committee noted that section 98 of the Labour Code was repealed by Act No. 116 of 20 December 2013 adopting the new Labour Code. However, the Committee noted that section 107 of the 2013 Labour Code authorizes the employer to require the presence of the worker under exceptional circumstances, and allows the employer to postpone or reduce the worker's holidays and pay the worker for the forgone portion of the accumulated holidays. In this regard, the Committee has been asking the Government since 2018 to indicate the manner in which it is ensured that section 107 of the Labour Code gives full effect to *Article 41* of the Convention. However, the Committee notes with ***regret*** that the Government does not provide any new information on this point and that it merely reiterates that holidays can only be postponed under exceptional circumstances and that measures are adopted to protect this right. ***The Committee therefore urges the Government to take the necessary measures to give full effect to Article 41 of the Convention, which provides that any agreement to relinquish the right to an annual holiday with pay, or to forgo such a holiday, shall be void. Noting that section 107 of the 2013 Labour Code contains the same formulation on holidays with pay as that contained in section 98 of the former Labour Code, a section that the Committee already referred to as not being in conformity with Article 41 of the Convention, the Committee refers to its 2013 comments on the Holidays with Pay***

Convention, 1936 (No. 52), in which it asked the Government to amend section 98 of the Labour Code or to specify that this section cannot be applied to the minimum holidays provided for in section 95 of the Labour Code.

Parts IX and X. Right to organize and collective bargaining. Freedom of association. Articles 54–70. The Committee notes the statistical information provided by the Government, indicating that there are a total of 350,760 workers in agriculture, of whom 229,000 are state workers, 15,107 are non-state workers and 36,000 are retirees, and that 99.4 per cent of these workers are unionized. The Government also indicates that there are 8,020 base-level organizations and 43 trade union bureaux and that a total of 1,223 collective agreements have been signed. However, the Committee notes that the statistical information provided by the Government refers to the agricultural sector but does not refer specifically to workers on plantations. Moreover, the Government does not provide any specific information on the measures taken or envisaged to ensure in practice that workers on plantations enjoy appropriate protection against any act of discrimination aimed at undermining freedom of association in relation to their employment. ***The Committee therefore once again requests the Government to provide statistical information on the number of collective agreements signed specifically with respect to plantations and to indicate the number of workers covered. The Committee also once again requests the Government to provide information on the measures taken or envisaged to ensure in practice that workers on plantations enjoy adequate protection against any act of discrimination aimed at undermining freedom of association in relation to their employment.***

Part XI. Labour inspection. Articles 71–84. In its previous comments, the Committee asked the Government to indicate the manner in which the labour inspectorate monitors and ensures that the activities of the vocational training and occupational guidance process on plantations comply with Article 6 of the Minimum Age Convention, 1973 (No. 138). However, the Committee notes that the Government does not provide any information on this matter. The Committee also asked the Government to send detailed information on the numbers of secondary-school students working on plantations, disaggregated by age, type and conditions of work, and on how they are compensated, and also on the manner in which it is ensured that these students and prisoners who work on the plantations have the freedom to choose whether or not to work. The Committee notes that the Government provides a partial reply in this regard, indicating that the Ministry of Education establishes working procedures for each school year, regulates vocational and work training for school students, on the basis of the principle of combining theory with practice by linking study and work, on a voluntary and unpaid basis, respecting the special guarantees and protection provided for in the legislation. As regards work done by prisoners, the Government indicates that such work is voluntary. In reply to the Committee's previous comment, the Government states that in 2020 the National Labour Inspection Office carried out inspections in 4,246 entities, covering 927,921 workers in the state sector, including in agriculture. The Government adds that these inspections mainly checked compliance with measures for the prevention and control of COVID-19. The Government also indicates that the National Labour Inspection Office has not detected any cases of forced labour or of child labour and that the Public Assistance Office at the Ministry of Labour and Social Security has not received any complaints in this regard. However, the Committee notes that the Government does not provide any specific information on workers on plantations. ***The Committee therefore once again requests the Government to provide detailed information on the supervision and enforcement measures relating to the conditions of work of plantation workers, particularly the inspections carried out on plantations, violations of the labour legislation reported, and the penalties imposed. Furthermore, the Committee once again requests the Government to indicate the manner in which the labour inspectorate conducts inspections and ensures that the activities of the vocational training and occupational guidance process for students on plantations comply with Article 6 of the Minimum Age Convention, 1973 (No. 138). The Committee also requests the Government to indicate which criteria, including age and sex, are used to select students who work on plantations, and how it is ensured that work on plantations is relevant to them in the***

context of the work-study link referred to above. Lastly, the Committee requests the Government to indicate the manner in which it is ensured that secondary-school students and prisoners who work on plantations have the freedom to decide whether or not to work.

Part IV. Application in practice. The Committee notes that no information has been supplied by the Government on the application of the Convention in practice. ***The Committee therefore once again requests the Government to provide detailed, up-to-date information on the application of the Convention in practice, including: (i) recent studies on the socio-economic conditions of workers on plantations; (ii) statistical information, disaggregated by sex and age, on the number of plantations and workers to whom the Convention applies; (iii) copies of collective agreements applicable in the sector; and (iv) the number of workers' and employers' organizations established in the plantations sector, and any other information which enables the Committee to assess the situation of workers on plantations in relation to the provisions of the Convention.***

Panama

Domestic Workers Convention, 2011 (No. 189) (ratification: 2015)

Previous comment

The Committee notes the observations of the National Confederation of United Independent Unions (CONUSI), received on 30 August 2021. ***The Committee requests the Government to provide its comments in this respect.***

Article 18. Application of the Convention. In its previous comments, the Committee noted the preparation of a preliminary draft Bill No. 012 (Bill No. 438) of 19 July 2016, which amends the provisions of the Labour Code and Family Code establishing working conditions for persons engaged in domestic work and requested the Government to provide information on the status of the Bill. The Committee notes the Government's indication that the Bill was referred back from the second reading in the National Assembly to a further first reading. In its comments CONUSI observes that no progress had been made in the status of the Bill since 2017 and maintains that it includes provisions that establish working conditions for domestic workers that are less favourable than those provided for in the legal system for other categories of workers in areas such as: wages, working time (more than eight hours per day), right to education and compensation for unjustified termination of contract. ***In the context where it is likely that draft Bill No. 012 (Bill No. 438) of 19 July 2016 will be approved in the near future, the Committee requests the Government to take the necessary measures, in consultation with the social partners, including the organizations representative of domestic workers as well as organizations representative of employers of domestic workers, to ensure full conformity of its labour legislation with the requirements of the Convention (Article 18), and keep the Office informed of any developments in this respect.***

Articles 6 and 9. Fair terms of employment and decent working and living conditions. The Committee notes the Government's indication that, in most cases, employers reach agreement with domestic workers about whether they are required to reside in the household. It adds that domestic workers' rest breaks and holiday periods are also respected. The Government also indicates that all workers have the right to keep their travel and identity documents. However, in its comments CONUSI indicates that there is a lack of information regarding the situation of domestic workers from which it can be ascertained whether or not domestic workers enjoy such rights in practice. In relation to the measures taken to ensure that domestic workers living in the household where they are employed enjoy decent living conditions, the Government refers once again to section 231(9) of the Labour Code, which requires that the meals provided to domestic workers must be healthy, plentiful and nutritious, and the living area comfortable and clean. ***The Committee requests the Government to provide updated and detailed information on how it is ensured in practice that all domestic workers: (a) are free to reach agreement***

with their employer or potential employer on whether to reside in the household; (b) are not obliged to remain in the household or with members of the household during periods of daily and weekly rest or annual leave; and (c) are entitled to keep in their possession their travel and identity documents. The Committee also once again requests the Government to provide information on the measures envisaged or adopted to ensure, in practice, that domestic workers who reside in the household they work for, benefit from decent living conditions that respect their privacy.

Article 10(1). Equality of treatment between domestic workers and workers generally in relation to hours of work. In its previous comments, the Committee noted that section 231(2) of the Labour Code provides that "domestic workers shall not be subject to a schedule of hours of work but shall benefit from a minimum absolute rest period between 9 p.m. and 6 a.m. …". It also noted that, in its ruling of 10 August 1994, the Supreme Court declared that section 231(2) of the Labour Code does not establish a 15-hour day for domestic workers but seeks to ensure that they benefit from a "continuous and uninterrupted period of rest during which they are not under the requirement to perform any work." The Committee notes the Government's indication that in practice most domestic workers are entitled to keep a set schedule, including periods of rest. The Committee nevertheless notes that both the Government and CONUSI in its observations recognize the need to amend this regulation to ensure equal working conditions between domestic workers and workers in general. ***The Committee therefore urges the Government to take the necessary measures without delay to amend section 231(2) of the Labour Code with a view to ensuring equality of treatment between domestic workers and workers in general in relation to normal hours of work, overtime compensation and periods of daily rest. The Committee requests the Government to provide information on progress achieved in this respect.***

Article 10(3). Periods during which domestic workers are not free to dispose of their time as they please. The Committee notes that the Government has not provided information on the implementation in practice of this Article of the Convention. ***The Committee once again requests the Government to take the necessary measures to ensure that periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls are regarded and paid as hours of work.***

Article 11. Minimum wage. Non-discrimination based on sex. In its previous comments, taking into account that domestic workers receive the lowest minimum wage due to the fact that a monthly rate is set, the Committee requested the Government to take the necessary measures to establish a minimum hourly wage for domestic workers in the same way as for other workers. The Government reiterates that, in accordance with the provisions of the legal system, all workers are entitled to a minimum wage. The Government indicates that the tripartite National Minimum Wage Committee makes recommendations to the Government regarding minimum wage rates based on studies and research. The Committee notes the information provided by the Government on the development of minimum wage rates for domestic workers between 2000 and 2021. The Committee notes that, over a 21-year period, minimum wage rates for domestic workers have increased from 105 to 300 balboas per month in the first region and in the second region they have increased from 95 to 275 balboas per month. CONUSI reports that the minimum wage established for domestic workers is the lowest of all legally established minimum wages and is lower than the monthly cost of the family basket of essential foodstuffs. The Committee notes, however, that the Government does not provide any information on the adoption of measures to establish a minimum hourly wage for domestic workers, as for other workers. The Committee recalls that this situation may give rise to instances of wage discrimination as, in accordance with section 231(2) of the Labour Code, domestic workers may work up to 15 hours per day, given that the legal system does not establish a maximum of eight working hours per day in the same way as it has for other workers. The establishment of a minimum monthly wage for domestic work is detrimental to this group of workers in these circumstances, as they tend to work many more hours per month than other workers. With regard to equal pay, the Committee refers to its 2019 observation on the application of the Equal Remuneration Convention, 1951 (No. 100), in which it noted the

Government's request for assistance from the Office in August 2017, in order to progress with bringing its legislation into line with the principle of Convention No. 100 and trusted that it would be provided without delay. The Committee also notes that CONUSI emphasizes the need to compile information on wages received by men and women domestic workers to identify gender-based wage discrimination in the domestic work sector. ***The Committee once again requests the Government to take the necessary measures to establish a minimum hourly wage for domestic workers in the same way as for other workers. It also requests the Government to take the necessary measures, in accordance with national practice and conditions, to ensure that the minimum wages rates established for domestic workers are fair and enable them to enjoy a decent standard of living.***

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: **Convention No. 110** *(Panama, Sri Lanka);* **Convention No. 149** *(Congo, Ghana, Guyana, Seychelles, Slovenia, Tajikistan);* **Convention No. 172** *(Guyana, Iraq, Lebanon, Mexico);* **Convention No. 177** *(Albania, Tajikistan);* **Convention No. 189** *(Guinea, Guyana, Ireland, Italy, Jamaica, Panama, Portugal).*

II. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)

Albania

Failure to submit. The Committee notes with ***interest*** that the Government ratified the Violence and Harassment Convention, 2019 (No. 190) on 6 May 2022. However, the Committee once again notes that the Government has not replied to its previous observations. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***Referring to its previous observations, the Committee reiterates its request that the Government provide information on the submission to the Albanian Parliament of 25 instruments: the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted by the Conference at its 82nd Session, the Promotion of Cooperatives Recommendation, 2002 (No. 193), the List of Occupational Diseases Recommendation, 2002 (No. 194), adopted by the Conference at its 90th Session, as well as the instruments adopted at the 78th, 84th, 86th, 89th, 92nd, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (the Violence and Harassment Recommendation, 2019 (No. 206)).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Angola

Serious failure to submit. The Committee notes with ***concern*** that the Government has once again not provided the information requested in its previous observations. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide the information required under article 19 of the ILO Constitution on the 19 instruments pending submission to the National Assembly. These are: the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180), adopted by the Conference at its 79th Session; the Protocol of 1995 to the Labour Inspection Convention, 1947, adopted by the Conference at its 82nd Session; and the instruments adopted at the 86th, 91st, 92nd, 94th, 95th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions of the Conference (2003–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Antigua and Barbuda

Failure to submit. The Committee once again notes that the Government has not provided a reply to its 2018 direct request. It therefore recalls the information provided by the Government in April 2014

that the instruments adopted by the Conference from its 83rd to its 101st Sessions (1996–2012) were resubmitted by the Minister of Labour to the Cabinet of Antigua and Barbuda on 11 March 2014. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***In this context, the Committee reiterates its request that the Government specify the dates on which the 14 instruments adopted by the Conference from its 83rd to its 101st Sessions were submitted to the Parliament of Antigua and Barbuda. The Committee also reiterates its request that the Government provide information on the submission to Parliament of the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, and the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session.***

Bahamas

Serious failure to submit. The Committee once again notes with ***concern*** that the Government has again not provided information in response to its previous observation. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament). The Committee therefore once again firmly urges the Government to provide information on the submission to Parliament of the 26 instruments adopted by the Conference at 15 sessions held between 1997 and 2019 (85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Bahrain

Failure to submit. The Committee recalls that, for a number of years, it has been requesting the Government to submit the instruments adopted by the International Labour Conference to the National Assembly in compliance with its obligation of submission pursuant to article 19 of the ILO Constitution. In this respect, it notes the information provided by the Government in its communication of 30 August 2022, in which it reiterates that: (i) it has complied with its constitutional obligations by submitting the instruments adopted by the International Labour Conference to its Council of Ministers, as the competent authority; and (ii) indicated that a new mechanism for submission of the instruments adopted by the Conference would require the revision of the Constitution of Bahrain and of a number of laws which regulate this aspect and which specify the mandate and powers of the Council of Ministers and the National Assembly.

Against this backdrop, the Committee recalls that when a State decides to become a Member of the Organization it accepts to fulfil the obligations established in the Constitution, such as the obligation to submit to the competent authorities the instruments adopted at the Conference. It emphasizes, however, that the obligation of ILO Member States to submit the instruments adopted by the Conference to the competent authorities does not imply any obligation to propose the ratification or application of the instruments in question, or to take any other specific action. Pursuant to article 19 of the ILO Constitution, Member States have complete freedom as to the nature of the proposals to be

made, if any, when submitting the instruments. Submission does not imply any obligation to propose the ratification of a Convention or Protocol, nor does it imply the application of one or more of the principles set out in an unratified Convention or a Recommendation. In this respect, the Committee once again draws the attention of the Government to the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted by the Governing Body in 2005, particularly Part I on the aims and objectives of submission.

The Committee understands that, in Bahrain, the Council of Ministers is the authority competent to ratify a Convention or Protocol, as well as to decide on any other action which it may deem appropriate in respect of the instruments adopted by the Conference (2005 Memorandum, Part I(b)). The Committee nevertheless recalls that, for the purposes of article 19 of the ILO Constitution, discussion in a deliberative assembly – or at a minimum transmission to a deliberative assembly of information concerning the instruments adopted by the International Labour Conference – is an essential component of the constitutional obligation to submit, as indicated in the 2005 Memorandum (2005 Memorandum, Part I(c) and Part II(c)). This obligation is applicable even in cases where legislative power is vested in the executive by virtue of the Constitution of the Member State. The obligation to submit is twofold: (1) to encourage ratification or application of instruments adopted by the Conference through submission to the competent authority empowered to consider ratification; and (2) to bring the instruments adopted by the Conference to the knowledge of the public through their submission to a parliamentary or deliberative body. Given the importance of the latter objective, the Committee has noted that, even in the absence of a parliamentary body, informing a consultative body makes it possible to carry out a full examination of the instruments, ensuring that they are widely disseminated among the public, which is one of the purposes of the obligation of submission (2005 Memorandum, Part II(d)).

The Committee therefore expresses the hope that the Government will take urgent measures to further examine this matter in order to ensure full compliance with this twofold obligation to submit, established in article 19 of the ILO Constitution, and that it will soon be in a position to report not only on the submission to the Council of Ministers of the 25 instruments adopted by the Conference at 14 sessions held between 2000 and 2019 (88th Session, 89th Session, 90th Session, 91st Session, 92nd Session, 94th Session, 95th Session, 96th Session, 99th Session, 100th Session, 101st Session, 103rd Session, 104th Session and 108th Session), but also on the submission of these instruments to the Consultative Council.

Belize

Serious failure to submit. The Committee notes once again with ***deep concern*** that the Government has provided no reply to its previous observations. It recalls once again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee expresses the firm hope, as did the Conference Committee in June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). ***The Committee once again urges the Government to provide information on the submission to the National Assembly of the 43 pending instruments adopted by the Conference at 22 sessions held between 1990 and 2019. It once again reminds the Government of the availability of ILO technical assistance in meeting its submission obligations.***

Plurinational State of Bolivia

Serious failure to submit. The Committee once again notes with ***concern*** that the Government has not provided a reply to its previous comments. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee notes that information has not been provided on the submission to the

Plurinational Legislative Assembly of 31 instruments adopted by the Conference at 20 sessions between 1993 and 2019. ***The Committee firmly urges the Government to provide information on the submission to the Plurinational Legislative Assembly of the 31 instruments adopted by the Conference since 1993 for which submission is still pending. It once again reminds the Government that it may avail itself of ILO technical assistance if it so wishes.***

Brunei Darussalam

Serious failure to submit. The Committee notes once again with ***deep concern*** that the Government has not replied to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again firmly urges the Government to provide information on the submission to the competent national authorities, within the meaning of article 19(5) and (6) of the ILO Constitution, of the 12 instruments adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2007–19). The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.***

Central African Republic

Submission. The Committee notes with ***interest*** the ratification of the Violence and Harassment Convention, 2019 (No. 190) on 9 June 2022. It notes, however, that the Government has yet again not replied to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee reiterates its request that the Government provide information on the submission to the National Assembly of the eight instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–18). It also requests that the Government provide information on the submission of the Violence and Harassment Recommendation, 2019 (No. 206), adopted by the Conference at its 108th Session.***

Chad

Serious failure to submit. The Committee notes with ***concern*** that the Government has once again failed to reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament).***

Therefore, the Committee once more requests the Government to provide information on the submission to Parliament of the ten instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).

Chile

Submission. The Committee notes that the Government has not provided a reply to its previous comments. ***The Committee therefore reiterates its request that the Government provide information on the submission to the National Congress, indicating the date, of the remaining 25 instruments adopted at 16 sessions of the Conference between 1996 and 2017 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 95th (the Employment Relationship Recommendation, 2006 (No. 198)), 96th, 99th, 101st, 103rd, 104th and 106th Sessions).***

The Committee recalls that the Government may avail itself of the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Comoros

Serious failure to submit. The Committee notes once again with ***deep concern*** that the Government has not provided the information requested in its previous observation. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once more expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It therefore once again firmly urges the Government to provide information on the submission to the Assembly of the Union of Comoros of the 46 instruments adopted by the Conference at the 23 sessions held between 1992 and 2019.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Congo

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has not replied to its previous observation. The Committee once more recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference in June 2019, June 2021 and June 2022, that the Government of Congo will comply with its obligations to submit Conventions, Recommendations and Protocols to the competent authorities in the future. The Committee once again reiterates its request that the Government complete the submission procedure in relation to 67 Conventions, Recommendations and Protocols, adopted by the Conference during 32 sessions from 1970 to 2019, which have not yet been submitted to the National Assembly. It reminds the Government of the availability of ILO technical assistance to meet its constitutional submission obligations.***

Croatia

Submission. The Committee welcomes the information provided by the Government regarding the submission of the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, to the Croatian Parliament on 17 March 2022. ***The Committee also firmly urges the Government to provide information on the submission to the Croatian Parliament of the remaining 21 instruments adopted by the Conference at 12 sessions held between 1998 and 2016 (86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd and 104th Sessions).***

Democratic Republic of the Congo

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has yet again not replied to its previous observation. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide***

information on the ten instruments pending submission to Parliament, which were adopted during the past seven Sessions of the Conference (2010–19).

Dominica

Serious failure to submit. The Committee notes once again with ***deep concern*** that the Government has not provided a reply to its previous comments. It once more recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021, and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore once again firmly urges the Government to provide information on the submission to the House of Assembly of the 43 instruments adopted by the Conference during 22 sessions held between 1993 and 2019 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions). It once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.***

El Salvador

Submission. The Committee welcomes the Government's communication of 25 May 2022. It notes with ***interest*** the ratification on 7 June 2022 of the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), the Collective Bargaining Convention, 1981 (No. 154), the Maternity Protection Convention, 2000 (No. 183), and the Violence and Harassment Convention, 2019 (No. 190). The Committee nevertheless notes that 57 instruments remain pending submission to the Legislative Assembly. ***It therefore firmly urges the Government to submit to the Legislative Assembly the 57 instruments adopted at the 25 sessions of the Conference held between October 1976 and June 2019. Moreover, it once again reiterates its request that the Government provide information on the submission of the remaining outstanding instruments adopted by the Conference at its 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163), 69th (Recommendation No. 167) and 90th (Recommendations Nos 193 and 194) Sessions.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Equatorial Guinea

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. Accordingly, the Committee once again firmly urges the Government to provide information on the submission to Parliament of the 37 instruments adopted by the Conference***

between 1993 and 2019. It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.

Eswatini

The Committee notes with ***satisfaction*** the information provided by the Government regarding the submission on 25 May 2022 to the House of Assembly of the ten instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19). ***The Committee commends the efforts made by the Government in meeting its constitutional obligation of submission.***

Gabon

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee firmly expects that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore once again firmly urges the Government to provide information concerning the submission to Parliament of the 27 instruments adopted at the 82nd, 83rd, 85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions of the Conference.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Gambia

Serious failure to submit. The Committee once again notes with ***deep regret*** that the Government has not provided a reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore urges the Government to provide information on the submission to the National Assembly of the ten instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Grenada

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no response to its previous comments. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***Referring to its previous observations, the Committee once again urges the Government to communicate the date on which the instruments adopted by the Conference between 1994 and 2006 were submitted to the Parliament of Grenada and to provide information on the decisions taken by the Parliament, if any, in relation to the instruments submitted. The Committee also once again urges the Government to provide information on the submission to Parliament of the 11 instruments adopted at the 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions of the Conference (2007–19). It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Guinea

Failure to submit. The Committee once again notes with ***concern*** that the Government has provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again firmly urges the Government to provide information regarding the submission to the National Assembly of the 31 instruments adopted at 17 sessions held by the Conference between October 1996 and June 2019 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th, 101st, 103rd, 104th, 106th and 108th Sessions).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Guinea-Bissau

Submission. The Committee notes with ***concern*** that the Government has yet again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again urges the Government to provide information on the submission to the Assembly of the Republic of the 21 remaining instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 108th Sessions (2001–19). It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Guyana

Serious failure to submit. The Committee notes with ***concern*** that the Government has once again provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide information on the submission to the Parliament of Guyana of the ten instruments adopted by the Conference at its 96th, 99th, 101st, 103rd, 104th, 106th and 108th Sessions. It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Haiti

Serious failure to submit. The Committee notes once again with ***deep concern*** that the Government has provided no response to its previous comments. It again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). The Committee therefore once again firmly urges the Government to provide information with regard to the submission to the National Assembly of the following 65 instruments:***

- ***the remaining instruments from the 67th Session (Conventions Nos 154 and 155, and Recommendations Nos 163 and 164);***
- ***the instruments adopted at the 68th Session;***

– ***the remaining instruments adopted at the 75th Session (Convention No. 168, and Recommendations Nos 175 and 176); and***

– ***the instruments adopted at 26 sessions of the Conference held between 1989 and 2019.***

The Committee reminds the Government of the availability of ILO technical assistance to assist it in meeting its constitutional obligation of submission.

Hungary

Serious failure to submit. The Committee once again notes with ***deep regret*** that the Government has not responded to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee accordingly once again reiterates its request that the Government provide information on the submission to the National Assembly of the ten instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Iraq

Failure to submit. The Committee notes with ***concern*** that the Government has once again provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. It therefore once again recalls the detailed information provided by the Government in November 2017, including the dates of submission to the Council of Representatives (Majlis Al-Nuwaab) of each of the instruments adopted by the Conference at its 88th, 90th, 92nd, 95th, 96th, 99th, 100th and 101st Sessions (2000–12). The Committee further recalls the Government's indication that Recommendations submitted to the Council of Representatives were not examined by the Council, but were transmitted to the Ministry of Labour and Social Affairs which, according to the Government's indication, is the competent authority with respect to Recommendations. The Committee further recalls the information provided by the Government in March 2017, indicating that the Protocol of 2014 to the Forced Labour Convention, 1930, was submitted to the competent authority. It noted in this regard that no information was provided on the date of submission, or on whether the instrument in question was in fact submitted to the Council of Representatives (Majlis Al-Nuwaab).

Against this backdrop, the Committee recalls that when a State decides to become a Member of the Organization it accepts to fulfil the obligations established in the Constitution, such as the obligation to submit to the competent authorities the instruments adopted at the Conference. It emphasizes, however, that the obligation of ILO Member States to submit the instruments adopted by the Conference to the competent authorities does not imply any obligation to propose the ratification or application of the instruments in question, or to take any other specific action. Pursuant to article 19 of the ILO Constitution, Member States have complete freedom as to the nature of the proposals to be made, if any, when submitting the instruments. Submission does not imply any obligation to propose the ratification of a Convention or Protocol, nor does it imply the application of one or more of the principles set out in an unratified Convention or a Recommendation. In this respect, the Committee once again draws the attention of the Government to the 2005 Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted by the Governing Body in 2005, particularly Part I on the aims and objectives of submission.

The Committee understands that, in Iraq, the Ministry of Labour and Social Affairs is considered to be the competent authority in relation to the submission of Recommendations. The Committee nevertheless recalls that, for the purposes of article 19 of the ILO Constitution, discussion in a deliberative assembly – or at a minimum provision to a deliberative assembly of information concerning all of the instruments adopted by the International Labour Conference, regardless of whether these are Conventions, Protocols or Recommendations – is an essential component of the constitutional obligation to submit, as indicated in the 2005 Memorandum (2005 Memorandum, Part I(c) and Part II(c)). This obligation is applicable even in cases where legislative power is vested in the executive, as in this case the Ministry of Labour and Social Affairs, by virtue of the Constitution of the Member State. The obligation to submit is twofold: (1) to encourage ratification or application of instruments adopted by the Conference through submission to the competent authority empowered to consider ratification; and (2) to bring the instruments adopted by the Conference to the knowledge of the public through their submission to a parliamentary or deliberative body. Given the importance of the latter objective, the Committee has noted that, even in the absence of a parliamentary body, informing a consultative body makes it possible to carry out a full examination of the instruments, ensuring that they are widely disseminated among the public, which is one of the purposes of the obligation of submission (2005 Memorandum, Part II(d)).

The Committee therefore expresses the hope that the Government will take urgent measures to further examine this matter in order to ensure full compliance with this twofold obligation to submit, established in article 19 of the ILO Constitution, and that it will soon be in a position to provide more specific information on the submission to the Council of Representatives of the remaining 12 instruments adopted by the Conference from 2000 to 2015. The Committee also reiterates its request for the Government to provide information on the submission to the Council of Representatives of the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session, and the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019). It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.

Kazakhstan

Failure to submit. The Committee notes with ***interest*** the ratification of the Part-Time Work Convention, 1994 (No. 175) on 25 May 2022. The Committee notes, however, that the Government has yet again provided no response to its previous comments. Therefore, it recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again urges the Government to provide information on the date of submission of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) to Parliament. Moreover, the Committee once again reiterates its request that the Government to provide information on the submission to Parliament of the remaining 38 instruments adopted by the Conference between 1993 and 2019, including with respect to the date of submission of each instrument. It reminds the Government of the availability of ILO technical assistance to meet its constitutional obligation of submission.***

Kyrgyzstan

Failure to submit. The Committee notes with ***concern*** that the Government has once again failed to reply to its previous comments. The Committee therefore refers yet again to the comments it has been formulating since 1994, and recalls that, under article 19 of the ILO Constitution, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies for the enactment of legislation or

other action. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again firmly urges the Government to provide information on the submission to the competent national authority of the 43 instruments adopted by the Conference at 22 sessions held from 1992 to 2019. The Committee reminds the Government of the availability of ILO technical assistance to assist it in overcoming this serious delay.***

Lebanon

Serious failure to submit. The Committee once again notes with ***regret*** that the Government has provided no response to its previous comments. It recalls yet again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee recalls once more the information provided by the Government in February 2016, indicating that the Ministry of Labour had submitted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), to the Council of Ministers for consideration, and that the Council of Ministers had decided to establish a special commission to examine the Recommendation. ***The Committee yet again refers to its previous comments and urges the Government indicate the date on which the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2010–17) were submitted to the National Assembly (Majlis Al Nuwwab), and to provide information on the submission of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session (June 2019).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Liberia

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in 2017, 2018, 2019, 2021 and 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It also once again reiterates its request that the Government provide information on the submission to the National Legislature of the 25 instruments adopted by the Conference at its 77th, 82nd, 88th, 89th, 90th, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Libya

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has yet again provided no reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to***

the competent authorities. The Committee therefore once again reiterates its request that the Government provide information on the submission to the competent national authorities (within the meaning of article 19(5) and (6) of the ILO Constitution) of the 37 Conventions, Recommendations and Protocols adopted by the Conference at 19 sessions held between 1996 and 2019.

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Malawi

Failure to submit. The Committee once again notes with ***regret*** that the Government has provided no reply to its previous comments. It once more recalls the information provided by the Government concerning the submission to the President on 12 December 2018 of the HIV and AIDS Recommendation, 2010 (No. 200), adopted by the Conference at its 99th Session, the Domestic Workers Convention, 2011 (No. 189), adopted by the Conference at its 100th Session, the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session. In addition, the Government indicated that the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), was submitted to the competent authority. The Committee once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. While noting the Government's indication that the President is a member of the Parliament, the Committee wishes to reiterate that the obligation of submission cannot be considered to have been fulfilled until the ILO instruments adopted have reached and been submitted to the legislative body. ***The Committee therefore once again requests that the Government provide information on the submission to Parliament, and the dates of submission, of the nine instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

Malaysia

Failure to submit. The Committee welcomes the ratification by Malaysia of the 2014 Protocol on Forced Labour, 1930, on 21 March 2022. It nevertheless notes that the Government has not responded to the Committee's previous comments with respect to the submission of pending instruments. The Committee therefore once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee reiterates its request that the Government provide information on the submission to the Parliament of Malaysia of the 12 instruments adopted by the Conference at its 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2006–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Maldives

Serious failure to submit. The Committee once again notes with ***regret*** that the Government has provided no response to its previous comments. The Committee again recalls that the Republic of Maldives became a Member of the Organization on 15 May 2009. Subsequently, in accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text

of the Convention, Recommendations and Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions. ***The Committee therefore expresses the firm hope, as did the Conference Committee in June 2022, that the Government will comply with its constitutional obligation of submission. The Committee once again reiterates its request that the Government provide information on the submission (indicating the dates of submission) to the Parliament of the People (Majlis) of the instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

The Committee also recalls once again that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the People's Majlis of the instruments adopted by the Conference.

Malta

Submission. The Committee notes that in a communication of 29 April 2021, the Government indicated that it was in the process of ratifying the Domestic Workers Convention, 2011 (No. 189). The Committee nevertheless notes that the Government has not provided the information requested in its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore reiterates its request that the Government provide information on the submission to the House of Representatives of the ten instruments adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2007–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Marshall Islands

Serious failure to submit. The Committee once again notes with ***regret*** that the Government has provided no response to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee again recalls that the Marshall Islands became a Member of the Organization on 3 July 2007. In accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and the Protocol adopted by the Conference at its 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2007–19). ***The Committee once again reiterates its request that the Government provide information on the submission to Parliament of the 12 instruments adopted by the Conference between 2007 and 2019.***

The Committee recalls once more that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the ILO Constitution relating to the submission of the instruments adopted by the Conference to the competent authorities.

Mozambique

Submission. The Committee once again notes with ***regret*** that the Government has not provided a response to its previous comments. The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***It therefore firmly urges the Government to provide information on the submission to the***

Assembly of the Republic of the 33 instruments adopted by the Conference at 16 sessions held between 1996 and 2019.

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

North Macedonia

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has not replied to its previous comments. The Committee recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2018, June 2019, June 2021 and June 2022, that the Government will provide information on the submission to the Assembly of the Republic (Sobranie) of 29 instruments (Conventions, Recommendations and Protocols) adopted by the Conference from October 1996 to June 2019.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Papua New Guinea

Serious failure to submit. The Committee notes once again with ***deep concern*** that the Government has provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee firmly urges the Government to submit to the National Parliament the 25 instruments adopted by the Conference at 15 sessions held between 2000 and 2019.***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Republic of Moldova

Failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again reiterates its request that the Government provide information on the submission to Parliament of the 14 instruments adopted by the Conference at its 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 106th and 108th Sessions.***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Rwanda

Serious failure to submit. Date of submission. The Committee once again notes with ***regret*** that the Government has provided no response to its previous comments. It once again recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***Therefore, the Committee once more firmly urges the Government to provide information on the date of submission to the National Assembly of the 38 Conventions, Recommendations and Protocols adopted by the Conference at 20 sessions held between 1993 and 2019 (80th, 82nd, 83rd, 84th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Saint Kitts and Nevis

Serious failure to submit to the National Assembly. The Committee welcomes the information provided by the Government with respect to the tripartite consultations held in relation to the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, and the subsequent referral of the instruments to the Council of Ministers. It nevertheless reiterates that, to fully comply with the constitutional obligation of submission set out in article 19(5)(b) and (6)(b) of the ILO Constitution, the instruments should be submitted to the authorities "within whose competence the matter lies, for the enactment of legislation", which should normally be the legislature (in the case of Saint Kitts and Nevis, the National Assembly). The Committee expresses the firm hope, as did the Conference Committee in June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. The Committee therefore once again urges the Government to provide information on the submission to the National Assembly of the 27 instruments adopted by the Conference at 16 sessions held between 1996 and 2017 (83rd, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions). It further requests the Government to provide information regarding the submission to the National Assembly of the two instruments adopted by the Conference at its 108th Session in June 2019: the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, 2019 (No. 206).

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Saint Lucia

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no response to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority. It firmly urges the Government to provide information on the submission to Parliament of the 79 remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2019 (66th, 67th (Convention No. 156 and Recommendations Nos 164***

and 165), 68th (Convention No. 157 and Protocol of 1982), 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th (Recommendations Nos 193 and 194), 91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

The Committee notes with ***interest*** the ratification of the Occupational Safety and Health Convention, 1981 (No. 155) and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 by Saint Lucia on 14 May 2021. ***The Committee requests the Government to provide information on the tripartite consultations held prior to the ratifications, as required by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).***

Saint Vincent and the Grenadines

Serious failure to submit. The Committee again notes with ***deep concern*** that the Government has yet again failed to reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the House of Assembly). It firmly urges the Government to provide information on the submission to the House of Assembly of the 31 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 17 sessions held from 1995 to 2019 (82nd, 83rd, 85th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Seychelles

Serious failure to submit. The Committee once again notes with ***deep regret*** that the Government has provided no response to its previous comments. It therefore recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Assembly). It firmly urges the Government to provide the requested information on the submission to the National Assembly of the 22 instruments adopted by the Conference at 13 sessions held from 2001 to 2019.***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Sierra Leone

Failure to submit. The Committee once again notes with ***deep concern*** that the Government has failed to reply to its previous comments. It recalls once more that the constitutional obligation of

submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again firmly urges the Government to provide information on the submission to Parliament of the instruments adopted by the Conference in October 1976 (Convention No. 146 and Recommendation No. 154, adopted at its 62nd Session), and all instruments adopted between 1977 and 2019 that have not been submitted. The Government is firmly urged to take steps without delay to submit all 93 pending instruments to Parliament.***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

The Committee also reiterates its request that the Government provide information with respect to the tripartite consultations held prior to the ratification on 25 August 2021 by Sierra Leone of eight instruments, as required by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

Solomon Islands

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no response to its previous comments. It therefore recalls yet again that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the National Parliament). The Committee firmly urges the Government to take steps without delay to submit to the National Congress the 65 pending instruments adopted by the Conference between 1984 and 2019 to comply with its constitutional obligations under article 19 of the ILO Constitution and provide the required information to the International Labour Office.***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Somalia

Submission. The Committee notes with ***regret*** that the Government has once again not provided a reply to its 2018 observations. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again firmly urges the Government to take steps without delay to submit to the competent national authority the 51 instruments adopted by the Conference between 1989 and 2019 which are still pending submission and to provide the information required under article 19 of the ILO Constitution to the International Labour Office.***

The Committee once again recalls that the Government may avail itself of the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Syrian Arab Republic

Serious failure to submit. The Committee once again notes with ***deep regret*** that the Government has failed to reply to its previous comments. It once again recalls the Government's indications in

September 2015 that the Consultative Council for Consultation and Social Dialogue held discussions related to the submission of the instruments adopted by the Conference to the competent authorities. The Committee further notes that 41 instruments adopted by the Conference are still pending submission to the People's Council. In this context, the Committee recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee therefore once again expresses the firm hope, as did the Conference Committee in June 2018, June 2019, June 2021 and June 2022, that the Government will provide information on the submission to the People's Council of the 41 instruments adopted by the Conference at its 66th and 69th Sessions (Recommendations Nos 167 and 168) and at its 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 85th, 86th, 90th (Recommendations Nos 193 and 194), 91st, 92nd, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions. The Committee once again firmly urges the Government to take steps to submit the pending instruments without delay.***

The Committee once again recalls that the Government may avail itself of the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Timor-Leste

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has not replied to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***It therefore once again reiterates its request that the Government provide information on the submission to the National Parliament of the ten instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th and 106th and 108th Sessions (2010–19).***

The Committee recalls once more that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Tuvalu

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no response to its previous comments. It recalls that Tuvalu became a Member of the Organization on 27 May 2008. In accordance with article 19(5)(a) and (6)(a) of the ILO Constitution, the Office communicated to the Government the text of the Convention, Recommendations and the Protocol adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19). The Committee recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee firmly trusts that the Government will take steps to submit without delay the ten instruments adopted by the Conference between 2010 and 2019 and provide the information required under article 19 of the ILO Constitution to the Office.***

In this context, the Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the ILO Constitution relating to the submission of the instruments adopted by the Conference to the competent authorities.

United Arab Emirates

Failure to submit. The Committee notes with ***regret*** that the Government has once again failed to respond to its previous comments. It recalls that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO.

The Committee recalls that when a State decides to become a Member of the Organization it accepts to fulfil the obligations established in the Constitution, such as the obligation to submit to the competent authorities the instruments adopted at the Conference. It emphasizes, however, that the obligation of ILO Member States to submit the instruments adopted by the Conference to the competent authorities does not imply any obligation to propose the ratification or application of the instruments in question, or to take any other specific action. Pursuant to article 19 of the ILO Constitution, Member States have complete freedom as to the nature of the proposals to be made, if any, when submitting the instruments. Submission does not imply any obligation to propose the ratification of a Convention or Protocol, nor does it imply the application of one or more of the principles set out in an unratified Convention or a Recommendation. In this respect, the Committee once again draws the attention of the Government to the 2005 Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted by the Governing Body in 2005, particularly Part I on the aims and objectives of submission.

The Committee understands that, in the United Arab Emirates, instruments adopted by the Conference are submitted to the Council of Ministers as the authority competent to ratify a Convention or Protocol, as well as to decide on any other action which it may deem appropriate in respect of the instruments adopted by the Conference (2005 Memorandum, Part I(b)). The Committee nevertheless recalls that, for the purposes of article 19 of the ILO Constitution, discussion in a deliberative assembly – or at a minimum, transmission to a deliberative assembly of information concerning the instruments adopted by the International Labour Conference – is an essential component of the constitutional obligation to submit, as indicated in the 2005 Memorandum (2005 Memorandum, Part I(c) and Part II(c)). This obligation is applicable even in cases where legislative power is vested in the executive by virtue of the Constitution of the Member State. The objective of submission is twofold: (1) to encourage ratification or application of instruments adopted by the Conference through submission to the competent authority empowered to consider ratification; and (2) to bring the instruments adopted by the Conference to the knowledge of the public through their submission to a parliamentary or deliberative body. Given the importance of the latter objective, the Committee has noted that, even in the absence of a parliamentary body, informing a consultative body makes it possible to carry out a full examination of the instruments, ensuring that they are widely disseminated among the public, which is one of the purposes of the obligation of submission (2005 Memorandum, Part II(d)).

The Committee therefore expresses the hope that the Government will take urgent measures to further examine this matter in order to ensure full compliance with this twofold obligation to submit, established in article 19 of the ILO Constitution, and that it will soon be in a position to provide information on the submission to the Federal National Council (Majlis Watani Ittihadi) of the 11 instruments adopted by the Conference at its 94th, 99th, 100th, 101st, 103rd, 104th and 106th Sessions (2006, 2010–17). It also requests the Government to provide information on the submission to the competent national authorities of the Violence and Harassment Convention (No. 190) and the Violence and Harassment Recommendation (No. 206), 2019, adopted by the Conference at its 108th Session.

Vanuatu

Serious failure to submit. The Committee once again notes with ***deep concern*** that the Government has provided no reply to its previous comments. It recalls once more that the constitutional

obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. ***The Committee once again expresses the firm hope, as did the Conference Committee in June 2016, June 2017, June 2018, June 2019, June 2021 and June 2022, that the Government will comply with its obligation to submit Conventions, Recommendations and Protocols to the competent authority (the Parliament of Vanuatu). The Committee firmly urges the Government to provide information on the submission to the Parliament of Vanuatu of the 18 instruments adopted by the Conference at 12 sessions held between 2003 and 2019 (91st, 92nd, 94th, 95th, 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions).***

The Committee once again recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Yemen

Serious failure to submit. The Committee notes with ***deep regret*** that the Government has yet again provided no response to its previous comments. It therefore once again recalls the information provided to the Conference by the Government in June 2018, indicating that it was not able to submit instruments adopted by the Conference to the House of Representatives due to the ongoing conflict in Yemen. ***While noting the complex situation in the country, particularly the ongoing conflict, the Committee trusts that, when national circumstances permit, the Government will be in a position to provide information on the submission to the House of Representatives of the 21 instruments adopted by the Conference at its 88th (Maternity Protection Recommendation, 2000 (No. 191)), 89th (Safety and Health in Agriculture Recommendation, 2001 (No. 192), 90th, 92nd (Human Resources Development Recommendation, 2004 (No. 195), 94th, 95th (Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197) and the Employment Relationship Recommendation, 2006 (No. 198), 96th, 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2000–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Zambia

Serious failure to submit. Date of submission. The Committee notes with ***concern*** that the Government has yet again provided no reply to its previous comments. It recalls once more that the constitutional obligation of submission is of the highest importance and is a fundamental element of the standards system of the ILO. The Committee again recalls the information provided by the Government in September 2010, indicating that 12 instruments adopted by the Conference from 1996 to 2007 had been submitted to the National Assembly, but without specifying the date of submission of these instruments. ***The Committee therefore reiterates its request once more that the Government indicate the dates on which the above-mentioned instruments were submitted to the National Assembly. It also urges the Government to provide information on any action taken by the National Assembly in relation to the submissions, as well as with respect to the prior tripartite consultations that took place with the social partners. Moreover, the Committee again requests the Government to provide information on the submission to the National Assembly of the ten instruments adopted by the Conference at its 99th, 100th, 101st, 103rd, 104th, 106th and 108th Sessions (2010–19).***

The Committee recalls that the Government may request the technical assistance of the Office, if it so wishes, to assist it in achieving compliance with its obligations under article 19 of the

Constitution with respect to the submission to the competent authorities of the instruments adopted by the Conference.

Direct requests

In addition, requests regarding certain matters are being addressed directly to the following States: *Afghanistan, Algeria, Argentina, Austria, Bangladesh, Belarus, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burundi, Cabo Verde, Cameroon, Colombia, Côte d'Ivoire, Cyprus, Djibouti, Dominican Republic, Ecuador, Eritrea, Ethiopia, Georgia, Germany, Ghana, Honduras, Islamic Republic of Iran, Jamaica, Jordan, Kenya, Lao People's Democratic Republic, Lithuania, Madagascar, Mali, Mexico, Nepal, Nicaragua, Nigeria, Norway, Oman, Palau, Panama, Paraguay, Peru, Romania, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Singapore, South Africa, South Sudan, Sudan, Suriname, Sweden, Tajikistan, Thailand, Tonga, Tunisia, Turkmenistan, Uganda, Ukraine, United Republic of Tanzania, Uruguay, Bolivarian Republic of Venezuela, Viet Nam.*



Appendices

Appendix I. Reports requested on ratified Conventions registered as at 10 December 2022
(articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th Session (November 1977), the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

(a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;

(b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

Appendix I. Reports requested on ratified Conventions

(articles 22 and 35 of the Constitution)

List of reports registered as at 10 December 2022 and of reports not received

Note: First reports are indicated in parentheses.

Afghanistan — 9 reports requested

· No reports received: Conventions Nos. 100, 105, 111, 138, 140, 141, 142, 144, 182

Albania — 12 reports requested

· No reports received: Conventions Nos. 77, 78, 81, 97, 100, 111, 129, 143, 156, 177, 185, (MLC, 2006)

Algeria — 5 reports requested

All reports received: Conventions Nos. 81, 87, 97, 100, 111

Angola — 5 reports requested

All reports received: Conventions Nos. 81, 100, 107, 111, (144)

Antigua and Barbuda — 15 reports requested

· No reports received: Conventions Nos. 11, 29, 81, 87, 98, 100, 105, 111, 122, 135, 138, 144, 151, 154, 182

Argentina — 8 reports requested

· 4 reports received: Conventions Nos. 81, 129, 177, 189
· 4 reports not received: Conventions Nos. 100, 111, 156, 169

Armenia — 5 reports requested

All reports received: Conventions Nos. 81, 97, 100, 111, 143

Australia — 4 reports requested

All reports received: Conventions Nos. 81, 100, 111, 156

Austria — 4 reports requested

All reports received: Conventions Nos. 81, 100, 111, 172

Azerbaijan — 7 reports requested

All reports received: Conventions Nos. 81, 100, 105, 111, 129, 149, 156

Bahamas — 11 reports requested

All reports received: Conventions Nos. 29, 81, 87, 97, 100, 105, 111, 138, 144, 182, 185

Bahrain — 2 reports requested

All reports received: Conventions Nos. 81, 111

Bangladesh — 6 reports requested

All reports received: Conventions Nos. 81, 87, 100, 107, 111, 149

Barbados — 12 reports requested

· No reports received: Conventions Nos. 81, 87, 90, 100, 105, 111, 122, 135, 138, 144, 172, 182

Belarus — 7 reports requested

All reports received: Conventions Nos. 81, 87, 100, 111, (132), 149, (176)

Belgium — 11 reports requested

All reports received: Conventions Nos. 81, 97, 100, 107, 111, 129, 149, 156, 172, 177, 189

Belize
12 reports requested

· 6 reports received: Conventions Nos. 29, 87, 88, 98, 138, 154
· 6 reports not received: Conventions Nos. 81, 115, 140, 144, 151, 155

Benin
5 reports requested

All reports received: Conventions Nos. 81, 100, 111, 143, 182

Bolivia (Plurinational State of)
18 reports requested

All reports received: Conventions Nos. 29, 77, 78, 81, 100, 111, 122, 124, 129, 131, 136, 138, 156, 162, 167, 169, 182, 189

Bosnia and Herzegovina
10 reports requested

All reports received: Conventions Nos. 81, 97, 100, 111, 122, 129, 138, 143, 156, 177

Botswana
6 reports requested

All reports received: Conventions Nos. 29, 100, 105, 111, 138, 182

Brazil
8 reports requested

· 7 reports received: Conventions Nos. 81, 97, 98, 100, 111, (MLC, 2006), 189
· 1 report not received: Convention No. 169

Bulgaria
5 reports requested

All reports received: Conventions Nos. 81, 100, 111, 156, 177

Burkina Faso
6 reports requested

All reports received: Conventions Nos. 81, 97, 100, 111, 129, 143

Burundi
4 reports requested

· 1 report received: Convention No. 26
· 3 reports not received: Conventions Nos. 81, 100, 111

Cabo Verde
9 reports requested

All reports received: Conventions Nos. 17, 19, 81, 100, (102), 111, 118, (144), 155

Cambodia
4 reports requested

All reports received: Conventions Nos. 13, 100, 111, 150

Cameroon
14 reports requested

All reports received: Conventions Nos. 3, 13, 14, 19, 45, 81, 89, 95, 100, 106, 111, 131, 132, 162

Canada
9 reports requested

All reports received: Conventions Nos. 1, 14, 26, 81, 100, 111, 160, 162, 187

Central African Republic
21 reports requested

· 1 report received: Convention No. 182
· 20 reports not received: Conventions Nos. 3, 13, 14, 17, 18, 19, 52, 62, 81, 95, 100, 101, 111, 118, 119, 120, 131, 150, 155, 158

Chad
16 reports requested

· No reports received: Conventions Nos. 13, 14, 26, 29, 81, 87, 95, 100, 102, 105, 111, 122, 132, 138, 173, 182

Chile
21 reports requested

· 16 reports received: Conventions Nos. 1, 13, 14, 26, 30, 63, 100, 103, 111, 115, 127, 131, 136, 161, 162, 187
· 5 reports not received: Conventions Nos. 12, 19, 24, 25, 121

China
10 reports requested

All reports received: Conventions Nos. 14, 19, 26, 45, 100, 111, 150, 155, 167, 170

China - Hong Kong Special Administrative Region
12 reports requested

All reports received: Conventions Nos. 3, 12, 14, 17, 19, 42, 81, 101, 115, 148, 150, 160

China - Macau Special Administrative Region
16 reports requested

All reports received: Conventions Nos. 1, 14, 17, 18, 19, 26, 81, 100, 106, 111, 115, 120, 148, 150, 155, 167

Colombia
28 reports requested

All reports received: Conventions Nos. 1, 3, 12, 13, 14, 17, 18, 19, 24, 25, 26, 30, 52, 81, 95, 99, 100, 101, 106, 111, 129, 136, 160, 161, 162, 167, 170, 174

Comoros
24 reports requested

· No reports received: Conventions Nos. 1, 12, 13, 14, 17, 19, 26, 29, 42, 52, 81, 87, 89, 95, 98, 99, 100, 101, 105, 106, 111, 122, 138, 182

Congo
17 reports requested

· 1 report received: Convention No. 87
· 16 reports not received: Conventions Nos. 13, 14, 26, 89, 95, 98, 100, 105, 111, 119, 138, 144, 149, (185), (MLC, 2006), 188

Cook Islands
3 reports requested

· 2 reports received: Conventions Nos. 14, 99
· 1 report not received: Convention No. (MLC, 2006)

Costa Rica
19 reports requested

All reports received: Conventions Nos. 1, 14, 45, 81, 89, 95, 100, 101, 102, 106, 111, 120, 127, 129, 130, 131, 148, 150, 160

Côte d'Ivoire
22 reports requested

All reports received: Conventions Nos. 3, 13, 14, 18, 19, 26, 45, 52, 81, 95, 99, 100, 111, 129, 136, 150, 155, 160, 161, 170, 171, 187

Croatia
24 reports requested

· No reports received: Conventions Nos. 12, 13, 14, 19, 24, 25, 45, 81, 100, 102, 103, 106, 111, 119, 121, 129, 132, 136, 139, (144), 148, 155, 161, 162

Cuba
26 reports requested

All reports received: Conventions Nos. 1, 3, 12, 13, 14, 17, 19, 30, 42, 45, 52, 63, 81, 95, 100, 101, 106, 111, 120, 131, 136, 148, 150, 155, 183, 187

Cyprus
19 reports requested

All reports received: Conventions Nos. 19, 81, 95, 100, 102, 106, 111, 119, 121, 128, 150, 155, 160, 162, 170, 171, 175, 183, 187

Czechia
32 reports requested

· 16 reports received: Conventions Nos. 13, 81, 115, 120, 129, 136, 139, 148, 150, 155, 160, 161, 167, 176, 183, 187
· 16 reports not received: Conventions Nos. 1, 12, 14, 17, 19, 26, 42, 95, 99, 100, 102, 111, 128, 130, 132, 171

Democratic Republic of the Congo
25 reports requested

· 22 reports received: Conventions Nos. 12, 19, 26, 29, 62, 81, 89, 94, 95, 100, 102, 105, 111, 117, 118, 119, 120, 121, 138, 144, 150, 182
· 3 reports not received: Conventions Nos. 14, 88, 158

Denmark
24 reports requested

All reports received: Conventions Nos. 12, 14, 19, 52, 81, 100, 102, 106, 111, 115, 118, 119, 120, 129, 130, 139, 148, 150, 155, 160, 162, 167, 187, (188)

Denmark - Faroe Islands
7 reports requested

All reports received: Conventions Nos. 12, 14, 18, 19, 52, 106, (188)

Denmark - Greenland
6 reports requested

All reports received: Conventions Nos. 14, 19, 100, 106, 111, (138)

Djibouti

29 reports requested

· 14 reports received: Conventions Nos. 12, 71, 81, 87, 88, 94, 96, 98, 100, 108, 111, 125, 126, 144
· 15 reports not received: Conventions Nos. 1, 13, 14, 26, 52, 63, 89, 95, 99, 101, 106, 115, 120, 122, (183)

Dominica

8 reports requested

· No reports received: Conventions Nos. 11, 22, 87, 94, 98, 108, 144, 147

Dominican Republic

18 reports requested

All reports received: Conventions Nos. 1, 19, 26, 45, 52, 81, 95, 100, 102, 106, 111, 119, 150, 167, 170, 171, 183, 187

Ecuador

25 reports requested

All reports received: Conventions Nos. 45, 81, 87, 95, 98, 100, 101, 102, 103, 106, 111, 115, 118, 119, 120, 121, 127, 128, 130, 131, 136, 139, 148, 153, 162

Egypt

24 reports requested

All reports received: Conventions Nos. 1, 14, 17, 18, 19, 30, 45, 52, 62, 63, 81, 89, 95, 100, 101, 106, 111, 115, 118, 129, 131, 139, 148, 150

El Salvador

11 reports requested

· 4 reports received: Conventions Nos. 12, 129, 144, 155
· 7 reports not received: Conventions Nos. 81, 99, 100, 111, 131, 150, 160

Equatorial Guinea

8 reports requested

· 3 reports received: Conventions Nos. 1, 14, 30
· 5 reports not received: Conventions Nos. (68), 87, (92), 98, 100

Eritrea

6 reports requested

All reports received: Conventions Nos. 29, 98, 100, 105, 111, 138

Estonia

10 reports requested

All reports received: Conventions Nos. 12, 13, 14, 19, 81, 100, 111, 129, 174, MLC, 2006

Eswatini

12 reports requested

All reports received: Conventions Nos. 12, 14, 19, 45, 81, 89, 95, 100, 101, 111, 131, 160

Ethiopia

15 reports requested

· 10 reports received: Conventions Nos. 29, 88, 105, 138, 155, 158, 159, 181, 182, (MLC, 2006)
· 5 reports not received: Conventions Nos. 2, 14, 100, 106, 111

Fiji

12 reports requested

· 10 reports received: Conventions Nos. 12, 19, 26, 45, 81, 100, 105, 129, 155, 184
· 2 reports not received: Conventions Nos. 111, (190)

Finland

34 reports requested

All reports received: Conventions Nos. 12, 13, 14, 19, 47, 81, 100, 111, 115, 118, 119, 120, 121, 128, 129, 130, 132, 136, 139, 148, 150, 155, 160, 161, 162, 167, 168, 170, 173, 174, 175, 176, 184, 187

France

28 reports requested

All reports received: Conventions Nos. 3, 12, 13, 14, 17, 19, 24, 42, 52, 62, 63, 81, 95, 100, 101, 102, 106, 111, 115, 118, 120, 127, 129, 131, 136, 139, 148, 187

France - French Polynesia

25 reports requested

All reports received: Conventions Nos. 3, 12, 13, 14, 17, 19, 24, 37, 38, 42, 44, 52, 63, 81, 89, 95, 100, 101, 106, 111, 115, 120, 127, 129, 131

France - French Southern and Antarctic Territories

1 report requested

All reports received: Convention No. 111

France - New Caledonia
23 reports requested

All reports received: Conventions Nos. 3, 12, 13, 14, 17, 19, 24, 42, 52, 63, 81, 89, 95, 100, 101, 106, 111, 115, 120, 127, 129, 131, 187

Gabon
16 reports requested

· No reports received: Conventions Nos. 6, 11, 29, 81, 87, 98, 105, 123, 124, 135, 138, 144, 151, 154, 182, (MLC, 2006)

Gambia
7 reports requested

All reports received: Conventions Nos. 29, 87, 98, 105, 138, 182, (MLC, 2006)

Georgia
4 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182

Germany
4 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182

Ghana
9 reports requested

All reports received: Conventions Nos. 11, 29, 90, 100, 105, 138, 151, 182, MLC, 2006

Greece
8 reports requested

All reports received: Conventions Nos. 29, 77, 78, 90, 105, 124, 138, 182

Grenada
9 reports requested

· No reports received: Conventions Nos. 29, 100, 105, 111, 138, 144, 182, (MLC, 2006), (189)

Guatemala
11 reports requested

All reports received: Conventions Nos. 29, 59, 77, 78, 79, 87, 90, 105, 124, 138, 182

Guinea
13 reports requested

All reports received: Conventions Nos. 11, 29, 81, 87, 90, 98, 105, 114, 138, 140, 151, (167), 182

Guinea - Bissau
6 reports requested

All reports received: Conventions Nos. 6, 26, 29, 105, 138, 182

Guyana
10 reports requested

· 7 reports received: Conventions Nos. 11, 81, 105, 129, 135, 141, 151
· 3 reports not received: Conventions Nos. 29, 138, 182

Haiti
11 reports requested

· No reports received: Conventions Nos. 1, 14, 30, 45, 81, 87, 90, 98, 105, 106, 107

Honduras
5 reports requested

All reports received: Conventions Nos. 29, 78, 105, 138, 182

Hungary
17 reports requested

All reports received: Conventions Nos. 6, 29, 77, 78, 81, 87, 98, 105, 124, 129, 135, 138, 141, 144, 151, 154, 182

Iceland
6 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182, (MLC, 2006), (187)

India
12 reports requested

All reports received: Conventions Nos. 5, 11, 29, 81, 90, 105, 123, 138, 141, 144, 182, MLC, 2006

Indonesia
4 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182

Iran (Islamic Republic of)
3 reports requested

All reports received: Conventions Nos. 29, 105, 182

Iraq
8 reports requested

· 1 report received: Convention No. 98
· 7 reports not received: Conventions Nos. 29, 77, 78, 105, 138, 182, (185)

Ireland
7 reports requested

All reports received: Conventions Nos. 6, 29, 105, 124, 138, 182, 189

Israel
8 reports requested

All reports received: Conventions Nos. 29, 77, 78, 79, 90, 105, 138, 182

Italy
9 reports requested

All reports received: Conventions Nos. 29, 77, 78, 79, 90, 105, 124, 138, 182

Jamaica
9 reports requested

All reports received: Conventions Nos. 11, 29, 81, 87, 98, 105, 138, 144, 182

Japan
3 reports requested

All reports received: Conventions Nos. 29, 138, 182

Jordan
9 reports requested

· 6 reports received: Conventions Nos. 29, 98, 135, 138, 144, 182
· 3 reports not received: Conventions Nos. 105, 124, 142

Kazakhstan
7 reports requested

All reports received: Conventions Nos. 29, 81, 87, 105, 129, 138, 182

Kenya
13 reports requested

· 10 reports received: Conventions Nos. 11, 29, 81, 98, 129, 135, 141, 142, 144, MLC, 2006
· 3 reports not received: Conventions Nos. 105, 138, 182

Kiribati
9 reports requested

· 7 reports received: Conventions Nos. 29, 87, 98, 105, 138, (144), 182
· 2 reports not received: Conventions Nos. 111, MLC, 2006

Kuwait
5 reports requested

All reports received: Conventions Nos. 29, 81, 105, 138, 182

Kyrgyzstan
9 reports requested

All reports received: Conventions Nos. 29, 77, 78, 79, 90, 105, 124, 138, 182

Lao People's Democratic Republic
4 reports requested

· No reports received: Conventions Nos. 6, 29, 138, 182

Latvia
6 reports requested

All reports received: Conventions Nos. 29, 105, 108, 138, 182, MLC, 2006

Lebanon
37 reports requested

· No reports received: Conventions Nos. 1, 14, 17, 19, 29, 30, 45, 52, 71, 81, 88, 89, 95, 98, 100, 105, 106, 111, 115, 120, 122, 127, 131, 136, 138, 139, 142, 148, 150, 152, 159, 170, 172, 174, 176, 182, (MLC, 2006)

Lesotho
7 reports requested

· 5 reports received: Conventions Nos. 29, 45, 105, 138, 182
· 2 reports not received: Conventions Nos. 81, 135

Liberia
9 reports requested

· 3 reports received: Conventions Nos. 29, 87, 105
· 6 reports not received: Conventions Nos. 108, 112, 113, 114, 182, MLC, 2006

Libya — 6 reports requested

· No reports received: Conventions Nos. 29, 52, 89, 105, 138, 182

Lithuania — 8 reports requested

All reports received: Conventions Nos. 27, 29, 105, 108, 138, 182, MLC, 2006, 188

Luxembourg — 17 reports requested

All reports received: Conventions Nos. 12, 19, 26, 27, 29, 87, 98, 102, 105, 121, 130, 138, 150, (169), 182, 185, MLC, 2006

Madagascar — 34 reports requested

All reports received: Conventions Nos. 12, 13, 14, 19, 26, 29, 81, 87, 88, 95, 98, 100, 105, 111, 117, 118, 119, 120, 122, 127, 129, 132, 138, (143), 144, (151), (154), 159, 171, 173, (181), 182, 185, (189)

Malawi — 16 reports requested

· 7 reports received: Conventions Nos. 29, 111, 138, 155, 182, 184, 187
· 9 reports not received: Conventions Nos. 12, 19, 26, 81, 89, 99, 105, 129, 150

Malaysia — 4 reports requested

All reports received: Conventions Nos. 29, 98, 138, 182

Maldives — 5 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182, 185

Mali — 4 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182

Malta — 13 reports requested

· No reports received: Conventions Nos. 12, 13, 19, 29, 32, 42, 95, 105, 108, 131, 138, 182, MLC, 2006

Marshall Islands — 3 reports requested

· 2 reports received: Conventions Nos. 185, MLC, 2006
· 1 report not received: Convention No. (182)

Mauritania — 9 reports requested

All reports received: Conventions Nos. 22, 23, 29, 58, 105, 112, 114, 138, 182

Mauritius — 7 reports requested

All reports received: Conventions Nos. 29, 32, 105, 108, 137, 138, 182

Mexico — 16 reports requested

All reports received: Conventions Nos. 22, 27, 29, 55, 56, 58, 105, 108, 134, 138, 152, 163, 164, 166, 182, (189)

Mongolia — 6 reports requested

· 2 reports received: Conventions Nos. 181, 182
· 4 reports not received: Conventions Nos. 29, 105, 138, (167)

Montenegro — 16 reports requested

· No reports received: Conventions Nos. 12, 19, 24, 25, 27, 29, 102, 105, 113, 114, 121, 126, 138, 152, 182, 185

Morocco — 34 reports requested

· 30 reports received: Conventions Nos. 12, 13, 14, 17, 19, 27, 29, 30, 42, 45, 52, 81, (97), 98, 99, 101, (102), 105, 106, 108, 119, 129, 131, 136, 144, 150, 162, 176, 183, (187)
· 4 reports not received: Conventions Nos. 138, 182, MLC, 2006, 188

Mozambique — 5 reports requested

· 4 reports received: Conventions Nos. 29, 88, 138, 182
· 1 report not received: Convention No. 105

Myanmar — 7 reports requested

All reports received: Conventions Nos. 27, 29, 87, (138), 182, 185, MLC, 2006

Namibia — 6 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182, (189), (190)

Nepal — 4 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182

Netherlands — 10 reports requested

All reports received: Conventions Nos. 12, 19, 27, 29, 71, 105, 138, 152, 182, MLC, 2006

Netherlands - Aruba — 11 reports requested

· No reports received: Conventions Nos. 22, 23, 29, 69, 105, 113, 114, 138, 146, 147, 182

Netherlands - Caribbean Part of the Netherlands — 6 reports requested

All reports received: Conventions Nos. 22, 23, 29, 58, 69, 105

Netherlands - Curaçao — 4 reports requested

All reports received: Conventions Nos. 29, 105, 182, MLC, 2006

Netherlands - Sint Maarten — 18 reports requested

· 12 reports received: Conventions Nos. 12, 14, 17, 25, 42, 81, 87, 95, 101, 106, 118, 144
· 6 reports not received: Conventions Nos. 22, 23, 29, 58, 69, 105

New Zealand — 4 reports requested

All reports received: Conventions Nos. 29, 32, 105, 182

New Zealand - Tokelau — 2 reports requested

All reports received: Conventions Nos. 29, 105

Nicaragua — 8 reports requested

All reports received: Conventions Nos. 27, 29, 87, 105, 137, 138, 182, MLC, 2006

Niger — 4 reports requested

All reports received: Conventions Nos. 29, 105, 138, 182

Nigeria — 11 reports requested

All reports received: Conventions Nos. 19, 26, 29, 32, 45, 95, 105, 137, 138, 182, 185

North Macedonia — 44 reports requested

· 26 reports received: Conventions Nos. 13, 14, 19, 22, 23, 27, 29, 32, 45, 56, 69, 92, 98, 102, 105, 113, 114, 121, 126, 131, 132, 136, 144, 155, 162, 187
· 18 reports not received: Conventions Nos. 3, 12, 24, 25, 81, 87, 106, 119, 129, 138, 139, (141), 148, 150, 161, (171), 182, 183

Norway — 13 reports requested

All reports received: Conventions Nos. 13, 27, 29, 71, 105, 108, 119, 137, 138, 152, 182, MLC, 2006, 188

Pakistan — 4 reports requested

All reports received: Conventions Nos. 11, 87, 98, 144

Palau — 1 report requested

All reports received: Convention No. (182)

Panama — 5 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 144

Papua New Guinea — 6 reports requested

· No reports received: Conventions Nos. 11, 29, 87, 98, 122, 158

Paraguay — 4 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122

Peru — 6 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 144, 151

Philippines — 6 reports requested

All reports received: Conventions Nos. 87, 98, 122, 141, 144, 151

Poland — 8 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 135, 141, 144, 151

Portugal — 7 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 135, 144, 151

Republic of Korea — 2 reports requested

All reports received: Conventions Nos. 138, 182

Republic of Moldova — 7 reports requested

· 5 reports received: Conventions Nos. 29, 105, 138, 182, 185
· 2 reports not received: Conventions Nos. 92, 133

Romania — 9 reports requested

· No reports received: Conventions Nos. 11, 87, 98, 100, 111, 122, 135, 144, 154

Russian Federation — 8 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 135, 144, 151, 154

Rwanda — 8 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 123, 135, 144, 154

Saint Kitts and Nevis — 4 reports requested

All reports received: Conventions Nos. 87, 98, 144, MLC, 2006

Saint Lucia — 9 reports requested

· No reports received: Conventions Nos. 11, 12, 87, 94, 97, 98, 105, 108, 158

Saint Vincent and the Grenadines — 5 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 144

Samoa — 6 reports requested

· 2 reports received: Conventions Nos. (144), MLC, 2006
· 4 reports not received: Conventions Nos. 87, 98, 100, 111

San Marino — 17 reports requested

All reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 119, 138, 142, 143, 144, 151, 154, 156, 161, 182, (183)

Sao Tome and Principe — 11 reports requested

· 4 reports received: Conventions Nos. 100, 138, 182, (183)
· 7 reports not received: Conventions Nos. 87, 98, 111, 135, 144, 151, 154

Saudi Arabia — 2 reports requested

All reports received: Conventions Nos. (95), (120)

Senegal — 6 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 135, 144

Serbia — 12 reports requested

All reports received: Conventions Nos. 11, 87, 97, 98, 100, 111, 122, 135, 143, 144, 156, (184)

Seychelles — 5 reports requested

All reports received: Conventions Nos. 11, 87, 98, 144, 151

Sierra Leone — 3 reports requested

All reports received: Conventions Nos. 87, 98, 144

Singapore — 5 reports requested

· 2 reports received: Conventions Nos. 98, (155)
· 3 reports not received: Conventions Nos. 11, 100, 144

Slovakia — 8 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 135, 144, 151, 154

Slovenia — 14 reports requested

· No reports received: Conventions Nos. 11, 87, 97, 98, 100, 111, 122, 135, 143, 144, 149, 151, 154, 156

Solomon Islands — 7 reports requested

All reports received: Conventions Nos. 11, 81, 87, 98, 100, 111, 182

Somalia — 14 reports requested

· No reports received: Conventions Nos. 17, 19, 22, 23, 29, 45, 84, 85, 87, 94, 95, 98, 105, 111

South Africa — 3 reports requested

All reports received: Conventions Nos. 87, 98, 144

South Sudan — 7 reports requested

· 1 report received: Convention No. 29
· 6 reports not received: Conventions Nos. 98, 100, 105, 111, 138, 182

Spain — 9 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 135, 141, 144, 151, 154

Sri Lanka — 8 reports requested

· 7 reports received: Conventions Nos. 11, 87, 98, 100, 111, 135, 144
· 1 report not received: Convention No. 122

Sudan — 6 reports requested

· 5 reports received: Conventions Nos. 98, 100, 111, 122, (175)
· 1 report not received: Convention No. (MLC, 2006)

Suriname — 10 reports requested

All reports received: Conventions Nos. 11, 87, 98, 100, 111, 122, 135, 144, 151, 154

Sweden — 9 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 135, 141, 144, 151, 154

Switzerland — 8 reports requested

All reports received: Conventions Nos. 11, 87, 98, 122, 141, 144, 151, 154

Syrian Arab Republic — 12 reports requested

· No reports received: Conventions Nos. 11, 29, 87, 98, 100, 105, 107, 111, 135, 138, 144, 182

Tajikistan — 25 reports requested

· No reports received: Conventions Nos. 23, 27, 32, 69, 87, 92, 95, 98, 100, 103, 105, 108, 111, 113, 122, 124, 126, 133, 134, 142, 144, 147, 149, 159, 177

Thailand — 4 reports requested

· 3 reports received: Conventions Nos. 88, 122, MLC, 2006
· 1 report not received: Convention No. 159

Timor-Leste — 4 reports requested

· No reports received: Conventions Nos. 87, 98, 100, 111

Togo — 4 reports requested

All reports received: Conventions Nos. 87, 98, 122, 144

Tonga — 1 report requested

· No reports received: Convention No. (182)

Trinidad and Tobago — 6 reports requested

· 5 reports received: Conventions Nos. 87, 98, 125, 144, 159
· 1 report not received: Convention No. 122

Tunisia — 10 reports requested

All reports received: Conventions Nos. 87, 88, 98, 117, 122, 142, 144, 159, 185, (MLC, 2006)

Türkiye — 10 reports requested

All reports received: Conventions Nos. 87, 88, 94, 96, 98, 122, 142, 144, 158, 159

Turkmenistan — 4 reports requested

All reports received: Conventions Nos. 87, 98, 105, 144

Tuvalu — 2 reports requested

· No reports received: Conventions Nos. (182), MLC, 2006

Uganda — 18 reports requested

· 6 reports received: Conventions Nos. 11, 29, 81, 87, 98, 105
· 12 reports not received: Conventions Nos. 26, 94, 95, 100, 111, 122, 138, 144, 158, 159, 162, 182

Ukraine — 19 reports requested

· No reports received: Conventions Nos. 2, 87, 98, 115, 117, 119, 120, 122, 139, 140, 142, 144, 155, 158, 159, 161, 174, 176, 184

United Kingdom of Great Britain and Northern Ireland — 9 reports requested

All reports received: Conventions Nos. 2, 82, 87, 98, 122, 140, 142, 144, MLC, 2006

United Kingdom - Anguilla — 6 reports requested

All reports received: Conventions Nos. 82, 85, 87, 94, 98, 140

United Kingdom - Bermuda — 4 reports requested

All reports received: Conventions Nos. 82, 87, 94, 98

United Kingdom - British Virgin Islands — 6 reports requested

· 4 reports received: Conventions Nos. 85, 87, 98, 108
· 2 reports not received: Conventions Nos. 82, 94

United Kingdom - Cayman Islands — 1 report requested

All reports received: Convention No. MLC, 2006

United Kingdom - Falkland Islands (Malvinas) — 4 reports requested

· No reports received: Conventions Nos. 82, 87, 98, (MLC, 2006)

United Kingdom - Gibraltar — **5 reports requested**

All reports received: Conventions Nos. 2, 82, 87, 98, 142

United Kingdom - Guernsey — **5 reports requested**

· No reports received: Conventions Nos. 2, 87, 98, 122, 142

United Kingdom - Isle of Man — **8 reports requested**

All reports received: Conventions Nos. 2, 87, 98, (100), (111), 122, (138), MLC, 2006

United Kingdom - Jersey — **4 reports requested**

· No reports received: Conventions Nos. 2, 87, 98, 140

United Kingdom - Montserrat — **4 reports requested**

All reports received: Conventions Nos. 82, 85, 87, 98

United Kingdom - St Helena — **5 reports requested**

All reports received: Conventions Nos. 82, 85, 87, 98, 150

United Republic of Tanzania — **11 reports requested**

All reports received: Conventions Nos. 87, 94, 98, 100, 111, 137, 140, 142, 144, 152, (MLC, 2006)

United Republic of Tanzania - Tanganyika — **1 report requested**

All reports received: Convention No. 88

United Republic of Tanzania - Zanzibar — **2 reports requested**

All reports received: Conventions Nos. 58, 85

United States of America — **1 report requested**

All reports received: Convention No. 144

United States of America - American Samoa — **1 report requested**

All reports received: Convention No. 144

United States of America - Guam — **1 report requested**

All reports received: Convention No. 144

United States of America - Northern Mariana Islands — **1 report requested**

All reports received: Convention No. 144

United States of America - Puerto Rico — **1 report requested**

All reports received: Convention No. 144

United States of America - United States Virgin Islands — **1 report requested**

All reports received: Convention No. 144

Uruguay — **8 reports requested**

All reports received: Conventions Nos. 87, 94, 98, 122, 144, 159, 181, (190)

Uzbekistan — **4 reports requested**

· 2 reports received: Conventions Nos. 87, 98
· 2 reports not received: Conventions Nos. 122, 144

Vanuatu — **9 reports requested**

· No reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, (138), 182, 185

Venezuela (Bolivarian Republic of) — **17 reports requested**

All reports received: Conventions Nos. 13, 26, 45, 87, 88, 95, 98, 117, 120, 122, 127, 139, 140, 142, 144, 155, 158

Viet Nam — **7 reports requested**

All reports received: Conventions Nos. 27, 88, 98, (105), 122, 144, (159)

Yemen — **13 reports requested**

· No reports received: Conventions Nos. 19, 58, 81, 87, 94, 98, 100, 111, 122, 144, 158, 159, 185

Zambia — **8 reports requested**

All reports received: Conventions Nos. 87, 98, 117, 122, 144, 158, 159, 181

Zimbabwe — **5 reports requested**

All reports received: Conventions Nos. 87, 98, 140, 144, 159

Grand Total

A total of 1,915 reports (article 22) were requested,
of which 1,334 reports (69.66 per cent) were received.

A total of 188 reports (article 35) were requested,
of which 156 reports (82.98 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as at 10 December 2022
(article 22 of the Constitution)

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports were requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2515	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%
2010	2745	861	31.4%	1866	67.9%	2122	77.3%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered for the session of the Conference	
As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals							
2012	2207	809	36.7%	1497	67.8%	1742	78.9%
2013	2176	740	34.1%	1578	72.5%	1755	80.6%
2014	2251	875	38.9%	1597	70.9%	1739	77.2%
2015	2139	829	38.8%	1482	69.3%	1617	75.6%
2016	2303	902	39.2%	1600	69.5%	1781	77.3%
2017	2083	785	37.7%	1386	66.5%	1543	74.1%
2018	1683	571	33.9%	1038	61.7%	1194	70.9%
As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals							
2019	1788	645	36.1%	1217	68.1%	ILC 2020 deferred due to the COVID-19 pandemic	
In light of the deferral of 109th Session of the Conference to June 2021 due to the COVID-19 pandemic, the Governing Body decided in March 2020 to invite Member States to provide supplementary information on reports submitted in 2019, highlighting relevant developments, if any, on the application of the provisions of Conventions under review that might have occurred in the meantime. In addition, reports were requested on the basis of a footnote adopted by the Committee requesting a report for 2020 and on the follow-up of failures to submit reports							
2020	1796	394	21.9%	712	39.6%	768	42.8%
As a result of a decision by the Governing Body (November 2018), reports are requested, according to certain criteria, at yearly, three-yearly or six-yearly intervals							
2021	1865	747	40.0%	1230	65.9%	1383	74.2%
2022	1915	787	41.1%	1334	69.7%		

Appendix III. List of observations made by employers' and workers' organizations

	on Conventions Nos
Algeria	
• General and Autonomous Confederation of Workers in Algeria (CGATA)	87, 98
• General Confederation of Algerian Enterprises (CGEA)	100
• International Trade Union Confederation (ITUC)	87, 98
Argentina	
• Argentine Building Workers Union (UOCRA)	87
• General Confederation of Labour of the Argentine Republic (CGT RA)	81, 100, 111, 129, 156, 169, 177, 189
• Latin American and Caribbean Confederation of Domestic Workers (CONLACTRAHO)	189
Armenia	
• Confederation of Trade Unions of Armenia (CTUA)	81, 100, 131
Australia	
• Australian Council of Trade Unions (ACTU)	81, 100, 111, 156
Austria	
• Austrian Chamber of Labour (AK)	81, 100, 111, 172
• Austrian Federal Economic Chamber (WKÖ)	81, 100, 111, 172
Azerbaijan	
• Azerbaijan Trade Unions Confederation (ATUC)	105
• International Organisation of Employers (IOE)	105
• International Trade Union Confederation (ITUC)	105
Bahrain	
• General Federation of Bahrain Trade Unions (GFBTU)	81, 111
Bangladesh	
• Bangladesh Employers' Federation (BEF)	81, 87, 100, 107, 111, 149
• International Trade Union Confederation (ITUC)	87, 98
• Trade Union's International Labour Standards Committee (TU-ILS Committee)	81, 87, 111, 149
Belarus	
• Belarusian Congress of Democratic Trade Unions (BKDP)	29, 105
• International Organisation of Employers (IOE)	87
• International Trade Union Confederation (ITUC)	87, 98
Belgium	
• General Labour Federation of Belgium (FGTB); Confederation of Christian Trade Unions (CSC); General Confederation of Liberal Trade Unions of Belgium (CGSLB)	29, 81, 97, 98, 100, 111, 129, 156, 172, 189
Benin	
• International Organisation of Employers (IOE)	182
• International Trade Union Confederation (ITUC)	182
Bolivia (Plurinational State of)	
• Latin American and Caribbean Confederation of Domestic Workers (CONLACTRAHO)	189

Botswana

	on Conventions Nos
• Botswana Federation of Trade Unions (BFTU)	87, 98

Brazil

	on Conventions Nos
• International Organisation of Employers (IOE); National Confederation of Industry (CNI)	81, 97, 98, 100, 111
• International Trade Union Confederation (ITUC)	98
• Latin American and Caribbean Confederation of Domestic Workers (CONLACTRAHO)	189
• National Association of Labour Court Judges (ANAMATRA)	29, 138, 182
• National Confederation of Workers in Teaching Establishments (CONTEE)	98, 154
• National Confederation of Workers in Waterway and Air Transports, Fishing and Ports (CONTTMAF)	MLC, 2006
• National Union of Labour Inspectors (SINAIT)	81
• Single Confederation of Workers (CUT)	98, 100, 111, 151, 154, 169, 189
• Single Confederation of Workers (CUT); National Federation of Caixa Econômica Federal Staff Associations (FENAE); Brasilia Bank Workers Union (Bancários/DF)	111

Bulgaria

	on Convention No.
• Bulgarian Chamber of Commerce and Industry (BCCI)	131

Burundi

	on Conventions Nos
• Trade Union Confederation of Burundi (COSYBU)	26, 81, 100, 111

Cambodia

	on Convention No.
• International Trade Union Confederation (ITUC)	87

Cameroon

	on Conventions Nos
• Cameroon Workers' Trade Union Confederation (CSTC)	3, 13, 14, 19, 45, 81, 89, 95, 100, 106, 131, 132, 162
• Confederation of Autonomous Trade Unions of Cameroon (CSAC)	87, 111
• Trade Union Confederation National Agreement of Workers of Cameroon	111

Canada

	on Conventions Nos
• Quebec Interprofessional Health Federation (FIQ)	29, 105

Central African Republic

	on Convention No.
• International Trade Union Confederation (ITUC)	182

China

	on Convention No.
• International Trade Union Confederation (ITUC)	111

China - Hong Kong Special Administrative Region

	on Convention No.
• International Trade Union Confederation (ITUC)	87

Colombia

	on Conventions Nos
• General Confederation of Labour (CGT); Confederation of Workers of Colombia (CTC); Single Confederation of Workers of Colombia (CUT)	1, 3, 12, 13, 14, 17, 18, 19, 26, 30, 52, 81, 87, 95, 98, 99, 100, 111, 129, 136, 174
• International Organisation of Employers (IOE)	1, 3, 14, 18, 26, 81, 95, 99, 100, 111, 160, 162, 170, 174
• International Trade Union Confederation (ITUC)	87, 98
• National Employers Association of Colombia (ANDI)	1, 3, 14, 17, 26, 81, 95, 99, 100, 111, 160
• Trade Union of Workers in the Hydrocarbons, Energy and Mining Sectors, and Similar Enterprises (USTRASEN); Trade Union Federation of Workers in Operating and Contracting Activities and Services Enterprises in the Oil, Petrochemicals, Biofuel and Similar Energies Branch (USTRAPETROQUIMICA)	87, 98, 111

Costa Rica

	on Conventions Nos
• Confederation of Workers Rerum Novarum (CTRN); Costa Rican Workers' Movement Central (CMTC); General Confederation of Workers (CGT); Workers' Unitary Confederation (CUT)	102, 129, 144
• Confederation of Workers Rerum Novarum (CTRN); Costa Rican Workers' Movement Central (CMTC); General Confederation of Workers (CGT); Workers' Unitary Confederation (CUT); Costa Rican Trade Union and Social Unity Bloc (BUSSCO)	1
• Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP)	1, 14, 81, 89, 95, 100, 101, 102, 106, 111, 120, 127, 131, 150, 160

Cuba

	on Conventions Nos
• Independent Trade Union Association of Cuba (ASIC)	120, 155, 187

Denmark

	on Convention No.
• Danish Trade Union Confederation (FH); Danish Confederation of Professional Associations (AC)	81

Djibouti

	on Conventions Nos
• International Organisation of Employers (IOE)	122
• International Trade Union Confederation (ITUC)	122

Dominican Republic

	on Conventions Nos
• National Confederation of Trade Union Unity (CNUS); Autonomous Confederation of Workers' Unions (CASC); National Confederation of Dominican Workers (CNTD)	111, 183

Ecuador

	on Conventions Nos
• Ecuadorian Confederation of Free Trade Unions (CEOSL); Ecuadorian Federation of Municipal and Provincial Workers (FETMYP) ; National Ecuadorian Federation of workers of provincial governments (FENOGOPRE); National Federation of Education Workers (UNE)	81, 131
• International Trade Union Confederation (ITUC)	87
• Public Services International (PSI) in Ecuador; Ecuadorian Confederation of Free Trade Unions (CEOSL); National Federation of Education Workers (UNE); Federation of Petroleum Workers of Ecuador (FETRAPEC)	87, 98
• Trade Union Association of Agricultural, Banana and Rural Workers (ASTAC)	81, 87, 98, 102

El Salvador

	on Conventions Nos
• International Organisation of Employers (IOE)	87, 144
• International Trade Union Confederation (ITUC)	144

Eswatini

	on Convention No.
• International Trade Union Confederation (ITUC)	131

Fiji

	on Conventions Nos
• Fiji Trades Union Congress (FTUC)	105, 182
• International Organisation of Employers (IOE)	105
• International Trade Union Confederation (ITUC)	105

Finland

	on Conventions Nos
• Central Organization of Finnish Trade Unions (SAK)	115, 136, 139, 155, 161, 162, 187
• Central Organization of Finnish Trade Unions (SAK); Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA)	173, 175
• Central Organization of Finnish Trade Unions (SAK); Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA); Finnish Confederation of Professionals (STTK)	81, 100, 111, 121, 128, 150, 168, 184
• Central Organization of Finnish Trade Unions (SAK); Finnish Confederation of Professionals (STTK)	119, 120, 148, 167, 176
• Commission for Local Authority Employers (KT)	100, 132
• Confederation of Finnish Industries (EK)	100
• Federation of Finnish Enterprises (SY)	100, 111
• Finnish Confederation of Professionals (STTK)	14, 132, 136, 139, 161, 162, 173, 175, 187

France

	on Conventions Nos
• French Confederation of Management – General Confederation of Professional and Managerial Employees (CFE-CGC)	100, 102, 111, 187
• General Confederation of Labour - Force ouvrière (CGT-FO)	17, 100, 115, 148
• National Federation of Agricultural Holders' Unions (FNSEA)	12

France (French Southern and Antarctic Territories)

	on Convention No.
• General Confederation of Labour - Force ouvrière (CGT-FO)	111

France (New Caledonia)

	on Conventions Nos
• General Confederation of Labour - Force ouvrière (CGT-FO)	81, 129

Gambia

	on Conventions Nos
• International Trade Union Confederation (ITUC)	87, 98

Georgia

	on Conventions Nos
• Georgian Trade Unions Confederation (GTUC)	138, 182

Germany

	on Convention No.
• Confederation of German Employers' Associations (BDA)	29

Ghana

	on Convention No.
• International Trade Union Confederation (ITUC)	182

Greece

	on Conventions Nos
• Federation of Associations of the Ministry of Labour (OSYPE)	81
• Greek General Confederation of Labour (GSEE)	29, 77, 78, 81, 90, 105, 124, 138, 182
• Greek Primary Teachers' Federation (DOE) ; Federation of Private School Teachers of Greece (OIELE)	87, 151
• Hellenic Federation of Enterprises and Industries (SEV)	87, 98, 144

Guatemala

	on Conventions Nos
• Autonomous Popular Trade Union Movement; Global Unions of Guatemala	87
• Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)	138, 182
• International Trade Union Confederation (ITUC)	87

	on Conventions Nos
Haiti	
• Confederation of Public and Private Sector Workers (CTSP); Confederation of Haitian Workers (CTH)	1, 14, 30, 45, 81, 87, 90, 98, 105, 106, 107
• International Trade Union Confederation (ITUC)	87, 98
Honduras	
• Honduran National Business Council (COHEP)	29, 78, 105, 138, 182
Hungary	
• International Organisation of Employers (IOE)	98
• International Trade Union Confederation (ITUC)	98
India	
• Centre of Indian Trade Unions (CITU)	81, 144
• Hind Mazdoor Sabha (HMS)	144
• International Trade Union Confederation (ITUC)	81
Iraq	
• International Organisation of Employers (IOE)	98
• International Trade Union Confederation (ITUC)	98
Italy	
• Italian General Confederation of Labour (CGIL); Italian Confederation of Workers' Trade Unions (CISL); Italian Union of Labour (UIL)	29, 79, 90, 111, 138, 183
Jamaica	
• International Trade Union Confederation (ITUC)	87
• Jamaica Confederation of Trade Unions (JCTU)	11, 81, 87, 98, 144
• Jamaica Employers Federation (JEF)	11, 81, 87, 98, 144
Japan	
• Apaken Kobe (Casual/Temporary/Part-time Non-regular Workers' Union); Rentai Workers' Union, Itabashi-ku Section; Union Rakuda (Kyoto Municipality Related Workers' Independent Union); Rentai Union Suginami	122
• Japan Business Federation (NIPPON KEIDANREN)	29
• Japanese Trade Union Confederation (JTUC-RENGO)	29, 138, 182
• Labour Union of Migrant Workers (LUM)	29
Jordan	
• International Trade Union Confederation (ITUC)	98
Kazakhstan	
• International Organisation of Employers (IOE)	87
• International Trade Union Confederation (ITUC)	81, 87, 129
• Trade Union of Workers in the Fuel and Energy Complex	29, 81, 87, 105, 129, 138, 182
Kyrgyzstan	
• Kyrgyzstan Federation of Trade Unions (FPK)	29, 79, 90, 105, 124, 138, 182
Latvia	
• Free Trade Union Confederation of Latvia (FTUCL)	111, 183
Lebanon	
• International Trade Union Confederation (ITUC); International Domestic Workers Federation (IDWF)	29

Liberia

	on Conventions Nos
• International Organisation of Employers (IOE)	87
• International Trade Union Confederation (ITUC)	87

Madagascar

	on Conventions Nos
• Christian Confederation of Malagasy Trade Unions (SEKRIMA)	13, 127, 144
• General Confederation of Workers' Unions of Madagascar (FISEMA)	12, 13, 14, 19, 26, 81, 87, 88, 95, 117, 118, 119, 120, 122, 127, 129, 132, 144, 159, 171, 173
• Trade Union Confederation of Malagasy Revolutionary Workers (FISEMARE)	13, 14, 26, 81, 95, 97, 100, 111, 117, 119, 120, 122, 129, 132, 143, 144, 171, 189
• Trade unionism and life of societies (SVS); Independent Trade Unions of Madagascar (USAM)	87, 98

Malawi

	on Conventions Nos
• International Organisation of Employers (IOE)	111
• International Trade Union Confederation (ITUC)	111
• International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	111, 184

Malaysia

	on Conventions Nos
• International Trade Union Confederation (ITUC)	98
• National Union of Bank Employees (NUBE)	98

Maldives

	on Conventions Nos
• Maldives Trade Union Congress (MTUC)	111
• Tourism Employees Association of Maldives (TEAM)	87, 98

Mali

	on Conventions Nos
• Confederation of Workers' Union of Mali (CSTM)	29, 105, 138, 182
• National Council of Employers of Mali (CNPM)	29

Mexico

	on Conventions Nos
• Authentic Workers' Confederation of the Republic of Mexico (CAT)	22, 27, 29, 55, 56, 58, 105, 108, 134, 138, 152, 163, 164, 166, 182, 189
• Confederation of Workers of Mexico (CTM)	22, 27, 29, 55, 56, 58, 105, 108, 134, 138, 152, 163, 164, 166, 182, 189
• National Union of Men and Women Domestic Workers (SINACTRAHO)	189

Myanmar

	on Conventions Nos
• International Organisation of Employers (IOE)	87
• International Trade Union Confederation (ITUC)	87

Netherlands

	on Conventions Nos
• Nautilus International	MLC, 2006
• Netherlands Trade Union Confederation (FNV); National Federation of Christian Trade Unions (CNV)	29, 105, 111, 156, 183
• Netherlands Trade Union Confederation (FNV); National Federation of Christian Trade Unions (CNV); Trade Union Federation for Professionals (VCP)	121
• Netherlands Trade Union Confederation (FNV); Nautilus International	MLC, 2006
• Royal Association of Netherlands Shipowners (KVNR)	MLC, 2006

Netherlands (Sint Maarten)

	on Conventions Nos
• Employer Council Sint Maarten (ECSM)	87, 88, 144
• International Trade Union Confederation (ITUC)	87

New Zealand

	on Conventions Nos
• Business New Zealand	29, 98, 105, 182
• Business New Zealand; International Organisation of Employers (IOE)	98, 144
• International Organisation of Employers (IOE)	98
• International Trade Union Confederation (ITUC)	98
• New Zealand Council of Trade Unions (NZCTU)	32

Nicaragua

	on Conventions Nos
• International Organisation of Employers (IOE)	87
• International Trade Union Confederation (ITUC)	87

Niger

	on Convention No.
• International Trade Union Confederation (ITUC)	29

Nigeria

	on Conventions Nos
• International Trade Union Confederation (ITUC)	26, 95

Norway

	on Conventions Nos
• Norwegian Confederation of Trade Unions (LO)	27, 71, 137, 152, MLC, 2006

Panama

	on Conventions Nos
• National Confederation of United Independent Unions (CONUSI)	87, 98, 144
• National Council of Organized Workers (CONATO)	11, 87, 98, 122, 144

Paraguay

	on Conventions Nos
• Central Confederation of Workers Authentic (CUT-A)	87, 98, 122
• International Trade Union Confederation (ITUC)	87, 98

Peru

	on Conventions Nos
• Autonomous Workers' Confederation of Peru (CATP)	87, 98
• Coordination of Trade Union Federations of Peru	11, 87, 98, 122, 144, 151
• International Trade Union Confederation (ITUC)	87, 98
• National Confederation of Private Business' Institutions (CONFIEP)	87, 98, 122, 144

Philippines

	on Convention No.
• International Trade Union Confederation (ITUC)	87

Poland

	on Conventions Nos
• All-Poland Trade Unions Alliance (OPZZ)	87
• Independent and Self-Governing Trade Union "Solidarnosc"	11, 87, 98, 122, 135, 144, 151
• International Trade Union Confederation (ITUC)	87, 98

Portugal

	on Conventions Nos
• Confederation of Portuguese Business (CIP)	98
• General Workers' Union (UGT)	11, 87, 98, 122, 135, 144, 151

Republic of Korea

	on Conventions Nos
• Federation of Korean Trade Unions (FKTU)	138, 182
• Korean Confederation of Trade Unions (KCTU)	111, 138, 156, 182

Republic of Moldova

	on Conventions Nos
• National Confederation of Trade Unions of Moldova (CNSM)	29, 105

Romania

	on Convention No.
• International Trade Union Confederation (ITUC)	98

	on Conventions Nos
Russian Federation	
• Confederation of Labour of Russia (KTR)	87, 98, 111, 135, 144, 154, 156
Senegal	
• National Confederation of Workers of Senegal (CNTS)	87, 98, 144
• National Federation of Independent Trade Unions of Senegal (UNSAS)	87, 98, 144
Serbia	
• Confederation of Autonomous Trade Unions of Serbia (CATUS)	87, 98, 111, 122, 135, 144, 156
• Serbian Association of Employers (SAE)	11, 98, 100, 111, 122, 144, 156
Seychelles	
• Association of Seychelles Employers; Seychelles Chamber of Commerce and Industry (SCCI)	87, 98, 144, 151
Solomon Islands	
• International Organisation of Employers (IOE)	182
• International Trade Union Confederation (ITUC)	182
• Solomon Islands Public Employees' Union (SIPEU)	98
South Africa	
• International Trade Union Confederation (ITUC)	87, 98
Spain	
• Federation of Industry, Construction and Agriculture of the General Union of Workers (UGT FICA)	11, 141
• General Union of Workers (UGT)	87, 98, 135, 144, 151, 154
• Spanish Confederation of Employers' Organizations (CEOE); Spanish Confederation of Small and Medium-Sized Enterprises (CEPYME)	11, 87, 98, 122, 135, 141, 144, 151, 154
• Trade Union Confederation of Workers' Commissions (CCOO)	11, 87, 98, 122, 141, 144, 151, 154
Sweden	
• Swedish Trade Union Confederation (LO)	111, 156
Switzerland	
• Swiss Federation of Trade Unions (USS/SGB)	87, 98
Thailand	
• Employers Confederation of Thailand (ECOT)	88
Togo	
• National Union of Independent Unions of Togo (UNSIT); Synergy of Workers of Togo (STT)	87, 98
Tunisia	
• International Trade Union Confederation (ITUC)	87, 98
Türkiye	
• Confederation of Progressive Trade Unions of Turkey (DISK)	29, 87, 98, 158
• Confederation of Public Employees' Trade Unions (KESK)	87, 98, 144, 159
• International Trade Union Confederation (ITUC)	87, 98
• Turkish Confederation of Employers' Associations (TISK)	87, 88, 96, 98, 142, 144, 158, 159
Turkmenistan	
• International Trade Union Confederation (ITUC)	87, 105

Ukraine

	on Conventions Nos
• Federation of Trade Unions of Ukraine (FPU); Confederation of Free Trade Unions of Ukraine (KVPU)	87, 95, 98, 122, 132, 135, 155, 158
• International Trade Union Confederation (ITUC)	87

United Kingdom of Great Britain and Northern Ireland

	on Conventions Nos
• Trades Union Congress (TUC)	2, 87, 98, 111, 122, 140, 142, 144

Uruguay

	on Conventions Nos
• International Organisation of Employers (IOE); Chamber of Commerce and Services of Uruguay (CCSUY); Chamber of Industries of Uruguay (CIU)	98
• Inter-Union Assembly of Workers - Workers' National Convention (PIT-CNT)	87, 98, 144, 190

Uzbekistan

	on Conventions Nos
• Federation of Trade Unions of Uzbekistan (FPU)	87, 98, 144
• International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)	87

Venezuela (Bolivarian Republic of)

	on Conventions Nos
• Bolivarian Socialist Confederation of Men and Women Workers in Urban and Rural Areas and Fishing of Venezuela (CBST-CCP)	26, 87, 117, 140, 144
• Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS)	26, 87, 88, 122, 144, 155, 158
• Independent Trade Union Alliance Confederation of Workers (CTASI); Confederation of Workers of Venezuela (CTV); Federation of University Teachers' Associations of Venezuela (FAPUV)	26, 87, 88, 95, 98, 117, 122, 144, 155, 158
• National Union of State and Public Service Workers (UNETE)	26, 87, 98, 117, 144
• United Federation of Workers of Venezuela (CUTV)	98

Zimbabwe

	on Conventions Nos
• International Trade Union Confederation (ITUC)	87, 98
• Zimbabwe Congress of Trade Unions (ZCTU)	87, 98, 111, 140, 144, 159

Appendix IV. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7 that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specific time period. Under the same provisions, the governments of Member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities.

In accordance with article 23 of the Constitution, a summary of the information communicated by Member States in accordance with article 19 is submitted to the Conference.

At its 276th Session (November 1996), the Governing Body approved new measures to rationalize and simplify proceedings. As a result, the summarized information is presented in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The following summary contains the most recent information on the submission to the competent authorities of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted at the 103rd Session of the Conference (June 2014), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted at the 104th Session of the Conference (June 2015), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session (June 2017), and the Violence and Harassment at Work Convention (No. 190), and Recommendation (No. 206), 2019, adopted at the 108th Session of the Conference.

The summarized information includes communications that were forwarded to the Director-General of the International Labour Office after the closure of the 109th Session of the Conference (June 2021) and which could not therefore be laid before the Conference at that session.

Benin. The Government submitted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, (No. 206), 2019 to the National Congress on 7 December 2020.

Bulgaria. The Government submitted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), to the National Congress on 4 April 2016.

Burkina Faso. The Government submitted the Violence and Harassment Convention, 2019 (No. 190), the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), and the Violence and Harassment Recommendation, 2019 (No. 206) to the National Assembly on 7 July 2022.

Cambodia. The Government submitted the Protocol of 2014 to the Forced Labour Convention, 1930, the Violence and Harassment Convention, 2019 (No. 190), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), and the Violence and Harassment Recommendation, 2019 (No. 206) to the Parliament on 4 October 2021.

China. The Government submitted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, (No. 206), 2019 to the State Council on 19 January 2021.

Croatia. The Government submitted the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), to the Parliament on 17 March 2022.

Egypt. The Government submitted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, (No. 206), 2019 to the House of Representatives (Maglis El Nouwab) on 28 June 2022.

Eswatini. The Government submitted the 2014 Protocol to the Forced Labour Convention, 1930, the Violence and Harassment Convention, 2019 (No. 190), the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), and the Violence and Harassment Recommendation, 2019 (No. 206) to the Parliament (to the Senate on 23 May 2022 and to the House of Assembly on 25 May 2022).

Ireland. The Government submitted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, (No. 206), 2019 to the Parliament (the Dáil Éireann) on 20 July 2022.

Lesotho. The Government submitted the Violence and Harassment Convention, 2019 (No. 190), the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), and the Violence and Harassment Recommendation, 2019 (No. 206) to the Parliament (to the Senate on 30 May 2022 and to the National Assembly on 31 May 2022).

Qatar. The Government submitted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, (No. 206), 2019 to the Council of Ministers on 22 January 2020 and to the Consultative Council (Majlis Al-Shoura) on 16 February 2020.

Senegal. The Government submitted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, (No. 206), 2019 to the Parliament on 22 June 2021.

Sri Lanka. The Government submitted the Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, (No. 206), 2019 to the Parliament on 4 May 2021.

Appendix V. Information supplied by governments with regard to the obligation to submit Conventions and Recommendations to the competent authorities
(31st to 110th Sessions of the International Labour Conference, 1948–2022)

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.

Account has been taken of the date of admission or readmission of Member States to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972), 73rd Session (June 1987), 93rd Session (June 2005), 97th Session (June 2008), 98th Session (June 2009), 102nd Session (June 2013), 105th Session (June 2016), 107th Session (June 2018) and 109th Session (June 2021).

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Afghanistan	31-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Albania	79-81, 82 (R183, C176), 83, 84 (R186, C178, P147), 85, 87, 88, 90 (P155), 91, 94, 95 (R197, C187), 108 (C190)	**78, 82 (P081), 84 (R185, R187, C179, C180), 86, 89, 90 (R193, R194), 92, 95 (R198), 96, 99-101, 103, 104, 106, 108 (R206)**
Algeria	47-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Angola	61-72, 74-78, 79 (C173), 80, 81, 82 (R183, C176), 83-85, 87-90, 96	**79 (R180), 82 (P081), 86, 91, 92, 94, 95, 99-101, 103, 104, 106, 108**
Antigua and Barbuda	68-72, 74-82, 83 (C177), 84, 85 (C181), 87, 88 (C183), 89 (C184), 90 (P155), 91, 94, 95 (C187), 96 (C188), 100, 103 (P029), 108 (C190)	**83 (R184), 85 (R188), 86, 88 (R191), 89 (R192), 90 (R193, R194), 92, 95 (R197, R198), 96 (R199), 99, 101, 103 (R203), 104, 106, 108 (R206)**
Argentina	31-56, 58-72, 74-90, 92, 94-96, 99-101, 103, 108 (C190)	**91, 104, 106, 108 (R206)**
Armenia	80-92, 94-96, 99-101, 103, 104, 106, 108	
Australia	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Austria	31-56, 58-72, 74-92, 94-96, 99, 101, 103	**100, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Azerbaijan	79-92, 94-96, 99-101, 103, 104, 106, 108	
Bahamas	61-72, 74-84, 87, 91, 94, 108 (C190)	**85, 86, 88-90, 92, 95, 96, 99-101, 103, 104, 106, 108 (R206)**
Bahrain	63-72, 74-87	**88-92, 94-96, 99-101, 103, 104, 106, 108**
Bangladesh	58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Barbados	51-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Belarus	37-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Belgium	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Belize	68-72, 74-76, 84, 87, 88, 94	**77-83, 85, 86, 89-92, 95, 96, 99-101, 103, 104, 106, 108**
Benin	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Bolivia (Plurinational State of)	31-56, 58-72, 74-79, 80 (C174), 81 (C175), 82 (C176), 83 (C177), 84 (C178, C179, C180), 85 (C181), 87, 88 (C183), 89 (C184), 91, 100	**80 (R181), 81 (R182), 82 (R183, P081), 83 (R184), 84 (R185, R186, R187, P147), 85 (R188), 86, 88 (R191), 89 (R192), 90, 92, 94-96, 99, 101, 103, 104, 106, 108**
Bosnia and Herzegovina	80-92, 94-96, 99-101, 103, 104, 106	**108**
Botswana	64-72, 74-92, 94-96, 99, 100	**101, 103, 104, 106, 108**
Brazil	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Brunei Darussalam		**96, 99-101, 103, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Bulgaria	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Burkina Faso	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Burundi	47-56, 58-72, 74-92, 95, 96, 99-101, 103, 104, 106	**94, 108**
Cabo Verde	65-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Cambodia	53-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Cameroon	44-56, 58-72, 74-92, 94-96, 101, 108	**99, 100, 103, 104, 106**
Canada	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Central African Republic	45-56, 58-72, 74-92, 94-96, 108 (C190)	**99-101, 103, 104, 106, 108 (R206)**
Chad	45-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Chile	31-56, 58-72, 74-82, 84 (C178, C179, C180, P147), 87, 94, 95 (R197, C187), 100, 103 (P029), 108	**83, 84 (R185, R186, R187), 85, 86, 88-92, 95 (R198), 96, 99, 101, 103 (R203), 104, 106**
China	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Colombia	31-56, 58-72, 74-92, 94-96, 99-101, 103, 108	**104, 106**
Comoros	65-72, 74-78, 87, 103 (P029)	**79-86, 88-92, 94-96, 99-101, 103 (R203), 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Congo	45-53, 54 (C131, C132), 55, 56, 58 (R146, C138), 59, 60 (R150, C142), 61, 62, 63 (R157, C148, C149), 64-66, 67 (C154, C155, C156), 68 (C158), 71 (C160, C161), 74, 75 (C167, C168), 76, 84, 87, 91, 94, 96	**54 (R135, R136), 58 (R145, C137), 60 (R149, R151, C141, C143), 63 (R156), 67 (R163, R164, R165), 68 (R166, C157, P110), 69, 70, 71 (R170, R171), 72, 75 (R175, R176), 77-83, 85, 86, 88-90, 92, 95, 99-101, 103, 104, 106, 108**
Cook Islands	104, 106, 108	
Costa Rica	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Côte d'Ivoire	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Croatia	80-85, 87, 91, 94, 106, 108	**86, 88-90, 92, 95, 96, 99-101, 103, 104**
Cuba	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Cyprus	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Czechia	80-92, 94-96, 99-101, 103, 104, 106, 108	
Democratic Republic of the Congo	45-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Denmark	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Djibouti	64-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Dominica	68-72, 74-79, 87, 100 (C189)	**80-86, 88-92, 94-96, 99, 100 (R201), 101, 103, 104, 106, 108**
Dominican Republic	31-56, 58-72, 74-92, 94, 95, 99, 100	**96, 101, 103, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Ecuador	31-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 104, 108 (C190)	**103 (R203), 106, 108 (R206)**
Egypt	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
El Salvador	31-56, 58-61, 63 (C148, C149), 64, 67 (R164, R165, C154, C155, C156), 69 (R168, C159), 71, 72, 74-81, 87, 88 (C183), 90 (P155), 108 (C190)	**62, 63 (R156, R157), 65, 66, 67 (R163), 68, 69 (R167), 70, 82-86, 88 (R191), 89, 90 (R193, R194), 91, 92, 94-96, 99-101, 103, 104, 106, 108 (R206)**
Equatorial Guinea	67-72, 74-79, 84, 87	**80-83, 85, 86, 88-92, 94-96, 99-101, 103, 104, 106, 108**
Eritrea	80-92, 94-96, 99-101	**103, 104, 106, 108**
Estonia	79-92, 94-96, 99-101, 103, 104, 106, 108	
Eswatini	60-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Ethiopia	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Fiji	59-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Finland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
France	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Gabon	45-56, 58-72, 74-81, 82 (C176), 83 (C177), 84, 85 (C181), 87, 89 (C184), 91, 94	**82 (R183, P081), 83 (R184), 85 (R188), 86, 88, 89 (R192), 90, 92, 95, 96, 99-101, 103, 104, 106, 108**
Gambia	82-92, 94-96	**99-101, 103, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Georgia	80-92, 94-96, 99-101	**103, 104, 106, 108**
Germany	34-56, 58-72, 74-76, 77 (R177, C170), 78-92, 94-96, 99-101, 103, 104, 106, 108	**77 (R178, C171, P089)**
Ghana	40-56, 58-72, 74-92, 94-96, 99-101, 104	**103, 106, 108**
Greece	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Grenada	66-72, 74-92, 94, 95, 100 (C189)	**96, 99, 100 (R201), 101, 103, 104, 106, 108**
Guatemala	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Guinea	43-56, 58-72, 74-83, 87, 95 (R197, C187), 100	**84-86, 88-92, 94, 95 (R198), 96, 99, 101, 103, 104, 106, 108**
Guinea - Bissau	63-72, 74-88, 94, 106	**89-92, 95, 96, 99-101, 103, 104, 108**
Guyana	50-56, 58-72, 74-92, 94, 95, 100	**96, 99, 101, 103, 104, 106, 108**
Haiti	31-56, 58-66, 67 (R165, C156), 69-72, 74, 75 (C167), 87	**67 (R163, R164, C154, C155), 68, 75 (R175, R176, C168), 76-86, 88-92, 94-96, 99-101, 103, 104, 106, 108**
Honduras	38-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Hungary	31-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Iceland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
India	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Indonesia	33-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Iran (Islamic Republic of)	31-56, 58-72, 74-92, 94-96, 100, 101, 103, 104, 106, 108	**99**
Iraq	31-56, 58-72, 74-87, 88 (C183), 89, 90 (P155), 91, 94, 95 (R197, C187), 96 (C188), 100 (C189)	**88 (R191), 90 (R193, R194), 92, 95 (R198), 96 (R199), 99, 100 (R201), 101, 103, 104, 106, 108**
Ireland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Israel	32-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Italy	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Jamaica	47-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Japan	35-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Jordan	39-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Kazakhstan	81 (C175), 82 (R183, C176), 87, 88, 91	**80, 81 (R182), 82 (P081), 83-86, 89, 90, 92, 94-96, 99-101, 103, 104, 106, 108**
Kenya	48-56, 58-72, 74-92, 94-96, 99-101	**103, 104, 106, 108**
Kiribati	88-92, 94-96, 99-101, 103, 104, 106, 108	
Kuwait	45-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Kyrgyzstan	87, 89, 103 (P029)	**79-86, 88, 90-92, 94-96, 99-101, 103 (R203), 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Lao People's Democratic Republic	48-56, 58-72, 74-81, 82 (R183, C176), 83-92, 94-96, 99, 100, 103	**82 (P081), 101, 104, 106, 108**
Latvia	79-92, 94-96, 99-101, 103, 104, 106, 108	
Lebanon	32-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Lesotho	66-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Liberia	31-56, 58-72, 74-76, 77 (R177, R178, C170, C171), 78-81, 82 (R183, C176), 83-87, 91, 94	**77 (P089), 82 (P081), 88-90, 92, 95, 96, 99-101, 103, 104, 106, 108**
Libya	35-56, 58-72, 74-82, 87	**83-86, 88-92, 94-96, 99-101, 103, 104, 106, 108**
Lithuania	79-92, 94-96, 99-101, 103, 104, 106	**108**
Luxembourg	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Madagascar	45-56, 58-72, 74-91, 94-96, 100, 103 (P029)	**92, 99, 101, 103 (R203), 104, 106, 108**
Malawi	49-56, 58-72, 74-92, 94-96, 103 (P029)	**99-101, 103 (R203), 104, 106, 108**
Malaysia	41-56, 58-72, 74-92, 94, 95 (R197, C187), 103 (P029)	**95 (R198), 96, 99-101, 103 (R203), 104, 106, 108**
Maldives		**99-101, 103, 104, 106, 108**
Mali	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Malta	49-56, 58-72, 74-92, 94, 95, 100 (C189), 103 (P029)	**96, 99, 100 (R201), 101, 103 (R203), 104, 106, 108**
Marshall Islands		**99-101, 103, 104, 106, 108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Mauritania	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Mauritius	53-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Mexico	31-56, 58-72, 74-92, 94, 95 (R198), 99, 100 (C189), 101, 106, 108 (C190)	**95 (R197, C187), 96, 100 (R201), 103, 104, 108 (R206)**
Mongolia	52-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Montenegro	96, 99-101, 103, 104, 106, 108	
Morocco	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Mozambique	61-72, 74-82, 87, 94, 103 (P029), 104, 106	**83-86, 88-92, 95, 96, 99-101, 103 (R203), 108**
Myanmar	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Namibia	65-72, 74-92, 94-96, 99-101, 103 (P029), 104, 106, 108 (C190)	**103 (R203), 108 (R206)**
Nepal	51-56, 58-72, 74-92, 94-96, 99-101	**103, 104, 106, 108**
Netherlands	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
New Zealand	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Nicaragua	40-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Niger	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Nigeria	45-56, 58-72, 74-92, 94, 95, 100, 104, 108 (C190)	**96, 99, 101, 103, 106, 108 (R206)**
North Macedonia	80-83, 85, 87, 88, 95 (R197, C187)	**84, 86, 89-92, 94, 95 (R198), 96, 99-101, 103, 104, 106, 108**
Norway	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Oman	81-92, 94, 95 (R197, R198), 99	**95 (C187), 96, 100, 101, 103, 104, 106, 108**
Pakistan	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Palau		**101, 103, 104, 106, 108**
Panama	31-56, 58-72, 74-88, 89 (R192), 90 (R193, R194), 92, 94, 95 (R197, R198), 96 (R199), 99-101, 103, 104, 106, 108 (C190)	**89 (C184), 90 (P155), 91, 95 (C187), 96 (C188), 108 (R206)**
Papua New Guinea	61-72, 74-87	**88-92, 94-96, 99-101, 103, 104, 106, 108**
Paraguay	40-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Peru	31-56, 58-72, 74-92, 94-96, 99-101, 103 (P029), 108 (C190)	**103 (R203), 104, 106, 108 (R206)**
Philippines	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Poland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Portugal	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Qatar	58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Republic of Korea	79-92, 94-96, 99-101, 103, 104, 106, 108	
Republic of Moldova	79-91, 95 (R197, C187), 104	**92, 94, 95 (R198), 96, 99-101, 103, 106, 108**
Romania	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Russian Federation	37-56, 58-72, 74-88, 91, 94, 95 (R197, C187), 103, 104	**89, 90, 92, 95 (R198), 96, 99-101, 106, 108**
Rwanda	47-56, 58-72, 74-79, 81, 85, 87, 95 (R197, C187)	**80, 82-84, 86, 88-92, 94, 95 (R198), 96, 99-101, 103, 104, 106, 108**
Saint Kitts and Nevis	84, 87, 94	**83, 85, 86, 88-92, 95, 96, 99-101, 103, 104, 106, 108**
Saint Lucia	67 (R163, C154, C155), 68 (R166, C158), 87, 90 (P155)	**66, 67 (R164, R165, C156), 68 (C157, P110), 69-72, 74-86, 88, 89, 90 (R193, R194), 91, 92, 94-96, 99-101, 103, 104, 106, 108**
Saint Vincent and the Grenadines	84, 86, 87, 94	**82, 83, 85, 88-92, 95, 96, 99-101, 103, 104, 106, 108**
Samoa	94-96, 99-101, 103, 104, 106	**108**
San Marino	68-72, 74-92, 94-96, 99-101, 108 (C190)	**103, 104, 106, 108 (R206)**
Sao Tome and Principe	68-72, 74-92, 94-96, 99-101	**103, 104, 106, 108**
Saudi Arabia	61-72, 74-92, 94-96, 99-101, 103 (P029)	**103 (R203), 104, 106, 108**
Senegal	45-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Serbia	89-92, 94-96, 99-101, 103, 104, 106, 108	

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Seychelles	63-72, 74-88, 94	**89-92, 95, 96, 99-101, 103, 104, 106, 108**
Sierra Leone	45-56, 58-61, 62 (R153, R155, C145, C147), 64 (C150), 67 (C155), 71 (C160), 85 (C181), 94, 95 (C187), 100 (C189), 103 (P029)	**62 (R154, C146), 63, 64 (R158, R159, C151), 65, 66, 67 (R163, R164, R165, C154, C156), 68-70, 71 (R170, R171, C161), 72, 74-84, 85 (R188), 86-92, 95 (R197, R198), 96, 99, 100 (R201), 101, 103 (R203), 104, 106, 108**
Singapore	50-56, 58-72, 74-92, 94-96, 99-101, 104	**103, 106, 108**
Slovakia	80-92, 94-96, 99-101, 103, 104, 106, 108	
Slovenia	79-92, 94-96, 99-101, 103, 104, 106, 108	
Solomon Islands	74, 87	**70-72, 75-86, 88-92, 94-96, 99-101, 103, 104, 106, 108**
Somalia	45-56, 58-72, 74, 75, 85 (C181), 87, 95 (C187), 108 (C190)	**76-84, 85 (R188), 86, 88-92, 94, 95 (R197, R198), 96, 99-101, 103, 104, 106, 108 (R206)**
South Africa	81, 82 (R183, C176), 83-92, 94-96, 99-101, 108 (C190)	**103, 104, 106, 108 (R206)**
South Sudan		**101, 103, 104, 106, 108**
Spain	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 (C190)	**108 (R206)**
Sri Lanka	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Sudan	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Suriname	61-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Sweden	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
Switzerland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
Syrian Arab Republic	31-56, 58-65, 67, 68, 69 (R167, C159), 71, 72, 74-76, 77 (R177, C170), 84, 87-89, 90 (P155), 94	**66, 69 (R168), 70, 77 (R178, C171, P089), 78-83, 85, 86, 90 (R193, R194), 91, 92, 95, 96, 99-101, 103, 104, 106, 108**
Tajikistan	81-92, 94-96, 99-101, 103 (P029)	**103 (R203), 104, 106, 108**
Thailand	31-56, 58-72, 74-92, 94-96, 99, 100 (R201), 101, 103, 104	**100 (C189), 106, 108**
Timor-Leste	92, 94-96	**99-101, 103, 104, 106, 108**
Togo	44-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Tonga		**106, 108**
Trinidad and Tobago	47-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Tunisia	39-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Türkiye	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Turkmenistan	81-92, 94-96, 99-101, 103, 104, 106	**108**
Tuvalu		**99-101, 103, 104, 106, 108**
Uganda	47-56, 58-72, 74-92, 94-96, 99-101, 103, 104	**106, 108**
Ukraine	37-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	**Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)**
United Arab Emirates	58-72, 74-92, 95, 96	**94, 99-101, 103, 104, 106, 108**
United Kingdom of Great Britain and Northern Ireland	31-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106, 108 (C190)	**108 (R206)**
United Republic of Tanzania	46-56, 58-72, 74-92, 94-96, 99-101, 103, 104, 106	**108**
United States of America	66-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	
Uruguay	31-56, 58-72, 74-89, 90 (R193, R194), 91, 92, 94, 95 (R197, R198), 96, 99-101, 103, 104, 106, 108	**90 (P155), 95 (C187)**
Uzbekistan	80-92, 94-96, 99-101, 103, 104, 106, 108	
Vanuatu		**91, 92, 94-96, 99-101, 103, 104, 106, 108**
Venezuela (Bolivarian Republic of)	41-56, 58-72, 74-92, 94-96, 99-101, 103	**104, 106, 108**
Viet Nam	79-92, 94-96, 99-101, 103, 104	**106, 108**
Yemen	49-56, 58-72, 74-87, 88 (C183), 89 (C184), 91, 95 (C187)	**88 (R191), 89 (R192), 90, 92, 94, 95 (R197, R198), 96, 99-101, 103, 104, 106, 108**
Zambia	49-56, 58-72, 74-92, 94-96	**99-101, 103, 104, 106, 108**
Zimbabwe	66-72, 74-92, 94-96, 99-101, 103, 104, 106, 108	

Appendix VI. Overall position of Member States with regard to the submission to the competent authorities of the instruments adopted by the Conference (as at 10 December 2022)

Sessions of the ILC		Number of States in which, according to the information supplied by the Government:			Number of ILO member States at the time of the session
		All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
All the instruments adopted between the 31st and the 53rd Sessions have been submitted to the competent authorities by member States					
54th	(June 1970)	119	1	0	**120**
55th	(October 1970)	120	0	0	**120**
56th	(June 1971)	120	0	0	**120**
58th	(June 1973)	122	1	0	**123**
59th	(June 1974)	125	0	0	**125**
60th	(June 1975)	125	1	0	**126**
61st	(June 1976)	131	0	0	**131**
62nd	(October 1976)	129	1	1	**131**
63rd	(June 1977)	131	2	1	**134**
64th	(June 1978)	134	1	0	**135**
65th	(June 1979)	135	0	2	**137**
66th	(June 1980)	138	0	4	**142**
67th	(June 1981)	138	5	0	**143**
68th	(June 1982)	142	2	3	**147**
69th	(June 1983)	143	2	3	**148**
70th	(June 1984)	143	0	6	**149**
71st	(June 1985)	145	2	2	**149**
72nd	(June 1986)	145	0	4	**149**
74th	(October 1987)	147	0	2	**149**
75th	(June 1988)	144	2	3	**149**
76th	(June 1989)	142	0	5	**147**
77th	(June 1990)	137	3	7	**147**
78th	(June 1991)	140	0	9	**149**
79th	(June 1992)	145	1	10	**156**
80th	(June 1993)	152	1	14	**167**
81st	(June 1994)	157	2	12	**171**
82nd	(June 1995)	150	8	15	**173**
83rd	(June 1996)	151	3	20	**174**
84th	(October 1996)	156	3	15	**174**
85th	(June 1997)	150	5	19	**174**
86th	(June 1998)	146	0	28	**174**
87th	(June 1999)	173	0	1	**174**
88th	(June 2000)	147	5	23	**175**
89th	(June 2001)	141	5	29	**175**

Sessions of the ILC		Number of States in which, according to the information supplied by the Government:			Number of ILO member States at the time of the session
		All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
90th	(June 2002)	137	8	30	**175**
91st	(June 2003)	148	0	28	**176**
92nd	(June 2004)	137	0	40	**177**
94th	(February 2006)	155	0	23	**178**
95th	(June 2006)	134	17	27	**178**
96th	(June 2007)	131	3	44	**178**
99th	(June 2010)	122	0	61	**183**
100th	(June 2011)	126	7	50	**183**
101st	(June 2012)	120	0	65	**185**
103rd	(June 2014)	106	15	64	**185**
104th	(June 2015)	103	0	83	**186**
106th	(June 2017)	88	0	99	**187**
108th	(June 2019)	67	17	103	**187**

Appendix VII. Comments made by the Committee, by country

The comments referred to below have been drawn up in the form of either "observations", which are reproduced in this report, or "direct requests", which are not published but are communicated directly to the governments concerned. This table also lists acknowledgements by the Committee of responses received to direct requests.

Afghanistan	**General observation** **Observations on Conventions Nos 100, 111, 138, 182** *Direct requests on Conventions Nos 105, 138, 140, 141, 142, 144, 182* *Direct request on submission*
Albania	**General observation** **Observations on Conventions Nos 81, 129, MLC** *Direct requests on Conventions Nos 81, 100, 111, 122, 129, 156, 177, MLC* **Observation on submission**
Algeria	**Observations on Conventions Nos 87, 100, 111** *Direct requests on Conventions Nos 81, 87, 100, 111, 122* *Direct request on submission*
Angola	**Observations on Conventions Nos 100, 111** *Direct requests on Conventions Nos 81, 100, 107, 144* **Observation on submission**
Antigua and Barbuda	**General observation** **Observations on Conventions Nos 100, 111, 138, 144, 151** *Direct requests on Conventions Nos 81, 87, 100, 111, 122, 135* **Observation on submission**
Argentina	**Observations on Conventions Nos 29, 138, 182** *Direct requests on Conventions Nos 100, 111, 156, 169, 182, MLC* *Response received to a direct request on Convention No. 29 Direct request on submission*
Armenia	**Observation on Convention No. 122**
Australia	**Observations on Conventions Nos 29, 182** *Direct requests on Conventions Nos 29, 182*
Austria	*Direct requests on Conventions Nos 81, 122* *Direct request on submission*
Azerbaijan	**Observation on Convention No. 105** *Direct requests on Conventions Nos 105, 122*
Bahamas	**Observation on Convention No. 87** **Observation on submission**
Bahrain	**Observations on Conventions Nos 81, 111** *Direct requests on Conventions Nos 81, 111* **Observation on submission**
Bangladesh	**Observations on Conventions Nos 81, 87, 100, 107, 111** *Direct requests on Conventions Nos 81, 100, 107, 111, MLC* *Direct request on submission*
Barbados	*General direct request* **Observations on Conventions Nos 87, 100, 111, 135, 182** *Direct requests on Conventions Nos 81, 87, 100, 105, 111, 122, 144, 182*
Belarus	**Observations on Conventions Nos 29, 87, 105** *Direct requests on Conventions Nos 29, 122* *Direct request on submission*
Belgium	**Observations on Conventions Nos 100, 111** *Direct requests on Conventions Nos 81, 100, 107, 111, 122, 129, 156*

Belize	**Observations on Conventions Nos 87, 98, 115, 138, 155** *Direct requests on Conventions Nos 29, 140, 144, 151, 154* **Observation on submission**
Benin	**Observations on Conventions Nos 143, 182** *Direct requests on Conventions Nos 81, 102, 143, 182*
Bolivia (Plurinational State of)	**Observation on submission**
Bosnia and Herzegovina	**Observation on Convention No. 100** *Direct requests on Conventions Nos 81, 100, 111, 129, 156* *Direct request on submission*
Botswana	**Observations on Conventions Nos 105, 138, 182** *Direct requests on Conventions Nos 29, 182* *Direct request on submission*
Brazil	**Observations on Conventions Nos 29, 98, 100, 111, 138, 169, 182** *Direct requests on Conventions Nos 29, 81, 97, 98, 100, 111, 169, 182, MLC* *Direct request on submission*
Brunei Darussalam	**Observation on submission**
Bulgaria	**Observations on Conventions Nos 81, 156** *Direct requests on Conventions Nos 81, 100, 111, 122, 156* *Direct request on submission*
Burkina Faso	*Direct requests on Conventions Nos 81, 122, 129*
Burundi	*General direct request* **Observations on Conventions Nos 26, 111** *Direct request on Convention No. 111* *Direct request on submission*
Cabo Verde	**Observations on Conventions Nos 138, 155, 182** *Direct requests on Conventions Nos 17, 19, 29, 81, 102, 118, 138, 144, 155, 182, MLC* *Direct request on submission*
Cambodia	**Observations on Conventions Nos 29, 105, 138, 182** *Direct requests on Conventions Nos 29, 122, 138, 182*
Cameroon	**Observations on Conventions Nos 95, 100, 111, 122, 131, 158, 162** *Direct requests on Conventions Nos 3, 13, 45, 81, 100, 111, 122, 131, 132, 144, 162* *Response received to direct requests on Conventions Nos. 14, 89, 106* *Direct request on submission*
Canada	**Observations on Conventions Nos 122, 138** *Direct requests on Conventions Nos 29, 81, 88, 122, 138, 182*
Central African Republic	*General direct request* **Observations on Conventions Nos 18, 81, 95, 118, 131, 155, 182** *Direct requests on Conventions Nos 3, 13, 14, 17, 52, 62, 81, 95, 101, 117, 118, 119, 120, 122, 142, 150, 155, 158, 182* **Observation on submission**
Chad	**General observation** **Observations on Conventions Nos 29, 87, 111, 182** *Direct requests on Conventions Nos 13, 14, 29, 81, 87, 95, 100, 102, 105, 111, 122, 132, 138, 182* **Observation on submission**
Chile	**Observations on Conventions Nos 24, 25, 103** *Direct requests on Conventions Nos 1, 13, 14, 30, 63, 115, 122, 127, 136, 140, 159, 161, 162, 187* **Observation on submission**
China	**Observations on Conventions Nos 14, 111, 155, 167** *Direct requests on Conventions Nos 45, 111, 150, 155, 159, 167, 170*

Hong Kong Special Administrative Region	**Observation on Convention No. 3**
	Direct requests on Conventions Nos 3, 14, 81, 122, 148
Macau Special Administrative Region	**Observations on Conventions Nos 1, 14, 81, 106**
	Direct requests on Conventions Nos 81, 88, 115, 122, 148, 155, 167
	Response received to a direct request on Convention No. 26
Colombia	**Observations on Conventions Nos 1, 14, 30, 52, 81, 100, 101, 106, 111, 129, 162, 167, 170, 174**
	Direct requests on Conventions Nos 2, 13, 81, 88, 100, 111, 129, 136, 161, 162, 167, 170, 174
	Response received to direct requests on Conventions Nos. 26, 95, 99
	Direct request on submission
Comoros	**General observation**
	Observations on Conventions Nos 13, 19, 26, 98, 99, 122, 138
	Direct requests on Conventions Nos 1, 29, 52, 81, 87, 89, 98, 100, 105, 111, 138, 182
	Observation on submission
Congo	**General observation**
	Observations on Conventions Nos 100, 111, 138, MLC, 188
	Direct requests on Conventions Nos 26, 87, 95, 98, 100, 105, 111, 138, 144, 149, 185, MLC, 188
	Observation on submission
Cook Islands	**General observation**
	Direct requests on Conventions Nos 29, 105, 144, 182
Costa Rica	**Observations on Conventions Nos 1, 14, 29, 81, 95, 100, 106, 122, 129**
	Direct requests on Conventions Nos 29, 45, 81, 88, 89, 94, 96, 102, 111, 117, 120, 122, 127, 129, 148, 150, 156, 159
Côte d'Ivoire	**Observation on Convention No. 111**
	Direct requests on Conventions Nos 3, 13, 14, 26, 45, 81, 95, 96, 99, 100, 111, 129, 136, 150, 155, 159, 161, 170, 171, 187
	Direct request on submission
Croatia	*General direct request*
	Observations on Conventions Nos 81, 111, 129, 155, 161, 162
	Direct requests on Conventions Nos 29, 45, 81, 100, 102, 111, 121, 129, 139, 148, 155, 161, 162, 182
	Observation on submission
Cuba	**Observation on Convention No. 110**
	Direct requests on Conventions Nos 29, 63, 88, 105, 122, 138, 142, 159, 182
	Response received to a direct request on Convention No. 94
Cyprus	**Observations on Conventions Nos 81, 122**
	Direct requests on Conventions Nos 81, 88, 102, 106, 121, 128, 142, 155, 158, 159, 160, 162, 170, 187
	Response received to direct requests on Conventions Nos. 95, 171
	Direct request on submission
Czechia	**Observation on Convention No. 132**
	Direct requests on Conventions Nos 1, 14, 29, 88, 102, 105, 122, 128, 130, 140, 159, 171, 181, 183
Democratic Republic of the Congo	**Observations on Conventions Nos 29, 95, 100, 105, 111, 138, 158, 182**
	Direct requests on Conventions Nos 14, 29, 62, 81, 88, 89, 100, 111, 119, 120, 150, 182
	Response received to a direct request on Convention No. 26
	Observation on submission
Denmark	*Direct requests on Conventions Nos 29, 81, 88, 100, 111, 122, 129, 142, 150, 160*
	Response received to a direct request on Convention No. 94
Faroe Islands	*Direct requests on Conventions Nos 14, 52, 106*
Greenland	*Direct requests on Conventions Nos 111, 122*
	Response received to direct requests on Conventions Nos. 14, 106
Djibouti	*General direct request*
	Observations on Conventions Nos 19, 26, 63, 87, 98, 99, 122
	Direct requests on Conventions Nos 1, 13, 14, 52, 71, 81, 87, 88, 89, 100, 101, 106, 111, 115, 120, MLC
	Direct request on submission

Dominica	**General observation** **Observations on Conventions Nos 87, 94, 147** *Direct requests on Conventions Nos 144, 147* **Observation on submission**
Dominican Republic	**Observations on Conventions Nos 122, 138, 182** *Direct requests on Conventions Nos 29, 88, 105, 159, 182* *Direct request on submission*
Ecuador	**Observations on Conventions Nos 81, 87, 98, 100, 103, 111, 115, 131, 148, 162** *Direct requests on Conventions Nos 29, 45, 81, 87, 100, 101, 102, 105, 111, 117, 118, 119, 121, 122, 128, 130, 136, 139, 142, 148, 153, 162* *Direct request on submission*
Egypt	**Observations on Conventions Nos 94, 100, 111** *Direct requests on Conventions Nos 2, 63, 88, 96, 100, 111, 159*
El Salvador	*General direct request* **Observations on Conventions Nos 100, 111, 144, 182** *Direct requests on Conventions Nos 29, 100, 111, 131, 138, 150, 160, 182* **Observation on submission**
Equatorial Guinea	*General direct request* **Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 1, 14, 30, 68, 92, 100* **Observation on submission**
Eritrea	**Observations on Conventions Nos 29, 98, 105, 138** *Direct request on Convention No. 29* *Direct request on submission*
Estonia	*Direct requests on Conventions Nos 2, 29*
Eswatini	**Observations on Conventions Nos 29, 96, 138, 182** *Direct requests on Conventions Nos 29, 94, 105, 138, 182* **Observation on submission**
Ethiopia	**Observations on Conventions Nos 105, 138, 155, 182** *Direct requests on Conventions Nos 14, 29, 105, 106, 155, 158, 182, MLC* *Direct request on submission*
Fiji	*General direct request* **Observations on Conventions Nos 105, 111** *Direct requests on Conventions Nos 111, 122, 142, 159*
Finland	**Observations on Conventions Nos 81, 88, 100, 128, 129, 159** *Direct requests on Conventions Nos 47, 81, 94, 100, 111, 115, 119, 120, 121, 122, 128, 129, 130, 132, 136, 139, 140, 148, 150, 155, 161, 162, 167, 168, 170, 174, 175, 176, 181, 184, 187* *Response received to direct requests on Conventions Nos. 13, 14*
France	**Observations on Conventions Nos 122, 158** *Direct requests on Conventions Nos 88, 122, 140, 142, 159, 181*
French Polynesia	*Direct requests on Conventions Nos 29, 82, 88, 94, 115, 122* *Response received to direct requests on Conventions Nos. 14, 89, 106*
New Caledonia	*Direct requests on Conventions Nos 82, 122, 142*
Gabon	**General observation** **Observations on Conventions Nos 87, 124, 138, 182, MLC** *Direct requests on Conventions Nos 29, 87, 98, 105, 123, 138, 144, 151, 182, MLC* **Observation on submission**
Gambia	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 87, 98, MLC* **Observation on submission**
Georgia	*Direct request on Convention No. 144* *Direct request on submission*

Germany	*Direct request on submission*
Ghana	**Observations on Conventions Nos 81, 105, 138, 182** *Direct requests on Conventions Nos 29, 81, 105, 149, 182, MLC* *Direct request on submission*
Greece	**Observations on Conventions Nos 81, 154** *Direct requests on Conventions Nos 81, 144*
Grenada	**General observation** **Observation on Convention No. 144** *Direct requests on Conventions Nos 100, 105, 111, 138, 182* **Observation on submission**
Guatemala	**Observations on Conventions Nos 87, 105, 122, 138, 182** *Direct requests on Conventions Nos 29, 87, 105, 138, 144, 182*
Guinea	**Observations on Conventions Nos 81, 87, 138, 182** *Direct requests on Conventions Nos 98, 138, 140, 144, 167, 182, 189* **Observation on submission**
Guinea - Bissau	**Observations on Conventions Nos 26, 138, 182** *Direct requests on Conventions Nos 45, 81, 138, 182* **Observation on submission**
Guyana	**Observations on Conventions Nos 81, 129, 138** *Direct requests on Conventions Nos 29, 81, 129, 140, 144, 149, 151, 172, 182, 189* **Observation on submission**
Haiti	**General observation** **Observations on Conventions Nos 1, 14, 30, 81, 87, 98, 106** *Direct request on Convention No. 81* **Observation on submission**
Honduras	*Direct request on Convention No. 144* *Direct request on submission*
Hungary	**Observations on Conventions Nos 81, 87, 98, 129** *Direct requests on Conventions Nos 81, 98, 122, 129, 135, 142, 144, 154* **Observation on submission**
Iceland	*Direct requests on Conventions Nos MLC, 187*
India	**Observation on Convention No. 81** *Direct requests on Conventions Nos 81, 141, MLC*
Indonesia	**Observations on Conventions Nos 81, 87, 98, 138, 182** *Direct requests on Conventions Nos 81, 138, 144, 182*
Iran (Islamic Republic of)	*Direct requests on Conventions Nos 29, 105* *Direct request on submission*
Iraq	*General direct request* **Observations on Conventions Nos 29, 98, 182** *Direct requests on Conventions Nos 29, 105, 122, 138, 144, 172, 182* **Observation on submission**
Ireland	**Observation on Convention No. 144** *Direct requests on Conventions Nos 29, 189*
Israel	*Direct requests on Conventions Nos 29, 105, 138, 182*
Italy	**Observations on Conventions Nos 81, 129** *Direct requests on Conventions Nos 81, 129, 189*
Jamaica	**Observations on Conventions Nos 81, 87, 98** *Direct requests on Conventions Nos 11, 81, 87, 189* *Direct request on submission*

Japan	**Observation on Convention No. 81** *Direct request on Convention No. 81*
Jordan	**Observations on Conventions Nos 98, 135** *Direct request on submission*
Kazakhstan	**Observation on Convention No. 87** *Direct requests on Conventions Nos 122, 144* **Observation on submission**
Kenya	**Observations on Conventions Nos 81, 105, 129, 138, 182** *Direct requests on Conventions Nos 81, 98, 105, 129, 138, 144, 182, MLC* *Direct request on submission*
Kiribati	*Direct requests on Conventions Nos 87, 98, MLC*
Kuwait	**Observations on Conventions Nos 29, 105** *Direct requests on Conventions Nos 29, 105*
Kyrgyzstan	**Observations on Conventions Nos 81, 95, 131** *Direct requests on Conventions Nos 81, 122, 124, 142, 144, 159* *Response received to direct requests on Conventions Nos. 77, 78, 79* **Observation on submission**
Lao People's Democratic Republic	*General direct request* **Observations on Conventions Nos 138, 182** *Direct requests on Conventions Nos 29, 138, 144, 182* *Direct request on submission*
Latvia	*Direct requests on Conventions Nos 105, 108, 142, 144, MLC*
Lebanon	**General observation** **Observations on Conventions Nos 17, 19, 29, 81, 98, 100, 111, 112, 113, 114, 115, 138, 182** *Direct requests on Conventions Nos 1, 29, 30, 52, 81, 88, 89, 95, 100, 105, 106, 111, 115, 120, 122, 127, 131, 136, 138, 139, 142, 148, 150, 152, 159, 170, 172, 174, 176, 182* **Observation on submission**
Lesotho	**Observations on Conventions Nos 138, 182** *Direct requests on Conventions Nos 29, 105, 138, 158, 182*
Liberia	*General direct request* **Observations on Conventions Nos 87, 105, 182** *Direct requests on Conventions Nos 29, 105, 108, 144, 182, MLC* **Observation on submission**
Libya	*General direct request* **Observations on Conventions Nos 29, 95, 102, 103, 105, 118, 121, 128, 131, 182** *Direct requests on Conventions Nos 1, 14, 29, 52, 81, 89, 95, 103, 105, 182* **Observation on submission**
Lithuania	**Observations on Conventions Nos 1, 47, 81** *Direct requests on Conventions Nos 14, 19, 81, 115, 127, 144, 160, 183* *Direct request on submission*
Luxembourg	*Direct requests on Conventions Nos 87, 102, 158, 169*
Madagascar	**Observations on Conventions Nos 14, 26, 81, 87, 95, 98, 100, 105, 111, 119, 129, 132, 138, 182** *Direct requests on Conventions Nos 13, 29, 81, 100, 111, 119, 120, 127, 129, 132, 143, 151, 154, 171, 182, 185* *Direct request on submission*
Malawi	*General direct request* **Observations on Conventions Nos 111, 138, 144, 182** *Direct requests on Conventions Nos 81, 111, 129, 150, 155, 182, 184, 187* **Observation on submission**

Malaysia	**Observations on Conventions Nos 29, 98, 138, 182**
	Direct requests on Conventions Nos 29, 98, 182
	Observation on submission
Sarawak	**Observation on Convention No. 94**
Maldives	**Observation on submission**
Mali	**Observations on Conventions Nos 29, 138, 182**
	Direct requests on Conventions Nos 29, 105, 182
	Direct request on submission
Malta	*General direct request*
	Observations on Conventions Nos 1, 81, 129
	Direct requests on Conventions Nos 1, 32, 62, 81, 119, 127, 129, 136, 144, 148, MLC
	Response received to direct requests on Conventions Nos. 14, 106, 132
	Observation on submission
Marshall Islands	**General observation**
	Direct requests on Conventions Nos 185, MLC
	Observation on submission
Mauritania	**Observations on Conventions Nos 29, 112, 114, 138, 182**
	Direct requests on Conventions Nos 22, 23, 29, 58, 138, 182
Mauritius	**Observation on Convention No. 108**
	Direct requests on Conventions Nos 32, 137, 160
Mexico	**Observation on Convention No. 144**
	Direct requests on Conventions Nos 96, 152, 160, 172
	Direct request on submission
Mongolia	*General direct request*
	Observations on Conventions Nos 29, 138
	Direct requests on Conventions Nos 29, 105
Montenegro	*General direct request*
	Direct requests on Conventions Nos 27, 29, 105, 113, 114, 126, 144, 152, 182, 185
Morocco	**Observations on Conventions Nos 81, 129, 138, 176, 182**
	Direct requests on Conventions Nos 13, 45, 81, 97, 98, 119, 129, 131, 136, 138, 150, 162, 176, 182, MLC, 187, 188
	Response received to direct requests on Conventions Nos. 27, 30
Mozambique	**Observations on Conventions Nos 29, 105, 138, 182**
	Direct requests on Conventions Nos 29, 105, 138, 144, 182
	Observation on submission
Myanmar	**Observations on Conventions Nos 52, 87**
	Direct requests on Conventions Nos 1, 14, 17, 19, 42
	Response received to a direct request on Convention No. 26
Namibia	**Observations on Conventions Nos 87, 98**
	Direct requests on Conventions Nos 81, 98, 144, 150, 151, 188
Nepal	**Observations on Conventions Nos 29, 98, 138, 182**
	Direct requests on Conventions Nos 29, 131, 138, 144, 182
	Response received to a direct request on Convention No. 14
	Direct request on submission
Netherlands	**Observations on Conventions Nos 81, 121, 129, 162, 183**
	Direct requests on Conventions Nos 62, 81, 102, 115, 121, 128, 129, 130, 139, 144, 148, 152, 155, 162, 170, 174, 183, 188
	Response received to a direct request on Convention No. 131
Aruba	*General direct request*
	Direct requests on Conventions Nos 22, 23, 29, 69, 105, 122, 140, 144, 146, 147, 182
Caribbean Part of the Netherlands	*Direct requests on Conventions Nos 14, 81, 101, 106*
Curaçao	*Direct requests on Conventions Nos 122, 144, MLC*

Sint Maarten	**Observation on Convention No. 87** *Direct requests on Conventions Nos 14, 42, 81, 88, 94, 106, 118, 122* *Response received to a direct request on Convention No. 101*
New Zealand	**Observations on Conventions Nos 14, 47, 160, 182** *Direct requests on Conventions Nos 32, 52, 81, 101, 155, MLC*
Nicaragua	**Observations on Conventions Nos 1, 12, 17, 18, 19, 24, 25, 30, 87, 111, 136, 138, 139, 144, 182** *Direct requests on Conventions Nos 1, 3, 13, 29, 30, 45, 63, 88, 105, 115, 119, 127, 136, 137, 138, 139, 182, MLC* *Direct request on submission*
Niger	**Observations on Conventions Nos 155, 161** *Direct requests on Conventions Nos 18, 81, 95, 102, 119, 122, 131, 144, 148, 150, 155, 161, 181, 183, 187* *Response received to a direct request on Convention No. 14*
Nigeria	**Observations on Conventions Nos 26, 29, 88, 95, 105, 138, 144, 182** *Direct requests on Conventions Nos 19, 29, 32, 45, 105, 137, 138, 182, 185* *Direct request on submission*
North Macedonia	**Observations on Conventions Nos 81, 87, 98, 129, 182** *Direct requests on Conventions Nos 3, 81, 106, 119, 129, 138, 139, 148, 150, 161, 182, 183* **Observation on submission**
Norway	**Observation on Convention No. 102** *Direct requests on Conventions Nos 102, 128, 130, 168, 183* *Direct request on submission*
Oman	*Direct request on submission*
Pakistan	**Observations on Conventions Nos 11, 87, 98, 100, 111** *Direct requests on Conventions Nos 87, 100, 107, 111*
Palau	*Direct request on submission*
Panama	**Observations on Conventions Nos 87, 98, 100, 189** *Direct requests on Conventions Nos 100, 110, 189* *Direct request on submission*
Papua New Guinea	*General direct request* **Observations on Conventions Nos 98, 158** *Direct requests on Conventions Nos 29, 87, 122* **Observation on submission**
Paraguay	**Observations on Conventions Nos 87, 98, 169** *Direct requests on Conventions Nos 100, 111, 156, 169* *Direct request on submission*
Peru	**Observations on Conventions Nos 87, 98, 144, 151** *Direct requests on Conventions Nos 11, 87, 151* *Direct request on submission*
Philippines	**Observations on Conventions Nos 87, 98, 100, 111, 141, 151** *Direct requests on Conventions Nos 97, 100, 111, 143, 187*
Poland	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 87, 135, 151, 188*
Portugal	**Observations on Conventions Nos 98, 144** *Direct requests on Conventions Nos 87, 135, 189*
Qatar	**Observation on Convention No. 111**
Republic of Korea	**Observations on Conventions Nos 81, 122** *Direct requests on Conventions Nos 81, 144*
Republic of Moldova	*Direct requests on Conventions Nos 92, 133, 160, 185* **Observation on submission**

Romania	*General direct request* **Observations on Conventions Nos 87, 98, 111, 122** *Direct requests on Conventions Nos 87, 100, 111, 122, 135, 144, 154* *Response received to a direct request on Convention No. 117* *Direct request on submission*
Russian Federation	**Observations on Conventions Nos 81, 87, 98, 100, 111** *Direct requests on Conventions Nos 100, 102, 111, 135, 154, 156, 167* *Response received to a direct request on Convention No. 151*
Rwanda	**Observations on Conventions Nos 26, 29, 81, 87, 98, 105** *Direct requests on Conventions Nos 29, 81, 87, 98, 100, 111, 135, 138, 144, 150, 154, 155, 181, 182, 187* *Response received to a direct request on Convention No. 11* **Observation on submission**
Saint Kitts and Nevis	**Observations on Conventions Nos 29, 98, 100, 111, 138, 182** *Direct requests on Conventions Nos 29, 87, 100, 105, 111, 138, 182* **Observation on submission**
Saint Lucia	**General observation** **Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 108, 158* **Observation on submission**
Saint Vincent and the Grenadines	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 11, 87, 122, 144* **Observation on submission**
Samoa	*General direct request* *Direct requests on Conventions Nos 87, 98, MLC* *Direct request on submission*
San Marino	*Direct requests on Conventions Nos 98, 100, 111, 140, 143, 154, 156, 159, 161* *Direct request on submission*
Sao Tome and Principe	*General direct request* **Observations on Conventions Nos 98, 100, 111, 138, 151, 154** *Direct requests on Conventions Nos 87, 100, 111, 135, 138, 144, 182, 183* *Direct request on submission*
Saudi Arabia	*Direct requests on Conventions Nos 95, 120* *Direct request on submission*
Senegal	**Observation on Convention No. 87** *Direct request on Convention No. 98*
Serbia	**Observations on Conventions Nos 87, 98, 111, 135** *Direct requests on Conventions Nos 87, 97, 98, 100, 111, 143, 156, 184*
Seychelles	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 149, 151* **Observation on submission**
Sierra Leone	**Observation on Convention No. 98** *Direct request on Convention No. 87* **Observation on submission**
Singapore	*General direct request* **Observation on Convention No. 100** *Direct requests on Conventions Nos 98, 100, 144* *Direct request on submission*
Slovakia	**Observations on Conventions Nos 100, 111, 156** *Direct requests on Conventions Nos 98, 100, 111, 156, MLC* *Response received to direct requests on Conventions Nos. 135, 151*

Slovenia	**General observation** **Observations on Conventions Nos 98, 111, 156** *Direct requests on Conventions Nos 97, 98, 100, 111, 122, 143, 144, 149, 151, 154, 156*
Solomon Islands	**Observations on Conventions Nos 98, 182** *Direct requests on Conventions Nos 11, 87, 182* **Observation on submission**
Somalia	**General observation** **Observation on Convention No. 87** *Direct requests on Conventions Nos 29, 87, 98* **Observation on submission**
South Africa	**Observations on Conventions Nos 87, 111** *Direct requests on Conventions Nos 98, 100, 111* *Direct request on submission*
South Sudan	*General direct request* *Direct requests on Conventions Nos 98, 100, 105, 111, 138, 182* *Direct request on submission*
Spain	**Observation on Convention No. 135** *Direct requests on Conventions Nos 87, 98, 141, 151*
Sri Lanka	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 11, 87, 110, 122, 135*
Sudan	**General observation** **Observation on Convention No. 98** *Direct request on submission*
Suriname	**Observation on Convention No. 111** *Direct requests on Conventions Nos 87, 98, 100, 111, 154* *Direct request on submission*
Sweden	**Observations on Conventions Nos 87, 98** *Direct request on Convention No. 135* *Direct request on submission*
Switzerland	**Observation on Convention No. 98** *Direct request on Convention No. 87*
Syrian Arab Republic	**General observation** **Observations on Conventions Nos 29, 87, 98, 100, 105, 138, 182** *Direct requests on Conventions Nos 29, 100, 105, 107, 111, 144, 182* **Observation on submission**
Tajikistan	*General direct request* **Observations on Conventions Nos 95, 100, 111** *Direct requests on Conventions Nos 32, 87, 98, 103, 105, 111, 122, 142, 144, 149, 159, 177* *Direct request on submission*
Thailand	*Direct request on Convention No. 159* *Direct request on submission*
Timor-Leste	**General observation** *Direct requests on Conventions Nos 87, 98, 100, 111* **Observation on submission**
Togo	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 98, 122*
Tonga	*General direct request* *Direct request on submission*
Trinidad and Tobago	**Observations on Conventions Nos 87, 98, 125**

Tunisia	**Observations on Conventions Nos 87, 98** *Direct requests on Conventions Nos 185, MLC* *Direct request on submission*
Türkiye	**Observations on Conventions Nos 87, 98, 100, 111** *Direct requests on Conventions Nos 87, 100, 111*
Turkmenistan	**Observations on Conventions Nos 87, 105** *Direct requests on Conventions Nos 98, 105, 144* *Direct request on submission*
Tuvalu	**General observation** *Direct request on Convention No. MLC* **Observation on submission**
Uganda	*General direct request* **Observations on Conventions Nos 26, 81, 87, 95, 98, 105, 122, 138, 144, 162, 182** *Direct requests on Conventions Nos 29, 81, 94, 100, 105, 111, 138, 158, 159, 182* *Direct request on submission*
Ukraine	*General direct request* **Observations on Conventions Nos 87, 115, 122, 139, 155, 176** *Direct requests on Conventions Nos 98, 115, 117, 119, 120, 139, 140, 142, 144, 155, 158, 159, 161, 174, 176, 184* *Direct request on submission*
United Arab Emirates	**Observation on submission**
United Kingdom of Great Britain and Northern Ireland	**Observation on Convention No. 87** *Direct requests on Conventions Nos 87, 98, 188*
Anguilla	*Direct requests on Conventions Nos 87, 98*
Bermuda	*Direct requests on Conventions Nos 87, 98*
British Virgin Islands	*Direct requests on Conventions Nos 82, 94, 98, MLC*
Falkland Islands (Malvinas)	**General observation** *Direct request on Convention No. 82*
Guernsey	*General direct request* *Direct request on Convention No. 122*
Isle of Man	*Direct request on Convention No. 98*
Jersey	*General direct request* **Observations on Conventions Nos 87, 98** *Direct request on Convention No. 140*
Montserrat	*Direct requests on Conventions Nos 87, 98*
St Helena	**Observation on Convention No. 98**
United Republic of Tanzania	**Observations on Conventions Nos 87, 98, 100, 111** *Direct requests on Conventions Nos 63, 100, 111, 137, 152, MLC* *Direct request on submission*
United Republic of Tanzania.Zanzibar	*Direct request on Convention No. 85*
Uruguay	**Observations on Conventions Nos 87, 94, 98** *Direct request on Convention No. 190* *Direct request on submission*
Uzbekistan	**Observations on Conventions Nos 98, 100** *Direct requests on Conventions Nos 81, 87, 100, 129, 144*
Vanuatu	**General observation** *Direct requests on Conventions Nos 87, 98, 182* **Observation on submission**
Venezuela (Bolivarian Republic of)	**Observations on Conventions Nos 26, 87, 95, 98, 117, 122, 140, 142, 144, 155, 158** *Direct requests on Conventions Nos 13, 45, 120, 127, 139, 155* *Direct request on submission*

Viet Nam	*Direct requests on Conventions Nos 27, 98* *Direct request on submission*
Yemen	**General observation** **Observations on Conventions Nos 87, 94, 98** *Direct requests on Conventions Nos 100, 111, 122, 144, 158, 159* **Observation on submission**
Zambia	**Observations on Conventions Nos 87, 98** *Direct request on Convention No. 181* **Observation on submission**
Zimbabwe	**Observations on Conventions Nos 87, 98, 100, 111** *Direct requests on Conventions Nos 100, 111*

Annex 13

International Labour Conference
81st Session · 1994

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Freedom

OF ASSOCIATION AND COLLECTIVE BARGAINING

International Labour Office Geneva

Freedom of association and collective bargaining

International Labour Conference
81st Session 1994

Report III (Part 4B)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

General Survey of the Reports on the Freedom of Association and and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949

Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)

FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

International Labour Office Geneva

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CHAPTER I

General introduction

Background

1. In accordance with article 19 of the Constitution of the International Labour Organization, the Governing Body of the International Labour Office decided at its 251st Session (November 1991) to invite those member States which have not yet ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), to submit reports on their legislation and practice in regard to these Conventions. The reports supplied in application of that decision, together with those submitted in accordance with articles 22 and 35 of the Constitution by States which have ratified one or both of these Conventions, have provided an opportunity for the Committee of Experts on the Application of Conventions and Recommendations (hereinafter referred to as "the Committee"), in accordance with its usual practice, to make a general survey of the situation.

2. The present General Survey is the sixth of its kind on Conventions No. 87 and No. 98. Previous surveys on freedom of association and collective bargaining were carried out in 1956, 1957, 1959, 1973 and 1983.

3. In the present survey, the Committee of Experts has endeavoured in particular to respond to questions and concerns expressed in the Conference Committee on the Application of Standards as to the scope of the Conventions considered.

4. In choosing to request reports on freedom of association and collective bargaining, the Worker and Employer members, together with the representatives of several governments in the Governing Body, have emphasized the importance of these Conventions for the ILO. The fundamental nature of these instruments becomes fully apparent in the present year, 1994, in which the 75th anniversary of the founding of the ILO coincides with the 50th anniversary of the Declaration of Philadelphia, as emphasized by the Committee of Experts in its General Report to the International Labour Conference. [1]

[1] ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, 81st Session, 1994, Report III, Part 4A. The Committee's reports will hereafter be designated by the abbreviation RCE, followed by the year of the report and the number of the page from which the quotation is drawn.

International sources of law in the field of trade union rights

Principal source: ILO instruments

5. Workers' organizations had been demanding recognition of freedom of association well before the establishment of the ILO. As an integral part of basic human rights and as the cornerstone of provisions intended to ensure the defence of workers, freedom of association is particularly important for the ILO in view of the latter's tripartite structure. It is also of undoubted interest to employers' organizations, which now make greater use of the procedures which have been established for the purpose of ensuring its application. The ILO could therefore not fail to include this principle in its Constitution of 1919 as one of the objectives of its programme of action. The Preamble to Part XIII of the Treaty of Versailles mentioned "recognition of the principle of freedom of association" among the objectives to be promoted by the ILO, and the general principles set forth in Article 427 of the Treaty contained a provision concerning "the right of association for all lawful purposes by the employed as well as by the employers".

6. Freedom of association having thus been proclaimed from the outset as one of the fundamental principles of the Organization, the need was rapidly felt to adopt provisions aimed at defining this general concept more precisely and to set forth its essential elements in a formal ILO instrument in order that its general application could be effectively promoted and supervised. An initial attempt to do this failed in 1927.[2]

7. In 1944, the Constitution of the ILO was supplemented by the inclusion of the Declaration of Philadelphia, which reaffirmed "the fundamental principles on which the Organization is based and, in particular, that freedom of expression and of association are essential to sustained progress".[3] At the same time, the Declaration recognized the ILO's solemn obligation to further the implementation of programmes which would achieve, among other things "the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures".[4] The principles thus enunciated in the Constitution are applicable to all the member States of the Organization.

[2] The placing of this item on the agenda of the 1928 Session of the International Labour Conference was rejected, in particular by the Workers' group, mainly because of questions relating to the right not to organize and to the legal formalities to be observed by organizations.

[3] Declaration concerning the aims and purposes of the International Labour Organization, art. I(b).

[4] ibid., art. III(e).

8. The earliest ILO Convention to deal with the right to organize was the Right of Association (Agriculture) Convention, 1921 (No. 11),[5] followed in 1947 by the Right of Association (Non-Metropolitan Territories) Convention (No. 84). However, the project to regulate freedom of association on an international scale only really materialized with the adoption, in 1948, of the Freedom of Association and Protection of the Right to Organize Convention (No. 87) and, the following year, of the Right to Organize and Collective Bargaining Convention (No. 98), which together constitute the basic instruments governing freedom of association.[6] The International Labour Conference has since adopted several other instruments concerning trade union rights and collective bargaining.

9. As regards collective bargaining and the settlement of disputes, the following can be singled out for particular attention:

— the Collective Agreements Recommendation, 1951 (No. 91), dealing with collective bargaining machinery, the definition of collective agreements, their effects, their interpretation and the supervision of their application;

— the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which is aimed at promoting the establishment of conciliation and arbitration machinery with equal representation on both sides; it stresses the voluntary nature of such machinery and specifies that none of its provisions may be interpreted as limiting the right to strike;

— the Collective Bargaining Convention (No. 154) and Recommendation (No. 163), both adopted in 1981 and aimed at promoting free and voluntary collective bargaining.

10. The Conference has also adopted various instruments in order:

— to take account of the particular difficulties encountered by workers in certain sectors in the exercise of their trade union rights, such as the Rural Workers' Organizations Convention (No. 141) and Recommendation (No. 149), adopted in 1975;

— to adapt the existing instruments to the particular status of certain categories of worker, for example the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159), adopted in 1978;

— to strengthen the protection of workers' representatives and to ensure that they are afforded facilities in order to enable them to carry out their functions promptly and efficiently, through the Workers' Representatives Convention, 1971 (No. 135), and the accompanying Recommendation (No. 143).

[5] Without defining this right, the Convention provides that all persons engaged in agriculture shall possess the same rights of association and combination as industrial workers.

[6] The text of the substantive provisions of Conventions Nos. 87 and 98 is reproduced in Appendix I.

11. In order to promote mutual understanding and good relations between the authorities and employers' and workers' organizations, as well as between these organizations themselves, other instruments are aimed at institutionalizing consultation in the field of industrial relations:

— at the workplace, the Cooperation at the Level of the Undertaking Recommendation, 1952 (No. 94); and

— at higher levels, the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113).

12. In addition to Conventions and Recommendations, the International Labour Conference has adopted a number of resolutions relating to freedom of association, two of which, in the view of the Committee, are of particular interest. The first of these is the 1952 resolution concerning the independence of the trade union movement, which lays down several principles with regard to the relations between workers' organizations, governments and political parties; it states that it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission, irrespective of political changes. This resolution finds a particular echo within the context of the recent democratization process and remains altogether relevant.[7] The same is true of the 1970 resolution concerning trade union rights and their relation to civil liberties, which recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil and political freedoms which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights; the resolution adds that the absence of these liberties removes all meaning from the concept of trade union rights, and places special emphasis on civil liberties which are essential for the normal exercise of trade union rights.[8] Finally, it should be pointed out that the promotion and defence of freedom of association occupy a prominent position in most of the resolutions adopted since 1983 by the International Labour Conference or the Regional Conferences.

Principles and practices

13. The ILO standards on trade union matters have been supplemented and developed by the principles enunciated by the supervisory bodies, in particular the Governing Body Committee on Freedom of Association and the Fact-Finding and Conciliation Commission on Freedom of Association set up to examine complaints of violation of trade union rights. These decisions, which are not limited to the basic rules laid down by the Conventions on freedom of association — despite the significance which the latter have acquired in substantive law, owing in particular to the large number of ratifications obtained

[7] See the text of the resolution in Appendix II.

[8] See the text of the resolution in Appendix III.

— have progressively become a set of principles which, together with the observations formulated by the Committee of Experts concerning those same instruments, constitutes a veritable international law of freedom of association.

Other international sources

14. The United Nations does not deal with labour issues as such, and in an agreement concluded in 1946 with the ILO it recognized that body as the specialized agency with responsibility for taking appropriate measures to achieve the objectives laid down in its Constitution. The United Nations has, however, adopted — essentially within the framework of instruments relating to human rights — standards and principles also concerning labour matters, including trade union rights. Thus, the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights set forth rights and freedoms which are essential to the free exercise of trade union rights. The Declaration, the moral influence of which is indisputable, provides, inter alia, that everyone has the right to freedom of peaceful assembly and association (article 20.1) and the right to form and to join trade unions for the protection of his interests (article 23.4). The Covenants, which entered into force in 1976, contain provisions concerning the right of association, in particular the right to form trade unions and the right to strike. In accordance with article 18 of the International Covenant on Economic, Social and Cultural Rights, the ILO reports to the Economic and Social Council of the United Nations (ECOSOC) on the progress made in ensuring observation of those provisions of the Covenant which lie within the competence of the Organization. The Governing Body entrusted this task to the Committee of Experts, which has examined the position in a number of States party, particularly with regard to the implementation of the relevant articles of the Covenant. [9]

New developments since 1983 [10]

15. Over the past decade there has been a spectacular change in the world political climate which has resulted, among other things, in profound changes in the legislation and practice of many States. Although the most striking symbol of these changes was the dismantling of the Berlin Wall in late 1989, together with the trend towards a generalization of a market economy in the countries of Central and Eastern Europe, this evolution was not restricted to Europe alone, many African, Latin American and Asian countries having also opted for, or returned to, political and trade union pluralism. [11] All of this has had at least

[9] See for example, RCE 1993, para. 33 et seq.

[10] Date of the last General Survey on Conventions Nos. 87 and 98.

[11] ILC, 79th Session, 1992, *Democratization and the ILO*, Report of the Director-General (Part I), pp. 8-12.

three direct consequences for the ILO and international labour standards. First, there has been a rapid increase in the number of member States, which has risen from 150 in 1983 to 170 in January 1994. Second, the number of ratifications of the Conventions covered in the present survey has also increased, from 96 to 109 in the case of Convention No. 87, and from 112 to 123 in the case of Convention No. 98. [12] And third, the consequence which perhaps has the greatest practical significance is that certain issues relating to respect for fundamental human rights instruments, including Conventions Nos. 87 and 98, which for many years had been the subject of observations by the ILO's supervisory bodies, have been — or are currently in the process of being — resolved. While hoping that this evolution will continue and increase, the Committee remains aware that numerous difficulties still exist. [13]

Promotion and supervision machinery

16. Although during this period the ILO somewhat relaxed the pace of its standard-setting activities in relation to freedom of association, it continued and stepped up its efforts to promote and supervise the application of the Conventions. The Committee refers to the description given in the General Survey of 1983 as regards the general supervision procedures applicable to all international labour Conventions, [14] and to its annual reports to the Conference with regard to promotional activities relating to freedom of association and collective bargaining.

Special procedures

17. Special procedures for the protection of freedom of association were envisaged during the discussion of Conventions Nos. 87 and 98 by the International Labour Conference, since the failure by a State to ratify those Conventions made it impossible to supervise their application under the general supervision procedures, despite the fundamental importance attached to respect for the standards and principles relating to trade union rights. It was for this reason that the Fact-Finding and Conciliation Commission on Freedom of Association was set up in 1950, followed by the Committee on Freedom of Association in 1951.

[12] The other Conventions on Freedom of Association have also been ratified by many countries since 1983: C.11, 13 ratifications; C.135, 14 ratifications; C.141, 9 ratifications; C.151, 12 ratifications; C.154, 15 ratifications.

[13] See Chapter XI.

[14] ILC, 1983, *Freedom of association and collective bargaining*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, paras. 21-37 (hereinafter, *General Survey, 1983*).

Fact-Finding and Conciliation Commission on Freedom of Association

18. Established in agreement with the Economic and Social Council of the United Nations,[15] this Commission examines complaints of violations of trade union rights referred to it by the Governing Body and concerning ILO member countries which may or may not have ratified the Conventions on freedom of association; if, however, the country concerned has not ratified them, the complaint may only be referred with its consent.[16] Functioning as a general rule as a panel of three members and composed of independent persons appointed by the Governing Body, this Commission, while essentially an investigatory body, may also examine, together with the government concerned, the possibilities of settling the difficulties involved by agreement. The Commission has been convened only rarely, mainly because prior to 1964 no government that had been requested to do so had given its consent. Complaints submitted against States which are Members of the United Nations but *not* members of the ILO are referred to the Commission in accordance with a special procedure and if the government concerned so agrees. Thus, a complaint presented by the Congress of South African Trade Unions against the Government of South Africa was referred to the ILO in 1988; in 1991, the Government gave its consent to the referral of the complaint to the Commission, which issued a very detailed report containing its conclusions on the situation in law and in practice with regard to labour relations in that country, at the same time formulating numerous recommendations relating in particular to freedom of association and collective bargaining.[17]

Committee on Freedom of Association

19. Established in 1951 as a tripartite body comprising nine members of the Governing Body, and chaired since 1978 by an independent personality, the Committee on Freedom of Association examines complaints containing allegations of violations of the Conventions on freedom of association, regardless of *whether or not* the countries concerned have ratified those instruments. The consent of the governments concerned is not necessary in order for these complaints to be examined: the legal basis for this concept resides in the Constitution of the ILO and the Declaration of Philadelphia, according to which member States, by virtue of their membership of the Organization, are bound

[15] Resolutions of the Economic and Social Council No. 239(IX) of 2 August 1949 and No. 277(X) of 17 February 1950; 110th Session of the Governing Body, Official Minutes, pp. 71-90.

[16] As regards the application of ratified Conventions, the Governing Body may, under article 26 of the Constitution, designate the Fact-Finding and Conciliation Commission as a Commission of Inquiry.

[17] International Labour Office, Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the *Republic of South Africa*, Official Bulletin, Special Supplement, Vol. LXXV, 1992, Series B, paras. 746-748 (hereinafter "Report Fact-Finding and Conciliation Commission *South Africa*".

to respect the fundamental principles contained in its Constitution, particularly those concerning freedom of association even though they have not ratified the Conventions on this subject. The Committee on Freedom of Association systematically examines the substance of the cases submitted to it and presents conclusions thereon, unanimously adopted, to the Governing Body, recommending, where appropriate, that it draw the attention of the governments concerned to any principles called into question, and in particular to any recommendations made with a view to settling the difficulties raised in the complaint. The Committee meets three times a year and has, since its establishment, examined nearly 1,800 cases, which are often of a very serious nature. In so doing, it has established a series of principles [18] which constitutes a veritable international law on freedom of association. [19] The upward trend in the number of cases submitted to the Committee on Freedom of Association, already noted in the previous General Survey, has continued.

Links between the Committee on Freedom of Association and the Committee of Experts

20. When a legislative problem arises and the country concerned has ratified the Conventions to which the complaint refers, the Committee on Freedom of Association can — and, in fact, often does — draw the attention of the Committee of Experts to these aspects of the case, thus enabling the latter to follow the development of the situation during the regular examination of the reports submitted by the government concerned in relation to the Convention in question. Thus, when considering the practice and legislation of a country as part of the regular examination of the application of Conventions under article 22 of the ILO Constitution, the Committee of Experts may be called upon to take account of the unanimous recommendations of the Committee on Freedom of Association approved by the Governing Body, in addition to the information provided by the government and by employers' and workers' organizations. While the Committee on Freedom of Association and the Committee of Experts differ in terms of their composition, the nature of their functions and their procedure, they apply the same principles, which are universal and cannot be applied selectively. The Committee of Experts does take into consideration particular facts when applying these principles which it tends to view as

[18] The Committee's decisions are published *in extenso* in the *Official Bulletin* and significant decisions and principles are collected from time to time, by subject, in a Digest. The decisions taken by the Committee up to 1985 have been published in: *Freedom of association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Geneva, 1985, 3rd revised edition (hereinafter, *Digest*). New developments may have occurred in the legal or factual situations described in the decisions of the Committee on Freedom of Association mentioned in this survey.

[19] In 1953 the Chairman of the Committee stated that it is "a kind of customary rule in common law, outside or above the scope of any Conventions or even of membership of one or other of the international organizations". ILO, Minutes of the 121st Session of the Governing Body, 3-6 Mar. 1953, p. 39.

guidelines from which governments and the social partners might draw inspiration with a view to promoting harmonious labour relations.

Available information

21. The present survey is based, on the one hand, on the reports communicated under article 19 of the ILO Constitution by countries which have not ratified the Conventions under consideration and, on the other hand, on the reports furnished under articles 22 and 35 by governments which have ratified those instruments. The number of reports supplied under article 19 is 31 and 23 respectively, for Conventions Nos. 87 and 98. Appendix IV contains the list of countries which have presented a report under article 19 and those for which information drawn from the reports communicated under article 22 is available. In addition, the Committee received information and comments from workers'[20] and employers'[21] organizations concerning unratified Conventions. In examining the information contained in the reports, the Committee of Experts has also sought to take account of the corresponding legislation and practice. The Committee stresses the crucial importance it attaches to the latter, since a purely formal compatibility of national legislations with ILO instruments on freedom of association has no real meaning for workers and employers. The Committee feels bound to point out that it has sometimes been difficult to gather information on the practical application of the Conventions, and even, in some cases, to obtain all of the national legislation concerning the subjects dealt with in this survey.[22]

Arrangement of the survey

22. The present General Survey is divided into three parts dealing, respectively, with the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and finally the highlights of the last decade and the difficulties and prospects with regard to ratification. However, before examining each of the aspects of freedom of association covered by Conventions Nos. 87 and 98, the Committee of Experts considered it worthwhile to recall briefly in a preliminary chapter the relationship between trade union rights and civil and political liberties, since respect for these fundamental rights

[20] New Zealand Council of Trade Unions (C.87 and C.98).

[21] National Confederation of Industry of Brazil (C.87); Confederation of Chambers of Industry of the United States of Mexico (C.98); New Zealand Employers' Federation (C.87 and C.98).

[22] Unless otherwise mentioned, the Committee based itself on information available as of 31 December 1993.

is the essential prerequisite to the genuine and sustained development of the rights of workers' and employers' organizations.

PART I

Freedom of association and protection of the right to organize

CHAPTER II

Trade union rights and civil liberties

Introduction

23. The examination of the numerous allegations of violations of trade union rights presented to the Committee on Freedom of Association since its creation in November 1951 shows that the restriction of civil and political liberties is a major factor in violations of freedom of association. [1] Aware of this problem, and aiming to promote social justice in accordance with its fundamental mission, the International Labour Organization has striven to safeguard the rights and liberties which individuals should enjoy at work. As the Director-General of the ILO recalled recently: "The ILO takes a keen interest in civil and political rights, for, without them, there can be no normal exercise of trade union rights and no protection of the workers". [2] Without these liberties, trade union rights are limited or non-existent, but "... respect of civil liberties has a more general dimension in so far as such liberties affect the existence, activities and development of an entire community". [3]

24. The Declaration of Philadelphia, adopted in 1944 by the International Labour Conference and incorporated in 1946 in the ILO Constitution, officially acknowledged the relationship between civil liberties and trade union rights by proclaiming in article I(b) that freedom of expression and of association are essential to sustained progress and referring in article II(a) to the fundamental rights which are an inseparable part of human dignity. Since then, this relationship has been repeatedly affirmed and highlighted, both by the ILO's supervisory bodies and in the Conventions, Recommendations and resolutions adopted by the International Labour Conference.

[1] Nearly half the complaints presented to the Committee concern, in whole or in part, human rights violations.

[2] International Labour Conference, 79th Session, 1992, *Democratization and the ILO*, Report of the Director-General, p. 24.

[3] ILO, Report of the Commission of Inquiry appointed to examine the complaint concerning the observation by *Nicaragua* of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), *Official Bulletin*, Supplement 2, Series B, Vol. LXXIV, 1991, para. 539 (hereinafter "Report of the Commission of Inquiry *Nicaragua*").

25. In the preparatory work on Convention No. 87, the preamble of which includes the principles set out in the Declaration of Philadelphia, it was stressed that "freedom of industrial association is but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties of man, all interdependent and complementary one to another".[4] In 1970, the International Labour Conference solemnly reaffirmed this essential link by adopting a resolution concerning trade union rights and their relation to civil liberties. Considering, inter alia, "that there exist firmly established, universally recognized principles defining the basic guarantees of civil liberties which should constitute a common standard of achievement for all peoples and all nations", it recognizes that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights". The Conference explicitly listed the fundamental rights essential for the exercise of freedom of association, in particular: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; and (e) the right to protection of the property of trade union organizations.

26. The Committee of Experts itself,[5] the Conference Committee on the Application of Standards[6] and the Committee on Freedom of Association,[7] have on many occasions stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate of respect for fundamental human rights. The exercise of civil liberties in relation to trade union rights "should be examined on the basis of the provisions contained in Article 3 of Convention No. 87. It is in connection with this standard that the respect of certain basic human rights acquires its full importance for trade union life".[8]

27. The information available, in particular on the nature of the complaints submitted to the Committee on Freedom of Association, shows that the main difficulties encountered by trade union organizations and their leaders and

[4] International Labour Conference, 30th Session, 1947, Report VII, *Freedom of Association and Industrial Relations*, p. 11.

[5] See, for example: *RCE* 1988, para. 12; *RCE* 1990, para. 37; *RCE* 1991, paras. 43 and 45. See also *General Survey*, 1983, para. 52.

[6] For example, International Labour Conference, *Provisional Records*, 1988 (General Report, paras. 5-10); 1990 (General Report, para. 48); 1991 (General Report, para. 97).

[7] *Digest*, Ch. II.

[8] Report of the Commission of Inquiry *Nicaragua*, op. cit., note 3, para. 435.

members relate to basic rights, in particular to the right to security of the person, freedom of assembly, freedom of opinion and expression, as well as the right to protection of trade union property and premises. The Committee stresses that trade union rights violations may also result by reason of legislation, sometimes taken for genuine economic motives, which favour individual rights to the detriment of collective rights, thereby weakening trade unions through a series of legislative measures which, taken individually, may otherwise be compatible with the principles of freedom of association.[9] Serious problems also frequently arise with regard to the exercise of trade union rights where the public authorities have declared states of emergency.

The right to freedom and security of person

28. The resolution concerning trade union rights and their relation to civil liberties rightly lists as first among the liberties essential for the normal exercise of trade union rights the right "to freedom and security of person" since this fundamental right is crucial to the effective exercise of all other liberties, in particular freedom of association. The violations noted by the Committee on Freedom of Association are as serious as they are varied: serious physical assault and even murder, arbitrary arrest and detention, restrictions on freedom of movement, exile and disappearances.

Physical assaults against persons, disappearance

29. In its examination of such complaints, the Committee on Freedom of Association has stated that a climate of violence in which the murder and disappearance of trade union leaders go unpunished constitutes a serious obstacle to the exercise of trade union rights and that such acts require that severe measures be taken by the authorities.[10] It has also stressed that, when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions.[11] Judicial inquiries of this kind should be conducted as promptly and speedily as possible, since otherwise there is a risk of de facto impunity which reinforces the climate of violence and insecurity and which is therefore highly detrimental to the exercise of trade union activities.[12]

[9] See on this point paras. 236, 335 and 336.

[10] *Digest*, para. 76. CFA, 281st Report, Case No. 1273 (*El Salvador*), para. 279; 283rd Report, Case No. 1538 (*Honduras*), para. 254.

[11] *Digest*, paras. 78, 79 and 85. CFA, 279th Report, Case No. 1444 (*Philippines*), para. 560; 283rd Report, Case No. 1590 (*Lesotho*), para. 347.

[12] CFA, 278th Report, Case No. 1426 (*Philippines*), para. 139; 284th Report, Case No. 1538 (*Honduras*), para. 743.

30. As regards more specifically torture, cruelty and ill-treatment, trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. [13] Governments should give the necessary instructions to ensure that no detainee suffers such treatment, and should apply effective and exemplary sanctions where evidence is available. [14] Complaints of this type should be investigated so that appropriate measures, including compensation for damages suffered, may be taken. [15]

Arbitrary arrest and detention

31. The arrest and detention, even for short periods, of trade union leaders and members engaged in their legitimate trade union activities, without any charges being brought and without a warrant, constitute a grave violation of the principle of freedom of association. [16] While being engaged in trade union activities does not confer immunity from sanctions under ordinary criminal law, the authorities should not use legitimate trade union activities as a pretext for arbitrary arrest or detention; the Committee recalls in this respect that the imposition of heavy criminal sanctions for violations of industrial relations legislation is inappropriate and not conducive to sound industrial relations. [17] In view of the importance which it attaches to the protection of the right of arrested or detained persons to a fair trial, the Committee has called on governments to bring detainees before the courts in all cases, irrespective of the reasons put forward for prolonging their detention. [18] Preventive detention may also involve serious interference in trade union activity and must be accompanied by all adequate judicial safeguards applied within a reasonable period. [19] The Committee also takes the view that so-called "education through labour" systems amount to administrative detention and forced labour which, when applied to people involved in trade union activities, constitute a blatant violation of the principles of freedom of association. [20]

32. The authorities must therefore ensure observance of the right of all detained or accused persons, including trade unionists, to be tried promptly

[13] *Digest*, paras. 82 and 86. CFA, 279th Report, Case No. 1577 (*Turkey*), para. 438.

[14] *Digest*, para. 84. CFA, 277th Report, Case No. 1524 (*El Salvador*), para. 377; 278th Report, Case No. 1508 (*Sudan*), para. 357.

[15] See also *Digest*, para. 85. CFA, 279th Report, Case No. 1520 (*Haiti*), para. 214.

[16] *Digest*, paras. 87-89. CFA, 279th Report, Case No. 1556 (*Iraq*), para. 61; 281st Report, Case No. 1593 (*Central African Republic*), para. 262.

[17] See Ch. V, paras. 176-178.

[18] *Digest*, para. 95. CFA, 265th Report, Case No. 1168 (*El Salvador*), para. 257; 270th Report, Case No. 1508 (*Sudan*), para. 404.

[19] *Digest*, para. 100.

[20] CFA, 281st Report, Case No. 1500 (*China*), para. 81.

through normal judicial procedures,[21] which includes in particular: the right to be informed of the charges brought against them, the right to have adequate time for the preparation of their defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority[22] in all cases, including cases in which trade unionists are charged with criminal offences, whether of a political nature or not, which in the government's view have no relation to their trade union functions.[23] The Committee, while refraining from expressing an opinion on the political aspects of a state of emergency, has always emphasized that the same safeguards must be applied when trade unionists are detained during a state of emergency.[24] Respect for the legal safeguards would not appear to be ensured if, under national law, the effect of a state of emergency is that a court cannot examine, and does not in fact examine, the merits of the case.[25]

Forced exile

33. Forced exile has particularly serious implications when imposed on trade unionists, since it weakens trade union organizations by depriving them of their leaders and key activists.[26] The practice of freeing trade unionists on condition that they leave the country is also incompatible with the free exercise of trade union rights.[27] Related sanctions, such as house arrest or banishment on the grounds of trade union activity, also violate freedom of association; the Committee has also stressed that such sanctions should not be imposed by administrative action.[28]

Freedom of movement

34. The leaders of workers' and employers' organizations should be able freely to travel within the country, enter and leave it when their activities on behalf of their members so require; the authorities should guarantee these rights.[29] Participation by trade unionists in international trade union meetings is also a fundamental trade union right; governments should refrain from any measure, such as withholding travel documents, which prevent representatives

[21] *Digest*, para. 108.

[22] *Digest*, para. 110. CFA, 279th Report, Case No. 1556 (*Iraq*), para. 61.

[23] *Digest*, para. 113. CFA, 259th Report, Case No. 1426 (*Philippines*), para. 585; 270th Report, Case No. 1508 (*Sudan*), para. 404.

[24] *Digest*, para. 128. See also para. 41 below.

[25] *Digest*, para. 130.

[26] *Digest*, para. 134. CFA, 256th Report, Case No. 1309 (*Chile*), para. 276.

[27] *Digest*, para. 136.

[28] *Digest*, para. 138. CFA, 272nd Report, Case No. 1516 (*Bolivia*), para. 153.

[29] Report of the Commission of Inquiry *Nicaragua*, op. cit., note 3, para. 113. See also CFA, 254th Report, Case No. 1406 (*Zambia*), para. 470.

of occupational organizations from exercising their mandate in full freedom and independence. [30]

Freedom of assembly and demonstration

35. Freedom of assembly constitutes a fundamental aspect of trade union rights. [31] The authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a *serious* and *imminent* threat to public order. [32] In addition, where trade unionists are arrested or charged for breaching public order in such circumstances, they should be entitled to refer the matter promptly to judicial authorities, with all guarantees of due process, so that the court may assess whether these measures were justified and, where necessary, issue appropriate remedial orders. Trade unions should therefore be able to hold meetings freely in their own premises for the discussion of trade union matters, without the need for previous authorization and without interference by the public authorities, [33] to draw up their agendas freely, [34] and to hold meetings without members of the police [35] or any representative of the authorities [36] being present. Employers' organizations should also be able to hold such meetings freely, without any interference or supervision by the authorities.

36. The freedom of assembly extends to international meetings. Any measure preventing an official of a workers' or employers' organization to attend to or participate in such reunions is a serious restriction on the guarantees set out in Article 3 of Convention No. 87. [37]

37. The right to organize public meetings, including May Day processions or demonstrations in support of social and economic demands, constitutes an important aspect of trade union rights. [38] Nevertheless, organizations must observe the general provisions relating to public meetings, which are applicable to everyone. [39] The prohibition of demonstrations or processions on public streets, in particular in the busiest parts of a city, when it is feared that

[30] 283rd Report, Case No. 1590 (*Lesotho*), para. 346.

[31] *Digest*, para. 140.

[32] CFA, 278th Report, Case No. 1479 (India), para. 278; 281st Report, Case No. 1564 (*Sierra Leone*), para. 186.

[33] *Digest*, para. 142. CFA, 283rd Report, Case No. 1479 (*India*), para. 98.

[34] *Digest*, para. 145.

[35] *Digest*, para. 148. CFA, 278th Report, Case No. 1337 (*Nepal*), para. 125.

[36] *Digest*, para. 149.

[37] CFA, 287th Report, para. 3: member of the Freedom of Association Committee prevented from participating in a session of the Committee. See also, *Digest*, para. 271.

[38] *Digest*, paras. 154-156. CFA, 283rd Report, Case No. 1590 (*Lesotho*), para. 349.

[39] *Digest*, para. 158. CFA, 279th Report, Case No. 1572 (*Philippines*), para. 583.

disturbances might occur, does not necessarily constitute an infringement of trade union rights,[40] but the authorities should strive to reach agreement with organizers of the meeting to enable it to be held in some other place where there would be no fear of disturbances.[41] While reasonable restrictions are acceptable, they should not result in breaches of fundamental civil liberties.

Freedom of opinion and expression

38. Another essential aspect of trade union rights is the right to express opinions through the press or otherwise.[42] The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications, and in the course of their other activities.[43] In cases in which the issue of a trade union publication is subject to the granting of a licence, mandatory licensing should not be subject to the mere discretion of licensing authorities, nor should it be used as a means of imposing prior restraint on the subject-matter of publications; in addition any application for such a licence should be dealt with promptly.[44] If trade unions are required to provide a substantial bond before being able to publish a newspaper, this constitutes, especially in the case of smaller unions, a condition which is hardly compatible with the right of trade unions to express opinions through the press.[45] Measures of administrative control — for example, the withdrawal of a licence granted to a trade union newspaper, the control of printing plants and equipment, or the control of paper supply — should be subject to prompt and independent judicial review.[46]

39. An important aspect of freedom of expression is the freedom of speech of delegates of workers' and employers' organizations meetings, conferences and reunions, and in particular to the International Labour Conference. The functioning of the latter would risk being considerably hampered and the freedom of speech of the workers' and employers' delegates paralysed, if they were to be threatened with prosecution based, directly or indirectly, on the contents of their speeches at the Conference. Article 40 of the ILO Constitution provides that delegates to the Conference shall enjoy "such immunities as are necessary for the independent exercise of their functions in connection with the Organization". The right of delegates to the Conference to express freely their point of view on questions within the competence of the Organization implies

[40] *Digest*, para. 163.

[41] *Digest*, para. 164. CFA, 280th Report, Cases Nos. 997, 999 and 1029 (*Turkey*), para. 34.

[42] *Digest*, para. 172. CFA, 286th Report, Case No. 1640 (*Morocco*), para. 638.

[43] *Digest*, para. 175. See also the Report of the Commission of Inquiry *Nicaragua*, op. cit., note 3, para. 541.

[44] *Digest*, para. 177.

[45] *Digest*, para. 178.

[46] *Digest*, paras. 180 and 181.

point of view on questions within the competence of the Organization implies that delegates of employers' and workers' organizations have the right to inform their members in their respective countries of what they have said. The arrest and sentencing of a delegate as a result of his speech to the Conference, or by reason of information given on the debates thereof, jeopardize freedom of speech for delegates as well as the immunities that they should enjoy in this regard. [47]

Protection of trade union premises and property

40. While trade unions cannot claim any special immunity, such as immunity from searches of trade union offices, such searches should only be made when a warrant has been issued by the regular judicial authority, when that authority has good reason to believe that evidence for criminal proceedings under the ordinary law will be found on the premises, and on condition that the search is restricted to the purpose for which the warrant was issued. [48] Judicial review is also required for any similar measures taken by the authorities (for instance, searches of the private homes of trade unionists; occupation, closure or sealing of trade union premises; seizure of material needed by the union in its work) in view of the significant risk that such measures may paralyse trade union activities.

State of emergency

41. The freedom of association Conventions contain no provisions allowing the invocation of a state of emergency to justify exemption from the obligations arising under the Conventions or any suspension of their application. This motive is frequently invoked and the exercise of trade union rights is seriously endangered thereby. Such a pretext cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity (acts of God, serious disruption of civil order, etc.), and on condition that any measures affecting the application of the Conventions are limited in scope and duration to what is strictly necessary to deal with the situation in question. [49] While it is conceivable that the exercise of some civil liberties, such as the right to public assembly or the right to hold street demonstrations, might be limited, suspended and even prohibited it is not

[47] *Digest*, para. 189.

[48] *Digest*, para. 205. CFA, 284th Report, Case No. 1597 (*Mauritania*), para. 283.

[49] Report of the Commission instituted under article 26 of the Constitution of the International Labour Organization to examine the complaint on the observance by *Poland* of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98): *Official Bulletin*, Special Supplement, Series B, Vol. LXVII, 1984, para. 479 (hereinafter "Report of the Commission of Inquiry (*Poland*)").

permissible that, in the field of trade union activities, the guarantees relating to the security of the person should be limited, suspended or abolished. [50]

42. The ILO supervisory bodies assess measures taken against workers' or employers' organizations during a political or civil crisis in the light of the exceptional circumstances prevailing at the time to determine independently whether the circumstances invoked by a State justify a temporary exemption from the principles of freedom of association; the States concerned are not allowed to be sole judge of the issue. [51]

* * *

43. *The Committee considers that the guarantees set out in the international labour Conventions, in particular those relating to freedom of association, can only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments, notably the International Covenant on Civil and Political Rights, are genuinely recognized and protected. These intangible and universal principles, the importance of which the Committee wishes to emphasize particularly on the occasion of the 75th anniversary of the creation of the ILO and the 50th anniversary of the Declaration of Philadelphia, should constitute the common ideal to which all peoples and all nations aspire.*

[50] *General Survey*, 1983, paras. 71 and 72. *Digest*, paras. 192, 194-196.

[51] *General Survey*, 1983, para. 73. *Digest*, para. 193. Report of the Commission set up to examine the complaints concerning the observance by *Greece* of Conventions Nos. 87 and 98, ILO, *Official Bulletin*, Special Supplement, Vol. LIV, 1971, para. 111.

CHAPTER III

Right of workers and employers to establish and join organizations

Introduction

44. The industrial relations systems in certain countries can entail conditions or restrictions which in practice make it very difficult for large numbers of workers and employers in certain categories to establish organizations for furthering and defending their economic and social interests. The Committee considers that the freedom, *de facto* and *de jure*, to establish organizations is the foremost among trade union rights and is the essential prerequisite without which the other guarantees enunciated in Conventions Nos. 87 and 98 would remain a dead letter. The free exercise of this right, to which this chapter is devoted, depends on three things, namely the *absence of any distinction*, in law and in practice, among those entitled to the right of association, the *absence of the need for previous authorization* to establish organizations, and *freedom of choice* with regard to membership of such organizations. The rights to which organizations are entitled are examined in the subsequent chapters.

I. Right of workers and employers, *without distinction whatsoever*, to establish and join organizations

45. Article 2 of Convention No. 87 provides that "Workers and employers, without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing ...". In adopting the terms "without distinction whatsoever", which it considered a more suitable way in which to express the universal scope of the principle of freedom of association than a list of prohibited forms of distinction, the International Labour Conference emphasized that the right to organize should be guaranteed without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion.[1] The right to organize should therefore be considered as the general principle, the only exception to which is that stipulated in Article 9 of the Convention, which permits States to determine the

[1] ILO: *Record of Proceedings*, ILC, 30th Session, 1947, p. 570.

extent to which the guarantees provided for in the Convention apply to the armed forces and the police.

46. The use of the terms "employers" and "workers" in Convention No. 87 underscores the fact that that instrument guarantees the right of association for trade union purposes — a subject which comes directly and unquestionably within the competence of the International Labour Organization — and not the right of association in general, which falls within the competence of other international agencies.[2] Consequently, the various terms used in the present survey, which are often based on those used in national legislation, all refer, unless otherwise stated, to the right to organize or associate for occupational purposes with the aim of furthering and defending the interests of workers or employers.

47. Most countries recognize the right of workers and employers to organize as provided for in Article 2. In several countries, however, the law draws a distinction in that regard for certain categories of occupation or persons. The distinctions most frequently encountered concern certain groups of workers such as public servants, executive and managerial staff and agricultural workers. They may also apply to specific categories such as workers in free export zones, seafarers and domestic workers, be based on other factors such as nationality, or refer to the recognition of the right of association of employers.

Public service

48. During the preparatory work on Convention No. 87, it was emphasized that freedom of association was to be guaranteed not only to employers and workers in private industry, but also to public employees.[3] Accordingly, the law and practice report prepared by the Office provided that public servants and officials should be covered by that instrument: "The guarantee of the right of association should apply to all employers and workers, public or private, and, therefore, to public servants and officials and to workers in nationalized industries. It has been considered that it would be inequitable to draw any distinction, as regards freedom of association, between wage-earners in private industry and officials in the public services, since persons in either category should be permitted to defend their interests by becoming organized ... However, the recognition of the right of association of public servants in no way prejudges the question of the right of such officials to strike ...".[4] The Committee has always considered that the exclusion of public servants from this fundamental right is contrary to the Convention.

[2] See also ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, p. 108.

[3] ILO: *Record of Proceedings*, ILC, 30th Session, 1947, p. 570.

[4] ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, p. 109. See also Chapter V regarding the right to strike of public servants.

49. Given the very broad wording of Article 2 of Convention No. 87, all public servants and officials should have the right to establish occupational organizations, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings. However, an examination of the legislation of different countries shows that the terms used to refer to public servants vary a great deal. The same expressions in the legislation of different countries do not necessarily cover the same persons, [5] while in some countries the legislation itself draws distinctions as to the status and rights of the various categories of public servant. [6] The Committee considers that all workers in this category are covered by the Convention, whatever the terms used.

50. For some countries it is not possible to determine from the substantive law in force the precise extent to which public servants enjoy the right of association in practice. Even if the legislation does not recognize their right to form trade union organizations, associations have in some cases been established under the terms of an act on the right of association in general, [7] and there are even cases in which such associations are accorded de facto recognition by the government in its capacity as employer for the purpose of discussing wage claims or other working conditions.

51. In many countries, the right of public servants to organize for the purpose of defending and furthering their occupational interests is guaranteed by the legislation applicable to trade unions in general. [8] In others, the right of public servants to organize is governed by a set of provisions contained in public service statutes or regulations or in special legislation. [9] Most of these countries have for a long time recognized the right of public servants to organize. In some cases, however, such recognition may have been accorded only more recently [10]

[5] For example, the French word "fonctionnaire" (public servant) does not have the same meaning in all French-speaking countries.

[6] For example, in *Germany*, law and practice draw a distinction, based on *status* rather than on the nature of *functions*, between public servants having the status of "Beamte", and other persons employed at the various levels of public service, white collars ("Angestellte") or manual workers ("Arbeiter").

[7] For example: *Bangladesh*, with limited exceptions, public servants are excluded from the 1969 Industrial Relations Ordinance, although they can form and join associations for the purpose of pursuing claims and furthering their interests; these associations are, however, subject to certain constraints which do not apply to the trade unions referred to in the 1969 Ordinance (RCE, 1994 observation on C.87). In *Ecuador*, public servants ("servidores públicos") are barred from establishing trade unions, even though they have the right to associate and to designate their representatives (RCE 1993, p. 193).

[8] For example: *Argentina, Australia, Belarus, Egypt, Finland, India, Italy, Philippines, Poland, Venezuela.*

[9] For example: *Belgium, Benin, Denmark, Djibouti, France, Japan, Mexico.*

[10] For example: *Mali* (1987). *Yemen* (1991).

and may be closely linked to profound changes in the wake of a country's return to democracy following a period of authoritarian government. [11] In other countries, the right to organize is granted only to certain categories of public servants, as an exception to the general rule. [12]

52. Where legislation recognizes the right of public servants to organize, it does not necessarily follow that they enjoy this right for the purpose of defending their economic and social interests. In this connection, the Committee has emphasized the importance it attaches to the need for clear recognition in the legislation of the right of public servants to associate not only for cultural and social purposes, but also for the purpose of furthering and defending their occupational and economic interests.

53. In a number of countries, the legislation explicitly or indirectly denies public servants the right to organize in trade unions. [13] In such cases, this right may be denied to all categories of personnel in the service of the State or to some of them, [14] to public servants engaged in the administration of the State and, in certain cases, even to workers in public undertakings and public institutions.

54. In some countries the legislation, although recognizing in principle the right of public servants to organize, may deny this right to certain categories of public servants or subject them to particular restrictions on account of their level of responsibility (senior officials) or the nature of their functions, where these are perceived as being incompatible with the right to organize (for instance fire service personnel and prison staff).

[11] For example, *Guatemala* in 1986.

[12] For example: *Malaysia*, public servants may not join a trade union unless an exemption is granted by the Head of State (s. 27(1) and (2) of the Trade Unions Act). *Panama*: public servants are not covered by the Labour Code (s. 2, para. 2), except in the case of dispensations authorizing organization in trade unions (e.g. s. 137 of Act No. 8 of 25 Feb. 1975). *Singapore*: government employees are prohibited from joining trade unions; the President may exempt a given category of government employees, either completely or under certain conditions (s. 28(3) of the Trade Unions Act); according to the Government, exemptions have been granted to all government departments and public bodies other than the police and armed forces.

[13] For example: *Bolivia*: s. 104 of the 1939 General Labour Act. *Chad*: The Committee requested the Government to communicate the texts which repealed the provisions which denied the right to organize to public employees (RCE 1993, p. 180). *Ecuador*: art. 60(g) of the Act of 29 Nov. 1972, as amended in 1991. *Ethiopia*: s. 3(2)(e) of Proclamation No. 42 of 1993. *Liberia*: s. 4700 of the Labour Practices Law (the Government states that in practice there are organizations of public servants).

[14] For example: *Chile*: s. 74 of Legislative Decree No. 2756 of 29 June 1979 denies state employees the right to organize, although workers in state enterprises may establish trade unions under s. 1 of Act No. 19069 of 22 July 1991 concerning trade union organizations and collective bargaining. *Nicaragua*: s. 9 of the Labour Code. *Nigeria*: s. 11 of Trade Unions Decree No. 31 of 1973 excludes the following from the right to organize: customs employees and employees of the mint, of the Central Bank and of the External Telecommunications Company. According to the Government, however, these categories of workers have the right to establish joint advisory committees.

Police and armed forces

55. The only exceptions authorized by Convention No. 87 are the members of the police and armed forces (Article 9), such exceptions being justified on the basis of their responsibility for the external and internal security of the State. Most countries deny the armed forces the right to organize, although in some cases they may have the right to group together, with or without certain restrictions, to defend their occupational interests. [15] As regards members of the police and security forces, it is frequently the case that countries which deny this right to members of the armed forces include the police under the same heading and generally apply the same legal provisions in both cases. Sometimes, members of the police are restricted to the right to establish and join their own organizations, [16] although in some countries they have the same right to organize as other categories of public servants or are entitled to do so under separate legislation. [17] Although Article 9 of Convention No. 87 is quite explicit, it is not always easy in practice to determine whether workers belong to the military or to the police or are simply civilians working in military installations or in the service of the army and who should, as such, have the right to form trade unions. [18] In the view of the Committee, since Article 9 of the Convention provides only for exceptions to the general principle, workers should be considered as civilians in case of doubt. [19]

Fire service personnel and prison staff

56. While exclusion from the right to organize of the armed forces and the police, as defined above, is not contrary to the provisions of Convention No. 87, the same cannot be said for fire service personnel [20] and prison staff, [21] to whom a number of countries nevertheless deny the right to organize. The Committee is of the opinion that the functions exercised by these two categories of public servants should not justify their exclusion from the right to organize

[15] For example: *Austria, Denmark, Finland, Germany, Luxembourg, Norway, Sweden.*

[16] For example: *Cyprus.*

[17] For example: *Australia, Austria, Belgium, Côte d'Ivoire, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malawi, Netherlands, New Zealand, Niger, Norway, Portugal, Senegal, Spain, Sweden, Tunisia, United Kingdom, United States.*

[18] This problem arose, for example, in the *United Kingdom* in the case of workers at the Government Communications Headquarters (GCHQ) in Cheltenham, which has been the subject of observations by the Committee for several years.

[19] See also CFA, 238th Report, Case No. 1279 (*Portugal*), para. 137; 286th Report, Case No. 1664 (*Ecuador*), para. 287.

[20] For example: *Japan*, art. 52(4) of the Local Public Service Law expressly denies this right to fire service personel. Since the *General Survey* of 1983, *Gabon* (Act No. 8/91) and *Sudan* (Act of 1992 on workers' unions) have repealed the provisions which excluded fire service personnel from this right.

[21] The following countries, among others, deny the right to organize to prison staff: *Cameroon, Malaysia, Mexico, Nigeria, Pakistan, Sri Lanka, Swaziland.*

on the basis of Article 9 of Convention No. 87. However, the restrictions imposed as regards the means of exerting pressure that are allowed to these workers are another matter altogether, dealt with in Chapter V of this Survey.

Senior public officials

57. Some countries draw a distinction between personnel and management in the public service with a view to limiting the right to organize of senior officials and public servants holding managerial or supervisory positions of trust. The right to organize of senior public servants and some of their supporting staff is thus often subject to restriction and in some cases excluded. [22] In some countries, the legislation specifies the categories or posts thus excluded. These restrictions do not necessarily constitute an outright denial of the right of these persons to organize. In several countries, for example, they seem to have the right to form associations to protect their occupational interests, provided they do not join associations of public servants of a lower grade or trade unions of other categories of public servants. [23] The Committee is of the opinion that to bar these public servants from the right to join trade unions which represent other workers is not necessarily incompatible with freedom of association, but on two conditions, namely that they should be entitled to establish their own organizations, and that the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities.

Agricultural workers [24]

58. It is clear from the preparatory work on Convention No. 87 that Article 2, in affirming the right of all workers to establish free and independent organizations, includes workers engaged in agricultural activities. In practice, however, workers in this category have often encountered obstacles in their attempts to organize, and in many countries agricultural workers continue frequently to experience difficulties arising out of legislation or practice when it comes to organizing in trade unions. [25] Recognizing the importance of an

[22] For example: *Pakistan*: senior public servants are not covered by s. 2(viii) of the Industrial Relations Ordinance. The Government states that associations of public servants exist and that these may act in different ways to defend the interests of their members. They are, however, subject to serious restrictions incompatible with Article 2 of the Convention. The Committee has requested the Government to modify the legislation in question (RCE 1993, p. 218). *Poland*: The Committee noted with interest that the number of public servants excluded from the right to establish trade unions had been reduced in comparison with the previous situation (RCE 1992, p. 236).

[23] For example: *Bangladesh*: s. 2 of the Industrial Relations Ordinance, No. XXIII, 1969. *Mexico*: s. 363 of the Federal Labour Act.

[24] See Chapter XIII on rural workers' organizations in the *General Survey* of 1983.

[25] For example: *Honduras*: s. 2 of the Labour Code excludes workers in agricultural or livestock-breeding concerns which do not have a permanent workforce of at least ten workers. By contrast, the Committee noted with satisfaction that s. 168(2) of the new Labour Code of *Lesotho*,

organized rural sector, the International Labour Conference adopted the Rural Workers' Organizations Convention, 1975 (No. 141), and Recommendation, 1975 (No. 149), with a view to encouraging the establishment of such organizations. The Committee recalls that agricultural workers continue to benefit from the guarantees provided for in freedom of association Conventions, in particular Conventions Nos. 87 and 98.

Other categories of workers

59. There are numerous other categories of workers who are denied the right to form trade unions, either because they are excluded from the scope of the labour legislation, or because the latter expressly denies them the right to organize. In particular, the Committee has noted that this is often the case of domestic staff,[26] persons working at home or in family workshops,[27] workers in the informal sector, persons working in charitable institutions, seafarers[28] and workers in export processing zones. Since, however, Convention No. 87 does not exclude any of these categories, they should all be covered by the guarantees it affords and should have the right to establish and join occupational organizations. The Committee has requested those countries whose legislation denies the right to organize to one or more of the above-mentioned categories to take the necessary measures to ensure that they be accorded this right.

Workers in export processing zones

60. As regards more specifically the right to organize of workers in export processing zones, the Committee has on several occasions in recent years looked into the problems posed by the legislation in certain countries within the context of Article 2 of Convention No. 87,[29] and has emphasized the importance it

drawn up with ILO assistance and in force since 1992, guarantees to all agricultural workers the same rights of association and combination as workers in other sectors (RCE 1993, p. 66).

[26] For example: *Yemen, s. 3 of the Labour Code.*

[27] For example: *Nicaragua*: s. 9(1) of the Labour Code. By contrast, the Committee noted in the case of *Bolivia* that homeworkers and domestic staff are covered by the General Labour Act of 1939, and that they have the right to organize in trade unions (RCE 1987, p. 151).

[28] For example: *Greece* (RCE 1993, p. 199). *Madagascar* (RCE 1993, pp. 207-208). As regards freedom of association of seafarers, see also the resolution concerning freedom of association, collective bargaining and tripartite consultation of the Joint Maritime Commission, Report of the 26th Session of the Joint Maritime Commission (October 1991), ILO Governing Body, 252nd Session, March 1992, doc. GB.252/3/2.

[29] For example: *Bangladesh*: the Committee was of the view that s. 11A of the Export Processing Zones Authority Act, 1980, which provides for the exemption of a zone from the operation of all or part of the Industrial Relations Ordinance, is not compatible with Article 2 of Convention No. 87 (RCE 1991, p. 149). *Pakistan*: s. 25 of the Export Processing Zones Authority Ordinance, 1980, excludes completely such zones from the scope of the Industrial Relations Ordinance, 1969, thus denying workers there the right to establish and join trade unions; the Committee has requested the Government to modify its legislation (RCE 1993, pp. 217-218). *Togo*: the Government having stated that free trade zones are in the process of being established,

attaches to the need for all workers, without distinction whatsoever, fully to enjoy the trade union rights provided for by the Convention. It has also recalled that the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body in November 1977, states in paragraph 45 that "where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively".

Other forms of discrimination or distinction

61. Problems of recognition of the right to organize may also stem from restrictions relating, for example, to race, nationality, sex, opinion or political affiliation, which limit, in a manner incompatible with Convention No. 87, the right to establish or join occupational organizations. Such restrictions are, moreover, contrary to the principles contained in the resolution of 1952 concerning the independence of the trade union movement, which provides, inter alia, that a condition for the freedom and independence of the trade union movement "is that trade unions be constituted as to membership without regard to race, national origin or political affiliations". [30]

(i) Race

62. As far as can be ascertained from the information available to the Committee, there appears to be no ILO member State whose legislation still prohibits or restricts *specifically* trade union membership on the grounds of race. [31] Indeed, in some countries the law expressly prohibits discrimination based on this ground, stipulating, for example, that no employee may be denied trade union membership on the grounds of race, or prohibiting occupational associations whose aim is to restrict rights on such grounds. [32] In others, it is unlawful for a trade union to discriminate against members by refusing or deliberately omitting to grant them the same benefits as are accorded to other members, [33] or to limit, segregate or classify its membership according to race,

the Committee requested it to specify whether the provisions of the Labour Code apply to industrial relations in such zones. By contrast, the Committee was able to note that some progress had been made recently as regards the *Dominican Republic* (RCE 1993, p. 191), and *Panama* (RCE, 1994 observation on C.98).

[30] See the full text of the resolution in Appendix II.

[31] As regards the trade union situation in *South Africa* (as of the date of preparation of this survey, *South Africa* was member of the United Nations but not of the ILO); see Report of the Fact-Finding and Conciliation Commission on Freedom of Association, *South Africa*, op. cit., Ch. I, note 18.

[32] For example: *Argentina*: s. 7 of Act No. 23551 of 14 Apr. 1988 on trade union associations. *China*: s. 3 of the Trade Unions Act of 1992. *El Salvador*: s. 204 of the Labour Code. *Japan*: s. 5, para. 2, of Trade Union Law No. 174, 1949.

[33] For example *United Kingdom*: s. 11 of the Race Relations Act, 1976.

colour or national origin. [34] Certain laws relating to human rights and equitable employment practices prohibit all racial discrimination in connection with trade union membership. [35]

(ii) Nationality

63. Restrictions on the right to organize based on nationality exist in varying degrees in the legislation of several countries. Some countries, for example, make citizenship a precondition for the establishment of trade unions; [36] others stipulate that a certain proportion of the members must be nationals; [37] and in others, trade union affiliation of non-nationals is subject to conditions of residence [38] or reciprocity, [39] or both. The Committee considers that such restrictions may, in particular, prevent migrant workers from playing an active role in the defence of their interests, especially in sectors where they are the main source of labour. The right of workers, without distinction whatsoever, to establish and join organizations implies that anyone legally residing in the territory of a given State benefits from the trade union rights provided by the Convention, without any distinction based on nationality. The ILO has also adopted a number of legal standards relating to the special situation

[34] For example *United States*: Civil Rights Act. *New Zealand*: s. 37, Human Rights Act, 1993.

[35] For example *Canada (Quebec)*: ss. 10 and 17 of the Quebec Charter of Rights and Freedom.

[36] For example: *Algeria*: s. 6 of Act No. 90-14 of 2 June 1990 respecting the procedures for the exercise of the right to organize provides that only Algerian workers or workers having held Algerian nationality for at least ten years may establish a trade union organization. *Thailand*: s. 88 of the Labour Relations Act, 1975.

[37] For example: *Colombia*: two-thirds of the membership (s. 384 of the Labour Code). *Panama*: 75 per cent of the membership (s. 347 of the Labour Code).

[38] For example: *Kuwait*: non-Kuwaiti workers must have resided five years in Kuwait to be able to join a trade union (s. 72 of the Labour Code — Ordinance No. 38 of 1964). *Lithuania*: permanent residence in Lithuania (s. 1 of Act No. I-2018 of 1991 on trade unions).

[39] For example, in the case of the *Philippines*, foreign workers holding valid permits issued by the Ministry of Labor and Employment may establish and join organizations of their own choosing on condition that the same rights are accorded to Philippine workers in the country of origin of the foreign worker (s. 269 of the Labour Code, as modified by Act No. 6715). As regards the *Central African Republic*, the Committee noted with interest that Act No. 88/009 of 19 May 1988 on freedom of association and protection of the right to organize has repealed the restrictions on the rights of foreigners to join a trade union, i.e. residence of at least two years, with reciprocity condition (RCE 1989, p. 140). In some countries, the legislation draws distinctions other than race or nationality for the purposes of trade union membership, for example: *Libyan Arab Jamahiriya*: s. 5 *in fine* of the Workers' Trade Unions Act No. 107, 1975, distinguishes between Arab and non-Arab workers for the purposes of trade union membership. *Syrian Arab Republic*: The Committee noted with interest that a bill has been submitted to the Council of Ministers to repeal specifically provisions which differentiated between Arab and non-Arab foreign workers for purposes of trade union membership (RCE 1993, p. 230).

of migrant workers, particularly in so far as their right to join trade unions is concerned. [40]

(iii) Sex, marital status and age

64. In most countries the trade union legislation normally makes no distinction based on sex; some countries even include provisions which implicitly or explicitly prohibit any discrimination in this respect. [41] In several countries where restrictions on the right to organize might result from provisions contained in the civil code, the legislation on occupational organizations provides specifically that a married woman may join a trade union without the authorization of her husband. [42] Some countries have legislative provisions concerning union membership of minors. [43] The Committee considers that no distinction based on these grounds is authorized by the Convention.

(iv) Political affiliation or activities

65. The political opinions or affiliation of individuals are rarely referred to as a criterion for recognition of their right to organize. In some cases, the law seeks to prevent any discrimination by trade unions against their members on the grounds of their political beliefs. [44] There are cases, however, in which the legislation restricts the right of association by reason of subversive opinions or activities of those concerned or of their membership of particular organizations, [45] or denies the right to establish a trade union to certain persons by reason of their past political conduct. [46] The Committee considers that any legislative or regulatory measure whereby an individual is deprived of his or her

[40] Article 6(1)(a)(ii) of Convention No. 97; Article 10 of Convention No. 143; Paragraph 2(g) of Recommendation No. 151. See also para. 118 regarding eligibility of non-nationals for trade union office.

[41] For example: *Cameroon*: s. 1 of the Labour Code of 1992. *Central African Republic*: s. 1 of the Labour Code. *China*: s. 3 of the Trade Unions Act of 1992. *United States*: s. 703 of the Civil Rights Act. Indeed, the constitution of certain trade unions goes beyond such legal prescriptions and provides that a given number of seats on the Executive Council are set aside for women or representatives of visible minorities (for example, Constitution of Canadian Labour Congress, art. 15.1).

[42] For example: *France* (Labour Code, Book IV, s. L.411-5).

[43] For example: *Argentina*: persons over 14 years of age may join a trade union without authorization (s. 13 of Act No. 23551 on trade union associations). *Congo*: minors over 16 years may join a trade union (s. 189 of the Labour Code). *Lithuania*: membership authorized from 14 years of age (s. 1 of Act No. I-2018 of 1991 on trade unions).

[44] For example: *Argentina*: s. 7 of Act No. 23551 of 1988 on trade union associations. *Dominican Republic*: Principle VII of Act No. 16-92 of 1992 promulgating the Labour Code.

[45] For example: *Philippines*: s. 241(e) of the Labour Code, as amended.

[46] For example: *Algeria*: persons having displayed conduct inconsistent with the War of Liberation are barred from the right to establish a trade union (s. 6 of Act No. 90-14 of 1990 respecting the procedures for the exercise the right to organize).

right to become or remain a trade union member for professing certain political opinions or having political activities (except those which advocate violence) would constitute an infringement of the right to organize as it is recognized in Article 2 of the Convention. Conversely, the authorities should not practice favouritism toward persons or trade union organizations which share their political views. The Committee recalls in this connection the importance it attaches to the resolution of 1952 concerning the independence of the trade union movement, so that the latter should be in a position to carry forward its economic and social mission irrespective of political changes. [47] Furthermore, conviction for a political offence should in no case constitute a valid ground for withdrawal of the right to trade union membership. All workers and employers should therefore have the right, without any discrimination whatsoever on the basis of their political opinions, to join the organizations of their choice.

Right to organize of managerial and executive staff in the private sector

66. Article 2 of Convention No. 87 makes no distinction based on the nature of the functions or the hierarchical level of workers, who should all enjoy the right to organize, including managerial and executive staff. In many countries, managerial and executive staff in the private sector have the right to establish trade unions. The Committee considers that provisions which prohibit workers in this category from joining trade unions in which other workers are represented are not necessarily incompatible with the Convention, provided they had the right to establish their own organizations and that the right to belong to those organizations was restricted to persons performing senior managerial or decision-making functions. By contrast, legislation which allows for the granting of fictitious promotions to unionized workers without actually according them management responsibilities, thereby effectively placing them in the category of so-called "employers" to whom the right to organize is not permitted, is not in accord with the Convention, since in end effect it denies the right of association and artificially reduces the size of the bargaining unit. [48]

Right to organize of employers

67. In the legislation of some countries, the provisions governing the right to organize are the same for employers and workers. [49] In certain countries, however, employers are excluded from the general trade union law or are governed by special regulations. [50] It should be noted that significant developments with regard to the right to organize of employers are currently taking place in the countries of Central and Eastern Europe. Following the

[47] See the full text of the resolution in Appendix II.

[48] CFA, 281st Report, Case No. 1534 (*Pakistan*), paras. 170-172.

[49] For example: *Dominican Republic, Equatorial Guinea, Namibia, Venezuela.*

[50] For example: *Argentina, Egypt, Mozambique, Uganda, Zambia.*

changes that have occurred in those countries, in the course of which most undertakings have been freed from state control, many new laws have appeared relating to the right to organize and applying both to workers and employers, [51] or containing specific provisions relating to the latter. [52] The Committee recalls in this respect that Convention No. 87 covers employers as well as workers.

II. Right to establish organizations *without previous authorization*

Introduction

68. Article 2 of Convention No. 87 guarantees the right of workers and employers to establish organizations "without previous authorization" from the public authorities. During the preparatory work on the Convention, it was stated that States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of organizations. National regulations governing the constitution of organizations are therefore not in themselves incompatible with the provisions of the Convention, provided that they do not impair the guarantees granted by that Convention. [53]

69. In many countries, legislation expressly provides that organizations may be established without previous authorization or specific formalities. In most countries, however, certain formalities must be observed when occupational organizations are established, for example, depositing by-laws or registering the organization in question. However, national regulations in this respect must not be equivalent to a requirement for "previous authorization", in violation of Article 2 of the Convention, nor must they constitute such an obstacle that they amount in practice to a prohibition.

Filing an organization's rules

70. National legislation providing that an organization must deposit its rules is compatible with Article 2 of the Convention if this is merely a formality to ensure that those rules are made public. [54] However, problems may arise when the competent authorities are obliged by law to request the founders of organizations to incorporate in their constitution certain provisions which are not in accord with the principles of freedom of association. [55]

[51] For example: *Hungary*, Act No. II of 1989 on the right to organize.

[52] For example: *Poland*, Act of 23 May 1991 concerning employers' organizations.

[53] International Labour Conference, *Record of Proceedings*, 31st Session, 1948, First Report of the Committee on Freedom of Association and Industrial Relations, p. 477.

[54] For example: *Comoros, Côte d'Ivoire, Guinea, Israel, Rwanda.*

[55] See also para. 74. As for the right of organizations freely to draw up their own by-laws, see Ch. IV, paras. 109-111.

Registration

71. In many countries, organizations are required to register with a judicial body or with the competent administrative authority. Registration may also be optional; depending on the case, it may be merely a formality akin to depositing the by-laws, or a genuine registration subject to more or less stringent conditions and having different implications for the operation of the organization.

72. In countries where registration is optional,[56] failure to register does not prevent organizations from existing or functioning. In most cases, however, registration confers significant advantages such as special immunities, tax exemptions, the right to have recourse to the dispute settlement machinery or to the procedure for dealing with unfair labour practices, or the right to be recognized as sole bargaining agent for a given category of workers. Such legislation is not in principle incompatible with the Convention.[57] However, in this type of system the benefits of registration sometimes include the fundamental rights necessary to defend and further the interests of members; if the competent authority has the discretionary power to refuse registration, this can in practice amount to a system of previous authorization, contrary to the principles of Convention No. 87.

73. In many countries, registration is compulsory and is a prerequisite for the normal functioning of an organization.[58] The formalities covered by the concept of "registration" vary according to national legislation. In some cases, all that is required is to deposit the organization's by-laws, possibly with details of the officers and constituent meeting, to satisfy the registration authority that the organization has complied with trade union legislation; in such cases, the competent authority does not normally have discretionary power.[59] In some other countries, however, legislation does not clearly define the procedures of the formalities which must be observed or the reasons which the competent authority may give for refusal, which may be tantamount to requiring previous authorization.[60]

74. In some countries, legislation confers on the competent authority a genuinely discretionary power to grant or reject a registration request or to grant or withhold the approval required for the establishment and functioning of an organization. In the Committee's view, such provisions are tantamount to a requirement for previous authorization which is not compatible with Article 2

[56] For example: *India, Japan, Lithuania, Namibia, New Zealand, Pakistan, Romania.*

[57] See para. 83 below concerning the requirement for a minimum number of members to obtain the right to register.

[58] For example: *Bahamas, Brazil, Chile, Dominican Republic, Greece, Hungary, Jamaica, Mexico, Poland, San Marino, United Republic of Tanzania, Zaire.*

[59] For example, in the *Russian Federation* the registration authorities have no control over the establishment of trade unions (Trade Union Act of 1990, s. 2).

[60] For example: *Ghana*, Trade Unions Ordinance, 1941, s. 13(1): registration is granted if in the opinion of the Registrar none of the objections brought to his notice justify refusal.

of the Convention.[61] However, member States remain free "... to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of occupational organizations".[62] Consequently, the formalities prescribed by national regulations concerning the constitution and functioning of workers' and employers' organizations are compatible with the provisions of Convention No. 87, provided, of course, that these regulations do not impair the guarantees laid down in the Convention.

75. Problems of compatibility with the Convention also arise where the registration procedure is long and complicated[63] or when registration regulations are applied in a manner inconsistent with their purpose and the competent administrative authorities make excessive use of their discretionary powers and are encouraged to do so by the vagueness of the relevant legislation. These factors may be a serious obstacle to the establishment of organizations and may amount to a denial of the right of workers and employers to establish organizations without previous authorization.

Recognition of legal personality

76. Article 7 of Convention No. 87 provides that "The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 thereof". Legislation is thus compatible with the terms of the Convention if it automatically confers legal personality on the organization in question at the time of establishment, be it without any formalities being observed,[64] when the

[61] For example, in *Cameroon*, under s. 2 of Act No. 68/LF/19 of 1968, the legal existence of a trade union or occupational association of civil servants requires the prior consent of the Minister of the Territorial Administration. In *Haiti*, under s. 236*bis* of the Criminal Code, any association of more than 20 persons which convenes in pursuit of political, literary, religious or *other* ends may be established only with the Government's consent; the Committee considers that this section may constitute a restriction on the right of workers to establish organizations without previous authorization (RCE 1993, p. 202). In *Kuwait*, a certificate must be obtained from the Minister of the Interior to the effect that there are no objections to any of the founders (Labour Code, s. 74) (RCE 1993, p. 205). In *Malaysia*, the Registrar must refuse to register a trade union if in his opinion it might be used for unlawful purposes or for purposes contrary to or incompatible with its own rules (Trade Unions Act, s. 12(3)). In *Yemen*, the establishment of a trade union requires previous authorization (Labour Code, s. 154; and the Regulations governing the by-laws of the General Union of Workers and Employees) (RCE 1993, p. 238). In *Zimbabwe*, the Clerk has wide-ranging powers to refuse registration (Industrial Relations Act, 1985, s. 45).

[62] ILC, 31st Session, 1948, *Record of Proceedings*, p. 477.

[63] The Committee on Freedom of Association has for example expressed regret at the delay in registering a trade union, given that there was no clear justification for such a delay: 238th Report, Case No. 1289 (*Peru*), para. 148. See also 281st Report, Case No. 1580 (*Panama*), para. 157.

[64] For example, in *Switzerland* workers' and employers' organizations are not required to register, most frequently choosing the legal form of the association and acquiring legal personality once they have expressed in their by-laws the wish to organize cooperatively (Civil Code, s. 60).

by-laws are deposited,[65] or following a registration procedure or other formalities[66] which are compatible with the Convention. However, when legislation makes the acquisition of legal personality a prerequisite for the existence and functioning of organizations, the conditions for acquiring legal personality must not be such that they amount to a de facto requirement for previous authorization to establish an organization, which would be tantamount to calling into question the application of Article 2 of the Convention. Legal personality should not be denied to organizations once they have met legal requirements.

Appeal to the courts

77. Trade unions should have the right to appeal to independent courts against any administrative decision regarding their registration; this is a necessary safeguard against unlawful or ill-founded decisions by the registration authorities. In many countries, legislation provides for appeals to a court.[67] In other countries, such appeals may be lodged only with the competent minister or labour authorities:[68] such appeals, however, are liable to lack the necessary conditions of objectivity. Moreover, the existence of the right to appeal to a court is not in itself an adequate safeguard; the competent judges should be able, on the basis of the record, to review the grounds for refusal given by the administrative authorities, which grounds should not be contrary to the principles of freedom of association. They should also be empowered to give a ruling rapidly and, where necessary, order appropriate remedies.[69]

78. The principle that organizations should be established freely may also be jeopardized where legislation on public and private meetings stipulates that previous authorization by the government or administrative authorities is required for all meetings. As the Committee has indicated in previous general surveys,[70] such a requirement is equivalent to a prior control by the State on the constitution of trade union organizations.

[65] For example: *Benin, Guinea.*

[66] For example: *Argentina, Chile, Dominican Republic, Lithuania, Namibia, Philippines, Poland.*

[67] For example: *Argentina, Poland, Swaziland, Zambia.*

[68] For example, in the *Bahamas*, appeals may be lodged with the Minister (Industrial Relations Act, s. 13). In the *Philippines*, appeals are made to the labour authorities (Labour Code of 1989, s. 236).

[69] CFA, 284th Report, Case No. 1633 (*United Kingdom* (*Isle of Man*)), para. 382: the Committee considered that the compulsory registration system established under the Trade Unions Act of 1991 did not contravene the terms of Convention No. 87, since decisions by the Chief Registrar can be challenged in the High Court, which can examine the substance of the case, including the grounds given for non-registration or cancellation.

[70] For example, *General Survey*, 1983, para. 118.

III. Right of workers and employers to establish and join organizations *of their own choosing*

Introduction

79. Under Article 2 of Convention No. 87, workers and employers have the right to establish organizations and to join them, subject only to the rules of the organization concerned. This right, which is essential if there is to be genuine freedom of association, has significant implications as regards free determination of the structure and membership of trade unions. The various restrictions to which this right is subjected in many countries give rise to several problems, in particular as regards the structure and composition of organizations, the question of trade union unity or pluralism and clauses respecting trade union security.

Structure and composition of organizations

80. Sometimes workers' and employers' choices as to the structure and composition of the organizations they wish to set up or join are limited by legal or statutory restrictions. Such restrictions may take the form of a required minimum number of members or may limit membership to certain workers on the basis of criteria such as occupation, branch of activity, enterprise, hierarchical ranking, public or private sector, etc.

(i) Minimum membership

81. In many countries an organization may not be established unless it has a minimum number of members. Although this requirement is not in itself incompatible with the Convention, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered; it may vary according to the particular conditions in which a restriction is imposed. In cases in which it has considered that the minimum number fixed by national legislation is too high,[71] the Committee has requested that it be reduced to a reasonable level.[72]

[71] For example: *Kuwait*: 100 workers to establish a trade union and ten employers to form an association (ss. 71 and 86 of the Labour Code). *Nigeria*: 50 workers (s. 3 of Trade Union Decree No. 31 of 1973). *Panama*: 50 workers or ten employers (s. 344 of the Labour Code). *Portugal*: s. 8(2) of Decree No. 215/B/75: 10 per cent of workers concerned a membership of 2,000 workers; s. 7(2) of same Decree: one-quarter of the employers concerned; s. 8(3): one-third of trade unions of the region or of the same category in order to establish a union or a confederation; s. 7(3) at least 30 per cent of the employers' association in order to establish a union or a confederation (RCE 1993, p. 225).

[72] As regards *Venezuela*, the Committee noted with satisfaction that s. 418 of the Labour Act of 1990 reduced the number of workers required for the establishment of works trade unions (20) and occupational unions (40); however, it considered that the figure of 100 self-employed workers required for the establishment of an occupational, branch or sectoral union appeared to be too high (RCE 1991, pp. 223-224).

82. Similar problems arise when legislation stipulates that an organization may be set up only if it has a certain number of members in the same occupation or enterprise, or when it requires a high minimum proportion (sometimes even more than 50 per cent) of workers which, in the latter case, in practice precludes the establishment of more than one trade union in each occupation or enterprise. [73]

83. The legislation in some countries, while not requiring a minimum number of workers for the establishment of a trade union, does lay down this kind of condition for their *registration*, which may considerably restrict their scope of activities. [74] The Committee considers that such requirements are contrary to the Convention.

(ii) Membership limited to workers in the same occupation or branch of activity

84. The legislation in some countries stipulates that members of a trade union must belong to the same or a similar profession, occupation or branch of activity. [75] In some of these, the law also fixes the general structure of the trade union movement according to the same criteria. [76] In the view of the Committee, such restrictions may be applied to first-level organizations, on condition that these organizations be free to establish inter-professional

[73] For example: *Chile*: enterprises with more than 50 workers, a minimum of 25 workers representing at least 10 per cent of the total number of workers; enterprises with 50 or fewer workers, eight workers representing more than 50 per cent of the staff; if the enterprise comprises more than one establishment, at least 25 workers representing at least 40 per cent of the workers of the said establishment; irrespective of the percentage which they represent, 250 workers or more belonging to the same enterprise may establish a trade union (s. 16 of Act No. 19069 of 1991 respecting trade union organizations and collective bargaining). *Nicaragua*: absolute majority of workers of an enterprise required for the establishment of a trade union (s. 189 of the Labour Code).

[74] For example: *Bangladesh*: a trade union may be registered — a prior requirement for the establishment of a trade union — only if it represents at least 30 per cent of the workers of the establishment or the group of establishments in which it is set up (RCE, 1994 observation on C.87). *Indonesia*: only "registered" unions are entitled to negotiate collective agreements and, to be registered, a trade union must have 100 plant-level units, 25 units at district level and five units at the provincial level, or have 10,000 members at the national level. *Philippines*: at least 20 per cent of the workers of a bargaining unit must be affiliated to a trade union for the latter to be registered (RCE 1993, p. 223). By contrast, as regards *Australia*, the Industrial Relations Reform Act, 1993, among others, reduced to 100 (as opposed to 10,000 previously) the minimum membership requirement for a trade union to have access to the *federal* conciliation and arbitration system.

[75] For example: *Algeria, Benin, Congo, France, Jordan, Senegal, Thailand.*

[76] For example: *Iraq*: s. 5 of the Act respecting trade union organizations of workers of 1987. *Jordan*: s. 84 of the Labour Code. *Libyan Arab Jamahiriya*: s. 2 of Act No. 107 of 1975 respecting workers' trade unions. *Sudan*: s. 9(1) and (2) of the Act respecting workers' trade unions of 1992. See also in this connection CFA, 284th Report, Case No. 1508 (*Sudan*), para. 431.

organizations, and to join federations and confederations in the form and manner deemed most appropriate by the workers or employers concerned. [77]

(iii) Special categories of workers

85. The legislation of some countries restricts the free choice of certain categories of workers, in particular public servants, executive and managerial staff, confidential employees, agricultural workers and domestic staff.

Public servants

86. The guarantees contained in Convention No. 87 apply to workers in the public sector as well as those in the private sector. It was also pointed out that some legal systems deny the right of public servants to associate, while others, although recognizing this right, restrict their right to join trade unions, for instance, the free choice of public servants may be restricted when legislation forbids them to establish mixed trade unions, i.e. organizations which accept workers from other sectors, or prohibits them from joining such organizations. [78] Provisions of this kind are often intended to prevent any form of political involvement by trade union members in the public sector or to deter them from taking strike action. The Committee considers that it is admissible for first-level organizations of public servants to be limited to that category of workers, subject to two conditions: firstly, that their organizations are not also restricted to employees of any particular ministry, department or service, and secondly, that they may freely join federations and confederations of their own choosing, like organizations of workers in the private sector. However, provisions stipulating that different organizations must be established for each category of public servants are incompatible with the right of workers to establish and join organizations of their own choosing. [79]

Executive and managerial staff

87. Some legislation, citing the need to prevent interference by employers in trade union activities and to avoid any conflicts of interest involving

[77] See also Ch. VII.

[78] For example: *Malaysia*: s. 27 of the Trade Unions Act. *Mauritania*: public officials do not have the right to join trade unions of workers in the private sector (s. 231 of the Labour Code). *Switzerland*: until 1 July 1987, public servants were prohibited from joining associations which advocate or use strike action, which implicitly restricted their right to join organizations of workers in the private sector (s. 13(2) of the Civil Servants' Statute); only illicit activities or those likely to endanger the security of the State are now covered by this provision.

[79] For example: *Mexico*: ban on the coexistence of several trade unions in the same state body ("dependencia"), s. 68 of the federal Act respecting workers in the service of the State. *Pakistan*: trade union membership is reserved to public servants in the same unit (s. 28 of the Sindh Government Servants Conduct Rules). *Sri Lanka*: s. 21 of the Trade Unions Act. *Thailand*: ban on the coexistence of more than one trade union in the same state enterprise (s. 21 of the State Enterprise Labour Relations Act).

managerial staff, restrict their right to establish and join organizations of their own choosing. Thus, these persons may sometimes be prohibited from joining or belonging to trade unions which are open to lower-grade employees or from joining workers' unions.[80] Legislation sometimes does not allow workers' unions to represent managerial staff[81] or authorizes an employer to require a person appointed or promoted to a managerial position to withdraw from, or refrain from joining, a workers' union;[82] provisions of this kind are found both in the private and public sectors.[83] Such restrictions are compatible with freedom of association provided that two conditions are met: first, that the persons concerned have the right to form their own organizations to defend their interests; and second, that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their actual or potential membership.[84]

Managerial and confidential exclusions

88. The legislation in certain countries denies staff "in positions of trust" the right to join trade unions. Generally speaking, this category concerns very senior staff who play a decisive role in determining and implementing commercial strategies and options (in the private sector) or major policies and guidelines (in the public sector). Sometimes these restrictions extend to their direct collaborators who, by virtue of their post, have access to confidential information. This category may also include executives or workers representing the employer in collective bargaining. In the opinion of the Committee, the criteria set out in the preceding paragraph apply equally to these cases.

Agricultural workers

89. Because of the nature of their work and the conditions in which they carry it out, rural workers are in something of a special category. In the opinion of the Committee, while restrictions can be imposed on first-level organizations of rural workers, they should nevertheless be entitled to affiliate to the federations and confederations of their own choosing, in whatever way they deem appropriate.[85]

[80] For example: *Guatemala*: s. 212 of the Labour Code. *Japan*: s. 2 of the Trade Unions Act. *Philippines*: s. 245 of the Labour Code.

[81] For example: *Malaysia*: s. 9 of the Industrial Relations Act. *Singapore*: s. 29 of the Trade Union Law.

[82] For example: *Malaysia*: s. 5 of the Industrial Relations Act. *Pakistan*: s. 15(2) of the Industrial Relations Ordinance. *Singapore*: s. 77 of the Industrial Relations Act.

[83] See above, paras. 57 and 66.

[84] See also, CFA: 281st Report, Case No. 1534 (*Pakistan*), para. 170; 284th Report, Case No. 1591 (*India*), para. 959.

[85] See also para. 58 above.

Domestic staff

90. The personal nature of the services rendered by domestic staff and the isolation in which they work add to the peculiarity of their situation. The Convention does not provide for any exception in their case, however, and they should normally be entitled to join trade unions, in accordance with the criteria set out in the preceding paragraph. [86]

Trade union monopoly/trade union diversity

91. The right of workers and employers to establish and join organizations of their own choosing raises the problem of trade union monopoly. The difficulty arises where the legislation provides, directly or indirectly, that only one trade union may be established for a given category of workers. Although it was clearly not the purpose of the Convention to make trade union diversity an obligation, it does at the very least require this diversity to remain possible in all cases. There is a fundamental difference between, on the one hand, a trade union monopoly established or maintained by law and, on the other hand, *voluntary* groupings of workers or unions which occur (without pressure from the public authorities, or due to the law) because they wish, for instance, to strengthen their bargaining position, coordinate their efforts to tackle ad hoc difficulties which affect all their organizations, etc. It is generally to the advantage of workers and employers to avoid proliferation of competing organizations, but trade union unity directly or indirectly imposed by law runs counter to the standards expressly laid in the Convention.

(i) Trade union monopoly imposed directly by law

92. Certain legislations explicitly prescribe a single-trade-union system for first-level organizations by allowing the establishment of only one such organization for all the workers in an enterprise, [87] a public body, [88] an occupation or branch of activity; [89] in other countries, unity is imposed at all levels of trade union organization. In such cases, generally speaking, only one first-level organization and one national trade union may be established for a given category of workers, or only one federation for each category or region.

[86] In practice, given the particular nature of the working conditions of both domestic staff and rural workers, membership in first-level inter-occupational organizations would present little interest in the vast majority of cases.

[87] For example: *Honduras*: s. 472 of the Labour Code. *Nicaragua*: s. 189 of the Labour Code.

[88] For example: *Mexico*: ss. 68, 71, 72 and 73 of the federal Act respecting workers in the service of the State.

[89] For example: *Kuwait*: s. 71 of the Labour Code. *Swaziland*: s. 20 of the Act of 1980.

These organizations in turn may or must join a single national confederation or central organization which is sometimes specifically designated in the law. [90]

93. In recent years the Committee has been able to note positive developments in a relatively large number of countries in which, following the advent of a pluralistic and democratic political system, the trade union unity previously established by law, and often controlled by an organization closely linked to the single party in power, has been abolished and replaced by a system allowing trade union pluralism. As a result of these changes, many first-level trade unions and central organizations have been freely set up, [91] which does not mean that all difficulties concerning freedom of association are solved.

(ii) Indirect trade union monopoly

94. An indirect result of some legislative provisions is that it is impossible to establish a second organization representing workers' interests, for example when legislation attributes trade union functions to a specifically designated trade union committee or fixes a percentage for membership which makes it impossible to establish several organizations, by requiring the participation of at least 50 per cent of the workers. [92] This is also the case when provisions expressly stipulate that trade unions are to be grouped together in a single federation or confederation, when the establishment of a new trade union is subject to the approval of the trade union which already exists in the occupation concerned, when first-level organizations must conform to the constitutions of the single existing central organization, when an organization is obliged to affiliate to the single central organization on penalty of remaining illegal, or when there is an obligation to pay contributions to a single national trade union whose establishment has been authorized.

95. Some provisions regulating the registration of trade unions may in practice lead to the same result as those establishing a single trade union organization. [93] This is the case if the competent authorities have discretionary

[90] For example: *Central African Republic*: s. 4 of Act No. 88.009 of 1988 respecting freedom of association and the protection of the right to organize; the Government, however, pointed out that the single trade union system no longer exists in practice and that first-level trade unions and central organizations have been freely set up (RCE 1993, p. 180). *Egypt*: ss. 7, 13, 14, 16 and 17 of the Trade Unions Act of 1976. *Kuwait*: ss. 71, 79 and 80 of the Labour Code. *Myanmar*: s. 9 of Act No. 6 of 1976; according to the Government, these two legislative texts have fallen into abeyance. *Nigeria*: ss. 19, 29 and 33 of Decree No. 31, as amended in 1978 and 1986. *Syrian Arab Republic*: s. 7 of Trade Union Legislative Decree No. 84 of 1968. *Yemen*: ss. 158 and 159 of the Labour Code. By contrast, in *Zambia*, the new Industrial Relations Act of 1993 no longer requires trade unions to be affiliated to the Congress of Trade Unions of Zambia.

[91] The Committee noted with interest or with satisfaction that new legislation in the following countries, for instance, has put an end to the system of trade union monopoly and introduced the possibility of trade union pluralism: *Algeria, Belarus, Bulgaria, Congo, Ethiopia, Hungary, Mongolia, Poland, Romania, Russian Federation, Rwanda, Ukraine.*

[92] For example: *Bolivia*, s. 103 of the General Labour Act of 1939.

[93] For example, *Indonesia*: s. 2 of Regulation No. 3/1993.

power to refuse the registration of a trade union when they believe that an already registered union adequately represents the workers concerned, or if they consider that is not in the interests of the workers concerned to register a new trade union.[94] Even if they do not expressly prohibit the establishment of more than one trade union for a given category of workers or employers, provisions of this kind may be used to impose trade union unity or maintain a monopoly, thus suppressing any freedom of choice.

(iii) Factual monopoly

96. Movements to group together may also occur among trade unions, independently of legislation or any pressure by the public authorities, when the workers or their unions join voluntarily in a single organization, for example in order to strengthen their position at the bargaining table or to better deal with structural reform or changes affecting their activities. In these circumstances, the Committee believes that the same basic principle is applicable: Convention No. 87 implies that pluralism should remain possible in all cases. Therefore, the law should not institutionalize a factual monopoly; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish.[95] Furthermore, the rights of workers or employers who do not wish to join the existing trade unions or central organization should also be protected.

Recognition of the most representative trade unions

97. Although trade union unity imposed directly or indirectly by law is incompatible with the Convention, an excessive proliferation of trade union organizations may weaken the trade union movement and ultimately prejudice the interests of workers. In some countries, in an attempt to establish a proper balance between imposed trade union unity and the fragmentation of organizations, legislation establishes the concept of the most representative trade unions, which are generally granted a variety of rights and advantages. The Committee believes that this type of provision is not in itself contrary to the principle of freedom of association,[96] provided that certain conditions are met. First, the determination of the most representative organization must be based on objective, pre-established and precise criteria so as to avoid any possibility

[94] For example: *Malaysia*: s. 12(3) of the Trade Unions Act. *Malawi*: s. 15 of the Trade Unions Act. *Uganda*: s. 10 of the Trade Unions Decree of 1976. *Singapore*: s. 14 of the Trade Unions Act.

[95] For example, the Committee recently recalled this principle as regards *Cuba* (RCE 1993, p. 189).

[96] The concept of "most representative" organizations is mentioned in Article 3, paragraph 5, of the ILO Constitution.

of bias or abuse.[97] Furthermore, the distinction should generally be limited to the recognition of certain preferential rights — for example for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations.

98. However, the workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the prohibition of other trade unions which workers would like to join, or in the granting of privileges such as to influence unduly the choice of organization by workers. Therefore, this distinction should not have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means for defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances),[98] for organizing their administration and activities, and formulating their programmes, as provided for in Convention No. 87.

99. The situation is different in some industrial relations systems where only one bargaining agent may be certified to represent the workers of any given bargaining unit, which gives it the exclusive right to negotiate the collective agreement and to monitor its implementation, usually through the grievance procedure negotiated in the collective agreement, or under a subsidiary procedure established in legislation. In the Committee's opinion, this type of system does not raise difficulties under the Convention, provided that legislation or practice impose on the exclusive bargaining agent an obligation to represent fairly and equally all workers in the bargaining unit, whether or not they are members of the trade union.

Trade union security

100. On the basis of the preparatory work on Convention No. 87 and taking account of the rejection by the International Labour Conference of an amendment to grant workers the right not to join an organization,[99] the Committee recognized that Article 2 of the Convention "leaves it to the practice

[97] For example: *Trinidad and Tobago*: for a number of years, the Committee has asked the Government to amend the provisions that afford a privileged position to registered associations, without providing objective and pre-established criteria for determining the most representative association (RCE 1993, p. 232). *Belgium*: for a number of years, the Committee has insisted on the need to ensure by law that objective, pre-determined and detailed criteria are adopted in establishing rules for the access for workers' and employers' occupational organizations to the National Labour Council and the various public and private sector committees in which binding collective agreements are formulated. In 1993, the Committee noted that the Minister of Employment and Labour is curently preparing a Bill setting out such objective criteria, which will be submitted to the social partners for their opinion and to the Government for approval (RCE 1993, p. 174).

[98] *Pakistan*: minority unions prohibited from representing their members in individual grievances (RCE 1993, p. 219).

[99] ILC, 30th Session, 1947, *Record of Proceedings*, p. 571.

and regulations of each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice". [100] Thus, systems which prohibit union security practices in order to guarantee the right not to join an organization, as well as systems which authorize such practices, are compatible with the Convention.

101. In several countries, the law guarantees directly or indirectly the right not to join a trade union organization and forbids the exercise of any constraint which would oblige a person to join or support a trade union. [101]

102. In other countries, the law allows "union security" clauses in collective agreements or arbitration awards which make trade union membership or payment of union dues compulsory, sometimes by making them subject to certain conditions or prohibiting certain types of arrangements. These clauses may specify that an employer can recruit only workers who are members of trade unions and who must remain union members in order to keep their job (closed shop). [102] In other cases the employer may recruit the workers he chooses, but these must then join a trade union within a specified period (union shop). They may also require all workers, whether or not they are members of trade unions, to pay union dues or contributions, without making union membership a condition of employment (agency shop), [103] or oblige the employer, in accordance with the principle of preferential treatment, to give preference to unionized workers in respect of recruitment and other matters. [104] These clauses are compatible with the Convention provided, however, that they are the result of free negotiation between workers' organizations and employers.

103. However, when union security clauses are imposed by the law itself, the right of workers to set up and join organizations of their own choosing is compromised. Legislation which makes it compulsory to join a union or which

[100] ILC, 43rd Session, 1959, RCE, Report III (Part IV), para. 36. In adopting Convention No. 98, the Conference Committee on Industrial Relations, with account being taken of its discussions on the question of trade union security clauses "finally agreed to express in the report their view that the Convention could in no way be interpreted as authorizing or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice" (ILC, 32nd Session, 1949: *Record of Proceedings*, p. 468).

[101] For example: *Chile*, article 19 of the Constitution. *Portugal*, article 56(2)(b) of the Constitution, s. 37 of the Trade Unions Act and s. 1(3) of Act No. 57 of 1977.

[102] For example: *Japan*, s. 7(1) of the 1949 Trade Union Law. *Mexico*, s. 395 of the Federal Labour Act. *Philippines*, s. 248(e) of the Labour Code. By contrast, *Mauritius*, nullity of closed shop clauses, s. 51 of the Industrial Relations Act of 1973.

[103] For example: *Switzerland*, collective agreements may require the payment of solidarity contributions by non-unionized employees.

[104] For example: *Australia* (*Queensland*), s. 11(a), Industrial Relations Act, 1990.

designates a specific trade union as the recipient of union dues,[105] or which achieves the same aim through regulation of the system of compulsory union dues, has a similar effect to provisions establishing a trade union monopoly and is not compatible with the Convention.[106] However, provisions which require the deduction at source of contributions by all workers, whether or not they are union members, to a majority union, without mentioning a specific trade union,[107] are, in the view of the Committee, compatible with the Convention.

Coercion or favouritism by the government

104. When governments place one occupational organization at an advantage or disadvantage in relation to the others, the choice of workers regarding the organization to which they intend to belong may be influenced. Such favouritism or discrimination may take various forms and relate to different aspects of labour relations: pressure exerted on organizations in public statements by the authorities; unequally distributed aid; premises provided for holding meetings or activities to one organization but not to another; refusal to recognize the officers of some organizations in the exercise of their legitimate activities, etc. Any unequal treatment of this kind compromises the right of workers or employers to establish and join organizations of their choosing and gives rise to difficulties with regard to the Convention.[108]

* * *

105. *The guarantees of Convention No. 87 should apply to all workers and employers* [without any distinction whatsoever], *the only exceptions provided by the Convention being the armed forces and the police. Provisions prohibiting the right to organize for specific categories of workers, such as public servants, managerial staff, domestic staff or agricultural workers, are incompatible with the express provisions of the Convention.*

106. *Although the right of workers and employers to establish organizations* [without previous authorization] *does not imply absolute freedom, the formalities required, such as those intended to ensure publicity, must not be so complex or lengthy as to give the authorities in practice discretionary power to refuse the establishment of organizations. Provision should be made for the possibility of a judicial appeal against any administrative decision of this kind*

[105] For example: *Congo*, the Committee has noted with satisfaction the repeal of a 1973 Decree which established compulsory check-off to the benefit of the Congolese Trade Union Confederation (RCE 1993, p. 184).

[106] See also *Digest*, para. 248.

[107] For example: *Canada* (*Quebec*): s. 47(2) of the Labour Code.

[108] For example: *Madagascar*: the Committee noted with interest the repeal of provisions under which only members of trade unions belonging to a revolutionary organization had the right to be elected to works committees (RCE 1993, p. 207). See also above, Political affiliation or activities, para. 65.

to an independent and impartial body which would re-examine the substance of the case.

107. *The right of workers and employers to establish organizations* [of their own choosing] *is one of the fundamental aspects of freedom of association. It implies in particular the right to take freely the following decisions: choice of the structure and composition of organizations; the establishment of one or more organizations in any one enterprise, occupation or branch of activity; and the establishment of federations and confederations. Excessive restrictions, for example as regards the minimum number of members, systems of trade union unity or trade union monopoly imposed by law are incompatible with Article 2 of the Convention; however, when moves towards unification of the trade union movement are made at the initiative of the workers themselves, they are in conformity with the Convention. Finally, although the Convention clearly does not aim to make trade union pluralism compulsory, pluralism must be possible in every case, even if trade union unity was once adopted by the trade union movement.*

CHAPTER IV

Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities

Introduction

108. Article 3 of Convention No. 87 guarantees the free functioning of workers' and employers' organizations by recognizing four basic rights: to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes without interference by the public authorities. Article 8 of the Convention provides that in exercising these rights, organizations shall respect the law of the land, but stipulates that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. During the preparatory work on the Convention, several Government members, although they accepted complete trade union autonomy, pointed out that the State could not refrain from all intervention since it must at least ensure that trade unions carried on their activities within the limits of the law. In an attempt to achieve this twofold objective, the International Labour Conference finally decided to word the second paragraph of Article 3 as follows: "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".[1]

Constitutions and rules

109. In order for this right to be fully guaranteed, the Committee believes that two basic conditions must be met: firstly, national legislation should only lay down formal requirements as regards trade union constitutions; secondly, the constitutions and rules should not be subject to prior approval at the discretion of the public authorities.

[1] ILC, 30th Session, 1947, *Record of Proceedings*, pp. 571.

110. Thus, legislation which does not contain any provisions respecting the content or approval of the constitutions and rules of organizations is compatible with Convention No. 87.[2] The same applies to legislation which, in order to protect members' rights by ensuring a sound administration and preventing legal complications arising as a result of constitutions and rules being drawn up in insufficient detail, lists particular points of a formal kind which must appear in the constitutions.[3] Model constitutions and rules intended to serve as *guidelines* to trade unions may also be included in this category, provided that there is no legal obligation to accept them or any pressure exerted for this purpose.

111. However, the Committee considers that any legislative provisions concerning the preparation, content,[4] amendment,[5] acceptance or approval of constitutions and rules of occupational organizations which go beyond these formal requirements may hinder the establishment and development of organizations and constitute interference contrary to Article 3(2) of the Convention. Such interference may take different forms: for example a first-level trade union may be required to conform to the constitution of a single federation;[6] the constitution of a new trade union may be subject to approval by the central administration of the existing organization; the sole central organization or higher-level organizations specified by the law may have the exclusive right to elaborate the by-laws of first-level trade unions;[7] the constitutions may have to be drawn up by the public authorities;[8] trade unions may be required to follow a model constitution which contains more than certain purely formal clauses or to use such a model as a basis.[9] This is also the case when the approval of constitutions and rules of occupational organizations is subject to the discretionary power of the public authorities,[10] and when the latter have the right to require amendments to the constitutions.

[2] For example: *Belgium, Côte d'Ivoire, Denmark, Finland, France, Germany, Italy, Luxembourg, Norway, Russian Federation, Senegal.*

[3] For example: *Algeria, Chile, Lithuania, Mozambique, Namibia, Poland, Romania.*

[4] For example: *Yemen*, s. 150 of the Labour Code of 1970: the authorities may request the amendment of rules.

[5] For example: *Colombia*, the Committee noted with satisfaction the repeal of the provisions which required ministerial approval of amendments to the rules of first-level trade unions, federations and confederations (RCE 1991, pp. 159-160).

[6] For example: *China*: s. 4 of the Trade Unions Act of 1972.

[7] For example: *Ethiopia*: the Committee noted with satisfaction that Proclamation No. 42/1993 repealed, inter alia, the previous provisions which gave this power to the higher-level trade union organizations (RCE 1993, p. 195).

[8] For example: *Kenya, United Republic of Tanzania.*

[9] For example: *Egypt*: s. 61 of Trade Unions Act No. 35 of 1976. See also CFA, 284th Report, Case No. 1508 (*Sudan*), para. 441.

[10] For example: *Iran*: s. 131 of the Labour Code of 1990. See also CFA, 278th Report, Case No. 1512 (*Guatemala*), para. 397; and *Digest*, para. 266.

Election of representatives

112. The autonomy of organizations can be effectively guaranteed only if their members have the right to elect their representatives in full freedom. The public authorities should therefore refrain from any interference which might restrict the exercise of this right, whether as regards the holding of trade union elections, conditions of eligibility or the re-election or removal of representatives.

Election procedures

113. In the majority of countries the law recognizes, implicitly or explicitly, the principle of election of trade union officers by members. The provisions of national legislation respecting election procedures can be divided into two categories.

114. The legislation in the first category does not contain any specific provisions on this subject or provides only that the constitutions of trade union organizations must indicate the procedure for appointing their executive bodies, as well as provisions to promote democratic principles within trade unions or to ensure the proper conduct of the election process, with respect for members' rights, so as to avoid any dispute on their outcome. The Committee considers that provisions of this kind do not involve any violation of the principles of freedom of association as long as they are not so detailed as to allow undue control by the authorities.

115. The second category contains provisions which go beyond these objectives and may enable the authorities to interfere in the right of organizations to elect their representatives in full freedom. For example, the Committee considers that the following provisions are contrary to the principles of freedom of association: those which establish very precise rules on the subject of trade union elections, thus constituting a kind of *a priori* control over the electoral procedure and enabling the public authorities to interfere in the voting process; [11] provisions which allow supervision by the administrative authorities or the single trade union central organization of the election procedure, for example by requiring the presence of labour inspectors or of representatives of the administration or the acceptance or approval of elections or their results. [12]

[11] For example, CFA, 279th Report, Case No. 1592 (*Chad*), para. 179: the legal provisions according to which trade union leaders must be subject to a background investigation conducted by the ministry amounts to prior approval by the authorities of candidates to the executive committee of a trade union and is contrary to Article 3 of Convention No. 87.

[12] For example: *Colombia*: the Committee noted with satisfaction that the provisions making the election of officials subject to approval by the administrative authorities had been repealed (RCE 1992, p. 207). See also CFA, 284th Report, Case No. 1622 (*Fiji*), para. 692: a provision which gives an administrative official the power to refuse a person freely elected by members of a workers' organization is incompatible with Article 3 of Convention No. 87.

The criterion applied by the Committee is therefore the risk of arbitrary interference by the authorities in the election process of workers' and employers' organizations. If, however, supervision is deemed necessary, it should be exercised by a judicial authority.

Conditions of eligibility

116. The conditions of eligibility most frequently encountered in national legislation concern occupational requirements, nationality, political views or activities or penal records; some provisions also establish restrictions or prohibitions concerning the re-election of trade union officers.

(i) Requirement to belong to an occupation or to an enterprise

117. The Committee considers that provisions which require *all* candidates for trade union office to belong to the respective occupation, enterprise or production unit [13] or to be actually employed in this occupation, either at the time of their candidature [14] or during a certain period before their election [15] are contrary to the guarantees set forth in Convention No. 87. Restrictions may also arise out of provisions requiring members of trade unions to belong to the occupation concerned, coupled with a requirement that the officers of the organization be chosen from among its members. [16] Provisions of this type infringe the organization's right to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. When national legislation imposes conditions of this kind on all trade union leaders, there is also a real risk of interference by

[13] For example: *Colombia*: ss. 388(1)(c) and 432(2) of the Labour Code and, as regards federations, s. 422(1)(c). *Peru*: Arts. 12 and 24 of the Act of 26 June 1992 on Collective Labour Relations. *Romania*: s. 9 of Act No. 54 of 1991 respecting trade unions and s. 13(3) of Act No. 15 of 1991 respecting the settlement of collective labour disputes. By contrast, as regards *Cyprus*, the Committee has noted with satisfaction the repeal of provisions which provided that only persons currently employed in the occupation or trade concerned could be appointed or elected to hold office in a trade union or confederation (RCE 1992, p. 211).

[14] For example: *Panama*: s. 359 of the Labour Code: automatic removal from office of an enterprise trade union official who is dismissed. On the dismissal of trade union officials, see also *Digest*, para. 305.

[15] For example: *Honduras*: s. 510 of the Labour Code: at the time of their election, trade union officers must normally exercise the occupation represented by the trade union, and have exercised it for more than six months during the previous year.

[16] For example: *Central African Republic*: ss. 1 and 2 of Act No. 88-009 of 1988 respecting freedom of association and protection of the right to organize.

the employer through the dismissal of trade union officers, which deprives them of their trade union office. In order to bring such legislation into conformity with the Convention, it would be desirable to make it more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization. [17]

(ii) Nationality

118. In many cases being a national of the country concerned is a condition of eligibility for trade union office. [18] Sometimes this requirement applies only to a certain proportion of the officers of a trade union or is flexible, for example where there is reciprocity between countries [19] or where the authorities may grant exemptions. Since provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors in which they account for a significant share of the workforce, the Committee considers that legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country. Other ILO instruments can provide guidelines in this respect: thus, Article 10 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), stipulates that migrant workers should be granted equality of opportunity and treatment, in particular as regards trade union rights, and Paragraph 2(g) of the Migrant Workers Recommendation, 1975 (No. 151), mentions that the policy of equality of opportunity and treatment should, inter alia, concern eligibility for office in trade unions.

(iii) Political views or activities

119. Legislation which prohibits the exercise of trade union functions solely on the grounds of political belief or affiliation is not compatible with the right of organizations to elect their representatives in full freedom. Provisions concerning ineligibility for trade union office on political grounds are sometimes directed against activities of an allegedly subversive nature, activities in a

[17] For example: *Bangladesh*: for a number of years the Committee has requested the Government to exempt a "reasonable proportion" of trade union officers from the requirement of belonging or having belonged to the occupation or of working or having worked in the sector concerned (RCE, 1994 observation on C.87).

[18] For example: *Colombia*, s. 384 of the Labour Code. *Djibouti*: s. 4 of Decree No. 83-099/PR/FP of 1983 establishing conditions for the exercise of the right to organize and to strike and s. 6 of the Labour Code. *Ecuador*: s. 455 of the Labour Code. *Guatemala*: s. 223(b) of the Labour Code. *Kuwait*: s. 72 of the Labour Code of 1964. *Mauritania*: Art. 7, Book III, Labour Code, as amended by Act No. 93-038 of 20 July 1993. *Romania*: s. 9 of Trade Unions Act No. 54 of 1991. *Rwanda*: s. 8 of the Labour Code.

[19] For example: *Central African Republic*, s. 2(2) and (3) of Act No. 88.009 of 1988 respecting freedom of association and protection of the right to organize.

specific political party[20] or movement,[21] or the defence of ideological principles of a prohibited party or association whose activities are deemed contrary to the national interest and whose registration has been cancelled or suspended.[22] The Committee is of the view that the practice of giving a broad interpretation to legislation which imposes restrictions on persons with a criminal record so as to deprive certain persons of the right to be elected to trade union office solely on the grounds of their political beliefs or affiliation is not compatible with the Convention.

(iv) Criminal record

120. Some legal systems contain provisions disqualifying from trade union office all persons who have been convicted, regardless of the gravity or nature of the offence,[23] or those convicted of certain specific offences.[24] In other cases, certain types of conviction can result in the loss of civil and political rights which a candidate must possess in order to be eligible for trade union office.[25] The Committee considers that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties should not constitute grounds for disqualification from trade union office. Thus, legislation which establishes excessively broad ineligibility criteria, for example by means of an open-ended definition or a long list including acts which have no real connection with the qualities of integrity required for the exercise of trade union office, is incompatible with the Convention.

(v) Conditions of re-election

121. Provisions restricting or prohibiting the re-election of trade union officers are a serious obstacle to the right of organizations to elect their representatives in full freedom,[26] irrespective of the scope and form of the provision: absolute prohibition, or prohibition of re-election where previous

[20] For example: *Malaysia*, officials or employees of a political party may not stand as candidates for trade union office (s. 28 of the Trade Unions Act); the minister may lift the prohibition.

[21] For example: *United States*, s. 504 of the Labor-Management Reporting and Disclosure Act of 1959, and para. 7120(a)(2), C.71, Title 5, Labour Code.

[22] For example: *Brazil*, s. 530 of the Consolidated Labour Laws.

[23] For example: *Madagascar*, s. 7 of the Labour Code. *Zaire*, s. 234(a) and (d) of the Labour Code.

[24] For example: *Uganda*, ss. 10, 22 and 23 of the Trade Unions Act of 1976.

[25] For example: *Burkina Faso*, s. 159(2) of the Labour Code. *Cameroon*, s. 10 of the Labour Code.

[26] For example: *Mexico*, s. 75 of the Federal Act of 1963 respecting workers in the service of the State prohibits the re-election of trade union officers. By contrast, as regards *Peru*, the Committee noted with satisfaction the repeal of the provisions prohibiting the re-election of officers of a union of public officials at the end of their term (RCE 1992, p. 234).

terms or a certain number of consecutive terms have been served.[27] In the view of the Committee, any provision, irrespective of its form, which restricts or prohibits re-election to trade union office is incompatible with the Convention. Such provisions may entail particularly serious consequences for organizations which do not have a sufficient number of persons capable of carrying out the duties of a trade union officer. The same principle is applicable to provisions fixing the maximum length of terms of trade union office.

Removal of trade union officers or executive bodies

122. Any removal or suspension of trade union officers which is not the result of an internal decision of the trade union, a vote by members or normal judicial proceedings, seriously interferes in the exercise of the trade union office to which the officers have been freely elected by the members of their trade unions. Provisions which permit the suspension and removal of trade union officers or the appointment of temporary administrators by the administrative authorities,[28] by the executive board of a single central organization[29] or under the provisions of legislation or a decree promulgated for the purpose are incompatible with the Convention.

123. Measures of this kind should be solely directed towards protecting the members of organizations and should only be possible through judicial proceedings. The law should lay down sufficiently precise criteria to enable the judicial authority to determine whether a trade union officer has committed acts warranting his suspension or removal; provisions which are too vague or fail to comply with the principles of the Convention do not constitute an adequate guarantee. The persons concerned should also enjoy all the guarantees of normal judicial procedures.

Administration of organizations

124. The right of workers' and employers' organizations to organize their administration without interference by the public authorities includes in particular autonomy and financial independence and the protection of the assets and property of these organizations. Legislation intended to protect the rights of members and to ensure sound and efficient management which require trade

[27] *Venezuela*: the Committee noted with satisfaction the removal of the provisions requiring trade union officers who have completed two consecutive terms to wait at least one term before standing for re-election (RCE 1991, p. 223).

[28] For example: *Colombia*, suspension for up to three years, with withdrawal of the rights of association, of trade union officers who are responsible for the dissolution of their trade union (RCE 1993, p. 182).

[29] For example: *Syrian Arab Republic* (RCE 1993, p. 230).

union rules to include provisions concerning the source of the organization's funds, the use of its funds, its internal financial administration or the distribution of assets in the event that the organization is dissolved, wound up or merged, or legislation which provides for the external supervision of the financial reports of trade unions are in general compatible with the Convention.

125. The Committee considers that there is no infringement of the right of organizations to organize their administration if, for example, the supervision is limited to the obligation of submitting periodic financial reports or if there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe the principles of freedom of association); similarly, there is no violation of the Convention if such verification is limited to exceptional cases, for example in order to investigate a complaint, or if there have been allegations of embezzlement. [30] Both the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity.

126. Problems of compatibility with the Convention arise when the law gives the authorities powers of control which go beyond the principles set forth in the previous paragraph. [31] This may take the form of permanent control by the authorities where the law establishes the minimum contribution of members, [32] specifies the proportion of union funds that have to be paid to the federations [33] or requires that certain financial operations, such as the receipt of funds from abroad, be approved by the public authorities. [34] The same applies if the administrative authority has the power to examine the books and other documents of an organization, conduct an investigation and demand

[30] For example: *Philippines*, the Committee noted with satisfaction the amendment of provisions which gave excessive powers of inquiry to the authorities into the financial management of trade unions; they may now undertake such inquiries only upon filing of a complaint duly supported and signed by at least 20 per cent of the members of a bargaining unit (RCE 1990, pp. 202-203).

[31] For example: *Bangladesh*: s. 10 of the Industrial Relations Rules of 1977 gives the registrar of trade unions very extensive powers to inspect the books and other documents of trade unions. *Panama*: s. 376(4) of the Labour Code gives the authorities excessive powers in examining, at least every six months, the financial accounts and records of proceedings of trade unions. By contrast, in *Greece*, Act No. 1915 of 1990 respecting the protection of trade union rights has eliminated the powers of the authorities to intervene in the financial administration of trade unions.

[32] For example: *India*: s. 6 of the Trade Unions Act.

[33] For example: *Syrian Arab Republic*: s. 36 of Legislative Decree No. 84 and s. 12 of Legislative Decree No. 250 require trade unions to assign a certain percentage of their receipts to higher-level trade union bodies (RCE 1993, p. 230).

[34] *Yemen*: some financial operations require the prior authorization of the minister and the financial resources of trade unions must necessarily be used for certain expenditure (ss. 132 and 133 of the Labour Code) (RCE 1993, p. 239).

information at any time,[35] or is the only body authorized to exercise control, or if such control is exercised by the single central organization expressly designated by the law.[36]

Inviolability of union premises, correspondence and communications

127. The freedom to organize their administration is not limited to strictly financial operations but also implies that trade unions should be able to dispose of all their fixed and movable assets unhindered and that they should enjoy inviolability of their premises, correspondence and communications. When legislation makes provision for exceptions in this respect, for example in emergency situations or in the interests of public order, the Committee is of the view that while trade unions cannot claim immunity against the searching of their premises, such searches should be possible only when a warrant has been issued for the purpose by the regular judicial authority, when the latter is satisfied that there is a good reason to presume that such a search will produce evidence for criminal proceedings under the ordinary law, and provided the search is restricted to the purpose for which the warrant was issued.[37]

Activities and programmes

128. Freedom of association implies that workers' and employers' organizations should have the right to organize their activities in full freedom and formulate their programmes with a view to defending all of the occupational interests of their members, while respecting the law of the land. This includes in particular the right to hold trade union meetings,[38] the right of trade union officers to have access to places of work and to communicate with management, certain political activities of organizations, the right to strike and, in general, any activity involved in the defence of members' rights.

129. In practice, however, the main difficulties which are most frequently encountered in national legislation concern restrictions or prohibition of political

[35] For example: *Chile*: s. 54 of Act No. 19069 of 1991 respecting trade union organizations and collective bargaining. *Kuwait*: s. 76 of the Labour Code: extensive powers enabling the authorities to have access at all times to the registers and books of trade unions (RCE 1993, p. 205). *Nigeria*: ss. 42 and 43 of Trade Unions Decree No. 31, as amended in 1978 and 1986 (RCE 1993, p. 216).

[36] For example: *Egypt*: supervision by the Egyptian Confederation of Trade Unions of the financial administration of trade union organizations (RCE 1993, p. 194).

[37] See also Ch. II, para. 40.

[38] For example: *Colombia*: the Committee noted with satisfaction the repeal of provisions which regulated trade union meetings too strictly; however, the final paragraph of s. 444 of the Labour Code still allows the presence of the authorities in general assemblies convened to vote on the launching of a strike and s. 1 of Decree No. 672 of 1956 provides for supervision of trade union meetings by public servants (RCE 1992, p. 207).

activities of organizations and of the right to strike, which is dealt with separately in the following chapter in view of its importance, as well as restrictions on collective bargaining. [39]

Political activities

130. Until recently, legislation in several countries established a close relationship between trade union organizations and the single political party in power. Although this type of subordination still remains in some countries, [40] the Committee has noted with satisfaction in recent years and in particular since the fall of the Berlin Wall in 1989 a clear trend towards its abolition. It also observes that the autonomy and independence of trade unions are now enshrined in the legislation of several countries. [41] The legislation of other countries restricts the political activities of trade unions by forbidding them, for example, from making financial contributions to a political party or candidate. Finally, there is a total ban on *any* political activities by trade unions in certain legislations. [42]

131. It was pointed out during the preparatory work on Convention No. 87 [43] that trade union activities cannot be restricted solely to occupational matters, since a government's choice of a general policy is usually bound to have an impact on workers (remuneration, leave, working conditions, functioning of the enterprise, social security, etc.). This relationship is obvious in the case of a national economic policy (for example, the impact of budgetary austerity programmes or price and wage restrictions; structural adjustment policies, etc.), although for workers in particular it may also appear in the form of broader political or economic options (for example, bilateral or multilateral free trade agreements; the application of directives of international financial institutions, etc.) or even decisions taken at the supranational level (for example,

[39] See Ch. X.

[40] For example: *China* "Trade unions shall organize and educate the workers ... to enable them ... to defend the socialist state power of the People's Democratic Dictatorship directed by the working class ..." (s. 5 of the Trade Unions Act of 3 Apr. 1992). *Cuba:* the Workers' Central Organization of Cuba recognizes the supreme authority of the Communist Party, accept its policy and carry out their activities in accordance with the principles of democratic centralism (preamble to the Constitution of the Workers' Central Organization).

[41] For example, the Committee noted with satisfaction that the autonomy and independence of workers' organizations have now been enshrined in the legislation of the following countries: *Belarus, Bulgaria, Congo, Ethiopia, Guinea, Hungary, Madagascar, Mongolia, Poland, Romania, Russian Federation, Rwanda, Ukraine.*

[42] For example: *Kuwait*, ban on the exercise of any political activities by trade unions (s. 73 of the Labour Code). *Swaziland*: ban on the exercise of political activities by federations and restriction of their activities to consultation and service functions (s. 33 of the Industrial Relations Act of 1980). By contrast, in the case of *Colombia*, the Committee noted with satisfaction the repeal of s. 379(a) of the Labour Code which prohibited trade unions from intervening in political matters (RCE 1992, p. 207).

[43] ILC, 31st Session, 1948, *Record of Proceedings*, p. 476.

the effects of the delocalization of enterprises on employment and wages). Although the promotion of working conditions by collective bargaining remains a major feature of trade union action, the Committee believes that the development of the trade union movement and the increasing recognition of its role as a social partner in its own right mean that workers' organizations must be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy.

132. As regards the political activities of the trade union movement, the Committee recalls that the 1952 resolution of the International Labour Conference concerning the independence of the trade union movement [44] remains as valid as it then was: when trade unions, in accordance with the law and practice of their respective countries and following a decision of their members, decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of the economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country. Furthermore, in order to guarantee the independence of the trade union movement, governments should not attempt to transform trade unions into an instrument for the pursuance of political aims or interfere with the normal functions of a union under the pretext of its freely established relationship with a political party.

133. The Committee is therefore of the view that both legislative provisions which establish a close relationship between trade union organizations and political parties and those which prohibit *all* political activities for trade unions give rise to serious difficulties with regard to the principles of the Convention. [45] Some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interest of organizations in expressing their point of view on matters of economic or social policy affecting their members and workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other.

134. Workers' organizations have several means available to promote and defend the economic and social interests of their members within the framework of collective bargaining. These means, which include meetings, protest demonstrations or the presentation of petitions, are solely intended to express the discontent of trade unions on certain matters. Means of action which place stronger pressure on the employer, essentially through strike action, are dealt

[44] See the full text of the resolution in Appendix II.

[45] See Ch. II, Freedom of opinion and expression of organizations. See also Report of the Committee of Inquiry on *Nicaragua*, op. cit., Ch. III, note 3, para. 544(3)(a).

with separately in the following chapter because of their importance and the effects they may have on labour relations.

* * *

135. *Legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by the public authorities. Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organizations in their functioning and administration. Restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body so as to avoid any risk of excessive or arbitrary interference in the free functioning of organizations.*

CHAPTER V

The right to strike

Introduction

136. Strike action, which is the most visible form of collective action in the event of a labour dispute, is often seen as the last resort of workers' organizations in the pursuit of their demands. It is also the means of action which gives rise to the most controversy, which is reflected in the discussions within the supervisory bodies and in particular in the large number of complaints presented to the Committee on Freedom of Association on this subject. The right to strike also raises special difficulties in the public and semi-public sectors, where the concept of employer is not without ambiguities and where the problem of essential services arises more frequently than in other sectors, since the exercise of this right inevitably affects third parties who sometimes feel that they are the victims in disputes in which they have no part. The Committee believes that it would be useful to explain in some detail its views on this essential feature of industrial relations, with reference to the existing substantive provisions and the process which has led it to establish certain principles on this subject. However, before proceeding, it would like to make some general observations.

137. First, strike action cannot be seen in isolation from industrial relations as a whole. It is true that it is a basic right, but it is not an end in itself. Strikes are expensive and disruptive for workers, employers and society and when they occur they are due to a failure in the process of fixing working conditions through collective bargaining which should remain the final objective.

138. Furthermore, more than any other aspect of industrial relations, strike action is often the symptom of broader and more diffuse issues, so that the fact that a strike is prohibited by a country's legislation or by a judicial order will not prevent it from occurring if economic and social pressures are sufficiently strong. In addition, while the judicial authorities generally have to confine themselves to applying existing legal rules to strikes, it is not unusual for workers and their unions to launch strikes precisely with the aim of having these rules changed, which inevitably leads to differences of opinion and even further disputes.

139. The Committee also emphasizes that the maintaining of the employment relationship is a normal legal consequence of recognition of the right to strike. However, in some countries with the common-law system strikes are regarded as having the effect of terminating the employment contract,

leaving employers free to replace strikers with new recruits.[1] In other countries, when a strike takes place, employers may dismiss strikers or replace them temporarily, or for an indeterminate period. Furthermore, sanctions or redress measures are frequently inadequate when strikers are singled out through some measures taken by the employer (disciplinary action, transfer, demotion, dismissal); this raises a particularly serious issue in the case of dismissal, if workers may only obtain damages and not their reinstatement. In the Committee's view, legislation should provide for genuine protection in this respect, otherwise the right to strike may be devoid of content.

140. Lastly, one should not overlook the sociological dimension of strike action, which, like any other social phenomenon, is affected by economic, social, technological and other changes to which it has to adapt. To name only a few examples, technological advances, increasing globalization and the development of multinational enterprises — all factors profoundly affecting the conditions in which goods and services are produced and their relationship with work — cannot but influence the issue of strike action. Change can also be seen in the motives underlying strikes: while most strikes used to support demands for improved pay or other working conditions, strikes have recently been held in some countries "for the protection of employment" or "against delocalization", sometimes with backing from employers.

141. The ILO instruments are the primary source of law in this context, but the right to strike is also recognized in several other international or regional instruments, and in national legislation and practice.

ILO instruments

142. Although the right to strike is not explicitly stated in the ILO Constitution or in the Declaration of Philadelphia, nor specifically recognized in Conventions Nos. 87 and 98, it seemed to have been taken for granted in the report prepared for the first discussion of Convention No. 87.[2] The right to strike was mentioned several times in that part of the report describing the history of the problem of freedom of association and outlining the survey of legislation and practice.[3] In the conclusions and observations of the same report, it was also mentioned in connection with the special case of public servants and voluntary conciliation.[4] However, during discussions at the

[1] Although this is rare in practice, workers are vulnerable to this type of measure. See, for example, CFA, 277th Report, Case No. 1540 (*United Kingdom*), paras. 47-98.

[2] ILC, 30th Session, 1947, Report VII, *Freedom of Association and Industrial Relations*.

[3] ibid., pp. 30, 31, 34, 46, 52, 73-74.

[4] "... the recognition of the right of association of public servants in no way prejudges the question of the right of such officials to strike, which is something quite apart from the question under consideration", ibid., p. 109; "... if the parties have recourse by mutual agreement to an agency for conciliation, they should be obliged to refrain from strikes or lockouts during the procedure of conciliation." ibid., p. 121.

Conference in 1947 and 1948, no amendment expressly *establishing* or *denying* the right to strike was adopted or even submitted. At present, only Article 1 of the Abolition of Forced Labour Convention, 1957 (No. 105),[5] and Paragraphs 4, 6 and 7 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92),[6] mention strike action, albeit indirectly. However, several resolutions of the International Labour Conference, regional conferences and industrial committees[7] refer to the right to strike or to measures to guarantee its exercise.

Other international and regional instruments

143. Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights provides that the States parties to the Covenant undertake to ensure, inter alia, "... the right to strike, provided that it is exercised in conformity with the laws of the particular country".[8] At the regional level, article 6(4) of the European Social Charter of 1961 expressly recognizes the right to strike in the event of a conflict of interests, subject to the obligations resulting from collective agreements in force.[9] Article 27 of the Inter-American Charter of Social Guarantees of 1948 stipulates that: "Workers have the right to strike. The law shall regulate the conditions and exercise of that right."[10] The

[5] Forced or compulsory labour is prohibited ... "(d) as a punishment for having participated in strikes;".

[6] "4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress ...

6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

7. No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike."

[7] For example: para. 15 of the resolution concerning trade union rights and their relation to civil liberties, 1970; para. 1(3) of the resolution concerning protection of the right to organize and to bargain collectively, Third Labour Conference of the American States which are Members of the International Labour Organization, Mexico, 1946; paras. 13(2) and 17 of the Resolution concerning industrial relations in inland transport, 1947.

[8] Of the 83 member States of the ILO which have ratified *both* Convention No. 87 and the Covenant, four (*Japan, Netherlands, Norway, Trinidad and Tobago*) registered a reservation specifically concerning Article 8(1)(d). Four others (*Algeria, India, Mexico, New Zealand*) accompanied their ratification with a declaration or general reservation concerning Article 8. Japan made a declaration of interpretation concerning fire-fighting personnel. France stated that it would apply the provisions of the Covenant concerning the right to strike in accordance with article 6(4) of the European Social Charter.

[9] Concerning the genesis of the European Social Charter and the influence which ILO standards have had on it, see *International Labour Review*, Vol. LXXXIV, No. 5, Nov. 1961, pp. 364-365; No. 6, Dec. 1961, pp. 475-476.

[10] Inter-American Charter of Social Guarantees adopted by the Ninth International Conference of American States, Bogota, 1948. The sixth paragraph of the Preamble — a text

right to strike is also recognized in article 8(1)(b) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. [11]

National legislation and practice

144. An examination of national legislation and practice shows that the manner and extent to which the right to strike is recognized varies from country to country. Although it is enshrined in the Constitution of some countries, [12] it is most often recognized in general legislation on trade unions or collective bargaining and accompanied by a number of more or less significant restrictions, depending on the country, which may sometimes amount in practice to an actual ban. In other countries the right to strike is not expressly recognized in legislation, although immunities are provided for as regards civil liability, under certain conditions. [13]

ILO supervisory bodies

145. In the absence of an express provision on the right to strike in the basic texts, the ILO supervisory bodies have had to determine the exact scope and meaning of the Conventions on this subject. These bodies are mainly the Committee on Freedom of Association within the framework of the special procedure set up to examine complaints of violations of freedom of association and the present Committee under the terms of articles 19 and 22 of the Constitution.

Committee on Freedom of Association

146. As early as its second meeting in 1952, the Committee on Freedom of Association affirmed the principle of the right to strike, stating that it is an "essential [element] of trade union rights" [14] and stressing shortly afterwards that "in most countries strikes are recognized as a legitimate weapon of trade

which dates from the same period as the international labour Conventions on freedom of association — states that it is "to the public interest, from the international point of view, to enact the most comprehensive social legislation possible, to give workers guarantees and rights on a scale not lower than that fixed in the Conventions and Recommendations of the International Labour Organization".

[11] Additional protocol of 1988, known as the "Protocol of San Salvador".

[12] For example: *Argentina, Burkina Faso, France, Portugal, Romania, Rwanda.*

[13] For example: *Ireland, United Kingdom.*

[14] Second Report, 1952, Case No. 28 (*Jamaica*), para. 68.

unions in furtherance of their members' interests".[15] Although the Committee subsequently specified the content of this right in a large number of cases, taking account of the particular circumstances brought to its attention, it has never departed from this position of principle.[16] In dealing with complaints, the Committee has considered that "... it should be guided in its task, among other things, by the provisions that have been approved by the Conference and embodied in the Conventions on freedom of association, which afford a basis for comparison when particular allegations are examined".[17] As regards more specifically the right to strike, the Committee based itself, inter alia, on the provisions of the Conventions on freedom of association.[18]

Committee of Experts

147. As early as 1959, the Committee expressed in its General Survey the view that the prohibition of strikes by workers other than public officials acting in the name of the public powers "... may sometimes constitute a considerable restriction of the potential activities of trade unions ... There is a possibility that this prohibition may run counter to Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)".[19] This position was subsequently reiterated and reinforced: "a general prohibition of strikes constitutes a considerable restriction of the opportunities opened to trade unions for furthering and defending the interests of their members (Article 10 of Convention No. 87) and of the right of trade unions to organize their activities";[20] "the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers".[21] The Committee's reasoning is therefore based on the recognized right of workers' and employers' organizations to organize their activities and to formulate their programmes for the purposes of furthering and defending the interests of their members (Articles 3, 8 and 10 of Convention No. 87).[22]

[15] Fourth Report, 1953, Case No. 5 (*India*), para. 27.

[16] *Digest*, paras. 362-363.

[17] *Digest*, p. 2.

[18] *Digest*, paras. 366, 379, 416, 438, 443.

[19] *General Survey*, 1959, para. 68.

[20] *General Survey*, 1973, para. 107.

[21] *General Survey*, 1983, paras. 200, 205.

[22] Article 3(1): "Workers' and employers' organizations shall have the right ... to organize their ... activities and to formulate their programmes";

Article 3(2): "The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof";

148. The words "activities and ... programmes" in this context acquire their full meaning only when read together with Article 10, which states that in this Convention the term "organization" means any organization "for furthering and defending the interests of workers or of employers". The promotion and defence of workers' interests presupposes means of action by which the latter can bring pressure to bear in order to have their demands met. In a traditional economic relationship, one of the means of pressure available to workers is to suspend their services by temporarily withholding their labour, according to various methods, thus inflicting a cost on the employer in order to gain concessions. This economic logic cannot be applied as such to the public sector, although here again the suspension of labour services is the last resort available to workers. The Committee therefore considers that the ordinary meaning of the word "programmes" includes strike action, which led it very early on to the view that the right to strike is one of the essential means available to workers and their organizations to promote their economic and social interests.

149. Under Article 3(1) of Convention No. 87, the right to organize activities and to formulate programmes is recognized for workers' and employers' *organizations*. In the view of the Committee, strike action is part of these activities under the provisions of Article 3; it is a collective right exercised, in the case of workers, by a group of persons who decide not to work in order to have their demands met. The right to strike is therefore considered as an activity of workers' organizations within the meaning of Article 3. [23]

150. As regards the practice followed in the various member States, an examination of the national legislation currently in force shows that although the conditions and restrictions of the right to strike vary enormously, the *principle* of the strike as a means of action of organizations is now widely recognized. The Committee points out in this connection that while 102 countries had ratified the Convention as of 31 December 1992, in its reports of 1992 and 1993 it made observations only on about 40 countries, and some of these referred merely to the conditions in which the right to strike is exercised: this shows that the legislation of more than 60 per cent of the countries was considered satisfactory with regard to Convention No. 87.

151. In the light of the above, the Committee confirms its basic position that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87. That being said, the Committee emphasizes that the right to strike cannot be considered as an absolute right: not only may it be subject to a general prohibition in exceptional circumstances, but it may be governed by

Article 8(2): The law of the land, which organizations and their members must respect, must not "be such as to impair, nor shall it be applied as to impair, the guarantees provided for in this Convention".

[23] It should be noted, however, that the protection provided for in Article 1(d) of the Abolition of Forced Labour Convention, 1957 (No. 105) extends to individuals, and that the right to strike recognized by the international instruments referred to in paragraph 143 of this survey also applies to workers as individuals.

provisions laying down conditions for, or restrictions on, the exercise of this fundamental right.

General prohibition of strikes

152. A general prohibition of strikes, such as occurs in certain countries, may arise from specific provisions in the law.[24] It may also result from provisions adopted under emergency or exceptional powers, the government invoking a crisis situation to justify its intervention. Inasmuch as general prohibitions of this kind are a major restriction of one of the essential means available to workers and to their organizations for furthering and defending their interests, such measures cannot be justified except in a situation of acute national crisis and then, only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural disaster in which the normal conditions for the functioning of society are absent.

153. A less general but still very serious prohibition may also result in practice from the cumulative effect of the provisions relating to collective labour disputes under which, at the request of one of the parties or at the discretion of the public authorities,[25] disputes must be referred to a compulsory arbitration procedure leading to a final award which is binding on the parties concerned.[26] These systems make it possible to prohibit virtually all strikes or to end them quickly: such a prohibition seriously limits the means available to trade unions to further and defend the interests of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with Article 3 of Convention No. 87.

[24] For example: The Committee requested the Government of *Chad* to repeal *specifically* Ordinance No. 30 of 26 Nov. 1975, which had "suspended all strike action on the national territory" (RCE 1993, p. 181).

[25] For example: *Antigua and Barbuda*: ss. 19, 20 and 21 of the Labour Court Act of 1976. *Honduras*: s. 555(2) of the Labour Code. *Kuwait*: s. 88 of the Labour Code. *Malta*: ss. 27 and 34 of the Industrial Relations Act of 1976. *Trinidad and Tobago*: s. 65 of the Industrial Relations Act, as amended in 1978.

[26] For example: *Bolivia*: s. 113(c) of the General Labour Act of 1939. *Colombia*: ss. 448(3) and (4) and 450(1)(g) of the Labour Code. *Côte d'Ivoire*: s. 183 of the Labour Code. *Dominica*: s. 59(1) of Industrial Relations Act No. 18 of 1986, as amended. *Guyana*: s. 3 of the Law on arbitration in public utilities and the public health services. *Nigeria*: Industrial Disputes Decree No. 7 of 1976. *Philippines*: s. 263(g) and (i) of the Labour Code. *Senegal*: ss. 238-245 of the Labour Code. *Swaziland*: s. 63(1) of the Industrial Relations Act of 1980.

Specific restrictions

154. In some countries legislation, while admitting the principle of the right to strike, imposes a number of restrictions on the exercise of this right; such restrictions vary in extent, and most often concern certain categories of workers because of their status (public service), the functions they perform (essential services, role in the industrial relations system), their hierarchical rank (managerial staff) or any combination of these. [27] Other restrictions also relate to strike objectives or methods, or the obligation to give advance notice (clauses imposing a waiting period).

155. The legislative restrictions imposed on the public service and essential services are often very similar or even identical, since work in essential services is often carried out by public officials or employees with a related status. The Committee considers that the essential criterion is not so much the public or private nature of the functions concerned as the nature of the tasks carried out. However, the distinction may be useful here since, while it is easy to imagine situations in which workers in the private or semi-private sectors perform duties which undeniably come under the heading of essential services (for security reasons, for example), there are very broad categories of other workers who, despite the fact that they belong to the public service, cannot be assimilated to groups for which the prohibition or restriction of the right to strike would be justified.

Restrictions relating to the public service

156. Convention No. 87 guarantees the right to organize to workers in the public service. However, their corollary right to strike may be either limited or prohibited if they are governed by restrictive provisions, such as those referred to in paragraph 151 above. National legislation varies widely in this respect: at one end, there are systems which specifically recognize it [28] and at the other end, there are those that specifically prohibit it. [29] In some countries there are no laws or regulations on the subject, which can give rise to radically different interpretations by the public authorities: tacit prohibition or recognition. Furthermore, public servants are sometimes governed by entirely separate legislation which defines, in particular, the conditions for their right to strike, [30] whereas other countries make no distinction between the private and public

[27] In its General Survey of 1959, the Committee had already commented on this point, in particular as regards the restrictions applicable to the public service and essential services (para. 68).

[28] For example: *Côte d'Ivoire, Fiji, France, Gabon, Poland, Spain.*

[29] For example: *Bolivia, Republic of Korea.*

[30] For example: *Central African Republic, Guatemala, Italy, Lesotho, Luxembourg, Portugal.*

sectors, so that workers in the latter must observe the procedures laid down in the general legislation in order to strike. [31]

157. Even when the right to strike is recognized in the public service, this does not mean that all public servants enjoy unlimited freedom in this respect. In most countries law and practice establish various restrictions and conditions, which are generally based on such criteria as the hierarchical rank or level of responsibility of the employees concerned, the nature of the services they perform, the conditions to be observed where a strike is called and held, and even the parties' choice of the machinery for settling disputes. [32]

158. In the view of the Committee, a too broad definition of the concept of public servant is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers. One of the main difficulties is due to the fact that the concept itself varies considerably from one legal system to another. For example, the terms "civil servant", "fonctionnaire" and "funcionario" are far from having the same coverage; furthermore, an identical term used in the same language does not always mean the same thing in different countries; lastly, some systems classify public servants in different categories, with different status, obligations and rights, [33] while such distinctions do not exist in other systems or do not have the same consequences. Although the Committee cannot overlook the special characteristics and legal and social traditions of each country, it must, however, endeavour to establish fairly uniform criteria in order to examine the compatibility of legislation with the provisions of Convention No. 87. It would be futile to try to draw up an exhaustive and universally applicable list of categories of public servants who should enjoy the right to strike or be denied such a right. As it has already noted, [34] the Committee considers that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State. The Committee is aware of the fact that except for the groups falling clearly into one category or another, the matter will frequently be one of degree. In borderline cases, one solution might be not to impose a total prohibition of strikes, but rather to provide for the maintaining by a defined and limited category of staff of a negotiated minimum service when a *total and prolonged* stoppage might result in *serious* consequences for the public.

Restrictions relating to essential services

159. Numerous countries have provisions prohibiting or limiting strikes in essential services, a concept which varies from one national legislation to

[31] For example: *Algeria, Australia, Egypt, Hungary, Iceland, India, Mauritania, Sweden.*

[32] For example: *Canada*: Public Service Staff Relations Act: the choice, which can be reviewed periodically by workers, between two procedures, one of which excludes strike action.

[33] For example: *Germany*: Beamte, Arbeitnehmer (Angestellte, Arbeiter). *Turkey*: manual workers, office employees.

[34] *General Surveys*: 1959, para. 68; 1973, para. 109; 1983, para. 214.

another. They may range from merely a relatively short limitative enumeration [35] to a long list which is included in the law itself. [36] Sometimes the law includes definitions, from the most restrictive to the most general kind, covering all activities which the government may consider appropriate to include or all strikes which it deems detrimental to public order, the general interest or economic development. [37] In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. [38] The principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively: the Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. [39] Furthermore, it is of the opinion that it would not be desirable — or even possible — to attempt to draw up a complete and fixed list of services which can be considered as essential.

160. While recalling the paramount importance which it attaches to the universal nature of standards, the Committee considers that account must be taken of the special circumstances existing in the various member States, since the interruption of certain services which in some countries might at worst cause economic hardship could prove disastrous in other countries and rapidly lead to conditions which might endanger the life, personal safety or health of the population. A strike in the port or maritime transport services, for example, might more rapidly cause serious disruptions for an island which is heavily dependent on such services to provide basic supplies to its population than it would for a country on a continent. Furthermore, a non-essential service in the

[35] For example: *Algeria, Dominican Republic, Haiti, Hungary, Lesotho.*

[36] For example: *Bolivia*: Supreme Decree No. 1598 of 1950. *Colombia*: ss. 430 and 450(1)(a) of the Labour Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967. *Ecuador*: s. 503 of Act No. 133 to reform the Labour Code. *Ethiopia*: s. 136(2) of Proclamation No. 42/1993 respecting labour. *Greece*: s. 4 of Act No. 1915 of 1990. *Mali*: Decree No. 90-562/P-RM of 22 Dec. 1990. *Swaziland*: s. 65(6) of the Industrial Relations Act of 1980.

[37] For example: *Côte d'Ivoire*: s. 183 of the Labour Code. *Dominica*: s. 59(1)(b) of Industrial Relations Act No. 18 of 1986, as amended. *Trinidad and Tobago*: s. 65 of the Industrial Relations Act. *Tunisia*: s. 384 of the Labour Code.

[38] For example: *Guatemala*: s. 243 of the Labour Code. *Pakistan*: s. 33(1) of the Industrial Relations Ordinance of 1969. *Philippines*: s. 263(g) and (i) of the Labour Code. *Romania*: ss. 38-43 of Act No. 15 of 1991 respecting the settlement of industrial disputes.

[39] *General Survey*, 1983, paras. 213-214. See also the observation of the Committee on this point concerning *Ecuador* (RCE 1993, p. 193). As regards *Lesotho*, the Committee has noted with satisfaction that s. 232(1) of the 1992 Labour Code defines essential services as indicated above (RCE 1993, p. 206).

strict sense of the term may become essential if the strike affecting it exceeds a certain duration or extent so that the life, personal safety or health of the population are endangered (for example, in household refuse collection services). In order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility ("services d'utilité publique") rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term.

Negotiated minimum service

161. In the view of the Committee, such a service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a *minimum* service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions.

Essential services and minimum service

162. Because of the diversity of terms used in national legislation and texts on the subject, some confusion has sometimes arisen between the concepts of minimum service and essential services: they must therefore be defined very clearly. When the Committee uses the expression "essential services" in this survey or in its reports, it refers only to essential services in the strict sense of the term, i.e. those mentioned above in paragraph 159, in which restrictions or even a prohibition may be justified, accompanied however by compensatory guarantees. The minimum service suggested in paragraph 161 above as a possible alternative to a total prohibition would be appropriate in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic

needs are met or that facilities operate safely or without interruption. [40] Indeed, nothing prevents authorities, if they consider that such a solution is more appropriate to national conditions, from establishing only a minimum service in sectors considered as "essential" by the supervisory bodies according to the criteria set forth above, which would justify wider restrictions to, or even a prohibition of strikes.

Requisitioning

163. Under the legislation of some countries, workers on strike can be requisitioned. Since the requisitioning of workers could be abused as a means of settling labour disputes, such action is to be avoided except where, in particularly serious circumstances, essential services have to be maintained. Requisitioning may be justified by the need to ensure the operation of essential services in the strict sense of the term.

Compensatory guarantees

164. If the right to strike is subject to restrictions or a prohibition, workers who are thus deprived of an essential means of defending their socio-economic and occupational interests should be afforded compensatory guarantees, for example conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery seen to be reliable by the parties concerned. It is essential that the latter be able to participate in determining and implementing the procedure, which should furthermore provide sufficient guarantees of impartiality and rapidity; arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

Restrictions relating to the objectives of a strike

Political strikes/protest strikes

165. The Committee has always considered that strikes that are purely political in character do not fall within the scope of freedom of association. [41] However, the difficulty arises from the fact that it is often impossible to distinguish in practice between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers or employers; this is the case, for example, of a general price and

[40] For example, in the iron and steel industry, the continuous operation of blast furnaces. See also CFA, 273rd Report, Case No. 1521, para. 39 (*Turkey*); 268th Report, Case No. 1486, para. 187 (*Portugal*).

[41] *General Surveys*, 1959, para. 69; 1973, para. 113; 1983, para. 216.

wage freeze. In the legislation of many countries political strikes are explicitly or tacitly deemed unlawful. Elsewhere, restrictions on the right to strike may be interpreted so widely that any strike might be considered as political. In the view of the Committee, organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living. [42]

Strikes, collective bargaining and "social peace"

166. The legislation in many countries does not establish any restrictions on the time when a strike may be initiated, stipulating only that the advance notice established by the law must be observed. Other industrial relations systems are based on a radically different philosophy in which collective agreements are seen as a social peace treaty of fixed duration during which strikes and lockouts are prohibited under the law itself, with workers and employers being afforded arbitration machinery in exchange. Recourse to strike action is generally possible under these systems only as a means of pressure for the adoption of an initial agreement or its renewal. The Committee considers that both these options are compatible with the Convention and that the choice should be left to the law and practice of each State. In both types of systems, however, workers' organizations should not be prevented from striking against the social and economic policy of the Government, in particular where the protest is not only against that policy but also against its effects on some provisions of collective agreements (for instance the impact of a wage control policy imposed by the Government on monetary clauses in the agreement).

167. If legislation prohibits strikes during the term of collective agreements, this major restriction on a basic right of workers' organizations must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements. Such a procedure not only allows the inevitable difficulties of application and interpretation to be settled during the term of an agreement, but has the advantage of clearing the ground for subsequent bargaining rounds by identifying the problems which have arisen during the term of the agreement.

[42] See also Ch. IV, paras. 130-133.

Sympathy strikes

168. Sympathy strikes, which are recognized as lawful in some countries, are becoming increasingly frequent because of the move towards the concentration of enterprises, the globalization of the economy and the delocalization of work centres. While pointing out that a number of distinctions need to be drawn here (such as an exact definition of the concept of a sympathy strike; a relationship justifying recourse to this type of strike, etc.), the Committee considers that a *general* prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful.

Export processing zones

169. In an increasing number of countries, legislation establishes a special system of industrial relations in free zones, which are sometimes called export processing zones or industrial zones.[43] In its General Report of 1993[44] the Committee referred to this problem, which is not unrelated to the growing phenomenon of the delocalization of enterprises. Amongst other provisions establishing exceptions from the general system of industrial relations, some of this legislation specifically or indirectly prohibits strikes: such a prohibition is incompatible with the provisions of the Convention, which provide that all workers, *without distinction whatsoever*, shall have the right to establish organizations of their own choosing and that such organizations shall have the right to organize their activities and to formulate their programmes.[45]

Other prerequisites

Requirement of a strike ballot

170. In many countries legislation subordinates the exercise of the right to strike to prior approval by a certain percentage of workers. Although this requirement does not, in principle, raise problems of compatibility with the Convention, the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice. The conditions established in the legislation of different

[43] For example: *Bangladesh*, Export Processing Zones Authority Act of 1980. *Pakistan*: Export Processing Zone Authority Ordinance of 1980 and Export Processing Zone (Control of Employment) Rules of 1982. *Togo*: no provisions regulating industrial relations in export processing zones.

[44] RCE 1993, paras. 58-61. See also Ch. III, para. 60.

[45] See also CFA, 241st Report, Case No. 1323 (*Philippines*), para. 371; 253rd Report, Case No. 1383 (*Pakistan*), para. 98.

countries vary considerably and their compatibility with the Convention may also depend on factual elements such as the scattering or geographical isolation of work centres or the structure of collective bargaining (by enterprise or industry), all of which require an examination on a case by case basis. If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.

Exhaustion of conciliation/mediation procedures

171. In a large number of countries legislation stipulates that the conciliation and mediation procedures must be exhausted before a strike may be called.[46] The spirit of these provisions is compatible with Article 4 of Convention No. 98, which encourages the full development and utilization of machinery for the voluntary negotiation of collective agreements.[47] Such machinery must, however, have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness.[48]

Waiting period, advance notice

172. In a large number of countries the law requires workers and their organizations to give notice of their intention to strike[49] or gives the authorities the power to impose an additional cooling-off period.[50] In so far as they are conceived as an additional stage in the bargaining process and designed to encourage the parties to engage in final negotiations before resorting to strike action — preferably with the assistance of a conciliator or a special mediator — such provisions may be seen as measures taken to encourage and promote the development of voluntary collective bargaining as provided for in Article 4 of Convention No. 98. Again, however, the period of advance notice should not be an additional obstacle to bargaining, with workers in practice simply waiting for its expiry in order to be able to exercise their right to strike. The period of advance notice should be shorter if the mediation or conciliation procedure itself

[46] For example: *Bahamas, Bulgaria, Cameroon, Madagascar, Morocco, Poland, Thailand, Venezuela, Zambia.*

[47] When conciliation and arbitration are voluntary, account should be taken of Para. 7 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92): "No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike."

[48] See, for example, as regards administrative obstacles and practical difficulties for the lawful initiation of a strike, CFA, 279th Report, Case No. 1566 (*Peru*), para. 89.

[49] For example: *Algeria, Central African Republic, Djibouti, Guinea, Poland.* In some countries, for example *France*, legislation makes advance notice obligatory only in the public sector, while parties in the private sector are allowed to negotiate this point.

[50] An identical period of advance notice is generally required for lockouts.

is already lengthy and has enabled the remaining matters in dispute to be clearly identified.

Forms of strike action

173. When the right to strike is guaranteed by national legislation, a question that frequently arises is whether the action undertaken by workers constitutes a strike under the law. Any work stoppage, however brief and limited, may generally be considered as a strike. This is more difficult to determine when there is no work stoppage as such but a slowdown in work (go-slow strike) or when work rules are applied to the letter (work-to-rule); these forms of strike action are often just as paralyzing as a total stoppage. Noting that national law and practice vary widely in this respect, the Committee is of the opinion that restrictions as to the forms of strike action can only be justified if the action ceases to be peaceful.

The course of the strike

Picketing/occupation of the workplace

174. Strike picketing aims at ensuring the success of the strike by persuading as many persons as possible to stay away from work. The ordinary or specialized courts are generally responsible for resolving problems which may arise in this respect. National practice is perhaps more important here than on any other subject: while in some countries strike pickets are merely a means of information, ruling out any possibility of preventing non-strikers from entering the workplace, in other countries they may be regarded as a form of the right to strike, and the occupation of the workplace as its natural extension, aspects which are rarely questioned in practice, except in extreme cases of violence against persons or damage to property. The Committee considers in this respect that restrictions on strike pickets and workplace occupations should be limited to cases where the action ceases to be peaceful.

Replacement of strikers

175. A special problem arises when legislation or practice allows enterprises to recruit workers to replace their own employees on *legal* strike. The difficulty is even more serious if, under legislative provisions or case-law, strikers do not, as of right, find their job waiting for them at the end of the dispute.[51] The Committee considers that this type of provision or practice

[51] CFA, 278th Report, Case No. 1543 (*United States*), para. 93; the case-law makes a distinction between "unfair labour practice" strikes and "economic" strikes. See also para. 139 as regards the maintaining of the employment relationship.

seriously impairs the right to strike and affects the free exercise of trade union rights. [52]

Sanctions against strikes

176. Most legislation restricting or prohibiting the right to strike also contains clauses providing for sanctions against workers and trade unions that infringe these provisions. In some countries, striking illegally is a penal offence punishable by a fine or term of imprisonment. [53] Elsewhere, engaging in an unlawful strike may be considered as an unfair labour practice and entail civil liability and disciplinary sanctions.

177. The Committee considers that sanctions for strike action should be possible *only* where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, both excessive recourse to the courts in labour relations and the existence of heavy sanctions for strike action may well create more problems than they resolve. Since the application of disproportionate penal sanctions does not favour the development of harmonious and stable industrial relations, if measures of imprisonment are to be imposed at all they should be justified by the seriousness of the offences committed. In any case, a right of appeal should exist in this respect.

178. In addition, certain prohibitions of, or restrictions to, the right to strike which are in conformity with the principles of freedom of association sometimes provide for civil or penal sanctions against strikers and trade unions which violate these provisions. In the view of the Committee, such sanctions should not be disproportionate to the seriousness of the violations.

* * *

179. *In the view of the Committee, the right to strike is an intrinsic corollary of the right of association protected by Convention No. 87. This right is not, however, absolute and may be restricted in exceptional circumstances or even prohibited for certain categories of workers, in particular certain public servants or for essential services in the strict sense of the term, on condition that compensatory guarantees are provided for. A negotiated minimum service might be established in other services which are of public utility ("services d'utilité publique") where a total prohibition of strike action cannot be justified. Provisions which, for instance, require the parties to exhaust mediation or*

[52] Some countries have adopted legislation which prohibits employers from hiring outside workers to ensure continuation of production or services, for example: *Bulgaria*; *Canada* (*Quebec, Ontario, British Columbia*) with some exceptions made for managerial staff; *Greece*; *Turkey*.

[53] For example: *Ecuador* (RCE 1992, p. 330); *Philippines* (RCE 1993, p. 302); *Sudan* (RCE 1993, p. 304); *Syrian Arab Republic* (RCE 1993, p. 305); *Thailand* (RCE 1992, p. 356). By contrast, the Committee recently noted with satisfaction the repeal of such provisions in *Costa Rica* (RCE, 1994 observation on C.87).

conciliation procedures or workers' organizations to observe certain procedural rules before launching a strike are admissible, provided that they do not make the exercise of the right to strike impossible or very difficult in practice, which would result in a very wide restriction of this right in fact. Since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its exercise should not result in workers being dismissed or discriminated against.

CHAPTER VI

Dissolution and suspension of organizations by administrative authority

Introduction

180. Article 4 of the Convention provides that workers and employers' organizations shall not be liable to be dissolved or suspended by administrative authority; Article 6 extends this guarantee to federations and confederations. Administrative measures of this kind being one of the most extreme forms of interference by the public authorities in the activities of organizations, since they put an end to the exercise of trade union activities, the Committee pays close attention to the conditions under which it may be concluded that dissolution or suspension — or any measure having the same results in practice — does not impair the guarantees provided for in the Convention.

181. While Article 4 of the Convention completes the guarantees relating to the establishment and functioning of organizations by affording them guarantees against arbitrary dissolution or suspension by administrative authority, it does not grant them any immunity with regard to the ordinary law; organizations and their members, under Article 8(1) of the Convention, are bound to respect the law of the land. Thus, for example, an organization seeking to undermine the internal and external security of the State cannot invoke the principles of freedom of organization in order to evade the application of the rules laid down in the ordinary law which are applicable to all unlawful associations.[1] The corollary of this obligation imposed on organizations and their members is that, under Article 8(2), the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention.

Dissolution and suspension of organizations

182. In many countries the legislation provides that only the judicial authorities may order the dissolution or suspension of an organization alleged to

[1] ILC, 30th Session, 1947, *Freedom of association and industrial relations*, p. 111.

have infringed the law;[2] in some cases a request must be submitted by the registrar.[3] Some laws, however, provide for dissolution or suspension by administrative authority,[4] the situation varying according to a number of factors: the possibility of a judicial appeal against the administrative decision, the extent to which the court can examine the substance of the case, and whether or not the appeal has the effect of staying the execution of the administrative decision.

183. In addition to situations in which organizations may be dissolved or suspended under the legislation on labour relations, such measures may also be taken following a decision of the executive power pursuant to a law conferring full powers,[5] a special decree[6] or a state of emergency.[7] As the Commission of Inquiry on Poland emphasized, "... although it is true that Article 4 of the Convention refers only to measures taken by administrative authority, the fact remains that dissolution by legislative authority entails consequences that are just as irremediable as a definitive dissolution by administrative authority since neither admits of appeal to independent bodies".[8] It is therefore essential to determine whether a given dissolution by legislative authority prevents workers from maintaining their membership and pursuing their activities in trade unions of their own choosing; if this is the case, such legislation would not be in conformity with the Convention.

[2] For example: *Argentina, Belarus, Greece*. As regards *Finland*, the Committee noted with satisfaction the adoption of the Associations Act, No. 503, which lays down that, as from 1 January 1990, associations are only subject to suspension by judicial decision (RCE 1991, p. 173).

[3] For example: *Pakistan*: s. 10 of the Industrial Relations Ordinance, 1969.

[4] For example: *Bolivia*: s. 129 of the Decree of 23 Aug. 1943; according to the Government, this provision is not applied in practice. *Yemen*: the Council of Ministers has power to dissolve a trade union (s. 157 of the Labour Code of 1964). By contrast, the Committee noted with interest the repeal of provisions which allowed administrative authorities to dissolve trade unions in the cases of *Guatemala* (RCE 1993, p. 200) and *Madagascar* (RCE 1993, p. 207).

[5] In *Poland*, for example, the martial law declared on 13 December 1981 had entirely suspended the activity of the trade unions and all trade union organizations had been dissolved by the Trade Union Act of 8 October 1982; the Committee noted with satisfaction that the Act was at first amended in 1989 (RCE 1990, p. 205), then repealed in 1991 (RCE 1992, pp. 235-236). *Turkey*: following the military take-over in 1980, certain trade unions had been suspended, their property confiscated and many trade union officers imprisoned; these measures were lifted in 1991.

[6] For example, in the *Central African Republic*, the General Union of Central African Workers (UGTC) had been dissolved and the activities of trade unions suspended in 1981 by presidential decree. The Committee noted with interest that these measures were lifted in 1988 (RCE 1990, p. 174).

[7] For example, the state of emergency which had been in force in *Nicaragua* for several years was lifted in 1988; see *Report of the Commission of Inquiry — Nicaragua*, op. cit., Ch. II, note 3, paras. 173 to 175.

[8] *Report of the Commission of Inquiry — Poland*, op. cit., Ch. II, note 49, para. 497.

184. Certain measures, which cannot be described as dissolution or suspension by administrative authority in the strict sense of the term, none the less give rise to difficulties because they have a similar effect on the organizations concerned. For example, such measures may consist in the loss of advantages which are essential to carrying out their activities, or a condition upon which their existence depends: arbitrary cancellation of registration by an administrative authority[9] or annulment or suspension of legal personality.[10] This category can also include provisions resulting in dissolution or de facto paralysis of an organization's activities, for example, by depriving it of its financial resources (stopping or suspending for a long period the payment of dues) under the terms of legislation which itself runs counter to the principles of freedom of association.

185. All of the measures described above involve a serious risk of interference by the authorities in the very existence of organizations and should therefore be accompanied by all of the necessary guarantees, in particular due judicial safeguards, in order to avoid the risk of arbitrary action. It is preferable for legislation not to allow dissolution or suspension of workers' and employers' organizations by administrative authority, but if it does, the organization affected by such measures must have the right of appeal to an independent and impartial judicial body which is competent to examine the substance of the case, to study the grounds for the administrative measure and, where appropriate, to rescind such measure;[11] moreover, the administrative decision should not take effect until a final decision is handed down. Measures of dissolution or suspension taken during an emergency situation should also be accompanied by normal judicial safeguards, including the right of appeal to the courts against such dissolution or suspension.

Trade union assets

186. The dissolution of an organization raises the problem of distribution or transfer of its assets. The legislation in some countries contains provisions on

[9] For example: *United Kingdom* (*Isle of Man*): discretionary power of the Chief Registrar to cancel registration in certain cases (s. 4 of the 1991 Trade Unions Act). The Committee on Freedom of Association considered in this respect that the appeal provision — not having suspensive effect — was not sufficient to save the cancellation provision: 284th Report, Case No. 1633, paras. 383 and 384. See also 284th Report, Case No. 1508 (*Sudan*), para. 435.

[10] For example: *Ghana*, s. 14 of the Trade Unions Ordinance of 1941. *India*: ss. 10 and 11 of the Trade Unions Act. *Kenya*: ss. 17 and 18 of the Trade Unions Act. *Malawi*: s. 16 of the Trade Unions Act. *Sri Lanka*: ss. 15 to 18 of the Trade Unions Ordinance.

[11] The possibility of such an appeal exists in several countries, for example: *United Kingdom* (*Hong Kong*), *Zambia*. In other countries, by contrast, legislation does not provide for such an appeal, for example: *El Salvador*: s. 230 of the Labour Code of 1972. *Malaysia*: s. 71A of the Trade Unions Act. *Singapore*: ss. 17 and 18 of the Trade Unions Act. *Somalia*: s. 27 of the Labour Code of 1972. See also *Digest*, paras. 497 and 498.

this subject which vary according to whether the dissolution was voluntary or not. [12] As regards the distribution of trade union assets, the Committee shares the view of the Committee on Freedom of Association that the assets should be used for the purposes for which they were acquired. [13]

187. A special problem has arisen and continues to occur, in particular in several Central and Eastern European countries where, following the process of political, economic and social transformation, special laws have recently been adopted in order to distribute the assets of former single trade union organizations. [14] Such legislative measures should take into account the fact that these trade unions often performed functions normally carried out by the State in a system of trade union pluralism, and possessed the corresponding amount of resources and staff. In the view of the Committee, legislative intervention to regulate the devolution of trade union assets is not in itself incompatible with the Convention; however, it is for the government and all of the trade union organizations concerned to cooperate in seeking a definitive formula so that the government, on the one hand, may recover the assets it needs to perform its new functions and all the trade unions, on the other, are able to carry out their activities effectively, in full independence, and on an equal footing. To this end the authorities should duly consult the country's representative organizations before adopting legislative measures. [15]

* * *

188. *The dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations, and should therefore be accompanied by all the necessary guarantees. This can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution. As regards the distribution of trade union assets in the event of dissolution, these should be used for the purposes for which they were acquired. The authorities and all of the organizations concerned should cooperate so that all of the trade unions are able to carry out their activities in full independence and on an equal footing.*

[12] For example: *Algeria*: ss. 32 and 33 of Act No. 90-14 respecting procedures for the exercise of the right to organize. *Guinea*: s. 264 of the Labour Code of 1988. See also *Digest*, para. 504.

[13] CFA, 194th Report, Case No. 900 (*Spain*), para. 261; 286th Report, Case No. 1623 (*Bulgaria*), para. 506.

[14] For example: *Bulgaria*: Act of 19 Dec. 1991 respecting the property of the Bulgarian trade unions. *Hungary*: Act No. 28 of 11 July 1991 on the protection of trade union property, on equal chances of association for workers and on equal chances of operation for their organizations; Act No. 29 of 11 July 1991 on the voluntary nature of the payment of trade union membership dues. *Poland*: s. 45 of the Trade Unions Act of 23 May 1991.

[15] CFA, 286th Report, Case No. 1623 (*Bulgaria*), para. 511; 287th Report, Case No. 1637 (*Togo*), para. 82.

CHAPTER VII

Right of organizations to establish federations and confederations and to affiliate with international organizations

Introduction

189. Article 5 of Convention No. 87 provides that "Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers". Article 6 completes this right by stipulating that "The provisions of Articles 2, 3 and 4 [of the Convention] apply to federations and confederations". Convention No. 87 therefore does not merely recognize the right of organizations to establish bodies operating at higher level; it extends to the latter the same rights as are accorded to the first-level organizations.

Right of federation and confederation

190. In order to coordinate their activities and strengthen the efficacy of their action, workers' organizations generally group together in federations, either with a vertical structure covering organizations which represent the same or similar categories of workers, or with a horizontal structure representing workers of the same region in different occupations or branches of activity. Federations in turn often establish confederations at the national or inter-occupational level. Although the problems and methods of action of employers' organizations are different, the same concerns for coordination and efficiency lead them to group together in occupational or inter-occupational associations at local, regional or national level. While workers' and employers' organizations are able to exercise these rights in full freedom in many countries, [1] in others legislation subjects them to serious restrictions which may even go as far as de facto prohibition.

[1] For example: *Belarus, Côte d'Ivoire, France, Morocco, Panama, Poland, Romania, Russian Federation.*

Restrictions on the right of federation and confederation

191. The applicable restrictions are very varied, with several restrictions being cumulated in the legislation of some countries: requirement of an excessively large minimum number of member organizations;[2] prohibition on setting up more than one federation or confederation per occupation,[3] branch of activity[4] or region;[5] enumeration in the law of which federations and confederations may be legally established;[6] need to obtain prior authorization for the establishment of higher-level organizations;[7] and any other excessive conditions concerning their establishment.[8] Provisions of this kind are contrary to the clear provisions of the Convention.

192. As in the case of the establishment of first-level organizations, the most serious problems arise in countries in which the law establishes, directly or indirectly, a single trade union system (or allows only one national confederation of employers), a situation which has already been examined and analysed in Chapter III in connection with the various aspects of trade union monopoly.[9]

[2] For example: *Brazil*, five or more first-level organizations, provided they represent the majority of workers in a branch of activity or identical, similar or related occupations (ss. 534 and 535 of the Consolidated Labour Laws). *El Salvador*: at least ten workers' organizations and three employers' organizations required for the establishment of a federation; at least three workers' and employers' federations for the establishment of a confederation (s. 257 of the Labour Code). *Philippines*: ten first-level organizations for the establishment of a federation (s. 237(a) of the Labour Code).

[3] For example: *Nigeria*, s. 28 of 1973 Decree on Trade Unions.

[4] For example: *Kuwait*, trade unions are required to federate by identical activities or industries producing similar goods or supplying similar services (s. 79 of the Labour Code of 1964).

[5] For example: *Philippines*, prohibition of federations or confederations covering more than one industry in a region (s. 238 of the Labour Code).

[6] For example: *Brazil*, s. 535 of the Consolidated Labour Laws.

[7] For example: *Yemen*, arts. 154 and 158 of the Labour Code (RCE, 1994 observation on C.87).

[8] For example: *Dominican Republic*, vote of two-thirds of the members of federations required for the establishment of confederations (s. 383(2) of the Labour Code of 1992). See also CFA, 279th Report, Case No. 1581 (*Thailand*), para. 474.

[9] For example, in some countries, a central organization (*Cuba*) or a national trade union (*Kenya, Uganda*) has been set up and specifically named by legislation. See also *Ghana* (RCE, 1994 observation on C.87).

193. In some countries legislation establishes prohibitions which apply specifically to particular categories of workers, in particular agricultural workers [10] or public servants; [11] in the case of the latter, the prohibition may result implicitly from provisions which prevent them from joining organizations which may have recourse to strike action. As pointed out earlier, [12] although first-level organizations of public servants may be restricted to this category of workers, such organizations should, however, be free to join federations and confederations of their choosing, including those which also group together organizations from the private sector. As regards organizations of agricultural workers, there is no justification, in the view of the Committee, for prohibiting their affiliation to higher-level bodies which group together trade unions from other sectors.

194. Workers' and employers' choice of a higher-level organization is motivated by the same reasons as those which prompt them to group together naturally because of their common interests and problems. In addition, in view of the more general nature of the problems discussed and negotiated at this level, they may wish to form groups with a broader occupational, inter-occupational or geographical coverage. The guarantees afforded to workers' and employers' organizations therefore imply that they may group together in full freedom into federations and confederations without intervention from the public authorities. This freedom of choice must be possible even where workers' and employers' organizations have chosen a single central organization in the past, a situation which should not be institutionalized by legislation.

Restrictions on the activities of federations and confederations

195. Article 6 of the Convention stipulates that the guarantees provided to first-level organizations also apply to higher-level organizations. Therefore most of the remarks made by the Committee concerning the rights of first-level organizations, in particular as regards their internal functioning and activities, also apply, with the appropriate adjustments, to federations and confederations. Although legislation in several countries expressly or implicitly affords them these same rights, restrictions are sometimes imposed, in particular as regards

[10] For example: *Liberia*: agricultural workers may not join organizations of industrial workers (s. 4601-A of the Labour Act).

[11] For example: *Malaysia*: trade unions of workers employed by statutory authorities may only affiliate to trade unions whose membership is confined to workers employed by such authorities (s. 27 of the Trade Unions Act).

[12] See Ch. III, para. 86.

their activities, [13] strike action [14] or collective bargaining. [15] Provisions of this kind are such as to seriously hinder the development of industrial relations, in particular for small trade unions which are not always able to defend the interests of their members effectively because they are unable to recruit from their small membership a sufficient number of well trained officers. The social partners should in particular be able to choose themselves, without any interference by the authorities, the level at which to bargain collectively (central, branch or enterprise level). [16]

International affiliation

196. Article 5 of the Convention stipulates that first-level organizations, as well as federations and confederations, have the right to affiliate with international organizations of workers and employers. As was already pointed out during the preparatory work on the Convention, [17] Article 5 thus recognizes the solidarity which unites workers or employers and which is not limited to one enterprise or a specific industry or even the national economy but extends to the whole international economy. The United Nations and the International Labour Organization have formally recognized certain international organizations of workers and employers by granting them consultative status.

197. In some countries, legislation restricts the right of international affiliation by limiting it to certain organizations, [18] by requiring prior

[13] For example: *Swaziland*: federations are not allowed to exercise political activities and must limit their activities to providing advice and services (s. 33 of the Industrial Relations Act of 1980); the Committee has recalled that federations, like first-level organizations, must be able to express their opinion publicly on the Government's social and economic policy (RCE 1990, pp. 208-209).

[14] For example: federations and confederations cannot declare a strike in *Colombia* (RCE 1993, p. 182) and *Honduras* (RCE 1993, p. 203).

[15] For example: *El Salvador*: federations and confederations enjoy the same rights as first-level organizations, except the right to bargain collectively (ss. 228 and 260 of the Labour Code). As regards *Uruguay*, the Committee noted with satisfaction the repeal of the provisions which denied the right of collective bargaining to organizations other than those of the first level (RCE 1987, p. 301).

[16] See also Ch. X, para. 249.

[17] ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, p. 111.

[18] For example: *Iraq*, s. 27(8) of the Trade Unions Act of 1987. By contrast, as regards *Ethiopia*, the Committee noted with satisfaction the repeal of the provisions which gave the single central organization the exclusive right to sign agreements with international organizations (RCE 1993, p. 195); as regards *Nigeria*, the Committee noted with satisfaction the repeal of provisions which prohibited the international affiliation of trade unions (RCE 1992, p. 225).

authorization by the public authorities,[19] or by permitting it only in certain conditions established by the law. As regards measures of assistance resulting from international affiliation, legislation in some countries prohibits trade unions from receiving financial aid or subsidies from foreign organizations.[20] The Committee on Freedom of Association has received several complaints concerning cases in which the authorities restricted contacts between organizations which are members of the same international organization[21] and in which organizations or their representatives had been prevented from participating in congresses and activities of international organizations.[22] Legislative measures of this kind or acts by the authorities which have the same result pose serious difficulties with regard to the Convention.

* * *

198. *In order to defend the interests of their members more effectively, workers' and employers' organizations should have the right to form federations and confederations of their own choosing, which should themselves enjoy the various rights accorded to first-level organizations, in particular as regards their freedom of operation, activities and programmes. International solidarity of workers and employers also requires that their national federations and confederations be able to group together and act freely at the international level.*

[19] For example: *Cameroon*, occupational associations or unions of public servants may not join a foreign occupational organization if they have not obtained prior authorization from the minister responsible for the supervision of public freedoms (s. 19 of Decree No. 69/DF/7 of 1969).

[20] For example: *Philippines*, prior authorization of the minister (s. 270 of the Labour Code). See also CFA, 285th Report, Case No. 1594 (*Côte d'Ivoire*), para. 58: national associations, including trade unions, must obtain prior approval from the authorities for the financing of any project submitted through the diplomatic missions; according to the Committee, steps should be taken to ensure that these provisions do not prevent the trade unions from receiving funds from outside the country, in particular from international workers' organizations, for normal and lawful trade union purposes.

[21] For example: CFA, 243rd Report, Case No. 1269 (*El Salvador*), para. 401; 283rd Report, Case No. 1599 (*Gabon*), para. 188. *Digest*: para. 531.

[22] As regards the confiscation by the authorities of passports of trade union officials, which prevents them from participating in ILO meetings, the Committee on Freedom of Association has emphasized that while workers and their organizations should respect the legislation of their country, it is important that no delegate to a body or meeting of the ILO be prevented from carrying out his or her functions or exercising his or her mandate. Participation as a trade unionist in a meeting organized by the ILO is a fundamental trade union right; it is therefore incumbent on the government of any member State of the ILO to refrain from any measure which would prevent a representative of an employers' or workers' organization from exercising his or her mandate in full freedom and independence; in particular, a government must not withhold the documents necessary for this purpose: 254th Report, Case No. 1406 (*Zambia*), para. 470 and 262nd Report, para. 31. See also CFA, 278th Report, Case No. 1525 (*Pakistan*), para. 56.

PART II

The right to organize and collective bargaining

Introduction

199. The Right to Organize and Collective Bargaining Convention, 1949 (No. 98), deals with two different aspects of freedom of association. First, it seeks to protect workers' exercise of their right to organize vis-à-vis employers and to protect workers' and employers' organizations against interference by each other (Articles 1 to 3). Secondly, to ensure the promotion of collective bargaining, the Convention emphasizes the autonomy of the parties and the voluntary nature of negotiation (Article 4). Like Convention No. 87, Convention No. 98 leaves it to national legislation to decide whether it applies to the armed forces and the police (Article 5). On the other hand, unlike Convention No. 87, Convention No. 98 excludes some categories of public servants from its scope, by providing in Article 6 that it "... does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way".

200. Since the concept of public servant may vary considerably under the various national legal systems, the application of Article 6 may pose some problems in practice. The Committee has adopted a restrictive approach concerning this exception by basing itself in particular on the English text of Article 6 of the Convention which refers to "public servants engaged in the administration of the State" (in Spanish "los funcionarios públicos empleados en la administración del Estado" and in French "fonctionnaires publics").[1] The Committee could not allow the exclusion from the terms of the Convention of large categories of workers employed by the State merely on the grounds that they are formally placed on the same footing as public officials engaged in the administration of the State. The distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants employed in government ministries and other comparable bodies, as well as ancillary staff) who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention.[2] In this connection, the Committee

[1] *General Surveys*: 1983, para. 255; 1973, para. 138. *Digest*, paras. 597 to 606.

[2] Legislation in many countries grants these rights to public servants other than those engaged in the administration of the State, for example: *Cameroon, Poland*. However, in other countries, legislation denies them the right to collective bargaining, for example: *Colombia*: s. 416 of the Labour Code; *Malaysia*: s. 52 of the Industrial Relations Act; *Pakistan*: s. 38A-38I of the Industrial Relations Ordinance of 1969; *Panama*: s. 2 of the Labour Code.

emphasizes that the mere fact that public servants are white-collar employees is not *in itself* conclusive of their qualification as employees "engaged in the administration of the State"; if this were the case, Convention No. 98 could be deprived of much of its scope. [3]

201. In order to dissipate a confusion which sometimes appears to arise, the Committee also wishes to emphasize that the right to organize and the right to bargain collectively are two distinct matters. While certain restrictions to collective bargaining are acceptable under Convention No. 98, for instance that minority unions be prevented from bargaining collectively, this should not affect the right to organize, which is a basic feature of workers' rights.

[3] CFA, 291st Report, Case No. 1557 (*United States*), para. 278.

CHAPTER VIII

Protection against acts of anti-union discrimination

Introduction

202. The protection afforded to workers and trade union officials against acts of anti-union discrimination constitutes an essential aspect of freedom of association, since such acts may result in practice in denial of the guarantees laid down in Convention No. 87. This means in particular that anti-union dismissal cannot be treated in the same way as other kinds of dismissal, because freedom of association is a fundamental right. In the view of the Committee, this means that certain distinctions must be made, for example as regards conditions as to proof, sanctions and remedies.

203. Article 1 of Convention No. 98 provides in general terms that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment" (paragraph (1)). The scope of this protection is made explicit in paragraph (2).[1] Thus, under the terms of this instrument, workers should enjoy adequate protection against any measures of anti-union discrimination both at the time of taking up employment and in the course of employment, with recognition of freedom of association by the other party to the contract of employment being the necessary corollary to recognition of freedom of association by the State. The same guarantees are laid down for public employees by Article 4 of the Labour Relations (Public Service) Convention, 1978 (No. 151).

204. Legislation in most countries contains general or detailed provisions protecting workers against acts of anti-union discrimination. However, the degree of protection varies according to the period covered, the persons protected, the measures referred to, as well as the procedures and sanctions for ensuring compliance with protective provisions.

[1] "Such protection shall apply more particularly in respect of acts calculated to *(a)* make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; *(b)* cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours."

"Trade union security" clauses

205. Special difficulties have arisen in this connection because of the existence, in some countries, of trade union security systems making union membership or payment of union contributions compulsory, or making provision for the recruitment of workers through trade union organizations which are signatories to a collective agreement and requiring payment of contributions by workers who are not members of these trade unions. The Committee has taken into account the view expressed by the Committee on Industrial Relations of the International Labour Conference during the adoption of Convention No. 98, that this instrument should not in any way be interpreted as authorizing or prohibiting trade union security clauses and that such questions are matters for regulation in accordance with national law and practice. [2] The problems related to union security clauses should therefore be resolved at the national level, in accordance with the practice and industrial relations system of each country. [3]

Persons protected

206. In several countries, workers covered by general labour law are protected against acts of anti-union discrimination; [4] in others, however, legislation provides no general protection in this respect, [5] or denies it directly or indirectly to certain categories of workers. [6]

207. On the other hand, some legislation grants special protection to certain persons, for example, to the members of a trade union which has applied for registration or which is in the process of being established, [7] or to the

[2] ILC, 32nd Session, 1949, *Record of Proceedings*, p. 468.

[3] See also Ch. III, paras. 100-103 (trade union security).

[4] For example: *Cape Verde, Côte d'Ivoire, France, Haiti, Ireland, Italy, Luxembourg.* In the *Dominican Republic* the Labour Code now applies to categories of workers who previously did not benefit from such protection and in particular all workers in agricultural, agro-industrial, stock raising or forestry enterprises.

[5] For example: *Iraq, Sri Lanka* (RCE, 1994 observations on C.98).

[6] For example: *Libyan Arab Jamahiriya*, agricultural workers and seafarers (RCE, 1994 observation on C.98). *Jordan*: agricultural and domestic workers (RCE, 1994 observation on C.98). *Nigeria*: persons exercising managerial, technical or administrative functions, commercial travellers and other commercial agents, homeworkers, persons employed on board ships and planes.

[7] For example: *Australia*, s. 334 of the Industrial Relations Act. *Ecuador*: the Committee noted with interest that Act No. 133 to reform the Labour Code provides that employers may not dismiss any of their workers from the time that they notify the respective labour inspector that they have met in a general assembly in order to establish a workers' association until the first meeting of the executive committee (RCE 1992, p. 267).

founding members of a trade union,[8] or to trade union officers and leaders.[9] Such protection is particularly desirable for trade union officers and representatives, because in order to be able to perform their trade union duties in full independence they must have the guarantee that they will not be prejudiced on account of their trade union office; one of the ways of ensuring the protection of representatives is to providc that they may not be dismissed or otherwise prejudiced either during their term of office or for a specified period following its expiry. While certain exceptions may be made in the event of a serious offence, the importance and nature of duties performed by a trade union representative and the demands made by this kind of office should be taken into account when deciding whether an offence was actually committed and assessing its seriousness.

208. Such guarantees for trade union officers are also necessary to ensure the respect of the principle whereby workers' organizations have the right to elect their representatives in full freedom. The Workers' Representatives Convention (No. 135) and Recommendation (No. 143) contain a number of provisions which effectively supplement the principles of Convention No. 98 in this respect, in particular Paragraph 6(2)*(d)* of Recommendation No. 143 which mentions, among effective remedies in the case of unjustified dismissals, reinstatement with payment of unpaid wages and maintenance of acquired rights.

209. The Committee also draws attention to the possible repercussions of a recent tendency, seen in some industrialized countries in particular, to appoint public servants for a fixed term. Should they wish to carry out trade union activities, these workers could find themselves in a more vulnerable position than others by reason of their precarious status.

Period covered

210. The legislation in several countries guarantees protection at all times against acts of anti-union discrimination: at recruitment and during employment, including at the time of work termination.[10] In other countries such protection is afforded at the time of recruitment and during employment,[11] and in others, workers are protected only during the period of employment.[12] Furthermore, trade union officers are sometimes granted special protection for a certain period when they resume their occupational activities in the enterprise at the end of the term of trade union office to which they have been elected. Provisions of this

[8] For example: *Honduras*, s. 517 of the Labour Code.

[9] For example: *Algeria, Egypt, Finland, Hungary, India, Spain, Romania, Trinidad and Tobago.*

[10] For example: *Belgium, Congo, Germany, Madagascar, Mauritania, Panama.*

[11] For example: *Comoros, Finland, Guinea-Bissau, Hungary, Poland, Togo.*

[12] For example: *Ecuador, Lebanon, Libyan Arab Jamahiriya.*

kind ensure that trade union officers do not find themselves in an excessively vulnerable position at the end of their term of office. The Committee considers that the protection provided for in the Convention covers both the time of recruitment and the period of employment, including the time of work termination.

Acts covered

211. A worker who is the victim of anti-union discrimination at the hiring stage may face insurmountable difficulties because it will often be virtually impossible to prove that his union membership or trade union activities were the real reason for the refusal to employ him. A particularly serious problem arises concerning the establishment and use of "blacklists", the secret nature of which often makes a dead letter of the remedies laid down by ordinary legislation on the protection of privacy and confidential information — even assuming that such legislation exists. Some legislation expressly prohibits such blacklists, treating them as unfair labour practices. [13] The Committee is of the view that practices involving the "blacklisting" of trade union officials constitute a serious threat to the free exercise of trade union rights and that governments should take stringent measures to combat such practices. [14]

212. Of all forms of anti-union discrimination, dismissal is both the most obvious and the one with the most serious consequences. However, other measures may also cause serious prejudice to the worker concerned: transfer, relocation, demotion, deprivation or restrictions of all kinds (remuneration, social benefits, vocational training). In order to prevent such situations Article 1(2)(b) of the Convention covers, in addition to dismissal, acts which "otherwise" prejudice a worker by reason of union membership or because of participation in union activities. However, as in the case of discrimination in hiring, the main difficulty often concerns the possibility of proving the discriminatory nature of the measure in question. [15]

Dismissal for economic reasons

213. A special problem arises in connection with dismissals for economic reasons, which may have negative repercussions on unionized workers, and in

[13] For example: *Panama*, s. 388(1) of the Labour Code.

[14] *Digest*, para. 564. CFA, Case No. 1618 (*United Kingdom*), 283rd Report, para. 448, and 287th Report, para. 267. See also 286th Report, Case No. 1658 (*Dominican Republic*), para. 735. The Committee recently noted with satisfaction that art. 63 of the 1993 Labour Code of the *Dominican Republic* now expressly prohibits the use of "blacklists" to prevent workers from finding a job (RCE, 1994 observation on C.98).

[15] See below, paras. 217-218.

particular on union officers, if they are used as an indirect means of subjecting them to acts of anti-union discrimination, under the guise of dismissal on economic grounds. [16] Amongst other measures, the Workers' Representatives Recommendation, 1971 (No. 143) includes in Paragraph 6(2)*(f)* a provision which is likely to strengthen protection in this sphere, namely recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce. Furthermore, the Termination of Employment Convention, 1982 (No. 158), stipulates that when the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, provisions must be made for consultation with workers' representatives (Article 13) and notification of the competent authority (Article 14). Although these two provisions do not provide specific protection for unionized workers and trade union officers in the event of dismissal for economic reasons, they may help protect them against acts of anti-union discrimination. [17]

Procedures and sanctions

214. The existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. Hence the importance of Article 3 of Convention No. 98, which provides that "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize ..." as defined in Articles 1 and 2 of the Convention. Such protection against acts of anti-union discrimination may thus take various forms adapted to national legislation and practice, provided that they prevent or effectively redress anti-union discrimination, [18] and allow union

[16] For example, *Brazil*: the Committee considered that a directive from the President of the Bank of Brazil to compile a register of employees likely to be dismissed as part of the staff restructuring policy and drawing attention to the employees who "worked the least and demanded the most" is based on selection criteria likely to impair the employees' right to organize which is guaranteed by the Constitution and national legislation (RCE 1991, p. 251).

[17] Convention No. 158, which came into force in 1985, had received 20 ratifications as of 31 December 1993.

[18] For example: *Gabon*, the Committee considers that legislative provisions accompanied by sufficiently effective and dissuasive sanctions need to be adopted in order to give workers adequate protection in this respect (RCE 1991, p. 264). *Morocco*: for a number of years the Committee has stressed the need to adopt specific measures to provide effective protection to workers against acts of anti-union discrimination (RCE 1992, p. 276). *Venezuela*: noting that the new Organic Labour Act of 1990 merely prescribes fines only of a sum between one-quarter and twice the minimum wage, the Committee asked the Government to consider the adoption of sufficiently effective and dissuasive sanctions (RCE 1991, p. 292). By contrast, as regards *Uruguay*, the Committee noted with interest that Act No. 15903 of 1987 allows the administrative labour authority to impose sanctions (fines, warnings or closures of establishments) in the event of the infringement of international labour Conventions, laws, resolutions, arbitration awards or collective agreements which regulate labour relations (RCE 1989, pp. 303-304).

representatives to be reinstated in their posts and continue to hold their trade union office according to their constituents' wishes.

215. In some cases legislation establishes *preventive* machinery by requiring that certain measures taken against trade union representatives or officers must first be authorized by an independent body or public authority (labour inspectorate or industrial tribunals), [19] a trade union body or the works council. [20] In most legislation, however, the emphasis is laid on *compensation* for the prejudice suffered. [21] The bodies authorized to rule on such cases are the ordinary courts [22] or specialized bodies hearing cases dealing with industrial relations. [23] Sometimes the measure taken by the employer against the worker is suspended until the competent authority has ruled on the matter. [24]

216. Whether the machinery is based on prevention or compensation, experience has shown that similar problems arise in practice and concern in particular the slowness of the proceedings, the difficulties relating to the burden of proof and the possibility for the employer to acquit himself by paying compensation which bears no proportion to the seriousness of the prejudice suffered by the worker. The Committee therefore emphasizes the necessity of providing expeditious, inexpensive and impartial means of preventing acts of anti-union discrimination or reducing them as quickly as possible.

Evidence

217. One of the main difficulties results from placing on workers the burden of proving that the act in question occurred as a result of anti-union discrimination, which may constitute an insurmountable obstacle to compensation for the prejudice suffered. Legislation in several countries has therefore strengthened the protection of workers by placing on the employer the onus of proving that the act of alleged anti-union discrimination was connected with questions other than trade union matters, [25] and some texts expressly establish a presumption in the worker's favour. [26] Since it may often be difficult, if not impossible, for a worker to prove that he has been the victim of an act of anti-

[19] For example: *Brazil, Dominican Republic, France, India, Venezuela.*

[20] For example: *Afghanistan, Finland, Lithuania, Romania, Russian Federation.*

[21] For example: *Finland*, the Committee noted with interest that the compensation to be paid by an employer for illegal dismissals of shop stewards or of employees having participated in industrial action was raised to a minimum of three months' and a maximum of 24 months' wages (RCE 1992, p. 268).

[22] For example: *Italy, Switzerland.*

[23] For example: *Belgium, Pakistan, Trinidad and Tobago.*

[24] For example: *Italy, Japan.*

[25] For example: *Finland*, when a worker alleges that he has been dismissed for trade union activities, the employer must prove that he had sufficiently serious reasons for dismissing the worker (RCE 1991, p. 263). *Hungary*, art. 5(2) of the Labour Code of 1992.

[26] For example: *Canada* (*Quebec*) art. 17 of the Labour Code.

union discrimination, legislation or practice should provide ways to remedy these difficulties, for instance by using the methods mentioned above.

218. The Committee draws attention to the relevance of certain provisions of other ILO instruments. Thus, Article 9(2) of the Termination of Employment Convention, 1982 (No. 158), provides as follows: "In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities: *(a)* the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer; ...". Paragraphs *(a)* and *(b)* of Article 5 of the Convention provide further that union membership or participation in union activities, including acting as union representative, do not constitute valid reasons for termination. Moreover, Paragraph 6(2)*(e)* of the Workers' Representatives Recommendation, 1971 (No. 143), provides that "provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was justified."

Compensation

219. As regards the form of compensation, the Committee is of the view that its purpose must be to compensate fully, both in financial and in occupational terms, the prejudice suffered by a worker as a result of an act of anti-union discrimination, since this is a violation of a fundamental right. The best solution is generally the reinstatement of the worker in his post with payment of unpaid wages and maintenance of acquired rights. For this to be done, the authorities responsible for examining such cases, the ordinary courts or specialized bodies, should have all the necessary powers to rule rapidly, completely and in full independence and in particular to decide the most appropriate form of redress in the light of the circumstances, including reinstatement if it is requested by the worker. [27]

220. The Committee considers that legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in all cases of unjustified dismissal, when the real motive is his trade union membership or activity, is inadequate under the

[27] See also the many decisions of the Committee on Freedom of Association in this respect: 281st Report, Case No. 1510 (*Paraguay*), paras. 94 and 95; 283rd Report, Case No. 1589 (*Morocco*), para. 314; 284th Report, Case No. 1549 (*Dominican Republic*), para. 753, Cases Nos. 1588 and 1595 (*Guatemala*), para. 734; 285th Report, Case No. 1594 (*Côte d'Ivoire*), para. 50; 286th Report, Case No. 1629 (*Korea*), para. 569, and Case No. 1655 (*Nicaragua*), para. 275.

terms of Article 1 of the Convention, the most appropriate measure being reinstatement. [28]

221. Where reinstatement is impossible, compensation for anti-union dismissal should be higher than that prescribed for other kinds of dismissal. The amount should be reviewed periodically, in particular in countries with galloping inflation where the compensation soon becomes merely symbolic. In order to avoid this problem, the compensation established by the law in the event of anti-union discrimination should not be expressed in absolute figures; rather, the relevant provisions should be drafted in such a way as to retain their dissuasive effect. [29]

Penalties

222. In some countries the law provides for penal sanctions such as fines or imprisonment or both, to be imposed on employers found guilty of anti-union discrimination. [30] Such sanctions, which have the dual purpose of punishing those responsible for violating a fundamental right and of acting as a deterrent, are likely to strengthen protection against anti-union discrimination.

* * *

223. *Article 1 of Convention No. 98 guarantees workers adequate protection against acts of anti-union discrimination, in taking up employment and in the course of employment including at the time of termination, and covers all measures of anti-union discrimination (dismissals, transfers, demotions and any other prejudicial acts). The protection provided in the Convention is particularly important in the case of trade union representatives and officers, as these must have the guarantee that they will not be prejudiced on account of the union office which they hold.*

224. *The effectiveness of legal provisions, however, depends to a large extent on the way in which they are applied in practice and on the forms of compensation and sanctions provided. Legal standards are inadequate if they are*

[28] In *France*, according to a well-established jurisprudence of the "Cour de cassation", the court must order the reinstatement of workers dismissed for anti-trade union reasons, if they so request.

[29] For example: *Costa Rica*: fine up to 23 times the monthly minimum wage. *Dominican Republic*: fine 7-12 times monthly minimum wage. See also RCE 1993, para. 111.

[30] For example: *Colombia*: the Committee noted with satisfaction that s. 39 of Act No. 50 of 1990 increased the amount of sanctions applicable in the event of acts that interfere with the right of association (from five to 100 times the highest minimum monthly wage), without prejudice of penal sanctions under s. 292 of the Penal Code (imprisonment of one to five years) (RCE 1991, pp. 253-254). *Romania*: s. 48 of Act No. 54 of 1991 respecting trade unions: fine or sentence of imprisonment of six months to two years. *Swaziland*: ss. 35, 10 and 76 of the Industrial Relations Act of 1980: fine or 30 days' imprisonment.

not coupled with effective and expeditious procedures and with sufficiently dissuasive sanctions to ensure their application. Machinery for preventive protection (for example, prior authorization of the labour inspectorate in the event of dismissal) is particularly useful in this respect. The onus placed on the employer to prove that alleged anti-union discrimination measures are connected with questions other than trade union matters, or presumptions established in the worker's favour are additional means of ensuring effective protection of the right to organize guaranteed by the Convention. Legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in any case of unjustified dismissal, when the real motive is the worker's union membership or activity, is inadequate under the terms of Article 1 of the Convention. Legislation should also provide effective means for implementing means of compensation, with the reinstatement of the dismissed worker, including retroactive compensation, being the most appropriate remedy in such cases of anti-union discrimination.

CHAPTER IX

Protection against acts of interference

225. Article 2(1) of the Convention provides that "Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration". Paragraph 2 of the same Article goes on to give the example of particular acts of interference "which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations". The Convention thus completes the trade union rights recognized for individual workers by guaranteeing the free exercise of the right of association of workers' organizations; [1] it also affords employers' organizations the same protection as workers' organizations. [2]

226. Article 3 of the Convention provides that "Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles". This Article covers both the protection of workers against acts of anti-trade union discrimination and the protection of organizations against acts of interference. The principles set forth in Chapter VIII therefore also apply to the protection established in Article 2 of the Convention.

227. Legislative provisions which protect workers' and employers' organizations directly or indirectly against acts of interference by each other are often of a very general nature, either providing for the independence of trade unions vis-à-vis any other organization [3] or incorporating the terms used in Article 2 of Convention No. 98. [4]

[1] See ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, p. 114. Similar provisions are established for public servants in Article 5 of Convention No. 151.

[2] ILC, 32nd Session, 1949, *Record of Proceedings*, p. 469: the principle of equal treatment was introduced during the Conference at the request of the Employers' group.

[3] For example: *Poland, Romania.*

[4] For example: *Algeria, Antigua and Barbuda, Cameroon.*

228. Others are more specific and stipulate the measures employers are prohibited from carrying out: interference in the establishment or administration of trade unions;[5] activities aimed at restricting the right of workers to join together in trade unions or at exercising control over their organizations;[6] becoming a member of a workers' organization;[7] or using means of pressure in favour of or against any trade union organization.[8] In other countries, legislation stipulates that the competent authorities may cancel the registration of a trade union if it is set up, organized, supported or directed with the objective of opposing or impairing the workers' interests which it is supposed to defend and promote.[9]

229. It is fairly common for legislation or practice to allow employers to contribute to the financing of trade unions or to afford them certain advantages, such as premises or facilities, which could involve the risk of interference or favouritism. In the view of the Committee, while there is no objection *in principle* to an employer expressing its recognition of a trade union as a social partner in this manner, this should not have the effect of allowing the employer control over a trade union, or favouring one trade union over another.

230. Explicit protective provisions in the law are less frequent with regard to acts of interference than to acts of anti-union discrimination. Some governments consider that the trade unions in their countries are sufficiently developed and strong to be protected against any acts of interference or that, because of trade union plurality, no problem arises in this connection. Governments which have ratified the Convention are, however, under the obligation to take specific action, in particular through legislative means, to ensure respect for the guarantees laid down in Article 2. When such protection is non-existent[10] or inadequate[11] or when acts of interference are committed

[5] For example: *Uganda*, s. 56 of the Trade Unions Decree of 1976.

[6] For example: *Poland*, s. 4 of the Act of 23 May 1991 concerning employers' organizations.

[7] For example: *Greece*, s. 14(2) of Act No. 1264 of 1982.

[8] For example: *Mali*, s. 257 of the Labour Code of 1992.

[9] See, however, Ch. VI (Dissolution and suspension by administrative authority) as regards the necessary limits on the power of the competent authority in this respect, and judicial appeals against such a measure.

[10] For example: *Jordan, Sri Lanka, Swaziland, Yemen.*

[11] For example: *Bangladesh, Chad, Fiji, Gabon, Indonesia, Iraq, Liberia, Mauritius, Zaire.* By contrast, the Committee noted with interest that in *Guinea-Bissau* the Act of 1991 respecting the right to freedom of association protects trade unions against any act of interference in respect of their establishment, functioning, administration or activities; employers' organizations, under the penalty of a fine, are prohibited from favouring workers' organizations by granting them financial advantages, with the object of interfering in their functioning or subordinating them to objectives which are different from their own aims (RCE 1992, p. 269).

in practice, [12] the Committee therefore requests governments to adopt specific measures, coupled with effective and sufficiently dissuasive sanctions.

231. The specific forms of such acts of interference likely to impair the guarantees established by the Convention are very varied in nature, and it would be futile to attempt to draw up an exhaustive list. The many complaints of this kind examined by the Committee on Freedom of Association are, however, a good illustration of such interference in practice: the existence of two executive committees within a trade union, one of which was allegedly manipulated by the employer; [13] the presence of a parallel trade union which had allegedly been set up under pressure from the management; [14] dismissal of trade union officers prejudicing the existing trade union and promoting the establishment of another trade union; [15] and a member of the government who was also a leader of a trade union representing several categories of workers employed by the State. [16]

232. The Committee is of the view that legislation should make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to ensure the application in practice of Article 2 of the Convention. Moreover, to ensure that these measures receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay down these substantive provisions, as well as appeals and sanctions in order to guarantee their application.

233. The Committee would like to draw attention to the special problem of the *solidarist associations* which have been set up in some Central American countries. Solidarist associations are associations of workers which are set up dependent on a financial contribution from the relevant employer and which are financed in accordance with the principles of mutual benefit societies by both workers and employers for economic and social purposes of material welfare (savings, credit, investment, housing and educational programmes, etc.) and of unity and cooperation between workers and employers; their deliberative bodies must be made up of workers, though an employers' representative may be included who may speak but not vote. [17] In recent years, the Committee on Freedom of Association has on a number of occasions received allegations concerning interference by solidarist associations in the industrial relations sphere of the trade unions, unequal treatment accorded to trade unions and solidarist associations in legislation and practice, as well as control of the latter

[12] For example, *Morocco* (RCE 1992, p. 276).

[13] 268th Report, Case No. 1435 *(Paraguay)*, para. 391.

[14] 278th Report, Case No. 1571 *(Romania)*, para. 548.

[15] 262nd Report, Case No. 1445 *(Peru)*, para. 90.

[16] 246th Report, Case No. 1330 *(Guyana)*, para. 379.

[17] CFA, Case No. 1483, 275th Report (*Costa Rica*), para. 316. For a complete description of the solidarist philosophy, movement and associations, see CFA, Case No. 1483, 278th Report (*Costa Rica*), paras. 174-191, and in particular the report of the direct contacts mission, which essentially concerned this subject, annexed to the decision of the Committee.

by employers; all these measures often result in employer interference in trade union activities and favouritism towards solidarist associations. [18] The fact that these associations are partly financed by employers, although their members include workers as well as senior staff and personnel having the employer's confidence, and that they are often set up at the employers' initiative, means that they cannot be independent organizations, and thus often raises problems as regards the application of Article 2 of the Convention. The governments concerned should adopt legislative or other measures to guarantee that solidarist associations do not exercise trade union activities, in particular collective bargaining by means of "direct settlements" between employers and groups of non-unionized workers. Furthermore, these governments should take measures to eliminate any inequality of treatment between solidarist associations and trade unions, [19] and to ensure that employers abstain from bargaining with this type of association.

* * *

234. *Article 2 of Convention No. 98 provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other. It is important, therefore, that whenever it appears that there is insufficient protection against interference or that such acts do occur in practice, governments take specific action, in particular through legislative means, to ensure that the guarantees provided for in the Convention are respected and to give these provisions the necessary publicity to ensure that they are effective in practice.*

[18] CFA, Case No. 1483 *(Costa Rica)*, 272nd Report, para. 444 and 278th Report, paras. 174-191; 259th Report, Case No. 1459 *(Guatemala)*, para. 305; 281st Report, Case No. 1568 *(Honduras)*, para. 380, and 283rd Report, para. 268.

[19] The Committee has very recently noted substantial progress in this respect, among others, as regards *Costa Rica* (RCE, 1994 observation concerning the application of Conventions Nos. 87 and 98).

CHAPTER X

Promotion of collective bargaining

Introduction

235. Article 4 of Convention No. 98 provides that "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements". [1] This provision contains two essential elements: action by the public authorities to *promote* collective bargaining, and the *voluntary* nature of negotiation, which implies autonomy of the parties.

236. More generally, the Committee would like to express concern at two trends occurring in certain industrialized countries in particular, which have a negative impact on collective rights and hence on collective bargaining. First, in several countries there has been a recent tendency for the legislature to give precedence to individual rights over collective rights in employment matters. Second, although often dictated by objective considerations, structural change may be used to undermine the trade unions if the necessary measures are not taken by the authorities. In particular, this problem could arise in the public or semi-public sectors, where privatization often results in the fragmentation of bargaining units, and therefore of collective bargaining itself.

Promotion of collective bargaining

237. In the vast majority of countries the right of workers to negotiate their conditions of employment through collective bargaining is recognized in law or in practice. However, national legislation promotes collective bargaining in varying degrees; the main difficulties arising in practice concern the

[1] Since Convention No. 98, the ILO has adopted other instruments which deal directly or indirectly with collective bargaining, in particular: the Labour Relations (Public Service) Convention, 1978 (No. 151), and Recommendation, 1978 (No. 159); the Promotion of Collective Bargaining Convention, 1981 (No. 154), and Recommendation, 1981 (No. 163); the Collective Agreements Recommendation, 1951 (No. 91); and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92).

recognition of trade unions for the purposes of collective bargaining and the establishment of machinery and procedures to facilitate bargaining. Furthermore, special problems arise concerning bargaining in the public service.

Recognition of trade unions for the purposes of collective bargaining

238. In some countries legislation stipulates that only registered trade unions may be recognized as bargaining agents. If in addition the conditions required for registration are excessive, the development of collective bargaining may be seriously impaired. [2]

239. The recognition of one or more trade unions as partners in collective bargaining immediately raises the question of their representativity. During its discussion on Convention No. 98, the International Labour Conference referred to this question and to some extent accepted the distinction sometimes made between the various trade unions according to their degree of representativity. Furthermore, article 3, paragraph 5, of the Constitution of the ILO establishes the concept of most representative organizations. Thus, the mere fact that legislation draws a distinction between the most representative trade union organizations and other organizations is not, in itself, reason for criticism. However, such a distinction should not result in the most representative organizations being granted privileges which go beyond priority in representation for the purposes of collective bargaining, consultation by governments or the appointment of delegates to international bodies.

240. Recognition of a trade union for the purposes of collective bargaining is sometimes optional, [3] in which case the public authority should encourage employers to recognize trade unions which can prove their representativity. Recognition may also be voluntary when provided for in a bipartite or tripartite agreement [4] or where it constitutes a well-established practice. [5] In many countries, however, the legislation establishes a system of "compulsory"

[2] For example: *Bangladesh*, ss. 7(2), 22 and 22A of the Industrial Relations Ordinance; only *registered* trade unions may become bargaining agents and in order to be registered a trade union must represent at least 30 per cent of the workers of an establishment; these provisions might impair the development of voluntary collective bargaining in small establishments because they appear to inhibit the establishment of sectoral or industry unions (RCE 1991, p. 250). *Indonesia*: s. 2 of Ministerial Regulation No. 05/MEN/1987: to be registered, labour organizations must cover at least 20 provinces, 100 districts and 1,000 "labour units within companies"; since the relevant regulations also establish that only *registered* trade unions have the right to conclude agreements, the Committee considers that these requirements impose a major obstacle on the right of workers' organizations to bargain collectively (RCE 1991, p. 267; RCE 1993, p. 253). See also Ch. III, paras. 71-75.

[3] For example: *Bahamas*: s. 40 of the Industrial Relations Act.

[4] For example: *Madagascar*: s. 54 of the Labour Code.

[5] For example: *Iceland*.

recognition where the employer, under certain conditions, must recognize the existing trade union(s). The Committee considers that it is important in such cases for the determination of the trade union in question to be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse. Furthermore, when national legislation provides for a compulsory procedure for recognizing unions as exclusive bargaining agents, certain safeguards should be attached, such as: *(a)* the certification to be made by an independent body; *(b)* the representative organization to be chosen by a majority vote of the employees in the unit concerned; *(c)* the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; *(d)* the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed.

241. Problems may arise when the law stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a majority union which fails to secure this absolute majority is thus denied the possibility of bargaining. The Committee considers that under such a system, if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members.[6]

242. In other countries legislation stipulates that workers may be represented by more than one trade union, even in enterprise-level bargaining, or grants exclusive bargaining rights for a specific category of workers to the union which represents a certain proportion or a relative majority of workers. Representativity may be determined by the number of members or by secret ballot.[7] The Committee considers that, in order to encourage the harmonious development of collective bargaining and avoid disputes, it would be desirable to draw up and apply objective procedures which make it possible to determine the most representative trade unions for the purpose of collective bargaining when it is not clear which trade unions the workers would like to represent them.

[6] For example: *Ecuador*: s. 230 of the Labour Code: to be entitled to present a draft collective agreement, a trade union must cover 50 per cent of all the workers in the public sector to which the Labour Code applies or enterprises in the private sector of a social or public nature (RCE 1992, p. 267). *Jamaica*: s. 5(5) of Act No. 14 of 1975 and regulations issued under it (RCE, 1992, p. 270). *Lebanon*: s. 3 of Decree 17386/64: in order to be able to bargain, workers' representatives must obtain the support of at least 60 per cent of the Lebanese employees concerned. *Trinidad and Tobago*: s. 34 of the Industrial Relations Act: only a majority trade union covering more than 50 per cent of the workers may be recognized as a bargaining agent (RCE 1992, p. 286). *Turkey*: s. 12 of Act No. 2822 stipulates that trade unions may conclude a collective agreement only if they represent 10 per cent of the workers of a branch *and* more than half of the workers employed in an establishment (RCE, 1993, p. 257).

[7] For example: *Algeria, Botswana, Costa Rica, Greece, Pakistan, Philippines, Thailand, Venezuela.*

243. The provisions governing the recognition of trade unions are also closely linked to the obligation to bargain, which in some legislation takes the form of the obligation on the parties to "negotiate in good faith", compliance with this requirement and its consequences usually being evaluated by specialized bodies. In several countries legislation makes the employer liable to sanctions if he refuses to recognize the representative trade union,[8] an attitude which is sometimes considered as an unfair labour practice. The Committee recalls in this connection the importance which it attaches to the principle that employers and trade unions should negotiate in good faith and endeavour to reach an agreement, the more so in the public sector or essential services where trade unions are not allowed strike action.[9]

Machinery and procedures to facilitate collective bargaining

244. National legislation on the subject varies considerably; furthermore, several countries have decided to establish different systems for the public and private sectors in order to take better account of the specific characteristics of the latter.

245. Several countries provide for the setting up of joint bodies (within the enterprise or the branch of activity, or at the central or interoccupational level) within which collective agreements must be, or usually are, concluded.[10] When the conditions imposed by law for participation in these bodies are such that they prevent a trade union which would be the most representative of its branch of activity from being associated in the work of the said bodies, the principles of Convention are impaired. The Committee considers in this respect that the criteria established by the law should enable such organizations to bargain collectively. Other legislation provides for the setting up of specialized, permanent[11] or ad hoc[12] institutions whose purpose is to help promote collective bargaining by studying general problems, drawing up codes of good conduct and giving advice to the parties to help them solve particular problems

[8] Several countries have adopted legislation prohibiting some of these practices which are detrimental to collective bargaining, for example: *Antigua and Barbuda, Canada, Equatorial Guinea, Japan, Malaysia, Spain, Suriname, United Kingdom.*

[9] See Ch. V.

[10] For example: *Belgium, Cameroon, Russian Federation, Zambia.*

[11] For example: *Bangladesh*: Tripartite Consultative Committee. *Colombia*: National Labour Council. *Ireland*: Labour Relations Commission. *Italy*: National Council for Economy and Employment. *Spain*: National Consultative Commission on Collective Agreements.

[12] For example: *Comoros*: s. 80 of the Labour Code of 1984. However, the Committee believes that when an ad hoc body is set up only rarely and each time on the initiative of the Government, a system of this kind is not likely to promote collective bargaining within the meaning of Art. 4 of Convention No. 98 (RCE 1987, p. 262).

they may encounter. The specific task — though not necessarily the only task — of these institutions is to promote collective bargaining.

246. Various rules and practices are designed to facilitate collective bargaining, such as mediation and conciliation procedures — whether compulsory or voluntary — the prohibition of certain practices likely to hinder the development of collective bargaining, such as unfair labour practices;[13] provisions to facilitate access by the parties to certain information,[14] and in particular the communication to workers' organizations of information on the economic situation of the bargaining unit, the enterprise or companies in the same sector. In the view of the Committee, in the latter case, when the objectivity of such economic information is reasonably guaranteed, provisions of this kind are particularly useful, since they enable the bargaining agents to make a realistic evaluation of the situation and prevent simple errors of appreciation or poor communication from bringing about an impasse in the bargaining.

247. Whatever the kind of machinery used, its first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and an administrative structure to which they *may* have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement. Experience shows that the mere intervention of a neutral, independent third party, in which the parties have confidence, is often enough to break a stalemate which the parties would be unable to resolve themselves. The provisions of the Collective Bargaining Convention, 1981 (No. 154) are particularly useful in this respect; the accompanying Recommendation (No. 163) also lists a series of specific means which can be used to promote collective bargaining. In addition, the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), mentions some of the essential characteristics of conciliation and arbitration machinery: the joint nature of such machinery; voluntary recourse to procedures, which should be free of charge and expeditious. However, paragraph 7 of this instrument clearly recalls that none of its provisions "may be interpreted as limiting, in any way whatsoever, the right to strike".

Voluntary collective bargaining; autonomy of the parties

248. The principle of voluntary negotiation of collective agreements, and thus the autonomy of the bargaining partners, is the second essential element of Article 4 of Convention No. 98. The existing machinery and procedures should be designed to facilitate bargaining between the two sides of industry, leaving them free to reach their own settlement. However, several difficulties arise in

[13] For example: *Argentina*: s. 53 of Act No. 23551 of 1988 on trade union associations.

[14] For example: *Romania*: s. 29(2) of Act No. 54 of 1991 respecting trade unions.

this respect, and an increasing number of countries restrict this freedom to various extents. The problems most frequently encountered concern unilateral decision as to the level of bargaining; the exclusion of certain matters from the scope of bargaining; making collective agreements subject to prior approval by the administrative or budgetary authorities; observance of criteria pre-established by the law, in particular as regards wages; and the unilateral imposition of working conditions.

Level of collective bargaining

249. As was pointed out in Chapter VII, the right to bargain collectively should also be granted to federations and confederations; any restriction or prohibition in this respect hinders the development of industrial relations and, in particular, prevents organizations with insufficient means from receiving assistance from higher-level organizations, which are in principle better equipped in terms of staff, funds and experience to succeed in such bargaining. On the other hand, legislation which makes it compulsory for collective bargaining to take place at a higher level (sector, branch of activity, etc.) also raises problems of compatibility with the Convention. The choice should normally be made by the partners themselves, since they are in the best position to decide the most appropriate bargaining level, including, if they so wish, by adopting a mixed system of framework agreements supplemented by local or enterprise-level agreements.

Restrictions on the scope of bargaining

250. In some countries the nature and scope of negotiable issues are regulated by legislation, which either prescribes the discussion of certain matters to ensure that the parties themselves reach their own settlement on the major problems affecting them[15] or prohibits the discussion of certain matters for reasons of general interest or public policy.[16] Other countries set aside certain topics for the legislative authority to regulate, for example by excluding from bargaining certain matters which are normally included in conditions of employment.[17] The Committee considers that measures taken unilaterally by

[15] For example: *Angola*: s. 78 of the General Labour Act of 1981; *Chile*: s. 121 of Act No. 19069 of 1991 respecting trade union organizations and collective bargaining; *Mexico*: s. 391 of the Federal Labour Act.

[16] For example, provisions prohibiting trade union security clauses or discriminatory clauses considered as unacceptable. See also: *Guinea*: s. 298 of the Labour Code; *Niger*: s. 67 of the Labour Code; *Trinidad and Tobago*: s. 43(5) of the Industrial Relations, Act No. 23 of 1972.

[17] For example: *Malaysia*: s. 13(3) of the Industrial Relations Act of 1967, as amended in 1980: exclusion of promotions, transfers, recruitment, dismissal without notice, and assignment of jobs; however, the Government indicated that, in practice, these questions are subject to

the authorities to restrict the scope of negotiable issues are often incompatible with the Convention; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method to resolve these difficulties.

Other interventions by the authorities

251. In some countries legislation stipulates that collective agreements between the parties must be submitted for approval to the administrative authority, the labour authorities or the labour tribunal before coming into force. Provisions of this kind are compatible with Convention No. 98, provided they merely stipulate that approval may be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. On the other hand, if legislation allows the authorities full discretion to deny approval or stipulates that approval must be based on criteria such as compatibility with general or economic policy of the government or official directives on wages and conditions of employment, it in fact makes the entry into force of the collective or works agreement [18] subject to prior approval, which is a violation of the principle of autonomy of the parties.

252. The discretionary power of the authorities to approve collective agreements is by its very spirit contrary to the principle of voluntary bargaining, but this does not mean that the public authorities may not establish machinery to encourage the parties to collective bargaining to take voluntary account of government social and economic policy considerations and the protection of the public interest. However, such machinery is not likely to be supported by the

negotiations. *Singapore*: s. 17 of the Industrial Relations Act: exclusion of promotions, transfers, appointment, dismissal without notice and assignment of duties.

[18] For example: *Chad*: approval of establishment collective agreements by the Minister of Labour, who may remove clauses which are not consonant with the social and economic situation in the establishment concerned. *Libyan Arab Jamahiriya*: collective agreements may be denied if they are not in the economic interest of the country (RCE, 1994 observation on C.98). *Papua New Guinea*: discretionary power of the authorities to declare wage agreements void when they are contrary to government policy or the national interest (RCE, 1994 observation on C.98). *Singapore*: power of the Industrial Arbitration Court to refuse to register a collective agreement which is not in the public interest and to refuse to register collective agreements of newly established enterprises which contain provisions which are more favourable than those of the Employment Act (RCE, 1994 observation on C.98). *Syrian Arab Republic*: the Minister may refuse to approve a collective agreement and to cancel any clause in it which is likely to prejudice the economic interest of the country (RCE, 1994 observation on C.98). *Yemen*: compulsory registration of collective agreements, which may be cancelled if they are contrary to the security and economic interest of the country (RCE, 1994 observation on C.98). By contrast, as regards *Algeria*, the Committee noted with interest the repeal of provisions which subjected the entry into force of a collective agreement to prior approval by the Minister (RCE 1991, p. 248). As regards *Portugal*, the Committee noted with satisfaction the repeal of the provisions requiring prior authorization by the Minister for the entry into force of collective agreements concluded in a public enterprise (RCE, 1994 observation on C.98).

parties concerned if the objectives which the authorities would like to see recognized as being in the public interest are not first submitted for consultation to the parties at the appropriate level within an advisory body, for example in line with the provisions of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113).

253. The public authorities could also envisage a procedure to draw the attention of the parties in certain cases to considerations of general interest that might call for further examination by them of proposed agreements, provided, however, that preference is always given to persuasion rather than coercion. Thus, rather than making the validity of collective agreements subject to administrative or judicial approval, it might be prescribed that any collective agreement submitted to the Ministry of Labour would normally enter into force within a reasonable period after being filed; if the public authority considers that the terms of the imposed agreement are clearly contrary to the economic policy objectives recognized as being in the public interest, the case could be submitted for advice and recommendation to an appropriate joint body, provided, however, that the final decision would rest with the parties.

Compulsory arbitration

254. Another frequent problem concerns legislation which makes provision for recourse to compulsory arbitration in the event of failure of collective bargaining. Stressing that the different circumstances of the private, public and semi-public sectors may call for some qualifications, [19] the Committee considers it necessary to elaborate somewhat its views on the subject.

255. A distinction is usually made between two types of disputes: on the one hand rights disputes (sometimes also called grievances) which concern the application or the interpretation of a collective agreement [20] and, on the other hand, interest disputes which relate to the establishment of a collective agreement or to the modification, through collective bargaining, of wages and other conditions of work contained in an existing collective agreement. Only the latter are dealt with here.

256. Some confusion arises at times as to the exact meaning of the term "compulsory arbitration". If that term refers to the compulsory *effects* of an arbitration procedure resorted to voluntarily by both parties, this does not raise difficulties in the Committee's opinion since parties should normally be deemed to accept to be bound by the decision of the arbitrator or arbitration board they have freely chosen. The real issue arises in practice in the case of compulsory arbitration which authorities may impose in an interest dispute at the request of *one* party, or at their *own initiative*.

[19] See below, paras. 261-263.

[20] See Ch. V, para. 167.

257. As regards arbitration imposed by the authorities at the request of one party, the Committee considers that it is generally contrary to the principle of the voluntary negotiation of collective agreements established in Convention No. 98, and thus the autonomy of bargaining partners. An exception might however be made in the case of provisions which, for instance, allow workers' organizations to initiate such a procedure on their own, for the conclusion of a *first* collective agreement. As experience shows that first collective agreements are often one of the most difficult steps in establishing a sound bargaining relationship, these types of provisions may be said to be in the spirit of machinery and procedures which facilitate collective bargaining. [21]

258. As regards arbitration imposed by the authorities at their own initiative, the Committee considers that it is difficult to reconcile such interventions with the principle of the voluntary nature of negotiation established in Article 4 of Convention No. 98. However, it has to recognize that there comes a time in bargaining where, after protracted and fruitless negotiations, the authorities might be justified to step in when it is obvious that the deadlock in bargaining will not be broken without some initiative on their part. In view of the wide variety of legal frameworks (completed through national case-law and practice) established in the various member States to address what constitutes one of the most difficult problems of industrial relations, the Committee would only give some general guidance in this respect and suggest a few principles that could be implemented through "measures adapted to national conditions", as contemplated in Article 4 of the Convention.

259. In the Committee's opinion, it would be highly advisable that the parties be given *every* opportunity to bargain collectively, during a *sufficient period*, with the help of *independent* facilitators (mediator, conciliator, etc.) and machinery and procedures designed with the foremost objective of facilitating collective bargaining. Based on the premise that a negotiated agreement, however unsatisfactory, is to be preferred to an imposed solution, the parties should always retain the option of returning voluntarily to the bargaining table, which implies that whatever disputes settlement mechanism is adopted should incorporate the possibility of suspending the compulsory arbitration process, if the parties want to resume negotiations.

Economic stabilization measures

260. In recent years, an increasing number of governments, believing that the national economic situation required stabilization measures, have taken steps to restrict or prevent the free fixing of wages by means of collective bargaining, in particular for public servants. The Committee must, however, recall that if, under an economic stabilization or structural adjustment policy, that is for imperative reasons of national economic interest, wage rates cannot be fixed

[21] See above, paras. 244-247.

freely by means of collective bargaining, these restrictions should be applied as an exceptional measure and only to the extent necessary, should not exceed a reasonable period and should be accompanied by adequate safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected. [22]

Workers in the public and semi-public sectors [23]

261. Bargaining in the public service has special characteristics which are found in various degrees in most countries. The first reason generally given is that the State has a twofold responsibility in this sphere, since it is both employer and the legislative authority; the sometimes difficult distinction between these two roles and the virtual contradictions between them may give rise to problems. Furthermore, the State's room to manoeuvre depends very much on receipts from taxation and it is ultimately responsible to the voters for the way in which it utilizes and manages these resources in its role as employer. Lastly, according to certain legal and even sociocultural traditions, the status of public servants is incompatible with the concept of collective bargaining or even the right to organize. [24] Although the legislation in many countries guarantees the right of collective bargaining for public servants, [25] in others it is expressly denied them. [26]

262. The situation of the public service is specifically dealt with in the Labour Relations (Public Service) Convention, 1978 (No. 151), and Recommendation, 1978 (No. 159), in terms similar to those of Convention No. 98. Article 7 of Convention No. 151 does, however, allow some flexibility in the choice of methods of determining conditions of employment in the public service, since it envisages procedures enabling conditions of employment to be

[22] For example, persons with a low income, or workers subject to systemic discrimination.

[23] Although this notion differs widely from country to country, the semi-public sector might be defined as encompassing those workers who, without enjoying *all* the benefits associated with the *status* of *public servant*, are employed by bodies which render services to the public and have some autonomy in their management, but which are financed, at least in part, by public funds. In the *United Kingdom* for instance, Quasi Autonomous Non-governmental Organizations (QUANGOs) would belong to this category.

[24] See Ch. III (Recognition of the right to organize in the public service).

[25] For example: *Argentina, Belgium, Guatemala, Italy, Portugal, Spain.*

[26] For example: *Colombia*: prohibition for trade unions of certain public employees ("empleados públicos") to conclude collective labour agreements (RCE, 1994 observation on C.98). *Iraq*: workers considered under national legislation as public officials, as well as persons employed by the State or autonomous public enterprises and institutions (teachers, for example) do not have the right to bargain collectively (RCE 1991, p. 268). *Liberia*: employees of state enterprises and other authorities excluded from the scope of the Labour Code to bargain collectively (RCE 1993, p. 254). *Pakistan*: employees of banking and financial institutions in the nationalized sector (RCE, 1994 observation on C.98).

negotiated between the public authorities and the organizations concerned, or "such other methods as will allow representatives of public employees to participate in the determination of these matters". As already noted, while Article 6 of Convention No. 98 allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages. [27]

263. While the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by the Convention, the special characteristics of the public service described above require some flexibility in its application. Thus, in the view of the Committee, legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall "budgetary package" within which the parties may negotiate monetary or standard-setting clauses (for example: reduction of working hours or other arrangements, varying wage increases according to levels of remuneration, fixing a timetable for readjustment provisions) or those which give the financial authorities the right to participate in collective bargaining alongside the direct employer are compatible with the Convention, provided they leave a *significant* role to collective bargaining. It is essential, however, that workers and their organizations be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts. [28]

264. This is not the case of legislative provisions which, on the grounds of the economic situation of a country, impose unilaterally, for example, a specific percentage increase and rule out any possibility of bargaining, in particular by prohibiting the exercise of means of pressure subject to the application of severe sanctions. The Committee is aware that collective bargaining in the public sector "... calls for verification of the available resources in the various public bodies or undertakings, that such resources are dependent upon state budgets and that the period of duration of collective agreements in the public sector does not always coincide with the duration of budgetary laws — a situation which can give rise to difficulties." [29] The Committee therefore takes full account of the serious financial and budgetary difficulties facing governments, particularly during periods of prolonged and

[27] See paras. 200-201.

[28] The Committee recalls the observations which it made on the subject of the application by *Spain* of Convention No. 154: "... in so far as the income of public enterprises and bodies depends on state budgets, it would not be objectionable — after wide discussion and consultation between the concerned employers and employees' organizations in a system having the confidence of the parties — for wage ceilings to be fixed in state budgetary laws. Neither would it be a matter for criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect for such ceilings" (RCE 1989, p. 469; RCE 1991, p. 465).

[29] CFA, 287th Report, Case No. 1617 (*Ecuador*), para. 63.

widespread economic stagnation. However, it considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants; where the circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected. In other words, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the parties to bargaining, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other.

* * *

265. *The two essential elements of Article 4 of Convention No. 98 refer to action by the public authorities to promote bargaining between the social partners and the voluntary nature of such bargaining. In the view of the Committee, it would be contrary to the principles of Convention No. 98 to exclude from collective bargaining certain issues such as those relating to conditions of employment, to make a collective agreement subject to prior approval before it can enter into force, or to allow it to be cancelled on the grounds that it runs counter to the government's economic policy. The parties in interest disputes should be given every opportunity to bargain collectively, during a sufficient period, with the help of independent mediation or conciliation. The government should endeavour to convince the parties to have regard voluntarily in their negotiations to major economic and social policy considerations and the general interest invoked by the government. If, for compelling reasons of national economic interest, a government considers that the wage rates cannot be fixed freely by means of collective negotiations, such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards. In the case of negotiations in the public or semi-public sector, intervention by the authorities is compatible with the Convention in so far as it leaves a significant role to collective bargaining. Measures which unilaterally fix conditions of employment should be of an exceptional nature, be limited in time and include safeguards for the workers who are the most affected.*

PART III

Highlights of the last decade
Ratification of Conventions: Difficulties and prospects

CHAPTER XI

Highlights of the last decade

I. Implementation of Convention No. 87

Major cases of progress

266. Since 1983, the Committee has been able to express satisfaction in about 50 cases regarding amendments introduced by various member States in legislation or practice in order to give effect to its comments and observations, supported or taken up in some cases by the conclusions and recommendations of the Committee on Freedom of Association, the Conference Committee on the Application of Standards, or both. Such changes have been noted in the following countries: *Algeria, Argentina, Bangladesh, Belarus, Bulgaria, Burkina Faso, Cameroon, Canada, Colombia, Congo, Costa Rica, Cyprus, Dominican Republic, Egypt, Ethiopia, Finland, France (French Polynesia), Greece, Guatemala, Guinea, Hungary, Iceland, Lesotho, Madagascar, Mali, Mauritania, Mongolia, Netherlands, Nicaragua, Nigeria, Paraguay, Peru, Philippines, Poland, Romania, Russian Federation, Rwanda, Ukraine, Uruguay, Venezuela.* [1] These improvements, which are substantial both in number and in importance, bear witness to the vitality and relevance of the ILO's system of supervision of the application of standards; they also reflect the essential contribution of tripartism in this process.

267. The key landmark in the last decade in this area has undoubtedly been the transition in many countries from a situation of trade union monopoly, most often enshrined in legislation, to a system allowing trade union pluralism. [2] While this change took place in the Central and Eastern European countries in particular, [3] substantial developments have also been seen in this area in several African countries [4] and in Latin America. [5] This movement towards trade union

[1] Several cases of progress have been noted for some of these countries.

[2] See also Ch. III, para. 93.

[3] For example: *Belarus* (RCE 1991, pp. 153-154 and RCE 1993, p. 174); *Bulgaria* (RCE 1991, p. 152); *Hungary* (RCE 1991, p. 181); *Poland* (RCE 1990, p. 204); *Romania* (RCE 1991, pp. 206-207); *Russian Federation* (RCE 1991, pp. 215-216); *Ukraine* (RCE 1991, p. 215).

[4] For example: *Algeria* (RCE 1991, p. 143); *Cape Verde* (RCE, 1994 observation on C.98); *Congo* (RCE 1993, p. 184); *Ethiopia* (RCE 1993, p. 195); *Rwanda* (RCE 1993, pp. 225-226).

[5] For example: *Paraguay*.

pluralism, which reflects political democratization, was in most cases accompanied by the dissolution of links between the political party in power and workers' organizations and was manifested in an increased autonomy of the latter with respect to the authorities. Nevertheless, the Committee intends to carefully monitor the measures which will be taken in these countries to guarantee a genuine opportunity for pluralism of workers' and employers' organizations, since laying down this principle in the statutes is not always enough to ensure that it is applied in practice.

268. Significant improvements have also been achieved in other areas: extension of the right of association to certain categories of workers;[6] establishment of organizations without prior authorization;[7] right of organizations to elect their representatives in full freedom,[8] to organize their administration[9] and their meetings freely;[10] increased autonomy of trade union organizations with respect to the public authorities;[11] and the possibility for organizations to become involved in certain political matters.[12] As regards the right to strike, several improvements have been noted in the general recognition of this right,[13] its extension to certain categories of workers,[14] the legality of certain types of strike or industrial action[15] or more flexible procedures leading

[6] Public servants: *Guatemala* (RCE 1987, pp. 185-186); *Mali* (RCE 1991, pp. 186-187); *Paraguay* (RCE, 1994 observation on Convention No. 87); *Peru* (RCE 1985, p. 177). University teachers: *Canada (British Columbia)* (RCE 1993, p. 178). Domestic employees: *Ethiopia* (RCE 1993, p. 195). Workers in free trade zones: *Dominican Republic* (RCE 1993, p. 191). Agricultural workers: *Costa Rica* (RCE, 1994 observation on C.87).

[7] *Colombia* (RCE 1991, p. 159); *Peru* (RCE 1991, p. 201); *Venezuela* (RCE 1991, p. 223).

[8] Exercise of trade union office by foreigners: *Cameroon* (RCE 1993, p. 176); *Guinea* (RCE 1989, p. 174). Exercise of trade union office by persons not employed in the occupation: *Cyprus* (RCE 1992, p. 211); *Greece* (RCE 1985, p. 150); *Nicaragua* (RCE 1984, p. 150). Re-election of trade union officers: *Nicaragua* (RCE 1984, p. 150); *Venezuela* (RCE 1991, p. 223).

[9] *Colombia* (RCE 1992, p. 207); *Nicaragua* (RCE 1984, p. 150); *Philippines* (RCE 1990, pp. 202-203); *Venezuela* (RCE 1991, p. 223).

[10] *Colombia* (RCE 1992, p. 207); *Dominican Republic* (RCE 1985, p. 137); *Nicaragua* (RCE 1984, p. 150).

[11] *Argentina* (RCE 1989, pp. 125-126); *Guinea* (RCE 1988, pp. 160-161); *Madagascar* (RCE 1991, pp. 185-186); *Mongolia* (RCE 1993, pp. 213-214).

[12] *Colombia* (RCE 1992, p. 207).

[13] *Algeria* (RCE 1991, p. 143); *Argentina* (RCE 1984, p. 134); *Belarus* (RCE 1993, p. 174); *Bulgaria* (RCE 1991, p. 152); *Hungary* (RCE 1991, p. 181); *Nicaragua* (RCE 1985, p. 170); *Poland* (RCE 1992, pp. 235-236); *Russian Federation* (RCE 1991, pp. 215-216); *Uruguay* (RCE 1987, p. 241).

[14] Employees of the State and decentralized bodies: *Guatemala* (RCE 1987, p. 185). Public servants: *Mali* (RCE 1991, pp. 186-187). Career members of the public service: *Paraguay* (RCE, 1994 observation on Convention No. 87). *Peru* (RCE 1985, p. 176).

[15] *Dominican Republic* (RCE 1993, p. 190).

up to the launching of a strike.[16] Lastly, mention should also be made of significant improvements as regards the right of organizations to establish federations and confederations[17] and to affiliate to international organizations.[18]

Major difficulties

269. In spite of these numerous and substantial improvements, the Committee cannot but note, both on the basis of reports submitted by Governments under articles 19 and 22 of the Constitution, and other information at its disposal (reports of the Committee on Freedom of Association, reports of direct contacts missions, debates at the Conference Committee on the Application of Standards) that serious, and sometimes persistent, difficulties still arise as regards compliance with fundamental rights guaranteed by Convention No. 87.

270. One of the main difficulties concerns the maintaining of trade union monopoly[19] but problems also persist in countries where a system of single trade union is imposed in the form of a single central trade union organization,[20] or when legislation prohibits the coexistence of more than one trade union in the same branch of activity, establishment, region, etc.[21]

271. In other countries, certain categories of workers who should enjoy the right of association under the terms of the Convention are still denied this right: public servants,[22] agricultural workers,[23] seafarers,[24] firefighting personnel,[25] prison staff,[26] workers in export processing zones,[27] and employees in the customs service, in mints, in the central bank and in external telecommunications.[28]

[16] *Greece* (RCE 1990, p. 190).

[17] *Nicaragua* (RCE 1984, p. 150); *Peru* (RCE 1991, p. 201).

[18] *Nigeria* (RCE 1992, p. 225).

[19] For example: *China*, *Indonesia*, *Myanmar*.

[20] For example: *Cuba* (RCE 1993, p. 189); *Egypt* (RCE 1993, p. 194); *Gabon* (RCE 1993, p. 195); *Kuwait* (RCE 1993, p. 205); *Nigeria* (RCE 1993, p. 216).

[21] For example: *Brazil*; *Gabon* (RCE 1993, p. 195); *Kuwait* (RCE 1993, p. 205); *Mexico* (RCE 1993, p. 210); *Nigeria* (RCE 1993, p. 216); *Sri Lanka*.

[22] For example: *Bolivia* (RCE 1993, p. 175); *Chad* (RCE 1993, p. 181); *Ecuador* (RCE 1993, p. 193); *Liberia* (RCE 1993, p. 207).

[23] For example: *Honduras* (RCE 1993, p. 203).

[24] For example: *Greece* (RCE 1993, p. 199); *Madagascar* (RCE 1993, p. 207).

[25] For example: *Japan* (RCE 1993, p. 204).

[26] For example: *Swaziland* (RCE 1993, p. 229).

[27] For example: *Pakistan* (RCE 1993, p. 217).

[28] For example: *Nigeria* (RCE 1993, p. 216).

272. The legislation in some countries continues to impose excessive restrictions on eligibility or re-election to trade union office, in particular as regards the obligation to belong to the occupation, [29] and nationality. [30]

273. In several countries, trade unions come up against various obstacles when they wish to obtain registration, in particular when the legislation requires prior authorization of the executive or administrative authorities. [31]

274. The legislation in several countries allows the authorities to intervene or even interfere in the functioning of organizations, either by granting them discretionary power to inspect trade union documents, [32] sweeping powers to control trade union activities or to restrict the administration of trade union property. Some difficulties also persist as regards the suspension and dissolution of organizations by administrative authority. [33]

275. Lastly, substantial and persistent problems arise as regards the recognition or the exercise of the right to strike: general prohibition or prohibition in certain non-essential sectors, mandatory arbitration, excessive conditions making strikes impossible, absence of adequate guarantees as regards discriminatory measures against strikers, or sanctions for holding a strike. [34]

276. Recalling its comments in Part I on these matters, the Committee considers that several minor difficulties could be smoothed out or even resolved by means of provisions allowing a certain amount of flexibility. As regards more fundamental problems arising out of the philosophy itself of a given legal system, the Committee would remind those governments which have expressed their intention of bringing their legislation into conformity with the Convention that they may avail themselves of the technical assistance of the ILO, initially to identify those problems — real or assumed — deterring them from ratifying this Convention, and then to explore possible solutions.

[29] For example: *Central African Republic* (RCE 1993, p. 180); *Colombia* (RCE 1993, p. 182).

[30] For example: *Ecuador* (RCE 1993, p. 193); *Kuwait* (RCE 1993, p. 205); *Rwanda* (RCE 1993, p. 226).

[31] For example: *Bolivia* (RCE 1993, p. 175); *Cameroon* (RCE 1993, p. 176); *Ghana* (RCE 1993, p. 198); *Haiti* (RCE 1993, p. 202); *Swaziland* (RCE 1993, p. 229).

[32] For example: *Bangladesh* (RCE 1991, p. 148).

[33] For example: *Ecuador* (RCE 1993, p. 193); *Senegal* (RCE 1993, p. 226); *Yemen* (RCE 1993, p. 239).

[34] See Ch. V, paras. 176-178.

II. Implementation of Convention No. 98

Major cases of progress

277. Since 1983, the Committee has expressed satisfaction in about 20 cases regarding measures taken by various member States, following the Committee's observations, to bring their legislation and practice into conformity with the provisions of Convention No. 98. Such changes have been noted in the following countries: *Bangladesh, Belgium, Brazil, Cape Verde, Colombia, Costa Rica, Dominican Republic, Ethiopia, Finland, Guatemala, Guinea-Bissau, Malta, Panama, Paraguay, Poland, Portugal, Uganda, Uruguay.*[35] As in the case of Convention No. 87, the Committee on Freedom of Association and the Conference Committee on the Application of Standards have contributed substantially to the search for a positive outcome to serious and sometimes persistent problems. The Committee views this as additional proof of the virtue of tripartite dialogue.

278. These cases of progress mainly concern measures strengthening the protection against anti-union discrimination[36] and introducing various improvements in collective bargaining: restoring the autonomy of the parties[37] or granting the right to bargain collectively to state employees.[38]

Major difficulties

279. The Committee must, however, point out that there remain a fair number of problems, some of them persistent, as regards the application of Convention No. 98.

280. As regards measures of protection against anti-union discrimination, the legislation of several countries fails to ensure satisfactorily the guarantees laid down in the Convention, in particular because provisions are non-existent or not sufficiently dissuasive,[39] or because they exclude certain categories of

[35] Several cases of progress have been noted for some of these countries.

[36] For example: *Brazil* (RCE 1989, pp. 264-265); *Cape Verde* (RCE 1992, p. 266); *Colombia* (RCE 1991, pp. 253-254); *Costa Rica* (RCE, 1994 observation on C.98); *Dominican Republic* (RCE, 1994 observation on C.98); *Finland* (RCE 1989, pp. 275-276); *Guinea-Bissau* (RCE 1988, p. 197).

[37] For example: *Belgium* (RCE 1989, p. 263); *Guinea-Bissau* (RCE 1988, p. 197); *Panama* (RCE, 1994 observation on C.98); *Poland* (RCE 1992, pp. 282-283); *Uruguay* (RCE 1987, p. 301).

[38] For example: *Guatemala* (RCE 1989, pp. 277-278); *Paraguay* (RCE, 1994 observation on C.98); *Uganda* (RCE, 1994 observation on C.98).

[39] For example: *Cameroon* (RCE 1993, p. 251); *Gabon* (RCE 1991, p. 264); *Indonesia* (RCE 1993, p. 252); *Iraq* (RCE 1991, p. 267); *Morocco* (RCE 1992, p. 275); *Peru* (RCE, 1994 observation); *Sri Lanka* (RCE 1991, p. 283); *Venezuela* (RCE 1990, p. 246); *Yemen* (RCE 1993, p. 257).

workers.[40] Much of this legislation also lacks provisions, or makes inadequate provision, for protection against acts of interference.

281. Intervention by the authorities in the collective bargaining process also remains a matter of concern for the Committee, whether in the form of denial of the right to bargain collectively to certain categories of workers (domestic personnel, agricultural workers, public servants), approval of collective agreements by the authorities, restrictions on subjects for bargaining, or repeated intervention by government in the bargaining process.[41]

282. Referring to its comments on these subjects in Part II, the Committee emphasizes that systems allowing a certain flexibility are helpful in settling minor difficulties; as regards the other problems, it would remind in particular those governments which have expressed an intention to bring their legislation into conformity with the Convention that they may avail themselves of ILO technical assistance, initially to identify those problems constituting a real or assumed obstacle to ratification, and then to explore possible solutions.

* * *

283. *While the Committee has been able to note significant positive changes since the last General Survey as regards the right of association and collective bargaining, it cannot but note that in some countries, serious — and sometimes persistent — difficulties still remain with respect to the fundamental rights guaranteed by Conventions Nos. 87 and 98. However, to conclude that these problems are widespread or that the situation is worsening would be to overlook the fact that, for a good many countries, the Committee has not made observations on these instruments during this period in its annual reports under article 22 of the Constitution. However, any supervisory system, by its very nature, tends to draw attention to difficulties, which are likely to be highlighted as long as a satisfactory solution has not been found. The Committee emphasizes that, far from trying to impose a uniform model of labour relations legislation, it endeavours, in cooperation with the other supervisory bodies, to open up a dialogue with member States with the aim of bringing national legislation into conformity with the Conventions. It recalls that member States may avail themselves of ILO technical assistance if they experience problems of implementation of the Conventions.*

[40] For example: *Libyan Arab Jamahiriya* (RCE 1992, p. 272) (seafarers). *Jordan* (RCE 1992, p. 271) (domestic personnel, agricultural workers). *Pakistan* (RCE 1992, p. 277) (workers employed in export processing zones).

[41] See Ch. X.

CHAPTER XII

Ratification of Conventions: Difficulties and prospects

I. Convention No. 87

New ratifications

284. The Committee notes with satisfaction that Convention No. 87 has been ratified by the following member States since 1983: *Burundi, Latvia, Rwanda, San Marino, Sao Tome and Principe, Turkey*. In addition, the following member States have officially informed the ILO that they remain bound by the Convention which was applicable to their territory: *Azerbaijan, Belize, Bosnia and Herzegovina, Croatia, Czech Republic, Kyrgyzstan, Russian Federation, Slovakia, Slovenia, Tajikistan*. This brings the total number of ratifications of Convention No. 87 to 109 as at 31 January 1994. [1]

Ratifications in progress or considered

285. The Committee notes with interest that the Government of *Estonia* states that there are no obstacles to the application of the Convention and announced in May 1993 that it would be submitted to Parliament for ratification. The Committee welcomes this initiative and trusts that the formal process of ratification will be rapidly completed.

286. The Government of *Cape Verde* states that it has begun the process with a view to ratifying the Convention since the necessary conditions already exist in legislation. The Government of *Iraq* states that it intends to adopt the necessary measures to bring its legislation into conformity with the provisions of the Convention, which will be examined with a view to ratification. The Committee notes the intention stated by these Governments and invites them to pursue and speed up the process leading up to ratification, if necessary with the technical assistance of the ILO.

Other cases

287. The Committee notes however that several other countries state that they are not in a position to ratify the Convention, citing various difficulties, [2]

[1] See Annex IV for the complete list of ratifications.

[2] *Botswana, Brazil, Cambodia, El Salvador, Kenya, Republic of Korea, Malaysia, Morocco, Sri Lanka, United States* (see below for the reasons cited).

or do not take up any position on the question of ratification.[3] In the latter group, some countries state that the provisions of the Convention will be considered at a later date, in some cases with the assistance of a body set up for that purpose, while others point out more generally that their legislation is, on the whole, compatible with the Convention or adequately governs the rights of workers' and employers' organizations.

Difficulties delaying or preventing ratification

288. Pointing out that freedom of association is enshrined in the country's Constitution, the Government of *Botswana* adds that it is also protected by legislation (the Trade Unions and Employers' Organizations (Amendment) Act, 1992) and by the guiding principles contained in certain documents outlining its policy in these matters (Government Paper No. 1 of September 1990). The latter provides, for example, that aspects of industrial relations legislation which may inhibit collective bargaining and the development of trade unions should be reviewed and abolished where necessary. Improvements have thus been introduced as regards the drafting of organizations' rules, the election of trade union officers, and affiliation to federations and international organizations; a provision entitling the Labour Minister's representative to attend every meeting of trade union federations has been repealed. However, the Government states that the Convention cannot be ratified at this time in view of the incompatibility of certain provisions of national legislation with Convention No. 87, in particular the power of the minister to dissolve trade unions, the need for unions to obtain previous authorization to affiliate with international organizations, and to observe certain guidelines in order to qualify for registration.

289. The Government of *Brazil* considers that two provisions of national legislation could give rise to difficulties with respect to the Convention, that is those prescribing a single trade union system at branch level and imposing the financing of trade union organizations by means of a compulsory contribution fixed by their general assembly (articles 8 II and IV of the Constitution).

290. According to the Government of *Cambodia*, the main difficulty preventing or delaying the ratification of the Convention is the absence of a law on trade unions, although the Labour Code and some Ministerial Regulations ("Prakas") give effect to some provisions of the Convention. It adds that the elaboration of a trade unions act is currently under study. The Committee recalls that the ILO may provide its technical assistance to the Government in this matter.

291. The Government of *El Salvador* raises the question of the armed forces and the police, which are governed by special legislation. As it had

[3] *Angola, Chile, China, Grenada, Indonesia, Islamic Republic of Iran, Lebanon, Malawi, Mauritius, New Zealand, Saudi Arabia, Singapore, Sudan, United Republic of Tanzania, Thailand, Uganda, Zambia, Zimbabwe.*

already emphasized in the General Surveys of 1973 and 1983,[4] the Committee recalls that according to Article 9 of the Convention, the extent to which the guarantees provided for in the Convention apply to the armed forces and the police is to be determined by national law and regulations: consequently, States ratifying the Convention are free to decide on the extent to which such workers shall enjoy the right to organize, if at all. The Government also mentions that several provisions prohibit the right to strike in the public sector and in essential services, where the settlement of labour disputes may be imposed by means of compulsory arbitration; the Committee refers to its comments on this subject in this Survey.[5] Noting in addition that *El Salvador* has recently received technical assistance from the ILO, including a direct contacts mission, on these matters in particular,[6] the Committee trusts that this enabled the Government to identify the discrepancies with respect to the Convention and to envisage possible solutions.

292. Referring to the relative stability of its legislation concerning freedom of association, the Government of the *United States* essentially reiterates the information supplied for the previous General Survey. Constitutional provisions guarantee workers and employers the right to establish organizations, without prior authorization or government interference. The main machinery for the settlement of disputes lies in the obligation on both parties to bargain in good faith, with the option of seeking the assistance of the Federal Mediation and Conciliation Service. In general, workers have the right to strike, and employers the right to continue operations during the strike, if necessary by hiring workers not employed in the enterprise; if the strike is what is known as an "economic strike" the employer is not required to re-employ the workers at the end of the dispute, but only to place them on a preferential re-hire list. Federal employees generally do not have the right to strike, as this is considered to be against the public interest; federal employees who do strike are subject to termination of employment and possible criminal penalties. At the request of the President of the United States, a federal district court may impose an injunction if it finds that a strike or lock-out threatens an entire industry or a substantial part thereof, and will imperil the national health and safety. The Government states that although no recent in-depth tripartite analysis has been performed regarding this Convention, federal legislation appears to be in general conformity with the Convention: no additional measure is envisaged, including as regards ratification of the Convention. The draft report of the Government was reviewed by the Tripartite Advisory Panel on International Labour Standards (TAPILS).

293. The Government of *Kenya* states that the present level of social and economic development prevents ratification of the Convention. The Committee recalls in this respect that the Conventions on freedom of association are part of fundamental human rights and cannot be called into question for purely

[4] *General Survey*, 1983, para. 368.

[5] Chapter V, in particular paras. 156-162.

[6] CFA, 291st Report, Cases Nos. 1273, 1441, 1494 and 1524, paras. 228-246.

economic reasons. The Government also considers that a problem arises concerning the armed forces and the police; the Committee refers to its comments above in this respect. Among the other difficulties preventing it from ratifying the Convention at this stage, the Government of Kenya mentions that trade unions are subject to registration. According to the Government, other provisions of national legislation should be amended in order bring it into conformity with the requirements of the Convention, in particular: the discretionary powers of the Registrar to refuse registration or deregister a trade union and the provisions requiring that union officials, except the secretary-general, should be connected with a particular industry. The Government adds that it continues to encourage the development of a few, but strong, viable and independent workers' and employers' organizations.

294. The Government of *Lebanon* mentions the fact that trade unions must obtain previous authorization to be set up as a difficulty which may impede ratification of the Convention. It adds, however, that this authorization is not granted by the State in a discretionary manner but is dictated by the need to provide rules and authority for the organization of trade union activity, and points out that these provisions have not prevented a substantial number of workers' and employers' organizations from being set up. The Committee emphasizes in this respect that regulations concerning the establishment of organizations are not in themselves incompatible with the Convention, unless they impair the guarantees laid down in the Convention. [7] Noting that in order to bring the Labour Code up to date, the authorities have recently set up a committee of specialists which should, among other things, study the possibility of taking the provisions of the Convention into account, including in the examination of a new planned trade union structure, the Committee reminds the Government that it may avail itself of ILO technical assistance for this purpose.

295. The Government of *Malaysia* mentions that the main difficulty preventing ratification of the Convention is that it would enable the formation of general unions which might be led by persons having nothing to do with the activities or interests represented by the unions and pursuing political or even subversive aims. According to the Government, the present system contributes to the orderly growth of trade unions, which in turn contributes to industrial harmony in the country.

296. According to the Government of *Morocco*, the Dahir of 1957 on organizations of employers and workers drew its inspiration to a large extent from the Convention and its provisions are mostly in conformity with it. However, the Convention has not been ratified due to provisions in legislation requiring that candidates to the executive committee and administration of trade unions be of Moroccan nationality and be in full possession of their civil and political rights. Noting that the Government had already raised this point in its

[7] See paras. 68-78.

report for 1983,[8] the Committee refers to its remarks in this survey,[9] pointing out that a formula which would allow a certain amount of flexibility would enable to overcome this minor difficulty.

297. The Government of *New Zealand* states that there have been substantial changes recently in the industrial relations legislation with the entry into force of the Employment Contracts Act 1991. As regards difficulties which may prevent or delay the ratification of the Convention, the Government mentions that the new Act leaves employers and employees free to choose whether they will associate collectively and if so, with whom. The Committee refers in this respect to its comments in the present Survey concerning trade union security.[10] The Government adds that, although strikes and lockouts are allowed in support of negotiations for an expired collective agreement, a problem could arise relating to certain restrictions on the right to strike, such as strikes a trade union would like to hold in order to secure an employment contract covering more than one enterprise; according to it, this provision is intended to protect the right of employers and employees to choose the coverage of employment contracts. The New Zealand Council of Trade Unions considers that these prohibitions constitute a fundamental restriction on the right to organize and to bargain collectively.

298. According to the Government of *Sri Lanka*, the main difficulties preventing ratification of the Convention at this stage are restrictions imposed on public servants and their organizations (prohibition on setting up more than one public servants' trade union for the same government department or service, prohibition on such unions from being affiliated or federated with any other trade union, whether in the private or the public sector, prohibition on pursuing political objectives or having political funds, prohibition on public servants from joining a trade union admitting private sector employees, and prohibition on any person who is not a public officer being admitted to membership of any public servants' trade union), and the power conferred on the Minister of Labour to refer any dispute for compulsory arbitration and broad powers of the Registrar to cancel registration of a union. The Government adds that the law requires that not less than half of the total number of officers must be employed in the industry or occupation concerned; on this last point, the Committee recalls that provisions of this kind do not pose problems with regard to the Convention when they only affect some of the trade unions' officers, which seems to be the case here. As for the other difficulties cited by the Government, the Committee refers to the comments it has made in this survey concerning the right to organize of public servants, the structure and composition of public servants' organizations (Ch. III), political activities of trade unions (Ch. IV), the prohibition on strike action (Ch. V) and the dissolution and suspension of organizations by administrative authority (Ch. VI).

[8] *General Survey*, 1983, para. 371.

[9] Chapter IV, paras. 118 and 120.

[10] Chapter III, paras. 100-103.

Other information

299. The Government of *Angola* states that inspiration was taken from the Convention in drafting the new Act respecting trade unions and that legislation has been extensively amended in order to give effect to the Convention.

300. The Government of *China* considers that the provisions of national legislation on this subject, in particular those of the Constitution, are in conformity with the fundamental principles and spirit of the Convention. Trade unions are mass organizations of the working class which should abide by the Constitution and the law, devote themselves to the unity of the country and the nation and should not infringe on the interests of the State and society, or the legitimate rights and freedom of other citizens.

301. The Government of *Malawi* states that national legislation guarantees the principles laid down in the Convention. However, the Government intends to review the labour legislation in order to accommodate developments and changes in the field of labour administration. This review will take account of the provisions of the Convention. The Committee reminds the Government that it may avail itself of ILO technical assistance for this purpose.

302. According to the Government of *Uganda*, the provisions of the Convention have been incorporated in the Trade Unions Decree, No. 20 of 1976. It states that there are now 15 legally registered trade unions; at the national level, affiliation is limited to one recognized central body, in view of past experience and problems occurring with a multiplicity of trade unions. According to the Government, the Trade Unions Decree also imposes certain restrictions on trade union activities, in that it requires a minimum number of members for registration of a trade union and confers broad powers on the Registrar to refuse registration or dissolve a trade union.

303. The Government of *Sudan* states that its labour relations legislation, which guarantees equal rights for workers' and employers' organizations, is in full conformity with, and even exceeds the requirements of the Convention, in particular as regards freedom to establish and administer trade unions. Moreover, legislation adequately protects their freedom of activity.

304. The Government of *Singapore* states that the national industrial relations system emphasizes consultation and the amicable resolution of industrial disputes through conciliation and arbitration; it has made it possible to improve the standard of living of the workers, who enjoy the right to organize, trade union membership having increased over the last seven years. The Government considers that there is no need to modify existing legislation and practice, but nevertheless notes the provisions of the Convention.

305. The Government of the *United Republic of Tanzania* states that with the recent adoption of a multi-party system, the ties between the workers' union and the single ruling party were severed and that various trade unions were set up. Referring to several provisions in the labour legislation which appear to be in conformity with the Convention, the Government points out however that, under the current legislation, the Organization of Tanzania Trade Unions

(OTTU) remains the sole body representative of all employees in the country; the relevant provisions have been scrutinized by the Government, employers and workers, who proposed that they be amended if the Convention is to be ratified. The Government foresees adoption of measures in the future which will give effect to those provisions of the Convention not yet covered by the national legislation and practice. The Committee notes these positive developments and recalls that the Government may avail itself of the technical assistance of the Office in this respect.

306. The Government of *Zambia* states that consultations are currently taking place within the Tripartite Labour Consultative Council with a view to adopting measures to ensure complete exercise of the right to organize. Noting that a new Industrial and Labour Relations Act (Act No. 27 of 1993) has recently entered into force, the Committee trusts that these tripartite consultations will soon bear fruit and enable the Government to ratify the Convention, if necessary with ILO technical assistance.

307. The Government of *Zimbabwe* states that the principle of a single trade union for each branch of industry has been removed from legislation, but that public servants are not yet covered by the Labour Relations Act.

308. Several governments state that they have entrusted an ad hoc body with the task of examining industrial relations legislation, or that the latter is currently being reviewed. Thus, in 1992 the Government of the *Republic of Korea* set up a Committee on Labour Laws (including representatives from academia, labour, management, legal circles and the media) to conduct a systematic examination of labour relations legislation in order to bring it into line with the changing industrial society; all of the social partners have been consulted and the Government planned to submit proposed amendments to the National Assembly in 1993. The Government is determined to achieve the ILO's objectives, but states that a considerable amount of time and effort will be required to harmonize national legislation and practice with the Convention. The Government of *Mauritius* likewise states that it is currently studying the report submitted to it by a Special Law Review Committee to examine industrial relations legislation, and that consideration will be given to the provisions of the Convention during this examination. The Government of *Thailand* reports that, since national legislation is not entirely in conformity with the Convention, it is currently undertaking a review which will take its provisions into consideration.

II. Convention No. 98

New ratifications

309. The Committee notes with satisfaction that Convention No. 98 has been ratified by the following member States since 1983: *Latvia, Netherlands, Rwanda, San Marino, Sao Tome and Principe, Togo*. Moreover, the following member States have officially informed the ILO that they remain bound by the Convention which was applicable to their territory: *Azerbaijan, Belize, Bosnia*

and Herzegovina, Croatia, Czech Republic, Kyrgyzstan, Russian Federation, Slovakia, Slovenia, Tajikistan. This brings the total number of ratifications of this instrument to 123 as at 31 January 1994. [11]

Ratifications in progress or considered

310. The Government of *Burundi* mentions that ratification follows its normal course and could be completed at any time, since the draft texts have been submitted to the competent authorities at the beginning of the year. The Government of *Estonia* states that there are no obstacles to the application of the Convention and announced in May 1993 that it would be submitted to Parliament for ratification. The Government of *Suriname* states that the process of ratifying the Convention is under way, although the legislation on collective agreements is incomplete and it intends to adopt more uniform rules applicable to all sectors of industry. The Committee welcomes these initiatives and trusts that the formal process of ratification will be rapidly completed in all of these countries.

311. The Government of *Zambia* states that national legislation has not been amended to give effect to the provisions of the Convention. Pointing out that a continuous review of the legislation is undertaken, it considers that in due course it should be possible to consider ratification of the Convention. The Committee notes this information with interest and trusts that the formal process of ratification will be initiated in the near future.

Other cases

312. The Committee notes however that several other countries state that they are not in a position to ratify the Convention, citing various difficulties, [12] or do not take up any position on the question of possible ratification. [13] In the latter group, some countries state that the provisions of the Convention will be taken into consideration in a review of the legislation currently in force; others state more generally that their legislation is, on the whole, compatible with the Convention or adequately governs the rights of workers' and employers' organizations.

Difficulties delaying or preventing ratification

313. Referring to various legislative and other provisions protecting workers against discrimination for trade union activities and organizations against acts of interference, as well as measures to promote collective bargaining, the Government of *Botswana* states, however, that there exist

[11] See Annex IV for the complete list of ratifications.

[12] *Botswana, Cambodia, Canada, Republic of Korea, Switzerland, United States* (see below for the reasons cited).

[13] *Chile, China, El Salvador, Islamic Republic of Iran, Kuwait, Madagascar, Mexico, Myanmar, New Zealand, Saudi Arabia, Thailand, Zimbabwe.*

difficulties preventing ratification of the Convention. It refers to the prohibition on civil servants from forming trade unions.

314. The Government of *Cambodia* states, due to the absence of an act on trade unions and to the fact that professional associations and trade unions do not exist, the issue of protection against anti-union discrimination remains somewhat theoretical. The authorities have undertaken a study with a view to elaborate a trade unions act and regulations concerning labour disputes and collective agreements. The Committee recalls that the ILO may provide technical assistance to the Government in this matter.

315. Mentioning that the legislation in force in the different jurisdictions is essentially in conformity with the basic provisions of the Convention, the Government of *Canada* recalls that, according to long-standing practice concerning instruments on subjects coming under both the federal and provincial/territorial jurisdictions (which is the case of Convention No. 98), ILO Conventions are only ratified if all of the authorities concerned concur with ratification and undertake to implement the instruments.

316. The Government of *El Salvador* states that Article 5 of the Convention is not applicable under national law, as the armed forces and the police are governed by special texts. In its General Surveys of 1973 and 1983, the Committee already drew the attention of the Government to the fact that under Article 5, the extent to which the guarantees provided for in the Convention apply to the armed forces and the police is to be determined by national law and regulations. Consequently, States ratifying the Convention may decide on the extent to which such persons shall enjoy the right to organize, if at all.

317. The Government of the *United States* points out that the application of the Convention is widely assured by constitutional and legislative provisions, in particular the National Labour Relations Act (NLRA). The latter protects workers against acts of anti-union discrimination and organizations against acts of interference, by means of remedies against unfair labour practices, with enforcement being entrusted to an independent body, the National Labour Relations Board (NLRB); specific Acts provide similar protection to railway and airline employees; employees who are not covered by these Acts are protected by state legislation or, subsidiarily, by constitutional guarantees. The promotion of collective bargaining is ensured by means of legal remedy against unfair labour practices and by provisions expressly obliging the parties to meet and confer in good faith, even if this does not include any duty to make concessions or agree to a proposal made by the other party to bargaining; the NLRA provides that the parties have the right to strike and lockout in support of their respective positions. Disputes that cannot be resolved by the parties themselves are generally resolved by means of mediation, conciliation and arbitration, usually on a voluntary basis, with or without the assistance of an independent agency, the Federal Mediation and Conciliation Service (FMCS). Federal public servants have rights and remedies similar to those provided under the NLRA, but there are limitations on the subject-matter of collective bargaining, and the

right to strike is denied; state and local government employees are covered by a variety of legislation which cannot be inconsistent with fundamental constitutional guarantees of freedom of association. In the view of the Government, legislation, which has been relatively stable, is in general conformity with the Convention, and no new measures are envisaged, including ratification of the Convention. The draft government report was reviewed by the Tripartite Advisory Panel on International Labour Standards (TAPILS). [14]

318. Recalling the substantial changes in labour legislation which have recently entered into force, the Government of *New Zealand* states that it has now instituted a labour relations system in which the parties are free to bargain collectively or individually, which could lead to disputes. It also reiterates the difficulties cited as regards certain restrictions on the right to strike. [15]

319. The Government of *Switzerland* states that while new provisions improve protection of workers against dismissal, in particular for the lawful exercise of trade union activities, ratification of the Convention is still impossible due to the absence of provisions in national legislation protecting workers against acts of anti-union discrimination before employment. At this stage, no measure is envisaged to give effect to the provisions of the Convention which are not yet covered by national legislation.

Other information

320. The Governments of the *Republic of Korea* and *Thailand* give the information supplied regarding the process of review of their national legislation with respect to Convention No. 87, as regards Convention No. 98, stating that the provisions of the Convention will be taken into consideration, but that several obstacles to ratification remain at this stage. [16] The Committee trusts none the less that the work of the bodies reviewing this legislation will be completed within a reasonable period and recalls that the ILO can provide technical assistance for this purpose.

321. The Governments of *Chile*, the *Islamic Republic of Iran*, *Kuwait*, *Madagascar* and *Mexico* state that, in their view, the provisions of national legislation are in conformity with the Convention and that no change is currently being envisaged.

322. The Government of *Myanmar* states that following the changes which occurred in 1988, a national Convention representing all social groups is currently discussing new constitutional and legislative provisions which will include those regarding the fundamental rights and responsibilities of workers. Noting that the Conference Committee on the Application of Standards suggested that the Government avail itself of ILO assistance with respect to Convention

[14] See also para. 292.

[15] See also para. 297.

[16] See also para. 308.

No. 87, [17] the Committee is of the view that such assistance could also prove useful and appropriate at this stage, in connection with Convention No. 98.

323. The Government of *Zimbabwe* states that although the Labour Relations Act has decentralized the collective bargaining process, it still does not cover public servants.

III. Reports not submitted

324. Regarding the reports requested under article 19, the Committee notes with concern that 52 of the 106 reports requested were not submitted. [18] While it is aware that some of these countries have been going through, or are still experiencing, severe political crises, or periods of civil unrest or war, the Committee stresses the importance of compliance with this constitutional obligation, as it does regularly with regard to article 22 of the Constitution, [19] since the reports supplied under article 19 are the first step in the dialogue undertaken with governments leading up to the possible ratification of Conventions. In view of the particular importance of Conventions Nos. 87 and 98 the Committee deeply regrets that these reports were not transmitted.

* * *

325. *The Committee recalls the utmost importance of ratifying ILO Conventions, in particular those concerning freedom of association, which the revised classification adopted in 1987 placed first among the instruments to be promoted on a priority basis.* [20] *It also observes that, at its 153rd Session, the Inter-Parliamentary Council adopted a resolution calling on each of the Parliaments represented in the Inter-Parliamentary Union to "take the necessary initiatives for the rapid ratification of [the ILO Conventions which have not yet been ratified]" and to take initiatives to ensure that, particularly by adapting*

[17] ILC, 80th Session, 1993, Geneva, Report of the Committee on the Application of Standards, *Provisional Record* No. 25, paras. 124-126 of the General Report; adopted by the International Labour Conference, 1993, *Provisional Record* No. 28.

[18] The following countries did not transmit the report requested on C.87: *Bahamas, Fiji, Guinea-Bissau, Jordan, Libyan Arab Jamahiriya, Papua New Guinea, Zaire.*

The following countries did not transmit the report requested on C.98: *Congo, Mauritania, Seychelles.*

The following countries did not transmit any of the two reports requested: *Afghanistan, Armenia, Bahrain, Equatorial Guinea, Eritrea, Georgia, India, Kazakhstan, Lao People's Democratic Republic, Lithuania, Republic of Moldova, Mozambique, Namibia, Nepal, Qatar, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia, United Arab Emirates, Uzbekistan, Viet Nam.*

[19] See, for example RCE 1993, paras. 87–92. See also ILC, 80th Session, 1993, Committee on the Application of Standards, *Provisional Record*, paras. 26–30.

[20] *Report of the Working Party on International Labour Standards*, ILO, Official Bulletin, Vol. LXX, 1987, Series A, Appendix II, p. 29 (known as the "Ventejol Report").

national labour legislation, the standards set by the ILO are fully implemented.[21] *On the occasion of the 75th anniversary of the founding of the ILO and the 50th anniversary of the Declaration of Philadelphia, the Committee urges member States which have not yet done so to ratify the Conventions concerning freedom of association, in particular those which are the subject of this survey.*[22]

[21] Resolution concerning the 75th anniversary of the ILO adopted by the Inter-Parliamentary Council, 153rd Session, Canberra, 13-18 Sep. 1993. The full text of the resolution is contained in document GB.258/13/3, 258th Session, Nov. 1993.

[22] See also ILC, 81st Session, 1994, Report of the Director-General, *Defending values, promoting change*, Ch. 3, "Standards: A broader approach", p. 51.

Final remarks

Final remarks

326. The year 1994 marks the 75th anniversary of the founding of the ILO and the 50th anniversary of the Declaration of Philadelphia. The fundamental principles contained in the Constitution and in the ILO standards on freedom of association are more relevant than ever at a time when the world is in the grip of sweeping and lasting changes affecting the political, economic and social spheres.

327. While aware of the extremely wide diversity of the problems faced by countries with very different levels of development, and of the special economic difficulties currently experienced in certain countries, the Committee none the less recalls once again the universal nature of international labour standards, especially the fundamental ILO Conventions such as those dealt with in this survey. The application of these Conventions cannot be made contingent upon the level of economic development of a country or periodic fluctuations of economic cycles, because these are instruments which involve basic human rights.

328. The effective implementation of the standards and principles of freedom of association, and especially of Conventions Nos. 87 and 98, is closely dependent upon respect of civil and political liberties. Although this interdependence sometimes seems to be taken for granted, the Committee wishes to recall and emphasize it, in view of the persistence and the seriousness of human rights violations infringing basic trade union rights, which the Committee on Freedom of Association is called upon to examine at all of its meetings.

329. Since the last General Survey, the Committee has been able to note certain trends in matters pertaining to freedom of association. While it has noted with satisfaction an increase in the number of ratifications, particularly in emerging States, as well as an improved implementation in certain countries which have ratified these Conventions, the fact remains that 61 member States have not ratified Convention No. 87 and 47 Convention No. 98. Amongst them can be found a number of States applying the rule of law which often have a long tradition of industrial relations and have legislation and practice that are, for a large part, in conformity with the Conventions on freedom of association. Ratification could intervene in these cases with little or no legislative amendments. Concerning some of the difficulties mentioned by other countries as preventing ratification, they should not raise serious problems, or could be solved through relatively minor legislative amendments. Recalling that the technical assistance of the ILO is at the disposal of countries which request it, the Committee urges those member States which have not yet done so to ratify

the Conventions on freedom of association and, in particular, Conventions Nos. 87 and 98.

330. New ratifications would certainly help to strengthen the ILO's action to protect trade union rights. If, as the Committee hopes, enough countries heed its call, these ratifications could also pave the way for setting up a *world social platform*, as a first step towards creating "humane conditions of labour" in every country, one of the objectives put forward by the drafters of the Constitution of the ILO 75 years ago.

331. As regards the application of Conventions, the Committee was able to note with satisfaction that substantial progress has been achieved, in particular as regards the possibility of trade union pluralism in several countries where it had been denied to workers' and employers' organizations until quite recently. While some of the improvements are modest and do not take effect as quickly as is desirable, the Committee none the less remains deeply convinced of the value of dialogue with the ILO's constituents and the correspondence between its own action and that of the other supervisory bodies with a view to gradually achieving a better application of the Conventions.

332. However, the Committee notes with deep concern that in a number of other countries the situation has hardly improved, and has even deteriorated, and that their legislation or practice, or both, remain in open violation of the Conventions on freedom of association. This is illustrated in particular by the repetitive observations made by the Committee in its annual report and the growing number of complaints presented to the Committee on Freedom of Association, which raise issues of both law and practice.

333. The Committee stresses the utmost importance of an open and frank dialogue in the improved implementation of the Conventions and recalls that the ILO is always available to provide help and technical assistance in these matters to member States which so request.

334. The Committee would like to point out that despite the current economic difficulties in many countries, and because of them, free and independent organizations of workers and employers, more than ever before, have a vital part to play in society: that of indispensable partners in economic development and the advancement of social justice.

335. From its studies since the last General Survey of these Conventions, embracing government reports, trade unions' comments, the work of the Committee on Freedom of Association and a number of reports of Commissions of Inquiry and direct contacts missions, the Committee has become aware of a considerable number of developments which appear likely, unless care is taken, to impede the rights to organize and to bargain collectively and to disrupt arrangements already in place. Policies such as those to increase competitiveness, to split large organizations and business into smaller units of profit centres, to move functions from the public to the private sector and to expand the rights of individuals and facilitate their enforcement are a matter for national policy. However, great care has to be taken to ensure that they may not result in weakening organizations of workers and bargaining arrangements built

up over the years, or seriously weaken the ability to organize and bargain effectively.

336. Two illustrations may be given. The growing emphasis on the right of the individual has had great advantages for workers and has helped to secure in several countries marked advantages for individuals, and especially for women. But progress by that method, which may be fragmented and slow, should not divert attention from the need for collective bargaining which, where successful, can in many cases secure fundamental rights more likely and more speedily through incorporation in a collective agreement.

337. Particular concern must be expressed about the establishment of "free trade zones" to attract foreign enterprises, which are excluded from the application of national custom duties and taxation, and much or all of the national law. Although it cannot be the intention of such action to remove the protection afforded to workers by the rights to organize and bargain collectively or to nullify the impact of fundamental protections contained, for example, in the laws protecting health and safety, that may be the result in practice. If so, other employers in the country may be induced to seek similar relaxation in the legislation which is applicable to them and so effectively reduce the benefit of effective trade union organization.

338. Indeed, attitudes and planning which increasingly regard workers merely as an "item of resource" or a "cost factor" identical to others fail to give enough emphasis to the human factor and are to be deplored.

339. The Committee hopes that this Survey will contribute to a better application of the fundamental Conventions on freedom of association and to significant progress in ratifications, that it will have helped to clarify certain points which have been the subject of debate for several years within the ILO, and that it will further the knowledge and the understanding of these Conventions, in particular by the social partners in the countries which have not ratified them.

340. On the occasion of these anniversaries which are particularly important for the ILO, and thus for workers and employers all around the world, the Committee wishes to pay tribute to all those who have helped protect and promote freedom of association, sometimes by risking their freedom and even their lives. The Committee also makes an urgent appeal that, in the near future, this basic freedom becomes a daily reality, everywhere and for everyone.

APPENDIX I

Text of the substantive provisions of Conventions Nos. 87 and 98

Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)

Article 1

Each Member of the International Labour Organization for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 3

1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organizations.

Article 7

The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organization the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term "organization" means any organization of workers or of employers for furthering and defending the interests of workers or of employers.

Article 11

Each Member of the International Labour Organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.

Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to —

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organization the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

APPENDIX II

Resolution of 1952 concerning the independence of the trade union movement

Whereas the International Labour Conference at its recent session has formulated in international Conventions and Recommendations principles for the establishment of freedom of association and good industrial relations;

Whereas a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvements of social conditions generally in each country;

Whereas the relations between the trade union movement and political parties will inevitably vary for each country; and

Whereas any political affiliation or political action by the trade unions depends on national conditions in each country;

Considering nevertheless that there are certain principles which should be laid down in this regard which are essential to protect the freedom and independence of the trade union movement and its fundamental task of advancing the social and economic well-being of the workers,

The International Labour Conference at its 35th Session adopts this twenty-sixth day of June 1952 the following resolution:

1. The fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers.

2. The trade unions also have an important role to perform in cooperation with other elements in promoting social and economic development and the advancement of the community as a whole in each country.

3. To these ends it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes.

4. A condition for such freedom and independence is that trade unions be constituted as to membership without regard to race, national origin or political affiliations and pursue their trade union objectives on the basis of the solidarity and economic and social interests of all workers.

5. When trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country.

6. Governments in seeking the cooperation of trade unions to carry out their economic and social policies should recognize that the value of this cooperation rests to

a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.

APPENDIX III

Resolution of 1970 concerning trade union rights and their relation to civil liberties (extracts)

The General Conference of the International Labour Organization,

Considering that the preamble to the Constitution of the International Labour Organization proclaims recognition of the principle of freedom of association as one of the objectives of the Organization,

Considering that the Declaration of Philadelphia, an integral part of the Constitution, proclaims that freedom of expression and of association are essential to sustained progress and refers to other fundamental and human rights inherent in human dignity,

Considering that the International Labour Organization has laid down basic standards of freedom of association for trade union purposes in the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98),

Considering that without national independence and political liberty full and genuine trade union rights could not exist,

...

Considering that trade unions, provided they enjoy their full rights, are an essential factor for the attainment of the objective of the economic, social and cultural progress stated in the Constitution of the ILO,

...

Considering that the supervisory machinery of the ILO, and particularly the Governing Body Committee on Freedom of Association, on the basis of existing standards, has taken supplementary decisions concerning infringements of trade union rights which refer also to specific civil liberties,

...

1. Recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.

2. Places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights:

(a) the right to freedom and security of person and freedom from arbitrary arrest and detention;

(b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

(c) freedom of assembly;

(d) the right to a fair trial by an independent and impartial tribunal;

(e) the right to protection of the property of trade union organizations.

3. Reaffirms the ILO's specific competence — within the United Nations system — in the field of freedom of association and trade union rights (principles, standards, supervisory machinery) and of related civil liberties.

4. Emphasizes the responsibility of the United Nations for protecting and promoting human rights in general political freedoms and civil liberties throughout the world.

5. Expresses its deep concern about and condemns the repeated violations of trade union rights and other human rights.

...

9. Reaffirms its belief in the principles which inspired the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and strongly urges that all member States which have not already done so ratify these Conventions and, pending ratification, that they ensure that the principles embodied in these Conventions are observed and that they respect the principles enshrined in these Conventions in the enactment of their national legislation.

...

13. Invites the Director-General of the ILO to express the support of the ILO for the action of the United Nations in the field of human rights and to draw the attention of the appropriate United Nations bodies to the relationship which exists between trade union rights and civil liberties.

14. Invites the Governing Body to undertake all efforts with a view to strengthening the ILO machinery for securing the observance by member States of ILO principles concerning freedom of association and trade union rights.

15. Invites the Governing Body to instruct the Director-General to undertake further comprehensive studies and to prepare reports on law and practice in matters concerning freedom of association and trade union rights and related civil liberties falling within the competence of the ILO, with a view to considering further action to ensure full and universal respect for trade union rights in their broadest sense;

For this purpose particular attention should be given to the following questions:

— right of trade unions to exercise their activities in the undertaking and other workplaces;

— right of trade unions to negotiate wages and all other conditions of work;

— right of participation of trade unions in undertakings and in the general economy;

— right to strike;

— right to participate fully in national and international trade union activities;

— right to inviolability of trade union premises as well as of correspondence and telephonic conversations;

— right to protection of trade union funds and assets against intervention by the public authorities;

— right of trade unions to have access to media of mass communication;

— right to protection against any discrimination in matters of affiliation and trade union activities;
— right of access to voluntary conciliation and arbitration procedures;
— right to workers' education and further training.

APPENDIX IV

Ratifications. Reports requested and received under article 19 of the Constitution

Member States	Convention No. 87		Convention No. 98	
	Year of ratification	Article 19	Year of ratification	Article 19
Afghanistan		X		X
Albania	1957		1957	
Algeria	1962		1962	
Angola		R	1976	
Antigua and Barbuda	1983		1983	
Argentina	1960		1956	
Armenia		X		X
Australia	1973		1973	
Austria	1950		1951	
Azerbaijan	1992		1992	
Bahamas		X	1976	
Bahrain		X		X
Bangladesh	1972		1972	
Barbados	1967		1967	
Belarus	1956		1956	
Belgium	1951		1953	
Belize	1983		1983	
Benin	1960		1968	
Bolivia	1965		1973	
Bosnia and Herzegovina	1993		1993	
Botswana		R		R
Brazil		R	1952	
Bulgaria	1959		1959	
Burkina Faso	1960		1962	
Burundi	1993			R
Cambodia		R		R
Cameroon	1960		1962	
Canada	1972			R
Cape Verde		R	1979	
Central African Republic	1960		1964	
Chad	1960		1961	
Chile		R		R
China		R		R
Colombia	1976		1976	
Comoros	1978		1978	
Congo	1960			X
Costa Rica	1960		1960	
Côte d'Ivoire	1960		1961	
Croatia	1993		1993	
Cuba	1952		1952	
Cyprus	1966		1966	
Czech Republic	1964		1964	
Denmark	1951		1955	

R = Report received.

X = Report not received.

Member States	Convention No. 87		Convention No. 98	
	Year of ratification	Article 19	Year of ratification	Article 19
Djibouti	1978		1978	
Dominica	1983		1983	
Dominican Republic	1956		1953	
Ecuador	1967		1959	
Egypt	1957		1954	
El Salvador		R		R
Equatorial Guinea		X		X
Eritrea		X		X
Estonia		R		R
Ethiopia	1963		1963	
Fiji		X	1974	
Finland	1950		1951	
France	1951		1951	
Gabon	1960		1961	
Georgia		X		X
Germany	1957		1956	
Ghana	1965		1959	
Greece	1962		1962	
Grenada		R	1979	
Guatemala	1952		1952	
Guinea	1959		1959	
Guinea-Bissau		X	1977	
Guyana	1967		1966	
Haiti	1979		1957	
Honduras	1956		1956	
Hungary	1957		1957	
Iceland	1950		1952	
India		X		X
Indonesia		R	1957	
Iran, Islamic Republic of		R		R
Iraq		R	1962	
Ireland	1955		1955	
Israel	1957		1957	
Italy	1958		1958	
Jamaica	1962		1962	
Japan	1965		1953	
Jordan		X	1968	
Kazakhstan		X		X
Kenya		R	1964	
Korea, Republic of		R		R
Kuwait	1961			R
Kyrgyzstan	1992		1992	
Lao People's Democratic Rep.		X		X
Latvia	1992		1992	

R = Report received.
X = Report not received.

Member States	Convention No. 87		Convention No. 98	
	Year of ratification	Article 19	Year of ratification	Article 19
Lebanon		R	1977	
Lesotho	1966		1966	
Liberia	1962		1962	
Libyan Arab Jamahiriya		X	1962	
Lithuania		X		X
Luxembourg	1958		1958	
Madagascar	1960			R
Malawi		R	1965	
Malaysia		R	1961	
Mali	1960		1964	
Malta	1965		1965	
Mauritania	1961			X
Mauritius		R	1969	
Mexico	1950			R
Moldova, Republic of		X		X
Mongolia	1969		1969	
Morocco		R	1957	
Mozambique		X		X
Myanmar	1955			R
Namibia		X		X
Nepal		X		X
Netherlands	1950		1993	R
New Zealand		R		R
Nicaragua	1967		1967	
Niger	1961		1962	
Nigeria	1960		1960	
Norway	1949		1955	
Oman*				
Pakistan	1951		1952	
Panama	1958		1966	
Papua New Guinea		X	1976	
Paraguay	1962		1966	
Peru	1960		1964	
Philippines	1953		1953	
Poland	1957		1957	
Portugal	1977		1964	
Qatar		X		X
Romania	1957		1958	
Russian Federation	1956		1956	
Rwanda	1988		1988	
Saint Lucia	1980		1980	
San Marino	1986		1986	
Sao Tome and Principe	1992		1992	
Saudi Arabia		R		R

* Became Member of the ILO on 31 January 1994. No report requested under article 19.

R = Report received.

X = Report not received.

Member States	Convention No. 87		Convention No. 98	
	Year of ratification	Article 19	Year of ratification	Article 19
Senegal	1960		1961	
Seychelles	1978			X
Sierra Leone	1961		1961	
Singapore		R	1965	
Slovakia	1993		1993	
Slovenia	1992		1992	
Solomon Islands		X		X
Somalia		X		X
Spain	1977		1977	
Sri Lanka		R	1972	
Sudan		R	1957	
Suriname	1976			R
Swaziland	1978		1978	
Sweden	1949		1950	
Switzerland	1975			R
Syrian Arab Republic	1960		1957	
Tajikistan*				
Tanzania, United Republic of		R	1962	
Thailand		R		R
The former Yugoslav Republic of Macedonia		X		X
Togo	1960		1983	
Trinidad and Tobago	1963		1963	
Tunisia	1957		1957	
Turkey	1993		1952	
Turkmenistan**				
Uganda		R	1963	
Ukraine	1956		1956	
United Arab Emirates		X		X
United Kingdom	1949		1950	
United States		R		R
Uruguay	1954		1954	
Uzbekistan		X		X
Venezuela	1982		1968	
Viet Nam		X		X
Yemen	1976		1969	
Yugoslavia	1958		1958	
Zaire		X	1969	
Zambia		R		R
Zimbabwe		R		R

* Became Member of the ILO on 26 November 1993. No report requested under article 19.
** Became Member of the ILO on 24 September 1993. No report requested under article 19.

R = Report received.
X = Report not received.

APPENDIX V

List of abbreviations used

ILO	International Labour Organization or International Labour Office
ILC	International Labour Conference
CFA	Committee on Freedom of Association
RCE	Annual Report of the Committee of Experts to the International Labour Conference, Part III(4A)
OB	Official Bulletin, ILO, Series B
Digest	Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 1985, 3rd ed.
General Survey	General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Geneva, 1983 (except where another year mentioned)

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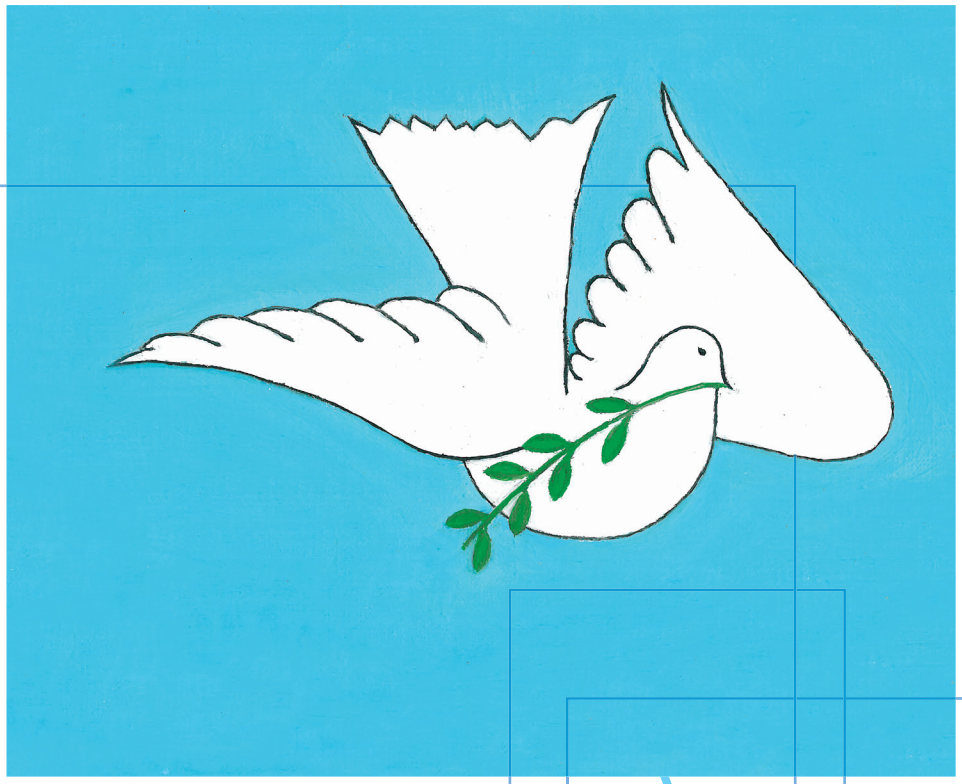
Annex 14

International
Labour
Office

Geneva

101st
Session of the
International
Labour Conference

Building a future with decent work



Giving globalization a human face

INTERNATIONAL LABOUR CONFERENCE
101st SESSION, 2012

International Labour Conference, 101st Session, 2012

General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008

Third item on the agenda:
Information and reports on the application of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)

Report III (Part 1B)

International Labour Office Geneva

Giving globalization a human face

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Part I. Introduction

Chapter 1

Preliminary comments

1. In March 2010, at its 307th Session, the Governing Body of the International Labour Organization decided that the recurrent item on the agenda of the 101st Session (2012) of the International Labour Conference should address the ILO strategic objective of promoting and realizing fundamental principles and rights at work. [1] In light of both the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and the ILO Declaration on Social Justice for a Fair Globalization (the Social Justice Declaration) of 2008, the Governing Body considered the fundamental principles and rights at work which are set out in the related fundamental ILO Conventions as being mutually supportive rights which logically would best be considered in a holistic manner. The four categories of fundamental principles and rights at work are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

2. Moreover, in an effort to align the General Survey of the Committee of Experts on the Application of Conventions and Recommendations with the recurrent item report, the Governing Body decided that the General Survey would cover the eight fundamental Conventions:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Forced Labour Convention, 1930 (No. 29);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Minimum Age Convention, 1973 (No. 138);
- Worst Forms of Child Labour Convention, 1999 (No. 182);
- Equal Remuneration Convention, 1951 (No. 100); and
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The principles and values embodied in these Conventions constitute a universal aspiration of the international community as a whole.

[1] GB.307/LILS/4.

3. Therefore, this General Survey, which deals with all eight fundamental Conventions, seeks to give a global picture of the law and practice in member States in terms of the practical application of ratified and non-ratified Conventions, describing the various positive initiatives undertaken in some countries, in addition to certain serious problems encountered in the implementation of their provisions. The General Survey recognizes the interdependence and complementarity between these Conventions and their universal applicability, while bearing in mind the specificities covered by each Convention. The General Survey also highlights the main considerations elaborated by the Committee of Experts, as well as its corresponding guidance in order to achieve fuller conformity with the fundamental Conventions. The General Survey seeks to do this by analysing the scope, methods and difficulties of application for all eight Conventions, the most salient thematic features pertaining to each Convention, as well as their enforcement and impact. It also hopes to provide guidance to member States in the steps they can take to close the implementation gaps that have been identified in the ongoing dialogue with them. The rights covered by these Conventions are of universal application requiring respect from all countries even where they have not been ratified. [2] However, ratification of these Conventions is testimony to the commitment of ratifying States and provides value added in offering certainty concerning the standards and transparency in their monitoring and implementation process. Ratification of the Conventions also opens the door to direct enforcement of the relevant standards through the judicial systems in some countries. The General Survey examines the barriers to ratification faced by member States, as well as the provision of technical assistance to overcome such obstacles and prospects for ratification. In this regard, out of 183 member States, 135 have ratified all eight fundamental Conventions. Therefore, 48 member States have yet to complete ratification of all eight Conventions. These include member States with the highest populations. Hence the importance in undertaking this General Survey is to provide guidance to non-ratifying member States with regard to obstacles to ratification as well as possible means of removing such obstacles in law and in practice. Moreover, the value of this General Survey to ILO constituents and to the general reader may be amplified in view of the increased importance of the fundamental Conventions in the context of globalization, and more recently the global economic and financial crisis and jobs crisis, as well as events in North Africa and the Middle East with calls for social justice, dignity, rights and fairness at work.

4. Finally, both the 1998 Declaration and the Social Justice Declaration, which constitute the ILO's response to the challenges of globalization, underline the essential importance of upholding the principles enshrined in these Conventions. In this regard, the Committee joins the Conference Committee on the Application of Standards in emphasizing that ensuring respect for fundamental principles and rights at work results in undeniable benefits to the development of human potential and economic growth in general and therefore contributes to global economic recovery, [3] and emphasizes their contribution to social justice and sustainable peace.

[2] See the ILO Declaration on Fundamental Principles and Rights at Work of 1998.

[3] ILO: *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, General Report, ILC, 98th Session, Geneva, 2009, para. 97.

Chapter 2

The protection of fundamental principles and rights at work in national constitutions [4]

5. Effective legal systems play a very important role in the protection of fundamental principles and rights at work. In particular, constitutional guarantees are of great importance in the protection of fundamental principles and rights at work, in that they not only provide the framework for these principles and rights to be further developed in national legislation, but also provide a very solid basis for their implementation, particularly through institutional mechanisms, and primarily the decisions of constitutional and supreme courts.

6. It is important to highlight that a number of constitutions attribute the force of law to international treaties, [5] or an authority higher than national legislation, [6] upon their publication or ratification. Accordingly, in the latter case national laws that are in conflict with fundamental principles and rights at work can be set aside on the grounds of their inconsistency with an international treaty in the context of a case before the national jurisdiction. Other systems require the transformation of international treaties into national law through the adoption of national legislation to this end. Moreover, in certain countries, the constitution enumerates international treaties and conventions on human rights which have the same, or even higher legal rank than the constitution itself. [7] It should also be noted that some constitutions provide that, when interpreting and applying the rights which they recognize, the courts shall consider the international treaties to which the State is a party. [8]

7. Examination of the constitutions of member States shows that constitutional provisions relating to fundamental principles and rights at work are very varied. Some apply to "everyone", while others only cover citizens. Some affirm individual rights or a duty of the State to take action, while others only define the guiding principles of state action, and are therefore less likely to result in meaningful and enforceable protection.

[4] In view of the broad scope of the General Survey, only the most salient features are presented.

[5] For example, the constitutions of: Angola (2010, art. 13); Kenya (2010, art. 2); Republic of Korea (1948, art. 6); Kyrgyzstan (2010, art. 6); Mongolia (1992, art. 10); Peru (1993, art. 55); and Ukraine (1996, art. 9).

[6] For example, the constitutions of: Albania (1998, art. 122); El Salvador (1983, art. 144); France (1958, art. 55); Guinea (2010, art. 151); Haiti (1987, art. 276); Madagascar (2010, art. 137); Mauritania (1991, art. 79); Morocco (2011, Preamble); and Turkmenistan (2008, art. 6).

[7] For example, the constitutions of: Argentina (1994, art. 75); Benin (1990, art. 7); Plurinational State of Bolivia (2008, art. 256); Brazil (1988, art. 5); Dominican Republic (2010, art. 74); Ecuador (2008, art. 424); Sudan (2005, art. 27); Togo (1992, art. 50); and Bolivarian Republic of Venezuela (1999, art. 23).

[8] For example, the constitutions of: Colombia (1991, art. 93); Guyana (1980, art. 39); Mozambique (2004, art. 43); and Seychelles (1993, art. 48).

Notwithstanding these important differences, the main trends are presented below for each category of fundamental principles and rights at work.

Freedom of association and collective bargaining

8. Freedom of association is guaranteed in almost all national constitutions. In most cases, the constitution provides that this freedom shall be exercised in accordance with the law. Most constitutions also provide for a number of exceptions, in particular in relation to security forces, or leave the determination of exceptions to the law. [9] Specific references to the right to freely form, to join or not to join trade unions are also found in 142 constitutions. Furthermore, the right to strike is constitutionally protected in 93 countries. [10]

9. Specific provisions in relation to collective bargaining are present in 66 constitutions. [11] For example, the Constitution of Chile (1980, art. 19) recognizes the right to collective bargaining to regulate labour relations, and the Constitution of Morocco (2011, art. 8) provides that the public authorities shall take the necessary measures to promote collective bargaining.

Forced labour

10. While almost all constitutions contain prohibitions of slavery, not all of them contain a prohibition of forced labour. In this regard, over a hundred constitutions prohibit forced or compulsory labour, without giving a definition of this concept. [12] In the same way that Convention No. 29 provides for a number of exceptions, most constitutions either provide some exceptions, or leave the determination of exceptions to the law. [13] Where forced labour is not expressly prohibited in the constitution, protection against forced labour or certain forms of forced labour may be guaranteed to a certain extent through other types of prohibitions or rights, such as:

– the prohibition of all forms of slavery or servitude, [14] exploitation, [15] or trafficking; [16]

[9] The question of the conformity of these exceptions with the provisions of Convention No. 87, is not addressed here.

[10] See paragraph 123 below.

[11] For example, the constitutions of: Plurinational State of Bolivia (2009, art. 49); Dominican Republic (2010, art. 62); Ecuador (2008, art. 326); Ethiopia (1994, art. 42); Greece (1975, art. 22); Guyana (1980, art. 147); Japan (1946, art. 28); Kenya (2010, art. 41); Republic of Korea (1948, art. 33); Republic of Moldova (1994, art. 43); Nepal (2007, art. 30); Philippines (1987, art. XIII); Poland (1997, art. 59); Rwanda (2003, art. 38); Seychelles (1993, art. 35); South Africa (1996, art. 23); Turkey (1982, art. 53). In Canada, the Supreme Court established that freedom of association includes a measure of protection for collective bargaining, despite the absence of a specific provision in the Canadian Charter of Rights and Freedoms (*Health Services and Support – Facilities Subsector Bargaining Association* v. *British Columbia*, 2007, CSC 27).

[12] For example, the constitutions of: Afghanistan (2004, art. 49); Dominica (1978, art. 4); Iraq (2005, art. 37); Liberia (1984, art. 12); Malaysia (1957, art. 6); Mexico (1917, art. 5); Russian Federation (1993, art. 37); Saint Lucia (1978, art. 4); Slovenia (1991, art. 49); Suriname (1987, art. 15); United Republic of Tanzania (1977, art. 25); Thailand (2007, art. 38). In one constitution only a specific situation is defined as forced labour: the Constitution of Serbia (2006, art. 26) prohibits forced labour and, before providing for some exceptions, specifies that sexual or financial exploitation of a person in an unfavourable position shall be deemed forced labour.

[13] The question of the conformity of these exceptions with the provisions of Convention No. 29 is not addressed here.

[14] For example, the constitutions of: Chad (1996, art. 20); Chile (1980, art. 19); Japan (1946, art. 18); Niger (2010, art. 4); and United States (1787, Thirteenth Amendment).

– the right to dignified and equitable working conditions; [17]

– the right to the free choice of employment. [18]

Child labour

11. Few constitutions establish a specific minimum age for admission to employment or work. This specific protection is mostly found in the constitutions of Latin American countries. [19] The Constitutions of The former Yugoslav Republic of Macedonia (1991, art. 42), Serbia (2006, art. 66), Seychelles (1993, art. 31) and Zambia (1991, art. 24) prohibit child labour under the age of 15. The Constitution of the Congo (2002, art. 34) sets the minimum age at 16 years. A number of other constitutions contain provisions in relation to child labour. Some make reference to a minimum age for work, without determining that age, [20] while others prohibit paid employment by children, [21] or provide that work performed by children must not be unsuitable for the child's age. [22]

12. Many national constitutions contain general provisions on the protection of children. A number of constitutions specifically address some of the worst forms of child labour. For example:

– the Constitution of Afghanistan (2004, art. 49) prohibits forced labour by children;

– the Constitution of Belarus (1994, art. 32) provides that children shall not be used for work that may be harmful to their physical, mental or moral development;

– the Constitution of Guinea (2010, art. 19) provides for the protection of young persons against trafficking;

– the Constitution of South Africa (1996, art. 28) prohibits the use of children under 18 in armed conflict.

13. In view of the importance of education in eliminating child labour, it should be noted that a large number of constitutions contain provisions relating to education, and that many recognize a right to education, as well as an obligation for the State to provide free education up to the end of compulsory schooling.

[15] For example, the constitutions of: Algeria (1989, art. 8); Cuba (1976, art. 14); Sri Lanka (1978, art. 27); and Syrian Arab Republic (1973, art. 13).

[16] For example, the constitutions of: Cambodia (1993, art. 46); Colombia (1991, art. 17); and Ecuador (2008, art. 66).

[17] For example, the constitutions of: Argentina (1994, art. 14bis); and Colombia (1991, art. 25).

[18] For example, the constitutions of: Chile (1980, art. 19); Costa Rica (1949, art. 56); Honduras (1982, art. 127); Hungary (1949, art. 70); Indonesia (1945, art. 28E); Rwanda (2003, art. 37); Switzerland (1999, art. 27); and Turkmenistan (2008, art. 33).

[19] The constitutions of: Brazil (1988, art. 7); Ecuador (2008, art. 46); El Salvador (1983, art. 38); Guatemala (1985, art. 102); Honduras (1982, art. 128); Mexico (1917, art. 123); and Panama (1972, art. 70).

[20] For example, the constitutions of: Albania (1998, art. 54); Angola (2010, art. 80); Croatia (1990, art. 65); Mozambique (2004, art. 121); Portugal (1976, art. 69); and Somalia (2004, art. 18).

[21] For example, the constitutions of: Italy (1947, art. 37); Lesotho (1993, art. 32); Malta (1964, art. 15); and Romania (1991, art. 49).

[22] For example, the constitutions of: South Africa (1996, art. 28); and Turkey (1982, art. 50).

Equality, non-discrimination and equal remuneration

14. Most constitutions contain general provisions guaranteeing equality before the law, the equal enjoyment of rights and fundamental freedoms, as well as non-discrimination. Certain constitutions specify that both direct and indirect discrimination shall be prohibited. [23] Other provisions include:

– equal opportunities provisions: the obligation of the State to ensure and promote equal opportunities for all is established in the constitutions of a number of countries, such as the Plurinational State of Bolivia (2009, art. 8); in a number of constitutions of countries in North Africa and the Middle East, equal opportunities are only guaranteed for citizens; [24]

– special measures, including affirmative action: some constitutions allow the State to make special provision in favour of certain groups, [25] often those that are particularly in need of protection or have historically suffered discrimination.

15. Work-related discrimination is addressed in approximately a quarter of national constitutions, mostly in countries in Latin America and Africa. For example, the Constitution of Senegal (2001, art. 25) provides that no one may be impeded in his or her work by reason of his or her origin, sex, opinions, political choices, or beliefs. Another example is the Constitution of Brazil (1988, art. 7) which prohibits any difference in wages, in the performance of duties and in hiring criteria by reason of sex, age, colour or marital status. The Constitution of the Philippines (1987, art. XIII) provides that the State shall promote full employment and equality of employment opportunities for all. In addition, a number of constitutions contain specific provisions in relation to public sector employment, which is sometimes expressly reserved for nationals. [26]

16. With regard to the grounds on which equality shall be ensured or discrimination prohibited, many different combinations are found. Some constitutions refer to "any grounds" or provide an open list of grounds. Others specifically mention certain grounds, covering all or some of those enumerated in Convention No. 111. Additional grounds which are frequently listed include language, economic condition, level of education, disability or age. The following additional grounds are also included in some constitutions:

– health, and in particular persons affected by HIV; [27]

– pregnancy; [28]

– membership of a trade union or public association; [29]

[23] The constitutions of: Cyprus (1960, art. 28); Kenya (2010, art. 27); Marshall Islands (1979, art. II); Montenegro (2007, art. 8); Serbia (2006, art. 21); and South Africa (1996, art. 9).

[24] The constitutions of: Iraq (2005, art. 16); Jordan (1952, art. 6); Qatar (2003, art. 19); Syrian Arab Republic (1973, art. 25); and Yemen (1991, art. 24).

[25] For example, the constitutions of: Nepal (Interim Constitution 2007, art. 13(3)); Ecuador (2008, art. 11(2)); Kyrgyzstan (2010, art. 16); Malta (1964, art. 45); Namibia (1990, art. 23(2)); Papua New Guinea (1975, art. 55); and Seychelles (1993, art. 27).

[26] For example, the Constitution of Panama (1972, art. 300) provides that public employees shall be Panamanian.

[27] The constitutions of: Burundi (2005, art. 22); and Ecuador (2008, art. 11).

[28] The constitutions of: Guyana (1980, art. 149); Kenya (2010, art. 27); New Zealand (Bill of Rights Act, 1990, art. 19); and South Africa (1996, art. 9).

[29] The constitutions of: Azerbaijan (1995, art. 25); Madagascar (2010, art. 28); Paraguay (1982, art. 88); and Russian Federation (1993, art. 19).

– sexual orientation. [30]

17. Constitutional provisions on equal remuneration vary as follows:

– provisions guaranteeing fair remuneration, or remuneration without discrimination or without discrimination based on sex; [31]

– provisions ensuring "equal pay for equal work" or "equal pay for equal work for men and women"; [32]

– provisions ensuring equal "pay" or "remuneration" for "work of equal value" generally, or with respect to a range of grounds. [33] Some specifically guarantee equal remuneration for men and women for work of equal value, as provided for in Convention No. 100. [34]

18. Overall, the Committee wishes to recall that the meaningful protection of fundamental principles and rights at work is best ensured when protection procedures and mechanisms are established. For instance, a number of national constitutions expressly provide that rights and fundamental freedoms are enforceable by the national courts. Moreover, most constitutions attribute to a constitutional or a supreme court the power to verify the conformity of national legislation with the constitution. As a consequence, laws can be set aside if they are found not to be in conformity with the constitution, and redress can be sought in relation to acts by an authority applying unconstitutional provisions of such laws. Another important procedure which allows greater protection of fundamental principles and rights at work is the possibility for an individual who alleges any violation of these rights to apply directly to the constitutional or supreme court for protection and eventually redress. Lastly, certain constitutions establish other protection mechanisms, [35] such as ombudspersons or national human rights institutions.

[30] The constitutions of: the Plurinational State of Bolivia (2009, art. 14); Ecuador (2008, art. 11); Mexico (1917, art. 1); New Zealand (Bill of Rights Act, 1990, art. 19); Portugal (1976, art. 13); South Africa (1996, art. 9); and Sweden (1974, Chapter 1, art. 2).

[31] Of the 22 countries concerned, see, for example, the constitutions of: Angola (2010, art. 76); Burkina Faso (1991, art. 19); Finland (1999, art. 6); Haiti (1987, art. 35); Indonesia (1945, art. 28D); Kazakhstan (1995, art. 24); and Turkey (1982, art. 55).

[32] Of the 39 countries concerned, see, for example, the constitutions of: Argentina (1994, art. 14bis); Burundi (2005, art. 57); Cambodia (1993, art. 36); China (1982, art. 48); India (1949, art. 39); and Romania (1991, art. 41).

[33] The constitutions of: Greece (1975, art. 22); and Maldives (2008, art. 37).

[34] See, for example, the constitutions of: Belarus (1994, art. 42); Plurinational State of Bolivia (2009, art. 48); Dominican Republic (2010, art. 62); Malawi (1994, art. 31); and Switzerland (1999, art. 8).

[35] For example, the constitutions of: Congo (2002, art. 168); Dominican Republic (2010, art. 190); France (1958, art. 71-1); and Philippines (1987, art. XIII).

Chapter 3

Other relevant international instruments

19. The ILO's special competence in relation to fundamental principles and rights at work is supplemented by that of other international organizations of which the mandate includes related areas, and certain regional organizations which are also competent for these matters. The many international and regional instruments adopted in the framework of these other organizations, which contain provisions relating to labour, cannot be given exhaustive coverage in the present Survey. The Committee nevertheless considers that it is useful to recall the following:

– the eight fundamental ILO Conventions form an integral part of the United Nations' overall human rights framework;

– the fundamental principles and rights at work are very broadly recognized, beyond the ILO's eight fundamental Conventions, in the other international and regional texts that the Committee has examined; and

– the Committee participates, through its collaboration with the supervisory bodies entrusted with monitoring the effective application of the principles and rights set out in these texts, in an essential effort intended to guarantee coherence in supervising the implementation of the international and regional obligations of States relating to fundamental principles and rights at work.

Recognition of fundamental principles and rights at work in other universal and regional instruments

United Nations instruments

20. Many instruments adopted by the United Nations, from the *Universal Declaration of Human Rights ("UDHR", 1948)* to the recent *Convention on the Rights of Persons with Disabilities (2006)* contain provisions on fundamental principles and rights at work.

Freedom of association and the right to collective bargaining

21. The *UDHR* (Articles 20(1) and 23(4)) and the *1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights* (Articles 22 and 8, respectively) set forth the right of everyone to freedom of association, including the right to form and join trade unions for the protection of their interests. It is also interesting to note that Article 8(1)(d) of the *International Covenant on Economic, Social and Cultural Rights ("ICESCR")* provides that States parties undertake to ensure the right to strike, exercised in conformity with the laws of the particular country.

22. Rights and liberties indispensable for the free exercise of trade union rights are also recognized in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)* [36] (Article 26(1)(b)) and the *Convention on the Rights of Persons with Disabilities* (Article 27(1)(c)).

23. It should be noted that none of these instruments explicitly provide for the right to collective bargaining. [37]

Elimination of all forms of forced or compulsory labour

24. The *UDHR* (Article 4) and the *International Covenant on Civil and Political Rights ("ICCPR")* (Article 8(1) and (2)) prohibit slavery and servitude. [38] The *UDHR* also provides that everyone has the right to free choice of employment (Article 23(1)). The *ICCPR* specifically provides that no one shall be required to perform forced or compulsory labour (Article 8(3)(a)), subject to a series of exceptions (Article 8(3)(b) and (c)) similar to those envisaged in Convention No. 29. The *ICESCR* recognizes the right to work which is freely chosen or accepted (Article 6(1)).

25. A specific prohibition of forced or compulsory labour is also contained in the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (Article 11(2)) and the *Convention on the Rights of Persons with Disabilities* (Article 27(2)).

Effective abolition of child labour

26. The *ICESCR* provides that children should be protected from economic and social exploitation. Their employment in work harmful to their morals or health, or dangerous to life or likely to hamper their normal development should be punishable by law and States should set age limits below which the paid employment of child labour should be prohibited and punishable (Article 10(3)).

27. The *Convention on the Rights of the Child (1989)* contains several provisions on child labour. States parties are under the obligation to provide for a minimum age or minimum ages for admission to employment (Article 32(2)(a)), prevent the use of children in the illicit production and trafficking of drugs (Article 33), prevent the exploitative use of children in prostitution or in pornographic performances and materials (Article 34), prevent the abduction of, the sale of or traffic in children

[36] This Convention, which extends to all migrant workers, whether they are in a regular or irregular situation (and the members of their families), rights generally reserved for individuals who have emigrated for employment under regular conditions, entered into force in 2003. See also *Migrant workers*, General Survey on the reports on the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Migrant Workers Recommendation, 1975 (No. 151), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III(Part 1B), ILC, 87th Session, Geneva, 1999, particularly paras 49–61.

[37] However, in the framework of the supervision of the application of the ICESCR, ratifying States are to provide information on the collective bargaining mechanisms in place and their impact on workers' rights.

[38] Other United Nations instruments address issues of slavery and the trafficking of persons for exploitation, including the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (the *"Palermo Protocol"*, 2000). For details of these other instruments, see *Eradication of forced labour*, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 96th Session, Geneva, 2007, paras 19 and 20.

(Article 35) [39] and protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare (Article 36). The *Convention* also addresses the protection of children in armed conflicts (Article 38). [40] It was reinforced in 2000 by the adoption of two *Optional Protocols*, one on the sale of children, child prostitution and child pornography, and the other on the involvement of children in armed conflict.

Equality, non-discrimination and equal remuneration

28. The right to equality and non-discrimination is at the heart of human rights discourse, and has been incorporated in various United Nations human rights instruments. General provisions envisaging equality and prohibiting discrimination on the basis of particular grounds are contained in the *UDHR* and the *1966 Covenants*. The grounds enumerated in these instruments are race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. [41] This is not considered a closed list, and a number of other grounds have been considered, including sexual orientation. [42] In the context of the right to work under the *ICESCR* (Article 6(1)), the requirements of Convention No. 111 are inferred. [43]

29. With particular reference to discrimination in employment and occupation, specific provisions are contained in the *Convention on the Elimination of All Forms of Discrimination Against Women (1979) (CEDAW)* (Article 11(1)), the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (Article 25(1)), and the *Convention on the Rights of Persons with Disabilities* (Article 27(1)). The definition of discrimination in the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* and the *CEDAW* are modelled on the definition in Convention No. 111. [44]

30. The issue of equal pay or remuneration is reflected in the main human rights international instruments, though the ILO was the first at the international level to recognize the concept of "work of equal value". Some of these instruments, including the *ICESCR* [45] and the *CEDAW* [46] refer explicitly to the principle of "equal remuneration

[39] Reference should also be made to the adoption in 2000 of the *Palermo Protocol* (see previous footnote), the purposes of which include preventing and combating trafficking in persons, paying particular attention to women and children (Article 2(a)). Article 3 of the *Protocol* defines the term "trafficking in persons" and specifies that exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs, and that the term "child" shall mean any person under 18 years of age.

[40] It should also be noted that the *Additional Protocols to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) and of Non-International Armed Conflicts (Protocol II)*, adopted in 1977, already regulated the participation of children in hostilities (see, in particular, Articles 77(2) and 4(3)(c), respectively).

[41] *UDHR*, Article 2; *ICCPR*, Article 2(1); and *ICESCR*, Article 2(2). See also *Equality in employment and occupation*, Special Survey on equality in employment and occupation in respect of Convention No. 111, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 83rd Session, Geneva, 1996, para. 244, and *Equality in employment and occupation*, General Survey on the reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation No. 111, 1958, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 75th Session, Geneva, 1988, para. 2.

[42] See, for example, the Committee on Economic, Social and Cultural Rights (CESCR), general comment No. 20, 2 July 2009, E/C.12/GC/20, para. 32.

[43] CESCR, general comment No. 18, 24 November 2005, E/C.12/GC/18, para. 12. The complementarity of the different human rights instruments and Convention No. 111 is also acknowledged in general comment No. 20, op. cit., para. 5.

[44] *ICERD*, Article 1(1); *CEDAW*, Article 1.

[45] Article 7(a)(i).

for work of equal value". Others, such as *UDHR* [47] and *ICERD* [48] refer to the more limited concept of "equal pay for equal work."

Regional instruments

31. The constituent acts of two regional organizations deserve first mention as they contain provisions relating to the fundamental principles and rights at work, to which all the member States of these organizations are therefore committed. These are, firstly, the *Charter of the Organization of American States* (*1948*, as amended by a series of Protocols), which provides, among other measures, that employers and workers have the right to associate themselves freely for the defence and promotion of their interests, including the right to collective bargaining (Article 45(c)). The second is the *Treaty on European Union*, as amended following the entry into force of the *Treaty of Lisbon* in 2009, which provides that the Charter of Fundamental Rights of the European Union shall have the same legal value as the Treaties (Article 6(1)), [49] that is, it has binding force for the institutions of the Union and for Member States, when implementing the Union's law. The *Charter of Fundamental Rights* (*2000*, as adapted in 2007) covers all of the fundamental principles and rights at work in Articles 12 (freedom of association), 28 (right of collective bargaining and action), 5 (prohibition of slavery and forced labour), 32 (prohibition of child labour and protection against economic exploitation and any harmful work), 21 (non-discrimination) and 23 (equality between women and men in all areas, including employment, work and pay).

32. In addition to these constituent acts, many instruments adopted within the framework of regional organizations contain provisions relating to fundamental principles and rights at work: certain particularly relevant examples in the context of the present General Survey are referred to below in relation to each of the four categories of fundamental principles and rights at work.

Freedom of association and the right to collective bargaining

33. Freedom of association is recognized in all the regional instruments examined, including in the *Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights", ECHR, 1950*; Article 11), the *American Convention on Human Rights* (*1969*; Article 16), the *African Charter on Human and Peoples' Rights* (*1981*; Article 10), the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (*1995*; Article 12(1)) and the *Arab Charter on Human Rights* (*2004*; Article 24(5)).

34. However, the right to collective bargaining, with the exception of the constituent acts referred to in paragraph 31 above, is only recognized in Article 6 of both the *European Social Charter (1961)* and the *European Social Charter (Revised, 1996)*.

[46] Article 11(1)(d).

[47] Article 23(2).

[48] Article 5(d)(i).

[49] The Court of Justice of the European Union may hear cases of violations of the *Charter*. Moreover, if an individual considers that a national authority has violated the Charter when implementing EU law, he or she can apply to the national courts in the country in question. A Protocol to the *Lisbon Treaty*, however, provides that Title IV of the *Charter* does not create justiciable rights applicable to Poland or the United Kingdom. Subsequently, the Czech Republic took a similar decision.

Reference should also be made to Article 7 of the *Inter-American Charter of Social Guarantees (1948)*, which provides for the existence of collective labour agreements. [50]

35. It is also interesting to note that the right to strike is recognized in the *Charter of the Organization of American States* (Article 45(c)) and the *Charter of Fundamental Rights of the European Union* (Article 28), as well as in Article 27 of the *Inter-American Charter of Social Guarantees*, Article 6(4) of both the *European Social Charter* and the *European Social Charter (Revised)*, Article 8(1)(b) of the *Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights ("Protocol of San Salvador", 1988)* and Article 35(3) of the *Arab Charter on Human Rights*.

Elimination of all forms of forced or compulsory labour

36. The elimination of all forms of forced or compulsory labour is envisaged in all the principal regional instruments examined, including the *ECHR* (Article 4), the *American Convention on Human Rights* (Article 6), the *African Charter on Human and Peoples' Rights* (Article 5), the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (Article 4) and the *Arab Charter on Human Rights* (Article 10). [51]

Effective abolition of child labour

37. The issue of the effective abolition of child labour is also broadly addressed in the instruments adopted at the regional level. Accordingly, the establishment of a minimum age for admission to employment is envisaged in the *Inter-American Charter of Social Guarantees* (Article 16), the *European Social Charter* and the *European Social Charter (Revised)* (Article 7), the *African Charter on the Rights and Welfare of the Child (1990*; Article 15(2)(a)), the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (Article 27(3)) and the *Arab Charter on Human Rights* (Article 34(3)).

38. Specific provisions on the worst forms of child labour are contained in the *African Charter on the Rights and Welfare of the Child* (Articles 15, 22 and 27 to 29), the *Protocol of San Salvador* (Article 7(f)) and the *Arab Charter on Human Rights* (Article 34(3)).

39. Several recent initiatives in Asia should also be emphasized:

– two Conventions on the rights of the child were adopted in 2002 by the South Asian Association for Regional Cooperation (SAARC), one to prevent and combat trafficking in women and children for prostitution, and the other addressing regional arrangements for the promotion of child welfare in South Asia; and

– in the framework of the Association of Southeast Asian Nations (ASEAN), a *Declaration Against Trafficking in Persons Particularly Women and Children* was adopted in 2004.

[50] Furthermore, the Committee notes that the Court of Justice of the European Union in the case *International Transport Workers' Federation and Finnish Seamen's Union* v. *Viking Line ABP* reaffirmed that collective action is a fundamental right and integral part of the general principles of European Community law, while the European Court of Human Rights declared in *Demir and Baykara* v. *Turkey* that the right to bargain collectively with the employer has become one of the essential elements of the "right to form and to join trade unions for the protection of workers' interests" provided for in the European Convention on Human Rights.

[51] See also General Survey, 2007, para. 21.

Equality, non-discrimination and equal remuneration

40. Regional instruments tend to enshrine general principles of equality and non-discrimination, including, for example, in the *African Charter on Human and Peoples' Rights* (Articles 2, 3 and 19), the *Protocol of San Salvador* (Article 3) and the *Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States* (Article 20).

41. Only certain regional instruments contain specific provisions on the elimination of discrimination in employment and occupation:

– Article 20 of the *European Social Charter (Revised)* refers to the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination, although it is limited to the ground of sex; and

– Article 34(1) of the *Arab Charter on Human Rights*, while reserving the right to work for citizens, provides that the State shall ensure equality of opportunity without discrimination of any kind on the grounds of race, colour, sex, religion, language, political opinion, membership of a union, national origin, social origin or any other situation.

42. Various regional instruments also contain provisions in relation to equal remuneration, [52] with some providing for the broader concept of equal value, including the following:

– the *European Social Charter* and the *European Social Charter (Revised)* recognize the right of men and women workers to equal pay for work of equal value (Article 4(3));

– the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)* calls on States parties to promote the right to equal remuneration for jobs of equal value for women and men (Article 13(b)).

43. Others, however, establish a more limited right to equal remuneration for equal work, including the following:

– the *Protocol of San Salvador* provides for equal wages for equal work for all workers (Article 7(a)); and

– the *Arab Charter on Human Rights* provides that there shall be no discrimination between men and women in the enjoyment of the right to effectively benefit from equal remuneration for equal work (Article 34(4)).

The objective of coherence in the supervision of the international and regional obligations of States in relation to fundamental principles and rights at work

44. Most of the international and regional texts referred to above have supervisory mechanisms entrusted with monitoring the effective application of the obligations assumed by States through their ratification.

[52] See *Equal remuneration*, General Survey of the reports on the Equal Remuneration Convention, 1951 (No. 100) and Equal Remuneration Recommendation, 1951 (No. 90), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 72nd Session, Geneva, 1986, para. 6.

45. In the context of the United Nations, this supervision is entrusted to bodies composed of independent experts (the "treaty bodies"). [53] As the Committee has recalled on many occasions, [54] international labour standards and the provisions of related United Nations human rights treaties are complementary and mutually reinforcing. Continuing close cooperation between the ILO and the United Nations to supervise the application of the respective instruments is therefore essential, particularly in the context of United Nations reforms aimed at greater coherence and cooperation within the United Nations system, including with respect to human rights mainstreaming. This cooperation includes the regular exchange of information between the ILO and the United Nations human rights bodies and organs. The ILO provides reports regularly to the CESCR, the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights of the Child (CRC), the Committee on the Elimination of Discrimination against Women, the Committee on Migrant Workers and the Human Rights Committee, and attends private sessions of these bodies. In this respect, the Committee also takes into account in its own work, where appropriate, the concluding observations of the treaty bodies and charter-based bodies.

46. The collaboration that also exists between the ILO and other United Nations bodies and institutions, such as the Human Rights Council and its Universal Periodic Review and the work of its Special Rapporteurs, also assists in reinforcing coherence within the United Nations system. [55] Some issues, such as children in armed conflicts, are also dealt with at the apex of the United Nations system – in the Security Council. Accountability also arises in regard to serious crimes under the jurisdiction of the International Criminal Court.

47. At the regional level, the institutionalized collaboration which exists between the ILO and the committee of experts entrusted with supervising the application of the European Social Charter, its Additional Protocol of 1988 and the European Social Charter (Revised) should be mentioned as a particularly effective example with a view to developing greater coherence in the supervision of the international and regional obligations of States in relation to fundamental principles and rights at work. In accordance with the procedure established under Article 26 of the European Social Charter, a representative of the ILO participates in an advisory capacity in the sessions of the European Committee of Social Rights.

48. The Committee also wishes to emphasize that three regional systems for the protection of human rights have developed a system of jurisdictional supervision, namely the African Court on Human and Peoples' Rights, [56] the Inter-American Court of Human Rights and the European Court of Human Rights.

[53] The treaty bodies (including the CESCR, the CERD, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, examine the reports submitted regularly by States parties on the application of the treaties and draw up conclusions and recommendations ("concluding observations"). Most of the bodies can also receive individual communications in the event of the violation of rights set out in the Conventions for which they are responsible.

[54] See, in particular, the relevant sections of the Committee's annual General Report (for example, in its 2011 report, paras 109–111).

[55] See the I*nformation document on ratifications and standards-related activities* submitted to the Conference each year (for example, Report III (Part 2), ILC, 100th Session, Geneva, 2011, paras 114–117).

[56] A Protocol, adopted by the African Union in 2008, which has not yet entered into force, provides for the merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into a single court, namely the African Court of Justice and Human Rights.

Part II. Freedom of association and collective bargaining

Chapter 1

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Introduction

49. Freedom of association is essential for the pursuit of social justice in the process of globalization and interlinks closely with all other fundamental rights covered by this General Survey. It is a basic human right with universal scope enabling the enjoyment of other rights, a process with substantive content, and opens the door to participatory actions against forced labour, the protection of children from abuses and responsive measures based on non-discrimination and equality beneficial to all. Freedom of association is at the heart of democracy from the grassroots to the higher echelons of power.

50. In its Preamble, the ILO Constitution of 1919 sets forth the principle of freedom of association as one of the means of improving the conditions of workers and ensuring peace. In 1944, the Declaration of Philadelphia, which forms part of the ILO Constitution, reaffirmed that "freedom of expression and of association are essential to sustained progress" and emphasized that this was one of the "fundamental principles on which the Organisation is based". In June 1998, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference, stated that "all Members, even if they have not ratified the [fundamental] Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights". These principles include freedom of association and the effective recognition of the right to collective bargaining. The 1998 Declaration therefore considers to be fundamental the principles enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The ILO Declaration on Social Justice for a Fair Globalization, 2008, adds that freedom of association and the effective recognition of the right to collective bargaining are of particular significance for the achievement of the ILO's four strategic objectives. [57]

[57] Namely: (i) create greater opportunities for women and men to secure decent employment and income; (ii) enhance the coverage and effectiveness of social protection for all; (iii) strengthen tripartism and social dialogue; and (iv) promote and realize standards and fundamental principles and rights at work.

51. Freedom of association and collective bargaining, which are now set out in most of the constitutions of member States, [58] are of vital importance for the social partners, as they enable them to establish rules in the field of working conditions, including wages, to pursue more general claims and to reconcile their respective interests with a view to ensuring lasting economic and social development. In the Committee's opinion, strong and independent workers' organizations are essential to compensate the legal and economic inferiority of workers. Furthermore, employers' organizations are particularly important for the protection of interests of small enterprises. Workers' and employers' organizations are major tools for labour market governance and for the development of industrial relations systems that are vectors of stability, progress and economic and social prosperity. They also make it possible to ensure the effective application of labour legislation through the denunciation of violations of the law wherever necessary. In addition, these organizations participate in consultation machinery for the definition of economic and social policy and the formulation of draft labour legislation. It is therefore essential to ensure their independence in relation to the public authorities and political parties, as recalled by the resolution adopted by the Conference in 1952 concerning the independence of the trade union movement.

52. Conventions Nos 87 and 98 are among those which have received the most ratifications. As additional proof of their importance, all member States, even if they have not ratified the Conventions in question have, on the one hand, an obligation arising from the very fact of membership in the ILO to respect, to promote and to realize the principles concerning fundamental rights which are the subject of these Conventions and, on the other hand, can be called upon to provide explanations to the Committee on Freedom of Association which, as a tripartite body of the Governing Body, has had the mandate since 1951 to examine complaints alleging violations of the principles of freedom of association presented by workers' or employers' organizations against a member State. The Committee of Experts attaches particular importance to the decisions of the Committee on Freedom of Association. As a tripartite body, the legitimacy of the recommendations and principles of the Committee on Freedom of Association is accentuated by the consensus that prevails in its work and the expertise in industrial relations provided by the Government, Employer and Worker members who sit on the Committee in their individual capacity. The very broad convergence of views between the Committee on Freedom of Association and the Committee of Experts can be explained mainly by a need for coherence between the supervisory bodies in relation to the fundamental principles set forth in Conventions Nos 87 and 98. The Committee of Experts therefore frequently refers in its observations to the reports of the Committee on Freedom of Association concerning specific problems relating to freedom of association in a particular country, and the Committee on Freedom of Association draws the attention of the Committee of Experts to the legislative aspects of cases that it is examining, or bases itself on the principles established by the Committee of Experts. Also, at the request of the Committee on Freedom of Association, the Committee of Experts follows up on the implementation of the recommendations of the Committee on Freedom of Association. [59]

[58] See Part I, Chapter 2, above.

[59] *Argentina*, *Australia*, *Colombia*, *Fiji*, *Panama*, *Uruguay*, etc.

Scope of the Convention and methods of application

General principle and authorized exceptions

53. ***By virtue of Article 2 of Convention No. 87, all workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.*** These guarantees apply to all employers and workers in the private and public sectors, including seafarers, agricultural workers, migrant workers, domestic workers, apprentices, subcontracted workers, dependent workers, [60] workers employed in export processing zones and in the informal economy, and self-employed workers. [61] This right also has to be guaranteed in both law and practice without distinction or discrimination of any sort, particularly with regard to race, nationality, sex, civil status, age, occupation and political opinions and activities. Furthermore, Convention No. 87 is not confined to recognizing the right of workers to establish and join first-level organizations, but also recognizes the right of such organizations to establish higher level organizations, which must enjoy the rights recognized for first-level organizations. Finally, as emphasized by *Article 6 of the Convention*, the provisions of *Articles 2, 3 and 4 of the Convention* also apply to federations and confederations.

54. The only exceptions authorized to this principle are set out in *Article 9, paragraph 1*, which allows States to determine the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police. These exceptions are interpreted in a restrictive manner by the ILO supervisory bodies (see below). In practice, the Committee observes that several countries authorize the police forces to establish trade union organizations. [62]

Methods of application

55. ***The principal objective of Convention No. 87 is to protect the autonomy and independence of workers' and employers' organizations in relation to the public authorities, both in their establishment and in their functioning and dissolution.*** However, Convention No. 87, in the same way as Convention No. 98, does not contain specific stipulations with regard to its methods of application. Under the terms of *Articles 1 and 11*, each State bound by the Convention "undertakes to give effect to [its] provisions" and "to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise". Accordingly, the Convention does not necessarily require States to adopt legislation for the implementation of its provisions. For example, for many years, freedom of association was not regulated by legislation in *Uruguay*, where the Convention was applied directly and case law defined the framework for the exercise of the rights of organizations. However, direct legislative intervention is, in almost all countries, the principal method of application of the Convention at the national level (adoption of industrial relations laws, labour codes, etc.).

[60] See the Employment Relationship Recommendation, 2006 (No. 198).

[61] See below paras 63–81.

[62] See, for example, the European Council of Police Unions, which groups together the unions from 20 European countries. See also Brazil and New Zealand (in its report under art. 19 of the Constitution, the Government of New Zealand indicates that the armed forces are not covered by the Employment Relations Act, 2000, but that the police force is covered by the Act, subject to certain arrangements). In contrast, as indicated in the report under art. 19 of the Constitution provided by the Government of Morocco, in that country the personnel of the police forces and auxiliary forces under the responsibility of the Ministry of the Interior cannot establish unions.

Moreover, indirect legislative intervention can be used to establish a legislative framework for collective bargaining, leaving it to the parties to determine together the arrangements governing their relations and agreements. However, all of these legislative interventions have to be interpreted in light of *Article 8* of the Convention, under the terms of which, while organizations are bound, in the exercise of these rights, to respect the law, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. In practice, the effectiveness of the protection and promotion of freedom of association at the national level varies considerably. ***Yet, irrespective of the type of intervention chosen for the implementation of the Convention, the Committee emphasizes the importance that needs to be attached to ensuring that the introduction of any draft legislation on freedom of association and the right to organize that is likely to affect collective bargaining or terms and conditions of employment is preceded by free and frank consultations with the most representative employers' and workers' organizations, with a view to ensuring that the rules adopted are endorsed by all parties, and are therefore sustainable.*** [63]

56. The guarantees set out in constitutions, laws and regulations can be supplemented by other methods of application. These include declarations, public programmes and policies, as well as their evaluation, and codes of conduct and other machinery for self-regulation. They also include recourse procedures and specific machinery established for the settlement of collective disputes. Effect is also frequently given in practice to the provisions of the Convention through national case law and arbitration awards. [64] Finally, the labour inspection services, as well as the authority responsible for the registration of organizations and the authorities entrusted with the settlement of disputes, contribute to ensuring the application of the Convention on a day-to-day basis.

57. In this context, the Committee has recently noted with satisfaction several interesting cases of progress, including the explicit recognition in the new Constitution in Kenya [65] of the right to form, join or participate in the activities and programmes of trade unions or of employers' organizations; the recognition of the universal nature of the right to organize and collective bargaining for all workers, including agricultural workers, in the new Constitution of the *Plurinational State of Bolivia*; [66] the adoption of legislation broadening the scope of application of the Convention in *Chile*; [67] and the amendment to the Constitution in *El Salvador*, [68] under the terms of which employers and workers in the private sector, without distinction as to nationality, sex, race, creed or political persuasion, and whatever their activity or the nature of the work they perform, have the right to associate freely in order to defend their respective interests, by forming occupational associations or unions (the same right is accorded to workers in

[63] See, for example, the Report of the Committee of Experts on the Application of Conventions and Recommendations (hereinafter referred to as the CEACR), Report III (Part 1A), ILC, 100th Session, Geneva, 2011, *Bolivarian Republic of Venezuela* – observation.

[64] See, for example, *Mexico* – CEACR, observation, 2011: the Committee requested the amendment of section 75 of the Federal Act on State Employees (the prohibition of re-election in trade unions) to align it with the case law of the Supreme Court of Justice, with a view to bringing the Act into conformity with the Convention and current ILO practice. According to the Government, even though the legislation in question has not been amended, the Federal Conciliation and Arbitration Tribunal applies the case law referred to.

[65] Kenya – CEACR, observation, 2011, Convention No. 98.

[66] *Plurinational State of Bolivia* – CEACR, observation, 2010.

[67] *Chile* – CEACR, observation, 2002.

[68] *El Salvador* – CEACR, observation, 2010.

autonomous official institutions, public officials and employees, and municipal employees). With reference to consultation procedures prior to the adoption of legislative provisions, the Committee has noted with interest, among other cases, the establishment in *Georgia* [69] of the National Social Dialogue Commission, as well as the creation of a tripartite working group to review and analyse the conformity of the national legislation with the comments of the Committee of Experts; and the preparation of the Fair Work Act, 2009, in *Australia* [70] through a process of extensive consultation with the social partners and key stakeholders.

Main difficulties concerning the scope of application

58. The principal difficulties relating to the scope of application of Convention No. 87 concern the interpretation given by the legislation in certain countries to the exceptions authorized by *Article 9, paragraph 1, of the Convention*, namely the armed forces and the police and, more generally, the application of the Convention to public servants and to certain other categories of workers. The application of the Convention to fire service personnel, prison staff, magistrates and teachers has also been the subject of special attention by the Committee. It is the same for the application of the Convention to workers in the informal economy, [71] migrant workers, domestic workers, workers in export processing zones, as well as workers engaged under a disguised labour relationship (in the form of service contracts, for example). The Committee has also noted that a number of the sectors and groups of workers excluded from the right to organize and related rights are often predominantly female. The Committee therefore considers that it is important to examine the gender implications of the application of the Conventions to ensure that there is no direct or indirect discrimination against women. In the view of the Committee, all of these categories of workers should benefit from the rights and guarantees set forth in the Convention.

Thematic issues

Right of workers and employers to establish and to join organizations of their own choosing

Trade union rights and civil liberties

59. Freedom of association is a principle with implications that go well beyond the mere framework of labour law. Indeed, in the absence of a democratic system in which fundamental rights and civil liberties are respected, freedom of association cannot be fully developed. In addition, and particularly in situations where the law prohibits

[69] *Georgia* – CEACR, observation, 2010.

[70] *Australia* – CEACR, observation, 2010.

[71] The term "informal economy" comprises all economic activities that are – in law or practice – not covered or insufficiently covered by formal arrangements. This term takes account of the considerable diversity of workers and economic units, in different sectors of the economy and across rural and urban contexts that are particularly vulnerable and insecure, that experience severe decent work deficits and that often remain trapped in poverty and low productivity. The informal economy includes wage workers and own-account workers, contributing family members and those moving from one situation to another, as well as some of those who are engaged in new flexible work arrangements and who find themselves at the periphery of the core enterprise or at the lowest end of the production chain. See *Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO's supervisory bodies related to the informal economy* (Geneva, ILO, 2010) p. 13.

democratic and pluralistic alternative voices in the political sphere, trade unions often become the catalyst for broader democratic developments. The resolution adopted by the Conference in 1970 concerning trade union rights and their relation to civil liberties reaffirms the essential link between civil liberties and trade union rights, which was already emphasized in the Declaration of Philadelphia (1944), and enumerates the fundamental rights that are necessary for the exercise of freedom of association, with particular reference to: (i) the right to freedom and security of person and freedom from arbitrary arrest and detention; (ii) freedom of opinion and expression, and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (iii) freedom of assembly; (iv) the right to a fair trial by an independent and impartial tribunal; and (v) the right to protection of the property of trade union organizations. ***The ILO supervisory bodies have since unceasingly stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations.***

60. The interdependence of respect for fundamental rights and freedom of association implies, in particular, that the public authorities cannot interfere in the legitimate activities of organizations by means of arrests or arbitrary detention, nor use the pretext of alleged criminal conduct against workers in view of their membership or legitimate trade union activities. [72] It also requires independent judicial investigations to be conducted rapidly in the case of allegations of violations of the rights and principles guaranteed by the Convention with a view to establishing the facts, violations and determining responsibilities, punishing the perpetrators and instigators and preventing the recurrence of such acts. [73] In this regard, the Committee recalls that excessive delays in the procedures set in motion in response to such allegations create, in practice, a situation of impunity, which reinforces the existing climate of violence and insecurity. [74] It also emphasizes the need for this purpose to provide specific training on freedom of association to the forces of order [75] with a view to avoiding violence and arbitrary arrests on the occasion of strikes and peaceful demonstrations by workers. [76]

61. ***The Committee notes with deep concern that murders of trade union leaders and members continue to occur in certain countries.*** [77] ***Employers may also be the victims of murder*** [78] ***and acts of intimidation.*** [79]

[72] See, for example, *Bangladesh*, *Cuba*, *Ecuador*, *Egypt*, *Gabon*, *Indonesia* and *Myanmar* – CEACR, observations, 2010.

[73] See, for example, *Cambodia*, *Egypt*, *Ecuador*, *Guinea*, *Honduras*, *Panama* and *Paraguay* – CEACR, observations, 2010; Brazil – CEACR, observation, 2010, Convention No. 98.

[74] See, for example, *Cambodia*, *Guatemala* and *Bolivarian Republic of Venezuela* – CEACR, observations, 2010.

[75] *Guatemala* – CEACR, observation, 2010.

[76] See, for example, *Indonesia*, *Myanmar* and *Turkey* – CEACR, observations, 2010.

[77] See, for example, *Colombia*, *Guatemala*, *Philippines*, *Panama* and *Bolivarian Republic of Venezuela*.

[78] See, for example, *Guatemala*.

[79] See, for example, *Bolivarian Republic of Venezuela*.

62. The Committee has, however, noted with satisfaction [80] some progress in this field, including the new legislation in *Colombia*, [81] under the terms of which the time limit for the prescription of acts punishable as the murder of a member of a legally recognized trade union organization shall be 30 years; that it shall be considered as an aggravating circumstance when the victims of murders are members of a trade union organization or the human rights ombudsperson; that any person who prevents a lawful assembly or the exercise of rights granted by labour laws, or engages in reprisals on grounds of strike action, assembly or lawful association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law; and that, in the event of threats or intimidation against a member of trade union organizations, the penalty shall be increased by one third. It has also noted with interest the commitment of the Government of the *Philippines* [82] to create a high-level tripartite monitoring body to review the progress made in investigating and prosecuting the cases of violence against trade unionists brought to the attention of the ILO supervisory bodies.

Right of workers and employers, "without distinction whatsoever", to establish and join organizations

63. In adopting the term "without distinction whatsoever" in *Article 2* of the Convention, rather than enumerating the various prohibited distinctions, the International Labour Conference emphasized that ***the right to organize should be guaranteed without distinction or discrimination of any kind*** and that it should be considered as the general principle, of which the only authorized exception is that set out in *Article 9, paragraph 1*, of the Convention. Indeed, the possibility de facto and de jure to establish organizations is the essential prerequisite for the proper functioning of freedom of association and free collective bargaining. However, although the majority of countries now recognize this right, the legislation in several countries continues to make distinctions that are incompatible with the principles established by the Committee, based on reasons such as the desire to obtain competitive advantage, to perpetuate control over workers or to take into consideration specific economic or cultural characteristics.

Public service

64. In contrast with Convention No. 98, Convention No. 87 does not contain a provision excluding from its scope certain categories of public servants. [83] Accordingly, the Committee has always considered that ***the right to establish and join occupational organizations should be guaranteed for all public servants and officials***, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings. [84] Moreover, no distinction may be made based on

[80] For the Committee's approach in relation to the identification of cases of progress, see: the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), ILC, 100th Session, Geneva, 2011, pp. 21–28, paras 61–67.

[81] *Colombia* – CEACR, observation, 2010.

[82] *Philippines* – CEACR, observation, 2010; Committee on Freedom of Association (CFA), Cases Nos 2528 and 2745.

[83] On this subject, see *Freedom of association and collective bargaining*, General Survey of the reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Report III (Part 4B), ILC, 81st Session, Geneva, 1994, paras 48 et seq.

[84] See, for example, *Cambodia* – CEACR, direct request, 2011 (concerning judges and workers employed on a permanent or temporary basis in the public service).

whether such employees are engaged on a permanent or temporary basis. [85] However, the terms used in the legislation of the different countries to refer to public servants vary and the same expressions do not necessarily cover the same persons. The freedom of association of workers in the public sector may also be established, not by legislation, but by common law. [86] In practice, although the legislation in many States now recognizes the right of employees in the public service to establish and join organizations, certain systems continue to deny the express or indirect recognition of this right, or draw distinctions as to the status and rights of the various categories of public servants. In certain cases, this right is denied to all personnel in the service of the State, or only for certain public servants. [87]

65. Other specific problems may arise. For example, certain countries do not allow organizations of employees in the public service to join the confederations of their choosing, [88] or only authorize public servants to establish "associations", but not real trade union organizations within the meaning of the Convention, [89] even though these associations may sometimes be recognized de facto by the government so that they can participate in certain occupational negotiations. [90] In this context, the Committee has welcomed certain interesting cases of progress. Among others, it has noted with interest the adoption of the Act on the civil service in the *Dominican Republic*, [91] which establishes the right of civil servants to organize (including in federations and confederations), and provides that this right applies to all those employed in the service of the State, municipalities and autonomous entities, and guarantees special protection to the founders of associations and to some members of executive committees.

66. *Senior public officials*. Finally, a distinction is made in some countries between personnel and management in the public service with a view to limiting the right to organize of senior officials. The Committee is of the opinion that to bar these public servants from the right to join trade unions which represent other workers in the public sector is not necessarily incompatible with freedom of association, but on two conditions: (i) senior public officials should be entitled to establish their own organizations to

[85] See, for example, *Cambodia* – CEACR, direct request, 2010; and *Guatemala* – CEACR, observation, 2011 (particularly with regard to workers employed under budget item 029 for specific or temporary tasks).

[86] See, for example, *Guatemala* – CEACR, observation, 2010. In accordance with case law, workers engaged under item 029 who are not covered by the Civil Service Act and other budgetary items for specific or temporary tasks enjoy the right to organize.

[87] See, for example, *Bangladesh* – CEACR, observation, 2010; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; *Gambia* – CEACR, direct request, 2010; *Indonesia* – CEACR, observation, 2010; *Liberia* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2010; *Panama* – CEACR, observation, 2011; *Romania* – CEACR, direct request, 2011; *Rwanda* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Anguilla)* – CEACR, direct request, 2010. In its report under art. 19 of the Constitution, the Government of *Japan* indicates that the basic labour rights of public service employees have been restricted due to the "public nature of their functions performed", but that the issue remains under examination.

[88] See, for example, *Sri Lanka* – CEACR, observation, 2011. The same applies in India.

[89] With reference to prison staff, lighthouse keepers and workers in water and forestry services see, for example, Morocco – CEACR, direct request, 2011, Convention No. 98.

[90] See, for example, *Sri Lanka* – CEACR, observation, 2011 (nine federations of public service employees bargain directly with the ministry).

[91] *Dominican Republic* – CEACR, observation, 2010, Convention No. 98.

defend their interests; and (ii) the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities. [92]

Police and armed forces

67. ***Under Article 9, paragraph 1, of the Convention, the only authorized exceptions from the scope of application of the Convention concern members of the police and the armed forces.*** These exceptions are justified on the basis of the responsibility of these two categories of workers for the external and internal security of the State. In the view of the Committee, these exceptions must however be construed in a restrictive manner. For example, they do not include civilian personnel in the armed forces, fire service personnel, prison staff, customs and excise officials, civilian employees in the industrial establishments of the armed forces, [93] civilian employees in the intelligence services, [94] or employees of the legislative authority. [95] Nor do they automatically apply, in the view of the Committee, to all employees who may carry a weapon in the course of their duties, who cannot a priori be excluded from the scope of the Convention. [96]

68. In practice, as it is not always easy to determine whether workers belong to the military or to the police, in the view of the Committee workers should be considered as civilians in case of doubt. [97] For example, it considers that workers in private security firms [98] and members of the security services of civil aviation companies should be granted the right to establish organizations, in the same way as workers engaged in security printing services and members of the security or fire services of oil refineries, airports and seaports. [99]

Fire service personnel and prison staff

69. While the exclusion of the armed forces and the police from the right to organize is not contrary to the provisions of the Convention, the same cannot be said for fire service personnel and prison staff. Although in a number of countries they are denied the right to organize, [100] ***the Committee is of the opinion that the functions exercised by these two categories of public servants do not justify their exclusion from the rights and guarantees set out in the Convention***.

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[92] General Survey, 1994, para. 57. See, for example, *Romania* – CEACR, direct request, 2011; *Turkey* – CEACR, observation, 2010 (exclusion from the right to organize of certain public employees, including senior public officials); and *Yemen* – CEACR, observation, 2011.

[93] See, for example, *Nigeria* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[94] See, for example, *Czech Republic* – CEACR, direct request, 2011.

[95] See, for example, *Cambodia* – CEACR, direct request, 2011; and *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011.

[96] See, for example, the report provided under art. 19 of the Constitution by the Government of Morocco.

[97] General Survey, 1994, para. 55.

[98] *El Salvador* – CEACR, direct request, 2010.

[99] *Pakistan* – CEACR, observation, 2010.

[100] With regard to the exclusion of prison staff: see, for example, *Bahamas* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Fiji* – CEACR, observation, 2010; *Gambia* – CEACR, direct request, 2010; *Ghana* – CEACR, direct request, 2010; *Kazakhstan* – CEACR, observation, 2011; Morocco – CEACR, direct request, 2011, Convention No. 98; *Namibia* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2010; *United Republic of Tanzania* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; *Zambia* – CEACR, observation, 2011; *Zimbabwe* – CEACR, observation, 2011. With regard to the exclusion of fire service personnel: see, for example, *Bangladesh* – CEACR, observation, 2010; *Japan* – CEACR, observation, 2010; *Kazakhstan* – CEACR, observation, 2011; and *Pakistan* – CEACR, observation, 2010. See also the report provided under art. 19 of the Constitution by the Government of Malaysia.

Magistrates and teachers

70. The freedom of association of magistrates (judges, clerks of courts and public prosecutors) and of teachers also continues to be subject to restrictions, and even prohibitions, in several countries, despite the general principle set out in *Article 2* of the Convention. [101] The Committee has therefore welcomed the progress achieved in this field and, among others, has noted with interest that the Act on the collective bargaining regime of prosecutors for criminal and penal affairs in the Province of Quebec *(Canada)* grants them the right to organize and protection in the exercise of trade union rights. [102] In the field of education and teaching, it has noted with satisfaction the adoption of new legislation on trade unions and employers' organizations in *Botswana* [103] extending the right to organize to the public services and to teachers. It has also noted with interest the adoption of the Colleges Collective Bargaining Act in Ontario *(Canada)*, which allows part-time academic and support staff workers in colleges to join unions for collective bargaining purposes. Moreover, in the view of the Committee, it is not necessarily incompatible with the principles of freedom of association to deny managerial and executive staff the right to join the same trade unions as other workers in the sector, provided that they have the right to establish their own organizations to defend their interests. [104]

Other categories of workers

71. The Committee considers that other categories of workers who are regularly denied the right to establish trade unions must be covered by the principles set out in the Convention. These include, in particular, domestic workers (see below), [105] seafarers, [106] workers in the informal economy and those employed in export processing zones (see below), apprentices and workers during their probationary period, [107] self-employed workers, [108] workers without employment contracts, [109] agricultural workers, [110] certain

[101] With regard to restrictions on the freedom of association of magistrates: see, for example, *Armenia* – CEACR, direct request, 2011; *Burundi* – CEACR, observation, 2011; *Cambodia* – CEACR, direct request, 2010; *Chile* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; *Kazakhstan* – CEACR, observation, 2011; *Mauritania* – CEACR, observation, 2011; *Peru* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; *Ukraine* – CEACR, observation, 2011; *Yemen* – CEACR, observation, 2011; and *Zambia* – CEACR, observation, 2011. In its report under art. 19 of the Constitution, the Government of Morocco indicates that magistrates, irrespective of their status in the magistrature, cannot establish or join occupational unions (section 14 of the Dahir of 11 November 1974 issuing Act No. 1-74-467 establishing the statutes of the magistrature). With regard to restrictions on the freedom of association of teachers: see, for example, *Bangladesh* – CEACR, observation, 2010; and *Ethiopia* – CEACR, observations, 2010 and 2011.

[102] *Canada* – CEACR, observation, 2010.

[103] *Botswana* – CEACR, observation, 2005.

[104] General Survey, 1994, para. 66. See, for example, *Canada (Ontario)* – CEACR, observation, 2011; and *Ghana* – CEACR, direct request, 2010.

[105] With regard to the exclusion of domestic workers: see, for example, *Bangladesh* – CEACR, observation, 2010; *Canada (Ontario)* – CEACR, observation, 2010; *Eritrea* – CEACR, observation, 2011, Convention No. 98; *Gambia* – CEACR, direct request, 2010; *Kuwait* – CEACR, observation, 2011; *Swaziland* – CEACR, observation, 2010; and *Yemen* – CEACR, observation, 2011.

[106] With regard to the exclusion of seafarers: see, for example, *Benin* – CEACR, observation, 2010; and *Madagascar* – CEACR, observation, 2011.

[107] With regard to the exclusion of this category of workers: see, for example, *Burkina Faso* – CEACR, direct request, 2011; and *Turkey* – CEACR, observation, 2010.

[108] With regard to the exclusion of self-employed workers: see for example, *Central African Republic* – CEACR, direct request, 2010; and *Turkey* – CEACR, observation, 2010.

workers in the health sector (personnel in establishments for the care of the sick, the aged and orphans) [111] and workers in charitable institutions. [112] The Committee also recalls that legislation should not prevent former workers and retirees from joining trade unions, if they so wish, particularly when they have participated in the activity represented by the union. [113]

72. In this context, the Committee has noted with satisfaction, among others, the adoption of new legislation in *Peru* [114] removing the denial of the right to trade union membership of workers during their probationary period. Finally, it has noted with interest the amendment of the legislation in the *Central African Republic* [115] allowing persons who have ceased to work or who have left the profession to continue to belong to a trade union.

Domestic workers

73. Finally, although trade unions have increased their efforts to reach out to domestic workers, the labour legislation in a number of countries still does not cover this category of workers, as a result of which there are no legal provisions applicable to them, including in relation to trade union rights, and they are not covered by labour inspection or enforcement institutions. [116] ***The Committee therefore regularly emphasizes the need to ensure not only that domestic workers are covered by the relevant legislation, but also that, in practice, they benefit from the guarantees set forth in the Convention.*** [117] In this context, it has noted with satisfaction the recognition of the right to organize of domestic workers in *Swaziland*. [118] The right of domestic workers to establish and join organizations of their own choosing is now specifically formulated in the new Domestic Workers Convention, 2011 (No. 189).

Workers in export processing zones

74. In its report in 2009, ***the Committee observed with concern that there are significant lacunae in the application of Convention No. 87 with respect to workers in export processing zones (EPZs)***. [119] Noting "the disparity between de jure and de facto

[109] *Poland* – CEACR, observation, 2011.

[110] With regard to the exclusion of agricultural workers: see, for example, *Bangladesh* – CEACR, observation, 2010; *Canada (Alberta, Ontario and New Brunswick)* – CEACR, observation, 2010 (with reference to agricultural and horticultural workers; *Honduras* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2010.

[111] With regard to the exclusion of workers in the health sector: see, for example, *Bangladesh* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2010.

[112] With regard to the exclusion of workers in charitable institutions: see, for example, *Bangladesh* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2010.

[113] *Turkey* – CEACR, observation, 2010.

[114] *Peru* – CEACR, observation, 2005.

[115] *Central African Republic* – CEACR, observation, 2010.

[116] See: Domestic Workers Convention, 2011, (No. 189), adopted at the 100th Session of the ILC, June 2011, and the preparatory work. See also the comments of the CEACR on the situation of domestic workers in the following countries: *Bangladesh* – CEACR, observation, 2009; *Canada (Ontario)* – CEACR, observation, 2010; *China (Macau Special Administrative Region)* – CEACR, observation, 2004; *Gambia* – CEACR, observation, 2010; *Haiti* – CEACR, observation, 2010 (a law to improve the living conditions of domestic workers is due to be enacted); and *Kuwait* – CEACR, observation, 2011.

[117] See, for example, *Mexico* – CEACR, observation, 2005.

[118] *Swaziland* – CEACR, observation, 2011.

[119] CEACR, general observation, Convention No. 87, 2009.

application of labour standards in EPZs and between EPZ workers and those not working in EPZs", the Committee recalled that there are "around 3,500 EPZs throughout the world, operating in 120 countries and territories and employing around 66 million people" and found it "of particular concern when considering the importance of fundamental human rights, in particular equality of treatment, that there is often an extremely high proportion of women among EPZ workers deprived of their rights". ***The Committee therefore requests the governments concerned to provide information on the exercise in practice of trade union rights in EPZs and maquilas, particularly with regard to the access of the labour inspectorate and representatives of workers' organizations to these zones.*** [120] Among other measures, it has noted with interest in this respect the recent establishment of trade union organizations in the EPZ in *Togo*. [121]

Workers in the informal economy

75. With regard to the informal economy, the Committee added that in many countries around the world "the informal economy represents between half and three-quarters of the overall workforce" and that, under the terms of the Convention, these workers have the right to organize and to collective bargaining, without distinction whatsoever, to establish and join organizations freely and to represent their members in relation to the public authorities in structures established for the purpose of social dialogue. Examination of the Committee's comments "lends weight to the importance of the obstacles faced by" many of these workers and "in some cases, illustrates the dramatic impact that this has had on society overall". [122]

76. The Committee has welcomed the innovative approaches adopted in certain countries to enable workers in the informal economy to organize. For example, it has noted with interest the indication by the International Trade Union Confederation that the amendment to the legislation and the efforts made by the authorities in *Uganda* [123] have contributed to a significant improvement in the exercise of trade union rights, and that in most sectors employers that had traditionally been hostile towards trade unions have agreed to recognize and negotiate with them, including in the textile industry. It has also noted that the legislation in *Mauritius* [124] now provides that every employee, citizen or not, holding a work permit, shall be entitled to be a member of a trade union; that sensitization campaigns are being undertaken to apprise migrant workers of the provisions of the employment relations legislation (including freedom of association); and that steps are being taken to collect information on the rate of unionization of migrant workers. However, the Committee observes that these positive initiatives are few in number and highly dispersed. ***It therefore endorses the concern expressed in the resolution adopted by the Conference in 2002 concerning decent work and the informal economy, 2002, in which the ILO emphasizes the practical importance of***

[120] See, for example, *Bangladesh* – CEACR, observation, 2010; *Guatemala* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; and *Pakistan* – CEACR, observation, 2010. See also the comments on this subject in the context of Convention No. 98 concerning, for example, *Bangladesh* – CEACR, observation, 2011; *Belize* – CEACR, observation, 2010; *Iceland* – CEACR, observation, 2010; *Mauritius* – CEACR, observation, 2011; *Nicaragua* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2011; and *Mozambique* – CEACR, direct request, 2011. See also: Committee on Freedom of Association, Case No. 2371 *(Bangladesh)*, Report No. 337; and Case No. 2228 *(India)*, Report No. 362.

[121] *Togo* – CEACR, observation, 2011.

[122] CEACR, general observation, Convention No. 87, 2009.

[123] *Uganda* – CEACR, observation, 2009, Convention No. 98.

[124] *Mauritius* – CEACR, observation, 2011.

freedom of association for the effective improvement of working conditions in the informal economy, particularly for women and youth.

Subcontracting and other means of circumventing the right to organize

77. Noting that situations exist in which contractual arrangements can have the effect of depriving workers of the protection that they are due, the Employment Relationship Recommendation, 2006 (No. 198), provides that national policy should at least include measures to "combat disguised employment relationships" and ensure "standards applicable to all forms of contractual arrangements". ***The Committee therefore takes care to obtain information concerning the methods that are sometimes used in certain countries to circumvent the right to organize (including employment relationships disguised as civil contracts for the provision of services or the use of "work cooperatives" to cover actual employment relationships*** [125]***).*** [126]

Other forms of distinction

Distinction based on age

78. The legislation in most countries makes no distinction on grounds of sex, marital status or minimum age with regard to trade union membership, or explicitly prohibits any discrimination on these grounds. However, the Committee observes that, ***although it emphasizes the need to guarantee that minors who have reached the minimum legal age for admission to employment, both as workers and as apprentices, can exercise their trade union rights without parental authorization***, certain countries still make the trade union membership of minors under 18 or 16 years of age subject to the explicit authorization of their parents or guardians, or maintain a divergence between the minimum age for admission to employment and the minimum age for trade union membership. [127]

Distinction based on nationality or residence

79. ***The right of workers, without distinction whatsoever, to establish and join organizations of their own choosing implies that anyone residing in the territory of a State, whether or not they have a residence permit, benefits from the trade union rights provided for by the Convention, without any distinction based on nationality.*** [128] In other words, in the view of the Committee, migrant workers have the right, under the same conditions as nationals, to benefit from the fundamental rights deriving from freedom of association. Although the law and practice of the majority of countries recognizes the right of migrant workers to join trade unions, the law in several countries still contains restrictions of varying degrees of importance relating to nationality and residence. Certain States continue to make citizenship a requirement for the

[125] See, for example, *Colombia* – CEACR, observation, 2010. In its report under art. 19 of the Constitution, the Government of *Turkey* proposes that ILO standard-setting action on subcontracting should be envisaged in view of the inequalities that subcontracting creates between workers in the same jobs.

[126] On the subject of subcontracting, see, for example: Committee on Freedom of Association, Case No. 2602 (Republic of Korea), Report No. 350, para. 671; and Case No. 2151 *(Colombia)*, Report No. 330, para. 540.

[127] See, for example, *Burkina Faso* – CEACR, direct request, 2011; *Burundi* – CEACR, observation, 2011; *Chad* – CEACR, observation, 2010; *Djibouti* – CEACR, direct request, 2011; *Mali* – CEACR, direct request, 2011; *Mauritania* – CEACR, observation, 2011; *Central African Republic* – CEACR, observation, 2010; *Romania* – CEACR, direct request, 2011; *Senegal* – CEACR, observation, 2011; *Sri Lanka* – CEACR, observation, 2011; *Togo* – CEACR, direct request, 2011; and *Tunisia* – CEACR, observation, 2011.

[128] See, for example, *Albania* – CEACR, direct request, 2010. ILO instruments apply to irregular migrant workers, unless otherwise stated (see the resolution adopted by the Conference in 2004 concerning a fair deal for migrant workers in a global economy, para. 28).

establishment of trade unions, or determine the proportion of members who have to be nationals, [129] or subject the trade union membership of foreign nationals to conditions of residence and/or reciprocity. [130]

80. The Committee has therefore welcomed the recent adoption of legislation extending the right to organize to foreign workers, among others, in *El Salvador* [131] and *Kuwait*, [132] or removing reciprocity requirements, for example in the *Syrian Arab Republic*. [133] In particular, it has noted with satisfaction the ruling by the Constitutional Court in *Spain*, [134] which found a provision unconstitutional that required foreign nationals to be legally resident in the country in order to benefit from the right to organize or to join an occupational organization freely under the same conditions as those applicable to nationals.

Distinction based on political opinion

81. The Committee considers that any legislative or regulatory measure, or any practice, [135] whereby an individual is deprived of his or her right to become or remain a trade union member for expressing certain political opinions or participating in political activities (except those which advocate violence) constitutes an infringement of the right to organize, as recognized in *Article 2* of the Convention.

Right to establish organizations "without previous authorization"

82. The legislation in many countries explicitly provides that workers and employers have the right to establish organizations without previous authorization. While, in most countries, legislation requires certain formalities to be observed for this purpose, in other countries, no formalities whatsoever are imposed. [136] In the view of the Committee, regulations providing for formalities are not in themselves incompatible with the Convention, provided that they do not in practice impose a requirement of "previous authorization", in violation of *Article 2*, or give the authorities discretionary power to refuse the establishment of an organization; nor must they constitute such an obstacle that they amount in practice to a pure and simple prohibition. [137] It also emphasizes that provision should be made for the possibility of an appeal against any administrative

[129] See, for example, *Algeria* – CEACR, observation, 2010; and *Libya* – CEACR, direct request, 2011.

[130] See, for example, *Central African Republic* – CEACR, observation, 2010; and *Philippines* – CEACR, observation, 2011.

[131] *El Salvador* – CEACR, observation, 2010.

[132] *Kuwait* – CEACR, observation, 2011.

[133] *Syrian Arab Republic* – CEACR, observation, 2002.

[134] *Spain* – CEACR, observation, 2011. Furthermore, in its report under art. 19 of the Constitution, the Government of New Zealand indicates that freedom of association can be exercised at the enterprise, sector/industry and national and international levels by the following categories of workers: "all workers in the public service, medical professionals, teachers, agricultural workers, workers engaged in domestic work, migrant workers, workers of all ages and workers in the informal economy".

[135] See, for example, Committee on Freedom of Association, Case No. 2258 *(Cuba)*, Report No. 332, para. 515.

[136] In its report under art. 19 of the Constitution, the Government of the United States indicates that there is no requirement that a union be registered in order to be recognized under United States law, nor are there any general conditions that must be fulfilled by workers' and employers' organizations when they are being established. Most such organizations are unincorporated, voluntary associations. However, the Labor-Management Reporting and Disclosure Act, 29 U.S.C., sections 401–531, does establish a number of requirements relating to the functioning of labour organizations.

[137] General Survey, 1994, paras 68 et seq. See, for example, *Cameroon* – CEACR, observation, 2010 (the legal existence of a trade union is subject to the prior approval of the Minister for Territorial Administration).

decision of this kind to be examined without delay by an independent and impartial jurisdiction. [138]

Filing of by-laws and registration

83. The formalities covered by the concept of "registration" vary according to the legislation of each country. In most cases, registration confers significant advantages (special immunities, tax exemptions, the right to have recourse to dispute settlement machinery, the right to be recognized as a bargaining agent, etc.). However, ***in the view of the Committee, although the official recognition of an organization through its registration constitutes a relevant aspect of the right to organize, as it is the first measure to be taken so that organizations can fulfil their role effectively,*** [139] ***the exercise of legitimate trade union activities should not be dependent upon registration***. [140]

84. In some cases, the legislation merely requires the by-laws to be deposited, possibly with details of the number of members and the composition of the executive bodies, enabling the authority responsible for registration to verify that the organization is in conformity with the provisions of the legislation; in such cases, the competent authority does not normally have discretionary power. However, in other cases, the legislation does not clearly define the procedures for the formalities which have to be observed or the reasons which may be given for refusal, and confers upon the competent authority a discretionary power to accept or refuse an application for registration, which may be tantamount in practice to imposing "previous authorization", which is incompatible with *Article 2* of the Convention. [141] This is the case, for example, in countries in which discretionary power is exercised through the authority granted to the registrar, [142] or which make the decision concerning registration subject to approval by a specific authority [143] or a report of an investigation prepared by the labour inspectorate. [144]

85. Other problems of compatibility with the Convention also arise where the registration procedure is so long and complex as to undermine freedom of association. [145] With a view to resolving this issue, ***the Committee considers in particular that: (i) it is important to allow organizations seeking registration adequate time to rectify any difficulties related to registration through their representatives, rather than obliging them to recommence the procedure from the beginning;*** [146] ***and***

[138] General Survey, 1994, para. 106.

[139] *Ethiopia* – CEACR, observation, 2011.

[140] *Belarus* – CEACR, observation, 2011.

[141] General Survey, 1994, paras 73–74.

[142] See, for example, *Bahamas* – CEACR, observation, 2010; *Fiji* – CEACR, observation, 2010; *Saint Vincent and the Grenadines* – CEACR, direct request, 2011; and *Seychelles* – CEACR, observation, 2011.

[143] See, for example, *Haiti* – CEACR, observation, 2010. In its report under art. 19 of the Constitution, the Government of the Islamic Republic of Iran indicates that trade unions may be established in the country on condition that they "do not impair the principles of independence, freedom, national solidarity, Islamic precepts and the founding ideals of the Islamic Republic".

[144] See, for example, *Djibouti* – CEACR, observation, 2011.

[145] See, for example, *Ethiopia* – CEACR, observation, 2011 (concerning the excessive duration of the registration procedure for an organization of teachers); *Guatemala* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2011 (the period necessary for registration should be reduced to a reasonable duration of not more than 30 days); *Romania* – CEACR, direct request, 2011; *United Republic of Tanzania* – CEACR, observation, 2011 (no set duration); *Uganda* – CEACR, direct request, 2011; and *Zambia* – CEACR, observation, 2011 (up to six months).

[146] *Armenia* – CEACR, direct request, 2011.

the authorities entrusted with registration should cooperate fully in the resolution of such difficulties; (ii) in cases in which, to be able to lodge a new application for the establishment of a union, the law requires a certain period to have elapsed since the previous application, this period cannot be too long (for example, the Committee has requested the abolition of a period amounting to at least six months); [147] ***and (iii) the period required for the publication of the by-laws of the organization in the official journal must also be reasonable***. [148] The Committee also considers that amendments made to trade union by-laws should be effective once they have been approved by the competent bodies of the trade union and notified to the competent authority. [149] Finally, it recalls the importance of ensuring the confidentiality of the processing of data on trade union membership in the context of the registration procedure, [150] not only because they relate to the private life of workers, but also because they could expose workers to possible reprisals.

86. In this context, the Committee has noted with satisfaction the removal of provisions which allowed the courts in *Australia (Queensland)* [151] to order the deregistration of an organization on the grounds that the organization or its members had engaged in industrial action that had prevented or interfered with trade or commerce; as well as the adoption of legislation facilitating the registration of trade unions in *Botswana*; [152] and the limitation of the powers conferred upon the registrar to refuse an application for the merger of trade unions in *Fiji*. [153]

Recognition of legal personality

87. By virtue of *Article 7* of the Convention, legal personality should not be refused to organizations when they fulfil the requirements envisaged by the law and its acquisition cannot be made subject to conditions of such a character as to restrict the application of *Articles 2, 3 and 4* of the Convention. The Committee considers that in no event must the conditions for obtaining legal personality, if any, be such as to amount to a de facto requirement of previous authorization. It has noted with interest a ruling handed down recently to this effect by the Constitutional Court of *Colombia*, [154] which found that the registration of the founding statutes of an organization only fulfils functions of publicity, without authorizing the ministry to carry out prior controls of the content of the statute. However, it has considered that legislation is not in conformity with the Convention which, for example, requires a first-level organization to represent at least 50 workers to be able to acquire legal personality, [155] or requiring trade unions, in order to acquire legal personality, to be members of higher level organizations. [156]

[147] *El Salvador* – CEACR, direct request, 2010.

[148] See, for example, *Cape Verde* – CEACR, direct request, 2010.

[149] *Romania* – CEACR, direct request, 2011.

[150] *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[151] *Australia (Queensland)* – CEACR, observation, 2006.

[152] *Botswana* – CEACR, observation, 2005.

[153] *Fiji* – CEACR, observation, 2008.

[154] *Colombia* – CEACR, observation, 2010 (ruling No. 695 of 2008 of the Constitutional Court).

[155] *Equatorial Guinea* – CEACR, observation, 2011.

[156] *Republic of Moldova* – CEACR, observation, 2011.

Appeals to the courts

88. Trade unions should have the right to appeal to impartial and independent courts against any administrative decision relating to their registration. [157] However, ***in the view of the Committee, the existence of the right to appeal to a court is not in itself an adequate safeguard; the competent judges should be able, on the basis of the record, to review the grounds for refusal given by the administrative authorities, which should not be contrary to the principles of freedom of association***. They should also be empowered to give a ruling rapidly and, where necessary, to order appropriate remedies. [158]

Right of workers and employers to establish organizations "of their own choosing"

Structure and composition of organizations: Minimum membership

89. Under *Article 2* of the Convention, workers and employers have the right to establish and join organizations "of their own choosing", subject only to the rules of the organization concerned. This right, which is essential if there is to be genuine freedom of association, has significant implications for the determination of the structure and membership of the organizations concerned. In many countries, an occupational organization may not be established unless it has a minimum number of members. In the view of the Committee, although this requirement is not in itself incompatible with the Convention, ***the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered***. It also considers that this criterion should be assessed in relation to the level at which the organization is to be established (for example, at the industry or enterprise level) and the size of the enterprise. [159] Indeed, the requirement of a minimum membership that is too high may in practice preclude the establishment of more than one organization in a specific occupation, sector or enterprise. [160] The minimum membership may be higher for branch unions although, once again, excessive requirements could prevent the development of trade unions.

90. In practice, the Committee observes that the requirements relating to minimum membership continue to be excessive in a number of countries, both for workers' organizations [161] and for employers' organizations. [162] It has accordingly noted with

[157] This issue has been raised by the Committee in relation to the following countries: *Cape Verde* – CEACR, direct request, 2010; *Djibouti* – CEACR, direct request, 2011; and *Rwanda* – CEACR, direct request, 2011.

[158] General Survey, 1994, paras 77 and 106.

[159] See, for example, *Latvia* – CEACR, direct request, 2011; and *Nigeria* – CEACR, observation, 2011. For example, the Committee considers that the requirement of ten members to establish an employers' organization and 40 to establish a workers' organization at the enterprise level is too high (see, for example, *Panama* – CEACR, observation, 2011).

[160] Taking into account the fact that in a large number of countries small and medium-sized enterprises are preponderant, the Committee considers that the number of workers required to establish an enterprise union in small and medium-sized enterprises should be lower than 30 workers (see, for example, *Ecuador* – CEACR, observation, 1999).

[161] See, for example, *Bangladesh* – CEACR, observation, 2010; *El Salvador* – CEACR, direct request, 2010; *Ecuador* – CEACR, observation, 2010; *Gambia* – CEACR, direct request, 2010; *Equatorial Guinea* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Libya* – CEACR, direct request, 2011; *Latvia* – CEACR, direct request, 2011; *Paraguay* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[162] See, for example, *Armenia* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2010; *Ghana* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2010; *Kazakhstan* – CEACR, observation, 2011; *Kiribati* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Serbia* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

satisfaction the progress achieved in this field, including the removal of any requirement relating to minimum membership for the establishment of workers' and employers' organizations in *Portugal*, [163] and the reduction in the number of workers required for the establishment of a trade union in *Chile* [164] and *Peru*, [165] and for the establishment of an employers' organization in *Mauritius*. [166]

Right to join several organizations

91. In the Committee's opinion, it is important to allow workers in the private and public sectors who are engaged in more than one job in different occupations or sectors to join the corresponding unions as full members (or at least, if they so wish, to join trade unions at the branch level as well as the enterprise level at the same time). [167] In other words, ***obliging workers to only join one trade union could unduly prejudice their right to establish and join organizations of their own choosing***. [168] However, the legislation in certain countries stipulates that members of a trade union must belong to the same or a similar profession, occupation or branch of activity, [169] or imposes a general structure on the trade union movement. [170] In the view of the Committee, such restrictions may only eventually be applied to first-level organizations on condition that these organizations are free to establish inter-occupational organizations and to join federations and confederations in the form and manner deemed most appropriate by the workers or employers concerned. [171] In this context, it has noted with interest the repeal in *Turkey* [172] of constitutional provisions prohibiting membership of more than one trade union.

Trade union monopoly

92. Although it is generally to the advantage of workers and employers to avoid a proliferation of competing organizations, the right of workers to be able to establish organizations of their own choosing, as set out in *Article 2* of the Convention, implies that trade union diversity must remain possible in all cases. The Committee considers that it is important for workers to be able to change trade union or to establish a new union for reasons of independence, effectiveness or ideological choice. Consequently, ***trade union unity imposed directly or indirectly by law is contrary to the Convention***.

[163] *Portugal* – CEACR, observation, 2005.

[164] *Chile* – CEACR, observation, 2002.

[165] *Peru* – CEACR, observation, 2005.

[166] *Mauritius* – CEACR, observation, 2011.

[167] *El Salvador* – CEACR, direct request, 2010.

[168] With regard to the prohibition on joining or establishing more than one trade union see, for example, *Bangladesh* – CEACR, observation, 2010; *Egypt* – CEACR, direct request, 2011; *Fiji* – CEACR, observation, 2010; *Libya* – CEACR, direct request, 2011; *Pakistan* – CEACR, observation, 2010; *Paraguay* – CEACR, observation, 2011; and *Romania* – CEACR, direct request, 2011.

[169] See, for example, *Bangladesh* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010 (section 6(2) of the Industrial Relations Act); and *Zambia* – CEACR, observation, 2011 (restriction of trade union membership to workers in the same sector, trade or industry).

[170] See, for example, *Panama* – CEACR, observation, 2011 (not more than one association in an institution, and organizations may not have more than one chapter per province).

[171] General Survey, 1994, para. 84.

[172] *Turkey* – CEACR, observation, 2011.

93. In practice, the legislation in certain countries continues to explicitly prescribe a single trade union system, [173] either for first-level organizations (by only allowing the establishment of one organization for all the workers in an enterprise, occupation or branch of activity, or in a specific public body), or at all levels of trade union organization. [174] Other systems have the indirect result that it is impossible to establish a second organization representing workers' interests, for example by attributing trade union functions to a specifically designated trade union committee, or by fixing as the minimum membership for the establishment of an organization at least 50 per cent of the workers concerned, thereby making it impossible to establish several organizations. [175] With a view to resolving certain of these difficulties, the Committee requests that any specific designation of a particular organization in law be replaced by a neutral reference to the "most representative" organization. [176]

94. Other forms of trade union monopoly raise problems of compatibility with the Convention, for example where the law requires trade unions to be grouped together in a single federation or confederation; [177] or makes the establishment of a new trade union subject to the approval of the trade union which already exists; or requires first-level organizations to conform to the constitution of the single existing central organization, or obliges them to affiliate with that organization. [178] Finally, provisions regulating registration may also result in the imposition of a trade union monopoly, particularly if the competent authorities have discretionary power to refuse the registration of a trade union if another trade union already exists. [179] In this context, the Committee has welcomed the recent removal of references to trade union unity in the national legislation in several countries, including the *Central African Republic*, [180] *Ethiopia*, [181] *Russian Federation*, [182] *Kuwait*, [183] *Republic of Moldova* [184] and *United Republic of Tanzania*. [185]

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[173] In its report under art. 19 of the Constitution, the Government of Brazil indicates that the right is guaranteed to establish trade unions in full freedom, including for public employees. However, there cannot be more than one union of the same category in the same municipality. Other countries continue to provide for a system of trade union monopoly, such as: *Belarus* – CEACR, observation, 2007; *Iraq* – CEACR, observation, Convention No. 98, 2010; *Libya* – CEACR, direct request, 2011; *Syrian Arab Republic* – CEACR, observation, 2011; *Turkmenistan* – CEACR, direct request, 2011; and *Yemen*– CEACR, observation, 2011. See also: Committee on Freedom of Association, Case No. 2258 *(Cuba)*, 332nd Report, para. 514.

[174] General Survey, 1994, para. 91. See, for example, *Egypt* – CEACR, observation, 2011.

[175] See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Guatemala* – CEACR, observation, 2011.

[176] See, for example, *Canada* – CEACR, observation, 2010 (concerning the need for the governments of Prince Edward Island, Nova Scotia and Ontario to remove the specific designation in the legislation of individual trade unions as bargaining agents); and *Cuba* – CEACR, observation, 2010.

[177] See, for example, *Kuwait* – CEACR, observation, 2011; and *Syrian Arab Republic* – CEACR, observation, 2011.

[178] *Cuba* – CEACR, observation, 2010.

[179] *Nigeria* – CEACR, observation, 2011 (section 3(2) of the Trade Union Act).

[180] *Central African Republic* – CEACR, observation, 2010.

[181] *Ethiopia* – CEACR, observation, 2006.

[182] *Russian Federation* – CEACR, observation, 2003.

[183] *Kuwait* – CEACR, observation, 2011: however, trade union pluralism is still not ensured at the level of federations.

[184] *Republic of Moldova* – CEACR, observation, 2002.

[185] *United Republic of Tanzania* – CEACR, observation, 2005.

Coercion or favouritism by the public authorities

95. Favouritism or discrimination by the authorities in relation to one or more workers' or employers' organizations may take various forms: pressure exerted on organizations in public statements by the authorities; unequally distributed aid; premises provided for holding meetings or activities to one organization, but not to another; refusal to recognize the officers of some organizations in the exercise of their legitimate activities, etc. [186] In the view of the Committee, ***any unequal treatment of this kind compromises the right of workers or employers to establish and join organizations of their own choosing***.

Recognition of the most representative trade unions

96. In an attempt to establish a proper balance between imposed trade union unity, which is incompatible with the Convention, and the excessive multiplication of trade unions, the legislation in some countries establishes the concept of the "most representative trade unions", which are granted a variety of rights and advantages. There are different methods to determine the most representative trade unions and the manner in which they jointly or separately engage in collective bargaining. In the view of the Committee, this concept is not in itself contrary to the principle of freedom of association, but must be accompanied by certain conditions, namely: (i) the determination of the most representative organizations must be based on objective, pre-established and precise criteria, so as to avoid any possibility of bias or abuse; [187] and (ii) the distinction should be limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations). [188]

97. ***The Committee wishes to emphasize that workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the prohibition of other trade unions which workers would like to join, or in the granting of privileges such as to influence unduly the choice of organization by workers.*** [189] This distinction should not therefore have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means of defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances), of organizing their administration and activities, and formulating their programmes, as provided for in the Convention. [190]

[186] General Survey, 1994, para. 104.

[187] The Committee has, for example, noted with satisfaction the information that a political agreement was found in *Belgium* with a view to establishing quantitative and qualitative criteria (being constituted at national level and operating on an inter-occupational basis; representing the majority of sectors and staff categories in the public and private sectors; having a minimum number of paid-up members; and including the defence of workers' interests among the objectives laid down by its rules) that would have to be met by the most representative organizations which wished to be represented on the National Labour Council (*Belgium* – CEACR, observation, 2010).

[188] General Survey, 1994, para. 97; see, for example, Committee on Freedom of Association, Case No. 2843 *(Ukraine)*, Report No. 362.

[189] See, for example, *Argentina* – CEACR, observation, 2011 (concerning sections 38, 48 and 52 of the Act on Trade Union Associations (No. 23551) of 1998); and *Botswana* – CEACR, observation, 2011 (concerning section 48B(1) of the Trade Union and Employers' Organizations Act).

[190] General Survey, 1994, para. 98. See, for example, Committee on Freedom of Association, Case No. 2805 *(Germany)*, Report No. 362.

98. Finally, the Committee considers that systems are compatible with the Convention under which only one bargaining agent may be certified to represent the workers of any given bargaining unit, which gives it the exclusive right to negotiate the collective agreement and to monitor its implementation, provided that legislation or practice impose on the exclusive bargaining agent an obligation to represent fairly and equally all workers in the bargaining unit, whether or not they are members of the trade union. [191]

Trade union security and the right not to join an organization

99. Although, in several countries, the law guarantees directly or indirectly the right not to join a trade union organization and forbids the exercise of any constraint to oblige a person to join or support a trade union, in other countries the law allows "union security" clauses in collective agreements or arbitration awards. Nevertheless, the legislation in many countries does not authorize clauses of this type, and they have even been found unconstitutional by certain supreme courts. [192] Union security clauses are intended, for example, to make trade union membership compulsory or to require the payment of dues by workers who are not members (agency fees) and who benefit from the advantages of the collective agreement negotiated by the union. [193] In the view of the Committee, and in accordance with the preparatory work, *Article 2* of the Convention leaves it to the practice and regulations of each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization, or on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice. The only condition imposed by the Committee is that such clauses are the result of free negotiation between workers' organizations and employers including public employers. [194] On the other hand, compulsory contribution towards the maintenance of trade unions or employers' associations, imposed by law, runs against the right to freely join the organization of one's own choosing. It becomes especially problematic if these contributions are collected by the Government which has not been party to the negotiation of such clauses, and eventually distributed to trade unions or employers' organizations, since such a degree of involvement raises concerns as to possible undue interference of the State in their activities.

[191] General Survey, 1994, para. 99.

[192] See, for example, *Mexico*.

[193] For example, in the United States, non-union members may be required to pay a fair share for agency services (*International Association of Machinists* v. *Street*, 367 US 740 (1961)).

[194] General Survey, 1994, paras 100 et seq.

Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities

Drawing up of constitutions and rules

100. Two conditions have to be met to guarantee fully the right of workers' and employers' organizations to draw up their constitutions and rules: (i) national legislation should only lay down formal requirements respecting trade union constitutions, except with regard to the need to follow a democratic process [195] and to ensure a right of appeal for the members; and (ii) the constitutions and rules should only be subject to the verification of formal requirements by the authorities. Legislative provisions which go beyond these formal requirements may, in the view of the Committee, constitute interference contrary to *Article 3, paragraph 2*, of the Convention. However, in practice, several States continue to authorize certain types of interference by the public authorities, which may take different forms: a first-level trade union may be required to conform to the constitution of a single federation; the constitution of a new trade union may be subject to approval by the central administration of the existing organization; the constitutions may have to be drawn up by the public authorities; trade unions may be required to follow a model constitution which contains more than certain purely formal clauses; etc.

Freedom of association, gender equality and non-discrimination

The Committee recalls that the ILO Declaration on Social Justice for a Fair Globalization highlights freedom of association and the effective recognition of the right to collective bargaining as enabling rights for the attainment of the other ILO strategic objectives. Gender equality and non-discrimination are also highlighted as cross-cutting issues. The Committee has consistently emphasized that the rights under Conventions Nos 87 and 98 should be guaranteed without distinction or discrimination of any kind as to occupation, sex, colour, race, religion, national extraction, political opinion or social origin. For its part, the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), provides that the national policy for the prevention of discrimination in employment and occupation should have regard to a number of principles, including the following: that employers' and workers' organizations should not practice or countenance discrimination in respect of admission, retention of membership or participation in their affairs; and that in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no discriminatory provisions.

The Committee notes that trade unions and employers' organizations have, for many years, been instrumental in promoting equality in employment and opportunities, in particular through the collective bargaining process. In collective agreements, specific consideration has been given to equality and non-discrimination based on a range of grounds, including and often going beyond those set out in Convention No. 111, namely race, colour, sex, religion, political opinion, national extraction or social origin. Other grounds that have been touched upon in collective agreements include age, sexual orientation, disability, physical characteristics and HIV and AIDS. Provisions have also been included in collective agreements aimed at reinforcing

[195] For example, in its report under art. 19 of the Constitution, the Government of the United States indicates that the legislation (the Labor–Management Reporting and Disclosure Act, 29, U.S.C., section 411) provides a "Bill of Rights" for members of unions to assure certain basic rights to all union members. All union members have equal rights in nominating candidates for union office, voting in union elections, and attending and participating in membership meetings.

equality at the workplace and further assisting both women and men to reconcile work and family responsibilities, including provision for flexible working arrangements and family-related leave. In some countries, an analysis is being undertaken of the different impact on men and women of provisions in collective agreements, with a view to ensuring that they do not indirectly discriminate against women, and that they promote equal remuneration for men and women for work of equal value.

A number of trade unions and employers' organizations have also been seeking ways to make their own membership and executive bodies more representative, by establishing quotas or targets for women or minority groups, or by offering services of particular relevance to certain under-represented groups. The Committee welcomes and encourages these voluntary initiatives.

Freedom to elect representatives

Election procedures

101. In the majority of countries, the law recognizes, implicitly or explicitly, the principle of the election of trade union officers by the members. However, while the law in certain countries provides only that the constitutions of trade union organizations must indicate the procedure for appointing their executive bodies, or is intended to promote democratic principles within trade unions or to ensure the proper conduct of the election process, in other cases it allows arbitrary interference by the authorities in elections, which is incompatible with *Article 3, paragraph 1*, of the Convention. This is the case, for example, of provisions which establish very precise rules on the subject of elections or which allow control over the electoral procedure by the administrative authorities or the single trade union central organization [196] (for example, requiring the compulsory presence of a labour inspector or a representative of the administration, [197] or the acceptance or approval of elections and their results). ***With regard to the logistical support that could be provided by a public electoral authority for the organization of elections, the Committee considers that such assistance should only be provided if the organizations so request, in accordance with their constitutions***. [198]

Conditions of eligibility of representatives

Requirement to belong to an occupation or to an enterprise, and service requirements

102. The requirement to belong to an occupation or to an enterprise, either at the time of their candidature, or during a certain period before their election, [199] to be able to hold trade union office is a requirement that is frequently set out in trade union constitutions, and is sometimes also imposed by national law. [200] Failure to comply with this legal obligation is even sometimes punishable with imprisonment, which the Committee

[196] See, for example, *Egypt* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2010 (concerning the powers of the National Electoral Council).

[197] See, for example, *Bahamas* – CEACR, observation, 2010.

[198] General Survey, 1994, paras 113–115.

[199] See, for example, *Burundi* – CEACR, observation, 2011, and direct request, 2010 (seniority of at least one year and at least three years in the public service); *Cambodia* – CEACR, direct request, 2011 (one year); *Fiji* – CEACR, observation, 2010 (six months); and *Libya* – CEACR, direct request, 2011 (four years).

[200] See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; *Guatemala* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Mauritania* – CEACR, observation, 2005, and direct request, 2011; *Panama* – CEACR, observation, 2011; and *Uganda* – CEACR, direct request, 2011.

considers unacceptable. [201] This requirement may also be imposed indirectly when the law requires members of trade unions to belong to the occupation concerned, coupled with the requirement that the officers of the organization be chosen from among its members. [202] In the view of the Committee, provisions of this type infringe the right of organizations to draw up their constitutions and to elect representatives in full freedom by preventing qualified persons (such as full-time union officers or pensioners) from being elected, or by depriving them of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. There is also a real risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office. [203] ***The Committee therefore considers that such legislative provisions should be more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization.***

Nationality, age and literacy

103. The need to be a national of the country concerned is a condition of eligibility for trade union office imposed by several States. [204] Such provisions prevent the election of migrant workers or foreign nationals. In some cases, this requirement is reduced when there is a reciprocity condition between countries, [205] or where exemptions may be granted by the competent authorities. [206] ***The Committee considers that national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country.*** [207] For example, it has considered that the requirement of a period of residence of 20 years for access to trade union office was excessive, [208] but that a period of three years could be considered as being reasonable. [209] It has therefore noted with satisfaction the progress achieved in recent years in relation to the access of foreign workers to trade union office in certain

[201] See, for example, *Pakistan* – CEACR, observation, 2011 (section 27-B of the Banking Companies Ordinance of 1962).

[202] See, for example, *Mauritania* – CEACR, observation, 2005, and direct request, 2011.

[203] See, for example, *Peru* – CEACR, direct request, 2011 (requirement to be in employment to be able to hold trade union office).

[204] See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation, 2010; *El Salvador* – CEACR, direct request, 2010; *Ecuador* – CEACR, observation, 2010; *Fiji* – CEACR, observation, 2010; *Guatemala* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Libya* – CEACR, direct request, 2011; *Mexico* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

[205] See, for example, *Central African Republic* – CEACR, direct request, 2010.

[206] See, for example, Malaysia – CEACR, observation, 2011, Convention No. 98, (with the authorization of the minister); and *Tunisia* – CEACR, observation, 2011 (with the approval of the Secretary of State for Youth, Sport and Social Affairs).

[207] See, for example, *Bolivarian Republic of Venezuela* – CEACR, observation, 2011 (a draft text envisages reducing from ten to five years the period of residence necessary for this purpose). See also Art. 10 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), under the terms of which migrant workers have to benefit from equality of opportunity and treatment in respect of, among other matters, trade union rights, and Paragraph 2(g) of the Migrant Workers Recommendation, 1975 (No. 151), under the terms of which the policy of equality of opportunity and treatment should include eligibility for office in trade unions.

[208] *Democratic Republic of the Congo* – CEACR, direct request, 2011.

[209] *Central African Republic* – CEACR, direct request, 2010.

countries, including *Austria*, [210] *Botswana*, [211] *Burkina Faso*, [212] *Luxembourg*, [213] *Mauritania*, [214] *Nicaragua*, [215] *Romania*, [216] *Syrian Arab Republic* [217] and *Turkey*. [218]

104. With regard to certain other conditions of eligibility, ***the Committee considers, in particular, to be incompatible with the Convention the requirements that candidates for trade union office should have reached the age of majority,*** [219] ***or be able to read and write***, [220] and has noted with satisfaction the removal of the eligibility criterion of literacy in *Guatemala*. [221]

Political views or activities

105. Legislation which prohibits the exercise of trade union functions solely on the grounds of political belief, affiliation or activities is not compatible with the right of organizations to elect their representatives in full freedom. Moreover, ***the Committee is of the view that the practice of giving a broad interpretation to legislation which imposes restrictions so as to deprive certain persons of the right to be elected to trade union office solely on the grounds of their political beliefs or affiliation is not compatible with the Convention***. [222] The Committee has therefore noted with satisfaction the progress achieved in this field, including the recognition in *Peru* [223] of the possibility for trade union officers to engage in political activities to a certain extent.

Criminal record

106. ***The Committee considers that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties should not constitute grounds for disqualification from trade union office.*** However, in practice, several countries disqualify from trade union office all persons who have been convicted, regardless of the gravity or nature of the offence, [224] or those convicted of certain specific offences. [225] In

[210] *Austria* – CEACR, observation, 2008.

[211] *Botswana* – CEACR, observation, 2005.

[212] *Burkina Faso* – CEACR, observation, 2006.

[213] *Luxembourg* – CEACR, observation, 2005.

[214] *Mauritania* – CEACR, observation, 2005.

[215] *Nicaragua* – CEACR, observation, 2005.

[216] *Romania* – CEACR, direct request, 2005.

[217] *Syrian Arab Republic* – CEACR, observation, 2002.

[218] *Turkey* – CEACR, observation, 2010.

[219] See, for example, *Panama* – CEACR, observation, 2011; and *Paraguay* – CEACR, observation, 2010.

[220] See, for example, *Honduras* – CEACR, observation, 2010.

[221] *Guatemala* – CEACR, observation, 2002.

[222] General Survey, 1994, para. 119.

[223] *Peru* – CEACR, observation, 2005.

[224] See, for example, *Cambodia* – CEACR, direct request, 2011 ("persons convicted of any crime"); and *Djibouti* – CEACR, observation, 2011 (conviction "by a court").

[225] See, for example, *Bangladesh* – CEACR, observation, 2010 (compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand); *Burundi* – CEACR, observation, 2011 (imprisonment without suspension of sentence for more than six months); *Pakistan* – CEACR, observation, 2010 (any offence under section 78 of the Industrial Relations Act); *Papua New Guinea* – CEACR, direct request, 2011 (any criminal offence justifying imprisonment); and *Turkmenistan* – CEACR, direct request, 2011 (for being sentenced for a crime, especially a serious crime).

other cases, certain types of conviction can result in the loss of civil and political rights which a candidate must possess in order to be eligible for trade union office. [226] In this context, the Committee has noted with satisfaction the removal of the requirement for the absence of a criminal record in *Botswana* [227] and *Guatemala*. [228]

Re-election, removal and suspension of trade union officers

107. ***In the view of the Committee, the exercise of trade union office is not incompatible with professional life and, consequently, any worker exercising trade union office, including high-level civil servants*** [229] ***should be able to remain in an employment relationship, if she or he so wishes.*** Accordingly, in the view of the Committee, any legislative provision, irrespective of its form, which restricts or prohibits re-election to trade union office is incompatible with the Convention, [230] by reason both of the principle of the autonomy of organizations and the problems that such provisions may raise for organizations which do not have a sufficient number of persons capable of carrying out the duties of a trade union officer. Moreover, any removal or suspension of trade union officers which is not the result of an internal decision of the trade union, a vote by the members or normal judicial proceedings, seriously interferes in the exercise of trade union office. Consequently, provisions which permit the appointment of temporary administrators by the administrative authorities are incompatible with the Convention, whatever the reasons invoked. [231] Provisions are also incompatible with the Convention under the terms of which, for example, the authorities "encourage" or "promote" alternation in the leadership of certain workers' or employers' organizations. [232]

Organization of administration and activities and formulation of programmes

Financial management

108. Legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference which is incompatible with the Convention. Where such provisions are deemed necessary, they should simply establish an overall framework within which the greatest possible autonomy is left to the organizations for their functioning and administration. The Committee considers that restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body against any act of this nature by the authorities. [233]

[226] General Survey, 1994, para. 120.

[227] *Botswana* – CEACR, observation, 2005.

[228] *Guatemala* – CEACR, observation, 2002.

[229] *Romania* – CEACR, direct request, 2011.

[230] See, for example, *Mexico* – CEACR, observation, 2011 (prohibition of re-election in trade unions).

[231] See, for example, *Egypt* – CEACR, observation, 2011 (provoking work stoppages); and *Turkey* – CEACR, observation, 2010 (participation of a representative in local or general elections).

[232] See, for example, *Ecuador* – CEACR, observation, 2010 (art. 326(8) of the Constitution).

[233] General Survey, 1994, para. 135.

109. As the autonomy and financial independence and the protection of the assets and property of organizations are essential elements of the right of organizations to organize their administration in full freedom, any legislative intervention in this respect merits the attention of the Committee. While it accepts legislative requirements that the constitutions of organizations should contain provisions relating to their internal financial administration or which provide for external supervision of financial reports, with a view to ensuring the conditions for honest and effective administration, it considers that other interventions are incompatible with the Convention. For example, the Committee considers that such supervision is compatible with the Convention when it is carried out in the following manner (in all cases, both the substance and the procedure of such verification should be subject to review by the judicial authority, affording every guarantee of impartiality and objectivity): [234]

– the supervision is limited to the obligation of submitting annual financial reports;

– verification is carried out because there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe the principles of freedom of association);

– verification is limited to cases in which a significant number of workers (for example, 10 per cent) call for an investigation of allegations of embezzlement or lodge a complaint.

110. However, ***it would be incompatible with the Convention if the law gave the authorities powers of control which go beyond these principles, or which tend to over-regulate matters that should be left to the trade unions themselves and their by-laws***. [235] This may take the form of extended control over the financial management of organizations, [236] or legislative provisions which regulate in detail certain aspects of the internal administration of organizations. Examples include provisions which:

– establish the minimum contribution of members;

– provide for financial supervision of the accounts by the public authorities;

– entrust the authorities with extensive powers to regulate the maximum rates of salaries and allowances paid to employees of the trade union; [237]

– specify the proportion of union funds that have to be paid to federations;

– require that certain financial operations, such as the receipt of funds from abroad, be approved by the public authorities; [238]

– restrict the freedom of trade unions to invest, manage and use their assets as they wish for normal and legitimate trade union purposes; [239]

[234] General Survey, 1994, paras 124–125.

[235] See, for example, *Libya* – CEACR, direct request, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011. These principles also apply to the supervision of employers' organizations: see, *Ukraine* – CEACR, observation, 2011.

[236] See, for example, *Chad* – CEACR, observation, 2010; *Chile* – CEACR, observation, 2010; and *Egypt* – CEACR, observation, 2011.

[237] See, for example, *Zimbabwe* – CEACR, observation, 2011.

[238] The Committee has noted an amendment to the Labour Code in the *Philippines* in this respect (draft text): *Philippines* – CEACR, observation, 2011.

[239] See, for example, *Kuwait* – CEACR, observation, 2011; and *Syrian Arab Republic* – CEACR, observation, 2011.

– empower the administrative authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time; [240] or

– intervene in the determination of the use of the assets of the trade union to pay fines or penalties imposed on the organization or on a trade union leader in the performance of her or his duties.

111. The Committee has noted with satisfaction the progress achieved recently in certain countries, including a decrease in the powers granted to the authorities to supervise trade union organizations in *Chile*; [241] the ending of the strict supervision of trade union activities by the Government in *Guatemala*; [242] the limitation of the power of the registrar to inspect trade union accounts in *Saint Lucia*; [243] the removal of restrictions on the receipt of funds from abroad in *Botswana*; [244] and the repeal or amendment of provisions in the *Syrian Arab Republic* [245] which prohibited trade unions from accepting gifts and donations without the prior agreement of the federation and the approval of the ministry, conferred on the ministry broad powers of financial supervision and required first-level unions to allocate a certain percentage of their resources to higher level trade unions.

Internal administration and inviolability of union premises

112. Interference by the public authorities in the internal administration of organizations may take several forms. The Committee considers contrary to the Convention legal provisions and practices which, for example, place organizations under the following obligations:

– to transmit to the authorities, at their request, copies of the decisions taken by the executive committees of the organizations or reports of their activities;

– to inform the authorities prior to the adoption of important decisions or to authorize a representative of the authorities to be present on such occasions;

– to assist the authorities in ascertaining whether the association is achieving its authorized purposes; [246] or

– to allow the authorities to determine the composition of the congress and the presiding officers of trade unions. [247]

[240] See, for example, *Botswana* – CEACR, observation, 2011; *Fiji* – CEACR, observation, 2010; *Lesotho* – CEACR, direct request, 2011; *Nigeria* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2010; *Papua New Guinea* – CEACR, direct request, 2010; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Turkey* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011. In certain countries, failure to provide the authorities with the required information may be punishable with imprisonment: see, for example, *Gambia* – CEACR, direct request, 2010; and *Grenada* – CEACR, direct request, 2010.

[241] *Chile* – CEACR, observation, 2002.

[242] *Guatemala* – CEACR, observation, 2002.

[243] *Saint Lucia* – CEACR, observation, 2002.

[244] *Botswana* – CEACR, observation, 2005.

[245] *Syrian Arab Republic* – CEACR, observation, 2002.

[246] *Turkmenistan* – CEACR, direct request, 2011.

[247] See, for example, *Armenia* – CEACR, direct request, 2011 (detailed determination of the rights and responsibilities of the congress of an employers' organization); and *Syrian Arab Republic* – CEACR, observation, 2011 (determination of the composition of the congress and the presiding officers of the General Federation of Trade Unions).

113. Moreover, other matters should be left to the discretion of the members of the trade union, without any intervention by the public authorities, such as: the settlement of any internal dispute in a trade union; [248] issues relating to membership and members' dues; those relating to the decision to terminate the activities of an organization; [249] and those relating to the procedure for the submission of claims to the employer. [250] In this context, the Committee has welcomed, among other measures, the removal of the requirement in *Peru* [251] for trade unions to compile reports which may be requested by the labour authority.

114. Finally, the freedom to organize their administration also includes the right of organizations to be able to dispose of all their fixed and moveable assets unhindered, and that they should enjoy inviolability of their premises, correspondence and communications. When legislation makes provision for exceptions in this respect, for example in emergency situations, or in the interests of public order, ***the Committee considers that searches should only be possible when a warrant has been issued for that purpose by the regular judicial authority***, when the latter is satisfied that there is good reason to presume that such a search will produce evidence for criminal proceedings under the ordinary law, and provided the search is restricted to the purpose for which the warrant was issued. [252]

Activities and programmes

115. Finally, ***workers' and employers' organizations should have the right to organize their activities in full freedom and to formulate their programmes with a view to defending the occupational interests of their members, while respecting the law of the land. This includes in particular the right to hold trade union meetings, the right of trade union officers to have access to places of work and to communicate with management, the right to organize protest action, as well as certain political activities*** (such as expressing support for a political party considered more able to defend the interests of members). The authorities should refrain from any interference which would restrict freedom of assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order. [253] For example, the Committee considers that provisions authorizing the authorities to convene the general assembly of an organization should be repealed, [254] as should those which require the presence of observers at meetings or demonstrations organized by trade unions. [255] In this context, it has welcomed in particular the amendment of the legislation in *Botswana* [256] which gave the registrar and the minister the right to convene general meetings; and the removal by a draft text in *Turkey* [257] of the provision

[248] See, for example, *Burundi* – CEACR, direct request, 2011.

[249] See, for example, *The former Yugoslav Republic of Macedonia* – CEACR, observation, 2011.

[250] See, for example, *Kazakhstan* – CEACR, observation, 2011.

[251] *Peru* – CEACR, observation, 2005.

[252] General Survey, 1994, para. 127.

[253] General Survey, 1994, para. 35.

[254] *Uganda* – CEACR, direct request, 2011.

[255] *Tajikistan* – CEACR, direct request, 2011.

[256] *Botswana* – CEACR, observation, 2005.

[257] *Turkey* – CEACR, observation, 2010.

establishing the possibility for the governor to appoint an observer to the general congress of a trade union.

116. With regard to the political activities of organizations, ***the Committee is of the view that both legislative provisions which establish a close relationship between trade union organizations and political parties, and those which prohibit all political activities by trade unions, give rise to difficulties with regard to the principles of the Convention***. Noting that the existence of a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvement of social conditions generally in each country, [258] the Committee considers that some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interests of organizations in expressing their point of view on matters of economic or social policy affecting their members or workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other. [259]

The right to strike

Introduction

117. ***Strikes are essential means available to workers and their organizations to protect their interests***, but there is a variety of opinions in relation to the right to strike. While it is true that strike action is a basic right, it is not an end in itself, but the last resort for workers' organizations, as its consequences are serious, not only for employers, but also for workers, their families and organizations and in some circumstances for third parties. In the absence of an express provision in Convention No. 87, it was mainly on the basis of *Article 3* of the Convention, which sets out the right of workers' organizations to organize their activities and to formulate their programmes, and *Article 10*, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed (as was the case for other provisions of the Convention) by the Committee on Freedom of Association as a specialized tripartite body (as of 1952), and by the Committee of Experts (as of 1959, and essentially taking into consideration the principles established by the Committee on Freedom of Association). This position of the supervisory bodies in favour of the recognition and protection of the right to strike has, however, been subject to a number of criticisms from the Employers' group in the Committee on the Application of Standards of the International Labour Conference.

[258] Resolution concerning the independence of the trade union movement, 1952 (Preamble).

[259] General survey, 1994, paras 130–133.

Employers' group

The Employers' group in the Conference Committee considers that neither the preparatory work for Convention No. 87, nor an interpretation based on the Vienna Convention on the Law of Treaties, offers a basis for developing, starting from the Convention, principles regulating in detail the right to strike. [1]

According to the Employer members, the right to strike has no legal basis in the freedom of association Conventions. In their view, Convention No. 87 at most contains a general right to strike, which nonetheless cannot be regulated in detail under the Convention. They consider that when the Committee of Experts expresses its views in detail on strike policies, especially on essential services, it applies a "one-size-fits-all" approach that fails to recognize differences in economic or industrial development and current economic circumstances. They add that the approach of the Committee of Experts undermines tripartism and ask it to reconsider its interpretation of the matter. [2] In 2011, the Employer members reiterated their position, considering that the observations of the Committee of Experts on the right to strike and essential services are not in conformity with the text, the preparatory work and the history of the negotiation of Convention No. 87. [3]

In its communication dated 7 July 2011, the International Organisation of Employers (IOE) recalls and develops in detail the long-held views of the Employers' group in relation to the right to strike as set out in the Conference Committee *Record of Proceedings*, particularly those related to the 81st Session of the International Labour Conference (1994) when the last General Survey on freedom of association and collective bargaining was discussed.

[1] *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 57. [2] ibid. [3] *Committee on the Application of Standards: Extracts from the Record of Proceedings*, General Report, 100th Session, Geneva, June 2011, Part I, General Report, para. 55. Moreover, during the discussion of the 1994 General Survey, the Employer members indicated that "strike was not mentioned either in Convention No. 87 or in Convention No. 98. Furthermore, the Survey placed a great deal of emphasis […] on the historical aspects of these instruments; this historical method of interpretation however was only of secondary importance since, in the first place, must come the text, the purpose and the meaning of the provisions themselves. There were no concrete provisions and it was not helpful to quote the standards contained in the instruments of other organizations where strikes and collective action were sometimes mentioned in another context and in a very general or only indirect manner. […] The beginning of the chapter rightly indicated that the right to strike was mentioned during the preparatory work, but adds in paragraph 142 that "[…] during discussions at the Conference in 1947 and 1948, no amendment expressly establishing or denying the right to strike was adopted or even submitted". The Employer members however quoted the following passage: "Several Governments, while giving their approval to the formula, have nevertheless emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association". (31st Conference, 1948, Report VII, p. 87.) A similar conclusion was made in the plenary sitting: "The Chairman stated that the Convention was not intended to be a 'code of regulations' for the right to organize, but rather a concise statement of certain fundamental principles". (31st Conference, 1948, *Record of Proceedings*, Appendix X, p. 477). Later, Recommendation No. 92 on voluntary conciliation and arbitration dealt with this issue in a neutral manner without regulating the contents. During the plenary sitting, the famous Worker spokesperson, Léon Jouhaux, bitterly complained of the unsatisfactory result of the discussion: he did not explicitly mention the absence of the right to strike, but other delegates did. Moreover, during the adoption of Convention No. 98, two requests presented by Workers' delegates with the aim of including a guarantee of the right to strike were rejected on the basis that it was not covered by the proposed text and that this question should be dealt with at a later stage. (32nd Conference, 1949, *Record of Proceedings*, Appendix VII, pp. 468 and 470; see also ILO: *Industry and Labour*, Vol. II, July–December 1949, pp. 147, and following.) Shortly afterwards, a Government delegate made the same request which the chairman declared unreceivable for the same reasons. […] Under these circumstances, it was incomprehensible to the Employers that the supervisory bodies could take a stand on the exact scope and content of the right to strike in the absence of explicit and concrete provisions on the subject, and that this absence seemed precisely to be the justification for their position, as is suggested in paragraph 145. The Committee of Experts had put into practice here what was called in mathematics an axiom and in Catholic theology a dogma: that is complete, unconditional acceptance of a certain and exact truth from which everything else was derived" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, paras 117–119, pp. 25/32 and 33).

Workers' group

The Worker members of the Conference Committee contest the position of the Employer members and consider that, although the right to strike is not explicitly mentioned in the Convention, that does not prevent its existence being recognized, particularly on the basis of several international instruments. [1]

In the discussion of the 1994 General Survey, they stated that the right to strike is an indispensable corollary of the right to organize protected by Convention No. 87 and by the principles enunciated in the ILO Constitution. In their view, without the right to strike, freedom of association would be deprived of its substance. They added that strike objectives could not be limited only to the conflicts linked to the workplace or the enterprise, particularly given the phenomena of enterprise fragmentation and internationalization. This was the logical consequence of the fact that trade union activities should not be limited to strictly occupational questions. This was the reason why sympathy strikes should be possible, as well as strikes at the sectoral level, the national and the international level. Finally, they considered that by considerably limiting the scope of action of trade unions, by legal or administrative restrictions, governments and employers might find themselves increasingly faced with spontaneous actions. [2]

According to the Worker members, possible restrictions on the right to strike in essential services and for certain categories of public servants should be restrictively defined given that they are exceptions to a general rule concerning a fundamental right. They added that the Committee of Experts unanimously, all the Worker members and a large majority of the Government members are of the opinion that effective protection of freedom of association necessarily implies operational rules and principles concerning the modalities of strike action. Finally, they indicated that the Committee of Experts had developed its views on this question in a very cautious, gradual and balanced manner, and that it would be preferable that the general consensus established in this regard was not shaken up. [3]

[1] *Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 99th Session, Geneva, June 2010, Part I, General Report, para. 74. [2] *Record of Proceedings*, ILC, 81st Session, Geneva, 1994, 25, General Report, paras 136–143, pp. 25/38–40. [3] ibid.

118. With regard to the views put forward that the preparatory work would not support the inclusion of the right to strike, the Committee would first observe that the absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose. While the Committee considers that the preparatory work is an important supplementary interpretative source when reviewing the application of a particular Convention in a given country, it may yield to the other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years (see Articles 31 and 32 of the Vienna Convention on the Law of Treaties). In addition, and as seen below in response to comments made by both workers' and employers' organizations, the process of determining whether there is compliance with a general right to strike invariably involves consideration of the specific circumstances in which the Committee is called upon to determine the ambit and modalities of the right. The Committee has further borne in mind over the years the considerations set forth by the tripartite constituency and would recall in this respect that the right to strike was indeed first asserted as a basic principle of freedom of association by the tripartite Committee on Freedom of Association in 1952 and has been recognized and developed in scores of its decisions over more than a half century. Moreover, the 1959 General Survey, in which the Committee first raised its consideration in respect of the right to strike in relation to the Convention, was fully discussed by the Conference Committee on the Application of Standards without objection from any of the constituents.

119. The Committee reaffirms that the right to strike derives from the Convention. The Committee highlights that the right to strike is broadly referred to in the legislation of the great majority of countries and by a significant number of constitutions, as well as by several international and regional instruments, which justifies the Committee's interventions on the issue. Indeed, the principles developed by the supervisory bodies have the sole objective of ensuring that this right does not remain a theoretical instrument, but is duly recognized and respected in practice. For all of these reasons, and in light of the fact that the Committee of Experts has never considered the right to strike to be an absolute and unlimited right, [260] and that it has sought to establish limits to the right to strike in order to be able to determine any cases of abuse and the sanctions that may be imposed. The view taken concerning the right to strike and the principles developed over time on a tripartite basis, as in many other fields, should give rise to little controversy. The Committee further observes that employers' organizations also sometimes invoke the principles developed by the supervisory bodies concerning strikes and very tangible related matters, particularly with regard to the freedom to work of non-strikers, the non-payment of strike days, access of the management to enterprise installations in the event of a strike, the imposition of compulsory arbitration by unilateral decision of trade unions and protest action by employers against economic and social policy.

120. The affirmation of the right to strike by the supervisory bodies lies within the broader framework of the recognition of this right at the international level, particularly in the International Covenant on Economic, Social and Cultural Rights of the United Nations (Article 8, paragraph 1(d)), [261] which, to date, has been ratified by 160 countries, most of which are ILO members, as well as in a number of regional instruments, as indicated in paragraph 35 of the present Survey. It is in the context of the Council of Europe that the protection of the right to strike is the most fully developed at the regional level, in light of the abundant case law of the European Committee of Social Rights, the supervisory body for the application of the European Social Charter adopted in 1961 and revised in 1996, which sets out this right.

121. Other ILO instruments also refer to the right to strike, and principally the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibits the use of any form of forced or compulsory labour as a punishment for having participated in strikes, and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which indicates that the parties should be encouraged to abstain from strikes and lockouts in the event of voluntary conciliation and arbitration, and that none of its provisions may be interpreted as limiting, in any way whatsoever, the right to strike. Certain resolutions also make reference to this right. [262]

122. Each year, the Committee examines many individual cases relating to national provisions regulating strikes, most frequently without being challenged by the governments concerned, which generally adopt measures to give effect to the comments of the Committee of Experts. Over the years, the supervisory bodies have specified a

[260] During the discussion of the 1994 General Survey, the Employer members felt it important to note "that they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike" (*Record of Proceedings*, ILC, 81st Session, Geneva, 1994, Part I, General Report, para. 121, p. 25/33).

[261] The Committee on Economic, Social and Cultural Rights recommends States parties to take the necessary measures with a view to ensuring the full exercise of the right to strike, or relaxing the limitations imposed on this right.

[262] See, in particular, the resolution adopted in 1970 by the ILC concerning trade union rights and their relation to civil liberties.

series of elements concerning the peaceful exercise of the right to strike, its objectives and the conditions for its legitimate exercise, which may be summarized as follows: (i) the right to strike is a right which must be enjoyed by workers' organizations (trade unions, federations and confederations); (ii) as an essential means of defending the interests of workers through their organizations, only limited categories of workers may be denied this right and only limited restrictions may be imposed by law on its exercise; (iii) the objectives of strikes must be to further and defend the economic and social interests of workers and; (iv) the legitimate exercise of the right to strike may not result in sanctions of any sort, which would be tantamount to acts of anti-union discrimination. Accordingly, subject to the restrictions authorized, a general prohibition of strikes is incompatible with the Convention, although the supervisory bodies accept the prohibition of wildcat strikes. Furthermore, strikes are often called by federations and confederations which, in the view of the Committee, should be recognized as having the right to strike. Consequently, legislation which denies them this right is incompatible with the Convention. [263]

Recognition at the national level

123. Although the exercise of the right to strike is in most countries fairly commonly subject to certain conditions or restrictions, the principle of this right as a means of action of workers' organizations is almost universally accepted. In a very large number of countries, the right to strike is now explicitly recognized, including at the constitutional level. [264] The Committee has noted with satisfaction, for example, in relation to the African continent, the recent repeal of provisions prohibiting the right to strike in *Liberia*, [265] and the repeal of significant restrictions on the right to strike which remained in the *United Republic of Tanzania*. [266] It has also noted with satisfaction the definition of strikes set out in the new Labour Code of *Burkina Faso*, [267] under the terms of which a strike is understood as being a concerted and collective cessation of work with a view to supporting occupational demands and ensuring the defence of the material and moral interests of workers.

Modalities

124. In the legislation of several countries, "political strikes" are explicitly or tacitly deemed unlawful. [268] The Committee considers that strikes relating to the Government's economic and social policies, including general strikes, are legitimate and therefore

[263] See, for example, *Colombia* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; and *Panama* – CEACR, observation, 2011.

[264] See, for example, *Albania*, *Algeria*, *Angola*, *Argentina*, *Armenia*, *Azerbaijan*, *Belarus*, *Benin*, *Plurinational State of Bolivia*, *Bosnia and Herzegovina*, Brazil, *Bulgaria*, *Burkina Faso*, *Burundi*, *Cambodia*, *Cameroon*, *Cape Verde*, *Central African Republic*, *Chad*, *Chile*, *Colombia*, *Congo*, *Czech Republic*, *Democratic Republic of the Congo*, *Costa Rica*, *Côte d'Ivoire*, *Croatia*, *Cyprus*, *Djibouti*, *Dominican Republic*, *Ecuador*, *El Salvador*, *Estonia*, *Ethiopia*, *France*, *Georgia*, *Greece*, *Guatemala*, *Guinea*, Guinea-Bissau, *Guyana*, *Haiti*, *Honduras*, *Hungary*, *Italy*, *Kazakhstan*, Kenya, Republic of Korea, *Kyrgyzstan*, *Latvia*, *Lithuania*, *Luxembourg*, *The former Yugoslav Republic of Macedonia*, *Madagascar*, *Republic of the Maldives*, *Mali*, *Mauritania*, *Mexico*, *Republic of Moldova*, *Montenegro*, Morocco, *Mozambique*, *Nicaragua*, *Niger*, *Panama*, *Paraguay*, *Peru*, *Philippines*, *Poland*, *Portugal*, *Romania*, *Russian Federation*, *Rwanda*, *San Marino*, *Sao Tome and Principe*, *Senegal*, *Serbia*, *Seychelles*, *Slovakia*, *Slovenia*, *South Africa*, *Spain*, *Sweden*, *Switzerland*, *Suriname*, *Timor-Leste*, *Togo*, *Turkey*, *Ukraine*, United States, *Uruguay* and *Bolivarian Republic of Venezuela*.

[265] *Liberia* – CEACR, observation, 2009.

[266] *United Republic of Tanzania* – CEACR, observation, 2005.

[267] *Burkina Faso* – CEACR, observation, 2010.

[268] See, for example, *Gabon* – CEACR, direct request, 2004; *Nigeria* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

should not be regarded as purely political strikes, which are not covered by the principles of the Convention. In its view, trade unions and employers' organizations responsible for defending socio-economic and occupational interests should be able to use, respectively, strike action or protest action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members. [269] Moreover, noting that a democratic system is fundamental for the free exercise of trade union rights, the Committee considers that, in a situation in which they deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, trade unions and employers' organizations would be justified in calling for the recognition and exercise of these liberties and that such peaceful claims should be considered as lying within the framework of legitimate trade union activities, [270] including in cases when such organizations have recourse to strikes.

125. With regard to so-called "sympathy" strikes, the Committee considers that a general prohibition of this form of strike action could lead to abuse, particularly in the context of globalization characterized by increasing interdependence and the internationalization of production, and that workers should be able to take such action, provided that the initial strike they are supporting is itself lawful. [271] It has noted in particular the recognition in *Croatia* [272] of the right to call sympathy strikes in national legislation and the recognition of this right for public servants in the current collective agreement. It has also noted with interest the repeal from the Constitution of *Turkey* [273] of the provision which prohibited "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction".

126. Finally, ***in the view of the Committee, any work stoppage, however brief and limited, may generally be considered as a strike, and restrictions in this respect can only be justified if the action ceases to be peaceful***. [274] "Go-slow strikes" and "work-to-rule" actions are also covered by the principles developed. However, certain countries continue to consider these forms of strike action as unfair labour practices, which can be punished by fines, removal from trade union office and other sanctions. [275]

Permitted restrictions and compensatory guarantees

127. The right to strike is not absolute and may be restricted in exceptional circumstances, or even prohibited. Over and above the armed forces and the police, the members of which may be excluded from the scope of the Convention in general, other restrictions on the right to strike may relate to: (i) certain categories of public servants; (ii) essential services in the strict sense of the term; and (iii) situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to

[269] The Committee on Freedom of Association has considered, in the particular case of a complaint presented by employers, that employers, like workers, should be able to have recourse to protest strikes (or action) against a government's economic and social policies (Case No. 2530 *(Uruguay)*, Report No. 348, para. 1190).

[270] See, for example, *Swaziland* – CEACR, observation, 2011.

[271] In its report under art. 19 of the Constitution, the Government of New Zealand indicates that the reason for which it has not ratified Convention No. 87 is related to the fact that "ILO jurisprudence requires that sympathy strikes and strikes on general social and economic issues should be able to occur without legal penalty".

[272] *Croatia* – CEACR, observations, 1999 and 2004.

[273] *Turkey* – CEACR, observation, 2011.

[274] General Survey, 1994, para. 173.

[275] See, for example, *Pakistan* – CEACR, observation, 2010 (a work slowdown is considered an unfair labour practice).

meet the requirements of the situation. In these cases, compensatory guarantees should be provided for the workers who are thus deprived of the right to strike.

128. In this context, the Committee has noted with concern the potential impact of the recent case law of the Court of Justice of the European Communities (CJEC) concerning the exercise of the right to strike, and particularly the fact that in recent rulings the Court has found that the right to strike could be subject to restrictions where its effects may disproportionately impede an employer's freedom of establishment or freedom to provide services. [276] In a communication dated 29 August 2011, the European Trade Union Confederation (ETUC) drew the Committee's attention to its particular concerns with respect to the impact of recent decisions of the Court of Justice of the European Union (*Viking*, *Laval*, *Ruffert* and *Luxembourg*) on freedom of association rights and the effective recognition of collective bargaining. While the ETUC has asked the Committee to determine whether these decisions are compatible with Conventions Nos 87 and 98, the Committee recalls, as it had when examining similar matters with respect to the *United Kingdom*, that its mandate is limited to reviewing the application of Conventions in a given member State. The Committee nevertheless takes note with interest of recent initiatives of the European Commission to clarify the import of these judgments and looks forward to learning of the progress made in this regard.

Public service

129. Taking into account the importance of ensuring the continuity of the functions of the three branches of the State (the legislative, executive and judicial authorities) and of essential services, ***the Committee of Experts and the Committee on Freedom of Association consider that States may restrict or prohibit the right to strike of public servants "exercising authority in the name of the State"***. [277] Decisions implementing this principle at the national level vary. For example, in *Switzerland*, [278] although previously all federal officials were denied the right to strike, an ordinance now limits this prohibition to officials exercising authority in the name of the State.

130. Several States prohibit or impose restrictions on the right to strike in the public service which go beyond the framework established by the Committee. [279] These restrictions relate in particular to teachers. Nevertheless, the Committee considers that public sector teachers are not included in the category of public servants "exercising authority in the name of the State" and that they should therefore benefit from the right to strike without being liable to sanctions, even though, under certain circumstances, the

[276] *United Kingdom* – CEACR, observations, 2010 and 2011. CJEC, 11 December 2007, *International Transport Workers' Federation and Finnish Seaman's Union* v. *Viking Line ABP*, Case C-438/05, and CJEC, 19 December 2007, *Laval un Partneri* v. *Svenska Byggnadsarbetareforbundet*, Case C-341/05.

[277] See *Digest of decisions and principles of the Freedom of Association Committee*, 2006, para. 541, and General Survey, 1994, paras 158 et seq. For an example of the definition of the category of workers "exercising authority in the name of the State", see, *Denmark* – CEACR, direct request, 2010. See, for example, as regards the prohibition of the right to strike of customs officers, Committee on Freedom of Association, Case No. 2288 *(Niger)*, Report No. 333.

[278] *Switzerland* – CEACR, direct request, 2011.

[279] See, for example, *Albania* – CEACR, observation, 2010; *Bulgaria* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2010; *Estonia* – CEACR, observation, 2010; *Japan* – CEACR, observation, 2010 (in its report under art. 19 of the Constitution, the Government of *Japan* indicates that it is currently examining the issue of whether the right to strike should be granted in the public sector); *Kazakhstan* – CEACR, observation, 2011; *Lesotho* – CEACR, observation, 2011; *Niger* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2010.

maintenance of a minimum service may be envisaged in this sector. [280] This principle should also apply to postal workers and railway employees, [281] as well as to civilian personnel in military institutions when they are not engaged in the provision of essential services in the strict sense of the term. [282]

Essential services

131. ***The second acceptable restriction on strikes concerns essential services.*** The Committee considers that essential services, for the purposes of restricting or prohibiting the right to strike, are only those "the interruption of which would endanger the life, personal safety or health of the whole of part of the population". [283] This concept is not absolute in its nature in so far as a non-essential service may become essential if the strike exceeds a certain duration or extent, or as a function of the special characteristics of a country (for example, an island State). In practice, national legislation fairly frequently has recourse to the concept of essential services to limit or prohibit the right to strike. This may range from a relatively short limitative enumeration to a long list which is included in the law itself. In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. However, in certain countries, such as *Bulgaria*, [284] the right to strike can be exercised throughout the public service and in all services termed essential for the community.

132. In practice, the manner in which strikes are viewed at the national level varies widely: several States continue to define essential services too broadly, [285] or leave too much discretion to the authorities to unilaterally declare a service essential; [286] others allow strikes to be prohibited on the basis of their potential economic consequences [287] (particularly in EPZs and recently established enterprises), [288] or prohibit strikes on the basis of the potential detriment to public order or to the general or national interest. [289] Such provisions are not compatible with the principles relating to the right to strike.

133. In still other countries, such as *Colombia*, [290] it is left to the higher judicial authorities to determine, on a case-by-case basis, the essential nature of a service, even where there is a general definition in law in this respect. Finally, in other cases, the

[280] See, for example, *Germany* – CEACR, observation, 2010.

[281] ibid.

[282] See, for example, *Angola* – CEACR, direct request, 2010.

[283] General Survey, 1994, para. 159.

[284] *Bulgaria* – CEACR, observation, 2008 (removal of the prohibition of strikes in the energy, communications and health sectors).

[285] See, for example, *Chile* – CEACR, observation, 2010.

[286] See, for example, *Zimbabwe* – CEACR, observation, 2011.

[287] See, for example, *Australia* – CEACR, observation, 2010; *Benin* – CEACR, observation, 2001; and *Chile* – CEACR, observation, 2010.

[288] See, for example, *Bangladesh* – CEACR, observation, 2010 (prohibition of strikes for three years from the date of commencement of production in a new establishment); and *Panama* – CEACR, observation, 2011 (denial of the right to strike in enterprises less than two years old).

[289] See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; *Bangladesh* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Swaziland* – CEACR, observation, 2001; and *Zambia* – CEACR, observation, 2011.

[290] *Colombia* – CEACR, observation, 2010 (ruling on appeal for cassation of the Labour Chamber of the Supreme Court of Justice of 3 June 2009 (Case No. 40428)).

determination of essential services is the outcome of a joint decision by the parties through an agreement between the social partners, such as in *Cyprus*. [291] In this context, the Committee has noted with satisfaction several cases of interesting progress, including the repeal in *Guatemala* [292] of the prohibition of strikes or the suspension of work by workers in enterprises or services the interruption of which would, in the opinion of the Government, seriously affect the national economy; the removal in *Turkey* [293] of the imposition of compulsory arbitration to prevent a strike in EPZs and; the repeal in *Cyprus* [294] of provisions granting the Council of Ministers discretionary power to prohibit strikes in the services that it considers essential.

Activities not considered as essential services

134. When examining concrete cases, the ILO supervisory bodies have considered that it should be possible for strikes to be organized by workers in both the public and private sectors in numerous services, including the following: the banking sector, [295] railways, [296] transport services and public transport, [297] air transport services and civil aviation, [298] teachers and the public education service, [299] the agricultural sector, [300] fuel distribution services [301] and the hydrocarbon, natural gas and petrochemical sector, [302] coal production, [303] maintenance of ports and airports, [304] port services and authorities [305]

[291] *Cyprus* – CEACR, observation, 2006.

[292] *Guatemala* – CEACR, observation, 2002.

[293] *Turkey* – CEACR, observation, 2005.

[294] *Cyprus* – CEACR, observation, 2008.

[295] See, for example, *Botswana* – CEACR, observation, 2011; *Belize* – CEACR, observation, 2010; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Mexico* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Sao Tome and Principe* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[296] See, for example, *Azerbaijan* – CEACR, observation, 2010; *Bangladesh* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Costa Rica* – CEACR, observation, 2010; *Germany* – CEACR, observation, 2010; *Indonesia* – CEACR, observation, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; *Russian Federation* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[297] See, for example, *Azerbaijan* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *Guatemala* – CEACR, observation, 2011; *Guinea* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Jersey)* – CEACR, observation, 2011.

[298] See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2011.

[299] See, for example, *Canada* – CEACR, observation, 2010 (British Colombia and Manitoba); *Germany* CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; *Trinidad and Tobago* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[300] See, for example, *Chile* – CEACR, observation, 2010.

[301] See, for example, *Ecuador* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Guatemala* – CEACR, observation, 2011; and *Mozambique* – CEACR, observation, 2011.

[302] See, for example, *Bangladesh* – CEACR, observation, 2010; *Belize* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; and *Turkey* – CEACR, observation, 2010.

[303] See, for example, *Turkey* – CEACR, observation, 2010.

[304] See, for example, *Nigeria* – CEACR, observation, 2011.

and loading and unloading services for ships, [306] postal services, [307] municipal services, [308] services for the loading and unloading of animals [309] and of perishable foodstuffs, [310] EPZs, [311] government printing services, [312] road cleaning and refuse collection, [313] radio and television, [314] hotel services [315] and construction. [316]

Activities considered as essential services

135. When examining concrete cases, the ILO supervisory bodies have considered that essential services in the strict sense of the term may include air traffic control services, [317] telephone services [318] and the services responsible for dealing with the consequences of natural disasters, as well as firefighting services, health and ambulance services, prison services, the security forces and water and electricity services. The Committee has also considered that other services (such as meteorological services and social security services) include certain components which are essential and others that are not.

Negotiated minimum service

136. In situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, consideration might be given to ensuring that users' basic needs are met or that facilities operate safely or without interruption, the introduction of a negotiated minimum service, as a possible alternative to a total prohibition of strikes, could be appropriate. In the view of the Committee, the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (or essential services "in the strict sense of the term"); (ii) in services which are not essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an

[305] See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; *Dominica* – CEACR, observation, 2010; *Ghana* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2010; *Guyana* – CEACR, observation, 2011; and *Pakistan* – CEACR, observation, 2010.

[306] See, for example, *Costa Rica* – CEACR, observation, 2010; *Grenada* – CEACR, direct request, 2010; and *Guyana* – CEACR, observation, 2011.

[307] See, for example, *Belize* – CEACR, observation, 2010; *Ecuador* – CEACR, observation, 2010; *Germany* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2010; and *Russian Federation* – CEACR, observation, 2011.

[308] See, for example, *Russian Federation* – CEACR, observation, 2011.

[309] See, for example, *Mozambique* – CEACR, observation, 2011; and *Nigeria* – CEACR, observation, 2011.

[310] See, for example, *Dominica* – CEACR, observation, 2010; and *Mozambique* – CEACR, observation, 2011.

[311] See, for example, *Mozambique* – CEACR, observation, 2011.

[312] See, for example, *Antigua and Barbuda* – CEACR, observation, 2010; and *Nigeria* – CEACR, observation, 2011.

[313] See, for example, *Nigeria* – CEACR, observation, 2011.

[314] See, for example, Committee on Freedom of Association, Case No. 1884 *(Swaziland)*, Report No. 306.

[315] See, for example, Committee on Freedom of Association, Case No. 2120 (Nepal), Report No. 328.

[316] See, for example, Committee on Freedom of Association, Case No. 2326 (Australia), Report No. 338.

[317] See, for example, *Nigeria* – CEACR, observation, 2010.

[318] See, for example, *Kyrgyzstan* – CEACR, direct request, 2011.

acute crisis threatening the normal conditions of existence of the population; and (iii) in public services of fundamental importance.

137. However, such a service should meet at least two requirements: (i) it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. [319] Moreover, a minimum service may always be required, whether or not it is in an essential service in the strict sense of the term, to ensure the security of facilities and the maintenance of equipment.

138. The Committee emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. [320] Moreover, any disagreement on minimum services should be resolved, not by the government authorities, as is the case in certain countries, [321] but by a joint or independent body which has the confidence of the parties, responsible for examining rapidly and without formalities the difficulties raised and empowered to issue enforceable decisions. However, in practice, the legislation in certain countries continues to determine unilaterally and without consultation the level at which a minimum service is to be provided and to require that a specific percentage of the service is provided during the strike. [322] Others authorize the public authorities to determine minimum services at their discretion, without consultation, [323] or require the judicial authorities to issue an order for this purpose. [324]

139. In this context, the Committee has noted several interesting cases of progress, including the establishment and tripartite composition of the Guarantees Commission, which is entrusted with determining minimum services in *Argentina*; [325] the amendment of the Law on Strikes in *Montenegro*, [326] which now provides that, when determining the minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees; the introduction in *Guatemala* [327] of a minimum service in essential public services determined with the participation of the parties and the judicial authorities; and the decision in *Peru* [328] that in the case of disagreement on the number and occupation of the

[319] General Survey, 1994, para. 161.

[320] See, for example, *Republic of Moldova* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

[321] See, for example, *Cambodia* – CEACR, direct request, 2011; and *Cape Verde* – CEACR, direct request, 2011.

[322] See, for example, *Bulgaria* – CEACR, observation, 2011 (in the railways); and *Romania* – CEACR, observation, 2011 (in the field of transport).

[323] See, for example, *Armenia* – CEACR, direct request, 2011; *Chad* – CEACR, observation, 2010; *Paraguay* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2010.

[324] See, for example, *Mauritius* – CEACR, direct request, 2011.

[325] *Argentina* – CEACR, observation, 2011. In contrast, in *Mexico*, the National Banking Commission responsible for ensuring that the indispensable number of agencies remain open during a strike is not a tripartite body.

[326] *Montenegro* – CEACR, direct request, 2011.

[327] *Guatemala* – CEACR, observation, 2002.

[328] *Peru* – CEACR, direct request, 2011.

workers who are to continue working, the labour authority shall designate an independent body for their determination.

Situations of acute national or local crisis

140. ***The third restriction on the right to strike relates to situations of acute national or local crisis.*** As general prohibitions of strikes resulting from emergency or exceptional powers constitute a major restriction on one of the essential means available to workers, the Committee considers that they are only justified in a situation of acute crisis, and then only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural, sanitary or humanitarian disaster, in which the normal conditions for the functioning of society are absent. [329]

Compensatory guarantees for workers deprived of the right to strike

141. When the right to strike is restricted or prohibited in certain enterprises or services considered essential, or for certain public servants exercising authority in the name of the State, the workers should be afforded adequate protection so as to compensate for the restrictions imposed on their freedom of action. Such protection should include, for example, impartial conciliation and eventually arbitration procedures which have the confidence of the parties, in which workers and their organizations could be associated. [330] Such arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely.

Restrictions on strikes during the term of a collective agreement

142. The legislation in certain countries does not establish any restrictions on the time when a strike may be initiated, stipulating only that the advance notice established by the law or by collective agreement must be observed. In other systems, collective agreements are seen as a social peace treaty of fixed duration during which strikes and lockouts are prohibited. The Committee considers that both these options are compatible with the Convention. In both types of systems, however, workers' organizations should not be prevented from striking against the social and economic policy of the Government, in particular where the protest is not only against that policy but also against its effects on some provisions of collective agreements. If legislation prohibits strikes during the term of collective agreements, this restriction must be compensated by the right to have recourse to impartial and rapid arbitration machinery for individual or collective grievances concerning the interpretation or application of collective agreements. [331]

143. *EPZs.* A number of countries establish a special system of industrial relations in EPZs which specifically or indirectly prohibits strikes in such zones. [332] In the view of the Committee, such prohibitions are incompatible with the principles of non-discrimination which must prevail in the implementation of the Convention. It has

[329] General Survey, 1994, para. 152.

[330] *Switzerland* – CEACR, direct request, 2011.

[331] General Survey, 1994, paras 166–167.

[332] See, for example, *Pakistan* – CEACR, observation, 2011 (information provided by the International Trade Union Confederation); and *Panama* – CEACR, observation, 2011.

therefore noted with satisfaction, among other measures, the repeal in *Turkey* [333] of the provision under which compulsory arbitration was imposed for a ten-year period in EPZs for the settlement of collective labour disputes; and the repeal in *Namibia* [334] of the provision which prohibited any employee from taking action by calling, or participating in a strike in an EPZ, under the threat of a disciplinary penalty or dismissal.

Prerequisites

Exhaustion of prior procedures (conciliation, mediation and voluntary arbitration)

144. A large number of countries require advance notice of strikes to be given to the administrative authorities or to the employer and/or establish an obligation to have recourse to prior conciliation and voluntary arbitration procedures in collective disputes before a strike may be called. [335] In the view of the Committee, such machinery should, however, have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness. [336] With regard to the duration of prior conciliation and arbitration procedures, the Committee has considered, for example, that the imposition of a duration of over 60 working days as a prior condition for the exercise of a lawful strike may make the exercise of the right to strike difficult, or even impossible. In other cases, it has proposed reducing the period fixed for mediation. [337] The situation is also problematic when legislation does not set any time limit for the exhaustion of prior procedures and confers full discretion on the authorities to extend such procedures. [338]

Advance notice, cooling-off periods and the duration of strikes

145. In a large number of countries, there is a requirement to comply with a notice period or a cooling-off period before calling a strike. [339] In so far as they are conceived as a stage designed to encourage the parties to engage in final negotiations before resorting to strike action, such provisions may be seen as measures taken to encourage and promote the development of voluntary bargaining. Again, however, the period of advance notice should not be an additional obstacle to bargaining, and should be shorter if it follows a compulsory prior mediation or conciliation procedure which itself is already lengthy. For example, the Committee has considered that advance notice of 60 days is excessive. [340]

[333] *Turkey* – CEACR, observation, 2005.

[334] *Namibia* – CEACR, observation, 2003.

[335] See, for example, *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Libya* – CEACR, observation, 2011; and *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2010.

[336] General Survey, 1994, para. 171.

[337] *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011.

[338] See, for example, *Kiribati* – CEACR, observation, 2011.

[339] See, for example, *Burundi* – CEACR, direct request, 2011; *Honduras* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

[340] *United Republic of Tanzania* – CEACR, observation, 2011.

146. Finally, in certain cases, the advance notice must be accompanied by an indication of the duration of the strike, under the threat that workers may be liable to sanctions if they participate in a strike the duration of which is not specified in the notification. [341] The Committee considers that workers and their organizations should be able to call a strike for an indefinite period if they so wish. [342]

Quorum and majority required to call a strike

147. Certain countries provide that, to be able to call a strike, it must be so decided by two-thirds [343] or three-quarters [344] of workers. In general, the Committee considers that requiring a decision by over half of the workers involved in order to declare a strike is excessive and could unduly hinder the possibility of calling a strike, particularly in large enterprises. [345] In the Committee's view, if a country deems it appropriate to require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level. [346] For example, the observance of a quorum of two-thirds of those present may be difficult to reach and could restrict the right to strike in practice. [347] In this context, it has noted with satisfaction, among other measures, the legislative amendment in *Latvia* [348] which reduced the quorum required to declare a strike from three-quarters to one half of the members of a trade union or a company participating in the respective meeting. Similarly, in *Guatemala*, [349] the requirement to obtain the votes of two-thirds of the members of a trade union to decide whether or not to call a strike has been removed and it is now sufficient to obtain a vote in favour of half plus one of the members constituting the quorum of the respective assembly.

Prior approval and supervision of strike ballots

148. The Committee considers that the requirement set out in law to obtain prior approval of a strike by a higher level trade union organization [350] is an impediment to the freedom of choice of the organizations concerned to organize their activities. Furthermore, it considers that the control or supervision of the strike ballot by the

[341] See, for example, *Burundi* – CEACR, direct request, 2011; *Bulgaria* – CEACR, observation, 2011; *Egypt* – CEACR, direct request, 2011; *Georgia* – CEACR, observation, 2010; *Kyrgyzstan* – CEACR, direct request, 2011; *Mongolia* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

[342] See, for example, *Chad* – CEACR, observation, 2010; *Mozambique* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

[343] See, for example, *Armenia* – CEACR, direct request, 2011; *Honduras* – CEACR, observation, 2010; and *Mexico* – CEACR, observation, 2011.

[344] See, for example, *Bangladesh* – CEACR, observation, 2010; and *Plurinational State of Bolivia* – CEACR, observation, 2010.

[345] See, for example, *Armenia* – CEACR, direct request, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Mauritius* – CEACR, direct request, 2011.

[346] General Survey, 1994, para. 170.

[347] See, for example, *Czech Republic* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

[348] *Latvia* – CEACR, observation, 2007.

[349] *Guatemala* – CEACR, observation, 2002.

[350] Such approval is required, for example, in *Egypt* – CEACR, observation, 2011; and *Tunisia* – CEACR, observation, 2011.

administrative authority [351] constitutes an act of interference in trade union activities that is incompatible with the Convention, unless the trade unions so request, in accordance with their own rules.

The course of the strike

Picketing, occupation of the workplace, access to the enterprise and freedom of work

149. Strike action is often accompanied by the presence, at the entry to the workplace, of strike pickets aimed at ensuring the success of the strike by persuading the workers concerned to stay away from work. In the view of the Committee, in so far as the strike remains peaceful, strike pickets and workplace occupations should be allowed. Restrictions on strike pickets and workplace occupations can only be accepted where the action ceases to be peaceful. It is however necessary in all cases to guarantee respect for the freedom to work of non-striking workers and the right of the management to enter the premises. In practice, while certain countries establish very general rules which are confined to avoiding violence and protecting the right to work and the right to property, others explicitly limit or prohibit the right to establish strike pickets [352] or the occupation of the workplace during a strike. [353] ***The Committee considers that, in cases of strikes, the authorities should only resort to the use of force in exceptional circumstances and in situations of gravity where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances.***

150. Several complaints have been presented by employers' organizations to the Committee on Freedom of Association concerning issues relating to the right to strike. The principal subjects have consisted of the management being prevented from having access to the premises of the enterprise during the strike, the conditions relating to the payment of wages to striking workers, the freedom of work of non-striking workers and the modalities governing compulsory arbitration by unilateral decision of trade union organizations. The Committee has considered that the requirement by law of the closing down of the enterprise, establishment or business in the event of a strike could be an infringement of the freedom of work of non-strikers and could disregard the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of directors and managerial staff to enter the installations of the enterprise and to exercise their activities), and accordingly raises problems of compatibility with the Convention. It has also considered that a stable labour relations system should take account of the rights and obligations of both workers' organizations and of employers and their organizations. [354] In this context, the Committee has noted with satisfaction, for example, the amendment of the legislation in *Panama*, [355] which now provides that the owners, directors, managing director, the staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their

[351] Such supervision is carried out, for example, in *Angola* – CEACR, direct request, 2010; *Bahamas* – CEACR, observation, 2010; *Colombia* – CEACR, observation, 1997; *Swaziland* – CEACR, observation, 2010; and *United Republic of Tanzania* – CEACR, observation, 2011.

[352] See, for example, *United Republic of Tanzania* – CEACR, observation, 2011.

[353] See, for example, *Burkina Faso* – CEACR, observation, 2010 (prohibition under the penalty of penal sanctions); *Côte d'Ivoire* – CEACR, direct request, 2010; *Mauritania* – CEACR, direct request, 2011 (prohibition under penalty of penal sanctions); and *Senegal* – CEACR, observation, 2011.

[354] Committee on Freedom of Association, Case No. 1931 *(Panama)*, Report No. 310, paras 497 and 502.

[355] *Panama* – CEACR, observation, 2011.

purpose is not to recommence productive activities (the access of non-striking workers to the enterprise is not, however, mentioned).

Requisitioning of strikers and hiring of external workers

151. Although certain systems continue to retain fairly broad powers to requisition workers in the case of a strike, [356] the Committee considers that it is desirable to limit powers of requisitioning to cases in which the right to strike may be limited, or even prohibited, namely: (i) in the public service for public servants exercising authority in the name of the State; (ii) in essential services in the strict sense of the term; and (iii) in the case of an acute national or local crisis.

152. The Committee also recalls that the maintaining of the employment relationship is a normal legal consequence of recognition of the right to strike. However, in some countries with the common law system strikes are regarded as having the effect of terminating the employment contract, leaving employers free to replace strikers with new recruits. [357] ***The Committee considers that provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike, particularly where striking workers are not able in law to return to their employment at the end of the dispute.*** The legislation should provide for genuine protection in this respect. [358]

Compulsory arbitration

153. Another means of denying the right to strike or seriously restricting its exercise consists of the imposition of compulsory arbitration, which makes it possible to prohibit virtually all strikes or to end them quickly. In such cases, collective labour disputes are resolved by a final judicial award or an administrative decision that is binding on the parties concerned, with strike action being prohibited during the procedure and once the award has been issued. The Committee considers that recourse to compulsory arbitration to bring an end to a collective labour dispute and a strike is only acceptable under certain circumstances, namely: (i) when the two parties to the dispute so agree; or (ii) when the strike in question may be restricted, or even prohibited, that is: (a) in the case of disputes concerning public servants exercising authority in the name of the State; (b) in conflicts in essential services in the strict sense of the term; or (c) in situations of acute national or local crisis, but only for a limited period of time and to the extent necessary to meet the requirements of the situation. [359] Accordingly, the existence of protracted disputes and the failure of conciliation are not per se elements which justify the imposition of compulsory arbitration. [360] However, the Committee also recognizes that there comes a time in bargaining where, after protracted and fruitless negotiations, the public authorities might be justified to step in when it is obvious that the deadlock will not be broken without some initiative on their part. [361]

[356] See, for example, *Angola* – CEACR, direct request, 2010; *Burkina Faso* – CEACR, observation, 2011; and *Djibouti* – CEACR, observation, 2010.

[357] *United Kingdom* – CEACR, observation, 2011.

[358] General Survey, 1994, para. 139.

[359] General Survey, 1994, para. 257.

[360] *Kiribati* – CEACR, observation, 2011.

[361] General Survey, 1994, para. 258.

154. In practice, several countries continue to authorize recourse to compulsory arbitration, either automatically, or at the discretion of the public authorities, [362] or at the request of one of the parties (sometimes following the exhaustion of compulsory prior conciliation and mediation procedures). [363] ***In the view of the Committee, systematic recourse to this type of procedure is tantamount in practice to a general prohibition of strikes, which is incompatible with the Convention.*** Moreover, arbitration imposed by the authorities at the request of only one of the parties is, in general, contrary to the principles of collective bargaining. Nevertheless, many countries continue to authorize recourse to compulsory arbitration in situations which go beyond the framework established by the Committee, [364] particularly in cases in which disputes continue for more than a certain period. [365]

155. Other countries provide that when the conciliation attempt between the parties to the dispute has not been successful, the dispute may be referred to a specific body responsible for drawing up a report or recommendations which, after a certain period has elapsed, may become enforceable if the parties to the dispute have not challenged them. [366] The Committee considers that this type of provision may be compatible with the Convention, on condition that the period referred to above is sufficiently long to allow the parties the necessary time for reflection.

156. The issue of arbitration is also broadly developed in Chapter 2 below on Convention No. 98.

Sanctions

157. The principles developed by the supervisory bodies in relation to the right to strike are only valid for lawful strikes, conducted in accordance with the provisions of national law, on condition that the latter are themselves in conformity with the principles of freedom of association. They do not cover the abusive or unlawful exercise of the right to strike, which may take various forms and may give rise to certain sanctions. If the strike is determined by a competent judicial authority to be unlawful on the basis of provisions that are in conformity with freedom of association principles, proportionate

[362] See, for example, *Botswana* – CEACR, observation, 2011; *Dominica* – CEACR, observation, 2010; *Fiji* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; *Kuwait* – CEACR, observation, 2011; *Mali* – CEACR, observation, 2011; *Mauritius* – CEACR, direct request, 2011; *Panama* – CEACR, observation, 2010; *Sri Lanka* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010; and *United Kingdom (Anguilla)* – CEACR, direct request, 2011.

[363] See, for example, *Canada* – CEACR, observation, 2010 (when the work stoppage exceeds 60 days); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (from the end of the period of strike notice); *Côte d'Ivoire* – CEACR, direct request, 2010; *Egypt* – CEACR, observation, 2004; *Fiji* – CEACR, observation, 2010; *Georgia* – CEACR, observation, 2010 (after 14 days); *Haiti* – CEACR, observation, 2010; *Malta* – CEACR, observation, 2010; *Pakistan* – CEACR, observation, 2010; *Panama* – CEACR, observation, 2011; *Romania* – CEACR, observation, 2011; and *Uganda* – CEACR, observation, 2010.

[364] See, for example, *Burundi* – CEACR, direct request, 2011 (the possibility of recourse to the Administrative Court in the context of disputes appears to have resulted in a system of compulsory arbitration); *Egypt* – CEACR, observation, 2011 (sections 179, 187, 193 and 194 of the Labour Code); *Ecuador* – CEACR, observation, 2010 (art. 326(12) of the Constitution); *Ghana* – CEACR, direct request, 2010 (section 160(2) of the Labour Act); *Mauritania* – CEACR, observation, 2011 (sections 350 and 362 of the Labour Code); *Mozambique* – CEACR, observation, 2011 (section 189 of the Labour Act); *Panama* – CEACR, observation, 2011 (sections 452 and 486 of the Labour Code); *Sao Tome and Principe* – CEACR, observation, 2010 (section 11 of Act No. 4/92); *Togo* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2010 (sections 29, 30 and 32 of Act No. 2822); and *Uganda* – CEACR, direct request, 2011 (sections 5(1) and (3) of the Labour Disputes Act).

[365] See, for example, *Nicaragua* – CEACR, observation, 2011 (after 30 days of strike); and *Romania* – CEACR, observation, 2011 (after 20 days).

[366] See, for example, sections 242–248 of the Labour Code of *Congo*.

disciplinary sanctions may be imposed against strikers (such as reprimands, withdrawal of bonuses, etc). [367] The question of determining whether or not a strike is lawful is therefore essential. In the view of the Committee, responsibility for declaring a strike illegal should not lie with the government authorities, but with an independent body which has the confidence of the parties involved. [368] In this context, the Committee has noted with satisfaction, for example, that in *Colombia* [369] the legality or unlawful nature of a collective labour suspension or stoppage shall be the subject of a judicial ruling in a priority procedure. It should be noted that the non-payment of wages corresponding to the period of strike is a mere consequence of the absence of work, and not a sanction. Therefore, salary deductions for days of strike do not raise problems of compatibility with the Convention. Ultimately, the payment of wages to striking workers is a matter appropriate to negotiation between the parties concerned.

Penal sanctions

158. Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions that infringe this prohibition, including penal sanctions. [370] However, the Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property). The concern expressed by the Committee to ensure that sentences of imprisonment are on no account imposed on strikers is also supported by the supervisory bodies of the United Nations, and particularly the Committee on Economic, Social and Cultural Rights, which has considered that the imposition of such sanctions constitutes non-compliance with the obligations of the State party to the Covenant. [371] Despite these principles, several States continue to maintain specific penal sanctions for strike action, [372] including imprisonment, [373] in violation of the principles established by the Committee.

[367] *Kiribati* – CEACR, observation, 2011; *Madagascar* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Syrian Arab Republic* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Zambia* – CEACR, observation, 2011.

[368] Certain systems are not in conformity with the Convention on this point: see, for example, *Fiji* – CEACR, observation, 2010; *Peru* – CEACR, direct request, 2011 (this responsibility lies with the labour administrative authority); and *Uganda* – CEACR, direct request, 2011 (the responsibility for declaring a strike illegal lies with the Government).

[369] *Colombia* – CEACR, observation, 2009.

[370] It should be noted that Art. 1 of the Abolition of Forced Labour Convention, 1957 (No. 105), prohibits forced or compulsory labour as a punishment for having participated in strikes.

[371] Committee on Economic, Social and Cultural Rights of the United Nations, *Concluding observations: Syrian Arab Republic*, 24 September 2001 (E/C.12/1/Add.63), para. 21. In particular, the Committee on Economic, Social and Cultural Rights expressed "concern about the restrictions in practice reported by the ILO with regard to the right to strike, such as the imposition of sanctions, including imprisonment, which constitutes non-compliance with the State party's obligation regarding article 8 of the Covenant".

[372] See, for example, *Barbados* – CEACR, observation, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burkina Faso* – CEACR, observation, 2010; *Chile* – CEACR, observation, 2010; *Congo* – CEACR, direct request, 2010; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Guatemala* – CEACR, observation, 2010; *Guyana* – CEACR, observation, 2011; *Kiribati* – CEACR, observation, 2011;

159. Other types of sanctions are sometimes imposed, such as fines, the closure of trade union premises, the suspension or deregistration of the trade union concerned, [374] or the removal from office of trade union officers. [375] The Committee considers that such sanctions should be possible only where the prohibition of strike action is in conformity with the Convention and the sanctions are proportionate to the seriousness of the fault committed. In any case, a right of appeal should exist against sanctions imposed by the authorities. Finally, certain systems are characterized by specific features and convict strikers on the basis of more general provisions of penal legislation, such as the offence of "obstruction of business"; [376] or provide for sentences of imprisonment for failure to appear before the conciliator in the framework of the settlement of an industrial dispute; [377] or provide for penal sanctions in the case of a work slowdown. [378] In the view of the Committee, such sanctions are not compatible with the Convention. In this context, it has noted with satisfaction, among other measures, the removal of penal sanctions for strike action in the *Republic of Moldova*, [379] *Guatemala* [380] and the *Syrian Arab Republic*. [381]

Republic of Moldova – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; *Tunisia* – CEACR, observation, 2011; and *Ukraine* – CEACR, observation, 2011.

[373] See, for example, *Angola* – CEACR, direct request, 2010 (section 27 of Act No. 23/91 on strikes); *Azerbaijan* – CEACR, observation, 2010 (section 233 of the Penal Code); *Bahamas* – CEACR, observation, 2010 (sections 74(3), 75(3), 76(2)(b) and 77(2) of the Industrial Relations Act); *Bangladesh* – CEACR, observation, 2010 (sections 196(2)(e) and 291, 294 to 296 of the Labour Act); *Barbados* – CEACR, observation, 2011 (section 4 of the Better Security Act, 1920); *Benin* – CEACR, observation, 2010 (with regard to seafarers: Ordinance No. 38 PR/MTPTPT of 18 June 1968); *Chile* – CEACR, observation, 2010 (section 11 of Act No. 12927 on the internal security of the State); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (section 326 of the Labour Code); *Ecuador* – CEACR, observation, 2010 (Decree No. 105 of 7 June 1967); *Fiji* – CEACR, observation, 2010 (sections 256(a) and 250 of the Employment Relations Act); *Guyana* – CEACR, observation, 2011 (section 19 of the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Bill, 2006); *Libya* – CEACR, direct request, 2011 (section 176 of the Labour Code); *Madagascar* – CEACR, observation, 2011 (section 258 of the Labour Code); *Netherlands (Aruba)* – CEACR, observation, 2011 (section 374(a) to (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964); *Nigeria* – CEACR, observation, 2011 (section 30 of the Trade Union Act, as amended by section 6(d) of the Trade Union (Amendment) Act); *Pakistan* – CEACR, observations, 2011 (Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act) and 2010 (Essential Services Act); *Philippines* – CEACR, observation, 2011 (sections 264(a) and 272(a) of the Labour Code); *Syrian Arab Republic* – CEACR, observation, 2011 (sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949 issuing the Penal Code); *Serbia* – CEACR, direct request, 2011 (section 167 of the Penal Code); *Seychelles* – CEACR, observation, 2011 (section 56(1) of the Industrial Relations Act); *Tajikistan* – CEACR, direct request, 2011 (section 160 of the Criminal Code); *Trinidad and Tobago* – CEACR, observation, 2011 (for teachers and employees of the Central Bank); *Tunisia* – CEACR, observation, 2011 (section 388 of the Labour Code); *Turkey* – CEACR, observation, 2010 (sections 70, 71, 72, 73 (except for subsection 3, repealed by the Constitutional Court), 77 and 79 of Act No. 2822); *Ukraine* – CEACR, observation, 2011 (section 293 of the Penal Code); *Uganda* – CEACR, direct request, 2011 (section 29(3) of the Labour Disputes (Arbitration and Settlement) Act); *Zambia* – CEACR, observation, 2011 (section 107 of the Industrial and Labour Relations Act); and *Zimbabwe* – CEACR, observation, 2011 (sections 109 and 112 of the Labour Act).

[374] See, for example, *Pakistan* – CEACR, observation, 2010 (section 64(7) of the Industrial Relations Act); and *Zimbabwe* – CEACR, observation, 2011 (section 107 of the Labour Act).

[375] *Pakistan* – CEACR, observation, 2010.

[376] Committee on Freedom of Association, Case No. 2602 (Republic of Korea), Report No. 359, paras 342–370.

[377] See, for example, *Bangladesh* – CEACR, observation, 2010 (section 301 of the Labour Act).

[378] See, for example, *Pakistan* – CEACR, observation, 2010.

[379] *Republic of Moldova* – CEACR, observation, 2011.

[380] *Guatemala* – CEACR, observation, 2002.

[381] *Syrian Arab Republic* – CEACR, observation, 2002.

160. It has also noted with satisfaction the adoption of provisions in *Colombia* [382] providing that any person who prevents a lawful assembly or engages in reprisals on grounds of strike action, assembly or legitimate association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law.

Dismissal for strike action and reinstatement of strikers

161. Since the maintaining of the employment relationship is a normal consequence of recognition of the right to strike, its lawful exercise should not result in striking workers being dismissed or discriminated against. [383] In the view of the Committee, dismissal for strike action in the case of a lawful strike constitutes serious discrimination based on the exercise of lawful trade union activities, in violation of Convention No. 98. It considers that, if the right to strike is to be effectively guaranteed, workers who participate in a lawful strike should be able to return to work once the strike has ended and the fact of making their return to work subject to certain time limits or the consent of the employer is an obstacle to the effective exercise of this right. [384]

Dissolution and suspension of organizations by administrative authority

162. ***The dissolution and suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should therefore be accompanied by all the necessary guarantees. This can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution.*** However, certain countries continue to allow the dissolution of workers' and employers' organizations by administrative authority, which is a serious and direct violation of the Convention. [385] With regard to the distribution of trade union assets in the event of dissolution, these should be used for the purposes for which they were acquired. The authorities and all of the organizations concerned should cooperate so that all trade unions are able to carry out their activities in full independence and on an equal footing. [386]

Right of organizations to establish federations and confederations and to affiliate with international organizations

163. ***In order to defend the interests of their members more effectively, workers' and employers' organizations should have the right to form federations and confederations of their own choosing***, which should themselves enjoy the various rights accorded to first-level organizations, in particular as regards their freedom of operation, activities and programmes. International solidarity of workers and employers also requires that their national federations and confederations be able to group together and act freely at the international level. [387]

[382] *Colombia* – CEACR, observation, 2010.

[383] General Survey, 1994, para. 179.

[384] See Chapter 2 below on Convention No. 98.

[385] See, for example, *Nigeria* – CEACR, observation, 2011.

[386] General Survey, 1994, paras 180 et seq.

[387] General Survey, 1994, paras 189 et seq.

Chapter 2

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Introduction

164. The right to organize and to bargain collectively is interwoven with the other fundamental rights highlighted in this General Survey. It is the complement to freedom of association. It enables constructive leverage to be exerted against forced labour. It is a catalytic process to help protect children and other vulnerable groups. It is a key instrument to uphold non-discrimination and equality, integrating the world of work with the guarantee of fundamental rights at work for all.

165. One of the ILO's principal missions is to promote collective bargaining the world over. This mission was set out in 1944 in the Declaration of Philadelphia, which forms part of the ILO Constitution and recognizes the solemn obligation of the International Labour Organization "to further among the nations of the world programmes which will achieve […] the effective recognition of the right of collective bargaining". This principle was enshrined in Convention (No. 98), adopted five years later, which has since achieved almost universal endorsement in terms of ratification, bearing witness to the force of its principles in the majority of countries. In June 1998, the ILO took a further step with the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Declaration indicates that "all Members, even if they have not ratified the [fundamental] Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights". These principles include the effective recognition of the right to collective bargaining.

166. Convention No. 98, adopted in 1949 to supplement certain aspects of Convention No. 87, has three main objectives: (i) protection against acts of anti-union discrimination both at the time of taking up employment and in the course of employment, including the termination of the employment relationship; (ii) protection against acts of interference in the internal affairs of workers' and employers' organizations; and (iii) the promotion of collective bargaining. Convention No. 98 has since been supplemented by the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

167. The protection afforded to workers and trade union leaders against acts of anti-union discrimination and acts of interference is an essential aspect of freedom of association, as such acts may result in practice in a denial of freedom of association and of the guarantees laid down in Convention No. 87, and also consequently of collective bargaining. Collective bargaining is one of the principal and most useful institutions developed since the end of the nineteenth century. As a powerful instrument of dialogue

between workers' and employers' organizations, collective bargaining contributes to the establishment of just and equitable working conditions and other benefits, thereby contributing to social peace. It also provides a basis for preventing labour disputes and determining procedures for the settlement of certain specific problems, particularly in the context of adjustment processes in the event of economic crisis or cases of force majeure, as well as worker mobility programmes. Collective bargaining is therefore an effective instrument which facilitates adaptation to economic, socio-political and technological change. The principal elements of Convention No. 98, with which most national law and practice is now aligned, are the following: (i) the principle of the independence and autonomy of the parties and of free and voluntary bargaining; (ii) the effort made, in the context of the various bargaining systems, to reduce to a minimum any possible interference by the public authorities in bipartite negotiations; and (iii) the primacy accorded to employers and their organizations and to trade unions as the parties to negotiations.

Scope of the Convention and methods of application

General principle and authorized exceptions

168. ***Convention No. 98 covers all workers and employers, and their respective organizations, in both the private and the public sectors, regardless of whether the service is essential. The only exceptions authorized concern the armed forces and the police, as well as public servants engaged in the administration of the State*** (see below). Accordingly, for example, the Committee has recalled that the right to organize and to collective bargaining applies to the following categories of workers: prison staff, fire service personnel, seafarers, rural and agricultural workers, workers in export processing zones (EPZs), subcontracted workers, migrant workers, domestic workers and apprentices (see below, paragraph 209). Moreover, the rights and safeguards set out in the Convention apply to all workers irrespective of the type of employment contract, regardless of whether or not their employment relationship is based on a written contract, [388] or on a contract for an indefinite term. [389]

Methods of application

169. In the same way as Convention No. 87, there are no detailed provisions in Convention No. 98 respecting its methods of application. Only *Article 3* provides that "machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in [*Articles 1 and 2*, which relate to acts of discrimination and interference]". Various methods of application can therefore be envisaged and, while certain States give preference to legislative measures, others are content with satisfactory application in practice, or through case law. Most of the provisions relating to the right to organize and to collective bargaining are contained in labour legislation and in instruments regulating industrial relations at the national level. However, while the fundamental principles underlying these Conventions are set out in many constitutions, other means of application are determined directly by collective agreements concluded between employers' and workers' organizations at the

[388] *Gambia* – CEACR, observation, 2010.

[389] *Belarus* – CEACR, observation, 2011.

different levels. In general, the Committee encourages the use of methods of application for Conventions Nos 87 and 98 which have their origins in tripartism, social dialogue and full and frank consultations between the social partners. [390] This is particularly important in relation to legislation setting out the rights protected by these instruments with a view to ensuring that the parties concerned are committed to the principles and, accordingly, that the measures adopted are sustainable over time. For example, the Committee has noted with interest the preparation in close consultation with the social partners of the Fair Work Act, 2009, in *Australia*. [391]

Difficulties concerning the scope of application

170. *Armed forces and the police*. In provisions similar to those contained in Convention No. 87, Convention No. 98 leaves it to national laws or regulations to determine whether its provisions apply to the armed forces and the police (*Article 5(1)).* However, the Committee wishes to recall that civilian personnel in the armed forces enjoy the rights and guarantees set out in the Convention and that, even though certain employees in the private or the public sector may carry a weapon in the course of their duties, but are not members of the police or the armed forces, they cannot automatically be excluded from the scope of the Convention. [392]

171. *Public sector*. In contrast with Convention No. 87, Convention No. 98 excludes from its scope certain categories of public servants. [393] However, this restriction leaves intact the rights guaranteed to public servants by Convention No. 87. Under the terms of *Article 6*, Convention No. 98 does not deal with the position of public servants, nor shall it be construed as prejudicing their rights or status in any way. Nevertheless, observing the diversity of interpretations of the concept of "public servant" at the national level, the Committee decided to adopt a restrictive approach, basing itself in particular on the English text of this provision, which uses the terms "public servants engaged in the administration of the State" (in French, *fonctionnaires publics*, and in Spanish *los funcionarios públicos empleados en la administración del Estado*). Accordingly, the Committee considers that only public servants engaged in the administration of the State may be excluded from the scope of the Convention and that the determination of this category of workers is to be made on a case-by-case basis, in light of criteria relating to the prerogatives of the public authorities (and particularly the authority to impose and enforce rules and obligations, and to penalize non-compliance). Consequently, the establishment of simple consultation procedures for public servants who are not engaged in the administration of the State, instead of real collective bargaining procedures, is not sufficient.

172. In other words, a distinction must therefore be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants in government ministries and other comparable bodies, and ancillary staff), who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention. This second category of public employees

[390] See, for example, *Cambodia* – CEACR, observation, 2011; and *Republic of Moldova* – CEACR, observation, 2011.

[391] *Australia* – CEACR, observation, 2010.

[392] *Morocco* – CEACR, direct request, 2011.

[393] General Survey, 1994, paras 199 et seq.

includes, for instance, employees in public enterprises, municipal employees and those in decentralized entities, [394] public sector teachers, [395] as well as air transport personnel, whether or not they are considered in national law as belonging to the category of public servants. [396] Other examples can be found in paragraphs 894 et seq. of the *Digest of decisions and principles of the Freedom of Association Committee*, (fifth (revised) edition), 2006. The Committee could not accept large categories of workers employed by the State being excluded from the benefits of the Convention merely on the grounds that they are formally placed on the same footing as certain public officials engaged in the administration of the State. Furthermore, the mere fact that public servants are in the category of so-called "white-collar" employees is not in itself conclusive of their qualification as employees "engaged in the administration of the State"; if this were the case, the Convention would be deprived of much of its scope. [397]

Thematic issues

Protection against acts of anti-union discrimination and of interference

National legislation

173. Under the terms of the first two Articles of Convention No. 98, States are under the obligation to take specific measures to ensure both: (i) the adequate protection of workers against any acts of anti-union discrimination both at the time of taking up employment and in the course of employment, including at the time of the termination of the employment relationship, and covering "acts of anti-union discrimination in respect of their employment" (dismissal, transfer, demotion and other prejudicial acts); and (ii) adequate protection for workers' and employers' organizations against "any acts of interference by each other" in their establishment, functioning or administration.

174. ***The Committee emphasizes the need to adopt specific legislative provisions in relation to anti-union discrimination and interference, rather than overly vague provisions which may not constitute sufficient and adequate protection within the meaning of the Convention.*** [398] It has noted with satisfaction, for example, the modification of the list of prohibited "objects" of anti-union discrimination in *Australia (Western Australia)* [399] (one of which is intended to promote the principles of freedom of association and the right to organize); as well as the adoption of provisions affording protection against acts of anti-union discrimination in *Chile*, [400] *Indonesia*, [401] *Morocco*, [402] *Sudan* [403] and the *Democratic Republic of the Congo*. [404] However,

[394] See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011.

[395] See, for example, *Cambodia* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Lesotho* – CEACR, observation, 2011.

[396] See, for example, *Mauritania* – CEACR, direct request, 2011.

[397] On this subject, see, for example: Committee on Freedom of Association, Case No. 1557 (United States), Report No. 291, paras 247–285.

[398] See, for example, for comments on insufficient protection, *Georgia* – CEACR, observation, 2010.

[399] *Australia (Western Australia)* – CEACR, observation, 2006.

[400] *Chile* – CEACR, observation, 2002.

[401] *Indonesia* – CEACR, observation, 2002.

[402] *Morocco* – CEACR, observation, 2002.

although in the majority of cases national legislation contains provisions against acts of anti-union discrimination and interference, the extent of the protection afforded varies according to the period covered (hiring, employment and/or dismissal), the persons protected (trade union officers or members), the acts covered and their authors, and the procedures and sanctions established for their enforcement. In certain cases, national legislation contains specific provisions covering, for example, not only prejudice to the employment of a worker by reason of trade union membership, but also the aspiration to join a union, [405] or cancelling clauses prohibiting trade union membership in a contract of employment, as is the case in *Gambia*. [406] Although the Convention allows a certain flexibility in its implementation at the national level and the legislation in many countries affords adequate and sufficient protection against acts of anti-union discrimination and interference, the Committee however notes that there continue to be significant shortcomings in the legislation in other countries. [407] In addition to difficulties relating to the absence of adequate legislative provisions or sufficiently dissuasive sanctions, the Committee also sometimes notes a marked contrast between the legislation, which is in conformity with the Convention, and the absence in practice of protection against acts of discrimination and interference. [408]

175. ***With a view to assessing the general effectiveness of the protection afforded at the national level, the Committee invites governments to provide information, in consultation with the most representative employers' and workers' organizations, on the number of complaints filed with the competent authorities in this field, the outcome of investigations and court proceedings, and the average duration of***

[403] *Sudan* – CEACR, observation, 2005.

[404] *Democratic Republic of the Congo* – CEACR, observation, 2004.

[405] See, for example, *Barbados* – CEACR, observation, 2011.

[406] *Gambia* – CEACR, observation, 2010.

[407] See, for example, *Brazil* – CEACR, direct request, 2010 (need to provide explicitly for remedies and sufficiently dissuasive penalties against acts of anti-union discrimination); *Cambodia* – CEACR, observation, 2011 (the need to take steps without delay to adopt an appropriate legislative framework in full consultation with the social partners to ensure adequate protection against all acts of anti-union discrimination); *Georgia* – CEACR, observation, 2010 (section 11(6) of the Law on trade unions and section 2(3) of the Labour Code prohibit in very general terms anti-union discrimination and do not appear to constitute sufficient protection against anti-union discrimination at the time of the hiring of workers and of termination); *Guinea* – CEACR, observation, 2010 (need to adopt specific provisions to protect all workers against acts of anti-union discrimination at the time of recruitment and during employment and to provide expressly for appeal procedures and sufficiently dissuasive sanctions); *Kiribati* – CEACR, observation, 2011 (necessity for the legislation to include express provision for appeals and to establish sufficiently dissuasive sanctions against acts of anti-union discrimination); *Kuwait* – CEACR, direct request, 2011 (although under section 46 of the new Labour Law, workers cannot be dismissed on the basis of their trade union activities, the new Labour Law does not provide further protection against acts of discrimination or interference by employers or the authorities); *Liberia* – CEACR, observation, 2010 (need to adopt legislation guaranteeing workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions); *Republic of Moldova* – CEACR, observation, 2011 (neither section 61 nor section 55 of the Code on Contraventions provide for sufficiently dissuasive sanctions); *Montenegro* – CEACR, direct request, 2011 (section 172(1)(33) of the new Labour Law does not expressly refer to the acts of anti-union discrimination defined in sections 5 to 10 of the Law, which are linked to the performance of trade union activities by trade union members who are not trade union representatives); *Nepal* – CEACR, observation, 2011 (need to take the necessary measures to introduce into the legislation an explicit prohibition of all prejudicial acts committed against workers by reason of their trade union membership or participation in trade union activities); *Serbia* – CEACR, observation, 2011 (although the Labour Law of 2005 prohibits discrimination on the basis of trade union membership, it does not expressly prohibit discrimination for trade union activities and establishes no specific sanctions for anti-union harassment); and *Zimbabwe* – CEACR, observation, 2011 (see also the conclusions of the Commission of Inquiry, *Official Bulletin*, Vol. XCIII, 2010, Series B, Special Supplement).

[408] See, for example, *Indonesia* – CEACR, observation, 2010.

proceedings [409] ***in both the public and the private sectors.*** [410] ***For example, the fact that, in practice, the labour inspectorate and the courts do not intervene, or intervene only very rarely in cases of anti-union discrimination, gives grounds for deep concern by the Committee.*** [411]

Protection against acts of anti-union discrimination

Acts covered

176. ***The acts of anti-union discrimination against which, in accordance with the Convention, States have to provide adequate protection in both law and practice include in particular measures with the following objectives: (i) making the employment of a worker subject to the condition that he or she shall not join a union or shall relinquish trade union membership; or (ii) causing the dismissal of or otherwise prejudicing a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours (Article 1(2)).***

177. While the national legislation in several countries guarantees adequate protection against acts of anti-union discrimination – at the time of taking up employment, in the course of employment and at the time of the termination of the employment relationship – other systems only provide such protection against certain acts, or at certain times during the employment relationship. [412] For example, the legislation in certain countries is confined to penalizing dismissal on anti-union grounds, [413] without addressing other acts of discrimination which may occur at the time of recruitment or during the course of the employment relationship. In contrast, in other cases, protection is only provided in relation to recruitment. [414] In this context, the Committee has noted with satisfaction the comprehensive prohibition introduced in 2008 in *Fiji* [415] of acts of discrimination for all types of trade union activity, at all stages of the employment relationship, including recruitment. Since then, the situation of trade union rights in law and practice has seriously deteriorated in the country. The Committee has also noted with interest the new legislation in *Kenya*, [416] which prohibits acts of anti-union discrimination on the basis of trade union membership or activities, both during the recruitment period and the entire course of employment; as well as the legislation in *Uruguay*, [417] which provides for the invalidation of any act or omission, the aim of which is to make the worker's employment contingent on not joining or resigning from a union, or to dismiss a worker or cause her or him any other form of injury because of union membership or

[409] See, for example, *Czech Republic* – CEACR, observation, 2011; *Mozambique* – CEACR, direct request, 2011; and *Serbia* – CEACR, observation, 2011.

[410] *Turkey* – CEACR, observation, 2011.

[411] See, for example, *Indonesia* – CEACR, observation, 2010.

[412] General Survey, 1994, paras 211 et seq.

[413] See, for example, *Eritrea* – CEACR, observation, 2010 (section 28(3) of the Labour Proclamation); *Kuwait* – CEACR, direct request, 2011 (section 46 of the new Labour Law); *Iraq* – CEACR, observation, 2010 (draft Labour Code); and *Saint Kitts and Nevis* – CEACR, direct request, 2010 (section 11 of the Protection of Employment Act).

[414] See, for example, *Kiribati* – CEACR, observation, 2011 (protection against acts of anti-union discrimination exists only at the time of hiring).

[415] *Fiji* – CEACR, observation, 2008.

[416] *Kenya* – CEACR, observation, 2009.

[417] *Uruguay* – CEACR, observation, 2007.

participation in union activities. Finally, recalling that persons other than the workers directly concerned may in turn be victims of discrimination, the Committee has noted with interest the legislative provisions adopted in *Slovenia,* [418] under which persons who help the victims of discrimination may not be exposed to unfavourable consequences.

178. *Recruitment and "blacklists".* Hiring procedures give rise to specific risks of anti-union discrimination. A worker who is the victim of anti-union discrimination at the hiring stage may face insurmountable difficulties because it will often be virtually impossible to prove that her or his union membership or past trade union activities were the real reason for the refusal of employment. [419] That may be the case, for example, where there is no legislative provision authorizing the job applicant to assert the discriminatory nature of the recruitment procedures before an independent authority or guaranteeing adequate protection within the meaning of *Article 1* of the Convention in such situations. The Committee accordingly considers that the legislation should provide ways to remedy such difficulties, for instance by reversing the burden of proof and/or stipulating that the grounds for the decision not to hire the applicant could be made available upon request where the applicant asserts, by legal means, the anti-union nature of the non-recruitment. [420] ***The practice of so-called "blacklists" of trade union officers, activists or members used in the context of hiring procedures is particularly incompatible with the principles of the Convention.*** In some countries, legislation expressly prohibits such blacklists, treating them as unfair labour practices. Recalling that the secret nature of such lists often makes a dead letter of the remedies laid down by ordinary legislation on the protection of privacy, the Committee encourages governments to take stringent measures and to order the necessary investigations in this respect. [421] In particular, it has noted with satisfaction the legislation adopted on this matter in the *United Kingdom*. [422]

179. Other measures, such as transfer, relocation, demotion, withdrawal of benefits or restrictions of all kinds (remuneration, social benefits, vocational training, etc.) may be adopted for anti-union reasons and cause serious prejudice to the worker concerned. [423] The same applies in certain cases to the non-renewal of contracts of employment, pressure and harassment. [424]

[418] *Slovenia* – CEACR, observation, 2011.

[419] General Survey, 1994, para. 211.

[420] See, for example, *Georgia* – CEACR, observation, 2010.

[421] See, for example, *Ecuador* – CEACR, observation, 2010.

[422] *United Kingdom* – CEACR, observation, 2011. The Employment Relations Act (1999) (Blacklists) Regulations, 2010, aim to ensure that no person shall compile, use, sell or supply a prohibited list, which is defined as a list containing details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment, the payment of wages or the dismissal of workers. The Regulations also establish a list of exceptions to this prohibition in order to protect legitimate or lawful compilation of data.

[423] General Survey, 1994, para. 212.

[424] See, for example, *Belarus* – CEACR, observation, 2011 (the Committee noted with concern that in practice certain fixed-term contracts are terminated or not renewed in the case of trade union activities); and *Ethiopia* – CEACR, observation, 2010 (particularly with regard to teachers).

180. *Dismissal.* Of all forms of anti-union discrimination, dismissal is probably the one with the most serious consequences. ***The national situation in several countries continues to give rise to problems of compatibility with the Convention in this field. This is the case of legislation which allows the employer to terminate the employment of a worker unilaterally without giving reasons, on condition that the compensation provided for by law is paid, even when the real motive is the worker's union membership or activities (a situation that the Committee considers contrary to the Convention).*** [425] The Committee particularly emphasizes the need to guarantee workers adequate protection against dismissal occurring in the context of industrial action aimed, for example, at obtaining the reinstatement of dismissed workers, [426] or in the context of collective bargaining (particularly the negotiation of multi-business agreements and "pattern bargaining"). [427] It also recalls that ***dismissals for economic reasons, if they are used as an indirect means of engaging in acts of anti-union discrimination, may give rise to particular problems in relation to the Convention.*** [428]

181. In this context, the Committee has noted with satisfaction that the legislation in *Yemen* [429] now provides that no person may be coerced into joining or withdrawing from an organization or from exercising their trade union rights, and that any anti-union act, including dismissal, for trade union activities or membership is prohibited. The Committee has also noted with interest the indication by the Government of *Barbados* [430] that it is in the final stages of drafting new legislation which will, inter alia, make provision for an employment rights tribunal to hear cases of unfair dismissal; and that under the 2003 employment legislation of the *United Kingdom (Jersey)* [431] dismissal is automatically unfair, from day one of employment, where an employee claims to have been dismissed on certain grounds (namely, being or proposing to become a trade union member; taking part in, or proposing to take part in, trade union activities at an appropriate time; not being a trade member, or refusing to become (or remain) a member): furthermore, a tribunal can now issue an order of reinstatement or re-engagement in cases of unfair dismissal (i.e., re-employment under terms which, as far as possible, are as favourable as if the employee had been reinstated, unless the employee was partly to blame for the dismissal).

Anti-union dismissal and reinstatement

182. Determining the scope of the concept of "adequate protection" within the meaning of *Article 1(1)* of the Convention is central to issues relating to anti-union dismissal and measures of prevention and compensation. The Committee considers that systems are compatible with the Convention which envisage: (i) preventive measures (such as the need to obtain prior authorization from the judicial authorities, an independent authority or the labour inspectorate for the dismissal of a staff representative or a trade union delegate); (ii) compensation and sufficiently dissuasive sanctions (civil, administrative or

[425] General Survey, 1994, paras 223 and 224. See also, for example, *Georgia* – CEACR, observation, 2010.

[426] See, for example, *United Kingdom* – CEACR, direct request, 2011, Convention No. 87 (concerning section 223 of the Trade Union and Labour Relations Act, 1992).

[427] *Australia* – CEACR, observation, 2010. "Pattern bargaining" may be defined as negotiations seeking common wages or conditions of employment for two or more proposed collective agreements with different employers, or even different subsidiaries of the same parent company.

[428] General Survey, 1994, para. 213.

[429] *Yemen* – CEACR, observation, 2006 (section 8 of Act No. 35 of 2002).

[430] *Barbados* – CEACR, observation, 2011.

[431] *United Kingdom (Jersey)* – CEACR, observation, 2011.

penal) and/or; (iii) the reinstatement of a worker dismissed by reason of trade union membership or legitimate trade union activities with retroactive compensation which, in the absence of preventive judicial or administrative procedures of prior authorization, constitutes the most effective remedy for acts of anti-union discrimination. However, the Committee considers that legislation which allows "unjustified" dismissal (without the reason being indicated to the worker concerned), or which does not explicitly prohibit dismissal for anti-union reasons, is not compatible with the Convention. Whatever the system selected, the authorities responsible for examining the case (the ordinary courts or specialized bodies) need to have all the powers necessary to reach an expeditious and global decision in full independence and to determine the most appropriate remedy in the circumstances. The excessive slowness of reinstatement procedures and failure to comply with court orders for the reinstatement of dismissed trade unionists constitute, in the Committee's opinion, grave restrictions on the exercise of trade union rights. [432]

183. In practice, although the Convention does not require States to introduce reinstatement provisions in their legislation, an increasing number of systems do so, [433] although certain countries prefer other compensation measures. In the view of the Committee, ***reinstatement should at least be included among the range of measures that can be ordered by the judicial authorities in the event of anti-union discrimination***. Elsewhere, such as in *Brazil*, the dismissal of trade union officers is simply prohibited during a certain period before, during and after their mandate, except in the event of serious fault. [434] However, where a State opts for the principle of reinstatement, the Committee emphasizes the importance of ensuring that the system envisages retroactive wage compensation for the period that elapses between dismissal and the reinstatement or re-employment order, as well as compensation for the prejudice suffered, with a view to ensuring that all of these measures taken together constitute a sufficiently dissuasive sanction. For example, in *France*, [435] a trade union delegate or former trade union delegate is entitled to the payment of compensation corresponding to the whole of the prejudice suffered during the period between dismissal and reinstatement, provided that such compensation has been sought within two months of the notification of the decision; where reinstatement has not been sought, the compensation covers the whole of the prejudice suffered during the period between the dismissal and the end of the two-month period. Moreover, in this country, the refusal to reinstate constitutes, like any other act of anti-union discrimination, a penal infringement which can be punished by a fine or imprisonment.

184. With regard to reinstatement, the Committee has noted with interest, among other cases, the legislation of *Uruguay*, [436] which envisages the possibility of the reinstatement of a worker who has suffered prejudice by means of a special procedure. It has noted with satisfaction the new Labour Act in *Gambia*, [437] which provides for reinstatement

[432] See, for example, *Guatemala* – CEACR, observation, 2010 (court proceedings may last from six to seven years). In its report under article 19 of the Constitution, the Government of *Costa Rica* forwards the observations of the representative organization of employers, which emphasizes the problem of the slowness of procedures for the reinstatement of dismissed trade union leaders. This concern is also regularly raised by workers.

[433] For examples of provisions envisaging reinstatement see: *Eritrea* – CEACR, observation, 2010 (section 28(3) of the Labour Proclamation); *France* (section L.2422 of the Labour Code); *Gambia* – CEACR, observation, 2010 (section 92(2) of the new Labour Act); and *Namibia* – CEACR, direct request, 2010 (Labour Act, 2007).

[434] See the report provided under article 19 of the Constitution by the Government of *Brazil*.

[435] Section L.2422(4) of the Labour Code.

[436] *Uruguay* – CEACR, observation, 2007.

[437] *Gambia* – CEACR, observation, 2010.

and/or financial compensation in cases of dismissal for trade union membership or participation in trade union activities; and the legislation in *Belize*, [438] which now provides that the Supreme Court may order the reinstatement of the worker or measures that it deems just and equitable including, without limitation, orders for the restoration of benefits and other advantages to which the worker was entitled, and the payment of compensation. Moreover, the case law in many countries favours reinstatement. For example, the Constitutional Court in *Spain* [439] found, in a complaint relating to the dismissal for economic reasons of several workers one day after standing for positions as trade union representatives, that any worker dismissed for trade union reasons is entitled to reinstatement. Similarly, the Constitutional Court in *Colombia*, [440] giving effect to Conventions Nos 87 and 98 and the recommendations of the Committee on Freedom of Association in the context of a claim by workers demanding reinstatement following their dismissal for participation in a strike, cancelled the dismissals and ordered the reinstatement of the dismissed workers and the recognition of the salaries and benefits that remained due.

185. ***When a country opts for a system of compensation and fines, the Committee considers that the compensation envisaged for anti-union dismissal should fulfil certain conditions: (i) be higher than that prescribed for other kinds of dismissal, with a view to the effective dissuasion of this type of dismissal; (ii) be adapted in accordance with the size of the enterprises concerned (it has considered, for example, that while compensation of up to six months' wages may be a deterrent for small and medium-sized enterprises, that is not necessarily the case for highly productive and large enterprises);*** [441] ***and (iii) the amount be reviewed periodically (particularly in countries with galloping inflation where the compensation soon becomes merely symbolic), based for example on a minimum number of wage units or units of taxable income.*** [442] In this context, the Committee has noted with satisfaction, among others, the reform of the legislation on employment protection in the *United Kingdom (Guernsey)*, [443] which foresees a general six-month pay sanction award for anti-union dismissals, but which may be greater depending on the circumstances of the case in law and in equity.

Persons protected

186. *Trade union officers and members*. While the Convention requires protection against acts of anti-union discrimination in relation to all workers, the protection provided for in the Convention is particularly important in the case of trade union representatives and officers. [444] One of the ways of ensuring this protection is to provide that trade union representatives may not be dismissed or otherwise prejudiced either during their term of office, or for a specified period following its expiry. Moreover, the

[438] *Belize* – CEACR, observation, 2003.

[439] Constitutional Court, Second Chamber, 23 November 1981, ruling No. 38/1981.

[440] Constitutional Court, Fourth Appellate Supervisory Chamber, *Sindicato de los Trabajadores de las Empresas Varias de Medellín* v. *Ministry of Labour and Social Security, Ministry of Foreign Affairs, Municipio de Medellín and Empresas Varias de Medellín E.S.P.*, 10 August 1999, ruling No. 206.360.

[441] *Switzerland* – CEACR, observation, 2011.

[442] General Survey, 1994, paras 220 and 221. Moreover, the compensation established by law should not be expressed in absolute figures.

[443] *United Kingdom (Guernsey)* – CEACR, observation, 2009.

[444] The Workers' Representatives Convention (No. 135) and Recommendation (No. 143), 1971, effectively supplement the principles of Convention No. 98.

importance and nature of the duties performed by a trade union representative and the demands made by this kind of office should be taken into account when deciding whether an offence was actually committed and assessing its seriousness. [445] The Workers' Representatives Recommendation, 1971 (No. 143), adds in this respect that the measures which should be taken to ensure effective protection of workers' representatives might include recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce (Paragraph 6(2)(f)).

187. In this context, the Committee has noted with interest the extension of the protection of trade union representatives in *Montenegro* [446] until six months after the termination of their trade union activities, although it is not sufficient, in the view of the Committee, to confine the protection afforded under the Convention to trade union representatives, and it should therefore include workers who are trade union members, but not trade union representatives. [447] The legislation in certain countries has recently been strengthened, or discussions are being held on this matter, including in *Iraq* [448] and the *Netherlands*. [449] Finally, the Committee recalls that the protection afforded by the Convention covers all union committee members, including those of unregistered trade unions. [450]

188. *Public sector workers*. The Committee regularly emphasizes the need to adopt formal provisions clearly recognizing the protection of all public servants and public sector employees not engaged in the administration of the State (including those who are not trade union officers) against acts of anti-union discrimination and interference, and to provide for effective and sufficiently dissuasive sanctions against those responsible for such acts. Although the legislation in many countries does not yet afford sufficient protection in this respect, [451] the Committee has however noted with satisfaction, among others, the legislation adopted in *Panama*, [452] which contains provisions protecting public servants against such acts.

189. *Workers in EPZs.* Many allegations concerning the inadequacy of protection against acts of anti-union discrimination relate to the labour situation in EPZs. The Committee accordingly systematically requests the States concerned to take the necessary measures to ensure that investigations are carried out into these violations of the Convention with a view to identifying responsibilities and punishing those responsible, and it encourages governments to adopt measures to promote the respect,

[445] General Survey, 1994, paras 206 and 207.

[446] *Montenegro* – CEACR, direct request, 2011 (Labour Law (O.G. No. 49/08)).

[447] See, for example, *Guinea* – CEACR, observation, 2010, concerning the need to extend protection to all workers.

[448] *Iraq* – CEACR, observation, 2010 (section 142 of the draft Labour Code).

[449] *Netherlands* – CEACR, observation, 2011.

[450] *Botswana* – CEACR, observation, 2011.

[451] See, for example, *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Madagascar* – CEACR, observation, 2011; *Malta* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2011.

[452] *Panama* – CEACR, observation, 2009 (Act No. 24 of 2 July 2007).

protection and promotion of trade union rights in EPZs, particularly with regard to men and women migrant workers. [453]

Effective and rapid procedures

190. ***The existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice.*** This general principle, which the Committee continually emphasizes, is based on *Article 3* of the Convention, which provides that "[m]achinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in [*Articles 1 and 2*]".

191. *Slowness of procedures*. Whether the machinery is based on prevention or compensation, problems arise in practice, particularly with regard to the slowness of procedures. [454] These delays are related to more general problems linked to the weakness of labour inspection and the judicial system as a whole in certain countries. They are also related to difficulties that have to do with the burden of proof and the possibility, which is contested by the Committee, for the employer to be acquitted from the respective obligations by paying compensation which bears no proportion to the seriousness of the prejudice suffered by the worker. With a view to finding a solution, the Committee emphasizes the importance of ensuring without delay independent, expeditious and in-depth investigations in cases of allegations of anti-union discrimination. [455]

Burden of proof

192. One of the main difficulties in relation to allegations of discrimination in general, and of anti-union discrimination in particular, relates to the burden of proof. In practice, placing on workers the burden of proving that the act in question occurred as a result of anti-union discrimination may constitute an insurmountable obstacle to establishing liability and ensuring an appropriate remedy. In response, certain States have decided to strengthen the protection of workers by requiring the employer, under certain conditions, to prove that the act of alleged anti-union discrimination was caused by factors other than trade union activity or membership. Provisions introducing a "reversal of the burden of proof" (such as those existing, for example, in *Slovenia*) [456] are among the preventive mechanisms designed to afford protection against anti-union discrimination which, in the view of the Committee, usefully supplement the other types of sanctions and compensation measures that may be adopted in this field. This is also the view of certain national jurisdictions. For example, in *Argentina*, [457] the National Court of Appeal found that, when a worker considers her or himself to be a victim of discrimination, there must be a shifting of the burden of proof whenever the worker can "provide a reasonable indication" of the employer's hidden reason. Also, the United States Supreme Court has upheld the application of the national law to impose a burden of proof on the employer. Once the worker has established that protected conduct

[453] See, for example, *Bangladesh* – CEACR, observation, 2011; *Belize* – CEACR, observation, 2010; *Iceland* – CEACR, observation, 2010; *Mauritius* – CEACR, observation, 2011; *Mozambique* – CEACR, direct request, 2011; *Nicaragua* – CEACR, observation, 2011; and *Philippines* – CEACR, observation, 2011;.

[454] On the issue of the presumed slowness of procedures see, for example, *Belize* – CEACR, observation, 2010; *Costa Rica* – CEACR, observation 2010; and *Czech Republic* – CEACR, observation, 2011.

[455] See, for example, *Belarus* – CEACR, observation, 2011; *Dominican Republic* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011.

[456] *Slovenia* – CEACR, observation, 2011.

[457] National Court of Appeal, Fifth Chamber, *Parra Vera Maxima* v. *San Timoteo SA conc.*, 14 June 2006, ruling No. 144/05 68536.

(i.e. trade union activity) was simply one of the factors in the worker's adverse treatment, the burden shifts to the employer to prove that he would have acted against the worker in any event for valid, non-discriminatory reasons. [458] In *Namibia*, proceedings relating to anti-union dismissal carry a presumption that the termination was unfair unless the employer proves to the contrary. Recommendation No. 143 indicates in this respect that "in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative", provision should be made for laying upon the employer "the burden of proving that such action was justified" (Paragraph 6(2)(e)).

Effective and sufficiently dissuasive sanctions

193. The effectiveness of legal provisions prohibiting acts of anti-union discrimination depends not only on the effectiveness of the remedies envisaged, but also the sanctions provided for which should, in the view of the Committee, be effective and sufficiently dissuasive. With regard to the form of compensation, its purpose must be to compensate fully, both in financial and occupational terms, the prejudice suffered. [459] In some countries, the law provides for fines and/or imprisonment in cases of anti-union discrimination. [460] Such sanctions, which have the dual purpose of punishing those responsible and acting as a deterrent, are likely to strengthen protection against anti-union discrimination. [461] However, in many cases, the Committee notes that the level of the fines envisaged may not be sufficiently dissuasive (for example, where the amount is not adjusted on the basis of inflation) or the legislation does not allow their level to be adapted based on the size of the enterprise. It therefore invites the States concerned to raise the envisaged level of fines [462] and, with a view to assessing the really dissuasive nature of sanctions, requests the provision of information on the relationship between the amount of the fines and the average wage. [463] Nevertheless, penal sanctions applied in the context of a penal procedure in principle involve a higher level of proof than that required before a labour jurisdiction, and may therefore be less effective in practice.

Protection against acts of interference

Acts covered, rapid and impartial procedures

194. ***Under the terms of Article 2 of the Convention, workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. Acts of interference are deemed to include acts which are designed to***

[458] Supreme Court case *NLRB* v. *Transportation Management*, 462 US 393 (1983).

[459] General Survey, 1994, para. 219.

[460] See, for example, *Bangladesh* – CEACR, observation, 2011 (sections 195, 196 and 291 of the Labour Act); *Barbados* – CEACR, observation, 2011 (section 40A of the Trade Union Act, CAP 361); *China (Macau Special Administrative Region)* – CEACR, direct request, 2010 (Articles 6 and 10 of Act No. 7/2008 on labour relations); *El Salvador* – CEACR, direct request, 2010 (section 247 of the Penal Code); *Estonia* – CEACR, observation, 2002 (section 184 of the Administrative Offences Code); *Peru* – CEACR, observation, 2011 (section 25 of the Regulations of the General Labour Inspection Act); *Romania* – CEACR, observation, 2011 (Act No. 54/2003); *Sri Lanka* – CEACR, observation, 2002 (section 40(1)(1A) of the Industrial Disputes (Amendment) Act, No. 56 of 1999).

[461] General Survey, 1994, para. 222.

[462] See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burundi* – CEACR, observation, 2011; *Eritrea* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; *Republic of Moldova* – CEACR, observation, 2011; *Poland* – CEACR, observation, 2011; *Romania* – CEACR, observation, 2011; *Rwanda* – CEACR, observation, 2011; and *Saint Kitts and Nevis* – CEACR, observation, 2011.

[463] See, for example, *Mozambique* – CEACR, direct request, 2011; and *Sri Lanka* – CEACR, observation, 2011.

promote the establishment of workers' organizations under the domination of an employer or an employers' organization, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. Similarly, discrimination against a representative employers' organization, for example through its exclusion from participation in the preparation of labour legislation or consultations on social and economic matters, would not be in conformity with the Convention. [464] Finally, in the same way as for discrimination, machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for *Article 2*.

195. Some of the legislative provisions which protect workers' and employers' organizations directly or indirectly against acts of interference by each other are of a general nature, either providing for the independence of trade unions vis-à-vis any other organization, or incorporating the terms of the Convention. Others are more specific and stipulate the prohibited measures (such as interference in the establishment or administration of trade unions; activities aimed at restricting the right of workers to join together in trade unions or at exercising control over their organizations; means of pressure in favour of or against any trade union organization; payments intended to subvert trade union leaders; etc.).

196. In practice, although the Committee emphasizes the need for the legislation to make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference, explicit provisions in this field are less frequent than those intended to protect workers against acts of anti-union discrimination. In the view of the Committee, protection against acts of interference remains non-existent or inadequate in a large number of countries. [465] Indeed, certain governments tend to consider that trade unions are sufficiently developed and strong to be protected against any acts of interference or that, because of trade union plurality, no problem arises in this connection. [466] With regard to the contribution of employers to the financing of trade unions, or affording trade union organizations certain facilities, the Committee considers that, while there is no objection in principle to a public or private employer expressing its wish to promote the capacity of a trade union as a social partner in this manner, this should not have the effect of allowing the employer control over the trade union, or of favouring one trade union over another. [467] It is essential for workers'

[464] Report of the Commission of Inquiry, *Nicaragua*, *Official Bulletin*, Vol. LXXIV, 1991, para. 524.

[465] See, for example, *Bahamas* – CEACR, direct request, 2011; *Bangladesh* – CEACR, observation, 2010; *Belarus* – CEACR, observation, 2011; *Botswana* – CEACR, observation, 2011; *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Central African Republic* – CEACR, direct request, 2010; *Ethiopia* – CEACR, observation, 2010; *Guinea* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Kenya* – CEACR, observation, 2011; *Jordan* – CEACR, observation, 2010; *Kiribati* – CEACR, observation, 2011; *Liberia* – CEACR, observation, 2011; *Montenegro* – CEACR, direct request, 2011; *Nepal* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Slovenia* – CEACR, observation, 2011; *Swaziland* – CEACR, observation, 2011; *United Kingdom (Bermuda)* – CEACR, observation, 2011; and *United Kingdom (Jersey)* – CEACR, observation, 2011. In its report provided under article 19 of the Constitution, the Government of Mexico indicates that, although the national legislation contains provisions prohibiting acts of anti-union discrimination, it does not include a specific provision protecting workers' and employers' organizations against acts of interference by each other.

[466] General Survey, 1994, paras 230 et seq. See, for example, *Bulgaria* – CEACR, observation, 2011; *Hungary* – CEACR, observation, 2011; and *Saint Kitts and Nevis* – CEACR, direct request, 2010, and observation, 2011 (the Government indicates that the principle of protection against any acts of interference is ensured by custom and practice).

[467] General Survey, 1994, para. 229. For example, in its report provided under article 19 of the Constitution, the Government of the United States indicates that the Labor Management Relations Act also protects labour organizations from employer interference by generally prohibiting the payment of anything of value by an

and employers' organizations to maintain their independence so that they can defend the interests of their members effectively.

Effective and sufficiently dissuasive sanctions

197. ***"Adequate protection" against acts of interference within the meaning of the Convention requires the establishment of rapid appeal procedures and sufficiently decisive sanctions against such acts.*** However, as in the case of anti-union discrimination, certain of the sanctions established by States against acts of interference, where they exist, do not fully meet the requirements of effectiveness and deterrence developed by the Committee. [468] Nevertheless, some countries have recently made interesting progress in this respect. For example, the Committee has noted with satisfaction that the Penal Code in *Nicaragua* [469] now imposes a fine ranging from 90 to 300 days of workers' wages on any employer, manager or administrator who finances or promotes organizations intended to restrict or impede the full freedom and autonomy of trade unions; that the Labour Act in *Gambia* [470] prohibits an employer from promoting the establishment of workers' associations under its domination and provides for a sanction of not less than 50,000 *dalasis* (around US$1,770) in the event of non-compliance with this provision; and that employers' organizations and the public authorities in *Estonia* [471] are prohibited from interfering in the affairs of trade unions and fines of between 100 and 200 days' wages may be imposed in such cases. It has also noted with satisfaction the provisions adopted in this field in *Morocco* [472] and *Indonesia*. [473] Finally, it has noted with interest the entry into force of the new Labour Law in *Montenegro*, [474] which provides for stronger financial sanctions against acts of interference in trade union activities and it has welcomed the fact that in this country penalties can be imposed on the enterprise (legal entity), the employer (physical person) as well as the employer–entrepreneur (entity–employer), when the employer fails to allow employees the free exercise of their trade union rights, or fails to provide the trade union with the conditions necessary for exercising trade union rights.

Promotion of collective bargaining

National legislation

198. Under the terms of the ILO Declaration on Fundamental Principles and Rights at Work, 1998, ***collective bargaining is a fundamental right accepted by member States from the very fact of their membership in the ILO, and which they have an obligation***

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employer to any representative of the employees of an employer, to any labour organization or to any labour organization officer or agent. In addition, no payments may be made to a group of employees in excess of their normal wages and compensation for the purpose of causing the group to influence other employees in the exercise of their right to bargain collectively.

[468] See, for example, *Burundi* – CEACR, observation, 2011; *Eritrea* – CEACR, observation, 2011; *Republic of Moldova* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Romania* – CEACR, observation, 2011.

[469] *Nicaragua* – CEACR, observation, 2010.

[470] *Gambia* – CEACR, observation, 2010.

[471] *Estonia* – CEACR, observation, 2002.

[472] *Morocco* – CEACR, observation, 2002.

[473] *Indonesia* – CEACR, observation, 2002.

[474] *Montenegro* – CEACR, direct request, 2011.

to respect, to promote and to realize in good faith. [475] In this respect, *Article 4* of Convention No. 98 sets out two essential elements: action by the public authorities to promote collective bargaining; and the voluntary nature of negotiation, which implies the autonomy of the parties. [476] Although this provision does not imply a formal obligation to negotiate and to reach agreement, the supervisory bodies consider that the parties must respect the principle in good faith and not resort to unfair or abusive practices in this context (such as, for example, the non-recognition of representative organizations, obstruction of the bargaining process, etc.). The Committee emphasizes that the overall aim of this Article is, however, the promotion of good-faith collective bargaining with a view to reaching an agreement on terms and conditions of employment. The agreements so concluded must be respected and must be able to establish conditions of work more favourable than those envisaged in law: indeed, if this were not so, there would be no reason for engaging in collective bargaining. [477]

199. While law or practice in the vast majority of countries recognizes the right of all workers to negotiate collectively through their trade unions, even though the extent to which collective bargaining is promoted varies, certain systems continue to deprive important categories of workers of this right. These restrictions are in addition to two trends to which the Committee draws attention. The first is the tendency for the legislature in several countries to give precedence to individual rights over collective rights in employment matters. This tendency runs counter to ILO principles, and particularly the Collective Agreements Recommendation, 1951 (No. 91), which recalls the principle of the binding effects of collective agreements and their primacy over individual contracts of employment (with the exception of provisions in the latter which are more favourable to the workers covered by the collective agreement). Secondly, in certain countries, direct agreements between employers and groups of non-unionized workers are much more numerous than the collective agreements concluded with the representative organizations of workers. [478] This shows that the obligation to promote collective bargaining within the meaning of *Article 4* is not yet fully respected.

Scope of collective bargaining

Free and voluntary negotiation and autonomy of the parties

200. ***Under the terms of Article 4 of the Convention, collective bargaining must be free and voluntary and respect the principle of the autonomy of the parties.*** However, the public authorities are under the obligation to ensure its promotion. [479] Interventions by the authorities which have the effect of cancelling or modifying the content of collective agreements freely concluded by the social partners would therefore be contrary to the principle of free and voluntary negotiation. [480] The detailed regulation of

[475] *ILO Declaration on Fundamental Principles and Rights at Work*, para. 2.

[476] General Survey, 1994, paras 235–265.

[477] "Collective agreements" have the force of law in many countries, while "direct agreements" do not sometimes have this binding force.

[478] See, for example, *Costa Rica* – CEACR, observation, 2010.

[479] For example, in its report provided under article 19 of the Constitution, the Government of the United States indicates that "the duty to bargain does not include a duty to make concessions, nor does it compel either party to agree to a proposal made by the other party. In addition, the government cannot compel the parties to agree".

[480] For example, the suspension or cancellation of collective agreements by decree without the agreement of the parties; the interruption of agreements negotiated previously; the requirement to renegotiate agreements freely entered into; the cancellation of collective agreements or the forced renegotiation of agreements that are in force.

negotiations by law would also infringe the autonomy of the parties. [481] However, in the view of the Committee, machinery to support bargaining, such as information, conciliation, mediation or voluntary arbitration, is admissible. Such measures exist in many countries.

201. *Prior approval by the authorities*. One of the main restrictions on the principle of free and voluntary collective bargaining consists of the obligation to submit collective agreements for prior approval by the authorities (and particularly the administrative or budgetary authorities). In the view of the Committee, such provisions are only compatible with the Convention when they are confined to stipulating that approval may be refused if the agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. [482] On the other hand, if legislation allows the authorities full discretion to deny approval or stipulates that approval must be based on criteria such as compatibility with the general or economic policy of the government, or official directives on wages and conditions of employment, it in fact makes the entry into force of the agreement subject to prior approval, which is in violation of the principle of the autonomy of the parties. [483] In such cases, the Committee pays great attention to evaluating the consequences of provisions which authorize in general terms the evaluation, or even cancellation by the authorities of collective agreements for reasons related to the protection of the public interest or similar concepts ("public order", "morals", the "economic interests of the nation", etc.), [484] which are liable in principle to give rise to problems of compatibility with the Convention. Moreover, while the Committee has on occasion considered that the Convention could be compatible with systems requiring parliamentary approval for certain labour conditions or financial clauses of collective agreements in the public sector, [485] it considers that problems of compatibility with the Convention arise in relation to provisions requiring agreements to be negotiated in commissions appointed or controlled by the government. [486] With regard to the compulsory extension of the validity of collective agreements prescribed by law (which is different from the issue of the continuing effect of collective agreements upon their expiry stipulated in certain legislations when the parties fail to agree on the terms of a new collective agreement), in the view of the Committee this would only be admissible on an exceptional basis in cases of acute national or local crisis of a non-economic nature and for short periods.

202. In this context, the Committee has also noted with satisfaction in *Argentina* [487] the removal of provisions restricting free collective bargaining by requiring the approval of the Ministry of Labour for collective agreements which were broader in coverage than

[481] *Cuba* – CEACR, observation, 2010.

[482] General Survey, 1994, para. 251.

[483] ibid.

[484] Examples of countries in which clauses or collective agreements may be cancelled for such reasons include: *Brazil* – CEACR, observation, 2010 (section 623 of the Consolidation of Labour Laws); *Egypt* – CEACR, observation, 2011 (section 154 of the Labour Code); *Papua New Guinea* – CEACR, observation, 2011 (section 51 of the Sixth (final) Draft Industrial Relations Bill); *Yemen* – CEACR, observation, 2011 (sections 32(6) and 34(2) of the Labour Code); and *Zimbabwe* – CEACR, observation, 2011 (sections 78 and 79 of the Labour Act).

[485] See, for example, *Philippines* – CEACR, observation, 2011.

[486] See, for example, *Bangladesh* – CEACR, observation, 2011 (section 3 of Act No. X of 1974 (fixing of wage rates and other conditions of employment of public servants)); and *Rwanda* – CEACR, observation, 2011 (section 121 of the Labour Code).

[487] *Argentina* – CEACR, observation, 2005.

enterprise agreements; the repeal of a provision in *Singapore* [488] under the terms of which, in certain new undertakings, the approval of the competent minister had to be sought if the annual leave and sick leave benefits stipulated in the collective agreement were more favourable than those set out in law; the repeal of provisions in *Zimbabwe* [489] which established a requirement for collective agreements to be submitted for ministerial approval in order to ensure that their provisions are equitable to consumers, to members of the public generally or to any other party to the collective bargaining agreement; the new legislation in the *United Republic of Tanzania*, [490] which brings an end to the power of the Industrial Court to refuse the registration of a collective agreement if it is not in conformity with the Government's economic policy; and the repeal in the *Syrian Arab Republic* [491] of the provision which allowed the authorities to refuse approval of a collective agreement or to quash any clause liable to harm the country's economic interests.

203. *Taking the public interest into account*. While the discretionary power of the authorities to approve collective agreements is contrary to the principle of collective bargaining, the Committee admits that the public authorities may establish machinery for discussion and the exchange of views to encourage the parties to collective bargaining to take voluntary account of government social and economic policy considerations and the protection of the public interest. In case of dispute, the issue could, for example, be submitted for advice and recommendation to an appropriate joint body, provided that the final decision rests with the parties. [492]

204. *Privatization and enterprise closure*. The Committee considers that the restructuring or privatization of an enterprise should not in itself result automatically in the extinction of the obligations resulting from the collective agreement in force and that the parties should be able to take a decision on this subject and to participate in such processes through collective bargaining. [493] Furthermore, in the event of enterprise closure, the relevant clauses of agreements that are in force, particularly respecting benefits and compensation, should continue to be applicable. As emphasized by the Global Jobs Pact, in order to "prevent a downward spiral in labour conditions and build the recovery, it is especially important" to emphasize "the effective recognition of the right to collective bargaining" as an enabling mechanism "to productive social dialogue in times of increased social tension, in both the formal and informal economies". [494]

205. *Intervention of higher level organizations*. The interference, as set out in law, of higher level organizations in the bargaining process undertaken by lower level organizations is incompatible with the autonomy that must be enjoyed by the parties to bargaining. [495] The same applies to the requirement that organizations must be affiliated

[488] *Singapore* – CEACR, observation, 2005.

[489] *Zimbabwe* – CEACR, observation, 2007. The provision authorizing the submission of agreements for ministerial approval where the agreement is or has become unreasonable or unfair, having regard to the respective rights of the parties, has not been repealed.

[490] *United Republic of Tanzania* – CEACR, observation, 2005.

[491] *Syrian Arab Republic* – CEACR, observation, 2002.

[492] General Survey, 1994, paras 252 and 253.

[493] *Armenia* – CEACR, direct request, 2010.

[494] *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, Geneva, 2009, para. 14(1)(ii).

[495] *Egypt* – CEACR, observation, 2011.

with a national organization in order to be able to conclude sectoral and branch level agreements. [496]

206. *Scrutiny of the constitutionality of clauses of agreements*. Finally, in the view of the Committee, except where there are instances of serious breaches of constitutional rights in certain clauses of collective agreements (for example, if they establish wage discrimination on the basis of sex), collective bargaining, as an instrument of social peace, cannot be repeatedly subjected to recurrent scrutiny as to constitutionality without losing its credibility and usefulness. [497]

207. The Committee considers that a practice whereby the authorities almost systematically challenge the benefits awarded to public sector workers on the basis of considerations related to "rationality" or "proportionality" with a view to their cancellation (by reason, for example, of their cost deemed to be excessive) would seriously jeopardize the very institution of collective bargaining and weaken its role in the settlement of collective disputes. However, if the collective agreement contains provisions that are contrary to fundamental rights (e.g. non-discrimination), the judicial authority could nullify these provisions so as to ensure respect of higher standards.

Negotiation in good faith

208. ***The principle of negotiation in good faith, which is derived from Article 4 of the Convention, takes the form, in practice, of various obligations on the parties involved, namely: (i) recognizing representative organizations; (ii) endeavouring to reach agreement; (iii) engaging in real and constructive negotiations; (iv) avoiding unjustified delays in negotiation; and (v) mutually respecting the commitments made and the results achieved through bargaining.*** In general, evaluation of compliance with the obligation upon the parties to negotiate in good faith and its consequences is entrusted to specialized bodies, and in several countries the legislation makes the employer liable to sanctions for refusing to recognize the representative trade union, an attitude which may be considered as an unfair labour practice. [498] The Committee does not consider that this approach is incompatible with Convention No. 98.

Workers covered by collective bargaining

209. With the exception of organizations representing categories of workers which may be excluded from the scope of the Convention, namely the armed forces, the police and public servants engaged in the administration of the State, recognition of the right to collective bargaining is general in scope and all other organizations of workers in the public and private sectors must benefit from it. However, the recognition of this right in law and practice continues to be restricted or non-existent in certain countries. This situation has given the Committee cause to recall that the right to collective bargaining should also cover organizations representing the following categories of workers: prison staff, [499] fire service personnel, [500] seafarers, [501] self-employed and temporary

[496] *Bulgaria* – CEACR, observation, 2011 (section 51(b)(1) and (2) of the Labour Code).

[497] *Costa Rica* – CEACR, observation, 2010.

[498] General Survey, 1994, para. 243. For example, in its report provided under article 19 of the Constitution, the Government of *New Zealand* indicates that "the Employment Relations Authority and the Employment Court may have regard to an approved code of good faith to determine if the employers and unions have dealt with each other in good faith while conducting collective bargaining. Penalties may apply in some circumstances for breaches of good faith, including undermining collective bargaining".

[499] See, for example, *Bahamas* – CEACR, observation, 2010; *Kiribati* – CEACR, observation, 2011; *Saint Lucia* – CEACR, direct request, 2010; *Seychelles* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2011.

workers, [502] outsourced or contract workers, [503] apprentices, non-resident workers and part-time workers, [504] dockworkers, [505] agricultural workers, [506] workers in religious or charity organizations, [507] domestic workers, workers in EPZs and migrant workers. [508] The Committee further emphasizes that the right to collective bargaining should be recognized for teaching personnel and managerial personnel in educational institutions, as well as staff engaged in technical and managerial functions in the education sector. [509] In this context, it has recently noted with satisfaction the establishment of the universal nature of the right to collective bargaining for all workers in the Constitutions of the *Plurinational State of Bolivia* [510] and *Kenya*, [511] as well as the amendments to the Labour Code in *Chile* [512] making collective bargaining accessible to temporary and occasional workers. It has also noted with interest the decision by the Superior Court of Quebec (Canada), [513] which held that the Act amended the Act respecting health services and social services and the Act amended the Act respecting early childhood centres and other nursery services were unconstitutional as they were contrary to the Canadian Charter of Rights and Freedoms; following this ruling, the legislation established rules for the recognition of associations in this sector and collective bargaining between these associations and the Government.

210. Finally, with regard to federations and confederations, [514] the Committee considers that any restriction or prohibition of their right to collective bargaining would be contrary to *Article 4* of the Convention. [515]

The public sector and the public service

211. Collective bargaining in the public service has special characteristics which are found in various degrees in most countries, principally in view of the twofold responsibility of the State in this sphere, since it is both the employer and the legislative authority which is ultimately responsible to the electorate for the allocation and management of its resources. In this respect, the Committee notes with interest the

[500] See, for example, *Bahamas* – CEACR, observation, 2010; and *Saint Lucia* – CEACR, direct request, 2010.

[501] See, for example, *Benin* – CEACR, direct request, 2010 (merchant navy); *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Iceland* – CEACR, observation, 2010; *Madagascar* – CEACR, observation, 2011; and *Panama* – CEACR, observation, 2011 (fishing sector).

[502] See, for example, *Senegal* – CEACR, direct request, 2011; and *Tunisia* – CEACR, direct request, 2011.

[503] See, for example, *Ecuador* – CEACR, observation, 2010; and *Netherlands* – CEACR, observation, 2011.

[504] See, for example, *China (Macau Special Administrative Region)* – CEACR, direct request, 2010.

[505] See, for example, *Guinea-Bissau* – CEACR, observation, 2011.

[506] ibid.

[507] See, for example, *Ethiopia* – CEACR, observation, 2010.

[508] See, for example, *Bangladesh* – CEACR, observation, 2010; *China (Macau Special Administrative Region)* – CEACR, direct request, 2010; *Eritrea* – CEACR, observation, 2011; and *Kuwait* – CEACR, direct request, 2011.

[509] See, for example, *Cambodia* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; and *Lesotho* – CEACR, observation and direct request, 2011.

[510] *Plurinational State of Bolivia* – CEACR, observation, 2010.

[511] *Kenya* – CEACR, observation, 2011.

[512] *Chile* – CEACR, observation, 2002.

[513] Canada – CEACR, observation, Convention No. 87, 2010.

[514] See, for example, *Namibia* – CEACR, direct request, 2011; and *Uganda* – CEACR, observation, 2010.

[515] General Survey, 1994, para. 249.

Health Services and Support ruling of the Supreme Court of Canada in 2007 confirming that the freedom of association guaranteed by section 2(d) of the Canadian Charter of Rights and Freedoms includes the right to a process of collective bargaining for employees in the public sector. [516]

212. Certain countries in which the legislation regulates exhaustively all or certain of the conditions of employment of public servants consider that the status of public servant is incompatible with any notion of collective bargaining or freedom of association. Other countries have established systems which make it possible to reconcile the status of public servants with collective bargaining. For example, in *Spain*, the subjects which must necessarily be regulated by law may be covered by a collective accord between the public authorities and the trade union organizations of public servants with a view to ensuring that the authorities submit draft legislation to amend the law in the matter. In this context, ***the Committee recalls that only public servants "engaged in the administration of the State" may be excluded from the scope of the Convention,*** [517] ***but that collective bargaining may be subject to specific arrangements in relation to this category of public servants***. In practice, the general trend, which has been confirmed over the years, is to recognize the right to collective bargaining in the public sector, including public servants, either in law or in practice. However, it may also happen that it is not obstacles of a legislative nature, but rather practical considerations which prevent public servants from engaging in collective bargaining (for example, in the case of the refusal by the authorities to recognize trade union organizations on the grounds of an alleged delay in the holding of elections for the executive boards of organizations of public service personnel). [518]

213. Over recent years, the Committee has welcomed several positive developments. Among others, it has noted with satisfaction the recognition in the Constitution of *Turkey* [519] of the right of "public servants and other public employees" to conclude collective agreements; the adoption of specific legislation on collective bargaining in the public sector in *Colombia* [520] and *Uruguay*; [521] recognition of the right to collective bargaining of public servants in *Lesotho* [522] and *Botswana*; [523] as well as the fact that, following a legislative reform that is under way in *Japan*, [524] several issues could henceforth be covered by collective bargaining in public enterprises. Finally, it has welcomed the recognition by the Supreme Court of *Costa Rica* [525] of the principle that

[516] *Health Services and Support – Facilities Subsector Bargaining Assn.* v. *British Columbia*, [2007] 2 R.C.S. 391.

[517] The situation of the public service is dealt with in the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159), 1978, in terms similar to those of Convention No. 98.

[518] *Bolivarian Republic of Venezuela* – CEACR, observation, 2011. The Committee requested the Government to ensure that these organizations are able to elect their bodies without any interference whatsoever from the National Electoral Council (which is not a judicial body, but which may hear any claim from a small group of workers and hold up the endorsement of the elections).

[519] *Turkey* – CEACR, observation, 2011.

[520] *Colombia* – CEACR, observation, 2010.

[521] *Uruguay* – CEACR, observation, 2011.

[522] *Lesotho* – CEACR, observation, 2006.

[523] *Botswana* – CEACR, observation, 2005.

[524] In its report provided under article 19 of the Constitution, the Government of *Japan* indicates that it is currently determining a system to grant the right to conclude collective agreements in the public sector.

[525] *Costa Rica* – CEACR, observation, 2010 (several unanimous decisions (Second Chamber of the Supreme Court of Justice)).

collective agreements in the public sector are constitutional and that allowing collective bargaining should be the rule, and to restrict it the exception. Many other countries, however, do not yet fully guarantee the right of organizations of public servants and public employees not engaged in the administration of the State to negotiate wages and other conditions of work in accordance with the Convention, [526] or only grant public servants a right of consultation, and not negotiation, on issues relating to their terms and conditions of employment. [527]

214. *Bipartite or tripartite bargaining*. In general, the Convention tends essentially to promote the bipartite negotiation of terms and conditions of employment, namely between employers and employers' organizations, on the one hand, and workers' organizations, on the other. However, the Committee acknowledges that tripartism, which includes the public authorities, may be appropriate for the settlement of issues that are broader in scope, such as the formulation of legislation or economic and social policy. The presence of the government may also be justified if the general collective agreement is limited to fixing the rate of the minimum wage, although the negotiation of other terms and conditions of employment must be undertaken in a bipartite context and the parties must enjoy full autonomy in this respect in order to ensure that the content of the agreements so concluded is not dependent on the policy choices of successive governments.

Content of collective bargaining

215. Conventions Nos 98, 151 and 154 and Recommendation No. 91 focus the content of collective bargaining on terms and conditions of work and employment, and on the regulation of relations between employers and workers and their respective organizations. ***The concept of "conditions of work" covers not only traditional working conditions (the working day, additional hours, rest periods, wages, etc.), but also subjects that the parties decide freely to address, including those that are normally included in the field of terms and conditions of employment in the strict sense (promotion, transfer, dismissal without notice, etc.).*** In practice, although conditions of work remain essential issues addressed by most collective agreements, the range of the subjects addressed has progressively broadened to reflect the evolution of industrial relations. Agreements increasingly frequently cover issues related, for example, to recruitment levels, safety and health, restructuring processes, training, discrimination and supplementary social security benefits. Agreements are also sometimes used to institutionalize procedures on dispute settlement machinery, and to prevent strikes. Finally, they may also be used,

[526] See, for example, *Bulgaria* – CEACR, observation, 2010; *Burundi* – CEACR, observation, 2011; *Cambodia* – CEACR, observation, 2011; *Chile* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2009; *Eritrea* – CEACR, observation, 2011; *Guinea-Bissau* – CEACR, observation, 2011; *Equatorial Guinea* – CEACR, observation, 2011; *Honduras* – CEACR, observation, 2010; *Japan* – CEACR, observation 2010, Convention No. 87; *Liberia* – CEACR, observation, 2011; *Madagascar* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; *Sao Tome and Principe* – CEACR, observation, 2011; *Sri Lanka* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observations, 2009 and 2010, and direct request, 2007; *Uganda* – CEACR, observation, 2011; *Uzbekistan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation and direct request, 2010.

[527] See, for example, *China (Hong Kong Special Administrative Region)* – CEACR, observation, 2010. Furthermore, in its report under article 19 of the Constitution, the Government of the United States indicates that Executive Order No. 13522 signed in December 2009 creates the national Council on Federal Labor–Management Relations to advise the President on matters involving labour–management relations in the executive branch; requires all federal agencies to create labour–management forums; and establishes pilot projects in which certain executive departments will elect to bargain over certain permissive issues. The experiences gained through these pilots will be compiled into a report containing recommendations for the federal employee bargaining process.

where appropriate, to obtain arrangements for the benefit of workers, particularly with regard to their welfare (enterprise doctors, works stores, loan agreements, housing assistance, etc.). [528] Whatever the content, the Committee considers that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are generally incompatible with the Convention; [529] and that tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method of resolving these difficulties. [530]

216. The supervisory bodies have acknowledged certain restrictions on the subjects which may be covered by collective bargaining. They have considered, for example, that the employer's management prerogatives (such as the allocation of tasks and recruitment) could be excluded from negotiable issues. Moreover, certain subjects could be prohibited for reasons of public order, such as discriminatory clauses, trade union security clauses and clauses contrary to the minimum level of protection envisaged in the legislation. The Committee on Freedom of Association has also considered that "matters which clearly appertain primarily or essentially to the management and operation of government business" can reasonably be regarded as outside the scope of negotiation. [531]

217. In practice, the Committee has considered that it should be possible for issues relating to transfer, dismissal and reinstatement, if the parties so agree, to be included in negotiations and not to be determined solely by law, [532] and that the same applies to issues relating to the deduction of trade union dues, [533] as well as to facilities in favour of trade union representatives.

Pensions or supplementary retirement schemes and wages in the public service

218. The inclusion in the scope of collective bargaining of issues related to pensions and supplementary retirement schemes raises specific difficulties with regard to the macroeconomic consequences on supplementary pension schemes for public employment of modifications to the social security system. Called upon to address this issue in the context of specific national situations, the Committee has based its examination in part on the decisions of the Committee on Freedom of Association in this respect. It has accordingly endorsed the opinion of the Committee on Freedom of Association that supplementary pension schemes may legitimately be considered benefits that can be the subject of collective bargaining. [534]

[528] For example, in its report under article 19 of the Constitution, the Government of the United States indicates that, in addition to non-discrimination provisions, many collective bargaining agreements call for final and binding arbitration of workplace grievances by a neutral third party, the production of information by signatory employers and unions to be shared among the parties to facilitate subsequent collective bargaining efforts, and the payment of wages by employers to bargaining unit employees for time performing "official duties" in support of rights under the collective bargaining agreement.

[529] See, for example, *Croatia* – CEACR, observation, 2010; and *Fiji* – CEACR, observation, 2010.

[530] General Survey, 1994, para. 250.

[531] Committee on Freedom of Association, *Digest*, 2006, op. cit., paras 920–922. These relate in particular to staffing levels or the departments affected by financial difficulties, as well as the determination of the broad lines of educational policy.

[532] See, for example, *Malaysia* – CEACR, observation, 2010 (concerning section 13(3) of the Industrial Relations Act, 1967).

[533] *Congo* – CEACR, direct request, 2011.

[534] See, for example, *Colombia* – CEACR, observation, 2010 (Legislative Act No. 01 of 2005 limits the right to engage in collective bargaining on pensions); *Greece* – CEACR, observation, 2010 (Act No. 1876/1990 provides

219. With regard to wages in the public service, the Committee considers that ***public servants not engaged in the administration of the State should be able to negotiate collectively their wage conditions and that mere consultation of the unions concerned is not sufficient to meet the requirements of the Convention in this respect***. [535] ***However, the special characteristics of the public service described above require some flexibility, particularly in view of the need for the state budget to be approved by parliament.*** In practice, in many countries, the negotiation of wages in the public administration is separate from the negotiation of other conditions of work and often focuses on the determination of overall percentages for the administration as a whole. The Committee considers that legislative provisions which allow the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall "budgetary package", within which the parties may negotiate monetary or standard-setting clauses, or those which give the financial authorities the right to participate in collective bargaining alongside the direct employer, are compatible with the Convention, provided that they leave a significant role to collective bargaining. It is essential, however, that workers and their organizations are able to participate fully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data necessary for this purpose. [536]

220. This is not the case of legislative provisions which, on the grounds of the economic situation of the country, unilaterally impose a "wage freeze" or a specific percentage wage increase and rule out any possibility of bargaining. While taking fully into account the serious financial and budgetary difficulties that have to be faced at times by governments, the Committee considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants. It also considers that ***limitations on the content of future collective agreements, particularly in relation to wages, imposed by the authorities, by virtue of economic stabilization or structural adjustment policies that have become necessary, are admissible on condition that they have been subject to prior consultations with workers' and employers' organizations and meet the following conditions: (i) they are applied as an exceptional measure; (ii) they are limited to the extent necessary; (iii) they do not exceed a reasonable period; and (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected***. [537] In practice, although certain States continue to exclude wages from the scope of collective bargaining in the public service, [538] the Committee has welcomed the progress achieved in others, including in *Kiribati*, [539] *The former Yugoslav Republic of Macedonia* [540] and *Mauritius*. [541]

that retirement related matters are excluded from the scope of collective labour agreements); and *Philippines* – CEACR, observation, 2011 (matters relating to retirement pensions are not negotiable).

[535] See, for example, *Bangladesh* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2009.

[536] General Survey, 1994, para. 263.

[537] General Survey, 1994, para. 260. See, for example, *Greece* – CEACR, observation, 2011; and *Romania* – CEACR, observation, 2011.

[538] See, for example, *Burundi* – CEACR, observation, 2011; *Philippines* – CEACR, observation 2011; and *Romania* – CEACR, observation, 2011.

[539] *Kiribati* – CEACR, observation, 2011.

[540] *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2005.

[541] *Mauritius* – CEACR, observation, 2011.

221. In general terms, the Committee emphasizes the importance of enriching the content of collective bargaining in many countries and ensuring that it is not solely confined to addressing wage issues, which is still too often the case. It is in the interests of both workers and employers to negotiate together other aspects of industrial relations, including matters related to vocational training and promotion, dispute settlement machinery, measures to combat discrimination, issues relating to harassment at work and the reconciliation of family and working life.

Level of collective bargaining

222. Under the terms of Paragraph 4(1) of the Collective Bargaining Recommendation, 1981 (No. 163), "[m]easures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry or the regional or national levels". On various occasions, ***the Committee has recalled the need to ensure that collective bargaining is possible at all levels, both at the national level,*** [542] ***and at the enterprise level. It must also be possible for federations and confederations.*** [543] ***Accordingly, legislation that unilaterally imposes a level of bargaining or makes it compulsory for bargaining to take place at a specific level raises problems of compatibility with the Convention***. In practice, this issue is essentially a matter for the parties, who are in the best position to decide the most appropriate bargaining level including, if they so wish, by adopting a mixed system of framework agreements supplemented by local or enterprise level agreements. [544] The Committee has noted the introduction of the possibility of bargaining at all levels in *Argentina*. [545]

223. *Coordination of bargaining levels*. In countries where collective bargaining takes place at several levels, the parties to negotiations should seek to ensure that there is coordination among these levels. [546] The Committee accepts both systems which leave it to collective agreements to determine the means for their coordination, as well as systems characterized by legal clauses distributing subjects between agreements, giving primacy to a certain level or adopting the criterion of the most favourable provision for workers. In the event of persistent disagreement concerning the level of bargaining, the Committee on Freedom of Association has considered that the best procedure is to provide for a system established by common agreement between the parties so as to take into account the interests and points of view of all concerned, rather than having recourse to a legal ruling to determine a specific level of bargaining. Nevertheless, if it is decided that this issue is to be determined by an independent body, the Committee on Freedom of Association has considered that in such cases the body concerned should be truly independent. [547]

[542] See, for example, *Albania* – CEACR, observation, 2010; and *Bosnia and Herzegovina* – CEACR, observation, 2010.

[543] See, for example, *Namibia* – CEACR, direct request, 2010; and *Uganda* – CEACR, observation, 2010.

[544] General Survey, 1994, para. 249.

[545] *Argentina* – CEACR, observation, 2002.

[546] Paragraph 4(2) of the Collective Bargaining Recommendation, 1981 (No. 163).

[547] Committee on Freedom of Association, Case No. 2375 *(Peru)*, Report No. 338, para. 1226; and Case No. 2326 *(Australia)*, Report No. 338, para. 457 (the Committee on Freedom of Association requested the Government to take the necessary measures to ensure that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law, decision of the administrative authority or the case law of the administrative labour authority).

Recognition of organizations for the purposes of collective bargaining

Means of recognition

224. By virtue of *Article 4* of the Convention, the right to collective bargaining rests with workers' organizations and employers and their organizations. Accordingly, recognition by an employer of the main unions represented in the enterprise or bargaining unit, or the most representative of these unions, constitutes the very basis for any procedure of collective bargaining at the enterprise level. [548] Consequently, ***unjustified refusal to recognize the most representative organizations, or the imposition of a high percentage requirement for the recognition of a collective bargaining agent, may impair the promotion and development of free and voluntary collective bargaining within the meaning of the Convention***. [549] The determination of the criteria for the designation of bargaining agents is therefore a central issue. Although the Committee allows a certain flexibility, it considers that, at the very least, in the event of controversy, the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity on the basis of two criteria: representativity and independence. [550]

Rights of minority unions

225. In the view of the Committee, both systems of collective bargaining which grant exclusive rights to the most representative union, and systems under which several unions in an enterprise or a bargaining unit may conclude different collective agreements, are compatible with the principles of freedom of association. In its view, systems under which the collective agreements concluded by the representative organization only apply to the signatories and their members (and not to all workers), and the opposite practice under which all the workers in a bargaining unit are covered, are also compatible with these principles.

226. As the ILO Constitution itself enshrines the notion of "most representative" organizations (article 3, paragraph 5), the mere fact that legislation draws a distinction between the most representative trade union organizations and other organizations is not, in itself, reason for criticism. However, such a distinction should not result in the most representative organizations being granted privileges which go beyond priority in representation for the purposes of collective bargaining, consultation by governments or the appointment of delegates to international bodies. [551] In other words, this distinction should not have the effect of depriving trade unions which are not recognized as being among the most representative ("minority" organizations) of the essential means of defending the interests of their members, organizing their administration and activities and formulating their programmes. Accordingly, whatever the representativity threshold chosen, ***while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, the Committee considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members***.

[548] Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 953.

[549] *Hungary* – CEACR, observation, 2011.

[550] Committee on Freedom of Association, *Digest*, 2006, op. cit., para. 967.

[551] General Survey, 1994, para. 239.

227. In this context, the Committee has noted with satisfaction the recognition of minority unions for the purposes of collective bargaining in *Fiji* [552] (since then, the situation in the country with regard to trade union rights has seriously deteriorated) and the legislation in *Swaziland*, [553] which now provides that where in an establishment employees are represented by more than two trade unions whose respective membership does not cover at least 50 per cent of the employees eligible to join the union, the employer shall grant collective bargaining rights to the unions to negotiate on behalf of their own members.

Recognition procedure and criteria of representativity

228. With regard to the criteria to be applied to determine the representative status of organizations for the purposes of bargaining, the Committee emphasizes the importance of ensuring, in case controversy should arise, that these criteria are objective, pre-established and precise so as to avoid any opportunity for partiality or abuse. Furthermore, such determination should be carried out in accordance with a procedure that offers every guarantee of impartiality, by an independent body that enjoys the confidence of the parties, and without political interference. Governments should then be guided exclusively by the criterion of representativity in their relations with employers' and workers' organizations. Both systems of "compulsory" recognition of trade unions, whereby the employer, under certain conditions, must recognize the existing trade union(s), and those which envisage a system of "voluntary" recognition, are acceptable. Nevertheless, in the latter case, the public authorities are invited to encourage employers to recognize trade unions which can prove their representativity. Finally, recognition may also be "voluntary" when provided for in a bipartite or tripartite agreement, or where it constitutes a well-established practice. [554]

229. When national legislation provides for a compulsory procedure for recognizing unions as exclusive bargaining agents, the Committee considers that certain safeguards should be attached, namely: (i) the certification to be made by an independent body; (ii) the representative organization to be chosen by a majority vote of the employees in the units concerned; (iii) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; and (iv) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed. [555] Finally, where the legislation provides that only registered trade unions may be recognized as bargaining agents, it should be ensured that the conditions required for registration are not excessive, as otherwise there would be a risk of the development of collective bargaining being seriously impaired.

230. In practice, the major difficulties encountered by the Committee in this field include the incompatibility of the criteria applied by States for the determination of the organizations to be engaged in collective bargaining with the requirements of precision and objectivity established by the Committee. [556] Other elements may also give rise to risks of partiality or abuse. These include, for example, systems which allow third parties

[552] *Fiji* – CEACR, observation, 2004.

[553] *Swaziland* – CEACR, observation, 2011.

[554] General Survey, 1994, paras 238–240.

[555] General Survey, 1994, para. 240.

[556] See, for example, *Ghana* – CEACR, observation, 2010; *Madagascar* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2011; *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011; and *Trinidad and Tobago* – CEACR, observation, 2011.

to raise objections during the procedure of recognition of a trade union; [557] which require the relevant union to undergo a "competency check" to ascertain whether the majority of the class of workers in the enterprise are members of the union; [558] or which cite by name in the legislation the organizations which are to form part of dialogue bodies, rather than referring in general terms to the "most representative" organizations. [559] In certain cases, the Committee requests the provision of information on any sanctions against employers which have opposed the directives of the authorities respecting recognition. [560]

231. *Disputes concerning representativity*. The settlement of disputes concerning representativity, when they arise, should preferably be achieved through a ballot. The Committee has recently recalled the importance of introducing into the legislation a formal requirement for the holding of ballots to determine trade union representativity in the context of a national situation in which the arbitrator could in such cases decide to conduct a ballot only when she or he considered it appropriate. [561] It has also requested an amendment to ensure that a ballot is possible when a trade union claims that it has more affiliated members in the bargaining unit than the other trade unions already established as bargaining agents. [562]

232. With regard to the average duration of the recognition procedure, the Committee considers that it must be "reasonable". For example, it has considered that an average duration of nine months is excessively long. [563] It has also considered that the three-year time span that was required before an organization which had previously failed to obtain recognition as most representative, or a new organization, could seek a new decision, should be reduced to a more reasonable period. [564] In this context, it has noted that the legislation in certain countries requires the holding of a ballot within a certain period of the request being made by a trade union with a view to ensuring that the recognition procedure is not hampered by excessive delays, which may be caused by the wish of certain employers to identify trade union activists. [565]

Threshold of representativity

233. As the issue of the representativity of bargaining agents is central to the recognition procedure, the determination of the threshold of representativity to be able to negotiate is consequently essential. Considering that the representativity threshold must be assessed on the basis of the specific characteristics of the industrial relations systems, the Committee does not impose a predetermined compulsory percentage for an organization to be considered "representative". It however considers that the requirement of too high a percentage for representativity to be authorized to engage in collective bargaining may hamper the promotion and development of free and voluntary collective bargaining within the meaning of the Convention. In practice, the principal distinction to be made

[557] See, for example, *Cambodia* – CEACR, observation, 2011 (section 1 of Prakas No. 13 of 2004).

[558] See, for example, *Malaysia* – CEACR, observation, 2011.

[559] See, for example, *Portugal* – CEACR, observation, 2011 (section 9 of Act No. 108/91 respecting the Economic and Social Council).

[560] See, for example, *Malaysia* – CEACR, observation, 2011.

[561] *Lesotho* – CEACR, observation, 2011.

[562] See, for example, *Jamaica* – CEACR, observation, 2010.

[563] *Malaysia* – CEACR, observation, 2011.

[564] *Serbia* – CEACR, observation, 2011.

[565] *Sri Lanka* – CEACR, observation, 2011.

relates to the persons who are to be covered by the agreement: if the national system in force only authorizes organizations to negotiate on behalf of their own members, the issue of a representativity threshold does not arise. However, the situation is different when collective agreements negotiated by the organizations concerned are destined to be applied to all workers in a sector or establishment, and therefore more broadly than their own members.

234. *Fifty per cent.* ***In practice, the legislation in many countries provides that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent.*** [566] ***In the view of the Committee, such a system may however raise problems of compatibility with the Convention, as it means that a representative union which fails to secure the absolute majority may thus be denied the possibility of bargaining. It therefore considers that under a system of the designation of an exclusive bargaining agent, if no union represents the required percentage of workers to be declared the exclusive bargaining agent, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their own members.***

235. *Other thresholds*. Under other systems, representativity thresholds are established below or higher than 50 per cent. For example, thresholds are envisaged of around 30 per cent, [567] 40 per cent, [568] or between 10 and 20 per cent. [569] Such thresholds are not all compatible with the Convention. For example, the Committee considers that requiring the support of one third of the workers concerned, at the level of the branch or in a large enterprise, so that an organization can negotiate on their behalf [570] may be difficult to achieve and does not allow the promotion of collective bargaining within the meaning of *Article 4* of the Convention. Other countries require a representativity threshold that is even higher (up to 65 per cent of workers for a single union). [571] The Committee recalls that if no union in a specific negotiating unit meets the required percentage for representativity to be able to negotiate on behalf of all workers, minority unions should be able to negotiate, jointly or separately, on behalf of their own members.

[566] See, for example, *Belize* – CEACR, observation, 2010 (section 27(2) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act); *Dominican Republic* – CEACR, observation, 2010 (sections 109 and 110 of the Labour Code); *Lesotho* – CEACR, observation, 2011 (section 198A(1)(b) of the Labour Code); *Namibia* – CEACR, direct request, 2011 (section 64(1) of the Labour Act); *United Republic of Tanzania (Zanzibar)* – CEACR, observation, 2011 (section 57(2) of the Labour Relations Act); and *Turkey* – CEACR, observation, 2011 (section 12 of Act No. 2822).

[567] See, for example, *Bangladesh* – CEACR, observation, 2011 (section 202(15) of the Labour Act); *Botswana* – CEACR, observation, 2011 (section 48 of the Trade Union and Employers' Organizations (Amendment) Act, read with section 32 of the Trade Disputes Act); *Gambia* – CEACR, observation, 2010 (section 130 of Labour Act No. 5 of 2007); and *Pakistan* – CEACR, observation, 2010 (section 24(1) of the Industrial Relations Act).

[568] See, for example, *Jamaica* – CEACR, observation, 2010 (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its regulations); and *Sri Lanka* – CEACR, observation, 2011 (Circular of 19 September 2000 and section 32A of the Industrial Disputes (Amendment) Act).

[569] See, for example, *The former Yugoslav Republic of Macedonia* – CEACR, observation, 2011 (sections 212 and 213 of the Law on Labour Relations).

[570] See, for example, *Bangladesh* – CEACR, observation, 2011.

[571] *Hungary* – CEACR, observation, 2011. Trade unions have to represent 65 per cent of the workforce (for a single union), a threshold which can hardly be achieved under a plural trade union structure, in order to be able to participate in collective bargaining (section 33(5) of the Labour Code), amend or renegotiate the collective agreement (section 37(1) and (2) of the Labour Code). The Government has indicated that it would be ready to discuss an amendment of this provision.

236. In this context, the Committee has noted with satisfaction, among other changes, the abolition of the requirement that the conclusion and signature of a collective agreement should be approved by two-thirds of the members of the union concerned in *Guatemala*; [572] and the fact that, in *Peru*, [573] the dual requirement of a majority of the number of workers and of the number of enterprises to be able to conclude a collective agreement covering a branch of activity or an occupation is now only required if the outcome of collective bargaining in a branch of activity or occupation is to achieve general coverage of all the workers in the sector (in cases where this dual requirement is not met, the outcome of the bargaining has effects that are limited to the workers who are members of the corresponding trade union organization(s)).

Grouping of trade unions

237. The Committee observes that certain countries envisage the grouping of trade unions with a view to achieving the required representativity threshold, in cases where it is not met by one organization on its own. These systems provide, for example, that trade unions may form a grouping so that the unions which have not obtained the required percentage may participate in collective bargaining; [574] or, if no trade union meets the representativity requirements, that trade unions may conclude an agreement on merger for that purpose. [575] The Committee considers that these systems are compatible with the Convention. However, certain countries do not grant trade unions the possibility of forming a grouping for the purposes of bargaining. [576]

Representativity of employers' organizations

238. With regard to the issue of the representativity threshold required for the recognition of employers' organizations, the Committee has considered, for example, that the requirement for an employers' association to represent at least 10 per cent of employers to be able to engage in collective bargaining is particularly high, especially for negotiations at the sectoral or national level. [577] It has also requested a considerable reduction or the repeal of the minimum requirements for the definition of an "authorized association of employers" in a case in which the members of the association had to employ a minimum of 25 per cent of employees in the country and to represent a minimum of 25 per cent of the gross domestic product, so as to enable employers and employers' associations to conclude collective agreements in the manner that they consider most appropriate. [578]

Negotiation with representatives of non-unionized workers

239. Since, under the terms of the Convention, the right of collective bargaining lies with workers' organizations of whatever level, and with employers and their organizations, collective bargaining with representatives of non-unionized workers should only be possible when there are no trade unions at the respective level. Indeed, the Committee considers that direct bargaining between the enterprise and its employees with a view to avoiding sufficiently representative organizations, where they exist, may

[572] *Guatemala* – CEACR, observation, 2002.

[573] *Peru* – CEACR, observation, 2005.

[574] *Morocco* – CEACR, direct request, 2011.

[575] *Montenegro* – CEACR, direct request, 2011.

[576] See, for example, *Hungary* – CEACR, observation, 2011.

[577] *Serbia* – CEACR, observation, 2011 (section 222 of the Labour Law).

[578] *Montenegro* – CEACR, direct request, 2011 (article 161 of the Labour Law).

undermine the principle of the promotion of collective bargaining set out in the Convention. It is in this spirit that *Article 5* of the Workers' Representatives Convention, 1971 (No. 135), provides that, where there exist in the same undertaking "both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives". *Article 3(2)* of Convention No. 154 is drawn up in similar terms and the Collective Agreements Recommendation, 1951 (No. 91), establishes that the term "collective agreements" means "all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other."

240. In practice, the Committee has recalled on several occasions that, where there exists a representative trade union and it is active within the enterprise or branch of activity concerned, the authorization for other workers' representatives to bargain collectively not only weakens the position of the trade union, but also undermines ILO rights and principles on collective bargaining. Despite this principle, several States continue to promote or allow non-unionized workers' representatives to conclude collective agreements, [579] even where there exists in the sector or enterprise concerned a trade union that is more able to guarantee the independence of its positions in relation to the employer. Recalling the principle that the use of machinery for voluntary negotiation has to be encouraged, the Committee considers that if, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers, there would be a serious risk of undermining the negotiating capacity of the trade union and giving rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union. [580] Emphasizing that collective bargaining is a fundamental right recognized in many national constitutions, and therefore accorded a high legal ranking, ***the Committee calls on governments to take measures to prevent direct agreements with non-unionized workers being used for anti-union purposes***, as is still the case in certain countries. It has accordingly criticized, for example, the clear disproportion between the high number of direct agreements concluded with non-unionized workers, and the low number of collective agreements with trade unions. [581] Finally, the Committee has noted with satisfaction the amendment to the legislation in *Panama* [582] under the terms of which the Ministry of Labour will no longer entertain claims submitted by a non-organized group of workers.

[579] See, for example, *Central African Republic* – CEACR, observation, 2010 (sections 197 and 198 of the new Labour Code); *Georgia* – CEACR, observation, 2010 (sections 41 to 43 of the Labour Code); *Kazakhstan* – CEACR, observation, 2011 (section 282(2) of the Labour Code); *Kyrgyzstan* – CEACR, direct request, 2010; *Russian Federation* – CEACR, observation, 2011 (section 31 of the Labour Code); *Tajikistan* – CEACR, direct request, 2010 (section 17 of the Labour Code); and *Uzbekistan* – CEACR, observation, 2011 (sections 21(1), 23(1), 31, 35, 36, 48, 49 and 59 of the Labour Code).

[580] *Georgia* – CEACR, observation, 2010.

[581] See, for example, *Colombia* – CEACR, observation, 2010; and *Costa Rica* – CEACR, observation, 2010.

[582] *Panama* – CEACR, observation, 2010.

Machinery and procedures to facilitate and promote collective bargaining

241. The Collective Bargaining Recommendation, 1981 (No. 163), proposes a series of means to facilitate and promote collective bargaining, in accordance with *Article 4* of Convention No. 98. These include measures with a view to: (i) facilitating the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organizations; (ii) establishing procedures for the recognition of the most representative organizations; (iii) ensuring that collective bargaining is possible at any level whatsoever; (iv) enabling negotiators to obtain appropriate training and the parties to have access to the information required for meaningful negotiations (such as information on the economic situation of the enterprise, on condition, however, that the objectivity and confidentiality of such financial data is subject to reasonable guarantees); and (v) taking measures adapted to national conditions so that procedures for the settlement of labour disputes assist the parties to find a solution to the dispute themselves. [583] Moreover, the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), encourages the development of voluntary conciliation and arbitration machinery, one of the principal characteristics of which should be the joint nature of the machinery, voluntary recourse to the procedures, which should be expeditious and free of charge; and calls on the parties to abstain from strikes and lockouts while voluntary conciliation and arbitration procedures are in progress.

242. In practice, the systems in several countries provide for the setting up of joint bodies (within the enterprise or the branch of activity, or at the central or inter-occupational level), within which collective agreements must be, or are generally concluded. The legislation in certain countries establishes different schemes for the private and public sectors, with a view to taking into account more effectively the specific characteristics of the latter. Others provide for the establishment of specialized institutions. [584] Whatever the type of machinery used, the Committee is of the view that its first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and an administrative structure to which they may have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement under the best possible conditions.

243. With reference to the bodies entrusted with resolving disputes, it is the view of the Committee that they should be independent and that recourse to them should be voluntary. Experience shows that the mere intervention of a neutral, independent third party, in which the parties have confidence, is often enough to break a stalemate which the parties would be unable to resolve by themselves. The Committee also recalls that the promotion of collective bargaining requires measures to address improper practices in collective bargaining, such as proven bad faith, unwarranted delays in the bargaining process and failure to comply with the agreements concluded. [585] It also implies the holding of full and frank consultations with the employers' and workers' organizations concerned on a regular basis on the revision of collective bargaining machinery, in accordance with the principle of the autonomy of the parties and in light of the long-ranging implications of such revision for the standard of living of workers, [586] taking into

[583] General Survey, 1994, para. 247.

[584] General Survey, 1994, paras 244–247.

[585] The Committee emphasized this point in an observation concerning Switzerland, without however concluding that a problem existed in this respect in the country (*Switzerland* – CEACR, observation, 2011).

[586] *Greece* – CEACR, observation, 2011.

account the importance of ensuring that the rules of the system are sustainable, which implies a broad degree of acceptance by the parties.

244. In practice, several positive measures for the promotion of collective bargaining have been welcomed by the Committee in recent years. For example, it has welcomed the training and information activities for the social partners undertaken in *Burkina Faso*; [587] the training and awareness-raising activities on bargaining techniques for staff delegates, trade union delegates and other workers in *Madagascar*; [588] the prohibition of unfair practices and the guarantee of the right of access to the necessary information in all sectors, including EPZs, in *Mauritius*; [589] the measures to raise awareness and provide information on the applicable legislation and to support collective bargaining procedures in *Mozambique*; [590] the adoption of provisions to ensure that there are no financial penalties or incentives linked to undue restrictions on collective bargaining in *Australia*; [591] the establishment of new labour tribunals to resolve the slowness of the justice system in *Guatemala*; [592] and measures to limit the cost of the bargaining procedure in *Australia* [593] and *Cape Verde*. [594]

Extension of collective agreements

245. The Collective Agreements Recommendation, 1951 (No. 91), indicates that, where appropriate, having regard to established collective bargaining practice, "measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement." [595] National laws or regulations may make the extension of the collective agreement subject to the following, among other, conditions: (i) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (ii) that, as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; and (iii) that the employers and workers to whom the agreement would be made applicable should be given an opportunity to submit their observations. [596] The Committee considers that the extension of collective agreements is not contrary to the principle of voluntary collective bargaining and is not in violation of Convention No. 98. It observes that such measures are envisaged in several countries.

[587] *Burkina Faso* – CEACR, observation, 2011.

[588] *Madagascar* – CEACR, observation, 2011.

[589] *Mauritius* – CEACR, observation, 2011.

[590] *Mozambique* – CEACR, direct request, 2011.

[591] *Australia* – CEACR, observation, 2010.

[592] *Guatemala* – CEACR, observation, 2010.

[593] *Australia* – CEACR, direct request, 2010.

[594] *Cape Verde* – CEACR, observation, 2011.

[595] *Para. 5(1).*

[596] *Para. 5(2).*

Compulsory arbitration

246. The imposition of arbitration with compulsory effects, either directly under the law, or by administrative decision or at the initiative of one of the parties, in cases where the parties have not reached agreement, or following a certain number of days of a strike, is one of the most radical forms of intervention by the authorities in collective bargaining. Before addressing the issue, certain preliminary clarifications are required. First, a distinction has to be made between *rights disputes*, which concern the application or the interpretation of a collective agreement (the settlement of such disputes may be referred to an independent authority), and *interest disputes*, which relate to the establishment of a collective agreement or to the modification, through collective bargaining, of wages and other conditions of work contained in an existing collective agreement. The latter type of dispute is addressed here. Furthermore, the term "compulsory arbitration" itself gives rise to a certain confusion. If the term refers to the compulsory effects of an arbitration procedure resorted to voluntarily by the parties, this does not raise difficulties in the Committee's opinion, since the parties should normally be deemed to accept being bound by the decision of the arbitrator or arbitration board they have freely chosen. The real problem arises in the case of compulsory arbitration which the authorities may impose in an interest dispute at the request of one party, or at their own initiative, the effects of which are compulsory for the parties. [597]

247. ***Compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. In the Committee's opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis. However, arbitration accepted by both parties (voluntary) is always legitimate.*** In all cases, the Committee considers that, before imposing arbitration, it is highly advisable that the parties be given every opportunity to bargain collectively, during a sufficient period, with the help of independent mediation.

248. In practice, the main difficulties encountered by the Committee relate to the possibility that exists in certain countries to impose arbitration at the request of one of the parties only, [598] a third party [599] or an authority, [600] particularly in services that are not essential in the strict sense of the term, or when considerations are imposed relating to the protection of certain interests. Depending on the system, the public administrative or

[597] General Survey, 1994, paras 254–256.

[598] See, for example, *Indonesia* – CEACR, observation, 2010; *Republic of Moldova* – CEACR, observation, 2011; *Uganda* – CEACR, observation, 2011; and *Zambia* – CEACR, observation, 2011. Furthermore, in its report under article 19 of the Constitution, the Government of the United States indicates that the Federal Labor Relations Authority performs functions for federal employee labour organizations, including the resolution of complaints of unfair labour practices and disputes over the scope of collective bargaining negotiations. In addition, the Federal Mediation and Conciliation Service has authority to help resolve bargaining disputes between federal agencies and labour organizations. If the dispute cannot be resolved voluntarily, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The FSIP has authority to take whatever action is necessary to resolve the impasse, including direct assistance or binding arbitration.

[599] See, for example, *Portugal* – CEACR, observation, 2011.

[600] See, for example, *Kuwait* – CEACR, direct request, 2011; *Malaysia* – CEACR, observation, 2011; and *Mauritania* – CEACR, direct request, 2011.

legislative authorities, either intervening at their own initiative or at the request of one of the parties, may be authorized either to endeavour to settle the dispute themselves, or to submit the dispute to specific bodies (a conciliation board or an arbitration body), or to refer the dispute to the judicial authorities. In the Committee's opinion, all of these systems raise problems of compatibility with the Convention. [601]

249. In contrast, certain countries provide that, once the conciliation attempt between the parties to the dispute has failed, the dispute is transferred to a specific independent body entrusted with issuing a report or recommendations which, after a certain period, become enforceable if the parties to the dispute have not challenged them. [602] The Committee considers that this type of provision may be compatible with the Convention, on condition, however, that the period referred to above is reasonable.

250. *Conclusion of a first collective agreement*. While the Committee considers that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, it can envisage an exception in the case of provisions allowing workers' organizations to initiate such a procedure for the conclusion of a first collective agreement. As experience shows that first collective agreements are often one of the most difficult steps in establishing sound industrial relations, these types of provisions may be considered to constitute machinery and procedures intended to promote collective bargaining. The Committee has noted in this respect that, in *Portugal*, [603] where protracted and fruitless negotiations have ended in a stalemate deemed impossible to resolve, recourse to compulsory arbitration would be limited to the negotiation of a first collective agreement.

[601] Several countries have been requested to amend their legislation on these points: see, for example, *Angola* – CEACR, observation, 2010; *Botswana* – CEACR, observation, 2011; *Cuba* – CEACR, observation, 2010; *Egypt* – CEACR, observation, 2011; *Iceland* – CEACR, observation, 2010; *Jamaica* – CEACR, observation, 2010; *Lebanon* – CEACR, direct request, 2011; *Mozambique* – CEACR, direct request, 2011; *Nepal* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Russian Federation* – CEACR, observation, 2011; *Rwanda* – CEACR, observation, 2011; *Seychelles* – CEACR, observation, 2011; *Sudan* – CEACR, observation, 2011; *United Republic of Tanzania* – CEACR, observation, 2011; *Togo* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[602] See, for example, sections 242–248 of the Labour Code of the *Congo*.

[603] *Portugal* – CEACR, observation, 2011.

Part III. Forced labour

Chapter 1

Introduction

251. Freedom from forced or compulsory labour is pivotal for the attainment of social justice and its nexus with rights and freedoms. It is advanced by the right to freedom of association and collective bargaining already examined. It is of great relevance to the protection of vulnerable groups, such as children, from exploitation, enslavement and being used as a commodity. Its universality is anchored in the principle of non-discrimination pertaining to all.

252. Freedom from forced or compulsory labour is a cornerstone of the decent work concept and one of the most basic human rights coming within the competence of the ILO. The two fundamental ILO Conventions on the subject – Conventions Nos 29 and 105 – are the most widely ratified of all the ILO instruments. [604] Principles embodied in these Conventions have found universal acceptance and endorsement and have become an inalienable part of the core fundamental rights of human beings. They have been incorporated in various international instruments, both universal and regional. [605] ***The prohibition of the use of forced or compulsory labour in all its forms is considered now as a peremptory norm of international law on human rights; it is of an absolutely binding nature from which no exception is permitted.***

253. Conventions Nos 29 and 105 aim at guaranteeing to all human beings freedom from forced labour, irrespective of the nature of the work or the sector of activity in which it may be performed. The two instruments effectively supplement each other, and their concurrent application should contribute to the complete elimination of forced or compulsory labour in all its forms.

254. Since the last General Survey on the subject in 2007, [606] the Committee has noted with satisfaction a number of cases of progress, which cover measures taken, both in legislation and in practice, to ensure better observance of the Conventions in various countries of the world. The Committee has noted, in particular, the repeal or amendment of certain legislative provisions allowing the exaction of forced or compulsory labour for purposes of production or service. It has also noted the repeal or amendment of provisions authorizing the imposition of forced or compulsory labour as a means of

[604] See paras 908 et seq. below.

[605] See, for example, Article 8(1)(a),(b) and (c) of the *International Covenant on Civil and Political Rights* (1966). For other universal and regional instruments, see *Eradication of forced labour*, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), the Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 96th Session, Geneva, 2007.

[606] ibid.

political coercion or education, as a punishment for holding or expressing political views, as a punishment for various breaches of labour discipline or for having participated in strikes.

255. However, despite the universal condemnation of forced labour and the adoption of constitutional and legislative provisions abolishing it, the problem of forced or compulsory labour continues to exist in a number of countries and many people around the world are still subjected to it. The persistence of forced labour is an affront to human dignity and the antithesis of decent work.

256. In its 2007 General Survey, the Committee observed that there are instances of *vestiges of slavery* and other *slavery-like practices* which still survive in certain countries, sometimes connected with abductions of men, women and children in the context of armed conflicts. There still remain widespread practices of *debt bondage* and *trafficking in persons* for the purposes of sexual and labour exploitation, which may involve not only adults, but also children. In numerous countries, *domestic workers* are trapped in situations of forced labour, and in many cases they are restrained from leaving the employers' homes through threats or violence. The Committee further noted that forced labour today also affects considerable numbers of *migrant workers* who are transported away from their countries or communities of origin. At the same time, there are still instances of various forms of forced or compulsory labour imposed directly by the State, in violation of international standards, either for purposes of production or service (such as various kinds of national service obligations) or as a punishment (e.g. for expressing certain political views or for participating in strikes). The Committee referred in this connection to the 2005 Global Report on forced labour under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, which stated that over the past few years there has been a greater realization that forced labour in its different forms can pervade all societies, whether in developing or industrialized countries, and is by no means limited to a few pockets around the globe. [607]

257. In its 2007 General Survey, while examining the problems of the application of the forced labour Conventions, the Committee identified certain new trends and relatively new issues that have emerged in the past decades. Thus, the Committee drew attention to the problem of *trafficking in persons* for forced labour purposes; it also noted a trend towards a *privatization of prisons and work of prisoners for private companies*; the adoption in many countries of provisions introducing a new *penal sanction of community work* as an alternative to imprisonment; the adoption in some countries of policies imposing *compulsory work as a condition for the receipt of unemployment insurance benefits*; and, finally, the Committee examined certain situations in which a *requirement to work overtime* could represent an infringement of Convention No. 29.

258. The present General Survey further examines some of these trends, analysing progress in the application of the forced labour Conventions over the past five years and focusing on certain thematic issues, including the vulnerability to forced and compulsory labour of the most vulnerable groups, such as *migrant workers, domestic workers, indigenous peoples, informal sector workers, women and children*, both in the context of human trafficking and in other forced labour situations. Forced labour is very often linked to poverty and discrimination, particularly if exacted in the private sector, and even more often so in the informal economy. According to the latest Global Report on forced labour under the follow-up to the ILO Declaration on Fundamental Principles and

[607] *A global alliance against forced labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 93rd Session, Geneva, 2005, para. 11.

Rights at Work (2009), ILO research has consistently shown that the manipulation of credit and debt, either by employers or by recruiting agents, is still a key factor that traps vulnerable workers in forced labour situations. Poor peasants and indigenous peoples may be induced into indebtedness through accepting relatively small but cumulative loans or wage advances from employers or recruiters at a time of scarcity. Alternatively, aspirant migrants may have to pay very large amounts to the agents who help them secure work overseas and facilitate their travel, borrowing from moneylenders and other sources in order to meet these costs. [608]

259. This General Survey also examines the progress achieved over the past five years in the elimination of forced or compulsory labour as a punishment for holding or expressing political views, or as a punishment for various breaches of labour discipline or for having participated in strikes.

260. Today, forced or compulsory labour is universally banned. Guarantees of freedom of labour are generally embodied in national constitutions [609] and often made effective by provisions of criminal legislation punishing violations of individual liberties, through which individuals may seek protection against unlawful interference with their freedom, whether by private persons or public authorities. Specific prohibitions of forced labour have also been incorporated in the labour codes or general employment legislation of many countries. Thus, in many ratifying States national legislation contains a definition of forced or compulsory labour drawn upon the wording of Convention No. 29, which frequently follows very closely the terms of the definition contained in this instrument. [610] When applied in conjunction with the relevant Criminal Code provisions, constitutional and labour legislation provisions prohibiting forced or compulsory labour seem on the whole sufficient to protect individuals from the illegal imposition of forced labour. However, any such provisions may become ineffective where forced or compulsory labour is imposed by the legislation itself. [611]

[608] *The cost of coercion*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 98th Session, Geneva, 2009, para. 40.

[609] See para. 10 above.

[610] General Survey, 2007, para. 67 and footnote 141.

[611] See para. 266 below.

Chapter 2

Scope of the Conventions and methods of application

Scope

261. ***Conventions Nos 29 and 105 contain no provisions limiting the scope of their application by excluding certain categories of workers. Intended to guarantee respect for certain fundamental human rights, both Conventions are of general application and are designed to protect the entire population of the countries which have ratified them.***

262. *Article 2(1)* of Convention No. 29 defines "forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." [612] It follows from the words "all work or service" that the Convention applies to all types of work, service and employment, regardless of the industry or sector within which it is found, including the informal sector. The words "any person" refer to all human beings – adults and children, nationals and non-nationals, including migrants in irregular situations. The forced labour Conventions are therefore applicable to *all workers in the public and private sectors, migrant workers, domestic workers and workers in the informal economy*. Exceptions from the definition of forced labour in Convention No. 29 are considered below. [613]

263. With regard, more particularly, to the scope of Convention No. 105, it should be borne in mind that, despite the fact that its provisions are closely interlinked with civil liberties, this instrument does not deal with freedom of thought or expression or other civil liberties as such, nor does it regulate questions of labour discipline or strikes in general. Its purpose is to ensure that no form of forced or compulsory labour is used in the circumstances specified in the Convention. Where the penalties applicable to offences in relation to the expression of political views, labour discipline or participation in strikes do not involve any obligation to perform labour, the substantive provisions governing these offences are outside the scope of the Convention.

[612] For the complete analysis of the definition of forced or compulsory labour given in the Convention and the exceptions from its scope, see Chapter 3 below.

[613] See paras 273–281, below.

Methods of application: Constitutional and legislative provisions, judicial decisions

264. As indicated above, [614] guarantees of freedom of labour are generally embodied in *national constitutions, labour codes or general employment legislation* and often made effective by provisions of *criminal legislation* punishing violations of individual liberties, through which individuals may seek protection against unlawful interference with their freedom. However, assessment of the situation concerning the implementation of the forced labour Conventions requires, in addition to examining the constitutional and basic labour law provisions, the examination of a wide range of other national laws and regulations, with a view to ascertaining that no form of forced or compulsory labour falling within the scope of the Conventions could be imposed as a result of their practical application: *penal codes and various criminal laws, anti-trafficking laws, legislation governing civil and political freedoms (including laws on the press and other media, political parties, public meetings and assemblies, etc.), laws on indigenous peoples, prison laws and regulations, laws governing compulsory military service, laws governing emergency situations, etc.*

265. Moreover, since it is not always possible to appreciate the scope of legislation simply by examining the texts, it is also necessary to carefully study and assess the way in which these legislative texts are actually implemented in practice – particularly the court decisions which define or illustrate their scope. Only then can it be ascertained whether the standards laid down in the Conventions are really being complied with. Thus, judicial decisions play an important role in the implementation of the forced labour Conventions.

Difficulties in the application of the Conventions

266. Despite the tangible progress that has been made over the past decades in eliminating forced or compulsory labour, the Committee notes that the effective application of the forced labour Conventions continues to present problems in certain countries. ***There are still instances of various forms of forced or compulsory labour imposed directly by the State, in violation of international standards, either for the purposes of production or service (such as various kinds of national service obligations, e.g. the use of conscripts for non-military purposes, powers to call up labour outside emergency circumstances, or restrictions on the freedom of workers to terminate employment, in particular in the public service and essential services), or as a punishment (e.g. where convicted persons are hired to or placed at the disposal of private entities). There are also cases where freedom of expression still remains subject to restrictions enforced by sanctions involving compulsory labour. Similar sanctions are applicable for various breaches of labour discipline by public servants or seafarers, or for participation in strikes.*** These various forms of forced or compulsory labour will be considered in detail in Chapters 3 and 4. The Committee has requested the governments concerned to repeal or amend the provisions in question in order to bring the legislation into conformity with the Conventions.

267. ***The Committee also observes that, despite the adoption of the constitutional and legislative provisions prohibiting forced labour, various problems of application in practice still exist in a number of countries. Thus, there are instances of vestiges of slavery and other slavery-like practices which still survive in certain countries and regions, sometimes connected with abductions of men, women and children in the context of armed conflicts, as well as the entrapment of people through various forms***

[614] See para. 260 above.

of debt bondage and trafficking in persons for the purposes of sexual and labour exploitation, which may involve both adults and children. Members of the most vulnerable groups (such as, migrant workers, domestic workers, agricultural workers, informal sector workers, members of indigenous communities) are the most affected. These problems of the application of the Conventions in practice are also examined in detail in Chapters 3 and 4. The Committee has requested the governments concerned to take all the measures necessary to identify, release and rehabilitate the victims of the illegal exaction of forced labour (such as bonded labourers and victims of trafficking or slavery-like practices) and to punish those responsible through the strengthening of labour inspection and law enforcement machinery, and by imposing adequate penal sanctions, as required by *Article 25* of Convention No. 29.

Chapter 3

Forced Labour Convention, 1930 (No. 29)

Definition of forced or compulsory labour

268. For the purposes of Convention No. 29, the term "forced or compulsory labour" is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (*Article 2(1)* of the Convention). The three elements of this definition *(work or service, menace of any penalty* and *voluntary offer)* are considered below.

269. *Work or service* should be distinguished from "education or training". As the Committee observed in its 2007 General Survey, the principle of compulsory education is recognized in various international instruments as a means of securing the right to education, and it is also provided for in ILO instruments. [615] The Committee has also pointed out that a compulsory scheme of vocational training, by analogy with and considered as an extension of compulsory general education, does not constitute compulsory work or service within the meaning of Convention No. 29. [616] As indicated above, *all work or service* includes all types of work, service and employment, regardless of the industry or sector within which it is found, including the informal sector. [617]

270. *Menace of any penalty* should be understood in a very broad sense: it covers penal sanctions, as well as various forms of coercion, such as physical violence, psychological coercion, retention of identity documents, etc. The penalty here in question might also take the form of a loss of rights or privileges. [618]

271. *Voluntary offer* refers to the freely given and informed consent of workers to enter into an employment relationship and to their freedom to leave their employment at any time (e.g. with notice of reasonable length). An external constraint or indirect coercion interfering with a worker's freedom to "offer himself voluntarily" may result not only from an act of the authorities, such as a statutory instrument, but also from an employer's practice, for example where *migrant workers* are induced by deceit or false promises, or forced to remain at the disposal of an employer; such practices represent a clear violation of the Convention. [619] With regard to the possibility to revoke freely given consent to undertake work or service, the Committee has considered, in connection with freedom of workers to leave their employment that, even in cases where employment is

[615] General Survey, 2007, para. 36.

[616] ibid.

[617] See para. 262 above.

[618] General Survey, 2007, para. 37.

[619] ibid., para. 39.

originally the result of a freely concluded agreement, the right of workers to free choice of employment remains inalienable. Accordingly, the effect of statutory provisions preventing termination of employment of indefinite duration (or very long duration) upon notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with the Convention. [620] In relation to child labour, the question arises of whether, and under what circumstances, a minor can be considered to have offered himself or herself "voluntarily" for work or service and whether the consent of the parents is required and may be considered sufficient. Most national legislation has established a minimum age limit for concluding a labour contract, which may coincide with the age at which compulsory school attendance ends. However, employment that is likely to jeopardize health, safety or morals is generally prohibited for persons under 18 years of age, in conformity with the relevant ILO Conventions, [621] so that neither the children nor those having parental authority over them may give valid consent to their admission to such employment. [622]

272. ***The Committee emphasizes the fundamental relevance and value of the concept of the prohibition of forced labour in all its forms, which is based on the definition provided for in the Convention. When adopting the Convention, ILO constituents opted for a broad definition of the term "forced labour" – comprising the three elements examined above – rather than enumerating a list of prohibited practices. The use of a broad definition has enabled the ILO supervisory bodies to address traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking. Furthermore, forced labour imposed not only by private entities but also by state authorities is covered by this definition. Ratifying States are therefore required to develop a comprehensive legal and policy framework to combat forced labour in all its forms.***

Exceptions from the definition of forced labour

273. For the purposes of the Convention, certain forms of compulsory work or service, which would otherwise have fallen under the general definition of "forced or compulsory labour", are expressly excluded from its scope (*Article 2(2)* of the Convention). These exceptions are subject to the observance of certain conditions which define their limits. The Committee is therefore obliged to verify in all cases where ratifying States have recourse to the excepted categories of compulsory work or service that the conditions established by the Convention are observed.

Compulsory military service

274. Compulsory military service is excluded from the scope of the Convention, provided that it is used "for work of a purely military character" *(Article 2(2)(a))*. This condition is aimed specifically at preventing the call-up of conscripts for public works and has its corollary in *Article 1(b)* of Convention No. 105, which prohibits the use of forced or compulsory labour "as a method of mobilizing and using labour for purposes of economic development". [623] In this connection, the Committee has considered that,

[620] ibid., para. 40.

[621] Minimum Age Convention, 1973 (No. 138), *Art. 3(1)*; Worst Forms of Child Labour Convention, 1999 (No. 182), *Arts 1, 2 and 3(d)*.

[622] General Survey, 2007, para. 41.

[623] See para. 308 below.

when a choice is given under the national legislation between military service proper and non-military work, the existence of such a choice does not in itself exclude the application of the Convention, otherwise a call-up under military service laws could be used for engagement in work of a non-military character. As the services in question, whether non-military or purely military, result from compulsory call-up, the choice is not between voluntary work and compulsory service, but between two forms of compulsory service, one of which is excluded from the scope of the Convention, while the other is not. [624]

275. There are, however, specific circumstances in which a non-military activity performed within the framework of compulsory military service or as an alternative to such service remains outside the scope of Convention No. 29. First of all, it goes without saying that conscripts may be called up to work in cases of emergency, like any other citizens, under *Article 2(2)(d)* of the Convention. Secondly, it was accepted by the Conference during the preparation of the Convention that conscripts performing their service in engineering or similar units may be made to join in the building of roads and bridges as a part of their military training. Lastly, while the Convention does not mention specifically the issue of conscientious objectors, the Committee has considered that the exemption of conscientious objectors from compulsory military service, coupled with an obligation to perform an alternative service, is a privilege granted to individuals on request, in acknowledgement of freedom of conscience. [625] In examining whether it is a privilege granted to individuals on their request or whether, on the contrary, national service is being used as a means of pursuing economic and social development through the use of compulsory labour, due account should be taken of the number of persons concerned and the conditions in which they make their choice.

276. It should be noted that the provisions of the Convention relating to compulsory military service do not apply to career military personnel. The Convention therefore does not deal with the use of persons serving in the armed forces on a voluntary basis and consequently does not prohibit the performance of non-military work by these persons.

Normal civic obligations

277. The Convention exempts from its provisions "any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country" *(Article 2(2)(b))*. Three kinds of such "normal civic obligations" are specifically mentioned in the Convention as exceptions from its scope, namely: compulsory military service, work or service in cases of emergency and "minor communal services". [626] Other examples of "normal civic obligations" could be compulsory jury service and the duty to assist a person in danger. [627] The exception of "normal civic obligations" should be understood in a very restrictive way; it must be read in the light of the other provisions of the Convention and cannot be invoked to justify recourse to forms of compulsory service which are contrary to the letter and the spirit of the Convention. Thus, it is not possible to consider as "normal civic obligations", within the meaning of the Convention, work undertaken for public purposes, such as compulsory public works of general importance or compulsory national development service, which is prohibited by the Convention. [628] The use of such work is also prohibited by Convention No. 105,

[624] General Survey, 2007, para. 45.

[625] ibid., para. 44.

[626] See paras 274–276 above and paras 280–281 below.

[627] General Survey, 2007, para. 47.

in so far as it constitutes "a method of mobilizing and using labour for purposes of economic development".

Compulsory labour of convicted persons

278. Compulsory labour of convicted persons is excluded from the scope of the Convention, provided that it is "carried out under the supervision and control of a public authority" and that such persons are not "hired to or placed at the disposal of private individuals, companies or associations" *(Article 2(2)(c))*. Compulsory labour excluded under this provision may take the form of compulsory prison labour or labour exacted following the imposition of other kinds of penalty, such as a sentence of community work. The two conditions set forth in *Article 2(2)(c)*, are equally important and apply cumulatively: the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense the government from fulfilling the second condition, namely that the person is not hired to or placed at the disposal of private individuals, companies or associations. If either of the two conditions is not observed, the situation is not excluded from the scope of the Convention, and compulsory labour exacted from convicted persons under these circumstances is prohibited in virtue of *Article 1(1)* of the Convention. [629]

279. However, the Committee has considered that, provided the necessary safeguards exist to ensure that the persons concerned offer themselves *voluntarily*, by giving their free and informed consent and without being subjected to pressure or the menace of any penalty, such employment does not fall within the scope of the Convention. Since such formal consent is given in a context of lack of freedom with limited options, it should be in writing. Further, this authentification of voluntariness should be examined through supervision by the public authority. It could also include scrutiny of voluntariness by the courts. The question thus arises as to whether prisoners, notwithstanding their captive circumstances, can be in a situation of freely consented labour, for which they have offered themselves voluntarily and without the menace of any penalty, including the loss of a right or a privilege (advantage), so that their work does not come under the definition of forced or compulsory labour given in *Article 2(1)* of the Convention. If that is the case, the conditions laid down in *Article 2(2)(c)* for compulsory prison labour do not apply, and private employment of prisoners would be compatible with the Convention. Taking into account that, in the absence of an employment contract and outside the scope of the labour law, it seems difficult or even impossible to exactly replicate the conditions of a free working relationship, particularly in the prison context, the Committee has considered that, in assessing whether convict labour for private companies is voluntary, conditions approximating a free labour relationship are the most reliable indicator of the voluntariness of labour. [630]

Cases of emergency

280. The Convention exempts from its provisions "any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population"

[628] ibid.

[629] ibid., paras 53–55.

[630] ibid., paras 59–60 and 114–122. The issue of work of prisoners for prívate companies is also dealt with in para. 291 below.

(Article 2(2)(d)). This exception applies in restricted circumstances where a calamity or threatened calamity endangers the existence or well-being of the whole or part of the population. The enumeration of examples in the Convention is an indication of a restrictive character as to the nature of cases of emergency and helps to clarify the concept of emergency for the purposes of the Convention, which involves a sudden, unforeseen happening calling for instant countermeasures. In order to respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency. Moreover, the duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation. While examining reports provided by countries which have ratified the Convention, the Committee is therefore concerned to satisfy itself that both the law and the practice of countries with regard to the exaction of work or service in cases of emergency remain within these limits. In order to avoid any uncertainty as to the scope of national provisions or their compatibility with the Convention, it should be clear from the legislation itself that recourse to compulsory labour as an emergency measure is confined within the limits indicated above. [631]

Minor communal services

281. Minor communal services are excluded from the scope of the Convention, provided they are "performed by the members of the community in the direct interest of the said community", and "can therefore be considered as normal civic obligations incumbent upon the members of the community", subject to a condition "that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services" *(Article 2(2)(e))*. The Committee has drawn attention to the criteria which determine the limits of this exception and serve to distinguish it from other forms of compulsory services which, under the terms of the Convention, must be abolished (such as forced labour for general or local public works). These criteria are as follows:

– the services must be "minor services", that is to say relate primarily to maintenance work and, in exceptional cases, to the erection of certain buildings intended to improve the social conditions of the population of the community itself (a small school, a medical consultation and treatment room, etc.);

– the services must be "communal services" performed "in the direct interest of the said community", and not relate to the execution of works intended to benefit a wider group;

– the "members of the community" (that is to say the community which has to perform the services) or their "direct representatives" (for example the village council) must "have the right to be consulted in regard to the need for such services". [632]

[631] ibid., paras 62–64.

[632] ibid., para. 65.

Imposition of labour for public works or services and other specified purposes

282. As the Committee noted in its 2007 General Survey on the subject, systematic state practices of imposing compulsory labour on the population (e.g. where able-bodied persons could be called up for limited periods to perform public works, such as construction and maintenance of public buildings and roads, bridges, dams, as well as reforestation and irrigation works, conservation of natural resources, compulsory cultivation, etc.) have declined worldwide and practically disappeared in the great majority of countries. [633] Exceptions are quite rare and concern legislative provisions that still remain in force rather than remnants of old practices, and the governments concerned often indicate that provisions of this kind have fallen into disuse and that measures are being taken to repeal them. [634] The Committee has urged the governments concerned to take the necessary measures to ensure that the provisions incompatible with the Convention are repealed or amended. In certain other cases the Committee has noted with satisfaction that provisions of this kind have been repealed. [635]

283. With regard, more particularly, to *compulsory cultivation*, the Committee has considered that, if provisions imposing this kind of labour may be applied only in the event of actual or threatened famine, they fall outside the scope of the Convention as emergency measures, in virtue of *Article 2(2)(d)* of the Convention. [636] All other forms of compulsory cultivation, as well as other forms of compulsory labour referred to above, if they fail to meet the criteria of "minor communal services", are incompatible with Convention No. 29, as well as with Convention No. 105, which prohibits the use of forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development. [637] The Committee has therefore addressed comments to certain governments in this connection, asking them to take the necessary measures in order to repeal or amend the provisions in question. [638] In some other cases the Committee has

[633] ibid., para. 89.

[634] See, for example, *Kenya* – CEACR, observation, 2011: sections 13–18 of the Chief's Authority Act (Cap. 128), as amended by Act No. 10 of 1997, according to which able-bodied male persons between 18 and 50 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year; the Government has indicated that the above sections of the Chief's Authority Act have never been enforced and that the Act will be replaced by the Administrative Authority Act; *United Republic of Tanzania* – CEACR, observation, 2010: under article 25(1) of the Constitution, every person has the duty to participate in productive work, and under article 25(3)(d) of the Constitution, no work shall be considered as forced labour, if such work forms part of compulsory national service or the national endeavour at the mobilization of human resources for the enhancement of the society and the national economy; under the Local Government (District Authorities) Act, 1982, the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Government Finances Act, 1982, compulsory labour may be imposed, inter alia, by the administrative authority for purposes of economic development; several by-laws adopted between 1988 and 1992 under section 148 of the Local Government (District Authorities) Act, 1982, entitled "self-help and community development", "nation building" and "enforcement of human resources deployment", provide for an obligation to work; the Government has indicated that the Law Reform Commission is currently carrying out legal research on laws that need amendments or repeal to reflect the current economic, social and political arrangements, including laws which are not compatible with the Convention.

[635] See, for example, *United Republic of Tanzania* – CEACR, observation, 2008: the Employment Ordinance (Cap. 366), under which compulsory labour could be imposed for public purposes, was repealed by the Employment and Labour Relations Act, 2004 (No. 6). The Committee noted, however, that other provisions imposing compulsory labour on the population still remained in force (see footnote 633 above).

[636] General Survey, 2007, para. 90.

[637] ibid.

[638] See, for example, *Central African Republic* – CEACR, observation, 2011: section 28 of Act No. 60/109 of 27 June 1960 with respect to the development of the rural economy, under which minimum surfaces for

noted that certain provisions of this kind, including those to which reference was made in the previous General Survey on the subject, have been either repealed or declared null and void by a judicial decision. [639]

284. In certain countries, legislation allowing the call-up of labour in cases of emergency is worded in terms broad enough to permit its application in a wider range of circumstances, for example, where the inhabitants of regions lacking roads suitable for mechanized transport may be called up for work of public interest; [640] where the mobilization of the civilian population may be ordered in the event of serious economic crisis; [641] where persons and goods may be requisitioned in order to satisfy national needs and to protect the nation's vital interests; [642] or for the purpose of promoting the country's economic and social development. [643] These provisions appear to go far beyond the exception concerning emergencies provided for in *Article 2(2)(d)* of Convention No. 29 and permit the mobilization of labour "for purposes of economic development" within the meaning of Convention No. 105. In certain other cases, powers to call up labour originally granted during a period of emergency appear to have been maintained in force for longer periods, even after the immediate conditions which occasioned the emergency have ceased to exist. [644]

285. The Committee has considered that, in order to avoid any uncertainty as to the scope of national provisions or their compatibility with the Convention, it should be clear from the legislation itself that recourse to compulsory labour as an emergency

cultivation are to be established for each rural community and compulsory labour may be exacted; *Sierra Leone* – CEACR, observation, 2011: section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on "natives". The Government has indicated in its report that section 8(h) is not applicable in practice. It has also stated that the abovementioned section is not in conformity with article 9 of the Constitution and would be held unenforceable.

[639] See, for example, *Swaziland* – CEACR, observation, 2010: the Committee noted with interest that the Swazi Administration Order (No. 6 of 1998), which provided for orders requiring compulsory cultivation, anti-soil erosion works, etc., enforceable with severe penalties for non-compliance, had been challenged before the High Court of Swaziland which declared the Order null and void.

[640] *Congo* – CEACR, observation, 2011: Act No. 24/60 of 11 May 1960 on requisitioning, under which persons requisitioned who refuse to work are liable to a penalty of imprisonment.

[641] *Turkey* – CEACR, direct request, 2011: under article 18 of the Constitution, the term "forced labour" does not include services required from citizens during a state of emergency, which may be declared, under article 119 of the Constitution, inter alia, in the event of a serious economic crisis. Under section 10 of the State of Emergency Act (No. 2935, of 25 October 1983), the Council of Ministers may issue decrees to determine obligations and measures to be taken in the event of serious economic crisis, which may concern, inter alia, labour issues.

[642] *Morocco* – CEACR, observation, 2011: the Dahirs of 10 August 1915 and 25 March 1918, as retained in the Dahir of 13 September 1938 and reintroduced by Decree No. 2-63-436 of 6 November 1963. The Committee requested the Government to take steps to ensure that requisitioning could only be decided upon under conditions strictly limited to situations endangering the existence or well-being of the whole or part of the population. The Government has indicated in its report that this issue was debated during discussions held with the social partners and a consensus was obtained to amend the provisions in question.

[643] *Côte d'Ivoire* – CEACR, direct request, 2011: Act No. 63-4 of 17 January 1963 on the use of persons for the purpose of promoting the country's economic and social development and its implementing Decree No. 63-48 of 9 February 1963 allow the requisitioning of individuals or of groups for the performance of certain tasks which are in the national interest (sections 1, 2, 4 and 6). The Government has indicated that the Act is outdated and no longer applied. The Committee has noted, however, that the circumstances covered by the Decree (section 2) do not amount to cases of force majeure, disaster or, in general, circumstances endangering the whole or part of the population.

[644] See, for example, *Sri Lanka* – CEACR, observation, 2011: the Committee referred to the state of emergency declared on 20 June 1989 under the Public Security Ordinance, 1947, and the powers of the President under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulations, adopted in 1989 and revised in 1994, 2000, 2005 and 2006.

measure is confined within the limits indicated above. Where emergency powers are granted by ad hoc legislation, the authority to impose compulsory labour should be given only in circumstances constituting an emergency within the meaning of the Convention. In all cases, recourse to compulsory labour should continue only as long as strictly required to meet the emergency situation, and then (unless automatically limited in duration) should be terminated by a formal and public decision or declaration. [645] The Committee has noted with satisfaction that, in some cases, the provisions authorizing recourse to compulsory labour under emergency powers have been amended in accordance with the above guidelines. [646]

286. Since its last General Survey on the subject, the Committee has continued to make comments on one extremely serious case of flagrant, longstanding and persistent violation of the Convention by the authorities and the military in a country [647] where this grave situation has emerged over the last few decades, in contrast to the general tendency of the worldwide decline of state practices of imposing compulsory labour on the population, including children. [648] The Committee urged the Government to implement the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 under article 26 of the Constitution. [649] This grave situation has also been the subject of overwhelming criticism and condemnation on numerous occasions in the Conference Committee on the Application of Standards of the International Labour Conference and in the Governing Body, by governments and social partners alike. [650] In its continuing observations addressed to the Government, the Committee has identified four areas in which measures should be taken by the Government: (i) issuing specific and concrete instructions to the civilian and military

[645] General Survey, 2007, para. 64.

[646] See, for example, *Greece* – CEACR, observation, 2010: following the amendment introduced by Act No. 3536/2007 concerning special regulations of migration policy issues and other issues under the competence of the Ministry of the Interior, Public Administration and Decentralization (section 41(7)), Legislative Decree No. 17 of 1974 on civil emergency planning, under which the full or partial mobilization of civilians may be proclaimed, shall be applicable only in times of war. As regards requisition in times of peace, section 41 of the Act stipulates that the requisition of personal services is possible only in case of emergency, i.e. in a "sudden situation requiring the taking of immediate measures to face the country's defensive needs or a social emergency against any type of imminent natural disaster or emergency that might endanger the public health".

[647] *Myanmar* – CEACR, observations, 2008, 2009, 2010, 2011 and 2012.

[648] General Survey, 2007, paras 92–93.

[649] See ILO: *Forced labour in Myanmar (Burma)*, report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), *Official Bulletin*, Vol. LXXXI, 1998, Series B, special supplement. According to the report, the Convention was violated in national law and in practice in a widespread and systematic manner; there was abundant evidence showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military. The report concluded that "A State which supports, instigates, accepts or tolerates forced labour on its territory commits a wrongful act and engages its responsibility for the violation of a peremptory norm in international law ... Any person who violates the prohibition of recourse to forced labour under the Convention is guilty of an international crime that is also, if committed in a widespread or systematic manner, a crime against humanity". The Commission of Inquiry made the following recommendations: (1) that the relevant legislative texts be brought into line with the Convention; (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and (3) that the penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

[650] See, for example, the documents submitted to the Conference Committee on the Application of Standards during the 100th Session of the International Labour Conference in June 2011, as well as the discussions and conclusions of that Committee (ILC, 100th Session, *Provisional Record* No. 18, Part Three (A) and Doc. D.5(D)); see also the documents submitted to the Governing Body at its 310th and 312th Sessions (March and November 2011), as well as the discussions and conclusions of the Governing Body during those sessions (GB.310/5, GB.312/INS/6).

authorities; (ii) ensuring that the prohibition of forced labour is given wide publicity; (iii) providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and (iv) ensuring the enforcement of the prohibition of forced labour. [651]

287. In response to this grave situation, the ILO has been using its institutional framework, the existing supervisory procedures and technical cooperation means (see box below). In its most recent observation, [652] the Committee, while noting the positive developments in the country, urged the Government to adopt without delay legislation repealing the Village Act and the Towns Act of 1907, and to undertake all the necessary and urgent measures for the full implementation of the recommendations of the Commission of Inquiry by implementing the concrete practical requests addressed by the Committee to the Government in order to achieve full compliance with the Convention, both in law and in practice.

ILO response to forced labour in Myanmar

- The ILO has used the full range of its available arsenal towards achieving effective application of ratified Conventions in the case of Convention No. 29 in Myanmar. The establishment of a Commission of Inquiry under article 26 of the ILO Constitution in response to a complaint filed in 1996 was followed by a precedential use of article 33 of the ILO Constitution and the adoption of a resolution by the International Labour Conference inviting the Organization's constituents to review their relations with Myanmar and take appropriate measures to ensure that Myanmar cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry. The cooperation between the ILO and the Government was strengthened in 2001 through the signing of an Understanding to allow a high-level team to assess the realities of the forced labour situation in the country and the appointment of the ILO Liaison Officer in Myanmar to cover all activities relevant to ensuring the prompt and effective elimination of forced labour.
- A hitherto unprecedented complaints mechanism was established in the Supplementary Understanding between the ILO and the Government in 2007 aimed at giving victims of forced labour the opportunity to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking redress. At its November 2011 session, the Governing Body welcomed the indication that legislation was before the Parliament which was said to repeal both the Village Act and the Towns Act of 1907. Nevertheless, the commitment to a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism, but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code remains of critical importance to the implementation of the Commission of Inquiry recommendations.

[651] See *Myanmar* – CEACR, observation, 2011: the Committee fully endorsed the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee observed that the Government had not yet implemented the recommendations of the Commission of Inquiry: it had failed to amend or repeal the Towns Act and the Village Act; it had failed to ensure that, in actual practice, forced labour was no longer imposed by the authorities, in particular by the military; and it had failed to ensure that penalties for the exaction of forced labour under the Penal Code were strictly enforced against civil and military authorities.

[652] See *Myanmar* – CEACR, observation, 2012.

- As regards the cross-cutting elements of the Conventions dealt with in this General Survey, the Committee wishes to draw particular attention to its calls – echoed by the Conference Committee on the Application of Standards – for the Government of Myanmar to extend the presence of the ILO in the country to cover matters pertaining to freedom of association given the intrinsic link between these rights and the effective elimination of forced labour. The Committee welcomes in this regard the recent passage of the Labour Organization Law which appears to fill elements of the long-standing void in the legislative framework in relation to the right of workers to form and join organizations of their own choosing and expresses its firm expectation that this Law will enter into force in the very near future and that the newly formed workers' organizations will be in a position to exercise fully their trade union activities, including with a view to playing their part towards the full and effective elimination of forced labour.

National service obligations

288. In the last General Survey on the subject, the Committee drew attention to the legislative provisions concerning compulsory civic service or other non-military national service activities. The Committee recalled that, as regards national service obligations imposed outside emergency situations, only compulsory military service is excluded from the scope of the Convention, subject to the condition that it is used "for work of a purely military character" *(Article 2(2)(a))*, this condition being aimed specifically at preventing the call-up of conscripts for public works or development purposes. [653] The Committee has noted the indications of some governments that, in actual practice, legislation concerning non-military national service activities, including provisions authorizing the *use of conscripts for non-military purposes*, applies only in the case of emergencies or in respect of vocational training. Other governments stated that young people engaged in economic development activities as part of their compulsory national service are in practice always volunteers. The Committee has pointed out in this connection that, in order to avoid any ambiguity in the interpretation and to bring legislation into line with the Convention and the indicated practice, the principle that such non-military tasks are restricted to emergencies or performed exclusively by volunteers should be clearly reflected in the legislation. [654]

289. The Committee notes, however, that legislation authorizing the use of conscripts for non-military purposes is still in force in certain countries. [655] In some cases, persons liable to military service but not in fact called up for such service (for example, persons surplus to military requirements) may be required to satisfy their national service obligations in non-military forms, such as work for development purposes in production

[653] General Survey, 2007, para. 94. See also para. 274 above.

[654] ibid.

[655] See, for example, *Algeria* – CEACR, observation, 2011: Ordinance No. 74-103 of 15 November 1974 issuing the National Service Code and the Order of 1 July 1987, under which conscripts are required to take part in the running of various sectors of the economy and administration. The Government has indicated that the civic form of national service has not been used since 2001, but the legislation has not yet been amended; *Benin* – CEACR, observation, 2011: Act No. 2007-27 and Decree No. 2007-486, under which persons conscripted for military service in the national interest are assigned socio-economic development work which is not of a purely military character; *Congo* – CEACR, observation, 2011: section 1 of Act No. 16 of 27 August 1981 establishing compulsory military service, according to which national service is instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation and has two components: military service and civic service. The Government has indicated that the practice of imposing on recruits work which is not purely military in nature has fallen into disuse.

units of factories, public undertakings, etc. [656] There are also countries in which legislation concerning compulsory civic service is still in force; [657] sometimes the governments indicate that this legislation is no longer applied in practice, although it has not been formally repealed. [658] The Committee has therefore requested the governments concerned to take the necessary measures to bring their legislation into compliance with the forced labour Conventions. Since the last General Survey, the Committee has noted with satisfaction that *Cameroon* had repealed the provisions instituting national service for participation in development, making participation in work in the general interest voluntary. [659]

Restrictions on the freedom of workers to terminate employment

290. As indicated above, the effect of statutory provisions preventing termination of employment of indefinite duration by means of notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with Convention No. 29. [660] The Committee has thus addressed restrictions on the freedom to leave employment by giving notice of reasonable length that were imposed in different countries, including career military personnel in time of peace. It has noted, in particular, that in some countries, any person employed by the government, or by any public administration, establishment or body or any authority of the public or mixed sector, who unilaterally terminates employment (even with notice) without the consent of the employer or the authorization of the competent authority, is liable to penal sanctions of imprisonment; workers in the *public*

[656] See, for example, *Chad* – CEACR, observation, 2011: section 14 of Ordinance No. 001/PCE/CEDNACVG/91 organizing the armed forces, under which conscripts who are fit for service are classified into two categories: the first, the size of which is determined each year by decree, is incorporated and compelled to perform active service; the second remains at the disposal of the military authorities for two years and may be called up to perform work in the general interest by order of the Government; *Egypt* – CEACR, observation, 2011: section 1 of Act No. 76 of 1973, as amended by Act No. 98 of 1975, concerning general (civic) service of young persons on completion of their studies, under which young persons, male and female, who have completed their studies and who are surplus to the requirements of the armed forces, may be directed to work, such as development of rural and urban societies, agricultural and consumers' cooperative associations and work in production units of factories.

[657] For example, *Algeria* – CEACR, observation, 2011: sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 respecting civic service, as amended in 1986 and 2006, which require persons who have completed a course of higher education or training to perform a period of civic service ranging from one to four years before being able to obtain employment or exercise an occupation; refusal to perform civic service and the resignation of the person concerned without acceptable grounds result in their prohibition from exercising an activity on their own account, any violation being punishable under section 243 of the Penal Code.

[658] For example, *Dominica* – CEACR, observation, 2011: the National Service Act, 1977, under which persons between the ages of 18 and 21 years are required to perform service with the national service, including participation in development and self-help projects concerning housing, school, construction, agriculture and road building, failure to do so being punishable with a fine and imprisonment (section 35(2)). The Committee has observed that, contrary to the Government's repeated statement that the national service was created to respond to national disasters, the Act contained no reference to natural disasters, but specified the objectives of the national service which "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Government has indicated that section 35(2) of the Act has not been applied in practice.

[659] See *Cameroon* – CEACR, observation, 2008: Act No. 73-4 of 9 July 1973 instituting national service for participation in development, which allowed the imposition of work in the general interest on citizens aged between 16 and 55 years for 24 months, subject to penalties of imprisonment for refusal was repealed by Act No. 2007/003 of 13 July 2007.

[660] See para. 271 above.

service and *essential services* are the most affected. [661] In certain other countries, military officers and other career members of the armed forces cannot resign their commission before their resignation is formally accepted by the competent body, which takes a decision after having examined the reasons for resignation. [662] Since the last General Survey, the Committee has noted with satisfaction that *Uganda* had repealed the provisions under which workers employed in *essential services* could be prohibited from terminating their contract of service. [663] As regards private sector workers, the Committee has expressed concern about the vulnerable situation of *domestic workers*, including *migrant domestic workers*, particularly in relation to their freedom to terminate employment. It has requested the governments concerned to adopt provisions with a view to ensuring adequate protection of these workers with regard to termination of their employment relationship, including their right to have recourse to the courts, if necessary. [664]

[661] See, for example, *Bangladesh* – CEACR, observation, 2009: under the Essential Services (Maintenance) Act, No. LIII of 1952, termination of employment by any person employed by the central Government without the consent of the employer is punishable with imprisonment for up to one year, notwithstanding any express or implied term in the contract of employment providing that the employee may freely, and with notice, terminate his or her employment (sections 3, 5(1)(b) and explanation 2, and section 7(1)). Although the Government has indicated that the 1952 Act has become redundant and its provisions are no longer applied in practice, similar provisions are contained in the Essential Services (Second) Ordinance, No. XLI of 1958 (sections 3, 4(a) and (b) and 5), which is still in force; *Pakistan* – CEACR, observation, 2011: Essential Services (Maintenance) Act, 1952, under which a person in government employment who terminates employment without the consent of the employer is subject to imprisonment for up to one year. The Government has indicated that an amendment to the Essential Services (Maintenance) Act, 1952, has to be considered by the tripartite commission on the consolidation, simplification and rationalization of labour laws; *Syrian Arab Republic* – CEACR, observation, 2010: Legislative Decree No. 46 of 23 July 1974, amending section 364 of the Penal Code, under which a term of imprisonment of from three to five years may be imposed for leaving or interrupting work as a member of the staff of any public administration, establishment or body or any authority of the public or mixed sector before resignation has been formally accepted by the competent authority. The Government has indicated that the amendment of the Penal Code is currently ongoing and that the Committee's comments are being taken into account in order to bring it into conformity with the Convention.

[662] See, for example, *Egypt* – CEACR, direct request, 2011: section 141 of Act No. 232, of 1959, under which the military officer's service does not terminate until the resignation is accepted. The Committee has observed that, under the above provision, the application to resign may be either accepted or refused. It has also noted that the Act does not establish the criteria to be used to decide whether a resignation will be accepted; *Nigeria* – CEACR, direct request, 2011: section 11 of the Terms and Conditions of Service, Nigerian Army Officers (1984), according to which an officer holding a regular commission may be permitted to resign, but a ruling on each application will be made by the Army Council; section 17(10) of the Police Act, Cap. 359, under which no police officer other than a superior officer shall be at liberty to resign or withdraw himself from his duties without the approval of the Police Council; *Uganda* – CEACR, observation, 2011: the National Resistance Army (Conditions of Service) (Officers) Regulations No. 6 of 1993 (now the Uganda People's Defence Forces (Conditions of Service) (Officers) Regulations), section 28(1), under which the Board may permit officers to resign their commission at any stage during their service, but the officer applying for the resignation must give his/her reasons for it. The Board may grant permission to resign only after it has considered these reasons and finds them fit.

[663] See *Uganda* – CEACR, observation under Convention No. 105, 2009: Trade Disputes (Arbitration and Settlement) Act, 1964, which contained provisions under which workers employed in "essential services" may be prohibited from terminating their contract of service, was repealed by the Labour Disputes (Arbitration and Settlement) Act, 2006 (section 44(1)). Section 34(1) of the new Act expressly provides that an individual employee (employed in "essential services") shall not be prohibited from giving notice of termination of employment at any time under the Employment Act, 2006.

[664] See, for example, *Kuwait* – CEACR, observation, 2011: the Committee noted that the new Labour Code (Law No. 6, 2010) excluded domestic workers from its scope, but authorized the competent minister to issue a decision specifying the rules governing the relationship between domestic workers and their employers. It expressed the hope that such a ministerial decision would be issued in the near future and that it would provide adequate protection for domestic workers as regards their freedom to terminate employment.

Work of prisoners for private companies

291. In its 2007 General Survey, the Committee noted a trend towards two related phenomena in some member States, which has had a marked effect on the application of the Convention. First, prisoners in publicly administered prisons are more often working for private enterprises, both inside and outside prison premises. Second, in some cases, prison administration has been contracted to private firms, and prisoners are working for purposes of production in these prisons. This trend can be observed both in the countries bound by the Convention and in non-ratifying States and has an obvious effect on the application of the Convention, particularly *Article 2(2)(c)*. [665] After a thorough, in-depth analysis of this trend, the Committee has come to the conclusion that the privatization of prison labour is not incompatible with the Convention, if designed and implemented on the understanding that there are additional requirements that must be fulfilled in order to ensure compliance. As indicated above, [666] where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, by giving their free and informed consent and without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention, such work would not fall within the scope of the Convention. The Committee has considered that, in the prison context, the most reliable indicator of the voluntariness of labour is that the work is performed under conditions which approximate a free labour relationship, including wages (leaving room for deductions and attachments), social security and occupational safety and health. [667] As the Committee noted in its previous General Survey, a certain number of countries have already made progress towards full compliance with the Convention by taking measures, both in law and in practice, so that the conditions of the private employment of prisoners progressively approach those of free workers. [668] Others have been requested by the Committee to take measures to that effect. [669] The Committee reiterates its hope to see continuous advances in this sense and believes that the foregoing indications will provide a useful guide as to how the Convention should be applied for the benefit of those member States which have ratified the Convention, and those which are contemplating doing so.

Obligation to perform overtime work under threat of a penalty

292. As the Committee pointed out in its 2007 General Survey, the imposition of overtime does not affect the application of the Convention so long as it respects the limits permitted by national legislation or collective agreements. [670] Above those limits, the Committee has considered it appropriate to examine the circumstances in which a link arises between an obligation to perform overtime work and the protection provided by the Convention. The Committee has noted in this connection that, in some cases, fear of dismissal drives workers to work overtime hours well beyond what is allowed under national legislation. In other cases, where remuneration is based on productivity targets, workers may be obliged to work beyond normal working hours, as only in so doing can

[665] General Survey, 2007, paras 98–101.

[666] See para. 279 above.

[667] General Survey, 2007, paras 59–60 and 114–122.

[668] ibid., para. 61 and footnotes 123 and 124.

[669] ibid., para. 61 and footnote 125.

[670] ibid., para. 132.

they earn the minimum wage. [671] The Committee has observed that, although workers may in theory be able to refuse to work beyond normal working hours, their vulnerability means that in practice they may have no choice and are obliged to do so in order to earn the minimum wage or keep their jobs, or both. [672] Workers in the most vulnerable groups (such as *agricultural workers*) are often the most affected. [673] With regard to these issues, which have been raised before the Committee on several occasions by workers' organizations, [674] the Committee has considered that, in cases in which work or service is imposed by exploiting the worker's vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level, such exploitation ceases to be merely a matter of poor conditions of employment and becomes one of imposing work under the menace of a penalty, which calls for protection by the Convention. [675] The Committee has therefore requested that the necessary measures be adopted to ensure compliance with the Convention in order to protect workers in the sectors concerned, including *maquilas* (export processing zones), *plantations* and the *public service.* [676]

Slavery, slavery-like practices and other illegal forms of compulsion to work: Imposition of forced labour on workers in most vulnerable groups

293. In its previous General Survey, the Committee noted that, despite the prohibition of slavery and similar practices at the international level and the significant progress made by States in adopting legislation to eliminate slavery-like practices, some such practices, which may be characterized as the *vestiges of slavery*, still survive in some very rare cases today. [677] Thus, for a number of years, the Committee has been examining the situation in one country where conditions of slavery continue to be transmitted by birth to individuals from certain ethnic groups who are compelled to work for their master without payment, principally as shepherds, agricultural workers or domestic employees, despite the anti-slavery legislation and positive measures taken by the Government to eradicate these practices. The Committee has requested the Government concerned to

[671] ibid., para. 133.

[672] See, for example, *Guatemala* – CEACR, observation, 2010.

[673] ibid., concerning imposition of work in excess of normal working hours on plantation sector workers.

[674] Thus, the Inter-Union Commission of El Salvador made comments on the situation of workers in *maquilas* (export processing zones) who were required, under threat of dismissal, to work overtime in excess of the limits laid down in the national legislation and without pay, in order to achieve production targets set by *maquila* companies (see *El Salvador* – CEACR, observation, 2006). The Trade Union Confederation of Guatemala (UNSITRAGUA) and the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights referred in their respective comments to the obligation to work overtime under the threat of a penalty for certain categories of public sector workers and certain workers in the private sector *(plantations)* (see *Guatemala* – CEACR, observation, 2010).

[675] General Survey, 2007, para. 134.

[676] See *El Salvador* – CEACR, direct request, 2008: the Committee noted that the Ministry of Labour and Social Welfare was evaluating the activities of its offices established in the EPZs and sought information about the results of this evaluation in connection with the alleged imposition of work beyond normal working hours; *Guatemala* – CEACR, observation, 2010: the Committee requested information on the measures taken to protect both public sector workers and private sector *(plantations)* workers against the imposition of work beyond normal working hours.

[677] General Survey, 2007, para. 69.

take all the measures necessary to combat slavery and its vestiges through the adoption of the National Action Plan and the strengthening of the law enforcement machinery. [678] Since the last General Survey, the Committee has noted with satisfaction that in another country with reference to the vestiges of slavery, new legislation has been adopted to define, criminalize and penalize slavery-like practices. It requested the Government to take measures to ensure that victims are effectively in a position to assert their rights and asked it to adopt a global strategy to combat slavery. [679]

294. With regard to unlawful practices of *debt bondage*, under which labourers and their families are forced to work for an employer in order to pay off the debts they have incurred or inherited, such practices are still widespread in some countries and affect a significant number of people. As the Committee noted in its previous General Survey, the victims of debt bondage are the poorest people, often illiterate and relatively easy to deceive and be kept in ignorance of their rights; if they try to leave their employment, they are usually caught and returned by force. [680] The manipulation of credit and debt, either by employers or by recruiting agents, is still a key factor that traps *vulnerable workers* in forced labour situations. For example, poor *agricultural workers* or *members of indigenous communities* may be induced into indebtedness through accepting relatively small but cumulative loans or wage advances from employers or recruiters at a time of scarcity. [681] The Committee has observed in this connection that, since debt is the root cause of bonded labour, legal action is required to declare such bondage unlawful and to provide for penal sanctions against those employers who hold their workers in bondage. Such legal action should be accompanied by supplementary measures of economic assistance and rehabilitation for bonded labourers, so as to ensure that they do not fall back into a bonded labour situation. [682] The Committee has noted, with regard to the countries experiencing the most serious problems of bonded labour that, despite the adoption in these countries of specific legislation (and/or national plans) with a view to prohibiting this phenomenon, rehabilitating the victims and punishing perpetrators, the application of such legislation in practice is sometimes hampered by some difficulties, often due to the inadequacy of the labour inspection and law enforcement machinery, or the ineffectiveness of "vigilance committees". The Committee has consequently requested the governments concerned to take all the necessary measures to identify, release and rehabilitate bonded labourers and to punish perpetrators, by strengthening

[678] See *Niger* – CEACR, observation, 2011: the Committee noted the existence of an archaic form of slavery which is found in nomadic communities. The relations between master and slave are based on direct exploitation: a slave is placed at the disposal of the master and is obliged to work without remuneration. The Committee took note of the adoption of certain measures including the inclusion in the Penal Code of sections 270-1 to 270-5 which criminalize and punish slavery; the establishment in August 2006 of the National Committee to Combat Forced Labour and Discrimination in charge of the drafting of a national action plan; the agreement between the National Statistics Institute and the International Labour Office on the preparation of a study which would give an account of the forms of forced labour found in Niger and provide estimated statistics. The Committee sought information on the measures taken to combat slavery and its vestiges, including the measures taken for the adoption of the national action plan on combating all forms of forced labour, in particular slavery, and on the action taken by the National Committee.

[679] See *Mauritania* – CEACR, observation, 2010: Act No. 2007/48, which defines, criminalizes and penalizes slavery-like practices and makes a distinction between the crime of slavery and offences of slavery. The Committee has considered that the adoption of the Act constitutes an important step in combating slavery and that the challenge will henceforth lie in the effective application of the legislation.

[680] General Survey, 2007, para. 71. According to the information available, bonded labour is widespread in agriculture, but has been also detected in mines, brick kilns, leather, fish processing and carpet factories. In some regions, members of indigenous and tribal peoples are the most affected.

[681] *The cost of coercion*, op. cit., para. 40.

[682] General Survey, 2007, para. 71.

labour inspection and law enforcement machinery, conducting a nationwide statistical survey on bonded labour and imposing adequate penal sanctions, as required by *Article 25* of the Convention. [683] In some other cases, the Committee has emphasized the importance of strengthening the legal framework, for example by adopting legislative or other measures with the objective of undermining the economic and financial interests of those exploiting bonded labour, which would constitute an additional tool to combat forced labour, and by increasing the effectiveness of the penalties imposed on perpetrators, which must be sufficiently dissuasive and strictly enforced. [684] In a number of cases, the Committee has specifically addressed the vulnerable situation of *members of indigenous communities*, who often become victims of bonded labour, serfdom and other forced labour practices. [685]

295. ***On numerous occasions, the Committee has expressed concern about the vulnerable situation of migrant workers, including migrant domestic workers, who are often subjected to abusive practices by employers, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuse, which cause their employment to be transformed into situations that could amount to forced labour.*** More particularly, many *migrant domestic workers* work under precarious and difficult conditions, which may be characterized by: atypical working-time arrangements (hours of work, weekly rest periods and leave); insufficient guarantees covering their wages (observance of minimum rates, the payment of wages); insufficiency or absence of social protection; and the lack of information on the exercise and defence of the above rights (for example, recourse to the courts). The vulnerability of these workers, who are in their great majority *women* and *young persons*, arises principally out of two characteristics of their work: firstly, they are employed in domestic work, for which only a low level of protection is set out in labour legislation; and secondly, by working abroad they are outside the direct legal protection provided by their country of origin. The vulnerability of the situation of *migrant domestic workers* is increased by the absence of autonomy of these workers in respect of their employers. Thus, the Committee has noted that the so-called visa "sponsorship" system (or *"Kafala"* system) in certain countries in the Middle East may be conducive to the exaction of forced labour [686] and requested the

[683] For example, *India* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2011.

[684] See, for example, *Brazil* – CEACR, observation, 2010: the Committee noted, in particular, a Bill to provide a legal basis for the prohibition of persons recognized to have used bonded labour from obtaining fiscal benefits and credits or from participating in public contracts, and a Bill to increase the penalties applicable to the crime of reducing a person to a condition akin to slavery. The Committee pointed out that, once adopted, these Bills would constitute significant additional tools in combating bonded labour. It further noted that the draft amendment to article 243 of the Constitution (PEC No. 438/2001) was also a significant initiative intended to authorize the expropriation, without compensation, of establishments in which the use of slave labour has been identified.

[685] See, for example, *Paraguay* – CEACR, observation, 2010: the Committee expressed concern about the existence of cases of debt bondage in the indigenous communities of the Chaco. While noting positive action undertaken by the Government to eradicate bonded labour, such as the establishment of the Commission on Fundamental Rights at Work and the Prevention of Forced Labour and the development of an action plan, the Committee observed that the measures taken should be reinforced and lead to systematic action which is commensurate with the scope and gravity of the problem; *Peru* – CEACR, observation, 2011: for a number of years, the Committee has been examining the situation of members of indigenous communities who often become victims of forced labour practices (slavery, debt bondage and serfdom), particularly in such sectors as agriculture, stock-raising and forestry. While noting the positive measures taken by the Government, such as the establishment of the National Commission to Combat Forced Labour, the adoption of the National Plan and the creation of a special labour inspection unit to combat forced labour, the Committee stressed the importance of the adoption of penal provisions specifically criminalizing forced labour and defining its constituent elements, so as to cover all the forced labour practices existing in the country.

[686] See, for example, *Saudi Arabia* – CEACR, observation, 2010: the Committee requested the Government to take steps to adopt new regulations under section 7 of the Labour Code in order to protect migrant domestic

governments concerned to adopt legislative provisions specially tailored to the difficult circumstances faced by this category of workers and to protect them from abusive practices. The Committee has also considered it necessary to adopt measures to protect *migrant workers* by controlling the exploitative aspects of the activities of private recruitment agencies, to prohibit employers from withholding workers' passports and to eliminate all other restrictions on the fundamental rights of domestic and other migrant workers, in order to guarantee them standard labour protection. [687] Turning to *migrants in irregular situations*, whose vulnerability exposes them to the exploitation of their labour, the Committee has pointed out that the penalization of unlawful migration increases their vulnerability still further and it has requested the governments concerned to adopt the necessary measures to protect migrant workers from the exaction of forced labour, regardless of their legal status. [688] The Committee has noted various positive steps undertaken to ensure that domestic workers are aware of their rights, either through training workshops and information campaigns, or through the adoption of provisions governing a consolidated labour contract for domestic workers and a procedure for the investigation of complaints filed by domestic workers against their employers. The Committee has requested information on all the measures taken, in both law and practice, to strengthen the protection of *migrant domestic workers* with a view to the elimination of any forced labour among this category of workers, by providing the necessary assistance to enable them to assert their rights and denounce any abuses of which they may be victims. [689] The situation of workers in the most vulnerable groups, including migrant workers, is often addressed by workers' organizations in their comments supplied under article 23 of the ILO Constitution, which are regularly examined by the Committee. [690]

296. Since its last General Survey, the Committee has continued to examine information concerning *abductions of persons for forced labour purposes* affecting thousands of people, [691] including children, [692] in the context of armed conflicts in certain regions. The

workers from abusive practices and conditions that amount to the exaction of forced labour caused by the visa "sponsorship" system.

[687] See, for example, *Indonesia* – CEACR, observation, 2009.

[688] See, for example, *Italy* – CEACR, direct request, 2010: Act No. 94 of 15 July 2009 issuing provisions respecting public security amended the Act of 1998 regulating immigration and the status of foreign nationals by inserting section 10bis, under the terms of which the illegal entry and residence of migrants constitute a criminal offence.

[689] See, for example, *Lebanon* – CEACR, observation, 2011; *Peru* – CEACR, observation, 2011.

[690] For example, the Committee notes the comments by workers' organizations supplied with Government reports under article 19 of the ILO Constitution: Canada – Canadian Labour Congress (CLC) and Confederation of National Trade Unions (CSN); *Poland* – Independent and Self-Governing Trade Union "Solidarnosc"; *Portugal* – General Workers' Union (UGT) and Confederation of Portuguese Tourism (CTP).

[691] See *Democratic Republic of the Congo* – CEACR, observation, 2012: the Committee noted with deep concern the information regarding human rights violations committed by the state security forces and other armed groups, especially the Armed Forces of the Democratic Republic of the Congo (FARDC), including numerous cases of forced labour and sexual slavery, particularly in the mining areas of the Kivus. The Committee urged the Government to take all the necessary measures to bring an immediate end to these practices which constitute a most serious violation of the Convention, and to ensure that adequate sanctions are imposed on the perpetrators; *Sudan* – CEACR, observation, 2011: for many years, the Committee has been referring to the continuing existence of the practices of abduction and forced labour exploitation, which affect thousands of women and children in the regions of the country where an armed conflict was under way. While noting the positive measures taken by the Government, including through the Committee for the Eradication of Abduction of Women and Children (CEAWC), as well as the Government's renewed commitment to resolve the problem, the Committee strongly urged the Government to redouble its efforts in order to completely eradicate the forced labour practices which constitute a gross violation of the Convention, and in particular to resolve the cases of abductions in all the regions of the country and to ensure the victims' right to be reunified with their families.

Committee has observed that the situations concerned constitute gross violations of the Convention, since the victims are forced to perform work for which they have not offered themselves voluntarily, under extremely harsh conditions, combined with ill-treatment which may include torture and death, as well as sexual exploitation. [693] The Committee has therefore urged the governments concerned to take effective and prompt action to eliminate such practices and to ensure that, in accordance with *Article 25* of the Convention, penal sanctions are imposed on the perpetrators.

Trafficking in persons

297. Since its 2001 general observation concerning human trafficking, in which the Committee sought information on the measures taken or envisaged to prevent, suppress and punish this scourge, [694] the Committee has been systematically examining the problem of trafficking in its numerous individual comments addressed to ratifying States. In these comments, the Committee has drawn attention to *Article 1(1)* of the Convention, under which ratifying States are bound to suppress all forms of forced or compulsory labour within the shortest possible period, and *Article 25*, under which the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced. Referring to the definition of trafficking in persons in the Palermo Protocol, [695] the Committee pointed out, in particular, that the notion of exploitation of labour inherent in this definition allows for a link to be established between the Palermo Protocol and Convention No. 29, and makes clear that trafficking in persons for the purpose of exploitation (which is specifically defined to include forced labour or services, slavery or similar practices, servitude and various forms of sexual exploitation) is encompassed by the definition of forced or compulsory labour provided under *Article 2(1)* of the Convention. [696] Another important element of the definition of trafficking in persons in the Palermo Protocol, which brings it within the scope of Convention No. 29, is the means of coercion used against an individual, including the threat or use of force, abduction, fraud, deception, the abuse of power or a position of vulnerability, which definitely exclude the voluntary

[692] See *Uganda* – CEACR, observation, 2009: the Committee expressed concern about numerous cases of abductions of thousands of children in connection with armed conflict in the northern part of the country for the purpose of exploitation of their labour. Abducted children were forced to provide work and services as guards, soldiers and concubines, with such abductions being connected with killings, beatings and the rape of these children. Since the country has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee expressed the view that the problem of the forced labour of children may be examined more specifically under the latter Convention, which requires ratifying States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee accordingly asked the Government to refer to its comments on the application of Convention No. 182.

[693] General Survey, 2007, para. 70.

[694] CEACR, general observation on Convention No. 29, 2001: the Committee sought information, in particular, on the provisions of national law aimed at punishing the exaction of forced or compulsory labour, trafficking in persons and the exploitation of the prostitution of others, the measures taken to ensure that such provisions are strictly enforced against perpetrators, as well as measures designed to encourage victims to turn to the authorities (such as permission to stay in the country at least for the duration of court proceedings, efficient protection of victims willing to testify from reprisals by the exploiters, etc.).

[695] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (the "Palermo Protocol") which supplemented the United Nations Convention against Transnational Organized Crime (2000). While the UN Convention targets transnational organized crime, as defined in this instrument, ILO Convention No. 29 is aimed at the prohibition of forced or compulsory labour in all its forms, whether by public bodies or private persons, irrespective of their connection with organized crime.

[696] General Survey, 2007, para. 77.

offer or consent of the victim. With regard to the latter, the Palermo Protocol contains a qualifying provision that the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the abovementioned means have been used. Where the victim is a child, the crime of trafficking in persons can be established irrespective of the use of means of coercion or deceit referred to above. [697]

298. Since trafficking in persons is closely linked to the imposition of forced or compulsory labour or services, it should be punished as a criminal offence under *Article 25* of the Convention. [698] While the penal legislation of most countries that have ratified Convention No. 29 provides for the punishment of the exaction of forced compulsory labour, the Committee has noted since its last General Survey that a number of countries have introduced into their national legislation specific provisions aimed at punishing trafficking in persons, either by amending their criminal codes, [699] or by adopting special anti-trafficking laws. [700] Some other countries are currently in the process of adopting such specific provisions. [701] With regard to the prevention of trafficking in persons and the protection of victims of trafficking, which is essential for the efficient eradication of human trafficking and thereby contributes to the suppression of all forms of forced or compulsory labour, as required by the Convention, the Committee has noted with interest on numerous occasions since its last General Survey the adoption by ratifying States of anti-trafficking national plans and other policy measures and has sought information on their application in practice *(Argentina, El Salvador, Indonesia, Mexico, Zambia)*. [702] Particular attention has been paid in this connection to the situation of persons in the most vulnerable groups, such as *migrant workers, domestic workers, informal sector workers, women and children.* [703]

[697] ibid., paras 79 and 85. In a number of cases, the Committee has closely followed the issue of child trafficking under Convention No. 29. However, where the country in question has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee has usually expressed the view that this problem can be examined more specifically under Convention No. 182, since the protection of children is enhanced by the fact that the latter Convention requires ratifying States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee has accordingly asked the governments concerned to refer in such cases to its comments on the application of Convention No. 182. See, for example, *Haiti* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2010; *Uganda* – CEACR, observation, 2009.

[698] The offence of trafficking should also be punished under Article 5 of the Palermo Protocol.

[699] For example, *Azerbaijan* (Penal Code, section 144-1); *El Salvador* (Penal Code, sections 367 and 370); *Peru* (Penal Code, section 153); *Turkey* (Penal Code, sections 80 and 227(3)).

[700] For example, *Argentina* (Act No. 26364 of 9 April 2008 on the prevention and punishment of trafficking in persons and assistance to victims); *Djibouti* (Act No. 210/AN/07/5th L of 27 December 2007 respecting measures to combat trafficking in persons); *Guyana* (Combating of Trafficking in Persons Act, 2005); *Indonesia* (Law No. 21/2007 of 19 April 2007 on the elimination of the crime of human trafficking); *Mexico* (Act of November 2007 to prevent and punish trafficking of persons); Z*ambia* (Anti-Human Trafficking Act No. 11 of 2008).

[701] For example, *Haiti* – CEACR, observation, 2011 (two bills on human trafficking are under elaboration); *India* – CEACR, observation, 2010 (a bill to amend the Immoral Traffic (Prevention) Act, 1956, is under consideration by the Government with a view to redefining the offence of trafficking in persons and reinforcing penal sanctions); *Kuwait* – CEACR, observation, 2011 (a bill on combating trafficking in persons has been submitted to the Council of Ministers for adoption before its referral to Parliament).

[702] See *Argentina* – CEACR, observation, 2010; *El Salvador* – CEACR, observation, 2009; *Indonesia* – CEACR, observation, 2009; *Mexico* – CEACR, observation, 2010; *Zambia* – CEACR, observation, 2011. According to the information supplied by the governments in their reports under article 19 of the ILO Constitution, such national plans and other measures have been adopted in countries which have not yet ratified the Convention, for example, in China (Action Plan on Combating Trafficking in Women and Children, 2008–12) and the United States (comprehensive anti-trafficking policy measures have been adopted under the Trafficking Victims Protection Act, 2000, in the field of prevention and victim protection).

[703] Regarding the situation of the most vulnerable groups, see paras 293–296 above.

299. The Committee noted in its previous General Survey that some countries have altered their definition of forced labour for the purposes of their penal codes so as to cover acts connected with trafficking in persons. [704] In some other cases, anti-trafficking legislation has been worded in such a way as to cover a penal offence of the exaction of forced labour. [705] Some governments expressed the view that, even if legislation specifically criminalizing an offence of forced labour had not yet been adopted, provisions criminalizing human trafficking which contain a reference to its purpose, namely exploitation, could be applicable to protect the victims of forced labour. [706] ***The Committee has had the occasion to point out in this connection that the notion of forced labour, as established by the Convention, is broader than that of trafficking in persons and that it is important for national jurisdictions to have precise provisions, taking into account the principle of the strict interpretation of penal law.*** [707] ***As indicated above, trafficking in persons for the purpose of exploitation is encompassed by the definition of forced or compulsory labour provided in the Convention. However, forced labour or services may be exacted from persons in various kinds of vulnerable situation, including those which are not necessarily connected with human trafficking, as defined in the Palermo Protocol.*** The Committee has therefore requested the governments concerned to provide information on the application in practice of penal provisions punishing trafficking, in relation to punishment of the illegal exaction of the various forms of forced or compulsory labour in the situations where the imposition of such labour is not connected with human trafficking in the strict sense of the term, [708] so as to ascertain that all forms of forced or compulsory labour are punishable as a penal offence, as required by the Convention.

[704] General Survey, 2007, para. 81.

[705] For example, a country which has not ratified the Convention: United States (Trafficking Victims Protection Act of 2000, as amended in 2005 and 2008, section 1589 "Forced Labour").

[706] See, for example, *Peru* – CEACR, observation, 2011: the Government stated, however, that a Bill was under preparation to bring the legislation into conformity with the Convention. The Committee expressed the hope that this legislative initiative would result in the adoption of penal provisions specifically criminalizing forced labour and defining the constituent elements of forced labour so as to cover all the forced labour practices existing in the country.

[707] ibid.

[708] See, for example, *Georgia* – CEACR, direct request, 2011: the Government indicated that penal sanctions punishing trafficking are applicable in all cases of the illegal exaction of forced or compulsory labour. The Committee sought information on the application of such provisions in practice, particularly in situations other than those connected with cross-border trafficking or with such means of coercion as restriction of freedom of movement or the retention of passports.

Chapter 4

Abolition of Forced Labour Convention, 1957 (No. 105)

Scope of Convention No. 105 in relation to Convention No. 29

300. As indicated above, Convention No. 105 was designed to supplement Convention No. 29. [709] However, the later instrument does not, as a matter of law, incorporate any of the provisions of the earlier one. Thus, the exceptions laid down in *Article 2(2)* of Convention No. 29 "for the purposes of this Convention" do not automatically apply to Convention No. 105. Consequently, with regard to the exemption of prison labour or other forms of compulsory labour exacted as a consequence of a conviction in a court of law, it is necessary to examine national law and practice in order to ascertain that systems of penal labour are not diverted into methods of mobilizing and using labour for purposes of economic development, which is prohibited under Convention No. 105. Similarly, if a person has to perform compulsory prison labour because she or he has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by Convention No. 105, which prohibits the use "of any form of forced or compulsory labour" (including compulsory prison labour) as a sanction, as a means of coercion, education or discipline, or as a punishment within the meaning of *Article 1(a), (c) and (d)*. Otherwise, in the majority of cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of Convention No. 105, such as in the cases of the exaction of compulsory labour from offenders convicted, for example, of robbery, kidnapping, bombing or other acts of violence or acts or omissions that have endangered the life or health of others, or numerous other offences. The Committee has observed in this regard that, while convict labour exacted from common offenders is intended to reform or rehabilitate them, the same need does not arise in the case of persons convicted for their opinions or for having taken part in a strike. [710]

[709] See para. 253 above.

[710] General Survey, 2007, para. 146. The Committee has noted in this connection that the scope of the Convention is not restricted to sentences of "hard labour" or other particularly arduous forms of labour, as distinct from ordinary prison labour. Since Convention No. 105 prohibits the use of "any form of forced or compulsory labour" as a sanction, as a means of coercion, education or discipline in circumstances falling within its scope, the Committee has to ascertain whether the type of punishment concerned involves an obligation to perform labour (ibid., para. 147).

301. As the Committee noted in its previous General Survey, [711] compliance of penal laws with the Convention can be ensured at different levels:

– at the level of civil and social rights and liberties when, in particular, political activities and the expression of political views, the manifestation of ideological opposition, breaches of labour discipline and the participation in strikes are beyond the purview of criminal punishment;

– at the level of the penalties that may be imposed, when these are limited to fines or other sanctions that do not involve an obligation to work; [712]

– at the level of the prison system, when the law confers a special status on prisoners convicted of certain political offences, under which they are free from prison labour imposed on common offenders (although they may work at their own request). [713]

Imposition of sanctions involving compulsory labour for non-compliance with restrictions on civil rights and political freedoms

302. *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour "as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system". ***The range of activities which must be protected, under this provision, from punishment involving forced or compulsory labour thus comprises the freedom to express political or ideological views (which may be exercised orally or through the press and other communications media), as well as various other generally recognized rights, such as the right of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and which may also be affected by measures of political coercion.*** In the world today, national constitutions and other legislative texts in practically all countries contain provisions recognizing the rights to freedom of thought and expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest and the right to a fair trial in accordance with due process of law, etc. Legal guarantees of such rights and freedoms constitute an important safeguard against the imposition of forced or compulsory labour as a punishment for holding or expressing political or ideological views or as a means of political coercion or education. [714]

303. However, certain limitations may be imposed by law on the rights and freedoms concerned, which must be accepted as normal safeguards against their abuse, examples being laws against incitement to violence, civil strife or racial hatred. The Committee has observed in this connection that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or

[711] ibid., para. 151.

[712] ibid., para. 150 and footnote 344. The Committee noted the repeal of provisions imposing sentences of imprisonment in circumstances falling within the scope of the Convention.

[713] ibid., para. 150. The Committee noted that a number of countries which have ratified the Convention have introduced such exemptions in their legislation in order to ensure observance of the Convention.

[714] The Committee has repeatedly emphasized the importance for the effective respect of the Convention of legal guarantees regarding freedom of assembly, expression, demonstration and association, and the direct effect which restriction of these rights, in both law and practice, can have on the application of the Convention. See, for example, *Sudan* – CEACR, observation, 2009.

engage in preparatory acts aimed at violence; but sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the expression of views or of opposition to the established political, social or economic system, whether such prohibition is imposed by law or by a discretionary administrative decision. [715]

304. Freedom of expression and the related fundamental rights may also be restricted or suspended during certain exceptional periods, as a result of a declaration of an emergency, state of siege, martial law, etc. Apart from direct imposition of labour which may result from the application of the laws or regulations adopted during particularly troubled periods or in situations of force majeure, it frequently happens that the authorities are also empowered to impose considerable restrictions on the right of individuals to express political views or their opposition to the established order, such restrictions being enforceable with penal sanctions involving compulsory labour. With regard to such emergency measures, the Committee is concerned to ascertain, when examining individual cases of countries bound by the Convention, that recourse to these measures has been occasioned by circumstances of extreme gravity constituting an emergency in the strict sense of the term, and that the measures taken which are relevant to *Article 1(a)* are limited in time and scope to what is strictly required to meet the specific emergency situation. [716] In other cases, while examining the compatibility of national law and practice with the Convention, the Committee has been concerned to ascertain that the offences laid down in the laws against defamation, sedition, subversion, etc., are not defined in such wide or general terms that they may lead to the imposition of penalties involving compulsory labour as a means of political coercion or as a punishment for the expression of political or ideological views. [717]

305. On numerous occasions, the Committee has noted with satisfaction the repeal of provisions under which penal sanctions involving compulsory labour could be imposed for various kinds of: statements or criticism of a political nature; publications and propaganda contrary to the established political order or aimed at infringing national sovereignty or diminishing national sentiment; or tendentious information aimed at impairing the prestige of the State or various authorities; and certain other offences connected with the expression of political views. [718] Since the last General Survey, the Committee has noted with satisfaction the repeal of provisions punishing the participation in certain activities related to political parties and the expression of certain political views with penalties of imprisonment involving compulsory prison labour *(Liberia, Nicaragua).* [719]

306. However, in certain other cases referred to in the previous General Survey, freedom of expression still remains subject to restrictions enforced by sanctions involving compulsory labour, as a consequence of the adoption of legislative and other

[715] General Survey, 2007, para. 154.

[716] ibid., para. 155.

[717] ibid., para. 153.

[718] ibid., para. 156.

[719] See *Liberia* – CEACR, observation, 2010: the Electoral Reform Law of 2004 amended the Elections Law, 1986, by repealing provisions punishing with penalties of imprisonment (involving the obligation to work) the participation in certain political activities, such as activities that seek to continue or revive certain political parties; *Nicaragua* – CEACR, observation, 2010: the old Penal Code provisions punishing with penalties of imprisonment (involving the obligation to work) the expression of political views (such as inciting non-observance of the Constitution, organizing or joining communist parties or parties with another name that support the same or similar ideas) have not been included in the new Penal Code promulgated in May 2008.

provisions which prohibited certain political activities, including participation in various public meetings and assemblies, or the publication of newspapers banned "in the public interest", or punished the display of emblems and the distribution of publications signifying association with a political object or political organization. [720] The Committee also noted that in some countries it is an offence to publish any information calculated to weaken the government or which injures the State or its establishments, to disseminate views or information of such a nature as to prejudice the public interest or the development of the nation, [721] to disseminate tendentious information calculated to disturb the constitutional or legal order or the political or economic system. [722] Such provisions are worded in terms broad enough to lend themselves to application as a means of punishment for the expression of views, and in so far as they are enforceable with sanctions involving compulsory labour, they fall within the scope of the Convention. This may also be true of certain other widely worded provisions intended to protect the authority of the State or its institutions, for example, where it is an offence to publish or disseminate information provoking or encouraging tendencies calculated to impair the integrity of the State, [723] or to suppress, revoke or undermine certain basic constitutional principles. [724] On the other hand, the Committee has referred to some legislative provisions which, even if worded in reasonably precise terms, by their nature still leave a

[720] See, for example, *Kenya* – CEACR, observation, 2011: the Government has taken steps with a view to bringing certain provisions of the Penal Code, the Public Order Act (Cap. 56) and the Prohibited Publications Order, 1968, into conformity with the Convention; *United Republic of Tanzania* – CEACR, observation, 2010: the Government has indicated that certain provisions of the Penal Code, the Newspaper Act and the Local Government (District Authorities) Act, falling within the scope of the Convention, have been identified by the Law Reform Commission as being incompatible with the forced labour Conventions, and recommendations are being prepared with a view to repealing or amending these provisions.

[721] See, for example, *Afghanistan* – CEACR, observation, 2011: sections 184(3), 197(1)(a) and 240 of the Penal Code, under which prison sentences involving an obligation to perform labour may be imposed, inter alia, for the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning the internal affairs of the country which reduce the prestige and standing of the State, or for the purpose of harming public interest and goods; *Philippines* – CEACR, observation, 2011: sections 142 and 154(1) of the Penal Code, under which a penalty of imprisonment (involving compulsory labour) may be imposed upon persons who, by means of speeches, proclamations, writings or emblems, incite others to acts constituting sedition, utter seditious words or speeches, or write, publish, or circulate scurrilous libels against the Government or, by means of printing, lithography or any other means of publication, maliciously publish as news any false news which may endanger the public order or cause damage to the interests or credit of the State; S*yrian Arab Republic* – CEACR, observation, 2010: section 287 of the Penal Code respecting the spreading of exaggerated news tending to harm the prestige of the State. The Government has indicated that draft legislation to exempt persons protected by the Convention from the obligation to perform prison labour is under elaboration and a new draft Penal Code is also being prepared.

[722] See, for example, *Egypt* – CEACR, observation, 2011: section 98(a)bis and 98(d) of the Penal Code, as amended by Act No. 34 of 24 May 1970, which prohibits advocacy, by any means, of opposition to the fundamental principles of the socialist system of the State, as well as encouraging aversion or contempt for these principles, subject to penalties of imprisonment involving compulsory labour; sections 98(b), 98(b)bis and 174 of the Penal Code, punishing with similar sanctions advocacy of certain doctrines.

[723] See *Turkey* – CEACR, observation, 2011: sections 80–82, read in conjunction with section 117, of the Political Parties Act, No. 2820 of 22 April 1983, prohibit the following acts (subject to penalties of imprisonment involving compulsory labour): seeking to alter the principle of the unity of the State, claiming the existence of minorities based on a national or religious culture or on racial or linguistic differences, seeking to form minorities by protecting and promoting languages and cultures other than the Turkish language and culture, using any language other than Turkish in the drafting and publication of parties' statutes and programmes, advocating regionalism.

[724] See *Morocco* – CEACR, direct request, 2011: Dahir No. 1-58-378 of 15 November 1958 establishing the Press Code, as amended by Act No. 77-00 of 3 October 2002, contains provisions under which any person who knowingly puts on sale, distributes or reproduces newspapers, journals or periodicals which are detrimental to the Islamic religion, the monarchy, territorial integrity, respect for the King or public order, shall be liable to imprisonment (involving compulsory labour). The Government has expressed its intention to revise the Press Code with a view to abolishing sentences of imprisonment.

considerable element of appreciation to the courts called upon to enforce them, and in respect of which information concerning practical application may therefore be necessary to determine their scope in relation to the application of the Convention. This might be the case of provisions, for example, relating to insults to various holders of public office or punishing the dissemination of false news. [725]

307. Certain political views may also be prohibited, subject to penalties involving compulsory labour, as a consequence of the prohibition of political parties or associations. When a party is prohibited by the legislation, it may result in the adoption of various measures of supervision (covering both public and private meetings and close supervision of persons believed to hold the political opinions in question), which leads to the prohibition in one way or another of the holding or expressing of particular political views, on pain of compulsory labour. A similar situation may arise where administrative authorities enjoy wide discretionary powers to suspend associations, to prevent their creation or to prohibit participation in certain associations for general reasons, such as the national interest or public order, welfare or tranquillity. [726]

Imposition of forced or compulsory labour for purposes of economic development

308. *Article 1(b)* of the Convention prohibits the use of forced or compulsory labour "as a method of mobilizing and using labour for purposes of economic development". As the Committee observed in its earlier Surveys, it follows from the terms "mobilizing" and "economic development" that *Article 1(b)* applies only in circumstances where recourse to forced or compulsory labour has a certain quantitative significance and is used for economic ends. [727] This provision of the Convention covers the various forms of forced or compulsory labour for economic ends, whose abolition was already provided for in Convention No. 29 which, at the time of its adoption, had as a principal goal combating forms of forced labour for economic purposes. It should be pointed out that the prohibition laid down in *Article 1(b)* applies even where recourse to forced or compulsory labour as a method of mobilizing and using labour for purposes of economic development is of temporary or exceptional nature, since the Conference declined a proposal to limit the application of this provision to the use of forced labour as a "normal" method of mobilizing and using labour for such purposes. [728] As the Committee noted in its previous General Survey, progress has been achieved during the past few decades in a number of countries in the elimination of provisions imposing compulsory labour for

[725] See, for example, *Benin* – CEACR, observation, 2011: Act No. 60-12 of 30 June 1962 on the freedom of the press, sections 23 and 25; *Philippines* (see footnote 721).

[726] See, for example, *Pakistan* – CEACR, observation, 2011: sections 10–13 of the Security of Pakistan Act, 1952, and sections 2 and 7 of the Political Parties Act, 1962, give the authorities wide discretionary powers to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour. The Government has indicated that proposed amendments to these texts are under consideration; *Uganda* – CEACR, observation, 2011: the Public Order and Security Act, No. 20 of 1967, contains provisions empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour. Sections 54(2)(c), 55, 56 and 56A of the Penal Code empower the minister to declare any combination of two or more persons an unlawful society and thus render any speech, publication or activity on behalf of or in support of such combination illegal and punishable with imprisonment (involving an obligation to perform labour). The Government has indicated that the legislation in question is going to be revised.

[727] General Survey, 2007, para. 167.

[728] ibid.

economic purposes. [729] While it is still possible to find some pieces of legislation providing for compulsory mobilization of labour which are remnants of the past, when certain governments, referring to the needs of economic development, resorted to various measures of a compulsory character (such as compulsory assignment or requisition of labour), the governments concerned usually state that such measures are no longer applied in practice and that they intend to change or repeal the legislation in question with a view to bringing it into conformity with the ILO Conventions on forced labour. [730] The Committee has emphasized on numerous occasions that no exceptions to universally recognized human rights should be sought in the name of development. [731]

Violations of labour discipline punishable with sanctions involving compulsory labour

309. *Article 1(c)* of the Convention prohibits the use of forced or compulsory labour "as a means of labour discipline". This prohibition covers any measures to ensure the due performance by workers of their service under compulsion of law (in the form of physical constraint or the menace of a penalty), as well as any sanctions for breaches of labour discipline involving compulsory labour. As the Committee observed in its previous General Survey, in the large majority of countries, there exist no legal provisions permitting recourse to forced or compulsory labour as a means of labour discipline, since breaches of labour discipline give rise only to disciplinary sanctions or other kinds of sanctions (for example, sanctions of a monetary character) which do not involve any obligation to perform labour. [732] It may be recalled in this connection that, in so far as labour discipline is concerned, the Convention relates only to forced or compulsory labour (which also includes compulsory prison labour), and consequently it is always possible, without contravening the Convention, to have recourse to other disciplinary penalties.

310. However, compulsory labour as a sanction for breaches of labour discipline is still used under provisions applicable to specific sectors, such as the public service or merchant shipping. Thus, persons employed in the public service are often subjected to special penal provisions aimed at protecting the public interest (for example, provisions punishing abuse of authority by public officials or, in the case of essential services, such as fire and health services or water supply services, provisions punishing certain breaches of discipline which impair or are liable to endanger their proper functioning). In this connection, the Committee has distinguished between penalties imposed to enforce labour discipline as such (and therefore falling within the scope of the Convention) and penalties imposed for the protection of a general public interest, although simultaneously they may punish an act constituting a breach of labour discipline. The Committee has therefore considered that the Convention does not prohibit the imposition of sanctions (even involving compulsory labour) on persons responsible for breaches of labour discipline that impair or are liable to endanger the operation of essential services, or which are committed either in the exercise of functions that are essential to safety or in

[729] ibid., para. 168.

[730] See paras 282–284 above.

[731] General Survey, 2007, para. 169.

[732] ibid., para. 172.

circumstances where life or health are in danger. Consequently, penal provisions of this kind are not incompatible with the Convention. [733]

311. In certain cases, penal provisions applicable to persons employed in the public service are worded in general terms, broad enough to be likely to fall within the scope of the Convention (e.g. provisions laying down sanctions involving compulsory labour for neglect of duty by public employees). [734] The Committee has pointed out that the compatibility of such provisions with the Convention could be ensured only by limiting their scope to the operation of essential services in the strict sense of the term (that is services, the interruption of which may endanger the life, personal safety or health of the whole or part of the population), or to the exercise of functions which are essential to safety or to circumstances where the life or health of persons are endangered. [735]

312. With regard to merchant shipping, the Committee noted in its previous General Surveys that, in a considerable number of countries, legislation governing the conditions of work of merchant seafarers contained provisions permitting the imposition of penal sanctions involving compulsory labour in respect of various breaches of labour discipline. [736] Here again, the Committee has distinguished between the provisions relating to acts tending to endanger the ship or the life or health of persons, which are not covered by the Convention, and those relating to breaches of labour discipline as such, for example desertion, absence without leave or disobedience, often supplemented by provisions under which seafarers may be forcibly returned on board ship, which fall within the scope of the Convention. In the latter case, the Committee has requested the government concerned to review its legislation concerning conditions of employment of seafarers, if possible in consultation with the shipowners and seafarers in the country, with a view to bringing it into conformity with the Convention. [737] Such action has been undertaken in a considerable number of the countries concerned, frequently within the framework of a more general review of their merchant shipping laws. Since the last General Survey, the Committee has noted with satisfaction that, in a number of cases, provisions imposing penalties of imprisonment (involving an obligation to perform

[733] ibid., para. 175.

[734] See, for example, *Guatemala* – CEACR, observation, 2010: section 419 of the Penal Code; *United Republic of Tanzania* – CEACR, direct request, 2010: section 11 of the First Schedule to the Economic and Organized Crime Control Act, 1984 (“Economic offences”) read in conjunction with section 59(2) of the Act. The Government has indicated that this text is listed among the laws to be addressed by the task force of the current Tanzanian Labour Policy and Legislation Reform, which will make appropriate recommendations to the Government.

[735] General Survey, 2007, para. 176.

[736] ibid., paras 179 and 181.

[737] See, for example, *Benin* – CEACR, observation, 2011 (Merchant Shipping Code of 1968, sections 215, 235 and 238; the Government has stated that a new Merchant Shipping Code has been submitted to the National Assembly for adoption); *Ghana* – CEACR, observation, 2011 (Merchant Shipping Act, 1963, sections 122(2) and 147(1)(b), (c) and (e)); *Jamaica* – CEACR, observation, 2011 (Shipping Act, 1998, sections 178(1)(b), (c) and (e), and 179(a) and (b); the Government has indicated that the amendments of these provisions are under preparation); *Kuwait* – CEACR, observation, 2011 (Legislative Decree No. 31 of 1980 regarding security, order and discipline on board ship, sections 11, 12 and 13); *Liberia* – CEACR, observation, 2010 (Maritime Law, sections 347(1), (2), and 348; *Nigeria* – CEACR, observation, 2010 (Merchant Shipping Act, section 117(b), (c) and (e)); *Pakistan* – CEACR, observation, 2011 (Merchant Shipping Ordinance, 2001 (No. LII of 2001), sections 204 and 206–208); *Papua New Guinea* – CEACR, observation, 2011 (Seamen (Foreign) Act, 1952, sections 1 and 2 (1), (3), (4) and (5); Merchant Shipping Act, Chapter 242 (consolidated as Act No. 67 of 1996), section 161); *Trinidad and Tobago* – CEACR, observation, 2011 (Shipping Act, 1987, sections 157 and 158); *Turkey* – CEACR, observation, 2011 (Commercial Code (Act No. 6762 of 1956), sections 1467 and 1469; the Government has indicated that the new draft Commercial Code submitted to the Grand National Assembly does not contain such provisions).

labour) on seafarers for various breaches of labour discipline, such as desertion, absence without leave or disobedience, have been repealed *(Gabon, Kenya, Saint Vincent and the Grenadines, United Republic of Tanzania)*, [738] sometimes together with provisions permitting the forcible return of seafarers on board ship to perform their duties. [739]

Sanctions involving compulsory labour as a punishment for having participated in strikes

313. *Article 1(d)* of the Convention prohibits recourse to sanctions involving any form of forced or compulsory labour "as a punishment for having participated in strikes". However, as the Committee observed in previous General Surveys, the Convention does not prohibit the punishment of breaches of public order (acts of violence, assault or destruction of property) committed in connection with the strike; any sanctions (even involving compulsory labour) for offences of this kind obviously fall outside the scope of the Convention. [740] In examining the compatibility of national legislation concerning strikes with *Article 1(d)* of the Convention, where such legislation is enforceable with sanctions which may involve compulsory labour, the Committee has followed the principles developed in the field of freedom of association [741] in ascertaining the specific limits to the right to strike, and in particular the restrictions concerning emergency situations and political strikes. However, it should be kept in mind that the Convention is not an instrument to regulate strikes in general and applies solely to the exaction of forced or compulsory labour in any form, including cases when it is exacted as a sanction for participation in strikes. Where the penalties applicable to offences in relation to participation in strikes take the form of civil or disciplinary sanctions (such as damages or dismissal) and do not involve any obligation to perform labour, the substantive provisions governing these offences fall outside the scope of the Convention.

314. In previous General Surveys, the Committee has referred, in relation to the application of the Convention, to the general prohibition of strikes (enforceable with sanctions involving forced or compulsory labour), as well as to the restrictions on the right to strike relating to the public service and essential services. The Committee has considered that a suspension of the right to strike enforced by sanctions involving compulsory labour is compatible with the Convention only in so far as it is necessary to cope with cases of force majeure in the strict sense of the term – namely, when the existence or well-being of the whole or part of the population is endangered – provided that the duration of the prohibition is limited to the period of immediate necessity. [742] Regarding public servants, the Committee has considered that the prohibition of the right

[738] See *Gabon* – CEACR, 2010 (the Community Merchant Shipping Code, adopted by the Economic and Monetary Community of Central African States (CEMAC) and in force in Gabon, has repealed all national and community provisions inconsistent with the Convention, including the provisions of the 1963 Merchant Shipping Code of Gabon); *Kenya* – CEACR, 2011 (the Merchant Shipping Act of 1967 has been repealed by the Merchant Shipping Act, 2009); *Saint Vincent and the Grenadines* – CEACR, 2010 (the Merchant Shipping Act of 1982 has been repealed by the Shipping Act, 2004); *United Republic of Tanzania* – CEACR, 2010 (the Merchant Shipping Act of 1967 was repealed by the Merchant Shipping Act, 2003 (No. 21)).

[739] *Kenya, United Republic of Tanzania* (see previous footnote).

[740] General Survey, 2007, para. 182.

[741] The Committee has considered, where appropriate, the conclusions reached in the examination of reports on the application of the Conventions dealing with freedom of association and the right to organize, as well as the comments made by other ILO supervisory bodies competent in this field, and primarily the Governing Body Committee on Freedom of Association.

[742] General Survey, 2007, para. 183.

to strike in the public service should be limited to public servants exercising authority in the name of the State. The Committee has also pointed out that, as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively, and therefore should include only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. [743]

315. ***However, in its previous General Survey, the Committee recalled the importance it attaches to the general principle that, in all cases and regardless of the legality of the strike action in question, any sanctions imposed should not be disproportionate to the seriousness of the violations committed.*** [744] It has referred in this connection to the Governing Body Committee on Freedom of Association, which has pointed out that "all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike". [745] ***On a number of occasions the Committee has asked the governments concerned to take the necessary measures in order to ensure, both in legislation and in practice, that no sanctions involving compulsory labour can be imposed for the mere fact of organizing or peacefully participating in strikes.*** [746] Since the previous General Survey, the Committee has noted with satisfaction the repeal of penal provisions punishing the organization or participation in strikes with penalties of imprisonment (involving compulsory prison labour) *(Cyprus, Kenya, Kiribati, Mauritius)*. [747]

[743] See paras 129 and 131 above.

[744] General Survey, 2007, para. 189.

[745] See *Freedom of association*: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Geneva, ILO, fifth (revised) edition, 2006, para. 668. See also para. 158 above.

[746] See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2010; *Egypt* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2011; *Zimbabwe* – CEACR, observation, 2011.

[747] See *Cyprus* – CEACR, observation, 2009 (Order No. 366/2006 repealed sections 79A and 79B of the Defence Regulations, which granted the Council of Ministers discretionary power to prohibit strikes in the services considered to be essential subject to penalties of imprisonment involving compulsory labour); *Kenya* – CEACR, observation, 2011 (the Labour Relations Act, 2007, repealed the Trade Disputes Act (Cap. 234), under which sentences of imprisonment (involving compulsory labour) could be imposed for participating in strikes); *Kiribati* – CEACR, observation, 2011 (the Industrial Relations Code (Amendment) Act, 2008, repealed the provisions in sections 30 and 37 of the Industrial Relations Code, under which sanctions of imprisonment (involving compulsory prison labour) could be imposed against unlawful strikes; *Mauritius* – CEACR, observation, 2010 (the Employment Relations Act, 2008, repealed the Industrial Relations Act, 1973, which contained provisions punishing participation in strikes that violated compulsory arbitration procedures with sentences of imprisonment involving compulsory prison labour).

Imposition of forced or compulsory labour as a means of racial, social, national or religious discrimination

316. *Article 1(e)* of the Convention prohibits the use of any form of forced or compulsory labour "as a means of racial, social, national or religious discrimination". This provision requires the abolition of any discriminatory distinctions made on the above grounds in exacting labour for the purpose of production or service. Thus, in the case of a punishment involving compulsory labour, where such punishment is meted out more severely to certain groups defined in racial, social, national or religious terms, this situation falls within the scope of the Convention, even where the offence giving rise to the punishment is a common offence which does not otherwise come under the protection of *Article 1(a), (c) or (d)* of the Convention. [748] It should be kept in mind, however, that the Convention does not deal with the substance of the problem of discrimination on the above grounds; [749] its purpose is limited to the suppression of forced or compulsory labour as a means of discrimination. Instances in which legislation allows the imposition of forced or compulsory labour, including sanctions involving compulsory labour as a means of discrimination appear to be extremely rare, since there is a comprehensive body of constitutional and legislative guarantees of equality of citizens. However, in its previous General Surveys, the Committee noted a few cases in which certain forms of forced labour affected only particular groups or in which compulsory labour was used to punish the violation of discriminatory legal provisions; it has noted the repeal of some provisions of this kind. [750]

[748] General Survey, 2007, para. 190.

[749] For the substantial issues of discrimination, see Part V of this Survey.

[750] General Survey, 2007, para. 191.

Chapter 5

Law enforcement

317. By ratifying the forced labour Conventions, States are under an obligation not to engage in certain types of action and to adopt certain measures. The obligation not to engage in certain types of action consists of their commitment not to have recourse to constraint, even imposed by law, to exact from the population any work or service covered by the definition of forced labour. They are under the obligation to adopt measures, in both law and practice, with a view to ensuring that no form of forced labour is tolerated on their territory. In this respect, *Article 25* of Convention No. 29 provides that the "illegal exaction of forced or compulsory labour shall be punishable as a penal offence" and that it shall be an obligation on any Member ratifying the Convention "to ensure that the penalties imposed by law are really adequate and are strictly enforced".

318. If effective penal sanctions are to be strictly enforced upon persons who exact forced labour, several elements are necessary in terms of legislation and law enforcement. As the Committee explained in its 2007 General Survey, the public authorities have to ensure that "the national legal framework establishes penal sanctions for practices pertaining to forced labour, and whether those provisions can be applied easily in practice by the courts to punish those responsible for such acts". [751]

Penal sanctions

319. With regard to legislation, the first challenge is to ensure that the prohibition of the use of forced labour in general, or of specific practices which constitute forced labour, is accompanied by effective penal sanctions. The prohibition of practices pertaining to forced labour may be directly set out in the Constitution, or provided for in labour law, penal law, or in texts prohibiting a specific form of forced labour. However, it may be the case that these texts do not establish penalties that are applicable in the event of violations of the prohibition of forced labour, particularly in the case of constitutions, or they may establish sanctions that are not penal, as required by *Article 25* of Convention No. 29. The Committee has noted in several cases that, in the absence of other applicable penal provisions, the penalties envisaged in the labour legislation for the prohibition of forced labour consist in general terms of administrative sanctions which, in view of their nature and level, do not give effect to *Article 25* of the Convention. They are not generally of the required penal nature, and do not fulfil their dissuasive function. The Committee has emphasized, for example, when the envisaged sanction consists of a fine or a very short prison sentence, that even though the sanction corresponds to the highest level of penalties established by the Labour Code, it does not constitute an effective sanction in light of the seriousness of the violation and the fact that the sanctions need to

[751] General Survey, 2007, paras 135–140.

be dissuasive. [752] In such cases, the Committee requests the governments concerned to adopt adequate measures to remedy the situation.

320. Moreover, to ensure that effective penal sanctions can be imposed by the competent courts, it is necessary for the punishable offence to be defined precisely. A general prohibition of recourse to forced labour or general provisions on the freedom of work may not suffice for the conviction of persons who exact forced labour. In certain circumstances, it is preferable for the constituent elements of the prohibited or punishable practice to be defined precisely in law and to be adapted to national circumstances. The Committee has emphasized in this respect that, bearing in mind the principle of the strict interpretation of penal law, it is important to ensure that precise provisions are available for the investigatory authorities and the courts so that they can determine the facts easily and, where appropriate, initiate prosecutions. [753]

Law enforcement bodies

321. The effective implementation of the prohibition of forced labour also requires the sanctions envisaged by law to be "strictly enforced". For this purpose, the State has to ensure that the authorities responsible for enforcing the application of the law are in a position to fulfil their functions. In the first place, this involves the public authorities being able to identify violations of the prohibition of using any form of forced labour. Labour inspection plays an essential role in this respect in view of its mission to supervise the application of labour legislation and identify violations. Indeed, as the Committee has emphasized, the accumulation of certain violations of labour law may be an indicator of forced labour. In the great majority of cases, forced labour is characterized by several simultaneous violations of labour law, each of which must be penalized as such. Taken together, these labour law violations constitute the criminal offence of "forced labour", which in itself gives rise to specific penalties. The Committee therefore regularly emphasizes the importance of allocating adequate human and material resources to the labour inspection services so that they are able to carry out their functions. In particular, they should be able to travel rapidly, effectively and safely over the whole of the national territory, including in remote areas where workers are more likely to be exploited. Certain countries have established units in the labour inspectorate with special responsibility for combating certain forms of forced labour. The Committee has noted in this respect that inspections by these special units not only result in the release of workers from situations of forced labour, but also provide the judicial authorities with documents that serve as a basis for the prosecution of those responsible for such practices. [754]

[752] For example, *Morocco* – CEACR, observation, 2011: section 12 of the Labour Code provides for a fine, and in the case of repeated offences, a fine and imprisonment of between six days and three months, or one of these two penalties, for persons who requisition employees to perform forced labour or to work against their will.

[753] See, for example, *Peru* – CEACR, observation, 2011.

[754] See, for example, *Brazil* – CEACR, observation, 2010: the Committee noted the essential role played by the Special Mobile Inspection Group, which is composed of labour inspectors, officers of the federal police and public prosecutors of the Ministry of Labour; *Peru* – CEACR, observation, 2011: the recent creation of the Special Labour Inspection Group against Forced Labour; *Spain* – the Government indicates in its report under article 19 of the Constitution that in 2010 a special group was established within the Tripartite Advisory Commission of the Labour and Social Security Inspectorate with responsibility for proposing measures and evaluating the action of the labour inspection services in relation specifically to violations of the labour legislation in the "irregular economy" and the resulting exploitation of labour, including through human trafficking networks.

322. Furthermore, in view of the fact that the labour inspectorate does not cover all the sectors in which a large number of forced labour practices are encountered, and as they are penal offences, the police authorities are also essential elements in identifying and combating these practices. The Committee has emphasized the joint role of the forces of order and the investigatory authorities in conducting rapid, effective and impartial investigations and, where appropriate, initiating prosecutions against those responsible for violations. It should be recalled in this respect that the victims of forced labour are often from the most vulnerable categories of workers, who encounter greater difficulty in denouncing their situation. This is particularly the case of *migrant workers*, for whom their regular or irregular situation on the national territory may have an impact on their ability to turn to the competent authorities. The same applies to *domestic workers*, who often perform "hidden" work and may be subject to restrictions on their freedom of movement. Certain States have adopted interesting legislative provisions with a view to overcoming the difficulties that may be encountered by victims in gaining access to justice, for example by allowing human rights associations to denounce violations and assist victims throughout judicial procedures, [755] affording victims special protection or a temporary residence permit for those in an irregular situation, [756] or establishing sanctions against authorities which do not follow up denunciations that are brought to their knowledge. [757] The Committee has considered that the lack of prosecutions by victims may reveal ignorance of the remedies available, fear of social reprobation or reprisals, or a lack of will by the authorities responsible for prosecution.

323. With a view to ensuring that States give full effect in practice to *Article 25* of Convention No. 29 and that, accordingly, the courts apply effective sanctions strictly against persons who exact forced labour, the Committee places emphasis on obtaining information, and particularly statistical data on the judicial proceedings initiated and the nature of the sanctions imposed by the courts. [758] This is done to ensure that those responsible for these practices are convicted of criminal offences and that the dissuasive nature of the penalties imposed contributes to bringing an end to such practices, so as to avoid creating a climate of impunity. In this regard, the Committee considers that sentences of imprisonment which deprive persons exacting forced labour of their freedom are of significant symbolic value. Furthermore, in view of the profit made from exploiting the labour of others, even if only as a result of underpaying those who are forced to work, [759] it would also appear to be important, in addition to imposing penal sanctions, for economic pressure to be exerted on those who exploit work by others. This economic pressure can take various forms: obstacles to the marketing of products;

[755] See, for example, *Niger* – CEACR, observation, 2010: in accordance with section 270(5) of the Penal Code, associations established for the purpose of combating slavery or similar practices are authorized to initiate civil actions for damages caused by violations of the penal legislation on slavery.

[756] A large number of countries which have adopted legislation to suppress human trafficking have included provisions encouraging victims to participate in judicial proceedings. Countries such as *Belgium*, *Luxembourg* and *Portugal* establish reflection periods or grant victims residence permits (see CEACR, direct requests, 2009 and 2010).

[757] See, for example, *Mauritania* – CEACR, observation, 2010: in accordance with section 12 of Act No. 2007/48 criminalizing and repressing slave-like practices, Walis, Hakems, local chiefs and officers of the criminal investigation police who do not follow up denunciations of slave-like practices brought to their knowledge shall be liable to imprisonment and a fine.

[758] The Committee has been provided with quantitative information or statistics on this subject, for example, from the following countries: *Benin* – CEACR, direct request, 2010; *El Salvador* – CEACR, direct request, 2012; *Italy* – CEACR, direct request, 2010; *Romania* – CEACR, direct request, 2010; and *Thailand* – CEACR, observation, 2012.

[759] See, in this respect, *The cost of coercion*, op. cit., paras 145–150 on the economics of forced labour.

making it impossible to gain access to subsidies and public financing; and the payment of fines and substantial compensation. Obliging persons who have recourse to forced labour to compensate the damage suffered by victims means that financial pressure can be exerted on those who are in violation and the unlawful activity becomes less profitable, which accordingly contributes to dissuading those who might be tempted to exploit the labour of others.

Protection of victims

324. Moreover, compensation for the material and moral damages suffered makes it possible for victims to reconstruct their lives outside the framework of dependence in which they have lived. The procedures for obtaining compensation are not always easy for victims, as they sometimes involve civil action, in addition to criminal proceedings. The Committee has noted in this respect the example of a country in which the labour courts, as a result of action by the Ministry of Labour, also require the reimbursement of wage arrears and impose fines and the payment of compensation for the damage suffered by the victim, as well as for the "collective moral damage" suffered by society. [760] It should also be noted that the law may empower criminal courts which find a person guilty of exacting forced labour to set the amount of compensation to be paid to the victim. [761]

325. The Committee has emphasized on numerous occasions that it is essential to provide material and financial support to victims so as to prevent them falling back into a situation of vulnerability in which they would be likely to be exploited once again. In this connection, the legislation in many countries envisages the establishment of support programmes and measures and the reintegration of victims, not only for the victims of trafficking, as required by the Palermo Protocol, but also for the victims of other forced labour practices. The Committee regularly requests governments to provide information on the implementation of these programmes, which often encounter operational difficulties. [762] The Committee has also emphasized that victims of forced labour, whether in the form of labour exploitation through abuse of vulnerability or trafficking in persons, should, regardless of their status within the national territory, receive adequate protection in order to guarantee the full enjoyment of all their rights before the national authorities, including labour rights (wage arrears, social protection, etc.) and compensation for material and moral damages, as well as to ensure the punishment of perpetrators. [763]

[760] See *Brazil* – CEACR, observations, 2008 and 2010: the Committee has noted many court decisions requiring compensation for collective moral damages, which have reached record amounts, and the fact that the Government considers that large fines and compensation are highly effective as they undermine the financial profits gained from the use of slave labour.

[761] See *Mexico* – CEACR, observation, 2010: in accordance with section 9 of the Act of 2007 to prevent and suppress trafficking in persons, where a convict has been found penally responsible for the crime of trafficking in persons, the courts also have to order the payment of compensation for the damages suffered by the victim. The Regulations of the Act provide that the public prosecutor shall seek and compile sufficient evidence to justify and quantify the level of compensation.

[762] See, for example, *India* – CEACR, observation, 2010.

[763] Measures taken to assist victims include: granting of temporary residence permits (for example, *Chile* – CEACR, direct request 2012); assistance services at diplomatic missions abroad to protect workers and their rights in destination countries (for example, *Indonesia* – CEACR, observation, 2012); establishment of telephone help-lines providing support and judicial guidance (for example, *Portugal* – CEACR, direct request, 2009).

326. ***In conclusion, with a view to bringing an end to forced labour practices, it is indispensable for the legislation to define precisely the constituent components of the practice that is to be repressed and to establish really dissuasive penal sanctions. Moreover, as the vulnerability of the great majority of victims of forced labour has an impact on the extent to which they are able to assert their rights, States have to make every effort to ensure that the labour inspection services, the forces of order and the judicial authorities are provided with the necessary resources to identify forced labour practices, bring such practices to an end, prosecute those responsible, impose administrative, penal and economic sanctions that are commensurate with the seriousness of the violation and, finally, ensure that the victims are compensated for the damages they have suffered.***

Part IV. Elimination of child labour

Chapter 1

Minimum Age Convention, 1973 (No. 138)

Introduction

327. Since the ILO's inception, the elimination of child labour has been a preoccupation of the Organization. The issue has emerged increasingly as a key concern for both developed and developing countries. Establishing a minimum age for admission to employment or work is crucial in that it sets at least a basic minimum threshold for child protection. This is closely intertwined with the other rights addressed by this Survey. In particular, it is reinforced by freedom of association and collective bargaining which provide space for participation and mobilization against child exploitation. Child labour may also be dealt with under the heading of forced labour, as there is a need to protect children from such exploitation. Moreover, the protection of children in such situations is based on the need to respect and implement the principles of non-discrimination and equality in favour of all children irrespective of their origins.

328. Experience shows that where child labour is practised, respect for other human rights at work is weak. The most recent Global Report on child labour of June 2010 [764] highlights that, while child labour continues to decline globally, there remain 215 million children caught in child labour. [765] The continued existence of child labour is a significant indicator of major gaps in decent work. Ensuring that every child is free of the compulsion to work and has access to quality education is thus a crucial first step towards achieving decent work for the most vulnerable in society.

329. At the international level, action to combat the economic exploitation of children began in earnest with the creation of the ILO. At the very first session of the International Labour Conference (ILC) in 1919, the delegates of governments and of employers' and workers' organizations, aware of the need to protect children against economic exploitation, adopted the first ILO standard regulating the minimum age in industry. [766] Prior to the adoption of Convention No. 138, the ILO instruments on the

[764] *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 99th Session, Geneva, 2010, para. 19.

[765] These children are either under the minimum age for work or above that age and engaged in work that poses a threat to their health, safety or morals, or are subject to conditions of forced labour. This does not include young persons engaged in economic activities which are permitted by the Convention (work permitted by the Convention does not constitute "child labour"). The experience of the ILO has shown that not all forms of work are necessarily harmful to children, and that when appropriately regulated, certain forms of activity are permitted. This is the underlying reason for a number of the provisions of Convention No. 138 authorizing permissible work by children below the specified minimum age.

[766] Minimum Age (Industry) Convention, 1919 (No. 5).

minimum age for admission to employment or work only addressed specific sectors. [767] This sectoral approach had advantages, but remained a piecemeal approach to regulating the work of young persons. A new instrument was therefore developed for concerted international action to promote the well-being of children in all sectors. In order to enable a greater number of member States to ratify it, this new Convention needed to be applicable to all sectors and be adaptable to unique national situations. In this spirit, the Convention was adopted in 1973, and has since achieved near universal ratification.

330. The primary objective of Convention No. 138 is the pursuit of a "national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work […]". [768] Moreover, the Convention aims to protect children's ability to attend school as well as to regulate the types of economic activity which are permissible for them (and the appropriate conditions for such work), and to protect their health, safety and morals. This Convention, together with the Worst Forms of Child Labour Convention, 1999 (No. 182), constitute the most authoritative international normative framework for the elimination of child labour. The emphasis placed by both Conventions on the abolition of child labour reflects the conviction of the ILO's constituents that childhood is a period of life which should not be devoted to work, but to the full physical and mental development of children.

331. The only General Survey related to this Convention was undertaken in 1981, when 23 member States had ratified the Convention. This number has since increased sevenfold and there have been major changes in the worldwide approach to child labour in the last 30 years due to, inter alia, improved welfare and education systems, the development of an international framework on the rights of the child, the founding and operation of the International Programme on the Elimination of Child Labour (ILO–IPEC), [769] increased global awareness regarding child labour, globalization and the recent global financial crisis. This chapter will examine the significant developments in the application of the Convention in both law and practice, as well as the Convention's complementary relationship with Convention No. 182 and the other fundamental Conventions.

Scope of the Convention and methods of application

Scope of application

332. In general, Convention No. 138 applies to all sectors of economic activity and covers all forms of employment or work. The minimum age for admission to employment or work established by ratifying States (pursuant to *Article 2(1)*) should therefore apply to all persons engaged in economic activity, whether or not there is a contractual employment relationship and whether or not the work is remunerated, including unpaid work and work in the informal economy. This includes workers in family enterprises and farms, domestic workers, agricultural workers and self-employed workers.

[767] These sectors were industry, maritime work, non-industrial work and underground work.

[768] *Art. 1* of the Convention.

[769] A large-scale ILO technical cooperation programme launched in 1992, which operates in 92 countries.

333. However, the Convention was initially conceived as a flexible instrument "aimed not only at setting a basic standard, but also at promoting the progressive elimination of child labour". [770] In this vein, member States may have recourse to the flexibility clauses contained in the Convention. *Articles 4 and 5* of the Convention permit countries to exclude certain limited categories of workers or particular economic sectors from the scope of the Convention, allowing a government to adapt the Convention to a particular national context.

334. *Article 4* allows the competent authority (in so far as necessary), after consultation with organizations of employers and workers, [771] to exclude from the application of the Convention limited categories of employment or work in respect of which special and substantial problems of application arise. [772] With a view to leaving a certain latitude to each country to adapt the application of the Convention to its national situation, the Convention does not enumerate the categories of employment or work which may be covered by such an exclusion. [773] However, this cannot include types of employment determined as likely to jeopardize the health, safety or morals of young persons. [774] Ratifying Members must list (in their first report [775] submitted on the application of the Convention under article 22 of the ILO Constitution) the categories which have been excluded, and give the reasons for the exclusion. Some countries have also declared an intention for this limitation in the scope of application to apply only for a certain period of time. [776] In subsequent reports submitted under article 22 of the Constitution, Members should state the position of their law and practice in respect of the categories excluded and the extent to which effect has been given to the Convention with respect to these excluded categories. [777] The most frequently excluded limited categories of work are: work in family enterprises, [778] work carried out in small-scale agriculture [779] and

[770] *Minimum age for admission to employment*, Report IV(2), ILC, 58th Session, Geneva, 1973, p. 7.

[771] The importance of consultation with the social partners has been emphasized by the Committee. See, for example, *Cambodia* – CEACR, direct request, 2010; *Egypt* – CEACR, direct request, 2002; *Lesotho* – CEACR, direct request, 2004; and *Syrian Arab Republic* – CEACR, direct request, 2004.

[772] *Art. 4(1)* of the Convention.

[773] *Minimum age*, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146, concerning minimum age, Report of the CEACR, Report III (Part 4B), ILC, 67th Session, Geneva, 1981, para. 74.

[774] *Arts 3* and *4(3)* of the Convention. See for example, *Egypt* – CEACR, direct request, 2004.

[775] Excluding particular categories of work subsequent to the first report is not possible under *Art. 4*. See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2003; and *Republic of Korea* – CEACR, direct request, 2008. However, in cases where it is not clear from the Government's first report as to whether it intended to exclude limited categories of work, the Committee has asked the Government to clarify if it intended to avail itself of *Art. 4*. This has occurred particularly in cases where the legislation implementing the Convention excludes particular categories. See, for example, *Gambia* – CEACR, direct request, 2009; *Papua New Guinea* – CEACR, direct request, 2009; and *Pakistan* – CEACR, direct request, 2009.

[776] See, for example, *Bahamas* – CEACR, direct request, 2004. The Committee noted the Government's indication that it intended to exclude from the scope of application of the Convention five types of work (grocery packers, gift wrappers, peanut vendors, newspaper vendors and work in films) for a period of five years.

[777] *Art. 4(2)* of the Convention.

[778] See, for example, *Barbados* – CEACR, direct request, 2010; *Egypt* – CEACR, direct request, 2004; *Fiji* – CEACR, direct request, 2005; *Iceland* – CEACR, direct request, 2003; *Japan* – CEACR, direct request, 2004; *Lesotho* – CEACR, direct request, 2006; *Philippines* – CEACR, direct request, 2004; *Syrian Arab Republic* – CEACR, direct request, 2004; and *Trinidad and Tobago* – CEACR, direct request, 2010. Some States which have not ratified the Convention have also indicated that the relevant minimum age provisions do not apply to family enterprises. The Governments of Australia and Canada both indicated in their reports submitted under art. 19 of the ILO Constitution that a number of jurisdictions in each country allow children under the minimum age to be employed in family enterprises.

domestic work. [780] In line with the goal of progressive improvement in the application of the Convention, the Committee has noted with satisfaction when countries have adopted legislation applying the Convention to previously excluded categories. [781]

335. While *Article 4* allows exceptions for limited categories of employment or work, *Article 5* permits the exclusion of entire economic sectors. In particular, *Article 5* allows a Member whose economy and administrative facilities are insufficiently developed, to initially limit the scope of application of the Convention, following consultation with the organizations of employers and workers concerned. [782] Unlike *Article 4*, where the exclusion of limited categories is outlined in the government's first report, each Member which avails itself of the flexibility clause contained in *Article 5(1)* shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention. Ratifying States must, at a minimum, apply the Convention to: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers. [783] Several countries have limited the Convention's application to these categories only. [784] Professions from these sectors also cannot be excluded through *Article 4*. [785]

336. The Committee has emphasized on several occasions that this flexibility clause, used to limit the scope of application, can only be used at the time of ratification, and may not be invoked subsequently. [786] However, Members may formally extend the scope of application by a declaration addressed to the Director-General. [787] Similarly to *Article 4*, governments who avail themselves of *Article 5* must, in subsequent reports submitted under article 22 of the ILO Constitution, indicate the general position regarding the employment or work of young persons and children in the excluded branches of activity, in addition to any progress made towards the wider application of the provisions of the Convention. [788]

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[779] See, for example, *Egypt* – CEACR, direct request, 2004; and *Ethiopia* – CEACR, direct request, 2009.

[780] See, for example, *Cambodia* – CEACR, direct request, 2010; *Iceland* – CEACR, direct request, 2003; and *Japan* – CEACR, direct request, 2004.

[781] See, for example, *Sweden* – CEACR, observation, 1997; and *Turkey* – CEACR, observation, 2009. The Committee has also noted such developments with interest. See, for example, *Fiji* – CEACR, direct request, 2008; and *Papua New Guinea* – CEACR, direct request, 2007.

[782] *Art. 5(1).*

[783] *Art. 5(2) and (3).*

[784] See, for example, *Angola* – CEACR, direct request, 2005; *Brazil* – CEACR, direct request, 2004; *Cameroon* – CEACR, observation, 2009; *Dominican Republic* – CEACR, direct request, 2003; *Gambia* – CEACR, direct request, 2009; *Lao People's Democratic Republic* – CEACR, direct request, 2009; *Mauritania* – CEACR, direct request, 2009; *Panama* – CEACR, direct request, 2005; *United Republic of Tanzania* – CEACR, direct request, 2005; *Thailand* – CEACR, direct request, 2007; and *Tunisia* – CEACR, direct request, 2003.

[785] See, for example, *Turkey* – CEACR, observation, 2006.

[786] See, for example, *Equatorial Guinea* – CEACR, direct request, 2010.

[787] *Art. 5(4)(b)* states that any Member which has limited the scope of application pursuant to *Art. 5*, may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office. In cases where the implementing legislation appears to cover sectors that have been excluded, the Committee has drawn the government's attention to the possibility envisaged in *Art. 5(4)(b)*. See for example, *Brazil* – CEACR, direct request, 2004; *Thailand* – CEACR, direct request, 2007; and *Viet Nam* – CEACR, direct request, 2004.

[788] *Art. 5(4)(a).*

Methods of application

337. Convention No. 138 is applied by a combination of policy, legislative and programmatic measures. The application of the Convention through policy is rooted primarily in *Article 1* of the Convention, which states that each country in which the Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour. Between 1999 and 2009, approximately 70 countries formulated a national policy on child labour, [789] and the Committee has continuously emphasized the importance of developing such a national policy for the application of the Convention. [790] These national policies are then pursued through the development and implementation of national plans of action, national programmes and national strategies on child labour. [791] In some countries, policies to combat child labour are incorporated into broader policies and programmes on children [792] or Decent Work Country Programmes. [793]

338. The Convention may be applied through domestic legislation governing a variety of topics. The provisions stipulating the minimum age for admission to employment or work are, in the large majority of countries, found in the member State's primary piece of labour legislation, most frequently the labour code. [794] However, some countries have enacted specific legislation governing the employment of young persons [795] and, in some countries, the provisions governing the minimum age are contained in child protection legislation. [796] In some countries, the legislative provisions governing the minimum age are contained in the national constitution. [797] An essential component of Convention No. 138 is linking the minimum age for admission to work with the age of completion of compulsory education, and therefore education acts and other legislation governing compulsory education are also key methods of applying the Convention. [798] Additional pieces of legislation which apply the Convention include regulations governing

[789] *Accelerating action against child labour*, op. cit., fig. 1.10.

[790] See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2008; *Central African Republic* – CEACR, observation, 2010; and *Chad* – CEACR, direct request, 2010.

[791] Recent examples of the implementation of national plans of action or programmes to address child labour include: *Brazil* – CEACR, observation, 2010; *Egypt* – CEACR, observation, 2010; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Madagascar* – CEACR, observation, 2010; *Nicaragua* – CEACR, observation, 2010; and *South Africa* – CEACR, direct request, 2009.

[792] See, for example, *Armenia* – CEACR, direct request, 2011; *Mongolia* – CEACR, observation, 2010; *Morocco*, CEACR, observation, 2010; *Sri Lanka* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

[793] See, for example, *El Salvador* – CEACR, observation, 2009; *Honduras* – CEACR, observation, 2009; and *Nicaragua* – CEACR, observation, 2010.

[794] See, for example, *Chad* – CEACR, direct request, 2009; *Republic of Moldova* – CEACR, direct request, 2009; *Oman* – CEACR, direct request, 2005; and *Viet Nam* – CEACR, direct request, 2005.

[795] See, for example, *Ireland* – CEACR, direct request, 1997 (the Protection of Young Persons (Employment) Act); *Pakistan* – CEACR, direct request, 2010 (the Employment of Children Act); and *Trinidad and Tobago* – CEACR, direct request, 2008 (the Miscellaneous Provisions (Minimum Age for Admission to Employment) Act).

[796] See, for example, *Jamaica* – CEACR, direct request, 2006 (Child Care and Protection Act); and *Bolivarian Republic of Venezuela* – CEACR, direct request, 1993 (the Protection of Children Act).

[797] See, for example, *Romania* – CEACR, direct request, 1992; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2010.

[798] See, for example, *Angola* – CEACR, direct request, 2010; *Barbados* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2011; *Paraguay* – CEACR, direct request, 2009; *Seychelles* – CEACR, direct request, 2009; *Singapore* – CEACR, direct request, 2009; and *Thailand* – CEACR, direct request, 2011.

hazardous work, [799] regulations governing apprenticeships and vocational training, [800] regulations concerning artistic performances [801] and regulations on employers' registers. [802]

Difficulties of application concerning the scope

339. The Committee has consistently reminded governments that the Convention applies to all branches of economic activity and covers all kinds of employment or work. However, in many countries, the legislation giving effect to the Convention (containing provisions establishing the minimum age for admission to work) applies only to formal labour relationships between an employer and an employee, meaning that children working outside a formal labour relationship are excluded from the provisions giving effect to the Convention. This includes children working on their own account, in the informal economy or on an unpaid basis. [803] In some countries, although the legislation giving effect to the Convention explicitly excluded family work, domestic work and agricultural work, [804] these categories of work were not initially excluded by the member State under *Article 4*. These exclusions are particularly significant as, in many countries, the very activities not covered by the legislation are those in which the majority of economically active children under the minimum age are engaged. Globally, only 21 per cent of child labourers aged 5–17 are engaged in paid employment. [805] Two-thirds of child labourers in the age group 5–17 years old are unpaid family workers and another 5 per cent of children in this age group perform work on their own account. Moreover, the sectors which are most often excluded from the legislation implementing the Convention are often particularly difficult to monitor through labour inspection, [806] meaning that children working in these sectors have little protection. As the Convention applies to all working children, the Committee has frequently made recommendations to assist the concerned countries in overcoming such gaps in application.

[799] *Art. 3* of the Convention. See paras 376–387 below.

[800] Pursuant to *Art. 6* of the Convention. See, for example, *Jordan* – CEACR, direct request, 2005; and *Papua New Guinea* – CEACR, direct request, 2006.

[801] Pursuant to *Art. 8* of the Convention. See, for example, *Iceland* – CEACR, direct request, 2011; and *Latvia* – CEACR, direct request, 2009.

[802] Pursuant to *Art. 9(3)* of the Convention. See, for example, *Belarus* – CEACR, direct request, 2011; and *Bosnia and Herzegovina* – CEACR, direct request, 2009.

[803] See, for example, *Burundi* – CEACR, observation, 2010; *Chile* – CEACR, direct request, 2011; *Comoros* – CEACR, direct request, 2010; *Ethiopia* – CEACR, observation, 2010; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Montenegro* – CEACR, direct request, 2010; and *Russian Federation* – CEACR, observation 2010.

[804] See also the sections on family workers, domestic workers (paras 356–361) and child labour in agriculture (paras 349–355).

[805] *Accelerating action against child labour*, op. cit., para. 37.

[806] *Labour inspection*, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 95th Session, Geneva, 2006, pp. 17 and 85.

Thematic issues

Child labour in the informal economy

340. ***In many countries, the legislation giving effect to the Convention does not include the informal economy.*** [807] ***However, this sector has been identified as one of the areas in which child labour is most prevalent.*** [808] ***It represents 52.2 per cent of total employment in Latin America, 78.2 per cent in Asia and 55.7 per cent in Africa*** [809] ***and will continue to grow during times of economic crisis.*** [810] ***Moreover, many governments*** [811] ***and social partners*** [812] ***have identified combating child labour in the informal economy as one of the biggest challenges faced in the application of the Convention. Therefore, the Committee considers that addressing the issue of child labour in the informal economy, in both rural and urban areas, is essential to the application of the Convention.***

Legislative measures addressing child labour in the informal economy

341. Governments have taken various measures to ensure that the protection afforded by the Convention is enjoyed by children working in the informal economy. In cases where the general labour legislation excludes workers in the informal economy from its scope of application, this legislation may be amended to specifically stipulate that these exclusions do not apply to the provisions governing the work of children. For example, in *Kenya*, the Committee noted with satisfaction that the Employment Act of 2007 (which replaced legislation with a limited scope of application) extends the application of the minimum age for admission to employment to all undertakings. [813] Countries may also adopt specific regulations to govern the informal economy, as was done in *Spain*, where the Committee noted with satisfaction that pursuant to Statute 20/2007 on self-employed workers, children under 16 years may not work on a self-employed basis or be engaged in a professional activity, even within their own families. [814] Addressing this gap can also be accomplished through regulations specifically aimed at working children. This was done in *Argentina*, where the Committee noted with satisfaction that Act No. 26.390 of 25 June 2008 on the prohibition of child labour and protection of young workers provides that work involving children under 16 years of age is prohibited in all

[807] The term "informal economy" comprises all economic activities that are – in law or practice – not covered or insufficiently covered by formal arrangements, in different sectors of the economy and across rural and urban contexts, including wage workers and own-account workers, contributing family members and those moving from one situation to another. See *Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO's supervisory bodies related to the informal economy,* ILO (Geneva, 2010), p. 13 [hereinafter *Digest on the informal economy*].

[808] *Accelerating action against child labour*, op. cit., paras 246 and 385.

[809] *Digest on the informal economy*, op. cit., p. 5.

[810] *Tackling the global jobs crisis: Recovery through decent work policies*, Report of the Director-General, ILC, 98th Session, Geneva, 2009, para. 24.

[811] See, for example, *Central African Republic* – CEACR, observation, 2010; *Nepal* – CEACR, direct request, 2010; and *Russian Federation* – CEACR, observation, 2010. In addition, the Government of Bangladesh, indicated in its report supplied under art. 19 of the ILO Constitution that child labour occurs in the informal economy.

[812] See, for example, *Albania* – CEACR, observation, 2011; *Burundi* – CEACR, observation, 2008; *Indonesia*, – CEACR, observation, 2009; and *Senegal* – CEACR, observation, 2011.

[813] See *Kenya* – CEACR, observation, 2009.

[814] Section 9(1) of the Statute 20/2007. See *Spain* – CEACR, observation, 2010.

its forms, irrespective of whether or not there is a contractual employment relationship or whether or not the work is remunerated. [815]

342. However, as the legislation implementing the Convention in many countries only covers formal labour relationships, children working in the informal economy often do not benefit from any legal protection. The absence of legislative protection is exacerbated by the fact that, without a legislative basis to proceed, labour inspectors in many countries are unable to monitor children in this sector. [816] Recalling that the Convention applies to all sectors of the economy and all forms of work, the Committee encourages governments to take the necessary measures to ensure that the protection afforded by the Convention is enjoyed by children working in the informal economy, including through taking legislative measures to address these gaps. [817] Such measures are particularly important in countries where a large number of children are found to be working in the informal economy. [818] The Committee also calls on governments undertaking a review of their labour legislation to consider, in this context, taking measures to address children working in the informal economy.

Monitoring mechanisms of child labour in the informal economy

Labour inspection

343. Child labour in the informal economy can also be addressed through monitoring mechanisms, including through labour inspection. Several countries have successfully undertaken measures to adapt and reinforce their labour inspectorate to address child labour in the informal economy, particularly in Latin America. For example, in *Nicaragua*, the labour inspection system was strengthened through links with various governmental and non-governmental organizations to increase labour inspection activities in the informal economy, particularly with a view to eliminating child labour. [819] In *Brazil*, the Ministry of Labour and Employment modified the functions of the Special Mobile Inspection Group and extended the scope of action of labour inspectors to combating child labour in both the formal and informal economies. [820] In *Argentina*, Act No. 26.390 of 25 June 2008 stipulates that the labour inspection services must exercise their role to enforce the prohibition of work under the minimum age, including work in the informal sector. [821] Examples from other regions include *Benin*, where the Committee noted the Government's indication that the labour inspectorate is increasingly extending its actions in the informal economy, including through

[815] Section 2(3) of Act No. 26.390 of 25 June 2008. See *Argentina* – CEACR, observation, 2009.

[816] See, for example, *Morocco* – CEACR, observation, 2010 (The Committee noted the Government's indication that labour inspectors are only authorized to ensure the application of the labour legislation once there is an employment relationship and that consequently labour inspectors do not carry out any checks in the informal sector); and *Romania* – CEACR, observation, 2010 (The Government indicated that the labour inspectorate monitors only the work of persons employed by an individual labour contract, and has no competence with regard to persons working on their own account.

[817] See, for example, *Burundi* – CEACR, observation, 2008; *Côte d'Ivoire* – CEACR, observation, 2011; *Indonesia* – CEACR, observation, 2011; and *Russian Federation* – CEACR, direct request, 2010.

[818] See, for example, *Angola* – CEACR, direct request, 2011; *Central African Republic* – CEACR, observation, 2010; *Ethiopia* – CEACR, observation, 2010; *Indonesia* – CEACR, observation, 2011; and *Mongolia* – CEACR, observation, 2010.

[819] *Nicaragua* – CEACR, observation, 2010.

[820] *Brazil* – CEACR, direct request, 2010.

[821] *Argentina* – CEACR, observation, 2009.

inspections of small-scale gravel and granite quarries [822] and *Bosnia and Herzegovina*, where labour inspection includes illegal work involving children and youth and the informal economy. [823]

Child labour monitoring systems

344. Non-traditional monitoring mechanisms play an important role in addressing child labour in the informal economy. As discussed by the Committee in its 2006 General Survey on labour inspection, ILO–IPEC has developed the concept of "child labour monitoring systems" (CLMS) to address the difficulties of monitoring the informal economy. These CLMS act in partnership with the labour inspectorate to extend its eyes and ears through locally developed teams of monitors. [824] The Committee has noted the establishment of CLMS in several countries, including *Albania*, *Kenya*, *Malawi*, *Sri Lanka*, *Turkey* and *Ukraine*. [825] Other institutions may also be involved in monitoring child labour in the informal economy. For example, in *Angola*, the Government indicated that due to the specificity of the informal economy, provincial monitoring units serve to supervise this sector, in addition to the Labour Inspectorate. [826] In *Papua New Guinea*, the Ministry of Community Development (with the Consultative Implementation and Monitoring Council) monitors the implementation of the Informal Sector Control and Management Act, overseeing the situation of child labour in the informal economy throughout the country. [827]

345. ***However, as discussed by the Committee in its 2006 General Survey on labour inspection, the limited number of labour inspectors in some member States, particularly developing countries, has made it difficult for inspectors to cover the informal economy and agriculture where most child labour is found.*** [828] ***Therefore, the Committee calls on governments to strengthen the capacity and expand the reach of the labour inspectorate in the informal economy to address child labour in this sector, and welcomes measures taken in this regard.*** [829] ***The Committee is of the view that the expansion of the relevant monitoring mechanisms to the informal economy can be an important manner in which to ensure that the Convention is applied in practice, particularly in countries where expanding the scope of the implementing legislation to address children working in this sector does not seem a practicable solution.***

[822] *Benin* – CEACR, direct request, 2011.

[823] *Bosnia and Herzegovina* – CEACR, direct request, 2009.

[824] General Survey, 2006, para. 50.

[825] *Albania* – CEACR, direct request, 2009; *Kenya* – CEACR, observation, 2009; *Malawi* – CEACR, direct request, 2011, Convention No. 182; *Sri Lanka* – CEACR, direct request, 2004; and *Turkey* – CEACR, observation, 2009.

[826] *Angola* – CEACR, direct request, 2011.

[827] *Papua New Guinea* – CEACR, direct request, 2010.

[828] General Survey, 2006, para. 50.

[829] See, for example, *Albania* – CEACR, observation, 2011; *Azerbaijan* – CEACR, observation, 2011; *Cameroon* – CEACR, observation, 2011; *Central African Republic* – CEACR, observation, 2010; *Colombia* – CEACR, observation, 2011; *Comoros* – CEACR, direct request, 2011; *Mozambique* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; *Philippines* – CEACR, observation, 2010; *Romania* – CEACR, observation, 2010; and *Ukraine* – CEACR, observation, 2010.

Good practices in reaching out to children working in the informal economy

346. In an effort to reach out to children working in the informal economy, several member States have implemented a variety of programmes to combat child labour in this sector. As noted in the *Digest on the informal economy*, most persons enter the informal economy not by choice, but out of a need to survive. [830] This is of course particularly true of children working in this sector, and therefore programmatic measures which offer alternatives to this work have had some success in combating child labour in the sector.

347. These programmes may include specific measures to remove children from work in the informal economy, and often involve initiatives to reintegrate these children into school. For example, in *Viet Nam*, the Government has initiated several policies for children under 15 years working on their own account, including referring these children to social centres and encouraging their families to support their attendance in school or vocational training. [831] Addressing the needs of children engaged in, or at risk of becoming engaged in, the informal economy may also include social protection measures. This has been done in *Chile* through a component of the social protection scheme entitled "the Bridge Programme", which benefits young persons from more than 5,700 families, and contains measures for their reintegration into school. [832] Several countries have also mainstreamed the issue of children working in the informal economy into national action plans to combat child labour, as has been done in *Namibia* through the Action Programme to Eliminate Child Labour 2008–12. [833] Moreover, ILO–IPEC collaborates with several governments on projects to protect children working in the informal economy and withdraw them from this work, including in *Bangladesh*, [834] *Senegal*, [835] *Kenya*, *Ghana*, *Uganda* and the *United Republic of Tanzania*. [836] Recognizing the success achieved in these countries, the Committee encourages governments to undertake, or to pursue, programmatic measures to ensure that the protection provided by the Convention is enjoyed, in practice, by children working in the informal economy.

Child labour in agriculture

348. The Global Report of 2010 indicates that approximately 60 per cent of child labourers worldwide are engaged in the agricultural sector in both the formal and informal sectors. [837] Due to the prevalence of child labour in agriculture, the Committee has increasingly emphasized the importance of effectively applying the Convention to this sector. In this regard, the Committee wishes to underline that applying the Convention to the agricultural sector is not simply a question of aligning *national legislation* governing agriculture with the provisions of the Convention, but predominantly a question of the *practical* application of the Convention to this sector.

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[830] *Digest on the informal economy*, op. cit., p. 5.

[831] *Viet Nam* – CEACR, direct request, 2010.

[832] *Chile* – CEACR, direct request, 2011.

[833] *Namibia* – CEACR, direct request, 2010.

[834] ILO–IPEC Time-Bound Programme entitled "Prevention and elimination of the worst forms of child labour in the urban informal economy of Dhaka Metropolitan Area", implemented from 2007 to 2011.

[835] *Senegal* – CEACR, observation, 2011.

[836] ILO–IPEC programme entitled "Kenya, Ghana, Uganda, Tanzania: Skills training strategies to combat the worst forms of child labour in the urban informal sector", implemented from 2004 to 2007.

[837] *Accelerating action against child labour*, op. cit., para. 34 and fig. 1.4.

Application of the Convention to the agricultural sector in law

349. In the majority of countries in which the Convention is in force, the legislation giving effect to it applies to all areas of the formal economy, including agricultural activities. Moreover, in cases where the general labour legislation does not cover the agricultural sector (or explicitly excludes this sector), various legislative initiatives have been taken by governments to ensure that children working in agriculture benefit from the protection provided for in the Convention. For example, in *Jordan*, the Labour Code previously excluded from its scope of application, inter alia, agricultural workers, and the Code's provisions on the minimum age therefore did not apply to children working in the agricultural sector. The Committee called on the Government to ensure that children working in agriculture benefited from the protection of the Convention. It subsequently noted with interest that the Labour Code was amended in 2008 to broaden the scope of application to include "all workers". [838]

350. However, in several countries, children working in agriculture remain excluded from the protection provided for in the Convention. The agricultural sector may be explicitly excluded from the scope of application of the State's implementing legislation, [839] or implicitly excluded in countries where the implementing legislation only applies to the formal economy, but children work in informal agriculture (such as small-scale and informal undertakings or family farms). In both such cases, the Committee recalls that the Convention applies to all sectors and calls on governments to amend the legislation to ensure that children working in the agricultural sector benefit from the protection provided for in the Convention. The Committee emphasizes that the absence of an applicable minimum age to the agricultural sector is particularly problematic in countries where there are a large number of children engaged in this sector. [840]

Issues arising out of the application of the Convention in the agricultural sector

351. While the legislative application of the Convention in the agricultural sector is vital, the larger challenge lies in applying the Convention to this sector in practice. In this vein, the Committee has noted the information from various governments, [841] social partners [842] and statistical studies [843] that the majority of working children in their country are engaged in the agricultural sector, or that child labour in agriculture remains prevalent in the country. [844] This work can take many forms: in many countries, child

[838] Section 3(d) of Law No. 8 of 1996 issuing the Labour Code. See *Jordan* – CEACR, direct request, 2003 and observation, 2011.

[839] See, for example, *Swaziland* – CEACR, direct request, 2010; *United Arab Emirates* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

[840] See, for example, *Philippines* – CEACR, observation, 2010; and *Swaziland* – CEACR, direct request, 2010.

[841] See, for example, *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Senegal* – CEACR, observation, 2011; and *Tajikistan* – CEACR, direct request, 2010.

[842] See, for example, *Colombia* – CEACR, observation, 2011; and *Georgia* – CEACR, observation, 2011.

[843] See, for example, *Azerbaijan* – CEACR, observation, 2011; *Egypt* – CEACR, observation, 2011; *El Salvador* – CEACR, observation, 2009; *Guatemala* – CEACR, observation, 2009; *Honduras* – CEACR, observation, 2009; *Madagascar* – CEACR, observation, 2010; *Pakistan* – CEACR, direct request, 2010; and *Togo* – CEACR, observation, 2011.

[844] See, for example, *Guyana* – CEACR, direct request, 2010; *Israel* – CEACR, direct request, 2009; *Kyrgyzstan* – CEACR, direct request, 2010; and *Republic of Moldova* – CEACR, direct request, 2010.

labour occurs mostly in small-scale farming and family farms, [845] but children are also engaged in commercial agriculture in numerous States. [846] Child labour in agriculture may also occur on a seasonal basis, only during a specific harvest time. [847] Due to the various modalities in which child labour in agriculture occurs, there is no uniform solution for the effective application of the Convention to this sector. The Committee has therefore noted a wide range of positive initiatives taken by governments to address this challenge.

Monitoring child labour in agriculture through labour inspection

352. The Committee is of the view that labour inspection plays a key role in the application of the Convention to the agricultural sector. [848] For example, in *Egypt*, a separate unit within the Ministry of Manpower and Migration is responsible for child labour investigations in the agricultural sector and inspections are carried out in small family enterprises in the agricultural sector. Moreover, the Egyptian child labour inspectorate coordinates with community-based organizations in each of the governorates, and a child labour monitoring and tracking system has been set up for children working in agriculture. [849] With regard to specific sectors, the Government of *Belize* has hired additional labour inspectors for banana plantations, where much of the country's child labour occurs, while the Government of *El Salvador* undertook intense supervisory and inspection activities in the sugar cane sector. [850]

353. However, the monitoring of child labour in the agricultural sector remains difficult in many countries, particularly due to a lack of capacity. [851] To address these difficulties, the Committee calls on governments to take measures to adapt and strengthen the labour inspection services so that they can secure the protection set out in the Convention for children working in the agricultural sector. [852]

[845] See, for example, *Morocco* – CEACR, observation, 2010; and *Zambia* – CEACR, observation, 2009.

[846] See, for example, *Belize* – CEACR, direct request, 2009; *Cameroon* – CEACR, observation, 2011; and *Kenya* – CEACR, observation, 2009.

[847] See, for example, *Georgia* – CEACR, observation, 2009; and *Tajikistan* – CEACR, direct request, 2010.

[848] In this regard, the Committee has referred to its comments made under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), in its examination of Convention No. 138. See, for example, *Egypt* – CEACR, observation, 2010; and *Madagascar* – CEACR, direct request, 2006.

[849] *Egypt* – CEACR, observation, 2011.

[850] *Belize* – CEACR, direct request, 2009 and 2011; and *El Salvador* – CEACR, observation 2007.

[851] For example, in *Tajikistan*, the budget of the labour inspectorate was too small to travel outside major cities, essentially making it impossible to monitor the agricultural industry (the largest sector employing children in the country). In *Namibia*, the periodic labour inspections carried out by the Ministry of Labour and Social Welfare occurred almost entirely in commercial agriculture, although many more children work in subsistence agriculture. See, *Namibia* – CEACR, direct request, 2010; and *Tajikistan* – CEACR, direct request, 2010.

[852] See, for example, *Azerbaijan* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2010.

Programmatic measures to address child labour in agriculture

354. Many States endeavour to reduce the large number of children working in the agricultural sector by implementing programmatic measures aimed at this group. These programmes work to prevent children under the minimum age from prematurely entering the labour market, as well as serving to withdraw children already engaged in agricultural work. These include measures to strengthen the functioning of the education system in areas where children are most frequently engaged in agricultural production, primarily rural areas. [853] Many ongoing ILO–IPEC programmes also focus on agriculture (or contain elements addressing child labour in agriculture) [854] and several national action plans to combat child labour have prioritized action in the agricultural sector. [855] The social partners may also play a key role in measures to combat child labour in agriculture. For example, in *Argentina*, the Committee noted with interest the National Plan for the Prevention and Elimination of Child Labour, which includes the increased participation of workers' organizations and led to the signing of a Memorandum of Intent for the prevention and elimination of child labour in the agricultural sector on 12 June 2007. [856] In *Turkey*, the Ministry of National Education implemented a direct action programme on child labour in seasonal commercial agriculture, with the participation of the Turkish Confederation of Employers' Associations (TİSK) and the Confederation of Turkish Trade Unions (TÜRK-IŞ), from 2005 to 2007. [857]

355. ***The Committee welcomes these initiatives and in cases where child labour in agriculture continues to be a serious issue the Committee strongly encourages governments to intensify their efforts to combat child labour in this sector. Regarding countries where child labour in agriculture remains prevalent the Committee expresses its serious concern at the continued engagement of children under the minimum age in agriculture, and calls on governments to take the necessary measures to combat this phenomenon. As noted in the Global Report of 2010, "[m]eeting … the ultimate goal of the effective abolition of child labour requires a breakthrough in agriculture, where most child labourers work".*** [858] ***In this regard, the Committee will continue to call on governments to ensure the effective application of the Convention in the agricultural sector, in both law and practice.***

Family workers and domestic workers

356. In several member States, the legislation giving effect to the Convention explicitly excludes family work and domestic work, although these types of work have not been excluded by the respective governments through the flexibility clauses available in *Articles 4 and 5*. The Committee is of the view that addressing these gaps is essential to ensure the comprehensive application of the Convention to all working children.

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[853] See, for example, *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[854] See, for example, *Dominican Republic* – CEACR, observation, 2009; *Kenya* – CEACR, observation, 2009; *Togo* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2011.

[855] See, for example, *Argentina* – CEACR, observation, 2009; and *Philippines* – CEACR, observation, 2010.

[856] *Argentina* – CEACR, observation, 2009.

[857] *Turkey* – CEACR, observation, 2011.

[858] *Accelerating action against child labour*, op. cit., p. xv. See, for example, *Colombia* – CEACR, observation, 2011; *Pakistan* – CEACR, direct request, 2010; *Uganda* – CEACR, direct request, 2010; and *Zimbabwe* – CEACR, observation, 2011.

Family workers, including unpaid family work

357. The Committee has noted the various measures taken by governments to ensure that children engaged in unpaid family work benefit from the protection provided for in the Convention. For example, in *Zambia*, having previously noted that the relevant legislation authorized employment under the minimum age in undertakings where only members of the same family were employed, the Committee subsequently noted with satisfaction that the Employment of Young Persons and Children Act was amended in 2004 to include family enterprises, and applies the Convention to children working in such a setting. [859] In, *Kenya*, the Committee previously noted that the term "child labour" in the Children Act, 2001, only applied in situations where children provided labour in exchange for payment and that unpaid workers (mostly family workers) did not benefit from the protection of the Convention. The Committee subsequently noted with satisfaction that the Employment Act of 2007 prohibits employing a child under the minimum age, whether gainfully or otherwise, thereby providing protection to children working on an unpaid basis. [860]

358. Nonetheless, many countries have yet to take action to ensure the application of the minimum age provisions to children engaged in family work. [861] As 67.5 per cent of children engaged in child labour globally are unpaid family workers, [862] these exclusions can result in the exclusion of the majority of working children in a country from benefiting from the protection of the Convention. Therefore, the Committee wishes to highlight the importance of ensuring the protection of children working in family undertakings and requests governments to take the necessary measures to ensure that the protection afforded by the Convention is applicable to children working in all sectors, including family undertakings.

Child domestic workers

359. The Committee has also noted certain positive measures taken by some governments to ensure that children engaged in domestic work benefit from the protection provided for in the Convention. In *Kuwait*, the Committee previously noted that Act No. 38 of 1964 on Labour in the Private Sector excluded domestic workers from its scope of application, and therefore the minimum age did not apply to persons working in this sector. However, the Committee subsequently noted with interest that Order No. 640 (relating to the Foreigners Residence Act) stipulates that the minimum age for domestic workers is 20 years of age. [863] Similarly, in the *Philippines*, the Committee noted that Department Order No. 4 of 1999 stipulates that persons aged 15–18 years may be allowed to engage in domestic or household service, thereby applying the minimum age to this sector. [864] The Committee has also noted the indications of several governments that draft legislation, currently under discussion in their respective countries, would apply the minimum age provisions to domestic workers,

[859] Sections 3 and 4(a) of the Employment of Young Persons and Children (Amendment) Act of 2004. See *Zambia* – CEACR, direct request, 2002, and observation, 2009.

[860] *Kenya* – CEACR, observation, 2009.

[861] See, for example, *Angola* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Sudan* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

[862] *Accelerating action against child labour*, op. cit., fig. 1.7.

[863] *Kuwait* – CEACR, direct request, 2004, and observation, 2010.

[864] Section 4 of Department Order No. 4 of 1999. See *Philippines* – CEACR, observation, 2010.

including *Lesotho, Indonesia* and *Swaziland*. [865] Some other countries have taken steps to prohibit domestic work for children under 18. [866] The Committee consequently encourages these governments to take the necessary measures to ensure the application of the Convention to domestic workers through the adoption of the relevant legislation.

360. ***However, the Committee has noted that, in several countries, domestic work remains excluded from the scope of application of the Convention.*** [867] ***This is particularly problematic, as an estimated 15.5 million children are engaged in domestic work worldwide.*** [868] ***Accordingly, the Committee calls on governments to take the necessary measures to ensure that children engaged in domestic work benefit from the protection provided for in the Convention, particularly in countries where there are a high number of children under the minimum age engaged in this sector.*** [869]

361. Child labour in domestic work and family work are both identified in the Global Report of 2010 as sectors that require strengthened action to eliminate child labour. [870] The Committee also recognizes that addressing child domestic work will continue to be crucial in light of the recent adoption of the Domestic Workers Convention (No. 189) by the Conference in June 2011. Due to the large number of children engaged in family work globally, and the potential vulnerability of child domestic workers, the Committee wishes to underline the importance of applying the Convention to children working in both of these areas.

Minimum age for admission to employment or work

Setting the general minimum age for admission to employment or work

362. *Article 2(1)* of Convention No. 138 provides that each member State which ratifies the Convention shall specify a general minimum age for admission to employment or work at the time of ratification. In accordance with *Article 2(3)*, the general minimum age shall not be less than 15 years. However, the Convention allows more flexibility to member States whose economy and educational facilities are insufficiently developed. [871] Developing countries that face difficulty in enforcing a general minimum age of 15 may initially specify a minimum age of 14 provided that prior consultations with organizations of employers and workers have been held. Member States which avail themselves of this flexibility clause are further required to indicate, in subsequent reports submitted to the Office under article 22 of the Constitution, either that the reasons for maintaining a lower minimum age subsist or that they renounce availing themselves of the provision in question as from a stated date. [872]

[865] *Lesotho* – CEACR, observation, 2011; *Indonesia* – CEACR, observation, 2011; and *Swaziland* – CEACR, direct request, 2010.

[866] See, for example, *Benin* – CEACR, direct request, 2011; *Brazil* – CEACR, observation, 2010; and *Colombia* – CEACR, direct request, 2011.

[867] See, for example, *Cyprus* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2011; *Sudan* – CEACR, direct request, 2010; and *United Arab Emirates* – CEACR, direct request, 2010.

[868] As of 2008, according to the ILO Statistical Information and Monitoring Programme on Child Labour (IPEC–SIMPOC). See *Domestic work: Policy brief: Global and regional estimates on domestic workers*, (Geneva, ILO, 2011), p. 9.

[869] See, for example, *Chad* – CEACR, direct request, 2010; and *Mozambique* – CEACR, direct request, 2010.

[870] *Accelerating action against child labour*, op. cit., paras 37, 141 and 254.

[871] *Art. 2(4)* of the Convention.

[872] *Art. 2(5)* of the Convention.

363. Of the 161 countries that have ratified Convention No. 138, nearly half, that is to say 72 countries, have set the general minimum age for admission to employment or work at 15 years of age [873] and 40 member States have decided to go beyond the obligation laid down in *Article 2(3)* in fixing the general minimum age at 16 years. This mainly concerns industrialized countries, but includes a certain number of developing countries as well such as *Burundi*, *Djibouti*, *Gabon*, *Guinea*, *Kenya* and *Tajikistan*. A smaller number of member States, that is to say 49 developing countries, have availed themselves of the flexibility clause contained in *Article 2(4)* to set the minimum age at 14 years. [874]

Raising the general minimum age for admission to employment or work

364. Under *Article 2(2)*, member States have the opportunity to raise subsequently the general minimum age for admission to work or employment initially specified at the time of ratification. In this regard, Paragraph 7(1) of the Minimum Age Recommendation, 1973 (No. 146), indicates that raising progressively the general minimum age to 16 years should be taken as an objective. Furthermore, in accordance with Paragraph 7(2), where the minimum age for admission to employment or work is still below 15 years, urgent steps should be taken to raise it to that level. A Member showing a willingness to do so may notify its decision in a declaration addressed to the Director-General of the ILO.

365. The Committee has noted with satisfaction the cases of *Argentina*, *Colombia* and *Egypt* which have recently sent such a declaration to the Office. *Argentina* has officially raised the minimum age for admission to employment or work from 15 to 16 years. [875] And both *Colombia* and *Egypt* have officially raised the minimum age for admission to employment or work from 14 to 15 years. [876] On numerous occasions, the Committee has also observed that some countries have adopted new legislation establishing a general minimum age higher than that specified at the time of ratification and has thus drawn the attention of the governments concerned to the possibility of raising the minimum age initially specified by means of a declaration sent to the Office. [877] Furthermore, in recent years, several countries have expressed their willingness to raise the general minimum age in the near future. [878] However, while a sizeable number of member States have raised the general minimum age in national legislation, only a few have so far notified their decision to raise the minimum age by means of a new declaration. [879]

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[873] In their reports under art. 19 of the ILO Constitution, the Governments of Saudi Arabia and *Timor-Leste* have indicated that children below 15 years are not entitled to work.

[874] In their reports under art. 19 of the ILO Constitution, the Governments of *Bangladesh* and India indicated that their legislation provides for a minimum age for admission to employment or work of 14 years of age.

[875] See *Argentina* – CEACR, observation, 2011.

[876] See *Colombia* – CEACR, direct request, 2009; and *Egypt* – CEACR, observation, 2011.

[877] See, for example, *Bahamas* – CEACR, direct request, 2008; *Barbados* – CEACR, direct request, 2006; *Burkina Faso* – CEACR, direct request, 2009; *Chile* – CEACR, direct request, 2005; *Ecuador* – CEACR, observation, 2009; *Gambia* – CEACR, direct request, 2010; *Italy* – CEACR, direct request, 2011; *Panama* – CEACR, observation, 2011; *Rwanda* – CEACR, direct request, 2011; *Togo* – CEACR, observation, 2011; and *Yemen* – CEACR, direct request, 2010.

[878] See, for example, *Dominican Republic* – CEACR, direct request, 2007; *Mali* – CEACR, direct request, 2010; *Mauritius* – CEACR, direct request, 2006; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; and *Uruguay* – CEACR, direct request, 2010.

[879] Only three countries have done so in the last three years: *Argentina*, *Colombia* and *Egypt*.

366. Conversely, the Committee has observed on several occasions that the national legislation of some countries authorizes children to work at an age lower than the minimum age specified upon ratification of the Convention. It has examined situations in which the law allows younger children to work under special circumstances, [880] for example, when parental consent is given [881] or if the authorities consider that it is indispensable to provide for their subsistence or that of their family; or situations in which part of or all of the legislation has not been brought into conformity with the Convention. [882] ***In this connection, the Committee emphasizes that, notwithstanding the exceptions provided for in the Convention,*** [883] ***no child shall be admitted to work under the minimum age specified and emphasizes that Article 2(2) foresees the raising of the minimum age but does not allow the lowering of the minimum age once declared. Some countries still have not amended their legislation since they ratified the Convention and therefore do not comply with the requirements of the Convention.*** [884] ***The Committee accordingly considers that the governments concerned should take immediate measures to fix the minimum age at the age specified at the time of ratification in order to comply with the Convention.***

Minimum age for admission to work and compulsory education

367. During the elaboration of Convention No. 138, emphasis was placed by the tripartite constituents on the close relationship between education and the minimum age for admission to employment or work bearing in mind that depriving children of opportunities for education and training condemned them to remain unskilled and thus perpetuated the poverty of a society. [885] *Article 2(3)* of Convention No. 138 thus provides that the specified minimum age shall not be less than the age of completion of compulsory schooling. Paragraph 4 of Recommendation No. 146 reinforces this principle by advocating that full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively guaranteed up to an age at least equal to that specified for admission to employment.

Ensuring compulsory education up to the minimum age

368. A significant number of member States have adopted regulations fixing the age of completion of compulsory education in line with the minimum age for admission to employment or work. For example, in *Thailand*, the National Education Act provides for nine years of compulsory education and under the Compulsory Education Act, whoever, without reasonable cause, commits any act causing a juvenile not to be enrolled for education in an educational establishment shall be liable to a fine. [886] In *Kyrgyzstan*, the

[880] See, for example, *Honduras* – CEACR, observation, 2009; and *Senegal* – CEACR, observation, 2011.

[881] See, for example, *Tajikistan* – CEACR, observation, 2010; and *Ukraine* – CEACR, observation, 2010.

[882] See, for example, *Azerbaijan* – CEACR, observation, 2011; and *Costa Rica* – CEACR, observation, 2011.

[883] See *Art. 4* (exclusion of limited categories of employment or work), *Art. 5* (exclusion of economic sectors), *Art. 6* (exception of work done as part of education and training), *Art. 7* (exception of light work) and *Art. 8* (exception of artistic performances).

[884] See, for example, *Azerbaijan* – CEACR, observation, 2011; *Dominica* – CEACR, direct request, 1997; *Honduras* – CEACR, observation, 2009; *Kuwait* – CEACR, observation, 2010; *Malaysia* – CEACR, observation, 2010; *Senegal* – CEACR, observation, 2011; and *Tajikistan* – CEACR, observation, 2010.

[885] *Record of proceedings*, ILC, 57th Session, Geneva, 1972 (Appendix IV: Minimum Age for Admission to Employment (first discussion)), para. 8, p. 537.

[886] See *Thailand* – CEACR, direct request, 2010.

Kyrgyz Republic Education Law provides for free and compulsory education up to 16 years of age. [887] Moreover, in its report supplied under article 19 of the ILO Constitution, the Government of New Zealand has indicated that employers are prohibited from employing school-age children (below 16) during school hours, or when it would interfere with their attendance at school. Similarly, according to the information provided by Australia in its report under article 19, all provinces of the country prohibit children of compulsory school age from working during school hours. The Government of Canada has also indicated in its report under article 19 that the employment of a school-age child (until 16) during school hours is prohibited in all jurisdictions of Canada. In the United States, according to the report submitted by the Government under article 19, all states have established the age of completion of compulsory education at least until the age of 16 and the majority of states have a general minimum age for admission to employment or work of 16.

369. However, the national legislation of some countries is not in conformity with *Article 2(3)*. In this regard, the Committee has observed different trends. It has noted that the national legislation of certain countries, especially developing countries, does not provide for compulsory schooling, [888] although in certain cases it provides for free education. [889] In this regard, the Committee recalls that compulsory education is one of the most effective means of combating child labour. It thus stresses the importance of adopting legislation providing for compulsory education up to the minimum age for admission to employment or work, because where there are no legal requirements establishing compulsory schooling, there is a greater likelihood that children under the minimum age will be engaged in child labour.

Linking the age of completion of compulsory education with the minimum age for admission to work

370. The Committee has also noted that while the national legislation of some countries provides for compulsory education, the age of completion of compulsory schooling is higher than that of the general minimum age for admission to employment or work, which is contrary to *Article 2(3)*. [890] It points out that if the minimum age for admission to work or employment is lower than the school-leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work. [891] In such cases, the Committee calls on the governments concerned to take the necessary measures to raise the general minimum age in order to link it with the age of completion of compulsory schooling in conformity with the Convention. Some governments have taken corresponding measures. In the case of *Mauritius*, for example, the Committee has been able to note with satisfaction that an amendment of the Labour Act was subsequently adopted in order to raise the minimum age to 16. [892]

[887] See *Kyrgyzstan* – CEACR, direct request, 2010.

[888] These include: *Iraq* – CEACR, direct request, 2011; *Kenya* – CEACR, observation, 2010; *Lesotho* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, direct request, 2010; and *Zimbabwe* – CEACR, observation, 2011.

[889] These include: *Oman* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

[890] See, for example, *Italy* – CEACR, direct request, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Rwanda* – CEACR, direct request, 2010; and *Saint Vincent and the Grenadines* – CEACR, direct request, 2010.

[891] General Survey, 1981, para. 140.

[892] See *Mauritius* – CEACR, observation, 2008.

371. Finally, in some countries, the age of completion of compulsory education is lower than the minimum age for admission to employment or work. Although this situation does not contravene *Article 2(3)* of the Convention, the Committee observes that if compulsory schooling comes to an end before children are legally entitled to work, there may arise a vacuum which regrettably opens the door for the economic exploitation of children. [893] For these reasons, it strongly encourages member States to consider raising the age of completion of compulsory education to coincide with that of the minimum age for admission to employment or work.

Ensuring access to compulsory education for all children

372. The Committee not only attaches importance to the need to adopt legal provisions establishing compulsory education, but also underlines that compulsory schooling should be effectively implemented in practice. The Committee has taken due note that in order to achieve the goal of compulsory education for children up to the minimum age for admission to employment or work, a number of countries have implemented conditional cash transfer (CCT) programmes. These programmes are intended to provide grants to poor households with children on the condition, inter alia, of their school attendance. [894] Most CCT programmes have so far been developed in the Latin American and Caribbean region. [895] For example, in *Colombia*, the CCT programme *Familias en acción* provides grants to poor households with children, on the condition, inter alia, that children aged between 7 and 18 attend no less than 80 per cent of school classes during the school year. [896]

373. Other countries have decided to introduce free education, such as *China*, *Kenya* and *Zambia*, [897] or offer tuition grants to students enrolled in basic education, such as *Mozambique* and *Nicaragua*, [898] in order to provide universal access to compulsory education, thereby contributing to eradicating child labour.

374. ***In some cases, although education is compulsory up to the minimum age for admission to employment or work, a substantial number of children do not attend school.*** [899] ***Therefore, where school attendance rates are particularly low, the Committee encourages member States to adopt policies aimed at improving the functioning of the education system in order to increase school attendance and***

[893] See, for example, *Kenya* – CEACR, observation, 2010; *Lebanon* – CEACR, observation, 2010; *Madagascar* – CEACR, observation, 2010; *Niger* – CEACR, observation, 2011; *Pakistan* – CEACR, direct request, 2010; *Qatar* – CEACR, direct request, 2010; *Swaziland* – CEACR, direct request, 2010; and *Zimbabwe* – CEACR, observation, 2011.

[894] Recent examples of the implementation of conditional cash transfer programmes noted by the Committee include: *Colombia* – CEACR, observation, 2011; *Costa Rica* – CEACR, observation, 2011; *Lebanon* – CEACR, direct request, 2010; *Panama* – CEACR, observation, 2011; and *Paraguay* – CEACR, direct request, 2011.

[895] *Accelerating action against child labour*, op. cit., paras 226–232.

[896] See *Colombia* – CEACR, observation, 2011.

[897] See *China* – CEACR, observation, 2011; *Kenya* – CEACR, observation, 2010; and *Zambia* – CEACR, observation, 2010 (from grades 1 to 7). See also *China (Macau Special Administrative Region)* – CEACR, observation, 2011.

[898] See *Mozambique* – CEACR, direct request, 2009; and *Nicaragua* – CEACR, observation, 2010. See also *Belize* – CEACR, direct request, 2009; and *Guatemala* – CEACR, direct request, 2009.

[899] See, for example, *Angola* – CEACR, direct request, 2011; *Benin* – CEACR, direct request, 2011; *Central African Republic* – CEACR, observation, 2010; *Côte d'Ivoire* – CEACR, observation, 2011; *Eritrea* – CEACR, observation, 2011; *Paraguay* – CEACR, direct request, 2011; *Peru* – CEACR, direct request, 2010; *Sudan* – CEACR, direct request, 2010; *Bolivarian Republic of Venezuela* – CEACR, observation, 2011; and *Yemen* – CEACR, direct request, 2009.

completion rates and reduce drop-out rates to the level corresponding to the age of completion of compulsory education.

375. ***The Committee is of the view that to prevent and combat child labour, compulsory education should be effectively implemented so as to ensure that all children under the minimum age are attending school and not engaged in economic activities.***

Minimum age for hazardous work

Minimum age of 18 for admission to hazardous work

376. *Article 3(1)* of the Convention provides that the minimum age "for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years". Paragraph 9 of Recommendation No. 146 indicates that where the minimum age for admission to hazardous work is below 18 years, immediate steps should be taken to raise it to that level. The Convention does not provide any specific definition of hazardous work but, by virtue of *Article 3(2)*, these types of employment or work must be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned. The issues surrounding the types of hazardous work and their determination will be discussed in the next chapter on Convention No. 182, which includes a provision prohibiting hazardous work for persons below the age of 18 years.

Minimum age of 16 for admission to hazardous work and determination of such types of hazardous work

377. The Convention, however, offers yet another flexibility clause. Indeed, *Article 3(3)* sets out conditions under which certain types of employment or work, notwithstanding the provisions of *paragraph 1*, may be performed as from the age of *16 years*, provided the following conditions are met: (1) the organizations of employers and workers concerned must have been consulted beforehand; (2) the health, safety and morals of the young persons concerned must be fully protected; and (3) they must have received adequate specific instruction or vocational training in the relevant branch of activity.

378. Some member States, while expressly prohibiting work that is hazardous to the health, safety and morals of children under 18 years of age, have also availed themselves of the flexibility clause provided by *Article 3(3)* and set a minimum age of 16 for certain types of hazardous work, adopting both a list of types of hazardous work prohibited for young persons under 18 years and another for young persons under 16 years, under the conditions required by the Convention. [900] For instance, in *Turkey*, the Committee noted with satisfaction the adoption of Regulation No. 25494 on hazardous and arduous work of 16 June 2004 which includes a list of hazardous types of work which may be performed by young workers between 16 and 18 years of age. [901] It also noted that, under the terms of section 4 of Regulation No. 25494, the conditions set out in *Article 3(3)* of the Convention are respected, namely that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. In *Ireland*,

[900] See, for example, *Cambodia* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Finland* – CEACR, direct request, 2004; *Kenya* – CEACR, observation, 2010; *Mali* – CEACR, direct request, 2010; *Portugal* – CEACR, direct request, 2006; and *Sudan* – CEACR, direct request, 2010.

[901] *Turkey* – CEACR, observation, 2009.

regulations have been made to permit young persons between 16 and 18 years to become employed in the fishing or shipping sectors, provided that any young person so employed who is assigned to work between 10 p.m. on any one day and 6 a.m. on the following day is allowed equivalent compensatory rest time; in general duties during the summer or other holidays or for part-time work in licensed premises; and as an apprentice in a full-time capacity in licensed premises, and required to work up to midnight on any one day and not before 8 a.m. on the following day, provided that the young person is supervised by an adult. [902]

Absence of a general prohibition on hazardous work

379. ***Some member States have only provided for types of hazardous work in which young persons from 16 to 18 years may participate, but have not adopted a general prohibition on hazardous work for children under 18. The Committee emphasizes that the authorization to undertake hazardous work from the age of 16 years is a limited exception to the general rule on the prohibition of young persons under 18 years performing hazardous work, and that it does not constitute an unqualified authorization to engage in hazardous work as from the age of 16 years. The governments concerned must therefore take the necessary measures to ensure that no one under 18 years of age, other than in the exceptional cases allowed by the Convention, shall be authorized to engage in hazardous work, in accordance with Article 3(1).*** [903]

Absence of a minimum age of 16 for prohibited types of hazardous work

380. Some countries have provided that young persons may undertake hazardous work under the conditions provided for in *Article 3(3)*, but have not specified a minimum age or have specified an age lower than that of 16 years. In those cases, the Committee requests the governments concerned to take measures to raise the minimum age for admission to hazardous work to 16 years, even if the required protective conditions are adequately provided. [904] As a result, in *Mauritius*, the Committee noted with satisfaction the adoption and coming into force of the Occupational Safety and Health Act No. 28 of 2005 in September 2007, which raised from 15 to 16 years the minimum age from which young persons may be authorized to work on hazardous machines on condition that their health and safety are fully protected and that they have received adequate training in the relevant branch of activity. [905]

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[902] *Ireland* – CEACR, direct request, 2009.

[903] See, for example, *Djibouti* – CEACR, direct request, 2009; *Dominican Republic* – CEACR, direct request, 2005; and *Saint Vincent and the Grenadines* – CEACR, direct request, 2010.

[904] See, for example, *Colombia* – CEACR, observation, 2011; *Cyprus* – CEACR, direct request, 2011; *Ethiopia* – CEACR, observation, 2010; *Japan* – CEACR, direct request, 2005; *Latvia* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Panama* – CEACR, observation, 2011; *Paraguay* – CEACR, direct request, 2011; *Syrian Arab Republic* – CEACR, direct request, 2010; *Ukraine* – CEACR, observation, 2010; *United Arab Emirates* – CEACR, observation, 2010; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011. Moreover, in its report supplied under art. 19 of the ILO Constitution, for example, New Zealand has indicated that an employer must take all practicable steps to ensure that no one aged under *15 years* works in any area that is likely to cause harm to the health and safety of a person, and must ensure that any employee under *15 years* of age does not, among other things, operate heavy machinery, lift heavy loads or drive any vehicle. However, the New Zealand Council of Trade Unions has indicated that there is an unacceptably high rate of farm-based accidents involving tractors and other equipment. In the same vein, Australia has also indicated, in its report supplied under art. 19, that though the conditions for their protection are provided for, children may become engaged in certain types of hazardous work starting at *15 years* of age in some provinces.

[905] *Mauritius* – CEACR, observation, 2010. On the other hand, in *Belgium* – CEACR, observation, 2011, the Committee has noted with regret that the Government's report contained no information on the incorporation of

Non-compliance with the conditions required for carrying out hazardous work from the age of 16

381. The Committee has observed that certain countries have availed themselves of the possibility to establish a minimum age of 16 years for admission to hazardous work, but have not laid down the conditions required by the Convention in this respect. [906] For example, in *Saint Kitts and Nevis*, the Committee noted that the Employment of Women, Young Persons and Children Act prohibits the performance of night work by persons under 18, and that the Employment of Children (Restriction) Ordinance prohibits children under 16 years of age from being employed in any occupation likely to be injurious to their life, limbs, health or education, with regard being had only to their physical condition. [907] In this regard, the Committee stresses that the exception contained in *Article 3(3)* permits the competent authority to authorize hazardous work from the age of 16 years only on the condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific vocational training in the relevant branch of activity, following consultation with the employers' and workers' organizations concerned. In such cases, the Committee calls on the governments concerned to take measures to adopt legislation providing for all the appropriate provisions ensuring the protection of the young person, as required by *Article 3(3)* of the Convention. [908]

Work done by children and young persons in general, vocational or technical education or in an apprenticeship programme

382. *Article 6* of Convention No. 138 allows member States to exclude from the application of the Convention work done in school for general, vocational or technical education or in training institutions or work done by children at least 14 years of age as apprentices in undertakings. However, the exemption can only apply if such work is an integral part of: (i) a course of education or training for which a school or training

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the Royal Order of 1999 into the Code on Wellbeing at Work, which raises the minimum age for admission to work (including certain types of hazardous work) from 15 to 16 years. The Committee therefore urged the Government to take immediate and effective measures to ensure that the performance of hazardous work may not under any circumstances be authorized for children under 16 years of age. Furthermore, in *Greece* – CEACR, observation, 2011, the Committee noted with concern that Presidential Decree No. 62/1998 continues to permit the performance of hazardous work by persons as of the age of 15 under certain conditions, pursuant to sections 2(c) and 7(5) and that no new legislative, administrative or other measures have been taken to prohibit the performance of hazardous work by persons as of the age of 15 under certain conditions. The Committee therefore strongly urged the Government to take the necessary measures to bring its national legislation into conformity with *Art. 3(3)* of the Convention.

[906] See, for example, *Benin* – CEACR, direct request, 2011; *Burundi* – CEACR, direct request, 2008; *Chad* – CEACR, direct request, 2010; *Comoros* – CEACR, direct request, 2010; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Denmark* – CEACR, direct request, 2009; *Dominican Republic* – CEACR, direct request, 2009; *Republic of Korea* – CEACR, direct request, 2008; *Malaysia* – CEACR, observation, 2010; *Mali* – CEACR, direct request, 2010; *Mauritania* – CEACR, direct request, 2010; *Niger* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, direct request, 2010; *Peru* – CEACR, direct request, 2010; and *Senegal* – CEACR, observation, 2011. Similarly, in its report supplied under art. 19 of the ILO Constitution, the Government of the United States indicated that children who are 16 years of age may perform all farm work *with no restrictions* under the child labour laws.

[907] *Saint Kitts and Nevis* – CEACR, direct request, 2011.

[908] See, for example, *Congo* – CEACR, direct request, 2010. Order No. 2224 prohibits the employment of young workers under the age of 16 years in certain types of hazardous work, and provides that the labour and social legislation inspectors may require any young worker to undergo a medical examination in order to determine whether the work in which she or he is employed exceeds her or his capacities. The Committee recalled, however, that the Convention also requires that young persons aged between 16 and 18 years receive specific instruction or vocational training in the relevant branch of activity.

institution is primarily responsible; (ii) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or (iii) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training. In all cases, the work must be carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned. Furthermore, Paragraph 12(2) of Recommendation No. 146 indicates that measures should be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training and to formulate standards for their protection and development.

The minimum age for admission to apprenticeship

383. The Committee has noted that the national legislation of many countries meets the requirements of *Article 6* of the Convention. [909] In certain countries, the minimum age for entry into an apprenticeship relationship is even higher than that required under this provision. For example, in *Hungary*, training contracts may only be concluded with students who have reached the age of 16 years, [910] and in *Bosnia and Herzegovina* an apprentice shall not be younger than 18. [911] In cases where the legislation does not provide for a minimum age for admission to apprenticeship or authorizes children under 14 years to undertake an apprenticeship, member States have subsequently amended their legislation to ensure the protection afforded by the Convention to children under 14. For example, in *Georgia*, apprenticeship programmes could begin as from the age of 12 years, but the Committee subsequently noted with interest the adoption of the Law on professional education which provides for the vocational training and apprenticeship for children over 15 years. [912] Other examples include *Central African Republic* and *Chile*, where the Committee has noted with interest that regulations governing apprenticeship contracts have been adopted in accordance with the conditions set out in *Article 6* of the Convention. [913]

384. However, the Committee has found in some cases that either there are no provisions stipulating a minimum age for entry into apprenticeship, [914] or minors under 14 years may be legally engaged in apprenticeships. [915] The Committee therefore emphasizes the importance of setting a minimum age for admission to apprenticeship of at least 14 years to ensure that no child under that age undertakes an apprenticeship, as required by the Convention.

[909] See, for example, *Cameroon* – CEACR, observation, 2009; *Czech Republic* – CEACR, direct request, 2011; *Latvia* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Paraguay* – CEACR, direct request, 2011; *Qatar* – CEACR, direct request, 2010; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; and *Trinidad and Tobago* – CEACR, direct request, 2009.

[910] See *Hungary* – CEACR, direct request, 2009.

[911] See *Bosnia and Herzegovina* – CEACR, direct request, 2011.

[912] See *Georgia* – CEACR, direct request, 2009.

[913] See *Central African Republic* – CEACR, observation, 2010; and *Chile* – CEACR, direct request, 2009.

[914] See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2009; *Burkina Faso* – CEACR, direct request, 2009; *Estonia* – CEACR, direct request, 2011; *Pakistan* – CEACR, direct request, 2011; and *Saint Kitts and Nevis* – CEACR, direct request, 2011.

[915] See, for example, *Albania* – CEACR, observation, 2011; *Gambia* – CEACR, direct request, 2010; *Guatemala* – CEACR, direct request, 2009; *Kenya* – CEACR, observation, 2010; *Lesotho* – CEACR, observation, 2011; *Mozambique* – CEACR, direct request, 2010; *United Arab Emirates* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011.

Apprenticeship and hazardous work

385. In some countries, the prohibition on young persons under 16 from carrying out hazardous activities does not apply to apprentices or to young persons following courses in vocational schools, and consequently children may be engaged in such activities before reaching the age of 16, which is contrary to *Article 3(3)* of the Convention. [916] In these cases, the Committee has urged the governments to take the necessary measures to ensure that young persons below 16 years of age engaged in apprenticeship do not undertake hazardous work.

Problems of application of the legislation relating to work done as part of education and training

386. In some countries, although national legislation regulates work in educational and training institutions and apprenticeships, it is not always enforced in practice. In *Kyrgyzstan*, for example, school-age children are required to participate in the tobacco harvest for the profit of educational institutions run by the State. [917] The Committee has recently expressed its concern at the alleged abuse of the apprenticeship system in *China*, where children under the minimum age for apprenticeship (16 years pursuant to the Provisional Regulation 1958) are recruited to work as apprentices in factories and work long hours for low pay. [918] In the case of *Benin*, although a significant number of apprentices under the age of 14 are exploited in the informal sector in carpentry workshops, sawmills, vehicle repair, welding and hair dressing, the Committee has nonetheless noted with interest that an ILO–IPEC project has been implemented to withdraw children from this type of work. [919]

387. The Committee is of the view that work in educational institutions and apprenticeships must be regulated by law, and that the law must be applied effectively in practice. Moreover, the minimum age for admission to apprenticeship must be applied in all circumstances and sectors, [920] including in the informal economy. [921]

Employment in light work

Minimum age for light work

388. According to the 2010 Global Report, 61,826,000 children aged 12–14 years are child labourers. [922] *Article 7* of the Convention aims to take into consideration the many instances of countries where children below the minimum age for admission to employment or work are compelled to participate in economic activities for a number of reasons, including poverty, and pertains to cases where children and young persons may be authorized to become engaged in certain types of work, under certain conditions, at an age that is lower than the minimum age for employment or work specified at the time of ratification. This was done in an "attempt to combine the measure of flexibility

[916] These include *Ethiopia* – CEACR, observation, 2010; *Israel* – CEACR, direct request, 2011; and *Ukraine* – CEACR, observation, 2010.

[917] See *Kyrgyzstan* – CEACR, direct request, 2010.

[918] See *China* – CEACR, direct request, 2011.

[919] See *Benin* – CEACR, direct request, 2011.

[920] See *China* – CEACR, direct request, 2011.

[921] See *Gambia* – CEACR, direct request, 2010.

[922] *Accelerating action against child labour*, op. cit., table 1.2.

necessary to permit the wide application of the Convention, especially in view of its general scope, with the restrictions necessary to ensure adequate protection". [923]

Lower minimum age of 13 for light work

389. *Article 7(1)* is a flexibility clause which provides that national laws or regulations may permit the employment or work of persons 13–15 years of age on light work which is not likely to be harmful to their health or development, and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Under *Article 7(2)*, the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling may be permitted, subject to the same conditions indicated under *Article 7(1)*. [924]

390. Many countries have availed themselves of the option provided by *Article 7(1)*. Where the general minimum age specified is 15, member States have generally indicated a minimum age of 13 years for light work. [925] Where the general minimum age is higher (16 years), member States have often accordingly indicated a higher minimum age for light work, that is to say 14 years. [926]

Lower minimum age of 12 for light work

391. *Article 7(4)* of the Convention permits member States who have specified a general minimum age for admission to employment or work of 14 years to substitute a minimum age for admission to light work of 12–14 years to that of the usual 13–15 years. The Committee has noted several instances in which countries which have specified a minimum age for employment or work of 14 years have availed themselves of the exception allowed for under this provision. [927] Similarly, in its report supplied under article 19 of the ILO Constitution, the Government of Bangladesh indicated that its legislation provides that children aged 12 years may be employed in light work that does not endanger their health and development or interfere with their education and school attendance, in conformity with the Convention.

392. However, some member States which had specified a general minimum age of 15 or 16 years at the time of ratification have also adopted legislation which provides for a

[923] *Minimum age for admission to employment*, op. cit., p. 20.

[924] See, for example, *Belarus* – CEACR, direct request, 2004; and *Bulgaria* – CEACR, direct request, 2005.

[925] See, for example, *Fiji* – CEACR, direct request, 2011; *Iceland* – CEACR, direct request, 2010; *Indonesia* – CEACR, observation, 2011; *Japan* – CEACR, direct request, 2005; *Lesotho* – CEACR, observation, 2011; *Latvia* – CEACR, direct request, 2009; and *Norway* – CEACR, direct request, 2001. In its report supplied under art. 19 of the ILO Constitution, the Government of Saudi Arabia indicates that its legislation provides for a minimum age of 13 years for light work. Furthermore, some member States have specified a minimum age for admission to light work of 14, and not 13 years, even if their general minimum age for admission to employment or work is 15 years. See, for example, *Madagascar* – CEACR, direct request, 2008 (the Committee took note of the Government's information with interest); and *Turkey* – CEACR, direct request, 2006.

[926] See, for example, *Albania* – CEACR, observation, 2011; *Argentina* – CEACR, observation, 2009; *Armenia* – CEACR, direct request, 2011; *Azerbaijan* – CEACR, direct request, 2011; *Belarus* – CEACR, direct request, 2006; *Lithuania* – CEACR, direct request, 2004; *Malta* – CEACR, direct request, 2007; *Russian Federation* – CEACR, direct request, 2010; *Tajikistan* – CEACR, direct request, 2010; and *Ukraine* – CEACR, observation, 2010.

[927] See, for example, *Belize* – CEACR, direct request, 2011; *Cambodia* – CEACR, direct request, 2009; *Côte d'Ivoire* – CEACR, direct request, 2009; *El Salvador* – CEACR, direct request, 2007; *Mauritania* – CEACR, direct request, 2010; *Peru* – CEACR, direct request, 2009; *Uganda* – CEACR, direct request, 2010; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2004. In *Benin* – CEACR, direct request, 2011, where the minimum age for light work was initially 12 years, the Committee noted the Government's indication that it was envisaging increasing this minimum age to 13 years with the imminent adoption of a draft order.

minimum age for admission to light work of 12 years or less. In these cases, the Committee emphasizes that the governments in question should take the necessary measures to amend their legislation in order to ensure that the age for admission to light work is in conformity with *Article 7(1)* of the Convention, that is to say 13 years. [928] As a result, in *Mali*, [929] the Government indicated that it undertook to raise the minimum age for domestic work and light work of a seasonal nature from 12 to 13 years, and in *Austria*, [930] the Committee noted with interest that draft legislation proposes to raise the minimum age for light work and occasional work from 12 to 13 years.

Absence of a lower minimum age for light work

393. Many member States do not provide for a lower minimum age for light work. [931] In some cases, this is because the country has chosen not to avail itself of the flexibility clause offered by *Article 7* and does not regulate employment in these types of work. [932] However, in others, the country does choose to regulate light work for children under the general minimum age for admission to employment or work, but simply does not specify the minimum age required for children to become engaged in these types of work. In these cases, the Committee underlines that governments must take measures to ensure that the national legislation establishes a minimum age for admission to light work, in conformity with the Convention. [933] Some member States have responded positively, including in *Argentina*, where the Committee took note with satisfaction that section 189bis(1) of the Act on labour contracts, as added by the Act on the prohibition of child labour and protection of young workers, establishes that young persons aged over 14 years and less than 16 years may be employed in certain types of light work. [934]

394. ***While member States are generally not required to do so, adopting legislation regulating light work for children under the minimum age for admission to employment or work is encouraged by the Committee to ensure that children who in***

[928] See, for example, *Burkina Faso* – CEACR, direct request, 2009; *Burundi* – CEACR, direct request, 2010; *Dominica* – CEACR, observation, 2011; *Guinea* – CEACR, direct request, 2010; *Mozambique* – CEACR, direct request, 2010; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Seychelles* – CEACR, direct request, 2010; and *Viet Nam* – CEACR, direct request, 2010.

[929] *Mali* – CEACR, direct request, 2010.

[930] *Austria* – CEACR, observation, 2011.

[931] In its report supplied under art. 19 of the ILO Constitution, the Government of Australia provided information on the legislation pertaining to the employment of children in light work activities in several provinces, according to which there is no minimum age for light work in New South Wales, South Australia, Victoria, Tasmania, the Northern Territory, and the Australian Capital Territory. In the report supplied by Canada under art. 19, several provinces seem to regulate light work without providing a minimum age for admission. Moreover, in its report supplied under art. 19, New Zealand indicated that it does not provide a minimum age for light work, although a number of provisions restrict the employment of young persons in such activities.

[932] See, for example, *Brazil* – CEACR, direct request, 2005; *China* – CEACR, direct request, 2006; *Oman* – CEACR, direct request, 2008; and *Serbia* – CEACR, direct request, 2008.

[933] See, for example, *Angola* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Grenada* – CEACR, direct request, 2009; *Malaysia* – CEACR, observation, 2010; *Nigeria* – CEACR, direct request, 2010; *Pakistan* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; and *Swaziland* – CEACR, direct request, 2007.

[934] *Argentina* – CEACR, observation, 2009. See also *Papua New Guinea* – CEACR, direct request, 2010 (the Government indicated that it was envisaging amending its legislation in order to raise the minimum age for light work from 11 to 13 years). In *Slovakia* – CEACR, direct request, 2006, the Committee noted the Government's statement that a proposal was being submitted to Parliament to supplement a section of the Labour Code which allowed light work, but did not indicate a minimum age. In the *United Kingdom* – CEACR, direct request, 2006, the Government confirmed, at the Committee's request, that by virtue of section 135 of the Children (Northern Ireland) Order, 1995, children under 13 years of age shall not be employed in light work.

practice work under the minimum age are better protected. Indeed, the Committee has invited certain governments to take measures to avail themselves of the option provided for by Article 7 of the Convention in light of large numbers of children under the minimum age engaged in economic activity in practice. [935] In some cases, member States have responded positively and have taken the Committee's comments into consideration, including in *Paraguay*, where the Committee noted the Government's indication that the National Committee for the Prevention and Elimination of Child Labour and the Protection of the Work of Young Persons considered necessary the determination of light work and that a debate on the issue would take place in 2010. [936]

Determination of the types and conditions of light work activities

Types of light work activities

395. By virtue of *Article 7(3)* of the Convention, the competent authority shall determine the activities in which employment or work may be permitted for children 13–15 years (or 12–14 years) of age. When determining types of light work, member States have frequently specified the following: [937]

(a) agricultural work, such as the gathering of flowers, herbs, mushrooms or fruit; picking, gathering, or sorting work performed in agricultural undertakings; harvesting; manual husking of fruits and seeds, the sorting of vegetable products; gardening and weeding; preparing, cleaning and packaging in small packets; picking tobacco; providing fodder and water to animals;

(b) domestic work, such as light domestic tasks corresponding to the work of a kitchen assistant, assistant cook, houseboy or childminder; errand running;

(c) work in commercial enterprises, such as shelving or pricing; work as a shop assistant, as well as service work, such as dishwashing or serving tables; clerical and cleaning work; the delivery of newspapers, milk, groceries, foodstuffs, flowers or drapery goods;

(d) work in undertakings other than industrial undertakings, such as establishments, businesses or undertakings engaged in the sale and distribution of goods; administrative services; newspaper production and publication; the operation of hotels, restaurants and other places of public entertainment.

[935] See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Cameroon* – CEACR, direct request, 2007; *Comoros* – CEACR, direct request, 2010; *Eritrea* – CEACR, observation, 2011; *Gambia* – CEACR, direct request, 2010; *Iraq* – CEACR, direct request, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Mongolia* – CEACR, observation, 2010; *Montenegro* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; *South Africa* – CEACR, direct request, 2010; *Sudan* – CEACR, direct request, 2010;; and *Trinidad and Tobago* – CEACR, direct request, 2011. In *Czech Republic* – CEACR, direct request, 2011, the Committee noted that no provisions regulate light work for children aged 13–15 years and requested the Government to indicate whether, in practice, children under the age of 15 years are employed in light work activities.

[936] *Paraguay* – CEACR, direct request, 2011. See also *Bahamas* – CEACR, direct request, 2008, where, after previously requesting the Government to provide information on measures envisaged to regulate light work activities considering the important number of children under 14 years who were economically active, the Committee noted that the newly adopted Child Protection Act, 2007, provides that a child under the age of 16 may be employed by the child's parents or guardian in light domestic, agricultural or horticultural work.

[937] *Austria* – CEACR, observation, 2011; *Chad* – CEACR, direct request, 2010; *Congo* – CEACR, direct request, 2010; *Côte d'Ivoire* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Estonia* – CEACR, direct request, 2011; *Guinea* – CEACR, direct request, 2010; *Singapore* – CEACR, direct request, 2010; *Swaziland* – CEACR, direct request, 2007; *Syrian Arab Republic* – CEACR, direct request, 2008; and *United Kingdom* – CEACR, direct request, 2006.

Conditions of light work activities

396. *Article 7(3)* further provides that member States shall prescribe the number of hours during which and the conditions in which light work activities may be undertaken. In this respect, the Committee has consistently referred to Paragraph 13(1) of Recommendation No. 146, which provides that, in giving effect to *Article 7(3)*, special attention should be given to several key indicators, including the strict limitation of the hours spent at work in a day and in a week, the prohibition of overtime, the granting of a minimum consecutive period of 12 hours' night rest, [938] and the maintenance of satisfactory standards of safety and health and appropriate instruction and supervision.

397. The Committee has observed that in many cases member States have adopted legislation providing that the types of light work which children can undertake shall not be likely to be harmful to their health, safety, morals or development, nor such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority, or their capacity to benefit from the instruction received, as required by the Convention. [939] Many have also laid down the hours permitted for light work, namely between two and four-and-a-half hours per day and between ten and 25 hours per week, [940] while others prohibit night work. [941] Certain countries have established that the time spent at school and on light work shall not exceed a certain number of hours per day (four to seven hours) or per week; [942] others prohibit employment in light work during school term time, or permit it only during school holidays. [943] Some countries have established that children may be allowed to perform light work activities by virtue of regulations or permits granted by a certain authority, such as the Ministry of Labour or of Education, labour inspectors or medical officers, [944] only with parental consent, [945] or only within family enterprises. [946]

398. However, in a large number of cases, member States do not provide for all the conditions required by *Article 7* of the Convention when regulating light work. For example, a number of member States have not specified the number of hours during which and the conditions in which children may engage in light work activities, or the

[938] *Art. 2* of the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90), defines the term "night" as a period of at least 12 consecutive hours, and states that, in the case of young persons under 16 years of age, this period shall include the interval between 10 p.m. and 6 a.m.

[939] See, for example, *Botswana* – CEACR, direct request, 2010; *Chile* – CEACR, direct request, 2005; *Kazakhstan* – CEACR, direct request, 2011; *Lebanon* – CEACR, observation, 2010; *Malta* – CEACR, direct request, 2007; *Slovenia* – CEACR, direct request, 2005; *Switzerland* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

[940] See, for example, *Argentina* – CEACR, observation, 2009; *Armenia* – CEACR, direct request, 2011; *Azerbaijan* – CEACR, observation, 2009; *Chad* – CEACR, direct request, 2011; *Switzerland* – CEACR, direct request, 2010; and *Tajikistan* – CEACR, direct request, 2011.

[941] See, for example, *Azerbaijan* – CEACR, observation, 2009; and *Hungary* – CEACR, direct request, 2009.

[942] See, for example, *Botswana* – CEACR, direct request, 2010; *Côte d'Ivoire* – CEACR, direct request, 2009; *Japan* – CEACR, direct request, 2005; *Kyrgyzstan* – CEACR, direct request, 2010; and *Mauritania* – CEACR, direct request, 2010.

[943] See, for example, *Albania* – CEACR, observation, 2011; and *Chad* – CEACR, direct request, 2010.

[944] See, for example, *Barbados* – CEACR, direct request, 2010; *Belize* – CEACR, direct request, 2009; *Chad* – CEACR, direct request, 2010; *Congo* – CEACR, direct request, 2010; *Egypt* – CEACR, direct request, 2005; *Guatemala* – CEACR, direct request, 2009; and *Singapore* – CEACR, direct request, 2010.

[945] See, for example, *Côte d'Ivoire* – CEACR, direct request, 2009; *Hungary* – CEACR, direct request, 2009; *Republic of Korea* – CEACR, direct request, 2006; and *Kyrgyzstan* – CEACR, direct request, 2010.

[946] See, for example, *Argentina* – CEACR, observation, 2009; *Austria* – CEACR, observation, 2011; and *Sri Lanka* – CEACR, direct request, 2007.

types of light work in which children shall be permitted to be employed, in accordance with *Article 7(3)* of the Convention. The Committee has therefore requested many member States to take measures in order to ensure the protection of children participating in light work activities. [947] As a result, some countries have indicated that they would adopt legislative measures to apply these requirements. [948] The Committee encourages member States to take account, if they have not already done so, of the positive measures enumerated in the preceding paragraph.

Issues of application regarding legislation on light work

399. While it is up to the competent authorities of each member State to determine the conditions and types of light work in which children may be engaged, the Committee is of the view that certain activities or the conditions under which they are exercised do not constitute light work. In these cases, the Committee recalls the indications provided in Paragraph 13(1) of Recommendation No. 146 and expresses the hope that the governments concerned will take measures to determine the appropriate conditions, the number of hours or types of activities which constitute light work. [949]

400. Finally, the Committee has observed that some countries have availed themselves of the possibility of regulating light work by virtue of *Article 7*, but that a large number of children under the general minimum age for employment are found to be working in activities that do not constitute light work. In such cases, the Committee requests the governments concerned to take measures to strengthen the enforcement of their legislation pertaining to light work and to bring their national practice into conformity with the Convention by permitting employment in light work only for children who have reached the age specified for admission to these types of work, and by ensuring that children aged 13–15 (or 12–14) are only engaged in light work activities. [950]

Enforcement and impact

Monitoring mechanisms

401. The Committee wishes to underline the key role the labour inspectorate plays in implementing the Convention as a public authority which monitors compliance with

[947] See, for example, *Albania* – CEACR, observation, 2011; *Angola* – CEACR, direct request, 2011; *Armenia* – CEACR, direct request, 2011; *Azerbaijan* – CEACR, observation, 2011; *Guinea* – CEACR, direct request, 2010; *Kazakhstan* – CEACR, direct request, 2011; *Republic of Moldova* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

[948] See, for example, *Bahamas* – CEACR, direct request, 2009; *Botswana* – CEACR, direct request, 2010; *Cambodia* – CEACR, direct request, 2009; *Jamaica* – CEACR, direct request, 2011; *Kenya* – CEACR, observation, 2010; *Lebanon* – CEACR, observation, 2010; *Lesotho* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2010; *Mauritania* – CEACR, direct request, 2010; *Netherlands (Aruba)* – CEACR, observation, 2010; *Peru* – CEACR, direct request, 2009; *United Republic of Tanzania* – CEACR, direct request, 2010; *Tunisia* – CEACR, direct request, 2010; *Ukraine* – CEACR, observation, 2010; *Yemen* – CEACR, direct request, 2010; *Zambia* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011.

[949] See, for example, *Fiji* – CEACR, direct request, 2011 (the Committee expressed the view that permitting children aged 13–15 to work up to eight hours a day did not constitute light work). In *Georgia* – CEACR, observation, 2011, the Committee, noting that the legislation made it possible for young workers to work from 6 a.m. to 10 p.m. and for about eight hours per day, excluding school hours and night work, urged the Government to take the necessary measures to determine light work activities permitted for children aged 14–16 years and to prescribe the number of hours during which and the conditions in which light work may be undertaken by such persons.

[950] See *Indonesia* – CEACR, observation, 2011; and *Israel* – CEACR, direct request, 2011.

child labour-related provisions in each country. [951] Weak labour inspection machinery not only reduces the likelihood of the detection of violations related to child labour, but also hinders the appropriate punishment of those responsible. [952]

402. The vital role of the labour inspectorate is reflected in Paragraph 14(1) of Recommendation No. 146, which states that measures to ensure the effective application of the Convention should include the strengthening (as necessary) of labour inspection and related services. Moreover, the crucial nature of labour inspection in applying the Convention is reflected in the Committee's frequent references in relation to Convention No. 138 to its comments under the Labour Inspection Convention, 1947 (No. 81), and Convention No. 129. [953]

Good practices: Child labour and labour inspection

Child labour related inspections

403. An encouraging development is the growing number of countries providing child labour training to labour inspectors, [954] or specifically assigning labour inspectors to monitor child labour. An example of this specific training is in *Argentina* where the National Plan for the Prevention and Elimination of Child Labour includes training workshops for labour inspectors. [955] In *Kazakhstan*¸ the National Information Resource Centre on child labour has organized training seminars for state labour inspectors on child labour issues. [956] Moreover, the Committee has noted with interest that in *Turkey*, six action programmes were implemented by the labour inspectorate in collaboration with ILO–IPEC, and that 108 labour inspectors were working full time on child labour. [957] Furthermore, in countries such as *Ecuador* and the *Bolivarian Republic of Venezuela*, specific "child labour inspections" are carried out. [958] In addition, in some member States, the role of the labour inspectorate in combating child labour has expanded beyond monitoring. Labour inspectors may be involved in raising awareness on issues related to child labour, [959] in addition to measures for the rehabilitation of removed child labourers or their reintegration into school. [960]

[951] See, for example, *Georgia* – CEACR, observation, 2011 (the Committee expressed concern that, following the abolishment of the labour inspectorate, there existed no public authority to monitor the implementation of child labour-related provisions in the country).

[952] *Pakistan* – CEACR, observation, 2011.

[953] See, for example, *Comoros* – CEACR, direct request, 2010; *Egypt* – CEACR, observation, 2011; *Nigeria* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

[954] Paragraph 14(1) of Recommendation No. 146 states that the strengthening of the labour inspectorate can take place through the special training of inspectors to detect abuses in the employment or work of children and young persons and to correct such abuses.

[955] *Argentina* – CEACR, observation, 2011.

[956] *Kazakhstan* – CEACR, direct request, 2011.

[957] *Turkey* – CEACR, observation, 2006.

[958] *Ecuador* – CEACR, observation, 2009; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[959] See, for example, *Benin* – CEACR, direct request, 2011. In addition, the Government of Australia, in its report submitted under art. 19 of the Constitution, indicated that the Industrial Inspectorate in Western Australia implemented an education campaign relating to employment of under-age labour. The Government of Bangladesh also indicated in its report submitted under art. 19 that the Department of Inspection for Factories and Establishments implements preventive measures, such as motivational measures and counselling.

[960] *Jordan* – CEACR, observation, 2011.

Employers' registers

404. One important tool used by labour inspectors to monitor the employment of young persons is employers' registers of employment. These registers (or similar documents) are required under *Article 9(3)* of the Convention and should contain the names and ages (or dates of birth) of all persons employed under the age of 18. These registers are to be made available to labour inspectors, and consulting these registers may aid labour inspectors in the detection of violations related to child labour. In some countries, these registers are sent directly to the labour inspectorate. [961] In countries where such records are kept, but not made available to inspectors, the Committee emphasizes that these registers must be made available. [962]

Collaboration with other bodies

405. Paragraph 14(3) of the Recommendation states that the labour administration services should work in close cooperation with the services responsible for the education, training, welfare and guidance of children and young persons. In this regard, the Committee wishes to emphasize that cooperation with other bodies, including teachers and health professionals, may help to strengthen the effectiveness of the labour inspectorate in detecting and eliminating child labour. For example, in *Italy*, the General Directorate for Inspection collaborates with the local authorities, social services, schools and police forces to monitor child labour in areas where this phenomenon is most prevalent. [963]

Role of the social partners

Trade unions and employers' organizations alike have an important role to play in bringing to light activities where child labour occurs. In this respect, the Committee highlights that full respect for organizational rights in all sectors provides an important cross-cutting impact between the fundamental Conventions on freedom of association and efforts to combat child labour. It is therefore opportune to draw attention to the positive trend in the collaboration between the labour inspectorate and the social partners to better address child labour. For example, in *Albania*, the local action committees of the child labour monitoring system include labour inspectors, as well as trade unions and employment officers. [1] In *Kazakhstan*, the Ministry of Labour and Social Security conducted nationwide mass action against child labour, including planned investigations by inspection agencies with the participation of trade unions, and this action resulted in the detection and remedying of several child labour violations. [2] Moreover, the Government of Australia indicates, in its report submitted under article 19 of the ILO Constitution, that in New South Wales the body responsible for inspecting child labour in the state frequently meets with employers to discuss child labour compliance issues.

[1] *Albania* – CEACR, direct request, 2009. [2] *Kazakhstan* – CEACR, direct request, 2011.

Labour inspectorate and data dissemination

406. The labour inspectorate also plays an additional role of collecting and disseminating essential information on child labour violations, which is useful in assessing the implementation of the Convention. [964] Accordingly, the Committee

[961] *Romania* – CEACR, observation, 2010.

[962] *Indonesia* – CEACR, observation, 2011.

[963] *Italy* – CEACR, direct request, 2010.

[964] See, for example, *Albania* – CEACR, observation, 2011; and *Croatia* – CEACR, direct request, 2011.

consistently requests governments to provide information in their reports submitted under article 22 of the ILO Constitution on the number of inspections, the number and nature of violations detected relating to child labour (disaggregated, where possible, by sex and age) and the penalties applied. The reception of such information has allowed the Committee to make a more complete assessment of the application of the Convention. [965]

Strengthening the effectiveness of the labour inspectorate

407. Increasingly, governments are identifying the weak capacity of the labour inspectorate as a major barrier to the effective implementation of the Convention. [966] This lack of capacity is generally attributed to a lack of financial and human resources. [967] These limitations may also severely hamper the capacity of the labour inspectorate to monitor child labour in particular regions or sectors. The Committee is of the view that the inability of the labour inspectorate to monitor outside a given area (such as outside the state capital) is particularly problematic when child labour is concentrated in regions [968] or sectors [969] outside the coverage of the labour inspectorate. In such cases, the Committee emphasizes the importance of ensuring that the labour inspection system effectively monitors working children in all areas and sectors. [970] However, it is important to underline that the weak capacity of the labour inspectorate is not only caused by limited resources; the Committee has, on several occasions, noted with concern indications from the social partners that labour inspection is ineffective in some countries due to corruption. [971]

408. ***Moreover, in some countries the data from the labour inspectorate does not accurately reflect the prevalence of child labour in the country, due to a weak inspection system. Statistical studies indicate that child labour exists in a country, although the labour inspection has yet to detect any related violations.*** [972] ***To address all of these weaknesses, the Committee has systematically called on governments to take the necessary measures to adapt and strengthen the labour inspection services in***

[965] See, for example, *Egypt* – CEACR, observation, 2010; *Republic of Korea* – CEACR, direct request, 2010; *Pakistan* – CEACR, direct request, 2010; *Romania* – CEACR, observation, 2010; and *Viet Nam* – CEACR, direct request, 2010.

[966] For example, the Committee noted the indication by the Government of *Sudan* that the weak labour inspectorate contributed to the difficulty in applying the Convention. *Sudan* – CEACR, direct request, 2010.

[967] For example, the Committee noted the indication by the Government of *Netherlands (Aruba)* that control and enforcement of the labour legislation by labour inspectors was weak due to regulatory and financial challenges, and that labour inspection had not revealed any cases of child labour. The Government of *Saint Vincent and the Grenadines* indicated that the insufficient number of labour inspectors had limited the number of inspections conducted every year. In *Uruguay*, the Committee noted the Government's indication that one of the two main institutions responsible for monitoring the application of the Convention faced a shortage of human resources and had only five inspectors covering the entire country. See *Netherlands (Aruba)* – CEACR, observation, 2010; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; and *Uruguay* – CEACR, direct request, 2010.

[968] For example, in *Mozambique*, the Committee has noted that the labour inspectorate does not have the capacity to monitor areas outside the country's capital. See *Mozambique* – CEACR, direct request, 2010.

[969] Regarding sectors outside the reach of the labour inspectorate, reference may be made to child labour in the informal economy and in the agricultural sector.

[970] See, for example, *Albania* – CEACR, observation, 2011; and *Colombia* – CEACR, observation, 2011.

[971] See *China* – CEACR, observation, 2011 (the Committee noted the ITUC's allegation that collusion between private enterprises and local officials resulted in factory owners receiving advance warning of inspections, allowing the owners to hide working children or give the children the day off, which renders inspections meaningless). See also *Pakistan* – CEACR, observation, 2011.

[972] See, for example, *Cameroon* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *Serbia* – CEACR, direct request, 2010.

order to improve their capacity to detect cases of child labour. [973] ***This is particularly important in countries where the legislation complies with the Convention, but the application of the Convention in practice is weak. Due to the importance of the labour inspectorate in applying the Convention, the Committee has, in cases where limited resources contribute to the weakness of the labour inspectorate, encouraged the allocation of additional resources to address the capacity of this institution.*** [974] ***Moreover, in cases where labour inspectors do not appear to have adequate sensitivity to child labour issues, the Committee has called on governments to take measures to ensure that labour inspectors have received adequate training in this area.*** [975]

409. In addition to the detection of cases of child labour, a strong labour inspectorate is crucial for the effective application of penalties for violations related to child labour. This complementary role is reflected in the case of *Mauritius*, where the Committee has noted with interest that the Labour and Industrial Relations Officers undertook systematic inspections at all places of work, including the formal and informal sectors of employment, and that where cases of child labour were detected, criminal action was taken against the offenders, including the application of appropriate penalties. [976] As labour inspectors on the ground are often responsible for imposing the penalties contained in legislation, laxity in this regard jeopardizes the implementation of the Convention. For example, in some countries, labour inspectors offer advice upon the detection of violations related to child labour, rather than applying penalties. [977] In this regard, the Committee emphasizes the importance of ensuring that child labour violations detected by the labour inspectorate are met with appropriate penalties.

Penalties

410. *Article 9(1)* of the Convention requires that all necessary measures, including the provision of appropriate penalties, be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention. While the adoption of national legislation is essential as it establishes a framework within which society determines its responsibilities with regard to young persons, even the best legislation only takes value when it is applied effectively. [978] Moreover, Paragraph 15(a) of Recommendation No. 146 specifies that special attention should be paid to the enforcement of provisions concerning employment in hazardous types of employment or work.

[973] See, for example, *Netherlands (Aruba)* – CEACR, observation 2010; *Lesotho* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *Uganda* – CEACR, direct request, 2010.

[974] See, for example, *Mozambique* – CEACR, direct request, 2010.

[975] See, for example, *Armenia* – CEACR, direct request, 2011.

[976] *Mauritius* – CEACR, observation, 2010.

[977] For example, in *Morocco* – CEACR, observation, 2010, the Committee has noted that labour inspectors provide advice and information to employers on the dangers of child labour before resorting to penalties. Similarly, the Committee has noted that, in *Jordan* – CEACR, observation, 2011, the great majority of child labour violations detected in the course of investigations did not result in penalties, but in advice and guidance, and that inspectors often handled child labour cases informally rather than issuing citations and fines.

[978] *Fundamental rights at work and international labour standards* (Geneva, ILO, 2003), p. 102.

Adopting appropriate penalties to ensure the effective enforcement of the Convention

Penalties for violations of the prohibitions on minimum age and hazardous work

411. Many countries have adopted penalties that have been deemed appropriate by the Committee, and these have been provided for in a wide range of ways – through the application of labour and/or penal legislation, resulting in fines and/or administrative penalties and/or prison sentences. [979] For example, in *Côte d'Ivoire*, the Committee noted with satisfaction that, under section 19 of Act No. 2010-272 of 30 September 2010, anyone who has a child in their care or supervises a child if they are in charge of the child's education or his or her intellectual development or vocational training, who knowingly forces or allows that child to carry out hazardous work, shall be liable to a prison sentence of between one and five years. [980] In *Grenada*, the Committee observed that section 35 of the Employment Act establishes that any person who contravenes section 32 of this Act, which pertains to the prohibition of child labour, commits an offence and is liable on summary conviction to a fine not exceeding US$10,000 or to a term of imprisonment not exceeding three years, or both. [981]

Penalties for non-enrolment and non-attendance at school

412. Some countries have also adopted penalties to which parents may be liable when their children are not enrolled or do not attend school. For example, the Committee noted that an Education Bill, subsequently enacted as the Education Act, makes primary school free and compulsory in *Lesotho*, and that this Bill includes sanctions for parents if they do not send their children to school. [982] Similarly, the Education Act of *Jamaica* imposes fines or penalties of imprisonment in case of violations of the provisions regarding compulsory education, and in *Morocco*, the Dahir of 13 November 1963 on compulsory

[979] See, for example, *Belize* – CEACR, direct request, 2006; *Brazil* – CEACR, direct request, 2005; *Central African Republic* – CEACR, observation, 2010; *China (Macau Special Administrative Region)* – CEACR, direct request, 2005; *Djibouti* – CEACR, direct request, 2009; *Egypt* – CEACR, direct request, 2005; *El Salvador* – CEACR, direct request, 2005; *Estonia* – CEACR, direct request, 2011; *Fiji* – CEACR, direct request, 2006; *Hungary* – CEACR, direct request, 2009; *Israel* – CEACR, direct request, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Lebanon* – CEACR, direct request, 2008; *Lithuania* – CEACR, direct request, 2002; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Mauritania* – CEACR, direct request, 2005; *Republic of Moldova* – CEACR, direct request, 2010; *Montenegro* – CEACR, direct request, 2010; *Oman* – CEACR, direct request, 2008; *Qatar* – CEACR, direct request, 2009; *Romania* – CEACR, direct request, 2004; *Senegal* – CEACR, direct request, 2006; *Serbia* – CEACR, direct request, 2006; *Singapore* – CEACR, direct request, 2008; *Sri Lanka* – CEACR, direct request, 2004; *Sudan* – CEACR, direct request, 2007; *Thailand* – CEACR, direct request, 2010; *Trinidad and Tobago* – CEACR, direct request, 2009; *Turkey* – CEACR, observation, 2006; *United Arab Emirates* – CEACR, direct request, 2010; *United Republic of Tanzania* – CEACR, direct request, 2007; and *Viet Nam* – CEACR, direct request, 2006. In its report submitted under art. 19 of the ILO Constitution, the Government of Australia provided information about a variety of penalties to which persons who violate the laws pertaining to the employment of children, such as the minimum age for admission to work and the prohibition of hazardous work, are liable according to each province's legislation, and which are accumulated through a system of penalty units. Similarly, in its report submitted under art. 19, the Government of the United States indicated that for child labour violations, employers are subject to a civil monetary penalty of up to US$11,000 per worker for each violation of the child labour provisions. In addition, employers are subject to a civil monetary penalty of US$50,000 for each violation that causes the death or serious injury of any minor employee – such penalties may be doubled, up to US$100,000, when the violations are determined to be wilful or repeated.

[980] *Côte d'Ivoire* – CEACR, observation, 2011.

[981] *Grenada* – CEACR, direct request, 2007.

[982] *Lesotho* – CEACR, observation, 2011.

schooling, as amended by Act No. 04.00 of 25 May 2000, requires parents to enrol their children in school, failing which they face penalties. [983]

Issues of application regarding penalties

Absence of penalties in national legislation

413. Certain countries have indicated that, according to their legislation, persons who violate the national provisions giving effect to the Convention commit an offence, but their legislation has not established the specific penalties applicable in cases of violation, or has not provided penalties for every potential child labour offence. In these cases, the Committee has requested the governments concerned either to indicate the provisions which establish penalties for breaches of the provisions giving effect to the Convention, [984] or to take measures to establish such penalties in order to ensure the effective enforcement of the Convention. [985]

Insufficiently deterrent penalties

414. Moreover, while it is up to each country to determine its own penalties, some have established sanctions that are not dissuasive enough to ensure the enforcement of the Convention and deter employers from resorting to child labour, and are therefore inadequate. In such cases, the Committee has requested the governments concerned to take the necessary measures to adopt legislation that will establish appropriate and effective penalties for violations of the provisions relating to child labour. [986] For example, in *Kuwait*, after noting that the fines imposed on employers violating the provisions of Act No. 38 of 1964 on labour in the private sector were low and inviting the Government to take measures to revise and increase those penalties in accordance with *Article 9(1)* of the Convention, the Committee subsequently noted that the draft Labour Law included harsher sanctions than the ones set out in the previous Labour Code. [987] Moreover, in order to assess the adequateness of the penalties established by some member States, the Committee has requested governments to provide information on the application of these penalties in practice in cases of violations of the provisions on the employment of children and young persons, including the number and nature of the

[983] *Jamaica* – CEACR, direct request, 2009; and *Morocco* – CEACR, observation, 2010. Similarly, in its report submitted under art. 19 of the ILO Constitution, the Government of New Zealand indicated that the Education (National Standards) Amendment Act of 2008 introduced increased penalties for non-enrolment and non-attendance at school. Section 24 increases the maximum financial penalty for non-enrolment of compulsory school-age children from NZD$1,000 to NZD$3,000, and section 29 increases the financial penalty for irregular attendance from NZD$150 to NZD$300 for a first offence and from NZD$400 to NZD$3,000 for a second or subsequent offence. Furthermore, an offender of the Health and Safety in Employment Act is liable to a fine up to NZD$250,000.

[984] *Azerbaijan* – CEACR, observation, 2011; *Belarus* – CEACR, observation, 2007; *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, direct request, 2009; and *Paraguay* – CEACR, direct request, 2011. In its report submitted under art. 19 of the ILO Constitution, the Government of Bangladesh indicated that the use of all forms of child labour is prohibited by virtue of section 4 of the Bangladesh Labour Act of 2006 and that the breach of this provision is a punishable offence, as envisaged under section 284 of the Act. The Government of Canada also indicates, in its report under art. 19, that all provincial jurisdictions have appropriate enforcement and penalty provisions under occupational safety and health and employment standards legislation.

[985] *Czech Republic* – CEACR, direct request, 2011.

[986] See, for example, *Bahamas* – CEACR, direct request, 2009; *Burundi* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2010; *Mongolia* – CEACR, observation, 2010; and *Nigeria* – CEACR, direct request, 2010.

[987] *Kuwait* – CEACR, observation, 2008.

penalties imposed. [988] The Committee requests the governments concerned to adopt penalties that are sufficiently dissuasive.

Statistical information

Global picture

Incidence of child labour in the world

The Global Report of 2010 indicates that, in general, child labour in the age group 5–17 years has continued to decline over the last four years. However, the rate of decline has slowed down and child labour was still affecting 215 million children in the world in 2008. In the age group 5–14 years, there were 153 million children engaged in child labour in 2008. [1] Little more than one third of them, that is to say 53 million or 4.3 per cent of all children aged 5–14, were involved in hazardous activities, and approximately 63 million, or 16.9 per cent of all children aged 15–17, were involved in hazardous work. [2] Between 2004 and 2008, a decline of 10 per cent in the number of children aged 5–14 in child labour and a decline of 31 per cent in the number of these children engaged in hazardous work was observed in all regions, [3] except for sub-Saharan Africa. [4] In contrast, the trends for the older age group (15–17 years old) reversed, as child labour in this age group increased globally by 20 per cent between 2004 and 2008. [5] As for regional estimates, the Global Report of 2010 highlights that the Asia and the Pacific region has the largest numbers of child labourers aged 5–17 years (113.6 million), followed by sub-Saharan Africa (65.1 million) and Latin America and the Caribbean (14.1 million). However, in terms of relative extent, the incidence of child labour is more prevalent in sub-Saharan Africa, where one-in-four children and adolescents are child labourers, compared to around one-in-eight in Asia and the Pacific and one-in-ten in Latin America and the Caribbean. [6]

[1] *Accelerating action against child labour*, op. cit., para. 22, and table 1.1. [2] ibid. [3] ibid., para. 24 and table 1.1. [4] ibid., para. 33 and table 1.5. In sub-Saharan Africa, the number of children in employment increased from 49.3 million to 58.2 million between 2004 and 2008. [5] ibid., para. 25 and table 1.1. [6] ibid., para. 30.

Achieving universal primary education by 2015: A global overview [989]

415. The goal of universal primary education by 2015 is a key target of the global community under the umbrella of the Millennium Development Goals. This provides an important opportunity to maximize respect for ILO Conventions with regard to the protection of children. In its General Report in 2009, the Committee devoted a section to highlights relating to Convention No. 138 in which it emphasized that the primary school attendance rate is one of the factors that is bound to influence the situation of children who are compelled to work. In this regard, the Committee has analysed trends in school enrolment, attendance and drop-out rates in respect of children under the minimum age and the relationship between progress towards achieving education for all and the progressive elimination of child labour.

[988] See, for example, *Armenia* – CEACR, direct request, 2011; *Benin* – CEACR, direct request, 2005; *Colombia* – CEACR, observation, 2011; *Cuba* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2010; *Hungary* – CEACR, direct request, 2009; *Latvia* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2011; *Paraguay* – CEACR, direct request, 2011; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; *Swaziland* – CEACR, direct request, 2007; and *Uganda* – CEACR, direct request, 2010.

[989] The information provided in this section is drawn from UNESCO *Education for All Global Monitoring Report 2011: The hidden crisis: Armed conflict and education* (Paris, 2011), pp. 40–41.

416. According to the UNESCO *Education for All Global Monitoring Report 2011*, there has been rapid progress in the past decade towards the goal of universal primary education. [990] Between 1999 and 2008, the net primary enrolment rate increased globally by 7 per cent. However, the rate of progress appears to have slowed down between 2004 and 2009. There were globally 68 million children out of school in 2008 and, despite the progress made in sub-Saharan Africa and South-West Asia, 69 per cent of all out-of-school children still live in these two regions. The 15 countries with the largest out-of-school population of children in 2008 are mostly developing countries, but also include middle-income countries. [991]

General picture of the situation in practice in member States

Measuring the magnitude of child labour

417. Statistical information on the number of children working is available for a considerable number of member States. In most cases, this information is either provided by national child labour or labour force surveys conducted by national institutes of statistics, IPEC–Statistical Information and Monitoring Programme on Child Labour (SIMPOC), IPEC studies, UNICEF Multiple Indicator Cluster Surveys (MICS) or Understanding Children's Work (UCW) country reports. [992] In their reports supplied under article 19 of the ILO Constitution, the Governments of Australia and Bangladesh also indicated that surveys on child labour have been recently conducted.

418. Furthermore, the Committee has recently noted that new surveys were about to be conducted or data compiled in the following countries: *Albania*, *Belize*, *Chile*, *Egypt*, *Malawi*, *Niger*, *Pakistan* and *Zimbabwe*. [993] In the cases of *Mozambique* and *Trinidad and Tobago*, child labour surveys are planned to be conducted in the near future. [994]

419. However, in some countries, the Committee has found that statistical information on the employment of children and young persons is lacking and has therefore encouraged the governments concerned to take the necessary measures to ensure that sufficient up-to-date data on the situation of working children is made available. [995]

[990] Great strides have been made in sub-Saharan Africa and South-West Asia. In the past decade, Sub-Saharan Africa has increased its net primary enrolment ratio by 31 per cent and drop-out rates have decreased by 32 per cent, while the number of out-of-school children has halved in South-West Asia.

[991] These are Bangladesh, *Brazil*, *Burkina Faso*, *Ethiopia*, *Ghana*, India, *Kenya*, *Mozambique*, *Niger*, *Nigeria*, *Pakistan*, *Philippines*, *South Africa*, *Thailand* and *Yemen*.

[992] The UCW Programme is an inter-agency research cooperation initiative involving the ILO, UNICEF and the World Bank.

[993] See *Albania* – CEACR, observation, 2011; *Belize* – CEACR, direct request, 2011; *Chile* – CEACR, direct request, 2011; *Egypt* – CEACR, observation, 2011; *Malawi* – CEACR, observation, 2011; *Niger* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[994] See *Mozambique* – CEACR, direct request, 2010; and *Trinidad and Tobago* – CEACR, direct request, 2011.

[995] See *Chad* – CEACR, direct request, 2010; *Estonia* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2010; *Jamaica* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2011; *Malaysia* – CEACR, observation, 2010; *Republic of Moldova* – CEACR, direct request, 2010; *Netherlands* – CEACR, direct request, 2010; *Paraguay* – CEACR, direct request, 2011; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Sudan* – CEACR, direct request, 2010; *Trinidad and Tobago* – CEACR, direct request, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

Magnitude of child labour

420. With regard to cases of progress, in *Turkey*, the percentage of working children between the ages of 6–14 fell from 8.8 per cent in 1994 to 5.1 per cent in 1999 and to 2.6 per cent in 2006. [996] In *Kenya*, the incidence of child labour decreased from 1.9 million in 1998 to 951,273 in 2005, and in *Nicaragua* child labour has fallen by around 6 per cent since 2000. [997]

421. ***However, in some countries the incidence of child labour is relatively high and often affects one in three children or even more.*** [998] ***Moreover, in a few countries, child labour even affects more than one in two children.*** [999]

422. ***In such cases, the Committee must express its serious concern at the high number of children working under the minimum age and accordingly strongly urges the governments concerned to intensify their efforts to tackle the situation of child labour in the country and put an end to the economic exploitation of children.***

Education

423. The Committee has observed that in some countries more children have been integrated into the educational system in recent years, thus contributing to the fight against child labour. For example, according to the UNESCO 2010 *Education for All Global Monitoring Report*, *Benin* is one of the countries that has made the most rapid progress towards the objective of universal primary education. [1000] The Committee has also observed that the total number of out-of-school children at primary school age has

[996] *Turkey* – CEACR, observation, 2011.

[997] See *Kenya* – CEACR, observation, 2010; and *Nicaragua* – CEACR, observation, 2009.

[998] For example, UNICEF statistics indicate that 29 per cent of children between the ages of 5–14 years are engaged in work in *Togo*. See *Togo* – CEACR, observation, 2011. Recent national surveys have revealed that nearly one third of children under 11 years of age were engaged in child labour out of which two-thirds undertook hazardous activities in *Benin* in 2008; more than 30 per cent of children in the 10–14 age group were economically active in *Madagascar* in 2007; and 31.1 per cent of children aged from 5 to 14 years were involved in economic activity in *Uganda* in 2005. See *Benin* – CEACR, direct request, 2011; *Madagascar* – CEACR, observation, 2010; and *Uganda* – CEACR, direct request, 2010. The *Malawi* MICS for 2006 indicates that over 30 per cent of children between 5 and 14 years, i.e. 1.4 million children, are involved in an economic activity. See *Malawi* – CEACR, observation, 2011. In *Côte d'Ivoire,* approximately 35 per cent of children between 5–14 years were working in 2008 according to UNICEF statistics and, according to ILO statistics for 2000, over 36 per cent of children between 10–14 years of age were economically active in 2000 in *Chad*. See *Côte d'Ivoire* – CEACR, observation, 2011; and *Chad* – CEACR, direct request, 2010. Finally, 42 per cent of children between the ages of 5–14 years were involved in child labour in *Zimbabwe* in 2004 and, according to the ILO–IPEC Rapid Assessment Survey, 68 per cent of child agricultural workers surveyed and 53 per cent of child domestic workers surveyed were 14 years old and younger. See *Zimbabwe* – CEACR, observations, 2008 and 2011.

[999] This is particularly the case of *Cameroon*, where 51 per cent of children aged 10 to 14 years are working according to a national survey on child labour published in 2008; *Central African Republic*, where 57 per cent of children between the ages of 5 and 14 years are engaged in work according to UNICEF statistics for 2007; *Mali*, where the National Survey Report on child labour of 2005 shows that 65.4 per cent of children between the ages of 5 and 14 years are engaged in work; and *Ethiopia*, where the Committee has noted with serious concern that according to a National Child Labour Survey of 2001, 84.5 per cent of the child population were engaged in economic activities and 81.2 were under the age of 15. See *Cameroon* – CEACR, observation, 2011; *Central African Republic* – CEACR, observation, 2010; *Mali* – CEACR, direct request. 2010; and *Ethiopia* – CEACR, observation, 2010.

[1000] See *Benin* – CEACR, direct request, 2011.

dropped from 1,574,000 children in 1999 to 954,000 in 2006 in *Mozambique* and from 3.4 per cent in 1998 to 1.6 per cent in 2008 in *Tunisia*. [1001]

Differences in enrolment rates between boys and girls

424. Even though important advances have been registered in the past decade, the situation remains alarming and a large number of countries are far from reaching the goal of universal primary education by 2015. Among the difficulties observed, the Committee has noted that there is an important gap between school enrolment ratios for girls and boys. [1002]

Enrolment rates in primary and secondary education and out-of-school children

425. In other countries, while the enrolment rate in primary education is relatively high, in secondary education it is very low, even though children of secondary education age may be under the minimum age for admission to employment or work. [1003] Finally, in some countries a very high proportion of school-age children are not attending school. [1004]

426. Considering that free and compulsory education is one of the most effective means of combating child labour, the Committee calls on the governments concerned to take the necessary measures to improve the functioning of the education system, in particular by increasing school enrolment and attendance rates of both boys and girls under the minimum age for admission to employment or work at the primary as well as the secondary level, so as to prevent the engagement of these children in child labour.

[1001] See *Mozambique* – CEACR, direct request, 2010; and *Tunisia* – CEACR, direct request, 2010.

[1002] This is the case in *China*, where two-thirds of non-enrolled school-age children are girls; in *Côte d'Ivoire*, where the net school attendance rate in primary education is 66 per cent for boys compared to 57 per cent for girls and 32 per cent for boys in secondary school compared to only 22 per cent for girls; and in *Yemen*, where the overall gross enrolment rate was 83 per cent for boys, and only 64 per cent for girls in 2007–08. See *China* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; and *Yemen* – CEACR, direct request, 2010.

[1003] This was found in *Mauritania*, where only 15 per cent of girls and 16 per cent of boys are enrolled in secondary education, and in *Uganda*, where the net enrolment rate in primary education is 95 per cent, while the net enrolment rate in secondary education is only 23.5 per cent. See *Mauritania* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2010.

[1004] For example, in *Lesotho*, where there were approximately 100,000 out-of-school children between the ages of 6–12 in 2007; in *Philippines*, where the number of children who are not able to go to school is increasing and is estimated at 4.2 million; and in *Oman*, where the total number of out-of-school children rose from 61,000 in 1999 to 82,000 in 2006. See *Lesotho* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2010; and *Oman* – CEACR, observation, 2010.

Chapter 2

Worst Forms of Child Labour Convention, 1999 (No. 182)

Introduction

427. Eliminating the worst forms of child labour is a universal absolute. It raises the challenge of immediacy, activating the range of fundamental rights encompassed by this Survey. For instance, freedom of association and collective bargaining are at the heart of facilitating a participatory approach to tackling the worst forms of child labour. Moreover, there are forms of child labour that are tantamount to forced labour, and fall into the category of the worst forms that are to be prohibited and eliminated. This is further advanced by the principles of non-discrimination and equality to offer an umbrella of protection for all.

428. The unanimous adoption of Convention No. 182 by the Conference in 1999 reflected tripartite consensus and commitment among ILO constituents that certain forms of child labour demanded urgent and immediate action for their prohibition. This milestone was the culmination of an in-depth examination and numerous consultations, aimed at creating a Convention with universal applicability and guaranteed relevance. The speed of ratification of Convention No. 182, which has received 174 ratifications to date, is unparalleled in the history of ILO standards-related activities. Undoubtedly, this reflects a major political will to eradicate child labour, especially its worst forms.

Defining the worst forms of child labour – *Article 3* of Convention No. 182

Convention No. 182 enumerates in detail in *Article 3* the types of work which constitute the worst forms of child labour. The Convention sets forth the principle that these forms of child labour cannot be tolerated by member States, whatever their level of development or national circumstances, and therefore cannot be subject to progressive elimination.[1]

***Article 3* of Convention No. 182**

For the purposes of the Convention, the term ***the worst forms of child labour*** comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

[1] *Child labour*, Report IV(2A), ILC, 87th Session, Geneva, 1999, Office commentary, p. 34. This is in contrast to the approach taken in Convention No. 138, which aims to progressively eliminate child labour and raise the minimum age for admission to employment.

429. Under *Article 1* of the Convention, each "Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency." The measures taken must ensure not only the prohibition of the worst forms of child labour in law, but also their elimination in practice. The Convention therefore takes a holistic approach to combating the worst forms of child labour, and its preamble states that the effective elimination of the worst forms of child labour requires both immediate and comprehensive action. [1005] This complex instrument therefore encompasses penal law, labour law and programmatic components, requiring member States to take action on all of these fronts.

430. The Convention is unique in view of the central importance given to programmatic initiatives: implementing such measures is essential for the full application of the Convention, in conjunction with appropriate legislative action. In this regard, *Article 6* of the Convention states that Members shall design and implement programmes of action to eliminate as a priority the worst forms of child labour. [1006] The adoption of the Convention resulted in the formulation of programmes of action to combat the worst forms of child labour in a large number of member States. Between 2006 and 2009, the Committee noted the adoption of over 90 national plans of action. [1007] Special national action plans for the elimination of the worst forms of child labour have been adopted in a wide range of member States. [1008]

431. Moreover, consistent with the holistic approach of Convention No. 182, *Article 7(2)* requires member States to take effective and time-bound measures to address the worst forms of child labour, taking into account the importance of education in eliminating child labour. These time-bound measures complement legislative action, and are often taken within the context of ***time-bound programmes (TBP)***. The ***TBP*** approach is a

[1005] Preamble of Convention No. 182.

[1006] Pursuant to *Art. 6(2)*, such programmes shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate. Moreover, Para. 2 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190) indicates that this can include taking into consideration the views of children directly affected by the worst forms of child labour and their families. In this regard, the Committee has urged several governments that are designing or revising a national action programme to ensure child participation in the process. See, for example, *Angola* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2011.

[1007] *Accelerating action against child labour*, op. cit., fig. 1.10. This may include not only plans of action to combat the worst forms of child labour, but also plans to combat child labour in all its forms.

[1008] See, for example, *Cambodia* – CEACR, direct request, 2011; *Cape Verde* – CEACR, direct request, 2011; *Colombia* – CEACR, direct request, 2011; *Costa Rica* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2008; *Ghana* – CEACR, direct request, 2011; *Indonesia* – CEACR, observation, 2011; *Jordan* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2008; and *Thailand* – CEACR, direct request, 2011.

means developed by ILO–IPEC to assist countries in fulfilling their obligations to take time-bound measures under the Convention. ***TBPs*** are composed of integrated and coordinated policies and programmes to prevent and eliminate a country's worst forms of child labour within a defined period of time, usually ranging from five to 15 years. They address the root causes of child labour, linking action against child labour with the national development effort, with particular emphasis on economic and social policies to combat poverty and to promote universal basic education and social mobilization. [1009]

432. Convention No. 182 is the most recent of the fundamental Conventions, and this is the first time the Convention has been examined in a General Survey. While much progress has been made since the adoption of the Convention, the worst forms of child labour persist in both developed and developing countries around the world. The number of children in hazardous work, often used as a proxy for measuring the extent of the worst forms of child labour, is today approximately 115 million children. This chapter examines the remaining challenges for the full implementation of the Convention, as well as the important trends in its application, in both law and practice, and its significant impact in the relatively short period of time since its adoption.

Scope and methods of application

Scope of application

433. Convention No. 182 has a broad scope of application, applying to all children under 18 years of age. Specifically, *Article 2* of the Convention specifies that for the purposes of the Convention, "the term 'child' shall apply to all persons under the age of 18". The Convention focuses very specifically on only the most extreme forms of child labour (that is the worst forms), and this narrow focus permits a wide scope of application to all children. [1010] The Convention therefore applies equally to boys and girls, citizens and non-citizens, employed and self-employed children, as well as legal and illegal work. Unlike Convention No. 138, which contains several flexibility clauses, Convention No. 182 does not permit exceptions. This is a reflection of the principle underlying the Convention that certain forms of child labour are so intolerable that there can be no exceptions to this age. [1011] Moreover, the definitions of the worst forms of child labour outlined in *Article 3(a)–(c)* are universal and apply uniformly in all countries that have ratified the Convention.

434. Pursuant to *Article 4(1)*, the determination of the types of hazardous work is done by each State, after consultation with the employers and workers concerned. While Recommendation No. 190 provides guidelines on what types of work should be included in this determination, the types of prohibited hazardous work differ from country to country, based on the determination by the competent authority. In this regard, work identified as hazardous (and therefore a worst form of child labour) in one country may not be defined as a worst form of child labour in another. This allows member States to

[1009] Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), 99th Session, Geneva, 2010, General Report, para. 68.

[1010] *Child labour*, 1999, op. cit., p. 19 (Office commentary).

[1011] ibid., p. 39 (Office commentary). It is also important to underline that the minimum age of 18 for these worst forms does not imply that any of these forms of labour are tolerable for persons over 18. The Convention addresses only the prohibition of these forms for children, and should not be interpreted as indicating that these forms of labour are acceptable for adults (i.e. persons over the age of 18). See *Child labour*, Report VI(2), ILC, 86th Session, Geneva, 1998, p. 41.

take account of national circumstances which may make certain types of work hazardous, and to adapt the scope of the Convention accordingly. [1012]

435. The Convention's geographical scope of application is not explicitly addressed in the Convention, unlike that of Convention No. 138. [1013] While the Convention is implemented through national legislation, and within national territories, the Committee has also observed several underlying elements of extra-territorial application. This includes the growing trend of countries which are enacting legislation providing for the liability of national citizens who engage children in the worst forms of child labour outside the national territory. This possibility is envisaged in Paragraph 15(d) of Recommendation No. 190. [1014] For example, the Committee has noted with interest that section 376C of the Penal Code of *Singapore* makes it an offence for any Singaporean citizen, or a permanent resident of *Singapore*, to obtain for consideration the sexual services of a person under 18 years of age outside *Singapore*. [1015] In addition, the Committee has noted that many States engage in significant international cooperation for the purpose of combating the worst forms of child labour, in conformity with *Article 8* of the Convention, and that this facilitates the effective application of the Convention both inside and outside a State's own national territory.

Methods of application

436. The Convention takes a holistic approach to combating the worst forms of child labour, and is therefore applied by a combination of legislative, policy and programmatic measures (in particular, effective and time-bound measures), in addition to international cooperation initiatives.

437. The immediate prohibition of the worst forms of child labour (pursuant to *Articles 1 and 3* of the Convention) is predominantly applied by member States through legislation. In some countries, specific acts have been adopted for the purpose of implementing the Convention. For example, the Committee noted with satisfaction the adoption in *Côte d'Ivoire* of Act No. 2010-272 prohibiting trafficking and the worst forms of child labour, and it noted with interest the adoption in the *Philippines* of an Act providing for the elimination of the worst forms of child labour (Act No. 9231). [1016] Nonetheless, the main legislation used in most countries to implement *Article 3* of the Convention is criminal law, [1017] particularly for the offences enumerated in *Article 3, clauses (a)–(c)*. In many countries, this penal legislation is supplemented by specific acts prohibiting trafficking, [1018] sexual offences [1019] and drug offences, [1020] which play an

[1012] *Child labour*, 1999, op. cit., p. 65 (Office commentary).

[1013] For example, *Art. 2(1)* of Convention No. 138 provides that ratifying States shall specify "a minimum age for admission to employment or work within its territory and on means of transport registered in its territory".

[1014] Para. 15(d) of Recommendation No. 190 states that measures for the abolition of child labour could include providing for the prosecution in their own country of the Member's nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour, even when these offences are committed in another country.

[1015] *Singapore* – CEACR, direct request, 2010. See also paras 542–546 below.

[1016] *Côte d'Ivoire* – CEACR, observation, 2011; and *Philippines* – CEACR, observation, 2008.

[1017] See, for example, *Armenia* – CEACR, direct request, 2011; *Colombia* – CEACR, direct request, 2011; *Israel* – CEACR, direct request, 2011; and *Lao People's Democratic Republic* – CEACR, direct request, 2010.

[1018] See, for example, *Argentina* – CEACR, observation, 2011 (Act No. 26.364 of 2008 on the prevention of trafficking); *Ghana* – CEACR, direct request, 2011 (Human Trafficking Act); and *Jordan* – CEACR, observation, 2011 (Prevention of the Trafficking in Persons Act (Act No. 9 of 2009)).

[1019] See, for example, *Jamaica* – CEACR, direct request, 2011 (Child Pornography (Prevention) Act); and *United Kingdom* – CEACR, direct request, 2011 (Sexual Offences Act).

important role in implementing *Article 3, clauses (a), (b) and (c)*, respectively. Military or defence legislation also often contains provisions prohibiting the recruitment of persons under 18 into the armed forces, as stipulated in *Article 3, clause (a)*. [1021] Child protection acts may also be important legislative texts for the implementation of the Convention containing provisions prohibiting the worst forms of child labour, [1022] in addition to provisions establishing child protection agencies. [1023] The prohibition of hazardous work (pursuant to *Article 3, clause (d)* of the Convention) is generally contained in the Labour Code or in related regulations. [1024]

438. The Committee wishes to emphasize that the Convention calls for not only the prohibition of the worst forms of child labour, but also for their elimination. Therefore, while national legislation is a key method of application, the Convention's full implementation requires significant programmatic measures. This is reflected in *Article 6* of the Convention, which states that each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour, in consultation with relevant government institutions and employers' and workers' organizations.

439. The application of the Convention also requires member States to take effective and time-bound measures, pursuant to *Article 7(2)*. Although the Convention requires immediate action, it was recognized that some issues related to the worst forms of child labour would take time to address, and that relevant measures would take time to implement. [1025] Measures that require a certain period of time to become effective include, in particular, measures related to the prevention of the worst forms of child labour (pursuant to *Article 7(2)(a)* of the Convention), as well as measures for the rehabilitation and social reintegration of children removed from these worst forms of child labour (pursuant to *Article 7(2)(b)* of the Convention). Time-bound measures should also be taken to ensure access to free basic education for children removed from the worst forms of child labour, to identify and reach out to children at special risk and to take account of the special situation of girls, pursuant to *Article 7(2)(c), (d) and (e)*.

440. Lastly, the Committee is of the view that it is important to highlight a complementary method of application of the Convention: international cooperation efforts. The Convention is unique in that it explicitly states that ratifying countries shall take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation and/or assistance. [1026] While this does not constitute an obligation to engage in a particular level or form of cooperation or

[1020] See, for example, *Brazil* – CEACR, direct request, 2010 (Anti-Drugs Act No. 6.368); *Suriname* – CEACR, direct request, 2010; and *Sweden* – CEACR, direct request, 2010 (Narcotic Drugs (Punishments) Act).

[1021] See, for example, *Czech Republic* – CEACR, direct request, 2011 (Conscription Act No. 585/2004); *Suriname* – CEACR, direct request, 2010 (Legal Status of Military Personnel Act); and *Togo* – CEACR, direct request, 2011 (Act No. 2007-010 issuing the general conditions of service of the military forces).

[1022] See, for example, *Costa Rica* – CEACR, observation, 2011 (Code of Childhood and Adolescence); *Democratic Republic of the Congo* – CEACR, direct request, 2011 (Act No. 09/001 of 2009 for the protection of children); and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011 (Law on the Protection of Children).

[1023] See, for example, *Antigua and Barbuda* – CEACR, direct request, 2011 (Childcare and Protection Act).

[1024] See, for example, *Gabon* – CEACR, direct request, 2011 (Labour Code, as amended in 2010); and *Lao People's Democratic Republic* – CEACR, direct request, 2010 (amended Labour Law No. 06/NA, 2006).

[1025] *Child labour*, 1999, op. cit., p. 98.

[1026] *Art. 8* of the Convention.

assistance, international cooperation can be an important method for the application of the Convention. [1027]

Difficulties concerning the scope of application

441. Difficulties regarding the scope of application of the Convention generally relate to cases where a prohibition of a worst form of child labour exists, but does not cover the whole of the activity specified in the Convention, or does not cover all children as defined in *Article 2* of the Convention. Firstly, in a number of countries the prohibition contained in the legislation implementing the Convention does not sufficiently cover the scope of activities defined as the worst forms of child labour in *Article 3* of the Convention. This may include legislation that only covers trafficking for the purpose of sexual exploitation (and not labour exploitation), or only covers cross-border trafficking (and not internal trafficking). [1028] Moreover, the Committee has observed cases where the existing prohibition relates to a worst form of child labour, but does not specifically address the crux of the prohibited activity. Examples of this include legislation which prohibits the possession or dissemination of child pornography, but not the *use* of a child to produce it, or legislation which prohibits providing drugs to minors, but does not prohibit the *use* of a child for the production or trafficking of such drugs. [1029] Secondly, difficulties concerning the scope of application include cases where the relevant prohibition does not cover both boys and girls, most often with regard to trafficking and commercial sexual exploitation. [1030] In such cases, the Committee strongly emphasizes that the Convention applies equally to boys and girls, and urges the governments concerned to take immediate measures to ensure that the relevant legislation provides protection for both sexes. Finally, prohibitions applying the Convention may be limited in terms of age, in that the legislation prohibiting the worst forms of child labour only addresses children up to 14 or 16 years of age. In these cases, the Committee underlines the importance of prohibiting the worst forms of child labour for all persons under 18 years, and calls on governments to take immediate measures in this regard.

Thematic issues

Sale and trafficking of children

Definition of sale and trafficking

442. *Article 3(a)* of Convention No. 182 provides that the term "worst forms of child labour" comprises, among others, all forms of slavery or practices similar to slavery, such as the sale and trafficking of children.

[1027] *Record of Proceedings*, ILC, 87th Session, Geneva, 1999, Report of the Committee on Child Labour, para. 243, p. 19/49.

[1028] See paras 442–464 below.

[1029] See paras 504–537 below.

[1030] See paras 442–464 and 504–526 below.

443. While Convention No. 182 does not provide any definition of the sale [1031] and trafficking [1032] of children, its scope is limited to circumstances in which children are trafficked for purposes of sexual or labour exploitation and is not meant to cover issues unrelated to the worst forms of child labour, such as trafficking for the purpose of adoption or organ transplants. [1033]

Legislative measures

444. In 2005, the Committee expressed deep concern about the size of the trafficking problem and recognized that, while the elimination of poverty is a necessary precondition to eradicate trafficking, it is not sufficient. [1034] However, the Committee also observed that many countries have adopted legislation to prohibit the worst forms of child labour and punish the perpetrators, including the trafficking of children under 18 years of age, after the adoption of the Convention, [1035] which reflects a real commitment to combat a problem that appears to be steadily on the increase in some parts of the world. [1036]

Comprehensive legislation to prohibit the sale and trafficking of children

445. The legislation prohibiting trafficking is penal in nature, and can be included in a country's penal or labour codes, or provided for in a law dealing specifically with trafficking, exploitation or children's rights. In *Mauritius*, for example, the Committee noted with satisfaction that the Child Protection Act was amended in 2005 in order to include provisions prohibiting all cases of child trafficking: section 13A(1) states that any person who wilfully and unlawfully recruits, transports, transfers, harbours or receives a child for the purpose of exploitation commits an offence; and section 13A(7) specifies that "exploitation" includes the exploitation of prostitution of children or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery. [1037] The Committee also noted with satisfaction in *Nicaragua* that the promulgation of Act No. 641 of 2007 issuing the new Penal Code prohibits the

[1031] Article 2(a) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000) defines the sale of children as meaning any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

[1032] Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) (Palermo Protocol) defines "trafficking in persons" as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

[1033] *Child labour*, 1999, op. cit., p. 60. See also *Child labour*, 1998, op. cit., p. 52.

[1034] CEACR, general observation, 2005, Convention No. 182.

[1035] The most recent examples of countries that have adopted appropriate anti-trafficking legislation include: *Australia* – CEACR, direct request, 2010; *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Central African Republic* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2010; *Islamic Republic of Iran* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; *Jamaica* – CEACR, observation, 2011; *Jordan* – CEACR, observation, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Madagascar* – CEACR, direct request, 2010; *Montenegro* – CEACR, direct request, 2010; *Panama* – CEACR, direct request, 2011; *Switzerland* – CEACR, direct request, 2010; *Tajikistan* – CEACR, direct request, 2011; and *Tunisia* – CEACR, direct request, 2010.

[1036] G. Nesi, L. Nagler and M. Pertile (eds): *Child labour in a globalized world: A legal analysis of ILO action* (Hampshire, Ashgate Publishing Ltd, 2008), p. 92.

[1037] *Mauritius* – CEACR, observation, 2008.

trafficking of persons for the purposes of slavery or sexual exploitation [1038] and that, in *Thailand*, that the Anti-Trafficking in Persons Act prohibits the trafficking of children, defined as the procuring, buying, selling, vending, bringing from or sending to, detaining, confining, or harbouring of a child under 18 years for the purpose of labour or sexual exploitation. [1039]

Prohibiting child trafficking at 18 years of age

446. Many countries have duly enacted a prohibition of the sale and trafficking of persons below 18 years of age. For example, having previously observed that the anti-trafficking provisions in *Sri Lanka* only applied to children below 16 years of age, the Committee noted with satisfaction that by virtue of the Penal Code (Amendment) Act, No. 16 of 2006, new section 360C(1)(c) prohibits the trafficking of a "child" for the purpose of securing forced or compulsory labour or services, slavery, servitude, or prostitution or other forms of sexual exploitation, and that section 360C(3) states that "child" means a person under 18 years of age. [1040] Similarly, noting in both *Finland* and *Ireland* that their legislation prohibiting child trafficking only covered children under 15 and 17 years of age, respectively, the Committee subsequently noted with interest that both countries had amended their relevant laws to criminalize the trafficking of children under 18 years of age. [1041]

447. The legislation in some countries, however, is not in conformity with the Convention. Indeed, the Committee has noted cases in which the legislation does not prohibit the trafficking of children under 18 years of age, or defines children as being younger than the required 18 years in their anti-trafficking legislation. [1042] Where countries do not have anti-trafficking legislation that prohibits the trafficking of persons below 18, the Committee emphasizes that the governments concerned need to rectify their legislative gaps as a matter of urgency.

Prohibiting child trafficking for both sexual and labour exploitation

448. Children are trafficked globally for commercial sexual and labour exploitation, and a good number of countries have prohibited the sale and trafficking of children for both of these purposes. In *Paraguay*, for example, while the Penal Code originally prohibited the international trafficking of persons only for prostitution, the Committee noted with satisfaction that new sections 129b and 129c of the Penal Code, as inserted by Act No. 3440/08, also punish trafficking for the purposes of slavery and forced labour through means of force, threats, deception or trickery. [1043]

[1038] *Nicaragua* – CEACR, observation, 2010.

[1039] *Thailand* – CEACR, observation, 2011.

[1040] *Sri Lanka* – CEACR, observation, 2007.

[1041] *Finland* – CEACR, direct request, 2009; and *Ireland* – CEACR, direct request, 2007.

[1042] For example, while the Offences against the Person Act of 1994 of *Barbados* – CEACR, direct request, 2010, makes it an offence for any person to traffic a child below 16 years, there appear to be no legal provisions in *Barbados* that specifically prohibit trafficking in children under the age of 18 years. See also *Bangladesh* – CEACR, observation, 2011; *Lesotho* – CEACR, observation, 2011; *Niger* – CEACR, observation, 2011; *Saint Kitts and Nevis* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; and *Trinidad and Tobago* – CEACR, direct request, 2011.

[1043] *Paraguay* – CEACR, observation, 2011.

449. However, the Committee has also noted cases in which the prohibition of trafficking is incomplete, applying only when trafficking is conducted for the purpose of sexual exploitation [1044] or, in rare cases, only for the purpose of labour exploitation. [1045] ***The Committee emphasizes that, under Article 3(a) of the Convention, the sale and trafficking of children under 18 must be prohibited for both sexual and labour exploitation.*** [1046]

Prohibiting the trafficking of both girls and boys under 18 years, taking into account the special situation of girls

450. As the Convention clearly applies to all children under 18 years of age, the prohibition of child trafficking must extend to both boys and girls. Hence, in *Guyana*, while the Criminal Law Offences Act of 1893 only covered the trafficking of females (girls) for the purpose of sexual exploitation, the Committee noted that the Combating of Trafficking in Persons Act, enacted in 2005, provides comprehensive measures to combat trafficking of both boys and girls. [1047] Similarly, the Committee had noted that the Criminal Code in the *Republic of Korea* only covered the trafficking of women for the purpose of sexual exploitation. [1048] The Committee later noted that section 29 of the Child Welfare Act prohibits the act of trading children (defined as those under 18 years), and that section 18 of the Act on the punishment of acts of arranging sexual traffic prohibits human trafficking aimed for sexual purposes regardless of the gender or age of the victim.

451. In some instances, however, the Committee has observed that the legislation covers the trafficking of women and girls, but not boys. [1049] ***Consequently, the Committee recalls that Article 3(a) requires the adoption of provisions prohibiting the sale and trafficking of both boys and girls under 18 years of age and emphasizes that immediate measures must be taken to ensure that the relevant legislation provides protection for both sexes.***

452. However, it is important to note that, while the prohibition of child trafficking must extend to boys and girls, this problem often affects a greater number of girls in practice. This can be especially true in instances of child trafficking for sexual exploitation or domestic work. In such cases, the Committee emphasizes that member States must take measures, taking into account the special situation of girls, in accordance with *Article 7(2)(e)* of the Convention, and protect girls from the worst forms of child labour, including the trafficking of girls for labour or sexual exploitation. [1050]

[1044] See, for example, *Algeria* – CEACR, direct request, 2009; *Angola* – CEACR, observation, 2011; *Bahamas* – CEACR, direct request, 2010; *Dominica* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2011; *Saint Lucia* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[1045] *Libya* – CEACR, direct request, 2011.

[1046] *United Republic of Tanzania* – CEACR, observation, 2010. Moreover, the Committee has noted with interest that the laws prohibiting child trafficking encompass both sexual and labour exploitation in *Cyprus* – CEACR, direct request, 2009; *Mongolia* – CEACR, direct request, 2010; and *Suriname* – CEACR, direct request, 2010.

[1047] *Guyana* – CEACR, direct request, 2007.

[1048] *Republic of Korea* – CEACR, direct request, 2007.

[1049] See, for example, *Dominica* – CEACR, direct request, 2010; *Dominican Republic* – CEACR, direct request, 2010; *Grenada* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2011; and *Papua New Guinea* – CEACR, observation, 2011.

[1050] See, for example, *Burkina Faso* – CEACR, observation, 2009; *Georgia* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2010; *Lesotho* – CEACR, observation, 2011; *Lithuania* – CEACR, direct request, 2008; and *Trinidad and Tobago* – CEACR, direct request, 2011.

Prohibiting both cross-border and internal child trafficking

453. Member States may be countries of origin, of transit and/or of destination for the sale and trafficking of children. [1051] Accordingly, in many member States, the prohibition on trafficking of children duly applies to both cross-border and internal trafficking. Hence, in *Brazil*, the Committee noted with satisfaction the adoption of Act No. 11.106 of 2005 amending Title VI, Chapter V, of the Penal Code relating to the procuring and trafficking of persons, which henceforth prohibits the international as well as the internal trafficking of persons. [1052]

454. However, in some countries, the prohibition of the trafficking of children only applies to cross-border trafficking. The Committee is of the view that this is particularly problematic when there is a significant level of internal or domestic trafficking within the country. [1053] ***It therefore requests the governments concerned to take the necessary measures to prohibit the sale and trafficking of all children under 18 years of age for labour and sexual exploitation within their territories, as well as to or from their country.***

Issues of the application of the legislation relating to the sale and trafficking of children

455. While trafficking for sexual exploitation most frequently relates to prostitution, trafficking for labour exploitation can imply many practices, such as domestic servitude, [1054] debt bondage, [1055] forced street vending, [1056] forced begging by religious instructors, that is the use of child *talibés*, [1057] the use of children for camel jockeying, [1058] and agricultural work. [1059] The Committee has observed a number of cases in which, regardless of the comprehensiveness of their legislation, countries suffer serious child trafficking problems in practice. This situation can arise from a number of factors.

Lack of effective enforcement of the anti-trafficking legislation

456. The problem of child trafficking can often stem from a lack of effective enforcement of the legislation, either due to a lack of resources or the low rate of prosecutions and convictions. [1060] In these cases, the Committee has expressed its

[1051] See, for example, *China* – CEACR, observation, 2011; *Djibouti* – CEACR, direct request, 2009; *Dominican Republic* – CEACR, observation, 2011; *Ethiopia* – CEACR, direct request, 2010; *Latvia* – CEACR, direct request, 2010; and *Pakistan* – CEACR, observation, 2011.

[1052] *Brazil* – CEACR, observation, 2008.

[1053] See, for example, *Angola* – CEACR, observation, 2011; *Pakistan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[1054] See, for example, *Central African Republic* – CEACR, direct request, 2010; and *Congo* – CEACR, observation, 2010.

[1055] See, for example, *Kuwait* – CEACR, direct request, 2010; and *Pakistan* – CEACR, observation, 2011.

[1056] See, for example, *Bangladesh* – CEACR, observation, 2011; and *Liberia* – CEACR, direct request, 2011.

[1057] See, for example, *Mauritania* – CEACR, observation, 2010; *Niger* – CEACR, observation, 2011; and *Senegal* – CEACR, observation, 2011.

[1058] See, for example, *Pakistan* – CEACR, observation, 2011; *Saudi Arabia* – CEACR, observation, 2010; *Sudan* – CEACR, direct request, 2010; and *United Arab Emirates* – CEACR, observation, 2010.

[1059] See, for example, *Côte d'Ivoire* – CEACR, observation, 2011; *Kyrgyzstan* – CEACR, observation, 2011; and *Mali* – CEACR, observation, 2010.

[1060] The issue of enforcement of the Convention is one that is usually covered by *Art. 7(1)*, pertaining to penalties. However, in the following countries, the Committee has analysed both the legislation of member States

concern and requested the governments to take measures to ensure the effective application of their legislation and to supply information on the application of the relevant provisions which prohibit child trafficking, including, in particular, statistics on the number and nature of the violations reported, investigations, prosecutions, convictions and penalties imposed. [1061] For instance, the Committee noted with concern the high and rising number of children who are the victims of sexual exploitation and trafficking and at the unequal enforcement of the law in *Colombia*, but then observed that the Government had increased law enforcement efforts against trafficking offenders. Consequently, in 2008, the Colombian authorities initiated 159 anti-trafficking investigations, 20 prosecutions and achieved 16 convictions, sentencing trafficking offenders to periods of imprisonment ranging from four-and-a-half years to 14 years. [1062]

Complicity of government officials

457. ***Another issue of concern that has been observed by the Committee are the cases in which there have been reports of complicity of government officials in the trafficking of children.*** [1063] ***The Committee expresses its deep concern over such practices, and therefore urges the governments concerned to intensify their efforts and strengthen the capacity of law enforcement agencies to ensure that perpetrators of human trafficking, and complicit government officials, are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

Programmatic measures

458. As with any other worst form of child labour, member States are required, under *Article 7(2)* of the Convention, to adopt effective and time-bound measures in order to eradicate the sale and trafficking of children for labour and sexual exploitation, as a matter of urgency. In the case of sale and trafficking, this is especially important since many countries have adopted the appropriate legislative framework, but the problem of trafficking remains difficult to combat in practice and necessitates, among other measures, cross-border cooperation.

on child trafficking and the enforcement of penalties in tandem: *Burkina Faso* – CEACR, observation, 2009; *Senegal* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[1061] See, for example, *Albania* – CEACR, observation, 2011; *Belize* – CEACR, direct request, 2011; *Benin* – CEACR, direct request, 2011; *Chad* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Dominican Republic* – CEACR, observation, 2011; *Peru* – CEACR, direct request, 2010; *Philippines* – CEACR, observation, 2010; *Russian Federation* – CEACR, observation, 2010; *Togo* – CEACR, observation, 2011; and *Ukraine* – CEACR, observation, 2010.

[1062] *Colombia* – CEACR, direct request, 2011. Other similar positive results have been observed in *Azerbaijan* – CEACR, direct request, 2011; and *Costa Rica* – CEACR, direct request, 2011.

[1063] For example, in *Mexico* – CEACR, observation, 2011, no convictions or sentences against corrupt officials were handed down in 2008, although some immigration officials, officials from the Mexican Attorney General's Office, and military officials were arrested for their alleged participation in trafficking crimes, and no convictions or sentences of trafficking offenders were reported by the federal, state or local authorities in 2008. See also *Kyrgyzstan* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; *Togo* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2011. In *Argentina* – CEACR, observation, 2011, after having observed reports of corruption in the police forces and the direct involvement of police officers in criminal activities related to the trafficking of persons, the Committee noted with interest that, since the entry into force of Act No. 26.364 of 2008 on the prevention of, and conviction for, the trafficking of persons and on assistance to victims, up to 31 July 2010, a total of 590 raids were carried out, 583 persons were arrested and 921 victims were assisted, including 204 children under 18 years of age.

The ILO response to the trafficking of children for use as camel jockeys in Qatar

Only a holistic approach to combating the trafficking of children may give the desired result of eradicating the problem. One illustration of this is the case of *Qatar*, where the Government's legislative, practical and rehabilitation measures have led to the eradication of the trafficking of children to the country for their use as camel jockeys.[1] The Committee noted that, prior to the adoption of Law No. 22 of May 2005 on the import, employment, training and participation of children in camel racing, there were between 200 and 300 children from 6 to 13 years of age (all from *Sudan*) used in camel racing and exposed to serious injuries. It has noted with satisfaction that since the promulgation of Law No. 22 of 2005, and the adoption of a number of practical measures, there has been no recourse by camel owners to using children as camel jockeys. In particular, the Government started to manufacture robots to replace camel jockeys, which have become so popular that even camel owners in other Gulf Cooperation Council countries, such as the *United Arab Emirates*, *Kuwait* and *Oman*, are buying them. The Government also adopted a number of rehabilitation measures aimed at assisting former child camel jockeys and providing them with medical treatment for poor health or injuries sustained before returning them to their country, i.e. *Sudan*. The Committee considers the developments in *Qatar* concerning the use of robot camel jockeys to be a case of good practice.

[1] *Qatar* – CEACR, observation, 2007. Similarly, in the *United Arab Emirates* – CEACR, observation, 2010, the Committee noted with satisfaction that section 1 of Federal Act No. 51 of 2006 defines and prohibits the trafficking of persons and that an executive-level office implemented several measures to address the issue of the use of children for camel jockeying. A 2007 agreement with UNICEF established a programme to rehabilitate and repatriate child camel jockeys to their country of origin (UAE–UNICEF programme), in cooperation with the Governments of *Bangladesh*, *Mauritania*, *Pakistan* and *Sudan*, in order to withdraw children trafficked to the United Arab Emirates for use in camel jockeying and to rehabilitate them, repatriate them to their countries and reintegrate them into their communities. The Committee noted with interest that, as of 2008, 3,778 children had been withdrawn from work as camel jockeys (879 from Bangladesh, 465 from Mauritania, 1,303 from Pakistan and 1,131 from Sudan) and that the Government has provided approximately US$8,414,900 in monetary compensation to the child victims of this type of work.

Programmes and national plans of action against trafficking

459. A significant number of member States have adopted effective and time-bound measures of their own, including through the implementation of programmes or national plans of action. [1064] In *Denmark*, for example, an Action Plan to Fight Trafficking in Human Beings was adopted for 2007–10 which focuses on four areas for action: strengthening investigation efforts in order to identify and bring traffickers to justice; supporting the victims of trafficking by improving social services; preventing human trafficking by limiting demand; and increasing the population's knowledge of these matters and preventing human trafficking by improving international cooperation. [1065] In *Viet Nam*, the National Plan of Action to Combat the Crime of Trafficking in Children and Women aimed to organize mass awareness programmes and other actions at different levels in order to prevent and reduce the incidence of trafficking of women and children by 2010. [1066]

[1064] See, for example, *Albania* – CEACR, observation, 2011; *Argentina* – CEACR, observation, 2011; *China* – CEACR, observation, 2011; *Czech Republic* – CEACR, direct request, 2011; *Finland* – CEACR, direct request, 2011; *Lithuania* – CEACR, direct request, 2010; *Malaysia* – CEACR, observation, 2011; *Montenegro* – CEACR, direct request, 2010; *Peru* – CEACR, direct request, 2010; *Poland* – CEACR, direct request, 2010; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[1065] *Denmark* – CEACR, direct request, 2011.

[1066] *Viet Nam* – CEACR, direct request, 2010.

460. Further measures also include access to free basic education; [1067] as well as the organization of meetings between the relevant authorities responsible for combating the trafficking of human beings to evaluate criminal strategies in the field; [1068] training programmes and workshops for victim support officials, child protection officials, youth workers, teachers, students, prosecutors and judges, and various law enforcement agencies; [1069] awareness-raising; [1070] state assistance funds; [1071] consular assistance; [1072] telephone hotlines; [1073] reinforcement of border and visa regulations and control; [1074] and cooperation and information sharing with organizations or groups in charge of human rights, such as UNICEF, UNDP and other United Nations agencies, the International Organization for Migration (IOM) and NGOs. [1075]

461. A good number of countries have also established shelters or crisis centres for child victims of trafficking. [1076] These centres usually provide social services aimed at satisfying the daily needs and preparing the social integration of child victims of violence and trafficking. Such services can include legal, medical and psychological help, counselling, material and financial support for personal needs, assistance with repatriation, services to replace personal identification documents, vocational or educational training, and a safe place of residence.

ILO–IPEC collaboration

*ILO–IPEC **Time-bound Programmes***

462. In many instances, effective and time-bound measures have been implemented with ILO–IPEC collaboration, [1077] including the implementation of comprehensive ***TBPs***. [1078] For example, in *Cambodia*, the ILO–IPEC project "Prevention of trafficking in children

[1067] Access to free basic education, being one of the most effective means of preventing the engagement of children in the worst forms of child labour, is required by the Convention. This principle is discussed in paras 563–588 below. However, in some countries, Governments have specifically adopted educational measures as the principle means of preventing the trafficking of children, such as in *Slovenia* – CEACR, direct request, 2010.

[1068] See, for example, *Belgium* – CEACR, direct request, 2007.

[1069] See, for example, *Estonia* – CEACR, direct request, 2011; and *Ghana* – CEACR, direct request, 2011.

[1070] See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Slovenia* – CEACR, direct request, 2010.

[1071] See, for example, *Georgia* – CEACR, direct request, 2011; and *Thailand* – CEACR, observation, 2011.

[1072] See, for example, *Hungary* – CEACR, direct request, 2010.

[1073] See, for example, *Slovakia* – CEACR, direct request, 2011; and *Poland* – CEACR, direct request, 2010.

[1074] See, for example, *Australia* – CEACR, direct request, 2011; and *Canada* – CEACR, direct request, 2011.

[1075] See, for example, *Kyrgyzstan* – CEACR, observation, 2011; *Malawi* – CEACR, direct request, 2011; *Serbia* – CEACR, direct request, 2010; and *Suriname* – CEACR, direct request, 2010.

[1076] See, for example, *Armenia* – CEACR, direct request, 2011; *Belarus* – CEACR, direct request, 2011; *Bulgaria* – CEACR, observation, 2011; *Gabon* – CEACR, observation, 2011; *Hungary* – CEACR, direct request, 2010; *Israel* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; *Japan* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2011; *Kyrgyzstan* – CEACR, observation, 2011; *Latvia* – CEACR, direct request, 2010; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Slovenia* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

[1077] See, for example, *Dominican Republic* – CEACR, observation, 2011; *Ecuador* – CEACR, observation, 2009; *Paraguay* – CEACR, observation, 2011; *Romania* – CEACR, direct request, 2010; and *South Africa* – CEACR, direct request, 2010.

[1078] See, for example, *Brazil* – CEACR, observation, 2010; *Indonesia* – CEACR, observation, 2011; and *Madagascar* – CEACR, direct request, 2010.

and women at a community level in Cambodia and Viet Nam" aimed to build community capacity to prevent trafficking in children and women in a total of six provinces in Cambodia through the setting up of holistic community-based preventive interventions against trafficking in children and women with the objective of reducing vulnerability to trafficking. [1079] The Committee noted with interest that, as a result of this project, 1,454 children were provided with non-formal education and vocational training, 18,670 children benefited from awareness-raising activities on trafficking prevention and safe migration, and 379 children were mainstreamed into the formal education system.

ILO–IPEC regional projects

463. ILO–IPEC has also been successful in conducting regional programmes with the collaboration of several countries. [1080] For example, nine West African countries *(Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Ghana, Mali, Nigeria* and *Togo)*, where the social partners were particularly concerned by the problem of the trafficking of children, [1081] participated in the ILO–IPEC Subregional Programme to Combat the Trafficking in Children for Labour Exploitation in West and Central Africa (LUTRENA), which commenced in 2001. In the context of the ILO–IPEC–LUTRENA programme, national legislation to combat the trafficking of children was reinforced to obtain the effective prohibition of trafficking, and awareness-raising campaigns were conducted among high-risk groups and their communities, as well as for the general public, with the objective of establishing surveillance systems. In *Burkina Faso*, for example, the Committee noted with interest that 716 children were intercepted and returned to their families with the support of the social, technical and financial partners, including vigilance committees, and these children were placed in workshops and various vocational training centres or reintegrated into the school system. [1082] In *Togo*, the direct action taken for children and their families between 2001 and 2007 resulted in the removal of 4,038 children from trafficking and the reintegration in the school system of 173 children removed from this worst form of child labour. [1083] Furthermore, four transitional shelter centres for children removed from trafficking have been established, a system to shelter and refer children removed from trafficking has been created, and 165 vigilance committees have become operational in village communities.

[1079] *Cambodia* – CEACR, direct request, 2009.

[1080] Such ILO–IPEC regional projects include: "Reducing labour exploitation of children and women: Combating trafficking in the Greater Mekong subregion" (Mekong project), involving *Cambodia*, *China*, *Lao People's Democratic Republic*, Myanmar, *Thailand*, and *Viet Nam* (see, for example, *China* – CEACR, observation, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Thailand* – CEACR, observation, 2011; and *Viet Nam* – CEACR, direct request, 2006), as well as the subregional project "Contribution to the prevention and elimination of the commercial sexual exploitation of children in Central America, Panama, and the Dominican Republic" (see, for example, *Dominican Republic* – CEACR, observation, 2011; *Guatemala* – CEACR, observation, 2009; and *Panama* – CEACR, direct request, 2011).

[1081] CEACR, general observation, 2005, Convention No. 182.

[1082] *Burkina Faso* – CEACR, observation, 2009.

[1083] *Togo* – CEACR, observation, 2011. See also *Benin* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Gabon* – CEACR, observation, 2009; *Ghana* – CEACR, direct request, 2009; and *Mali* – CEACR, observation, 2010.

Prevalence of child trafficking in practice

464. On the other hand, a number of countries have not developed effective and time-bound measures for the protection of children from trafficking, [1084] or have adopted a number of measures and initiatives that have proven to be inadequate, insufficient or not properly implemented, especially in light of the gravity of the trafficking problem. [1085] For example, one issue of concern relates to cases where child victims of sale and trafficking for sexual or labour exploitation are found to be undocumented or illegal residents and are deported within a short period of their arrest. [1086] ***The Committee must express its concern over such situations and emphasizes that the governments concerned should take immediate and effective measures for the prevention of child trafficking and/or the removal and rehabilitation of former child victims of trafficking through such measures as repatriation, family reunification and appropriate support, in cooperation with the child's country of origin.***

Forced labour

Children in bonded labour [1087]

465. *Article 3(a)* of the Convention, in its enumeration of forms of slavery or practices similar to slavery, specifically identifies debt bondage as a worst form of child labour. This consists of several situations, including where children are sold into bondage by their parents, [1088] where a parent is subject to debt bondage and children have no alternative but to work with their parents, [1089] or where children are used to settle financial disputes and sent by their family to work off a debt. [1090]

Legislation prohibiting child bonded labour

466. Several member States have constitutional or legislative prohibitions against the forced labour of children, and this prohibition may encompass bonded labour. In addition, some States have specifically addressed the issue of bonded labour in their legislation. For example, the Act on Special Protection against Child Abuse, Exploitation and Discrimination in the *Philippines* prohibits debt bondage and serfdom of children under 18 years. [1091] The Criminal Code in *Australia* also explicitly prohibits debt bondage and it is an aggravated offence when the victim is under 18 years of age. [1092]

[1084] See, for example, *Grenada* – CEACR, direct request, 2011; *Haiti* – CEACR, observation, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; *Oman* – CEACR, direct request, 2010; and *Swaziland* – CEACR, direct request, 2010.

[1085] See, for example, *Algeria* – CEACR, direct request, 2009; *Antigua and Barbuda* – CEACR, direct request, 2011; *Bahrain* – CEACR, direct request, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Ethiopia* – CEACR, direct request, 2010; *Greece* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2010; *Libya* – CEACR, direct request, 2011; *Lithuania* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2011; *Philippines* – CEACR, observation, 2010; *Russian Federation* – CEACR, observation, 2010; *Tajikistan* – CEACR, direct request, 2011; *Trinidad and Tobago* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, direct request, 2011.

[1086] See, for example, *Oman* – CEACR, direct request, 2010; *Saudi Arabia* – CEACR, observation, 2010; and *Trinidad and Tobago* – CEACR, direct request, 2011.

[1087] For a definition and full discussion of debt bondage, including adult bonded labour, see General Survey, 2007, op. cit., para. 71.

[1088] See, for example, *Philippines* – CEACR, observation, 2006.

[1089] See, for example, *Plurinational State of Bolivia* – CEACR, observation, 2009.

[1090] See, for example, *Mozambique* – CEACR, observation, 2010.

[1091] *Philippines* – CEACR, direct request, 2005.

[1092] Sections 271.8 and 271.9 of the Criminal Code of 1995. *Australia* – CEACR, direct request, 2010.

Some countries have adopted specific legislation focusing on the abolition of bonded labour. For example, the Government of India indicates in its report submitted under article 19 of the ILO Constitution that it adopted the Bonded Labour System (Abolition) Act in 1976, and the Global Report of 2010 indicates that it was the first country in South Asia to enact legislation against bonded labour. [1093] ***However, in some countries, the specific prohibition of bonded labour does not cover all persons under 18 years.*** [1094] ***In such cases, the Committee calls on the governments concerned to ensure that amendments are adopted to the relevant legislation prohibiting debt bondage for all children under 18, as a matter of urgency.***

Issues relating to the application of the prohibition of child bonded labour

467. The problem of child bonded labour is often one of practice, where the illegal use of child bonded labour persists despite legislation prohibiting this practice. Addressing this phenomenon therefore requires the effective enforcement of legislation and initiatives in this regard include the District Vigilance Committees in *Pakistan*, which were constituted to monitor the implementation of the Bonded Labour System (Abolition) Act of 1992, and the Vulnerable Groups Unit in *Lao People's Democratic Republic*, which was designed to intervene on issues of vulnerable children, including child bonded labour. [1095] However, in several countries, mechanisms to monitor and combat child bonded labour have not been effective. [1096] In such cases, the Committee emphasizes that the governments concerned should intensify their efforts to strengthen the capacity of the relevant law enforcement officials to ensure the effective implementation of the legislation prohibiting this worst form of child labour.

Complementary programmatic initiatives to address child bonded labour

468. The Committee is of the view that the effective enforcement of relevant legislative provisions should be supplemented by programmatic measures for the prevention of child bonded labour, as well as for the rehabilitation and social reintegration of children removed from this worst form of child labour. In *Nepal*, after the *kamaiya* system [1097] was abolished by formal declaration of Parliament in 2000, the Government launched a project, in conjunction with ILO–IPEC, entitled "Sustainable elimination of bonded labour", which targeted the rehabilitation of freed *kamaiyas*. The Committee noted with interest that within the framework of the project, 5,554 children were prevented from bonded labour and provided with educational support and 1,232 children were withdrawn from bonded labour and provided with informal education, together with

[1093] *Accelerating action against child labour*, op. cit., para. 85.

[1094] For example, in *Bangladesh*, the Labour Act of 2006 prohibits debt bondage, but only in respect of children under 14 years. See *Bangladesh* – CEACR, direct request, 2011. However, the Committee has noted the Government's indication that it is working on proposals to bring section 35 of the Labour Code of 2006 into conformity with *Art. 3(a)* of the Convention.

[1095] *Pakistan* – CEACR, observation, 2011; and *Lao People's Democratic Republic* – CEACR, direct request, 2010.

[1096] For example, in *Pakistan*, despite the establishment of the District Vigilance Committees, bonded labour continues, affecting the poorest and most vulnerable children. The Committee has also noted reports of serious corruption in District Vigilance Committees, and that the police lack the personnel, training and equipment necessary to confront landlords' armed guards when freeing bonded labourers. See *Pakistan* – CEACR, observation, 2011.

[1097] A traditional system of bonded labour found in southern *Nepal*.

income-generating support to these families. [1098] The Committee is of the view that this rehabilitation should also include educational initiatives, consistent with *Article 7(2)(c)* of the Convention. A positive example is the *Plurinational State of Bolivia*, where the Committee has noted with interest that ten education centres were set up in six camps in the municipality of Bermejo. [1099]

Forced child labour in domestic work

469. Another form of forced labour that particularly affects children is forced labour in the context of domestic work. [1100] Many children around the world are engaged in domestic work, [1101] and some working in this sector are exploited under conditions that qualify as forced labour. This includes children who are obliged to work long hours without pay and who experience restricted freedom of movement, [1102] children who are trafficked for the purpose of domestic labour, [1103] and children who are sold into domestic service by their parents, [1104] in addition to various traditional systems of domestic servitude. [1105]

Protecting children from forced domestic labour through legislative measures

470. Legislation can play a significant role in protecting children from forced domestic work. In some countries, the prohibition of forced labour explicitly specifies that this prohibition applies to domestic workers. For example, section 15 of the Labour Code of 1997 in *Cambodia* states that forced or compulsory labour is forbidden, including for domestic workers or household servants. [1106] Forced child domestic labour may be addressed through the effective regulation of domestic work, including recruitment practices and working conditions. For example, the Committee noted with satisfaction the adoption of Act No. 666 of 2008 on domestic work in *Nicaragua*, which amends the Labour Code to provide young persons working in domestic service with more protection by specifying recruitment and working conditions, as well as the penalties

[1098] *Nepal* – CEACR, direct request, 2010.

[1099] *Plurinational State of Bolivia* – CEACR, observation, 2009.

[1100] The Committee has also emphasized the potentially hazardous nature of child domestic work, see paras 540–558 below.

[1101] An estimated 15.5 million children were engaged in domestic work worldwide in 2008, according to IPEC–SIMPOC. See *Domestic work: Policy brief: Global and regional estimates on domestic workers* (Geneva, ILO, 2011), p. 9.

[1102] See, for example, *Haiti* – CEACR, observation, 2011.

[1103] See, for example, *Central African Republic* – CEACR, direct request, 2010; *Chad* – CEACR, direct request, 2010; *Ethiopia* – CEACR, direct request, 2011; *Lesotho* – CEACR, observation, 2011; and *Mali* – CEACR, observation, 2010.

[1104] For example, the Committee has noted the indications of the International Trade Union Confederation (ITUC) that in *Morocco* child domestic labour is performed under conditions of servitude with parents selling their children to work as domestic servants. See *Morocco* – CEACR, observation, 2011.

[1105] Such as the practice of "adopting" a child for the purpose of domestic service in *Papua New Guinea* (see *Papua New Guinea* – CEACR, direct request, 2011) and the *criadazgo* system in *Paraguay* (see *Paraguay* – CEACR, observation, 2011).

[1106] *Cambodia* – CEACR, direct request, 2009.

applicable in the case of abuses. [1107] Moreover, the Committee has noted that some States have opted to prohibit all child domestic work. [1108]

471. ***Despite some positive developments in this regard, significant legislative gaps remain in several countries allowing the continued exploitation of child domestic workers.*** [1109] ***In such cases, the Committee reminds the governments concerned that the forced labour of child domestic workers constitutes one of the worst forms of child labour. It expresses its serious concern at the continued economic and sexual exploitation experienced by child domestic workers, and considers that national legislation to prohibit this practice should be adopted as a matter of urgency.***

Issues related to the application of the prohibition on forced child domestic work

Forced domestic labour continues despite legislative prohibitions

472. The Committee has observed cases in which legislation, although in conformity with the Convention, has not been sufficient to address the practice of engaging children in forced domestic work. [1110] In such cases, the Committee calls on the governments concerned to take immediate and effective measures to ensure that children in forced domestic labour benefit from the protection afforded by the national legislation, and that the persons responsible for this worst form of child labour are prosecuted and that effective and sufficiently dissuasive penalties are imposed in practice.

Taking account of the special situation of girl domestic workers

473. Around the world, child domestic work is largely carried out by girls, who are easily isolated and have little protection or social support. [1111] Due to this isolation, the Committee has observed that reaching out to girls engaged in domestic work can be extremely difficult, and that these girls are particularly vulnerable to physical and sexual assault. [1112] The Committee expresses its deep concern regarding the situation of these girls. In addressing child domestic work performed under conditions similar to slavery,

[1107] *Nicaragua* – CEACR, observation, 2010.

[1108] See, for example, *Benin* – CEACR, direct request, 2011; *Brazil* – CEACR, observation, 2010; and *Colombia* – CEACR, direct request, 2011.

[1109] In the *Philippines*, domestic work is prohibited only for children under 15 years of age, although young persons between 15 and 18 years of age continue to be employed in domestic work in conditions similar to forced labour. See *Philippines* – CEACR, observation, 2010. Concerning *Bangladesh*, while the Government is preparing a guideline on domestic work, child domestic labour is not prohibited in law, although a large number of children are engaged in domestic work, working for long hours without pay. See *Bangladesh* – CEACR, observation, 2011.

[1110] For example, in *Paraguay*, although the *criadazgo* system (where children live and work in the houses of others in exchange for accommodation, food and basic education, sometimes in situations analogous to bondage) was prohibited pursuant to Decree No. 4951 of 22 March 2005, the practice persists in the country. See *Paraguay* – CEACR, observation, 2011. Moreover, in *Togo*, while national legislation prohibits forced labour and domestic work is considered hazardous for persons under 18 years of age, child domestic work continues to be performed under conditions similar to forced labour in the country. See *Togo* – CEACR, observation, 2011.

[1111] *Accelerating action against child labour*, op. cit., para. 258.

[1112] For example, in *Morocco*, the Committee noted the indication of the ITUC that some 50,000 children, mainly girls, are employed in domestic work. Of these, about 13,000 young girls under the age of 15 are employed as servants in Casablanca; 70 per cent of them are under 12 years of age and 25 per cent are under 10 years of age. A significant number of these girls, known as "*petites bonnes*" are subject to physical and sexual assault. See *Morocco* – CEACR, observations, 2009 and 2010.

the Committee considers it essential to take account of the special situation of girls, as this group constitutes the majority of victims of this worst form of child labour.

Programmatic measures to reach out to child victims of forced domestic work

474. As legislation addressing the forced domestic labour of children is not always effective, programmatic measures are essential in preventing the engagement of children in this worst form of child labour, and in removing them from it.

The role of national action plans in combating forced domestic child labour

475. Programmatic measures to address forced child domestic labour are often undertaken within the context of wider national strategies. For example, in *Uganda*, action plans were implemented within the framework of the National Programme of Action to Eliminate Child Labour aimed at both preventing (especially through education and training) and withdrawing and rehabilitating children engaged in domestic work. [1113] National action plans to combat child labour in *Ecuador* and *Swaziland* [1114] also included measures to combat exploitative domestic work of children.

The role of ILO–IPEC projects

476. The Committee wishes to highlight the role of ILO–IPEC projects in reaching out to children engaged in domestic work. For example, the Committee has noted that through phase II of the ILO–IPEC project entitled "Support to the National Action Plan and the Development of the ***Time-bound Programme*** for the Elimination of the Worst Forms of Child Labour" in *Indonesia*, 1,213 children were prevented from becoming engaged in child domestic work, and rehabilitation and reintegration services were provided to 127 former child domestic workers. [1115] Other ILO–IPEC projects implemented to reach out to child domestic labourers include the programme entitled "Preventing and eliminating exploitative child domestic work through education and training in sub-Saharan and Anglophone Africa", in *Uganda* and *Zambia*, and ILO–IPEC initiatives carried out in *Cambodia*, *Ecuador* and *Togo*. [1116]

Reaching out to child domestic workers through skills training and educational measures

477. The Committee notes that children working as domestic workers in situations similar to forced labour often have little access to education, [1117] and that educational initiatives therefore play an important role in reaching out to these children. For example, in *Mali*, through the country's ***TBP***, over 900 domestic helpers were provided with access to literacy and over 3,000 participated in additional training. [1118] In *Pakistan*, ten

[1113] *Uganda* – CEACR, direct request, 2010.

[1114] *Ecuador* – CEACR, direct request, 2009; and *Swaziland* – CEACR, direct request, 2010.

[1115] *Indonesia* – CEACR, observation, 2011.

[1116] *Cambodia* – CEACR, direct request, 2009; *Ecuador* – CEACR, direct request, 2009; *Pakistan* – CEACR, direct request, 2011; *Togo* – CEACR, observation, 2011; and *Zambia* – CEACR, direct request, 2010.

[1117] See, for example, *Ethiopia* – CEACR, direct request, 2010; *Haiti* – CEACR, observation, 2011; and *Uganda* – CEACR, direct request, 2010.

[1118] *Mali* – CEACR, direct request, 2010.

educational and training centres for child domestic workers were established to facilitate mainstreaming these children into formal education. [1119] In *Guatemala*, a project was implemented that allowed 110 children and young persons who were working as domestic workers to be reintegrated into the school system. [1120] Educational measures also play a key role in preventing this worst form of child labour.

Issues regarding the implementation of programmatic initiatives

478. However, not all programmatic measures aimed at protecting child domestic workers have proved effective, and the Committee has observed a lack of significant progress in several member States despite the implementation of such initiatives. [1121] In such cases, the Committee urges the governments concerned to intensify their efforts to ensure that all persons under 18 engaged in domestic work under conditions similar to slavery are identified, withdrawn and provided with assistance for their reintegration and rehabilitation.

Compulsory labour within the school system

479. The Committee notes with concern the persistence in some countries of the phenomenon of the compulsory labour of children within the school system. This form of forced labour, specific to children, may start at a very young age, interrupts the learning process of the children affected and often involves engaging children in hazardous tasks. In this regard, the Committee has focused on two specific types of compulsory labour within the education system: the forced mobilization of schoolchildren (sometimes referred to as "work–study" programmes) and the use of children for forced begging under the pretext of education.

Work–study programmes

480. The Committee has observed the practice of the forced mobilization of school children in several central Asian countries where children are removed from school and made to work during school hours. Participation in these programmes is mandatory, children may face fines for working too slowly or failing to meet production quotas, and the children's behaviour during this work may be reflected in their school marks. While such mass mobilization often occurs during the harvest season (particularly in the cotton harvest), [1122] these programmes may also contract out classes of students to work in factories in labour-intensive unskilled tasks for long periods of time. [1123]

[1119] *Pakistan* – CEACR, direct request, 2011.

[1120] *Guatemala* – CEACR, direct request, 2009.

[1121] For example, in *Morocco*, a national programme to combat the use of young girls as housemaids was adopted and an action programme to combat the use of young girls in domestic labour was launched by ILO–IPEC. However, the Committee subsequently noted a lack of information on any results achieved through these measures and expressed its deep concern at the exploitation of young persons under 18 years of age employed in domestic work under conditions similar to slavery. See *Morocco* – CEACR, observation, 2011. Moreover, the Committee has noted the situation in *Kuwait* of girls who migrated to the country as domestic workers who were coerced into situations of debt bondage or involuntary servitude. While a centre was established in 2007 to regulate the situation of domestic workers and to ensure that no domestic workers under 18 were brought into the country, the exploitation of domestic workers under 18 who have entered the country remains a concern. See *Kuwait* – CEACR, direct request, 2010.

[1122] See, for example, *Kyrgyzstan* – CEACR, observation, 2011; *Tajikistan* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, observation, 2011.

[1123] For example, in *China*, the work–study programmes in some regions (particularly in poorer inland provinces) oblige pupils to undertake tasks such as assembling fireworks, beadwork or other cottage industry-type production. See *China* – CEACR, observation, 2011.

481. ***As the practice of compulsory labour within schools is often deep-rooted within the education system and production processes of the country, most legislative measures have proved too weak or ineffective to address the phenomenon.*** [1124] ***Moreover, in some member States, legislation prohibiting this practice is routinely ignored by local officials*** [1125] ***and is poorly enforced on the ground.*** [1126]

482. ***Regarding all of these cases, the Committee must express its grave concern at the continued removal of children from school for the purpose of forced labour, and at the significant failures to apply the relevant legislation prohibiting this practice. Recalling that all forms of forced or compulsory labour are considered to be among the worst forms of child labour, the Committee strongly emphasizes that all member States in which children are engaged in compulsory labour through their schools must take immediate and effective measures to put a stop to this exploitation in practice.***

Talibé children

483. ***Another form of forced labour through educational institutions observed by the Committee is a phenomenon found in some West African countries called talibé children (sometimes referred to as almudus*** [1127] ***or mouhadjirin*** [1128] ***children). These are children who study in Koranic schools under the guardianship of religious Islamic education teachers called marabouts. These children are placed with a marabout so as to receive a Koranic education, but are often made to engage in street begging by their marabouts. This situation clearly constitutes a deviation from the legitimate purposes of this traditional educational system and its methods. While the issue of seeking alms as an educational tool falls outside the scope of the Committee's mandate, it is clear that the use of children for begging for purely economic ends cannot be accepted under Convention No. 182. Nevertheless, this is a growing phenomenon in some countries.*** [1129] ***Talibé children are often kept in conditions of servitude and are obliged to work daily, generally in street begging, in order to give the money received to their marabouts. Moreover, talibé children may be at an increased risk of trafficking, as victims of internal trafficking (from rural to urban areas),*** [1130] ***or moved across***

[1124] For example, in *Uzbekistan*, a decree banning child labour in cotton plantations was adopted in September 2008. Despite this legislative framework, the Committee has noted the convergence of allegations and the broad consensus among the United Nations bodies, as well as the representative organizations of employers and workers and NGOs, that the practice of mobilizing schoolchildren for work in the cotton harvest continues in *Uzbekistan*. See *Uzbekistan* – CEACR, observation, 2011.

[1125] For example, in *China*, the local education department of the Xinjiang Uyghur autonomous region had prohibited children between the ages of 6 and 14 from participating in the cotton harvest, and provided increased funding to the schools that had previously harvested cotton. However, the Committee has noted indications that this directive was not enforced at the local level. In *Tajikistan*, while the Education Act prohibits the employment of pupils and children in agricultural work during their studies, this legislation is routinely ignored by regional, city and district officials, and children are removed from school to work in the cotton harvest. While a presidential decree was issued in April 2009 banning the use of student labour in the cotton harvest, compulsory child labour continues to be an issue of concern. See *Tajikistan* – CEACR, direct request, 2011.

[1126] For example, in *Kyrgyzstan*, regulations prohibiting children from engaging in agricultural tasks are not strictly enforced. In some cases, classes are cancelled and children are sent to the fields to pick cotton, with the income generated going directly to the schools. See *Kyrgyzstan* – CEACR, observation, 2011.

[1127] *Gambia* – CEACR, direct request, 2010.

[1128] *Chad* – CEACR, direct request, 2010.

[1129] See, for example, *Niger* – CEACR, observation, 2011; and *Senegal* – CEACR, observation, 2011.

[1130] See, for example, *Mauritania* – CEACR, observation, 2010.

borders to large cities. [1131] ***They may also be engaged in agricultural work by their marabouts*** [1132] ***or trafficked for this purpose.*** [1133] ***The Committee expresses its serious concern at the use of talibés for purely economic ends and emphasizes that this worst form of child labour must be eliminated as a matter of urgency.***

Despite legislative efforts, the exploitation of talibé *children continues*

484. The Committee observes that, generally, legislative measures taken to address this worst form of child labour have not been particularly effective and that forced begging continues in practice. [1134] In some member States, the legislation has not been used to prosecute any offenders and there is evidence of official tolerance of this practice. [1135] In such cases, the Committee expresses its serious concern at the exploitation of *talibé* children and underlines that immediate and effective measures must be taken as a matter of urgency to enforce the national legislation prohibiting the forced begging of children and to punish *marabouts* who use children for purely economic purposes.

Small progress: Programmatic measures to reach out to talibé *children*

485. As the economic exploitation of *talibés* is often a problem deeply rooted in traditional practices, some countries have attempted to take programmatic measures to address the phenomenon, with varying degrees of success. For example, two action programmes aimed at taking *talibé* children off the streets and reintegrating them into school were implemented in *Benin*, with support from ILO–IPEC. [1136] Furthermore, the Government of *Senegal* has implemented a project in the *daaras* (Koranic schools) with the aim of combating begging and preparing *talibé* children for social and professional life through educational and vocational activities, in addition to implementing a programme of support to 48 Koranic schools that undertake not to engage *talibé* children in begging. [1137] In *Mauritania*, a centre for the protection and social integration of children in difficult situations has been created which targets street children, children

[1131] For example, the Committee noted that *talibé* children have been brought to Dakar by Koranic teachers for the purpose of begging from other countries including *Gambia*, *Mauritania* and *Mali*. See *Gambia* – CEACR, direct request, 2010; *Mali* – CEACR, observation, 2010; and *Mauritania* – CEACR, observation, 2010.

[1132] See, for example, *Senegal* – CEACR, observation, 2011.

[1133] For example, *talibé* children from *Burkina Faso* have been trafficked to work in the rice fields of *Mali.* See, *Burkina Faso* – CEACR, observation, 2008.

[1134] For example, in *Mali*, while section 183 of the Penal Code provides that any person inciting a child to beg shall be liable to a sentence of imprisonment, the practice of begging by children in Koranic schools continues. See *Mali* – CEACR, observation, 2010.

[1135] For example, a 2006 circular of the Ministry of Justice in *Niger*, addressed to the various judicial authorities, called for the strict application of the prohibition in the Penal Code of causing another person to beg or profiting from begging *for purely economic purposes.* However, the Committee later noted the Government's indication that despite some arrests of *marabouts* presumed to use children for purely economic purposes, such persons had generally been released for lack of legal proof of their guilt, and that the phenomenon of child *talibés* remains a cause of serious concern in practice in *Niger.* See, *Niger* – CEACR, observation, 2011. In *Senegal*, while Act No. 02/2005 of 29 April 2005 forbids the organization for economic gain of begging by others or the exertion of pressure on a person to beg, including where the offence is against a minor, the *talibé* phenomenon remains a concern in practice. Moreover, Act No. 02/2005 has never been used to prosecute the offence of begging and there is evidence of official tolerance on a local and institutional level of the trafficking of *talibé* children for forced begging. See *Senegal* – CEACR, observation, 2011.

[1136] *Benin* – CEACR, direct requests, 2009 and 2011.

[1137] However, the Committee noted the comments of the National Federation of Independent Trade Unions of Senegal that while the measures taken for *talibé* children are effective, they remain inadequate. See *Senegal* – CEACR, observation, 2011.

forced to beg or children subject to economic exploitation. [1138] However, in all of these countries, the exploitation of child *talibés* remains an issue. The Committee therefore urges the governments concerned to strengthen the relevant programmes to prevent the engagement of *talibés* in begging for solely economic purposes, in addition to strengthening their efforts to identify, withdraw and reintegrate victims of this worst form of child labour.

Child labour and armed conflict

The inclusion of forced or compulsory recruitment of children in armed conflict as a worst form of child labour

486. The proposed conclusions relating to the adoption of Convention No. 182 discussed at the 86th Session of the Conference in 1998 did not originally include the forced or compulsory recruitment of children for use in armed conflict as one of the worst forms of child labour, [1139] and because of the wide range of opinions on the matter, the Committee decided to defer discussions on this issue until the 87th Session of the Conference in 1999. [1140] A wide majority of comments from governments favoured an explicit reference to the participation of children in armed conflict in a separate subparagraph under *Article 3* of the Convention, while others preferred leaving it to national determination under *Article 4(1)* on hazardous types of work. Given the complexity of the debate, the Conference Committee on Child Labour decided to allow time for an informal tripartite working group to work towards consensus on this question. As a result of the consultations, the informal working group presented a proposal including the forced or compulsory recruitment of children under 18 for use in armed conflict as a specific category of forced or compulsory labour prohibited under *clause (a) of Article 3*, [1141] which was finally adopted by the tripartite constituents as amended. [1142]

Legislative measures adopted by member States

487. The prohibition contained in *Article 3(a)* of the Convention applies both to official armed forces and other armed groups. Nevertheless, it should be recalled that *Article 3(a)* only prohibits the forced or compulsory recruitment of children under 18, and does not cover the voluntary recruitment of children under 18 for use in armed conflict. [1143]

488. Among the positive trends that emerge from the comments of the Committee is that a large majority of countries have set a minimum age for compulsory recruitment into national military service at 18 years old or even beyond. [1144] Moreover, the legislation in some countries goes further than the requirements of the Convention by prohibiting both the compulsory and voluntary recruitment of children under 18 years of age in the armed

[1138] *Mauritania* – CEACR, observation, 2010.

[1139] *Child labour*, 1998, op. cit., pp. 173–177.

[1140] *Record of Proceedings*, ILC, 86th Session, Geneva, 1998, Report of the Committee on Child Labour, para. 145, p. 19/33.

[1141] *Record of Proceedings*, ILC, 87th Session, Geneva, 1999, Report of the Committee on Child Labour, para. 130, pp. 19/28–29.

[1142] ibid., para. 163, p. 19/37.

[1143] The issue of voluntary recruitment is covered under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

[1144] See, for example, *Angola* – CEACR, direct request, 2008 (military service is compulsory for men aged between 20 and 45 years); *Kuwait* – CEACR, direct request, 2010 (everyone appointed to serve in the army must be over 21 years of age); and *Latvia* – CEACR, direct request, 2009 (citizens from the age of 19 years shall be liable for mandatory military service).

forces or armed groups. [1145] For example, in *Gabon*, enlistment in the armed forces is voluntary and cannot take place before the age of 20 years. [1146]

489. In a certain number of countries, different rules apply for compulsory and voluntary recruitment into national military service. In these situations, voluntary recruitment is authorized below 18 years of age, which does not contradict the obligations of member States under the Convention. For example, in *Israel*, a person who has attained the age of 17 and a half may be called upon for service if this person has so requested in writing and parental consent has been given, whereas a person liable for defence service is defined as an Israeli national who has attained the age of 18 and a half. [1147] Also, in *Singapore*, any person aged 16 years and 6 months may apply to the proper authority to be enlisted for regular service in the Singapore Armed Forces while a Singaporean citizen may be required to report for enlistment for national service provided that he is more than 18 years old. [1148]

490. Among the positive developments observed in recent years, the Committee has noted with satisfaction that in cases where the forced recruitment of children under 18 has been observed, some countries, including the *Central African Republic*, *Sri Lanka*, and *United Republic of Tanzania*, have recently adopted or amended legislation to prohibit the forced or compulsory recruitment of children under 18 years of age for use in armed conflict. [1149]

491. However, in a few cases, the national legislation still authorizes the compulsory recruitment of children under 18. [1150] Moreover, there are instances where the compulsory recruitment of children under 18 is prohibited, but may be permitted under special circumstances. [1151] The Committee accordingly requests the governments concerned to take the necessary steps to ensure that no young person under 18 years of age is recruited for use in armed conflict.

Issues relating to the application of the legislation concerning the forced or compulsory recruitment of children for use in armed conflict

492. While the vast majority of countries have adopted or amended legislation to prohibit the forced or compulsory recruitment of children under 18, children are still being recruited and forced to join national armed forces or illegal armed groups in practice.

[1145] See, for example, *Mali* – CEACR, direct request, 2006; *Serbia* – CEACR, direct request, 2006; and *Uruguay* – CEACR, direct request, 2005.

[1146] See *Gabon* – CEACR, direct request, 2007 (Act No. 004/98 on the general organization of national defence and public security).

[1147] See *Israel* – CEACR, direct request, 2011 (Defence Service Law).

[1148] See *Singapore* – CEACR, direct request, 2006 (Enlistment Act).

[1149] See *Central African Republic* – CEACR, observation, 2010 (Labour Code of 2009); *Sri Lanka* – CEACR, observation, 2007 (Penal Code (Amendment) Act, No. 16 of 2006); and *United Republic of Tanzania* – CEACR, observation, 2010 (Anti-Trafficking Act of 2008).

[1150] See, for example, *Dominican Republic* – CEACR, direct request, 2005; *Guinea* – CEACR, direct request, 2007; and *Niger* – CEACR, direct request, 2011.

[1151] For example, in *Cape Verde* and *Mozambique*, persons under 18 years of age may be forced to enrol in the armed forces in wartime. See *Cape Verde* – CEACR, direct request, 2007 (as from the age of 17); and *Mozambique* – CEACR, observation, 2010.

Cases of progress

493. The situation of children affected by armed conflict has improved in several instances, usually along with a decrease or cessation of hostilities in the country. These include *Côte d'Ivoire*, *Rwanda* and *Sri Lanka*. [1152] In *Côte d'Ivoire*, the armed forces and groups have taken coordinated steps to identify and release children associated in their ranks with a view to ensuring their reintegration. Moreover, armed groups have agreed to an open-door policy in cooperation with the United Nations Operation in Côte d'Ivoire (UNOCI) whereby any allegations of the use of child soldiers can be immediately investigated with their full cooperation and with unrestricted access. As a result, the Committee has noted with satisfaction that there has been no substantiated evidence of new cases of recruitment or the use of children by armed forces or groups since October 2006. In *Rwanda*, the Government has collaborated with the UNHCR to establish mechanisms for improved child protection in refugee camps and to control children's exit from refugee camps following a surge in the recruitment of children from Rwandan-based refugee camps and communities in 2007. The Committee subsequently noted with interest that by 2009 the recruitment of children from Rwanda-based refugee camps and nearby towns had stopped. Finally, in *Sri Lanka*, the practice of the forced recruitment of children under 18 also came to an end with the ending of the armed conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE) on 18 May 2009.

494. Moreover, in its report supplied under article 19 of the ILO Constitution, the Government of *Burundi* indicated that in the context of the peace agreement signed with the *Front national de libération* (FNL), child soldiers have been demobilized and reintegrated into civilian life.

Forced recruitment of children by armed forces and/or armed groups

495. However, in a number of countries in the African region, although the regular armed forces have committed themselves to stop recruiting children in their ranks, children continue to be recruited and used by armed groups. For example, in *Uganda*, while noting that no case of recruitment of children by the Ugandan People's Defence Force (UPDF) or its auxiliary forces has come to the attention of the Uganda Task Force on Monitoring and Reporting (UTFMR) following the signature of an action plan between the Government and the UTFMR on 16 January 2009, the Committee has nonetheless observed with concern that the Lords' Resistance Army (LRA), whose leadership originates in *Uganda* and a significant number of whose forces are also from *Uganda*, continues to abduct and recruit children. Given the LRA's expansion of its armed activities to the wider region, the Committee has stressed the urgent need to adopt and implement a strategy for increased regional joint capability so as to monitor and report the cross-border recruitment and use of children by the LRA and to ensure that those responsible for this worst form of child labour are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. [1153] In the *Central African Republic*, the situation in the country remains a cause of grave concern as armed groups have released relatively few children hitherto and there may have been new recruitment. Indeed, although the rebel groups of the *Armée populaire pour la restauration de la République et la démocratie* (APRD) identified children for release and reintegration,

[1152] See *Côte d'Ivoire* – CEACR, observation, 2010, and direct request, 2011; *Rwanda* – CEACR, direct request, 2011; and *Sri Lanka* – CEACR, observation, 2010.

[1153] See *Uganda* – CEACR, observation, 2010.

there are still numerous children associated in their ranks, with some cases of children as young as 9 years of age. Furthermore, many children have also been abducted and recruited by the LRA. [1154] Finally, in the *Congo*, the Committee has expressed its concern at the fact that, despite the peace agreements of March 2003, the process of disarmament, demobilization and reintegration has not yet started and some 1,500 children are still armed or associated with armed groups in the Pool region. [1155]

496. The Committee has also observed that certain other member States from other regions are still having trouble controlling the forced recruitment of children by rebel groups. For example, in *Iraq*, the Committee has noted with serious concern that children, some as young as 10 years of age, were recruited and utilized by parties to the armed conflict and non-State actors such as Al Qaeda in scouting, spying, digging holes for improvised explosive devices (IEDs), planting and transporting IEDs, videotaping attacks, as suicide bombers, as well as in more traditional combat roles. Similarly, in *Pakistan*, the Committee has noted that there have been reports of forced recruitment of under-age children by non-State actors to participate in armed conflict and terrorist activities. In *Colombia*, the number of children incorporated into illegal armed groups is still substantial and is estimated at between 8,000 and 11,000. Illegal armed groups continued to recruit children for use in armed conflict and both the *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* (FARC–EP) and the *Ejército de Liberación Nacional* (ELN) continue child recruitment campaigns in schools. [1156]

497. In other countries the situation is even more alarming, as all parties to the armed conflict, including the government armed forces, are using child soldiers. [1157] For example, in *Chad*, despite a peace agreement signed on 25 October 2007 between the Government of Chad and the three main armed groups, namely the *Union des forces pour la démocratie et le développement* (UFDD), the *Rassemblement des forces pour le changement* (RFC) and the *Concorde nationale tchadienne* (CNT), children continue to be recruited and used in the conflict by all parties. The number of children associated with the armed forces and armed groups in *Chad* is estimated to be between 7,000 and 10,000. Moreover, it has been observed that Sudanese armed groups are abducting and recruiting children in and around Chadian-based refugee camps. In the *Lao People's Democratic Republic*, there have been reports of children under 18 recruited into the armed forces, with some sources stating that the compulsory recruitment of children as young as 15 years old may occur and that there exist internal conflicts with armed opposition groups increasing the risk of child recruitment by militias. In *Sudan*, despite the adoption of new legislation which prohibits the recruitment of children under 18 into the armed forces or groups, the United Nations field monitors reported that children under 18 were forced to join various armed groups, including the Sudan People's Liberation Army (SPLA) and the armed forces, the Sudan Armed Forces (SAF), in 2008. Finally, in the *Democratic Republic of the Congo*, despite a slight fall in the number of cases of recruitment of children reported in 2009, 42 per cent of the total number of cases reported that year was attributed to the regular armed forces, the *Forces armées de*

[1154] See *Central African Republic* – CEACR, observation, 2010.

[1155] Region adjacent to the *Democratic Republic of the Congo*. See *Congo* – CEACR, direct request, 2009.

[1156] See *Colombia* – CEACR, observation, 2011; *Iraq* – CEACR, direct request, 2011; *Pakistan* – CEACR, observation, 2011; and *Philippines* – CEACR, observation, 2010.

[1157] See *Chad* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; and *Sudan* – CEACR, observation, 2010. See also Myanmar – CEACR, observation, 2011, Convention No. 29. Myanmar has not ratified Convention No. 182. However, in its comments under Convention No. 29, the Committee has observed that many children under 18 are being forcibly recruited by the government armed forces.

la République démocratique du Congo (FARDC) which, in addition, accumulate the largest number of children in their ranks, partly due to the accelerated integration process of armed groups into the FARDC. [1158]

498. ***The Committee emphasizes the seriousness of such violations of the Convention. Considering these situations to be of deep concern, the Committee strongly urges the governments concerned to take immediate and effective measures to put a stop in practice to the forced recruitment of children under 18 years of age by armed groups and/or armed forces and to ensure that thorough investigations and robust prosecutions of the perpetrators of these egregious crimes are carried out and sufficiently effective and dissuasive penalties are applied in practice.***

The various roles in which children associated with armed forces and/or armed groups are used

499. The Committee has observed on many occasions that children in armed conflict are not only used as fighters or for taking direct part in hostilities. Some children are also used to support the war efforts, or may combine all these roles at the same time. They are generally used in supportive roles, such as porters, spies, cooks or messengers, and girls are often abducted for sexual purposes. Although these roles do not fall directly within the scope of the prohibition of forced or compulsory recruitment of children under 18 for use in armed conflict, the Committee has examined them under the category of slavery and forced labour. ***Where the Committee observes that children are being abducted by armed groups and forced to provide work and services, as well as becoming sex slaves, it strongly urges the governments of the countries concerned by this situation*** [1159] ***to take effective and time-bound measures to eradicate abductions and the exaction of forced labour from children as a matter of urgency and to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice.*** [1160]

Programmatic measures

National programmes for disarmament, demobilization and reintegration (DDR) and ILO–IPEC interregional projects

500. A significant number of countries affected by armed conflict have launched a national programmes for disarmament, demobilization and reintegration (DDR) of former combatants, including child soldiers, with the assistance of the United Nations and partner agencies or in the context of UN peacekeeping operations. [1161] These programmes, which promote the release of recruited children or provide reintegration and rehabilitation services for former child combatants, have produced notable results in terms of the number of children released and rehabilitated through family reunification, the establishment of rehabilitation and educational centres and the provision of psychological assistance. For example, the Committee noted with interest that the

[1158] Several cases are interlinked with individual criminal responsibility and are being deliberated upon by the International Criminal Court. The United Nations Security Council has also applied sanctions to various groups abusing children in this field.

[1159] Such as *Central African Republic*, *Colombia*, *Democratic Republic of the Congo*, *Sudan*, and *Uganda*. See *Central African Republic* – CEACR, observation, 2010; *Colombia* – CEACR, observation, 2009; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Sudan* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2010.

[1160] See, for example, *Sudan* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2010.

[1161] See, for example, *Burundi* – CEACR, observation, 2008; *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Liberia* – CEACR, direct request, 2011.

Government of *Sri Lanka* has taken significant measures to rehabilitate and reintegrate former child soldiers, such as reunification with their families or recruitment for foreign employment. It has also granted an amnesty to all child combatants who have surrendered and entitled them to undergo a rehabilitation programme under which accommodation, support, catch-up education and vocational training for persons under 18 years are provided in three rehabilitation centres. [1162] Similarly, in *Uganda*, specialized schools have been built in the northern part of the country to give support and rehabilitate former abducted children and child victims of armed conflict. [1163] In *Colombia*, the Government has adopted extensive measures to prevent the recruitment of children, such as developing an "early warning system" for monitoring imminent risks of violations of human rights and creating an inter-sectoral commission for the prevention of the recruitment and use of children by illegal armed groups and their reintegration into their communities.

501. Moreover, sizeable results have been achieved in the context of the ILO–IPEC interregional project on the prevention and reintegration of children involved in armed conflict, which aims to prevent the recruitment of children in armed conflict, facilitate their removal and ensure the social and economic reintegration of children formerly associated with armed forces and armed groups and other war affected children in certain Central African countries *(Burundi, Congo, Democratic Republic of the Congo* and *Rwanda)*, [1164] as well as in *Colombia*, *Philippines* and *Sri Lanka*. [1165] Important results have also been achieved through the ILO–IPEC project "Youth affected by war" implemented in *Burundi* and the *Democratic Republic of the Congo* following the completion of the interregional project.

ILO response to forced labour and under-age recruitment in Myanmar

- Myanmar has not ratified Convention No. 182, but this case highlights the nexus between the worst forms of child labour and the effective elimination of forced labour.
- Within the framework of the complaints mechanism established in the Supplementary Understanding between the ILO and the Government of Myanmar in 2007, 210 formal complaints have been received since the 310th Session of the Governing Body (March 2011). Of these complaints, 155 (75 per cent) relate to under-age recruitment, and particularly the trafficking of children for forced labour and military forced labour. In this regard, the Committee welcomes the fact that, since 1 March 2011, 33 children have been released or discharged from the military in response to complaints lodged under the Supplementary Understanding. Since February 2007, a total of 208 under-age recruits have been released or discharged in response to the Supplementary Understanding. Moreover, action under the military disciplinary code is now routinely taken with regard to military personnel deemed responsible for the recruitment of minors.
- The Committee calls on the Government to continue taking measures to put a stop, in practice, to the forced recruitment of children. In this respect, it urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of the perpetrators are carried out, and that sufficiently effective and dissuasive penalties are applied in practice.
- The Committee invites the Government to consider ratifying Convention No. 182.

[1162] See *Sri Lanka* – CEACR, observation, 2010.

[1163] See *Uganda* – CEACR, observation, 2010.

[1164] See *Burundi* – CEACR, observation, 2008; *Congo* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, observation, 2006; and *Rwanda* – CEACR, direct request, 2010.

[1165] See *Colombia* – CEACR, observation, 2009; *Philippines* – CEACR, observation, 2006; and *Sri Lanka* – CEACR, observation, 2010.

The challenge of rehabilitating former child soldiers

502. Despite the positive achievements obtained in most countries, particularly in removing children associated with armed forces, the effective reintegration of former child soldiers into civil society remains a major challenge. Indeed, observing that these children commonly face major obstacles to their social integration and are therefore at high risk of being re-recruited by armed forces, the Committee stresses the importance of ensuring that child victims of this worst form of child labour receive appropriate assistance for their rehabilitation and social integration. Among the difficulties observed, children may face ostracism and threats upon their return to their communities, as former recruiters may still be present in the same region. [1166] In addition, measures and strategies at the national level to adequately reintegrate child victims are often lacking, especially in relation to programmes aimed at promoting access to education or vocational training for former child victims, as well as psychological assistance. [1167] In several countries, children associated with armed forces may also be treated as prisoners of war. [1168] Former child soldiers may also be tried as war criminals in military courts and sentenced to imprisonment for military offences and other crimes allegedly committed while they were in the armed forces or groups. [1169] The Committee must express its concern over these practices and recalls that these children must be treated as victims rather than offenders.

Girls associated with armed forces and/or armed groups

503. Reaching out to girls associated with armed forces and groups is a highly complex issue. On the one hand, it is more difficult to gain the release of girl child soldiers through the formal process of DDR as they are used as sexual slaves by military officials who consider them as their own property. On the other hand, girls who have escaped or have been released from armed groups prefer returning discreetly to civilian life for fear of being socially excluded if they are found to have been associated with armed forces or groups and therefore do not benefit from rehabilitation programmes and psychological assistance. [1170] Given the particular complexity of this situation, the Committee underlines the need to pay special attention to the removal, rehabilitation and social integration of girls. [1171]

Child commercial sexual exploitation

504. *Article 3(b)* of the Convention states that the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances constitute some of the worst forms of child labour. [1172] Convention No. 182 is the first

[1166] See *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Rwanda* – CEACR, direct request, 2011.

[1167] See, for example, *Colombia* – CEACR, observation, 2011; *Congo* – CEACR, direct request, 2009; and *Democratic Republic of the Congo* – CEACR, observation, 2011.

[1168] For example, in *Iraq*, 838 children have been detained or imprisoned under custody of the Government for conflict-related reasons and face the threat of sexual and physical abuse by law enforcement officials to obtain a confession. See *Iraq* – CEACR, direct request, 2011.

[1169] See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011.

[1170] For example, in the *Democratic Republic of the Congo*, only 7 per cent of girls associated with armed forces and groups benefit from assistance through national DDR programmes.

[1171] See also *Congo* – CEACR, direct request, 2009.

[1172] For a definition of the terms "child prostitution" and "child pornography", reference may be made to Art. 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

ILO standard to explicitly recognize sexual exploitation as a labour rights issue. [1173] In the preparation of the Convention, some concerns were expressed by constituents that the designation of prostitution and the production of pornography as child *labour* would legitimize these activities as forms of work. [1174] On this subject, the report prepared by the Office in 1998 stated that "[c]hild prostitution and child pornography … are crimes of violence against children. They must be treated as crimes and attacked as the most serious crimes are attacked. Such repellent abuses are so far removed from any normal notion of work or labour … yet while they are crimes they are also forms of economic exploitation." [1175] In this regard, the Committee must highlight that *Article 3(b)* of the Convention only covers the sexual exploitation of children for an economic purpose, and does not encompass other forms of sexual abuse.

Prostitution

Legislation prohibiting the use, procuring or offering of a child for the purpose of prostitution

Positive legislative developments

505. The Committee observes that the majority of member States have some type of legislative prohibition against involving a child in prostitution. Overall, the ratification of Convention No. 182 has yielded positive legislative results with regard to government action in this area. [1176] For example, between 1999 and 2009, the Committee has noted approximately 50 new legislative prohibitions on child prostitution. [1177] Moreover, several member States have, since the ratification of the Convention, amended their existing legislation concerning the prostitution of children to be in conformity with the Convention.

Prohibiting child prostitution for both boys and girls

506. A growing number of member States have replaced legislation which only addressed the commercial sexual exploitation of girls with legislation that protects children of both sexes. For example, in *Papua New Guinea*, the Committee noted with satisfaction that the Criminal Code was amended to prohibit offences relating to child prostitution for children of both sexes, as the previous prohibition only protected girls. [1178] However, in a significant number of countries, the legislation concerning commercial sexual exploitation still applies only in cases where the victim is female, meaning that boys who are victims of commercial sexual exploitation do not benefit from the protection of the Convention. [1179] In such cases, the Committee strongly

[1173] *Child labour in a globalized world*, op. cit., p. 129.

[1174] See, for example, the comments on the proposed Convention by the Government of Venezuela (ILC Report IV(2A), 87th Session, 1999, p. 58) and by the General Confederation of Portuguese Workers Venezuela (ILC Report IV(2A), 87th Session, 1999, pp. 14 and 54).

[1175] ILC Report VI(2), 86th Session, 1998, p. 52.

[1176] *Child labour in a globalized world*, op. cit., p. 92.

[1177] *Accelerating action against child labour*, op. cit., fig. 1.10.

[1178] *Papua New Guinea* – CEACR, observation, 2011.

[1179] See, for example, *Bangladesh* – CEACR, direct request, 2011; *Belize* – CEACR, direct request, 2011; *Botswana* – CEACR, direct request, 2010; *Jordan* – CEACR, observation, 2011; *Mali* – CEACR, direct request, 2010; and *Seychelles* – CEACR, direct request, 2008.

emphasizes that the Convention applies equally to boys and girls, and urges the governments concerned to take immediate measures to ensure that the relevant legislation provides protection to both sexes.

Protecting all persons under the age of 18 from prostitution

507. Some member States have raised the age of the prohibition of prostitution to be in line with the Convention. For example, in *Germany*, the Committee noted with interest that the Penal Code was amended to change the prohibition on using a child for the purpose of prostitution from 16 to 18 years of age. [1180] Nonetheless, in some member States the relevant legislation only addresses children up to 14 or 16 years of age. [1181] In this regard, the Committee calls on such governments to provide protection from prostitution to all children under 18 years of age.

Prohibiting the "use" of a child for the purpose of prostitution

508. ***In several countries, the procuring or offering (that is, by a pimp) of a child for the purpose of prostitution is prohibited, but the use of a child for this purpose (that is, by a client) is not,*** [1182] ***although the use of a child is explicitly included in Article 3(b) of the Convention. In such cases, the Committee reminds the governments concerned of the importance of punishing all those who use children for the purpose of prostitution, and calls for immediate legislative action to address this gap.***

Age of consent versus commercial sexual exploitation

509. The Committee wishes to underline that a child's consent to a sexual act does not preclude it from the prohibition; *Article 3(b)* of the Convention prohibits the use of a child under the age of 18 for prostitution, regardless of the child's consent. [1183] The Committee must also emphasize that in countries where the age of consent is below 18, the prostitution of any person under the age of 18 constitutes a worst form of child labour, even if prostitution is a legal practice. [1184] ***In this regard, the Committee wishes to underline the importance of distinguishing between the age of sexual consent and the age for protecting children from commercial sexual exploitation. The Committee considers that all persons under the age of 18 years are entitled to be protected absolutely from commercial sexual exploitation, and that neither the age of consent nor the legality of prostitution affects the obligation to prohibit this worst form of child labour.***

[1180] *Germany* – CEACR, direct request, 2011.

[1181] See, for example, *Angola* – CEACR, direct request, 2011; *Montenegro* – CEACR, direct request, 2010; and *Namibia* – CEACR, direct request, 2010.

[1182] See, for example, *Argentina* – CEACR, observation, 2011; *Azerbaijan* – CEACR, direct request, 2011; *Chad* – CEACR, direct request, 2010; *Congo* – CEACR, direct request, 2009; and *Slovenia* – CEACR, direct request, 2011.

[1183] *Child Labour*, Report VI(2), ILC, 86th Session, Geneva, 1998, pp. 52–53.

[1184] See, for example, *Switzerland* – CEACR, observation, 2010.

Treating children engaged in prostitution as victims, not offenders

510. ***Moreover, the Committee must emphasize that children who are used, procured or offered for prostitution should be treated as victims, and not as offenders. In some countries, children engaged in prostitution are considered to have committed a criminal offence,*** [1185] ***and in others, these children are in practice treated as criminals.*** [1186] ***In all such cases, the Committee calls on the governments concerned to treat children engaged in prostitution as victims rather than offenders, and to ensure that they receive the services necessary for their rehabilitation and social reintegration.***

Good practices: Programmatic measures to combat child prostitution

511. In several countries, despite legislation prohibiting the commercial sexual exploitation of persons under 18, this remains an issue of serious concern in practice. [1187] In such cases, the Committee calls on the governments concerned to take immediate measures to strengthen law enforcement efforts to combat the prostitution of both boys and girls, and to take complementary programmatic measures to address this worst form of child labour.

National plans of action against commercial sexual exploitation

512. Since the adoption of the Convention, the Committee has noted a wide range of programmatic measures taken to address this phenomenon. These include national action plans to combat commercial sexual exploitation, particularly in South-East Asia (including *Cambodia, Indonesia, Lao People's Democratic Republic* and *Viet Nam*) [1188] and in Latin America (including *Colombia, Guatemala, Nicaragua, Panama, Paraguay, Uruguay* and *Bolivarian Republic of Venezuela*). [1189] For example, the national action plan for the prevention of the commercial sexual exploitation of boys, girls and young persons under 18 years of age in *Colombia* provided assistance and rehabilitation services to 2,294 child victims of commercial sexual exploitation in 2009. [1190] Other countries which have implemented such plans of action include *Bulgaria*, *Cameroon*, *Czech Republic*, *Mauritius*, *New Zealand* and *Spain*. [1191]

[1185] See, for example, *Kyrgyzstan* – CEACR, observation, 2011; *Nigeria* – CEACR, direct request, 2005; and the *United Arab Emirates* – CEACR, observation, 2010.

[1186] See, for example, *Austria* – CEACR, direct request, 2011; *Egypt* – CEACR, observation, 2011; *Colombia* – CEACR, direct request, 2009; *Fiji* – CEACR, direct request, 2010; *Iceland* – CEACR, direct request, 2010; and *Rwanda* – CEACR, direct request, 2011.

[1187] See, for example, *Burundi* – CEACR, observation, 2008; *Thailand* – CEACR, observation, 2011; and *Rwanda* – CEACR, direct request, 2011.

[1188] *Cambodia* – CEACR, direct request, 2009; *Indonesia* – CEACR, direct request, 2007; *Lao People's Democratic Republic* – CEACR, direct request, 2010; and *Viet Nam* – CEACR, direct request, 2010.

[1189] *Colombia* – CEACR, direct request, 2011; *Guatemala* – CEACR, observation, 2008, *Nicaragua* – CEACR, observation, 2010; *Panama* – CEACR, direct request, 2011; *Paraguay* – CEACR, observation, 2007; *Uruguay* – CEACR, direct request, 2010; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[1190] *Colombia* – CEACR, direct request, 2011.

[1191] *Bulgaria* – CEACR, observation, 2009; *Cameroon* – CEACR, observation, 2011; *Czech Republic* – CEACR, observation, 2010; *Mauritius* – CEACR, direct request, 2008; *New Zealand* – CEACR, direct request, 2010; and *Spain* – CEACR, direct request, 2008.

*ILO–IPEC: **TBPs** and regional projects*

513. The Committee has also noted the work of ILO–IPEC in several countries to combat the commercial sexual exploitation of children. For example, during Phase I of *Indonesia*'s ***TBP***, 177 children were withdrawn from commercial sexual exploitation and an additional 5,210 children were prevented from engaging in this worst form of child labour. [1192] In the *United Republic of Tanzania*, within the framework of an ILO–IPEC project, 858 children (167 boys and 691 girls) were withdrawn and 648 children (414 boys and 234 girls) were prevented from commercial sexual exploitation. [1193] Through the implementation of a ***TBP*** in *Brazil*, 723 children (54 boys and 669 girls) were prevented or removed from commercial sexual exploitation, and psychological and social support was provided to these former victims. [1194] Regional projects include the ILO–IPEC project entitled "Participation in preventing and eliminating the commercial sexual exploitation of children in Central America, Panama and the Dominican Republic", which resulted in the removal of 118 children from this worst form of child labour in *Costa Rica*, the removal of 88 children in *Panama*, the majority of whom were girls, as well as the removal of 80 children in the *Dominican Republic* through the provision of educational services and training opportunities. [1195]

Taking into account the special situation of girls in combating child prostitution

514. In most countries where statistics are available, the majority of victims of child prostitution are female, [1196] and therefore in many member States programmatic measures to prevent and combat this phenomenon focus particularly on girls. In this regard, the Committee has noted the statement by the Government of *New Zealand* that education and vocational training are the best strategies to prevent young girls from entering the sex industry. [1197] Member States implementing programmatic measures focusing on girls include *Kenya*, where 81 per cent of the children withdrawn from commercial sexual exploitation through the ***TBP*** operating in the country were girls [1198] and the *Netherlands*, where a range of measures were implemented to protect young girl victims, including residential assistance and the creation of a support network for girls fleeing this worst form of child labour. [1199] The Committee recognizes the value of these targeted efforts in combating the worst forms of child labour, and encourages governments undertaking such measures to pursue their efforts in this regard. Moreover, the Committee calls on governments that are developing programmatic initiatives to combat child prostitution to take particular account of the special situation of girls in both the formulation and the implementation of such programmes.

[1192] *Indonesia* – CEACR, observation, 2011.

[1193] *United Republic of Tanzania* – CEACR, observation, 2010.

[1194] *Brazil* – CEACR, observation, 2010.

[1195] *Costa Rica* – CEACR, direct request, 2011; *Panama* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, observation, 2011.

[1196] See, for example, *Botswana* – CEACR, direct request, 2010; *Comoros* – CEACR, direct request, 2010; *Jamaica* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; and *Russian Federation* – CEACR, direct request, 2010.

[1197] *New Zealand* – CEACR, direct request, 2010.

[1198] *Kenya* – CEACR, direct request, 2010.

[1199] *Netherlands* – CEACR, direct request, 2010.

Pornography

Legislative prohibition of the use, procuring or offering of a child for the production of pornography

Increasing legislative conformity with the Convention regarding child pornography

515. The Committee has observed the positive impact of the Convention regarding legislative action to address child pornography. Between 1999 and 2009, the Committee noted the adoption of nearly 50 legislative prohibitions related to child pornography. For example, following the Committee's observations that there were no provisions in the relevant legislation specifically addressing this worst form of child labour in *Jamaica*, the Committee subsequently noted with interest the adoption of the Child Pornography (Prevention) Act. [1200] Several countries have recently adopted more comprehensive prohibitions of child pornography. For example, the Committee noted with interest that the Penal Code in *Albania* was amended to prohibit the use of all persons under 18 for the production of pornographic materials, as the previous Penal Code only prohibited obscene acts with minors under 14 years of age. [1201]

Absence of legislative provisions prohibiting child pornography

516. However, significant legislative gaps remain in this area. In a number of member States, there exists no prohibition against child pornography. [1202] The lack of specific legislative provisions prohibiting child pornography is particularly problematic in countries where this worst form of child labour is clearly present. [1203] However, even in countries where the government indicates that there have been no recorded cases of child pornography, the Committee emphasizes the importance of having a specific prohibition of this worst form of child labour, pursuant to *Articles 1 and 3* of the Convention. [1204]

Protecting both girls and boys under the age of 18 from exploitation in child pornography

517. In a number of member States, the existing provisions relating to child pornography do not encompass all children covered by the Convention. ***In some member States, the relevant provisions only protect girls from exploitation in the production of pornography.*** [1205] ***In such cases, the Committee recalls that the Convention applies to both boys and girls, and calls on the governments concerned to take the necessary measures to prohibit the use, procuring or offering of boys under 18 years of age for the production of pornography. Similarly the legislation of some member States only prohibits the use, procuring or offering of a child in a***

[1200] *Jamaica* – CEACR, direct request, 2011.

[1201] *Albania* – CEACR, direct request, 2011.

[1202] See, for example, *Cameroon* – CEACR, observation, 2011; *Chad* – CEACR, direct request, 2010; *Dominica* – CEACR, direct request, 2010; *Sao Tome and Principle* – CEACR, direct request, 2011; and *Trinidad and Tobago* – CEACR, direct request, 2011.

[1203] See, for example, *Belize* – CEACR, direct request, 2011; and *Malawi* – CEACR, direct request, 2011.

[1204] See, for example, *Islamic Republic of Iran* – CEACR, direct request, 2011.

[1205] See, for example, *Bangladesh* – CEACR, direct request, 2011.

pornographic production from the age of 14 [1206] ***or 16 years.*** [1207] ***In such cases, the Committee urges the governments concerned to take the necessary measures without delay to ensure the adoption of legal provisions prohibiting and penalizing the involvement of children under 18 years of age in pornography.***

The importance of specifically addressing the involvement of a child in the production of pornography

518. In some member States, the prohibition relating to child pornography does not specifically address the *involvement* of a child in the production of pornographic materials. For example, in several member States, the prohibition relating to child pornography applies only to the possession and dissemination of child pornographic materials, [1208] and does not specifically relate to the production of such materials (or more particularly the use, procuring or offering of a child for such a purpose). [1209] Moreover, in some member States it is prohibited to expose a child to pornography, but this prohibition does not cover the *involvement* of a child in the production of such materials. [1210] The Committee is of the view that such provisions do not constitute adequate prohibitions in line with *Article 3(b)* of the Convention.

Prohibiting child pornographic performances

519. Furthermore, the Committee wishes to highlight the issue of live pornographic performances by children. While the majority of child victims of this worst form of child labour are exploited for the purpose of photographs and recordings, the Convention is quite clear in that it specifies that this prohibition must apply not only to the production of pornographic materials, but also to pornographic *performances*. ***In countries where non-recorded pornographic performances appear to be a problem in practice, the Committee urges the governments concerned to ensure that the relevant prohibition addressing the use, procuring and offering of a child for pornographic purposes also applies to non-recorded performances.*** [1211]

[1206] *Cape Verde* – CEACR, direct request, 2011.

[1207] *Angola* – CEACR, observation, 2011; *Antigua and Barbuda* – CEACR, direct request, 2011; and *Australia* – CEACR, direct request, 2011.

[1208] The medium of dissemination and consumption of pornographic material is not directly addressed in the Convention, and this is left to the national lawmaker. However, the existence of such material indicates a violation of the prohibition against using a child to produce pornographic materials. See *Child labour*, op. cit., p. 60.

[1209] See, for example, *Bahrain* – CEACR, observation, 2011; *Botswana* – CEACR, direct request, 2010; *Islamic Republic of Iran* – CEACR, direct request, 2011; *Singapore* – CEACR, direct request, 2010; and *United Kingdom (Guernsey)* – CEACR, direct request, 2011.

[1210] See, for example, *Mozambique* – CEACR, observation, 2010.

[1211] See, for example, *Thailand* – CEACR, observation, 2011.

Lack of clarity in the definition of child pornography

520. In some countries, the prohibitions related to child pornography are quite vague, [1212] and may simply prohibit involving a person in "unlawful and immoral" activities or "debauchery". [1213] In such cases, it is essential to determine whether such broad provisions are, in practice, used to prosecute persons who engage children in pornographic productions. If these provisions are not, in practice, used to prosecute persons who exploit children in pornographic productions, the Committee must urge the governments concerned to replace unclear provisions with specific prohibitions of this worst form of child labour.

Positive initiatives to combat the exploitation of children in pornography

521. The Committee consistently encourages governments to take comprehensive measures to prevent and combat the use of children in pornographic productions. While the Convention focuses on the actual use of a child for the production of materials, measures to reduce the demand for child pornographic materials contributes to preventing the future exploitation of children in this worst form of child labour. For example, in *Bulgaria*, a telephone hotline to combat illegal content in Bulgarian Internet space has been developed, which receives information from the public concerning child pornographic materials. [1214] In *Mexico*, the Internet Police Unit deactivated 1,113 websites containing child pornography. [1215] Due to the global nature of this phenomenon (as materials exploiting children for pornographic purposes are often disseminated transnationally via the Internet and other means), these measures should be implemented in all member States where such materials are consumed, even if the materials are not often produced within the country. An example of this is *France*, where a platform for the channelling of reports concerning illegal content on the Internet was established, enabling Internet surfers to report online content such as child pornography (approximately 33,735 reports were received between January and September 2009). [1216] Efforts to address the consumption of child pornographic materials may also contribute to the identification of persons who produce such material. ***The Committee is of the view that measures to stem the dissemination of these pornographic materials, and to prosecute the consumers of such materials, are important contributions to combating this worst form of child labour, as they decrease the demand for these materials.***

522. In addition, many positive initiatives have been undertaken by law enforcement officials to enforce legislation prohibiting the involvement of children in the production of pornography. For example, the Committee noted with interest a number of measures implemented in *Ukraine* to combat pornography, including the initiative by the police to dismantle the networks of individuals and organized criminal groups involved in

[1212] For example, in *Liberia*, while a draft bill aimed to prohibit the "sexual exploitation" of a child, it was not clear whether this encompassed the use, offering or procuring of a child for the production of pornography or pornographic performances. *Liberia* – CEACR, direct request, 2011.

[1213] For example, with regard to *Pakistan* (where the legislation prohibits selling, hiring or involving a person under 18 in "unlawful and immoral" purposes) and the *United Arab Emirates* (where the Penal Code prohibits inciting debauchery or exploiting the debauchery of another person), the Committee has requested the respective Governments to clearly indicate whether the production of pornography is encompassed in these prohibitions. See *Pakistan* – CEACR, direct request, 2011; and *United Arab Emirates* – CEACR, direct request, 2010.

[1214] *Bulgaria* – CEACR, observation, 2009.

[1215] *Mexico* – CEACR, observation, 2011.

[1216] *France* – CEACR, direct request, 2011.

pornography (22 groups discovered in 2005 and 65 in 2006), and initiatives to verify the legality of a significant number of photographic studios and modelling agencies. [1217] Moreover, *Canada*'*s* National Child Exploitation Coordination Centre coordinated an investigation into child sexual victimization on the Internet, resulting in 50 arrests on charges which included the making and distributing of child pornography. [1218] In *Belarus*, law enforcement officials stopped the activities of an organized criminal group that had produced and disseminated child pornography in 2008, and five pornographic studios were closed down from 2008–09. [1219]

523. ***However, the Committee observes that the relevant legislation is not always applied in practice. Where this is the case, the Committee must express its concern regarding such violations of the Convention, and calls on all member States to take the necessary measures to ensure that thorough investigations and robust prosecutions are carried out in practice against persons who use, procure or offer persons under 18 years of age for the production of pornography or pornographic performances.***

Child sex tourism

Extraterritorial legislation to combat child sex tourism and other legislative initiatives

524. Child sex tourism is a difficult problem to address, as perpetrators are not citizens of the State in which the offence is committed, making prosecution difficult. However, the Committee observes the positive trend of countries enacting legislation to combat child sex tourism. [1220] Specifically, such provisions permit the punishment of national citizens who engage children in prostitution outside the national territory, with a view to combating the phenomenon of citizens travelling to other countries to take advantage of weaker legislation or enforcement regarding the commercial sexual exploitation of children. For example, the Crimes Amendment Act of 2004 in *New Zealand* stipulates that the prohibition on engaging a child in prostitution applies to sexual conduct with children and young people outside the country. [1221] In *Suriname*, the Penal Code was amended in 2009 to provide that sexual offences committed with a person under 18 outside the country are punishable within *Suriname*. [1222] In the *United States*, section 2423(b) of Title 18 of the United States Code prohibits travelling in foreign commerce for the purpose of engaging in any prohibited sexual act with a person under 18. [1223] In *Spain*, the Penal Code provides for the prosecution of Spanish nationals and residents of *Spain* if they commit an offence in another country relating to the commercial sexual exploitation of children. Several destination countries for perpetrators of child sex tourism have also adopted penal legislation to specifically combat this offence, such as *Mexico*, *Morocco* and *Panama*. [1224]

[1217] *Ukraine* – CEACR, observation, 2008.

[1218] *Canada* – CEACR, direct request, 2011.

[1219] *Belarus* – CEACR, direct request, 2011.

[1220] One priority is to combat local sex tourism through national legislation, such as criminal legislation. However, cross-border cases can be addressed through extraterritorial legislation.

[1221] *New Zealand* – CEACR, direct request, 2006 (section 144A Crimes Amendment Act of 2004 and the Prostitution Reform Act of 2003).

[1222] *Suriname* – CEACR, direct request, 2010 (Title XIV of the Penal Code).

[1223] *United States* – CEACR, observation, 2005.

[1224] *Mexico* – CEACR, observation, 2011; *Morocco* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2011; and *Spain* – CEACR, direct request, 2005.

Challenges in enforcing the prohibition of child sex tourism

525. ***Enforcing the relevant legislation has been difficult in some countries, partially due to the transnational nature of this crime. The Committee has noted with concern a number of countries where child sex tourism continues despite legislative provisions,*** [1225] ***in addition to a number of countries whose citizens travel for the purpose of child commercial sexual exploitation.*** [1226] ***The Committee expresses its serious concern regarding the continuation of child sex tourism and strongly urges both source and destination countries of child sex tourism to strengthen their efforts to investigate, prosecute and convict perpetrators of this worst form of child labour, and to cooperate fully to make such efforts more effective.***

Good practices in preventing and combating child sex tourism

526. A variety of programmatic measures have been undertaken to address the phenomenon of child sex tourism in both source and destination countries of this worst form of child labour. For example, in the *Philippines*, the Department of Tourism has adopted the "Child wise tourism in the Philippines" programme, in partnership with Child Wise Tourism *Australia*, which encourages resorts and tour operators to report suspected cases of child sex tourism. [1227] In the *Dominican Republic*, an ethical code for the tourism sector is being implemented and awareness-raising activities on commercial sexual exploitation have been carried out in the tourist industry. [1228] In addition, in *Germany*, pursuant to the Plan of Action to Protect Children and Young Persons from Sexual Violence and Exploitation a "Code of Conduct for Protecting Against Child Sexual Exploitation in Tourism" was developed, and an awareness-raising campaign on child sexual exploitation was implemented, involving in-flight videos and a website. [1229] Moreover, in *Sri Lanka*, the National Action Plan to Combat Child Sex Tourism was implemented by UNICEF and the Sri Lanka Tourist Board with the aim of raising awareness of the tourist industry's zero-tolerance policy in relation to child sex tourism, maximizing the involvement of the private tourism sector in combating the phenomenon and empowering children and adolescents. [1230] Similarly, in *Chile*, the *"No hay excusas"* awareness-raising campaign was launched in September 2009 with the cooperation of the National Tourism Service and ILO–IPEC, which included the circulation of materials in *Chile*'s three border areas and main airport, and the slogan "in Chile sexual exploitation is a crime" was stamped on all entry visas. The Committee welcomes such initiatives and encourages the governments undertaking them to pursue or strengthen

[1225] For example, in *Fiji*, there has been a rise in child sex tourism and in *Jamaica*, child sex tourism continues to be a problem in the country's resort areas. Despite an amendment to the Penal Code of *Morocco* in 2003 criminalizing sex tourism, child prostitution and sex tourism involving young Moroccans and immigrants, particularly boys, is persistent. Moreover, in *Indonesia*, while the Minister of Culture and Tourism adopted Regulation No. PM.30/HK.201/MKP/2010 on Guidelines on the Prevention of Sexual Exploitation of Children in Tourism in 2010, child sex tourism remains prevalent in most urban areas and tourist destinations, such as Bali and Riau Island, and between 40,000 and 70,000 Indonesian children are victims of commercial sexual exploitation. See *Fiji* – CEACR, direct request, 2011; *Indonesia* – CEACR, observation, 2011; *Jamaica* – CEACR, observation, 2011; and *Morocco* – CEACR, observation, 2011; in addition to *Chile* – CEACR, direct request, 2011; and *Dominican Republic* – CEACR, observation, 2011.

[1226] For example, the Committee has noted that nationals of *Spain*, *Italy*, *Germany*, *Canada* and the *United States* travel to engage in child sex tourism (see *Dominican Republic* – CEACR, observation, 2011), as well nationals of *Sweden* (see *Sweden* – CEACR, direct request, 2011).

[1227] *Philippines* – CEACR, direct request, 2008.

[1228] *Dominican Republic* – CEACR, observation, 2011.

[1229] *Germany* – CEACR, direct request, 2011.

[1230] *Sri Lanka* – CEACR, observation, 2010.

their efforts in this regard. Furthermore, in cases where child sex tourism is prevalent, the Committee considers that the governments should take specific measures aimed at combating this phenomenon, including measures to raise awareness among actors directly related to the tourism industry, such as associations of hotel owners, tour operators, unions of taxi drivers and owners of bars, restaurants and their employees. [1231]

Use, procuring or offering of children for illicit activities

The inclusion of the use, procuring or offering of a child for illicit activities as a worst form of child labour

527. The first questionnaire sent to the tripartite constituents on the possible content of the Convention proposed *Article 3, clauses (b) and (c)*, of the final text of the Convention as a single item worded *"the use, engagement or offering of a child for prostitution, production of pornography or pornographic performances, production of or trafficking in drugs or other illegal activities"*. [1232] During the discussions at the 86th Session of the Conference, the constituents agreed to separate the two items, that is prostitution, production of pornography or pornographic performances, and illicit activities, into two different clauses for the purposes of clarity. [1233] Following the discussions, the Conference adopted amendments replacing the word "*engagement*" with the word "*procuring*" and adding to the clause the specific example of using, procuring or offering a child "*for the production and trafficking of narcotics drugs and psychotropic substances as defined in the relevant international treaties*". In 1999, the Office proposed that reference be made to "illicit activities" rather than to "illegal activities" for the following reasons: that by using the expression "illegal", an activity that had not been prohibited by national law might be considered to fall outside the scope of *clause (c)*; and that any activity considered illegal by the national legislation may fall within the scope of *clause (c)*. The Office also suggested simplifying the phrase, adding the specific example to read as "*in particular for the illicit production and trafficking of drugs as defined in the relevant international treaties*". [1234] These proposals became the final terms used in *Article 3(c)*. [1235] Moreover, during the elaboration of Recommendation No. 190, Paragraph 12(c), the constituents agreed to refer to another example of illicit activities other than the production and trafficking of drugs, namely "*activities which involve the unlawful carrying or use of firearms or other weapons*".

[1231] See, for example, *Dominican Republic* – CEACR, observation, 2011.

[1232] *Child labour*, 1998, op. cit., Questionnaire, point 7(b), p. 4.

[1233] *Record of Proceedings*, ILC, 86th Session, Geneva, 1998, Report of the Committee on Child Labour, paras 131–140, pp. 19/30–32.

[1234] The Office views the relevant treaties as the Single Convention on Narcotic Drugs, 1961; the Convention on Psychotropic Substances, 1971; the Protocol amending the Single Convention on Narcotic Drugs, 1972; and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. See *Child labour*, 1999, op. cit., p. 61, footnote 9 (Office commentary).

[1235] ibid., p. 61 (Office commentary).

Legislative measures adopted by member States to prohibit the use, procuring or offering of children for illicit activities

528. A substantial number of countries have adopted legislation to prohibit the use, procuring or offering of children under 18 for the production and trafficking of drugs. [1236] The prohibition of this worst form of child labour is applied by member States through different types of legislation and in different ways. In most cases, it is applied through criminal law, [1237] child protection acts, [1238] specific acts prohibiting trafficking in drugs, [1239] or is included in the list of prohibited types of hazardous work which is generally contained in the Labour Code. [1240]

The production and trafficking of drugs

529. In some cases, the legislative provision simply reproduces *Article 3* of the Convention as, for example, in *Burkina Faso*, *Central African Republic* and *Fiji*, [1241] or is limited to the use, procuring or offering of a child for the production and trafficking of drugs and does not prohibit the use of a child for other types of illicit activities. [1242] For example, in *China*, the Criminal Law states that whoever uses or urges a young person to traffic, transport, manufacture or sell drugs to young persons commits an offence.

Begging and other types of illicit activities

530. In other cases, the legislation covers different forms of illicit activities. Among the different types of activities considered as illicit other than the production and trafficking of drugs, the Committee has observed that the legislation in some countries also prohibits the use of children for forced or organized begging, [1243] gambling, [1244] the unlawful carrying or use of firearms or other weapons, [1245] or for the commission of an offence [1246] or a crime using violence or the threat of violence. [1247] For example, in

[1236] See, for example, *Barbados* – CEACR, direct request, 2005; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Nicaragua* – CEACR, direct request, 2005; *Niger* – CEACR, direct request, 2005; *Panama* – CEACR, direct request, 2011; and *Slovakia* – CEACR, direct request, 2009.

[1237] See, for example, *Denmark* – CEACR, direct request, 2006; *Ethiopia* – CEACR, direct request, 2010; and *Kyrgyzstan* – CEACR, direct request, 2009.

[1238] See, for example, *Kenya* – CEACR, direct request, 2005; *Saint Lucia* – CEACR, direct request, 2010 (use of children in begging); and *South Africa* – CEACR, direct request, 2008.

[1239] See, for example, *Grenada* – CEACR, direct request, 2009; *Oman* – CEACR, direct request, 2007; and *Peru* – CEACR, direct request, 2006.

[1240] In *Jamaica*, the Committee has observed that the draft list of hazardous work prohibited for children includes involving children in illicit activities and the drug industry, as well as more specific provisions prohibiting children from cultivating ganja and guarding ganja fields. See *Jamaica* – CEACR, observation, 2011. In *Liberia*, the sale and trafficking of narcotic drugs is under consideration for inclusion on a list of hazardous types of work prohibited for persons under 18. See *Liberia* – CEACR, direct request, 2011. See also *Republic of Moldova* – CEACR, direct request, 2010.

[1241] See *Burkina Faso* – CEACR, direct request, 2009; *Central African Republic* – CEACR, direct request, 2010; and *Fiji* – CEACR, direct request, 2009.

[1242] See *China* – CEACR, direct request, 2006; *Madagascar* – CEACR, direct request, 2008; and *Romania* – CEACR, direct request, 2010.

[1243] See, for example, *Belgium* – CEACR, direct request, 2009; *Cyprus* – CEACR, direct request, 2009; and *Dominica* – CEACR, direct request, 2010.

[1244] See, for example, *Singapore* – CEACR, direct request, 2010.

[1245] See, for example, *United States* – CEACR, observation, 2005.

[1246] See, for example, *Austria* – CEACR, direct request, 2007; *Estonia* – CEACR, direct request, 2005; and *Islamic Republic of Iran* – CEACR, direct request, 2011.

[1247] See, for example, *Armenia* – CEACR, direct request, 2011.

Kazakhstan, the Criminal Code imposes penalties on any person who involves a minor in the commission of antisocial acts, including the use of drugs and alcohol, prostitution, vagrancy or begging. [1248] In the *Philippines*, the legislation provides that any person who uses, coerces, forces or intimidates a child under 18 years of age to beg, to act as a middleman in drug trafficking or to undertake illegal activities, commits an offence. [1249]

Prohibiting the *use* of children for illicit activities

531. A few countries have nonetheless still not adopted legislation to prohibit the *use* of children under 18 in illicit activities. [1250] In most of these cases, although persons under 18 years of age are not legally permitted to perform illicit activities, the persons *who use, procure or offer* a child to perform the prohibited types of illicit activities are not liable to a penalty under national legislation.

532. Similarly, with regard to trafficking in drugs, the Committee has noted that in many instances while the legislation criminalizes the manufacturing, possession, use or trafficking in drugs, it does not specifically establish offences related to the use, procuring or offering of a child by other persons for the production and trafficking of drugs. [1251] ***The Committee thus calls on the governments concerned to ensure, as a matter of urgency, that the act of using, procuring or offering a child for the production and trafficking of drugs, as well as other types of illicit activities, is prohibited in national legislation.*** [1252]

Issues of application of the legislation relating to the use, procuring or offering of children for illicit activities

Most common types of illicit activities in which children are used

533. Among the types of illicit activities for which children are used by adults in practice, the Committee has observed, for instance, that criminal organizations use children for, inter alia, transporting weapons and carrying out arson attacks or destroying public or private property, [1253] illicit activities such as housebreaking and petty theft [1254] and that there are reports of children being engaged by adults in car breaking, housebreaking, selling drugs and selling stolen goods. [1255]

Street children

534. The Committee has also observed that street children are particularly vulnerable to the worst forms of child labour and to becoming involved in illicit activities. Therefore, where the Committee observes that a large number of children are living or working in

[1248] See *Kazakhstan* – CEACR, direct request, 2007. See also *Lithuania* – CEACR, direct request, 2010; and *Togo* – CEACR, direct request, 2011.

[1249] See *Philippines* – CEACR, direct request, 2005.

[1250] See, for example, *Finland* – CEACR, direct request, 2011; *Mali* – CEACR, direct request, 2010; and *Paraguay* – CEACR, direct request, 2011.

[1251] See, for example, *Bahamas* – CEACR, direct request, 2009; *Cambodia* – CEACR, direct request, 2009; and *Ireland* – CEACR, direct request, 2007.

[1252] The other types of activities include the use of children in begging. See, for example, *Gambia* – CEACR, direct request, 2010; and *Zambia* – CEACR, direct request, 2010.

[1253] See, for example, *Haiti* – CEACR, direct request, 2011.

[1254] See, for example, *Lesotho* – CEACR, observation, 2011.

[1255] See, for example, *Swaziland* – CEACR, direct request, 2010.

the streets, it urges governments to take specific measures to protect these children. [1256] Indeed, in many cases, Roma children and unaccompanied minors are often subject to serious exploitation, including forced begging. [1257]

Programmatic measures

535. A substantial number of countries have adopted various measures that contribute to preventing the involvement of children in illicit activities or provide direct assistance for the removal of children involved or at risk of being involved in these types of activities. Such measures may take the form of financial assistance to children from poor households, [1258] or may consist of providing services in childcare centres, such as accommodation, food or education, as well as family reintegration measures. [1259] For example, since 2008, children's day centres have been established in *Lithuania* offering at-risk children (from families who have social, psychological or other problems) and their families a variety of social services without separating children from their parents. [1260]

Good practices: Programmes designed specifically for children involved in illicit activities

536. A few countries have adopted specific programmes or measures to prevent the involvement of children under 18 in drug trafficking or other illicit activities and to provide assistance for their rehabilitation and social integration, such as in the *Philippines*, where an ILO–IPEC one-year action programme to prevent and eliminate the use of children under 18 years of age in the production, sale and trafficking of drugs was launched in 2003; in *Indonesia*, where the Ministry of Women's Empowerment and Child Protection has concluded a Memorandum of Understanding with various judicial institutions to encourage the use of a restorative justice approach with regard to children in conflict with the law, including those under 18 found to be guilty of selling, producing or trafficking drugs; and in *South Africa*, where a pilot programme for children used by adults and older children to commit crime (CUBAC) has been designed in the framework of an ILO–IPEC programme. [1261]

537. The Committee is of the firm view that similar programmatic measures or initiatives are essential, along with the implementation and enforcement of legislative provisions, to prevent and eliminate the use of children in illicit activities.

[1256] See, for example, *Cameroon* – CEACR, observation, 2011; *Pakistan* – CEACR, direct request, 2011; and *Portugal* – CEACR, direct request, 2010.

[1257] For example, in the case of *Italy*, among the unaccompanied foreign minors who were reported to be working in the streets in 2007, some were victims of labour exploitation, petty crimes and begging. See *Italy* – CEACR, direct request, 2011. See also *Angola* – CEACR, direct request, 2008; *Czech Republic* – CEACR, direct request, 2011; and *Greece* – CEACR, direct request, 2011.

[1258] See, for example, *Barbados* – CEACR, direct request, 2010; *Mongolia* – CEACR, direct request, 2010; and *New Zealand* – CEACR, direct request, 2010.

[1259] See, for example, *China*– CEACR, observation, 2011; *Republic of Moldova* – CEACR, direct request, 2010; and *Pakistan* – CEACR, direct request, 2011.

[1260] See *Lithuania* – CEACR, direct request, 2010.

[1261] See *Indonesia* – CEACR, observation, 2011; *Philippines* – CEACR, direct request, 2010; and *South Africa* – CEACR, direct request, 2010.

Specific measures to protect street children

538. In most cases, the governments concerned by the phenomenon of street children have taken specific measures to address this situation. Shelters and centres for the rehabilitation and social integration of street and vulnerable children have been established either by government agencies, non-governmental organizations or UNICEF to address the particular needs and concerns of these children, and to provide education, health, counselling and legal services or family support. [1262] For example, in the case of *Bulgaria*, the Committee noted with interest that child protection unit mobile teams comprised of police authorities, representatives of non-governmental organizations and local commissions were surveying the streets in order to identify street children and ensure their protection. [1263] In *Paraguay*, the Committee has also noted with interest that a Programme for the Progressive Reduction of Child Labour in the Streets (ABRAZO) has been established in recent years with the aim of helping families in situations of extreme poverty by providing them with financial allowances on condition that the children stop working in the streets and attend school.

539. Nonetheless, the Committee has noted that a significant number of countries still continue to take insufficient measures to address specifically the situation of children living or working in the streets and to ensure their rehabilitation and social integration. [1264] The Committee emphasized the necessity of taking effective and time-bound measures to protect street children from the worst forms of child labour and to ensure their rehabilitation and social integration through the setting up of specialized institutions or shelters.

Hazardous work

Hazardous work as a worst form of child labour

540. The Global Report of 2010 indicates that a considerable number of children are employed in hazardous work globally: nearly 53 million children (4.3 per cent) aged 5 to 14 years, and over 62 million children (16.9 per cent) aged 15 to 17 years were estimated to be performing hazardous labour in 2008. [1265] In order to combat this problem, *Article 3(d)* of the Convention provides that work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, is considered to be one of the worst forms of child labour and therefore must be prohibited for all children under 18 years of age. [1266]

541. The minimum age of 18 for admission to hazardous work has been the subject of much debate. It is important to note, however, that the objective of the Convention is to eradicate "work that is so intolerable, so bad that no child or young person should be engaged in it" and that the age of 18 was chosen to be consistent with the higher minimum age laid down in Convention No. 138 for hazardous work and the general

[1262] See, for example, *Central African Republic* – CEACR, direct request, 2010; *Ethiopia* – CEACR, direct request, 2010; and *Lao People's Democratic Republic* – CEACR, direct request, 2010.

[1263] See *Bulgaria* – CEACR, observation, 2009.

[1264] See, for example, *Chad* – CEACR, direct request, 2010; *Greece* – CEACR, direct request, 2009; and *Saudi Arabia* – CEACR, direct request, 2010.

[1265] *Accelerating action against child labour*, op. cit., table 1.2.

[1266] Reference may also be made in this regard to *Art. 3(1)* of Convention No. 138 which also prohibits hazardous work for children under 18.

definition of "child" in the Convention on the Rights of the Child. It does not in any way affect the minimum ages in Convention No. 138. [1267]

Hazardous work and determination of the types of hazardous work

542. The Convention does not offer a definition of hazardous work. However, *Article 4(1)* of the Convention provides that the types of work referred to under *Article 3(d)* shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraph 3 of Recommendation No. 190, which provides a non-exhaustive list of types of hazardous work. While it was proposed that the list in Paragraph 3 of the Recommendation be incorporated in *Article 3(d)* or *Article 4(1)* of the Convention, to specify more clearly what should, as a minimum, be considered as hazardous work, [1268] this was rejected in favour of allowing member States more flexibility according to their national circumstances. Therefore, in accordance with the Convention, it is left to the discretion of member States, after consultation with the organizations of employers and workers concerned, to elaborate a list of types of hazardous work in which children under 18 years of age are prohibited to participate. In order to do this, the competent authorities of each member State must undertake to identify where the types of work so determined exist, by virtue of *Article 4(2)*, [1269] as well as to periodically examine and revise the list of types of hazardous work, in conformity with *Article 4(3)*, all in consultation with the organizations of employers and workers concerned.

General prohibition of hazardous work for children under 18 years of age

543. A positive trend that has emerged from the Committee's comments is that a great number of countries have adopted legislation to prohibit children under 18 years of age from carrying out hazardous work. [1270] For example, the Committee noted with interest the adoption of Decree No. 2007-563 of 2007 respecting child labour in *Madagascar*, section 2 of which prohibits the engagement of young persons below 18 years of age in work which involves the risk of danger and in types of work which are likely to harm their health or their physical, mental, spiritual, moral or social development. [1271] Similarly, the Committee has noted with interest that, under the Labour Law of 2008 of

[1267] *Child labour*, 1999, op. cit., p. 39.

[1268] ibid., p. 62.

[1269] See, for example, *Guinea* – CEACR, direct request, 2007; *Paraguay* – CEACR, direct request, 2011; *Peru* – CEACR, direct request, 2011; *Serbia* – CEACR, direct request, 2010; *Slovakia* – CEACR, direct request, 2006; *Swaziland* – CEACR, direct request, 2010; *Thailand* – CEACR, direct request, 2011; *Tunisia* – CEACR, direct request, 2006; *Ukraine* – CEACR, direct request, 2006; and *Yemen* – CEACR, direct request, 2010.

[1270] *Child labour in a globalized world*, op. cit., p. 93. Recent examples of countries that have adopted appropriate hazardous work legislation include *Cambodia* – CEACR, direct request, 2011; *Chile* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Gabon* – CEACR, direct request, 2011; *Israel* – CEACR, direct request, 2009; *Lao People's Democratic Republic* – CEACR, direct request, 2010; *Latvia* – CEACR, direct request, 2009; *Mali* – CEACR, direct request, 2010; *Montenegro* – CEACR, direct request, 2010; *Saint Lucia* – CEACR, direct request, 2010; *Sao Tome and Principe* – CEACR, direct request, 2011; *Singapore* – CEACR, direct request, 2008; *South Africa* – CEACR, direct request, 2010; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011. For an overview of the status of the legislation on hazardous work in the world, see *Children in hazardous work: What we know: What we need to do*, (Geneva, ILO, 2011).

[1271] *Madagascar* – CEACR, direct request, 2010.

China (Macau Special Administrative Region), it is prohibited to employ minors under 18 years of age in certain types of hazardous work and occupations. [1272]

Lists of types of hazardous work

544. The Committee has also noted many instances where countries have duly adopted a list of types of hazardous work prohibited for children under 18 years of age, some of which can be extremely detailed. For example, in *Cyprus*, Law No. 48(I) of 2001 on the Protection of Young Persons at Work contains a non-exhaustive list of 115 types of work and processes prohibited for young persons under 18. [1273] Similarly, in *Brazil*, the Committee noted with interest the adoption of Decree No. 6.481 of 2008, which approves a detailed list of more than 90 worst forms of child labour in which the employment of young persons under 18 years of age is prohibited. [1274] In *Mongolia*, the Committee noted with interest that, pursuant to Order No. 107 of the Minister of Labour of 2008, a list of types of prohibited work for minors was adopted which contains 39 jobs and services, seven labour conditions and 53 working positions in 11 economic sectors that are prohibited for minors. [1275]

545. The prohibited types of hazardous work that have been adopted by member States include, but are not limited to, the following: [1276]

– work in construction and welding, mines and quarries, or the asphalt industry; [1277]

– work underground, underwater, at dangerous heights or in confined spaces;

– demolition work, the digging of underground galleries, terracing in narrow and deep excavations and work in sewers;

– work in petroleum and the extraction of natural resources, or work in ships;

– work involving the use of compressed air, including pressure chambers and diving;

– hazardous work in domestic or household service;

[1272] *China (Macau Special Administrative Region)* – CEACR, direct request, 2011.

[1273] *Cyprus* – CEACR, direct request, 2005.

[1274] *Brazil* – CEACR, direct request, 2010.

[1275] *Mongolia* – CEACR, direct request, 2010.

[1276] See, for example, *Armenia* – CEACR, direct request, 2011; *Barbados* – CEACR, direct request, 2011; *Cambodia* – CEACR, direct request, 2011; *Georgia* – CEACR, direct request, 2009; *Indonesia* – CEACR, direct request, 2008; *Philippines* – CEACR, observation, 2010; *Romania* – CEACR, direct request, 2008; *Switzerland* – CEACR, direct request, 2010; *United Arab Emirates* – CEACR, observation, 2010; and *Yemen* – CEACR, direct request, 2010.

[1277] In a number of cases, member States have had difficulty in applying their legislation pertaining to the prohibition of hazardous work in practice and suffer a widespread problem of children being engaged in certain areas of hazardous work. This can be the case in the mining sector. For example, in *Peru* – CEACR, observation, 2010, while Act No. 28992 of 2007 prohibits the employment of persons under 18 years of age in mining of any description, the Committee noted with deep concern that the number of children working in artisanal mines in Peru is estimated at around 50,000 and that both boys and girls are in practice engaged in hazardous types of work in small artisanal mines, with girls being increasingly frequently involved in extraction, transport and transformation activities. The Committee noted a similar problem in *Côte d'Ivoire* – CEACR, observation, 2011, where it observed that, although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice, and in the *Plurinational State of Bolivia* – CEACR, observation, 2009, where, although section 134 of the Code on Children and Young People contains a detailed list of types of hazardous work prohibited for young people, some of which are related to the work done by children in mines, the use of child labour in hazardous work in mines is a matter of concern. See also *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Niger* – CEACR, observation, 2011.

– work in the agricultural sector which exposes children to dangerous conditions, to pesticides or insecticides, work in cash crops;

– work in zoos or parks containing wild or poisonous animals, work involving incineration or butchery, work in abattoirs or tanneries;

– work associated with animal husbandry, such as milking cows, feeding cattle and cleaning stables/stalls/pens, or work in a silo or storage for storing crops;

– forest firefighting and forest fire prevention occupations, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lathe mill, shingle mill, or cooperage stock mill;

– work involving the use of tractors or other moving vehicles, such as industrial trucks, lifts and forklift trucks, forestry machinery, hand-operated motorized tools, rotary cultivators, mowers, fine-slicing machinery or snow blowers;

– work with and maintenance of dangerous machinery, equipment and tools, such as machinery with rapidly moving blades, machinery making stamping movements, machinery with open cylinders or screw blades, mixing, milling, breaking, chopping machinery, skinning machinery, grating machinery and centrifuges, motorized chainsaws and hedge cutters, nail and bolt pistols, machines for cleaning, painting, anti-corrosion or similar treatments;

– work on steam boilers, kilns, ovens or other equipment involving exposure to high temperatures;

– work involving the use of dangerous chemicals, physical or electromagnetic agents, or substances and mixtures of substances which are classified as toxic, very toxic, corrosive or explosive; or exposure to lead or lead compounds, ionizing radiations, asbestos and other materials containing asbestos;

– work that involves the manual handling or transport of heavy loads;

– deep-sea and offshore fishing, charcoal burning, firefighting;

– work as embalmers, work at prisons or mental hospitals, treatment of psychiatric patients and supervision of psychologically or socially disturbed persons, and other similar work;

– work with experimental types of cancer research or work taking place on the same premises as such research work;

– work performed in extreme cold or heat, or including exposure to a high level of noise or vibration, or to high voltage electricity;

– work in bars, hotels or places of entertainment, night work, or overtime work;

– camel or horse jockeying; and

– work which exceeds the physical and mental capacities of children, or work such as commercial sexual exploitation which exposes them to physical, psychological or sexual abuse.

Legislative gaps in the prohibition of hazardous work

Prohibiting hazardous work for children under 18 years of age

546. On the other hand, some countries have not adopted the provisions required to give effect to *Articles 3(d)* and *4(1)* of the Convention. Sometimes, the issue lies with the lack of provisions prohibiting hazardous work for children under 18, in which case the Committee has requested the governments concerned to take the necessary measures to ensure that no person under 18 years of age may be authorized to perform hazardous work, in conformity with *Article 3(d)*. [1278]

547. Some member States provide for a minimum age for admission to hazardous work or certain types of hazardous work that is lower than the required 18 years. ***The Committee emphasizes that member States must adopt a general provision prohibiting work that is likely to harm the health, safety or morals of children under 18, in accordance with Convention No. 182.*** [1279] Where countries have also adopted legislation providing that certain types of hazardous work are admissible to young persons over 16 years of age, or where they intend to do so, the Committee requests the governments concerned to take measures to ensure that such occupations are only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that the health, safety and morals of the children concerned are fully protected and that the children have received adequate specific instruction or vocational training in the relevant branch of activity. [1280]

Determining a list of types of hazardous work

548. In other instances, member States have not determined or adopted a list of types of hazardous work, as required by *Article 4(1)*. [1281] The Committee calls on the governments concerned to take immediate and effective measures to ensure the adoption of national provisions giving effect to *Article 4(1)* and, in so doing, duly draws their attention to the examples of types of hazardous work enumerated in Paragraph 3 of Recommendation No. 190. Moreover, some countries have adopted the required list determining the types of hazardous work prohibited for children under 18 years of age,

[1278] *Antigua and Barbuda* – CEACR, direct request, 2011; *Bahrain* – CEACR, observation, 2011; *Djibouti* – CEACR, direct request, 2009; *Dominica* – CEACR, direct request, 2010; *Mexico* – CEACR, direct request, 2011; and *Saint Vincent and the Grenadines* – CEACR, direct request, 2010.

[1279] See, for example, *Equatorial Guinea* – CEACR, direct request, 2007; *Nepal* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2011; *Paraguay* – CEACR, direct request, 2011; *Sudan* – CEACR, direct request, 2010; and *United Arab Emirates* – CEACR, direct request, 2010. See also the legislation of the states of Victoria and Tasmania in *Australia* – CEACR, direct request, 2011. Furthermore, in its report supplied under art. 19 of the ILO Constitution, the Government of India indicated that while the minimum age for admission to hazardous work is 14 years, the issue of raising this minimum age to 18 years is currently under consideration.

[1280] See, for example, *Mexico* – CEACR, direct request, 2011; and the legislation of the state of Queensland in *Australia* – CEACR, direct request, 2011.

[1281] See, for example, *Angola* – CEACR, observation, 2011; *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Cape Verde* – CEACR, direct request, 2011; *Central African Republic* – CEACR, direct request, 2011; *Equatorial Guinea* – CEACR, direct request, 2007; *Grenada* – CEACR, direct request, 2009; *Iraq* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2010; *Lesotho* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Tajikistan* – CEACR, direct request, 2011; *Trinidad and Tobago* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2010; *Seychelles* – CEACR, direct request, 2008; *Swaziland* – CEACR, direct request, 2010; *Uganda* – CEACR, direct request, 2008; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2011.

but these lists were adopted years or even decades earlier, [1282] or do not contain all the types of hazardous work which are relevant to the country's national circumstances. [1283] In these instances, the Committee reminds the governments concerned that, under *Article 4(3)* of the Convention, the list of types of hazardous work which have been determined must be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned. [1284]

Gaps in legislative coverage of hazardous work

549. The Committee has also observed that children can be engaged to perform hazardous tasks and occupations in some sectors that are not, at first sight, necessarily dangerous. This can be due to a lack of resources or to the fact that some sectors in which children perform hazardous work are more difficult to monitor, particularly when they are specifically excluded from the application of the labour legislation. [1285] In this regard, certain sectors of the economy are more problematic than others.

Hazardous work in the informal economy

550. The Committee has observed cases where the legislation is not comprehensive enough to protect all children from becoming engaged in work that is dangerous to their health, safety and morals. This is particularly true for self-employed children or children working in the informal economy, as national legislation often fails to cover children properly who perform hazardous work outside a labour relationship or contract. [1286]

551. ***The Committee is of the firm view that governments should take measures to ensure the protection of self-employed children or those working in the informal economy from hazardous work.*** This could be envisaged by extending the scope of the national legislation to children working in the informal economy. For instance, in *Mongolia*, having previously noted that the scope of application of the Labour Code was limited to persons who work for an employer under a contract of employment, the Committee subsequently noted with interest that a list of types of prohibited work for minors was adopted, following consultation with workers' and employers' organizations, which contains 39 jobs and services, seven labour conditions and 53 working positions in 11 economic sectors in both the formal and informal sectors. [1287]

[1282] See, for example, *Cameroon* – CEACR, direct request, 2011; *Congo* – CEACR, direct request, 2009; *France* – CEACR, direct request, 2011; *Libya* – CEACR, direct request, 2011; *Mauritania* – CEACR, direct request, 2005; and *Zimbabwe* – CEACR, direct request, 2011.

[1283] For example, in the *United States* – CEACR, observation, 2010, the Committee requested the Government to take immediate measures to ensure that the recommendations of the National Institute for Occupational Safety and Health for changing the existing Hazardous Orders (HOs) are followed up on and that the amendments to the HOs are effectively adopted pursuant to these recommendations as a matter of urgency, in particular with regard to the agricultural HOs, as hazardous child labour in agriculture is of particular concern in that country.

[1284] In *Morocco* – CEACR, observation, 2011, for example, the Committee has noted with interest the adoption and validation, in April 2010, of the decree applying the Labour Code promulgated by the Royal Decree of 24 December 2004 determining the list of hazardous types of work prohibited for children under 18 years of age, which increases the number of hazardous types of work from ten to 30.

[1285] For examples of categories of workers excluded from labour legislation, see *Saudi Arabia* – CEACR, observation, 2010; and *Turkey* – CEACR, direct request, 2011.

[1286] The most recent examples include *Algeria* – CEACR, direct request, 2011; *Bahrain* – CEACR, observation, 2011; *Botswana* – CEACR, direct request, 2011; *Cape Verde* – CEACR, direct request, 2011; *Chad* – CEACR, direct request, 2010; *Ethiopia* – CEACR, direct request, 2010; *Islamic Republic of Iran* – CEACR, direct request, 2011; *Republic of Moldova* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; *New Zealand* – CEACR, observation, 2010; *Niger* – CEACR, observation, 2011; *Rwanda* – CEACR, direct request, 2011; *Slovenia* – CEACR, direct request, 2010; and *Suriname* – CEACR, direct request, 2010.

[1287] *Mongolia* – CEACR, direct request, 2010.

552. Alternatively, governments could consider the possibility of assigning special powers to labour inspectors with regard to children engaged in economic activity on their own account, thereby securing for all children the protection against hazardous work afforded by the Convention. In *Poland*, for instance, the Polish National Labour Inspectorate's scope of activity includes supervision and inspection of working conditions for individuals performing work on a basis other than an employment relationship, and persons engaged in economic activity on their own account, in a place specified by the person for whom such work is performed. [1288]

Hazardous work in the domestic sector

Domestic work as a hazardous form of child labour

553. The Committee considers that child domestic workers constitute a high-risk group who are outside the normal reach of labour controls and are scattered and isolated in the households in which they work. This isolation, together with the children's dependency on their employers, lays the ground for potential abuse and exploitation. In many cases, the long hours, low or no wages, poor food, overwork and hazards implicit in the working conditions affect the children's physical health. [1289] In this regard, some countries have taken measures to protect child domestic workers from hazardous work. For instance, in *Costa Rica*, the Committee, having noted that nearly 6 per cent of the 113,500 working children were employed in domestic work, noted with interest the adoption of Act No. 8842 of 2010, which provides that domestic work by children aged between 15 and 18 years is prohibited under the following conditions: (i) if the young person must sleep at the workplace; (ii) if the work requires the young person to look after children, elderly persons or persons with disabilities; and (iii) if the work consists of supervision. [1290]

554. ***However, a considerable number of children are still engaged in exploitative domestic work in many countries.*** [1291] ***According to IPEC–SIMPOC, as of 2008, 15,525,000 children aged 5–17 were employed in domestic work.*** [1292] ***The Committee strongly emphasizes that the governments concerned should take the necessary measures to ensure that children engaged as domestic workers do not perform hazardous work or are not exposed to hazardous working conditions. This could***

[1288] *Poland* – CEACR, direct request, 2010.

[1289] See, for example, *Bangladesh* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2011; and *Togo* – CEACR, observation, 2011.

[1290] *Costa Rica* – CEACR, observation, 2011. See also *Nicaragua* – CEACR, observation, 2010.

[1291] For example, in *Indonesia* – CEACR, observation, 2011, the Committee observed with serious concern that approximately 35 per cent of domestic workers are under the age of 18, and that 81 per cent of domestic workers work 11 hours or more a day, and being invisible and hidden from public scrutiny, these workers are prone to becoming victims of exploitation and abuse, such as mental abuse, physical violence or sexual harassment or abuse while at work. Similarly, in *Haiti* – CEACR, observation, 2011, thousands of *restavek* children are often exploited under hazardous conditions. Some of them, only 4 or 5 years old, are the victims of exploitation, are obliged to work long hours without pay, face all kinds of discrimination and bullying, receive poor lodging and food and are often subjected to physical, psychological and sexual abuse. The number of *restavek* children is between 150,000 and 500,000, which represents about one in ten children in *Haiti*. See also *Bangladesh* – CEACR, observation, 2011; *Benin* – CEACR, direct request, 2011; *Brazil* – CEACR, observation, 2010; *China* – CEACR, direct request, 2011; *Colombia* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2010; *Paraguay* – CEACR, observation, 2011; *Peru* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2010; and *Togo* – CEACR, observation, 2011.

[1292] See *Domestic work: Policy brief: Global and regional estimates on domestic workers* (Geneva, ILO, 2011), p. 9.

include the possibility of strengthening the capacity, or expanding the reach of the labour inspectorate with a view to ensuring that children under 18 years of age engaged in hazardous domestic work benefit from the protection afforded by the national legislation. Measures should also be taken to ensure the imposition in practice of sufficiently effective and dissuasive penalties on persons who subject children under 18 years of age to hazardous work.

Taking into account the special situation of girls

555. The Committee also emphasizes that member States must take into account the special situation of girls involved in certain types of hazardous work where they are more vulnerable to exploitation. This is particularly the case in countries where an important number of girls are engaged in exploitative domestic work. [1293] The Committee requests the governments concerned to take effective and time-bound measures that pay particular attention to the situation of girls working in these areas. In *Mexico*, for instance, the Committee observed that over 80 per cent of girls between the ages of 12 and 17 years were engaged in some economic activity, particularly in domestic service, and that in particular young girls engaged in domestic work are often the victims of exploitation. [1294] In this regard, the Committee noted that the *Oportunidades* programme in rural areas contributed, inter alia, to reducing by 9.1 per cent the probability of girls between 15 and 17 years from becoming domestic workers.

Hazardous work in the agricultural sector

556. According to the 2010 Global Report, 60 per cent of child labourers aged 5 to 17 years are in agriculture. [1295] Indeed, the Committee has observed many cases where children are widely engaged in hazardous work in the agricultural sector. [1296] The Committee urges governments which experience a widespread problem of children engaged in hazardous work in agriculture to take the necessary measures to ensure the effective enforcement of their legislation, including through the strengthening of labour inspectorate capacities, the imposition in practice of sufficiently effective and dissuasive penalties through thorough investigations and robust prosecutions, and the implementation of effective and time-bound measures.

557. ***Furthermore, although it is generally left to the discretion of member States to determine the types of hazardous work which are prohibited for children, the Committee has noted cases in which children are, in practice, engaged in work that, while not prohibited, is clearly hazardous.*** [1297] ***This has been observed particularly in***

[1293] See, for example, *Central African Republic* – CEACR, direct request, 2011; *Equatorial Guinea* – CEACR, direct request, 2007; *Ethiopia* – CEACR, direct request, 2010; *Honduras* – CEACR, observation, 2009; *Lesotho* – CEACR, observation, 2011; *Mali* – CEACR, direct request, 2011; *Mauritania* – CEACR, direct request, 2010; *Morocco* – CEACR, observation, 2011; and *Paraguay* – CEACR, observation, 2011.

[1294] *Mexico* – CEACR, direct request, 2010.

[1295] *Accelerating action against child labour*, op. cit., para. 34.

[1296] For example, in *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2011; *Guinea* – CEACR, direct request, 2007; and *Nigeria* – CEACR, direct request, 2006, an important number of child workers perform hazardous work in the agricultural sector, and more specifically in cocoa plantations. See also *Democratic Republic of the Congo* – CEACR, observation, 2011; *Egypt* – CEACR, observation, 2011; *Kyrgyzstan* – CEACR, observation, 2011; *Nicaragua* – CEACR, observation, 2010; *Thailand* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, observation, 2011.

[1297] Such is the case in *Mongolia* – CEACR, direct request, 2010, where the Committee considered that children engaged as jockeys in horse racing perform work that, by its nature and the extremely hazardous conditions in which it is performed, is likely to harm their health and safety.

the agricultural sector, in cases where the conditions of work are dangerous and the number of injuries and fatalities suffered by children under 18 years of age employed in hazardous types of work are matters of serious concern. [1298] ***In such cases, the Committee has expressed its concern that such occupations, inherently dangerous to the health and safety of children, are not prohibited. The Committee recalls that Paragraph 4 of Recommendation No. 190 addresses the possibility of authorizing the employment or work of young persons as from the age of 16 under strict conditions of protection and prior training, but considers that, in view of the significant number of injuries and fatalities suffered by children in many instances, these conditions are not fully met in all circumstances. The Committee urges the governments concerned to take immediate and effective measures to comply with Articles 1 and 3(d) of the Convention, and to prohibit children under 18 years of age from engaging in hazardous and dangerous work as a matter of urgency. However, where such work is performed by young persons between 16 and 18 years of age, the Committee emphasizes that the governments concerned should take the necessary measures to ensure that such work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190.***

Programmatic measures

558. With regard to the adoption of effective and time-bound measures, the Committee has observed significant progress in the area of hazardous work. A great number of countries have implemented effective and time-bound measures in order to prevent children from becoming engaged in hazardous work and to remove those who have become engaged and rehabilitate and socially integrate them. Some countries have adopted national action plans or programmes to combat the worst forms of child labour, which target hazardous work in general, or certain problematic types of hazardous work more specifically, in accordance with national circumstances. [1299]

ILO–IPEC collaboration

ILO–IPEC ***Time-bound Programmes (TBPs)***

559. Frequently, these time-bound measures have been implemented with ILO–IPEC collaboration. Indeed, ILO–IPEC has assisted many countries with ***TBPs*** to prioritize certain worst forms of child labour, including certain types of hazardous work, in

[1298] For example, in *New Zealand* – CEACR, observation, 2010, the Committee noted with serious concern that statistics on work-related injuries indicated that in 2006, about 300 children under 15 years of age visited their local doctor for a work-related injury, and that the common location of such injuries is farm work. Moreover, in the same year, accident compensation entitlements and rehabilitation assistance were provided to about ten children under the age of 9; 15 children between the ages of 10 and 14, and between 1,000 and 2,000 children between the ages of 15 and 19. The Committee also expressed serious concern that, in the *United States* – CEACR, observation, 2010, between 300,000 and 800,000 children are employed in agriculture under dangerous conditions. Many work for 12 hours a day and are exposed to dangerous pesticides, suffer rashes, headaches, dizziness, nausea and vomiting, often risking exhaustion or dehydration due to lack of water, and are often injured. The industry that had by far the highest number of fatalities – 162, or 40 per cent – was agriculture, forestry and fishing, even though only 13 per cent of working children under 18 are engaged in this sector. This high rate of fatal injuries was confirmed by the fact that youths of 15–17 years of age working in agriculture appear to have over four times the risk of injury than those working in other industries.

[1299] See, for example, *Armenia* – CEACR, direct request, 2011; *Barbados* – CEACR, direct request, 2011; *Bulgaria* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, direct request, 2009; *Cambodia* – CEACR, direct request, 2011; *Ghana* – CEACR, direct request, 2011; *Guyana* – CEACR, direct request, 2007; *Kyrgyzstan* – CEACR, direct request, 2011; *Nepal* – CEACR, direct request, 2010; *Panama* – CEACR, direct request, 2011; *Peru* – CEACR, observation, 2010; *South Africa* – CEACR, direct request, 2010; *Uganda* – CEACR, direct request, 2008; and *Viet Nam* – CEACR, direct request, 2010.

consultation with the social partners. [1300] While some ILO–IPEC projects and programmes are not restricted in scope, covering child labour and its worst forms in general, [1301] others have targeted different forms or sectors of hazardous work, depending on the most pressing issues in each country. For example, in some cases, the ***TBPs*** have prioritized intervention in sectors where children are particularly at risk of performing hazardous work, such as agricultural work, child domestic labour, child labour in mining and quarrying, trafficking or fishing, or in the urban informal economy. [1302] In other instances, the ***TPBs*** have targeted more specific sectors of intervention: children involved in household chores or engaged in hazardous work in construction; the tourism or transport industries; banana and flower growing; tobacco, rice or cotton fields; sugar cane, cocoa or rubber plantations; small-scale mining; refuse dumps; the footwear, firework, brick or furniture industries; deep-sea fishing; rag-picking; carpet weaving; domestic service; glass bangle making; surgical instrument manufacturing; tanneries; scavenging; ship-breaking; salt and fishing production; or seafood processing. [1303] In the framework of these ***TBPs***, children have been prevented from entering hazardous work in the abovementioned sectors, as well as withdrawn, rehabilitated and socially integrated through a variety of direct actions, such as policy development and enforcement; building the knowledge base, commitment and mobilization; educational measures, skills training and literacy, as well as targeted interventions, such as counselling services, telephone hotlines, legal, medical or psychological consultations, and vocational training.

560. For example, the Committee noted with interest that in the *United Republic of Tanzania*, due to the interventions carried out between 2002–05 under Phase I of the ***TBP***, 25 per cent of children involved in the worst forms of child labour were withdrawn, and 20 per cent of those who were at risk of being involved in the worst forms of child labour were prevented from doing so in the four sectors targeted by the ***TBP***, namely, prostitution, domestic service, the mining sector and commercial agriculture, including the tea, coffee and tobacco sectors. [1304] Under Phase II of the ***TBP*** (since 2005), a total of 20,143 children (10,015 boys and 10,128 girls) were withdrawn from or prevented from being engaged in child labour, including hazardous work, through educational services or training opportunities; and 2,375 children (912 boys and 1,463 girls) were withdrawn or prevented from being engaged in child labour through other non-education related services. [1305] Moreover, in *Bangladesh*, under the ILO–IPEC ***TBP***, a list of types of hazardous work is being prepared by the Government, which includes eight sectors:

[1300] *Child labour in a globalized world*, op. cit., p. 97.

[1301] See, for example, *Dominican Republic* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2009; *Kazakhstan* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Panama* – CEACR, direct request, 2011; *Paraguay* – CEACR, direct request, 2011; *Senegal* – CEACR, direct request, 2011; and *Thailand* – CEACR, direct request, 2011.

[1302] See, for example, *Bangladesh* – CEACR, direct request, 2011; *Ghana* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2011; *Jordan* – CEACR, direct request, 2011; *Mongolia* – CEACR, direct request, 2010; *Morocco* – CEACR, observation, 2011; *Nicaragua* – CEACR, observation, 2010; *Philippines* – CEACR, observation, 2010; and *Turkey* – CEACR, observation, 2011.

[1303] See, for example, *Burkina Faso* – CEACR, observation, 2009; *Cambodia* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2007; *Ecuador* – CEACR, direct request, 2011; *Guinea* – CEACR, direct request, 2007; *Indonesia* – CEACR, observation, 2011; *Kyrgyzstan* – CEACR, direct request, 2011; *Malawi* – CEACR, direct request, 2011; *Pakistan* – CEACR, observation, 2011; *Swaziland* – CEACR, direct request, 2010; *United Republic of Tanzania* – CEACR, observation, 2010; and *Turkey* – CEACR, observation, 2011.

[1304] *United Republic of Tanzania* – CEACR, direct request, 2008.

[1305] *United Republic of Tanzania* – CEACR, observation, 2010.

bidi making (cigarette rolling), leather and tannery, manufacturing of matches, explosives and fireworks, cement manufacturing, child domestic labour, road transport, ship-breaking and mines. [1306]

ILO–IPEC regional projects

561. ILO–IPEC has also conducted regional programmes to combat certain sectors of hazardous child labour. For instance, the Committee has noted with interest that the *Dominican Republic*, in collaboration with ILO–IPEC, launched the project "Developing a roadmap to make Central America, Panama and the Dominican Republic a child-labour free zone", which is the strategic national framework to achieve the objectives established in the Decent Work Hemispheric Agenda of eliminating the worst forms of child labour by 2015 and eliminating child labour by 2020. [1307] The Committee also noted the implementation of the ILO–IPEC Project for the Prevention and Elimination of Child Labour in Artisanal Gold Mining in West Africa, involving *Burkina Faso* and *Niger*. [1308] As a result, a programme of action has been implemented in *Niger* to contribute to the establishment of schools and initiatives to promote school attendance on gold mining sites and neighbouring villages, as well as the improvement of school infrastructure on the gold mining sites of M'Banga and Komabangou, resulting in 2,195 children (1,515 girls) being prevented from exploitation in gold mining and integrated into the traditional school system. In *Burkina Faso*, 657 children have been removed from the worst forms of labour in gold washing and have benefited from pre-school and school services, support in the form of school equipment, school clothing and afternoon snacks, and medical care.

Lack of effective programmatic measures

562. However, the Committee has also noted some instances in which member States have not adopted the necessary measures to combat the use of children in hazardous work in their country. [1309] In these cases, the Committee requests the Governments concerned to take effective and time-bound measures to remove children from the worst forms of child labour in question and to ensure their rehabilitation and social integration, especially in sectors of work where hazardous child labour is more prevalent. Indeed, in view of the success experienced by member States with regard to the implementation of programmatic measures in the field of hazardous work, the Committee considers that concrete action to combat this worst form of child labour is a crucial element to its successful eradication and must imperatively be undertaken in conjunction with the adoption of legislative measures.

Access to free basic education

563. The UNESCO: *Education for All Global Monitoring Report 2011* points to the rapid progress made towards the goal of universal primary education in the last decade. According to this report, the number of children enrolled in primary school increased by 52 million from 1999 to 2008. However, the report highlights that 67 million children

[1306] *Bangladesh* – CEACR, direct requests, 2009 and 2011.

[1307] *Dominican Republic* – CEACR, direct request, 2011. See also *Panama* – CEACR, direct request, 2011.

[1308] *Burkina Faso* – CEACR, observation, 2009; and *Niger* – CEACR, observation, 2011.

[1309] See, for example, *Chad* – CEACR, direct request, 2010; *Comoros* – CEACR, direct request, 2010; and *Grenada* – CEACR, direct request, 2009.

were still out of school in 2008 and, because the rate of progress has been slowing in recent years, there could be an increase of 5 million out of school children by 2015. [1310]

564. Under *Article 7(2), clause (a)*, of the Convention, member States shall take effective and time-bound measures to prevent the engagement of children in the worst forms of child labour, taking into account the importance of education. *Article 7(2), clause (c)*, of the Convention also requires that member States shall take effective and time-bound measures to ensure access to free basic education for all children removed from the worst forms of child labour as a means of contributing to their rehabilitation and social integration.

Evolution in enrolment and attendance rates in basic education

Increasing school attendance rates

565. On several occasions, the Committee has observed that member States have taken measures in recent years that have led to increased school attendance rates in both primary and secondary education. [1311] For example, in *Zambia*, the primary net enrolment rates increased by more than 20 per cent between 1999 and 2005. [1312]

566. To address the issue of low enrolment rates in basic education, some governments have taken legal measures which establish penalties for any parents who fail to comply with the compulsory school attendance of their child. [1313] Moreover, the Committee has noted with satisfaction the adoption of an Act on domestic work in *Nicaragua* which prescribes the obligation of employers to promote and facilitate the education of their young domestic workers. [1314]

567. However, in many countries, enrolment and attendance rates remain particularly low and, in some cases, are below or equal to 40 per cent in primary education and 15 per cent in secondary education. [1315] In a few cases, they have even decreased, sometimes substantially, over the last few years. [1316]

[1310] UNESCO: *Education for All Global Monitoring Report 2011: The hidden crisis: Armed conflict and education* (Paris, 2011), p. 40.

[1311] See, for example, *Cambodia* – CEACR, direct request, 2009; *Djibouti* – CEACR, direct request, 2009; and *Kenya* – CEACR, direct request, 2009.

[1312] See *Zambia* – CEACR, direct request, 2010.

[1313] See, for example, *South Africa* – CEACR, direct request, 2010.

[1314] See *Nicaragua* – CEACR, observation, 2010.

[1315] For example, in *Chad*, the Committee has expressed serious concern at the low net school attendance rate, at both the primary and secondary levels, which were, respectively, 41 per cent for boys and 31 per cent for girls in primary school, and 13 per cent for boys and 7 per cent for girls in secondary education in 2006. See *Chad* – CEACR, direct request, 2010. In *Comoros*, the Committee has expressed concern at the low school attendance rate at both the primary and secondary levels which were, respectively, 31 per cent for both boys and girls in primary school, and 10 per cent for boys and 11 per cent for girls in secondary education in 2007. See *Comoros* – CEACR, direct request, 2010.

[1316] See, for example, *Fiji* – CEACR, direct request, 2010; *Liberia* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, observation, 2011.

Reducing the gap between the school attendance rates in primary and secondary education

568. In other countries, the secondary school attendance rate remains low in comparison with attendance rates at the primary level, even though children of the age of secondary education have often not yet reached the age for admission to employment or work. [1317] Therefore, the Committee has repeatedly underlined the importance of taking measures to increase attendance rates in secondary education. [1318]

Decreasing school drop-out rates

569. The Committee has furthermore often observed that one of the reasons that contributes to low school attendance rates is that many children drop out of school before completing basic education. Indeed, many countries face massive challenges in retaining students through a complete basic education school cycle. [1319] A small number of countries have taken measures in this regard, such as *Egypt*, where the National Council for Children and Motherhood (NCCM) has been providing families of working minors with alternative sources of income to reduce school drop-out rates since 2008. [1320] High school drop-out rates are partly linked to the poor quality of education, as the curriculum does not always prepare children adequately for gainful skilled employment. For instance, according to the report of the high-level fact-finding mission which visited *Niger* in 2006, parents hesitate to send their children to school when they see that such education affords no guarantee of a job. [1321] Child labour also contributes heavily to this trend: working children frequently drop out from school because they are unable to combine work and study. [1322] In this respect, according to a study which examines the negative relationship between child labour and school enrolment in *Senegal*, one child in four drops out of school in the 7–14 age group owing to premature entry into the labour market, which is the primary cause of school drop-out. [1323]

570. The Committee considers that high school retention rates contribute to preventing and combating the engagement of children in the worst forms of child labour. It therefore stresses the need to improve the functioning of the educational system through measures that aim in particular to increase school attendance rates and reduce school drop-out rates.

[1317] For example, in *Haiti*, the Committee noted that the net attendance rate in primary education was 48 per cent for boys and 52 per cent for girls, while it was barely 18 per cent for boys and 21 per cent for girls in secondary education in 2008. See *Haiti* – CEACR, direct request, 2011.

[1318] See, for example, *Costa Rica* – CEACR, direct request, 2011; *Gabon* – CEACR, observation, 2011; and *Portugal* – CEACR, direct request, 2011.

[1319] See, for example, *Indonesia* – CEACR, direct request, 2010; *Jordan* – CEACR, direct request, 2011; and *Tajikistan* – CEACR, direct request, 2011.

[1320] See *Egypt* – CEACR, direct request, 2011.

[1321] See *Niger* – CEACR, observation, 2011.

[1322] See, for example, *Jamaica* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2010; and *Mozambique* – CEACR, observation, 2010.

[1323] See *Senegal* – CEACR, direct request, 2011.

Overcoming major barriers to free basic education

Ensuring access to free basic education

571. A positive trend emerging from the Committee's comments is that a considerable number of member States have made basic education free and generally accessible. [1324] Free basic education contributes to improving enrolment and attendance rates as tuition fees and other costs are viewed as a barrier for many children to receive basic education, especially when families are obliged to choose between the education of their children and an additional income for the family due to poverty. [1325] In this regard, a rapid assessment survey identifying the worst forms of child labour in *Zimbabwe*, conducted in September 2008, indicated that 48 per cent of the children surveyed who had dropped out of school had done so because their parents could not pay for school fees and 59 per cent of the children who had never attended school said that this was due to financial reasons. [1326]

572. In addition, while tuition fees for basic education may be provided free of charge, parents of students are often required to pay other fees, such as books, uniforms, transport and supplies (hidden costs). [1327] In this regard, some member States have taken corrective measures to make access to basic education more affordable. These measures can be classified into two different categories.

Unconditional cash transfer programmes

573. Many countries have implemented grant schemes, such as scholarship programmes, to enable children to have more equal opportunities to access and complete basic education. [1328] For example, 5.3 million education grants were provided by the Government of *Mexico* during the school year 2007–08. As a result, the school completion rate of children who have received education grants has increased by 1.79 per cent more than the previous school years. [1329] Similarly, the Government of *Ghana* has initiated a capitation grant scheme and a school feeding programme and has introduced free transport, books and school uniforms for children, the provision of classrooms, as well as allowances for teachers in deprived communities. The Committee subsequently noted with interest that, according to the National Report on the Development of Education in Ghana of September 2008, the Capitation Grant Scheme has contributed to a rise in school enrolment rates of an additional 616,439 pupils (295,114 boys and 321,325 girls) in comparison with the 2004–05 enrolment rates. [1330]

[1324] See, for example, *Latvia* – CEACR, direct request, 2010; *Libya* – CEACR, direct request, 2006; and *United Arab Emirates* – CEACR, direct request, 2006.

[1325] For example, in *Mexico*, 1.7 million children of school age are unable to receive education as poverty makes it imperative for them to work. See *Mexico* – CEACR, observation, 2011.

[1326] See *Zimbabwe* – CEACR, observation, 2011.

[1327] See, for example, *Albania* – CEACR, direct request, 2011; *Lebanon* – CEACR, direct request, 2010; and *Namibia* – CEACR, direct request, 2010.

[1328] See, for example, *Belize* – CEACR, direct request, 2006; *Nicaragua* – CEACR, direct request, 2010; and *Sao Tome and Principe* – CEACR, direct request, 2011.

[1329] See *Mexico* – CEACR, observation, 2011.

[1330] See *Ghana* – CEACR, direct request, 2011.

Conditional cash transfer programmes

574. Other countries have implemented conditional cash transfer programmes (CCTs) which are aimed at helping families in situations of extreme poverty by providing them with financial allowances subject to the condition that the children of beneficiary families attend school. [1331] For example, the Government of *Brazil* has introduced an income transfer programme entitled "Programme for the Elimination of Child Labour (PETI)" which consists of a monthly grant (called the child-citizen grant – *Bolsa Criança-Cidadä*) to families of children aged 7–15 years which is conditional on their attendance at school. [1332]

575. However, there remain a large number of countries where basic education is still not free. [1333] The Committee is of the view that access to free basic education is one of the most effective means of combating the worst forms of child labour and emphasizes the need to take effective and time-bound measures to facilitate access to free basic education, particularly for children from poor and disadvantaged families.

Improving the general functioning of the education system

576. A large majority of countries have adopted and implemented national education programmes of action [1334] and Education for All (EFA) national plans [1335] in collaboration with UNESCO to improve the general functioning of the education system. Many member States have also included access to free basic education for all children as one of the objectives of several national action programmes. [1336] Depending on the situation of the country, these programmes and plans target different objectives. For example, the Government of *Uganda* has implemented a universal programme for free secondary education to ensure that children do not stop their schooling after primary education, [1337] while others, such as *Benin*, plan to support formal and informal education. [1338]

Putting an end to discrimination and disparities in educational opportunities

Achieving gender parity

577. Certain countries have taken specific measures to achieve gender parity and have made enormous progress in this regard in recent years. For example, some countries, such as *Burkina Faso*, have taken measures to encourage the school attendance of girls

[1331] See, for example, *Colombia* – CEACR, observation, 2011; *Lebanon* – CEACR, direct request, 2010; and *Panama* – CEACR, direct request, 2011.

[1332] See *Brazil* – CEACR, direct request, 2005.

[1333] See, for example, *Cape Verde* – CEACR, direct request, 2011.

[1334] See, for example, *Guatemala* – CEACR, direct request, 2009; *Morocco* – CEACR, direct request, 2011; and *Togo* – CEACR, direct request, 2011.

[1335] See, for example, *Cambodia* – CEACR, direct request, 2008; *Central African Republic* – CEACR, direct request, 2010; and *Haiti* – CEACR, direct request, 2011.

[1336] See, for example, *Algeria* – CEACR, direct request, 2009; *Slovenia* – CEACR, direct request, 2010; and *Viet Nam* – CEACR, direct request, 2010.

[1337] See *Uganda* – CEACR, direct request, 2008.

[1338] See, for example, *Benin* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; and *Nicaragua* – CEACR, direct request, 2011.

and, as a result, will probably achieve gender parity in education by 2015. [1339] In *Egypt*, among the initiatives taken to reduce the gender gap in both primary and secondary education, 77 girl-friendly schools have been established, as well as one-class schools to enable female drops-outs to complete their education. Furthermore, the Government is attempting to increase the number of girls' schools in the countryside in response to parents from rural areas who do not want to send their daughters to co-educational schools. [1340] The Committee has also noted with interest that since 2008 in *Togo*, school fees have been made free for pre-school and primary school, and are reduced for girls in secondary education in public establishments. [1341]

578. However, although the gender parity index in both primary and secondary education is on the rise in several countries, they are still at risk of not achieving the gender parity goal by 2015. [1342] In many countries, girls still face a severe disadvantage in accessing education. [1343] The factors that impede girls' educational opportunities range from the types of work they perform, such as domestic servitude or home-based work, to cultural and poverty constraints. Poor families often prefer to invest in the education of their sons, based on the assumption that boys are more likely to bring in monetary income. Moreover, girls are sometimes victims of harassment and sexual abuse in school, which leads to the refusal of some girls to go to school. [1344] However, it should also be noted that in a few instances, the Committee has observed the opposite trend, namely that gender parity has not been achieved with regard to boys. [1345]

579. The Committee therefore emphasizes the necessity of adopting and implementing measures aimed at achieving gender parity in both primary and secondary education.

Ensuring equal access to free basic education for vulnerable children

580. Gender discrimination is not the only cause of disparity in education. Many children, such as the children of indigenous families or ethnic minorities, [1346] poor families, [1347] migrant, refugee or displaced children [1348] and children in remote or rural areas [1349] have limited access to education for several reasons, including the non-existence or lack of provision of bilingual education, poverty, social exclusion or racial discrimination. Among the various measures taken by member States to reduce disparities between different groups of children, the Committee has observed that a new

[1339] See *Burkina Faso* – CEACR, direct request, 2011.

[1340] See *Egypt* – CEACR, observation, 2011.

[1341] See *Togo* – CEACR, direct request, 2011.

[1342] See, for example, *Egypt* – CEACR, observation, 2011; and *Niger* – CEACR, observation, 2011.

[1343] See, for example, *Iraq* – CEACR, direct request, 2011; and *Yemen* – CEACR, direct request, 2010.

[1344] See, for example, *Mozambique* – CEACR, observation, 2010.

[1345] See, for example, *Brazil* – CEACR, direct request, 2010; *Dominica* – CEACR, direct request, 2010; and *Saint Lucia* – CEACR, direct request, 2010.

[1346] See, for example, *Ecuador* – CEACR, direct request, 2011; *Hungary* – CEACR, direct request, 2011; and *Peru* – CEACR, direct request, 2010.

[1347] See, for example, *Philippines* – CEACR, direct request, 2010; *Togo* – CEACR, direct request, 2011; and *Turkey* – CEACR, direct request, 2011.

[1348] See, for example, *Azerbaijan* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2011; and *Sudan* – CEACR, direct request, 2009.

[1349] See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2011; *China* – CEACR, direct request, 2006; and *Senegal* – CEACR, direct request, 2011.

system of prohibiting the charging of fees in schools in the poorest quintile of areas was introduced in *South Africa* in 2007. [1350] In *Kuwait*, an order specifying that children who do not have Kuwaiti nationality shall be treated as Kuwaiti citizens with respect to free and compulsory education has been adopted and a fund totalling 4 million Kuwaiti dinars (approximately US$14 million) has been set up especially for the education of these children, benefiting 15,730 students in 2006 and 2007. [1351] The Committee also noted with interest that *New Zealand* has introduced an amendment to the Immigration Act, under which illegal migrant children can apply for a Limited Purpose Permit which will allow them to enrol at primary and secondary schools. [1352]

581. However, on a number of occasions, the Committee has expressed its concern that children from several vulnerable groups still experience great difficulty in gaining access to education and complete schooling. [1353] For example, in certain regions and areas, the school attendance rate of vulnerable children is barely half the national rate. [1354] Moreover, insufficient budgetary allocations and the lack of schools and trained teachers, particularly in remote and poor areas, still impede access to education in some countries. [1355]

582. The Committee therefore emphasizes the importance of taking measures to facilitate equal access to education for these vulnerable children in view of the fact that such children are at a greater risk of being engaged in the worst forms of child labour and that access to free basic education contributes to preventing children from being engaged in such activities.

Ensuring access to free basic education and vocational training for children removed from the worst forms of child labour

583. Providing educational services and other training opportunities for children withdrawn from child labour is a component of numerous ILO–IPEC programmes and projects such as "Tackle child labour through education", launched in 2004 in 11 countries across Africa, the Caribbean and the Pacific: *Angola*, *Fiji*, *Guyana*, *Jamaica*, *Kenya*, *Madagascar*, *Mali*, *Papua New Guinea*, *Sierra Leone*, *Sudan* and *Zambia*. [1356] Most national ***TBPs*** also provide educational services and other training opportunities for children withdrawn from the worst forms of child labour. [1357] Similarly, educational measures are often part of a series of measures taken under the various national programmes of action adopted by member States to eliminate specific forms of child labour. [1358]

[1350] See *South Africa* – CEACR, direct request, 2010.

[1351] See *Kuwait* – CEACR, direct request, 2010.

[1352] See *New Zealand* – CEACR, direct request, 2010.

[1353] See, for example, *Angola* – CEACR, observation, 2011; and *Guatemala* – CEACR, direct request, 2009.

[1354] See, for example, *Nigeria* – CEACR, direct request, 2006.

[1355] See, for example, *Angola* – CEACR, observation, 2011; *Gambia* – CEACR, direct request, 2011; and *Pakistan* – CEACR, direct request, 2010.

[1356] See *Angola* – CEACR, direct request, 2011; *Fiji* – CEACR, direct request, 2011; *Jamaica* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2011; *Mali* – CEACR, observation, 2010; and *Papua New Guinea* – CEACR, direct request, 2011.

[1357] See, for example, *Bangladesh* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2009; and *Philippines* – CEACR, direct request, 2010.

[1358] See, for example, *Bangladesh* – CEACR, direct request, 2011.

584. In the context of these programmes and projects, a substantial number of children removed from the worst forms of child labour have been rehabilitated through formal or non-formal education and vocational training opportunities. [1359] For example, the Committee noted with interest that, following the adoption by the *Plurinational State of Bolivia* of educational measures provided to children working in mines, 20 per cent of the children who participated in the programme have stopped working. [1360] It also noted with interest that *Nicaragua* has implemented a programme, the *Programa Amor*, which aims to restore the rights of 25,000 street children and young persons, who are very vulnerable to commercial sexual exploitation, and that the Government has set the objectives of integrating all children into the education system and ensuring that they receive social benefits by 2011. [1361]

585. In certain countries, child victims of a particular form of child labour also receive education in specialized schools, such as schools for former camel jockeys in *Mauritania* or for child victims of armed conflict in *Uganda*. [1362]

586. Moreover, a number of governments have developed non-formal education programmes or projects to make education accessible to children of different ages who are not in school, or who have dropped out of the early stages of basic education. [1363]

587. The Committee has nonetheless noted that a non-negligible number of countries have not taken sufficient measures to reintegrate children removed from the worst forms of child labour back into the educational system. [1364] The Committee is of the view that education and training are essential to ensure the rehabilitation and social integration of children removed from the worst forms of child labour. It therefore emphasizes the need to provide child victims of the worst forms of child labour with access to free education and vocational training.

588. ***Where it observes that the education system is not sufficiently efficient to ensure access to free basic education for all children, the Committee urges governments to strengthen the functioning of the education system, take effective and time-bound measures to increase school attendance rates and reduce drop-out rates, facilitate access to free basic education at both primary and secondary levels, provide informal education opportunities and vocational training for children who are not enrolled in formal schooling and pay particular attention to girls and vulnerable children, that is, for example, children living in rural areas, children from poor families, indigenous children and migrant children.***

Identifying and reaching out to children at special risk

589. The Convention, in *Article 7(2)(d)*, recognizes that effectively combating the worst forms of child labour means identifying and reaching out to children who are particularly vulnerable to these worst forms of child labour. In this regard, the Committee has noted that certain groups of children are particularly vulnerable to the worst forms of labour, due to various social and economic factors, which vary across States and regions. These

[1359] See, for example, *Madagascar* – CEACR, direct request, 2010; *Mexico* – CEACR, observation, 2011; and *Nepal* – CEACR, direct request, 2008.

[1360] See *Plurinational State of Bolivia* – CEACR, observation, 2009.

[1361] See *Nicaragua* – CEACR, observation, 2010.

[1362] See *Mauritania* – CEACR, observation, 2010; and *Uganda* – CEACR, observation, 2008.

[1363] See, for example, *Kenya* – CEACR, direct request, 2010; and *Haiti* – CEACR, direct request, 2011.

[1364] See, for example, *Zimbabwe* – CEACR, observation, 2011.

groups are not explicitly identified in the Convention, and as such children often belong to marginalized or isolated groups, they may not be reached through standard channels and institutions.

HIV and AIDS orphans and other vulnerable children

590. ***The Committee observes that HIV and AIDS orphans and other vulnerable children (OVCs) are particularly at risk of engagement in the worst forms of child labour. These children are often left without sufficient family support, and must engage in economic activity to support themselves,*** [1365] ***or in the case of child-headed households (a growing phenomenon in several member States), their siblings.*** [1366] ***OVCs usually have very limited means of generating income and therefore resort to risky coping strategies.*** [1367] ***The growing population of OVCs in many countries has therefore resulted in a growing number of persons under the age of 18 who are particularly vulnerable to becoming victims of trafficking and commercial sexual exploitation, or being used in illicit activities and hazardous work.*** [1368] ***In this regard, the Committee emphasizes that effective and time-bound measures tailored to the circumstances and needs of OVCs are essential in combating the worst forms of child labour.***

Specific national plans of action for OVCs

591. The Committee has noted the formulation and implementation of specific national plans of action for OVCs in many countries, particularly on the African continent, including *Angola, Benin, Cameroon, Côte d'Ivoire, Malawi, Mozambique, Namibia, Rwanda*, *South Africa* and *Zimbabwe*. [1369] Non-African countries which have implemented specific national plans of action for OVCs include *Guyana* and *Papua New Guinea*. [1370] These national plans of action commonly aim to provide a wide range of support to OVCs, including access to educational and health services, [1371] nutritional and food assistance [1372] and psychological services, [1373] in addition to strengthening institutional capacity to respond to the needs of OVCs, including stronger social protection. [1374] Direct financial support may be provided to vulnerable OVCs through

[1365] See, for example, *Mozambique* – CEACR, observation, 2010; *Uganda* – CEACR, direct request, 2008; and *Zimbabwe* – CEACR, direct request, 2008.

[1366] See, for example, *Lesotho* – CEACR, direct request, 2006; and *Zimbabwe* – CEACR, observation, 2011.

[1367] See, for example, *Botswana* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; and *United Republic of Tanzania* – CEACR, observation, 2010.

[1368] See, for example, *Cameroon* – CEACR, observation, 2011; *Congo* – CEACR, direct request, 2009; *Djibouti* – CEACR, direct request, 2010; *Equatorial Guinea* – CEACR, direct request, 2007; *Guyana* – CEACR, direct request, 2007; *Papua New Guinea* – CEACR, direct request, 2011; *Swaziland* – CEACR, direct request, 2006; *Togo* – CEACR, direct request, 2011; *Uganda* – CEACR, direct request, 2008; and *Zambia* – CEACR, observation, 2010.

[1369] *Angola* – CEACR, observation, 2011; *Benin* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, direct request, 2011; *Malawi* – CEACR, direct request, 2007; *Mozambique* – CEACR, observation, 2010; *Namibia* – CEACR, direct request, 2010; *Rwanda* – CEACR, direct request, 2008; *South Africa* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[1370] *Guyana* – CEACR, direct request, 2007; and *Papua New Guinea* – CEACR, direct request, 2009.

[1371] See, for example, *Ghana* – CEACR, direct request, 2009; and *Kenya* – CEACR, direct request, 2010.

[1372] See, for example, *Botswana* – CEACR, direct request, 2010; *Burkina Faso* – CEACR, direct request, 2011; and *Gabon* – CEACR, direct request, 2009.

[1373] See, for example, *Botswana* – CEACR, direct request, 2010; *Ethiopia* – CEACR, direct request, 2010; and *Zambia* – CEACR, observation, 2010.

[1374] *Angola* – CEACR, observation, 2011; and *Malawi* – CEACR, direct request, 2011.

CCTs, which work to prevent children from entering the labour market, thereby reducing their risk of becoming engaged in the worst forms of child labour. [1375] For example, the Child Grants Programme was launched in 2009 in *Lesotho* and provides quarterly unconditional payments to OVC children. [1376] However, despite such efforts, in many member States these social services and support mechanisms only reach a fraction of the OVCs in the country, [1377] or remain insufficient to address the needs of this vulnerable group. [1378] In this regard, the Committee considers that the governments concerned need to take concrete measures to increase the percentage of households with OVCs receiving support services and grants in order to protect such children from the worst forms of child labour.

Facilitating access to education or vocational training for OVCs to prevent their engagement in the worst forms of child labour

592. The Committee observes that access to education is a particular problem facing many OVC populations. [1379] Children in HIV and AIDS-affected families are often withdrawn from school at a young age to care for ill family members or siblings, and to supplement the income of sick parents. In many countries, HIV and AIDS orphans are much less likely to be enrolled and attending school than non-orphan children. [1380] However, several member States have taken positive measures to facilitate access to education for OVCs, including *Senegal*, where the implementation of a programme to support schooling and vocational training for OVCs included the provision of 8,508 scholarships for OVCs in 2008–10. [1381] In *Ghana*, a programme of monetary assistance for households for the upkeep of orphans was conditional on sending children of school age to school. [1382] In addition, in *Burkina Faso*, education and training was provided to approximately 10,000 OVCs through the strategic national framework to combat HIV and AIDS for 2006–10. [1383] The provision of vocational training can also lead to appropriate types of employment for young persons and help to prevent these adolescents from engaging in the worst forms of child labour. [1384] Considering that access to free basic education contributes to preventing the engagement of children in the worst forms of child labour, the Committee must emphasize the need for the

[1375] *Kenya* – CEACR, direct request, 2010, *Mozambique* – CEACR, observation, 2010; and *Namibia* – CEACR, direct request, 2010.

[1376] *Lesotho* – CEACR, direct request, 2011.

[1377] See, for example, *Ethiopia* – CEACR, direct request, 2010; and *Malawi* – CEACR, direct request, 2011.

[1378] See, for example, *Chad* – CEACR, direct request, 2011; and *Rwanda* – CEACR, direct request, 2011.

[1379] For example, in the *Philippines*, children affected by HIV and AIDS have inadequate access to basic education, and in *Azerbaijan*, children infected with HIV and AIDS face discrimination and may be excluded from mainstream schooling. *Philippines* – CEACR, direct request, 2010; and *Azerbaijan* – CEACR, direct request, 2009.

[1380] For example, in *Mauritania*, only 33 per cent of child HIV and AIDS orphans between 10 and 14 years of age attend school, compared with a rate of around 71 per cent among non-orphans. In *Côte d'Ivoire*, the school attendance rate of HIV and AIDS orphans between the ages of 10 and 14 years fell from 62.4 per cent in 2007 to 35.7 per cent in 2009. *Mauritania* – CEACR, direct request, 2010; and *Côte d'Ivoire* – CEACR, direct request, 2011; in addition to, for example, *Rwanda* – CEACR, direct request, 2011; and *Papua New Guinea* – CEACR, direct request, 2011.

[1381] *Senegal* – CEACR, direct request, 2011.

[1382] *Ghana* – CEACR, direct request, 2011.

[1383] *Burkina Faso* – CEACR, direct request, 2010.

[1384] *Zambia* – CEACR, observation, 2010.

governments concerned to take effective measures to facilitate access to, and attendance in, free basic education or vocational training, as appropriate, for OVCs.

Good practices in mainstreaming OVC issues into national policies and programmes to combat child labour

593. Lastly, the Committee wishes to highlight the important trend of mainstreaming OVC issues into national policies and programmes to combat child labour. For example, in *Kenya*, the National Plan of Action on the Elimination of Child Labour, 2004–15, identifies the HIV and AIDS pandemic as a contributing factor to child labour, and contains measures to lessen this impact. [1385] In *Sri Lanka*, the National Plan of Action for Children includes measures aimed at providing an adequate number of homes to accommodate HIV and AIDS orphans, [1386] and the National Strategy and Action Programme Towards the Elimination of Child Labour in *Swaziland* contains measures to open community registers of child-headed households and to better manage the education of OVCs. [1387] ILO–IPEC projects also frequently address the vulnerability of OVCs. These include the ILO–IPEC project to combat and prevent HIV and AIDS-induced child labour in sub-Saharan Africa (implemented in *Uganda* and *Zambia*), [1388] and a project implemented in *Malawi* containing measures to strengthen community-based safety nets to support OVCs, while providing for OVCs withdrawn from child labour through school feeding, home rations projects and targeted family assistance in the form of business start-up support and the provision of subsidized fertilizers. [1389]

Roma children

594. ***The Committee observes that in many member States, particularly in Eastern Europe, Roma children are particularly vulnerable to certain worst forms of child labour. Roma children are victims of both internal and external trafficking, particularly to western European countries.*** [1390] ***They are trafficked for the purposes of forced begging*** [1391] ***and prostitution,*** [1392] ***and are used in illicit activities, including theft*** [1393] ***and the sale of narcotics.*** [1394] ***Moreover, in several member States, Roma children constitute a majority, or a large proportion, of the children living in the streets.*** [1395] ***The Committee must emphasize the importance of protecting Roma children from these worst forms of child labour, due to the myriad factors which***

[1385] *Kenya* – CEACR, direct request, 2010.

[1386] *Sri Lanka* – CEACR, direct request, 2008.

[1387] *Swaziland* – CEACR, direct request, 2010.

[1388] *Uganda* – CEACR, direct request, 2011; and *Zambia* – CEACR, direct request, 2009.

[1389] *Malawi* – CEACR, direct request, 2011.

[1390] See, for example, *Austria* – CEACR, direct request, 2011.

[1391] See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Slovakia* – CEACR, direct request, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

[1392] See, for example, *Czech Republic* – CEACR, direct request, 2011; and *Hungary* – CEACR, direct request, 2010.

[1393] See, for example, *Bulgaria* – CEACR, direct request, 2004; and *United Kingdom* – CEACR, direct request, 2007.

[1394] See, for example, *Serbia* – CEACR, direct request, 2010.

[1395] See, for example, *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Greece* – CEACR, direct request, 2009; *Georgia* – CEACR, direct request, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

contribute to their vulnerability, including poverty, discrimination and insufficient social protection programmes.

Programmatic measures to address the vulnerability of Roma children

595. The Committee notes the value of broad, multi-pronged programmes to reach out to Roma children, such as the Action Plan and Strategy for Addressing the Roma Problem in *Bosnia and Herzegovina*, [1396] and the multi-nation initiative, the Decade of Roma Inclusion, [1397] through which numerous measures have been implemented in a number of member States. [1398] However, these initiatives are not always successful. [1399] In countries where some measures have been undertaken, but Roma children remain particularly vulnerable, the Committee calls on the governments concerned to intensify their efforts (including within the framework of the Decade of Roma Inclusion), and to take concrete measures to protect Roma children from the worst forms of child labour.

The importance of access to free basic education for Roma children

596. Roma children often face difficulties in accessing and remaining in school. In this regard, the Committee has welcomed specific initiatives to raise the enrolment rates of Roma children in many countries. For example, in *Slovenia*, strategies were adopted for the education of Roma children (such as pre-school programmes and optional classes on Roma culture), and additional funds were allocated to schools enrolling Roma children. [1400] In *Montenegro*, the Roma Education Initiative was implemented aimed at integrating a greater number of Roma children into the formal school system, through the provision of free textbooks and transport. [1401] In *The former Yugoslav Republic of Macedonia*, several measures to reduce the school drop-out rate of Roma children were taken, including the provision of 650 scholarships for Roma children and the construction of a secondary school in a Skopje neighbourhood predominantly inhabited by the Roma population. [1402] In *Latvia*, the National Programme on Roma was implemented with the aim of raising enrolment rates among Roma children, through the provision of preparatory classes, the improved enforcement of the Education Law in order to motivate Roma parents to ensure continuous education for their children and opportunities for Roma children to return to school following drop-out. [1403]

[1396] *Bosnia and Herzegovina* – CEACR, direct request, 2011.

[1397] Decade of Roma Inclusion initiative by 12 European countries to improve the socio-economic and social inclusion of the Roma minority across the region.

[1398] See, for example, *Albania* – CEACR, observation, 2011; *Croatia* – CEACR, direct request, 2011; *Romania* – CEACR, direct request, 2010; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

[1399] For example, despite some effective initiatives, the implementation of the Strategy for the Improvement of the Living Conditions of the Roma Minority in *Albania* was generally poor. *Albania* – CEACR, observation, 2011.

[1400] *Slovenia* – CEACR, direct request, 2010.

[1401] *Montenegro* – CEACR, direct request, 2010.

[1402] *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

[1403] *Latvia* – CEACR, direct request, 2010.

597. However, the Committee observes that the level of success of these initiatives is varied, [1404] and that despite the measures taken by certain member States, school drop-out rates remain significantly higher among Roma children than non-Roma children, [1405] or the vast majority of Roma children do not attend school. [1406] The Committee therefore notes that much progress remains to be made in this area. Considering the vital importance of access to free basic education in the fight against the worst forms of child labour, the Committee calls on the governments concerned to strengthen their efforts to facilitate access to education for Roma children.

Children from poor families and rural areas

598. ***Due to the strong links between poverty and the worst forms of child labour, the Committee wishes to highlight the vulnerability of children from poor families to the worst forms of child labour.*** [1407] ***Moreover, children from rural areas may be particularly vulnerable to trafficking to urban areas,*** [1408] ***for the purpose of commercial sexual exploitation,*** [1409] ***begging*** [1410] ***or for domestic work.*** [1411] ***Furthermore, in several countries, it is largely schools in poor and rural areas that contract out their students to perform compulsory labour during school hours.*** [1412] ***Lastly, in several member States, the vast majority of child domestic workers*** [1413] ***or street children*** [1414] ***are migrants from the countryside.***

Measures to reach out to children from poor families and rural areas

599. Many policies and interventions which work to reduce the vulnerability of children from poor families do not specifically target child labour, but instead are aimed at poverty reduction. For example, in *Mongolia*, the particular vulnerability of children from poor families to the worst forms of child labour has been addressed through programmes which offer such children financial assistance for education and health. [1415] Moreover, in several countries the provision of cash transfers to poor families (often conditional on the school attendance of their children) works to reduce the vulnerability

[1404] For example, the effectiveness of the measures adopted in *Slovakia* in 2008 to assist Roma pupils in school was limited by a lack of available teachers and low parental interest for Roma language and culture classes, and the de facto segregation of Roma children in education continues. In *Serbia*, despite the implementation of projects such as "Assistance to Roma children in education", only 13 per cent of Roma children complete primary education. See *Serbia* – CEACR, direct request, 2010; and *Slovakia* – CEACR, direct request, 2011.

[1405] *Latvia* – CEACR, direct request, 2010; *Hungary* – CEACR, direct request, 2010; *Serbia* – CEACR, direct request, 2010; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

[1406] *Bosnia and Herzegovina* – CEACR, direct request, 2011; *Croatia* – CEACR, direct request, 2011; and *Montenegro* – CEACR, direct request, 2010.

[1407] See, for example, *Bahamas* – CEACR, direct request, 2010; and *Mongolia* – CEACR, direct request, 2010.

[1408] See, for example, *Benin* – CEACR, direct request, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2009; and *Mozambique* – CEACR, observation, 2010.

[1409] See, for example, *Kyrgyzstan* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[1410] See, for example, *Mauritania* – CEACR, observation, 2008; and *Senegal* – CEACR, observation, 2011.

[1411] See, for example, *Haiti* – CEACR, observation, 2011; *Liberia* – CEACR, direct request, 2011; *Togo* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[1412] See, for example, *China* – CEACR, observation, 2011; and *Uzbekistan* – CEACR, observation, 2011.

[1413] See, for example, *Morocco* – CEACR, observation, 2010; *Sri Lanka* – CEACR, observation, 2004; and *Togo* – CEACR, observation, 2011.

[1414] See, for example, *Egypt* – CEACR, observation, 2011.

[1415] *Mongolia* – CEACR, direct request, 2010.

of these children, including in *Dominican Republic*, *Lebanon* and *Panama.* [1416] Measures may also be implemented in the context of programmes specifically targeting child labour, as in *Brazil*, where poor families with working children were provided with family allowances and grants through the Programme to Eliminate Child Labour. [1417]

600. A combination of factors contribute to the particular vulnerability of children from rural areas, including regional isolation, poverty, lack of access to education, a higher probability of engaging in hazardous agricultural work and particular vulnerability upon migration to urban areas. Therefore, taking comprehensive time-bound measures to provide effective protection to these children is necessary. For example, the Committee welcomed the ILO–IPEC project "Providing for direct intervention against the worst forms of child labour in rural areas" in *Morocco*, and the programmes implemented in *Colombia* for the support of families living in remote rural areas. [1418] Such initiatives may also focus on one specific worst form of child labour, as in *Thailand*, where a phase of the National Plan on Prevention and Resolution of Domestic and Cross-border Trafficking in Children and Women focused on rural areas, due to the particular vulnerability of the rural population. [1419]

601. Observing the positive impact of these measures, the Committee considers it essential that member States take effective and time-bound measures to protect children from poor families and rural areas from the worst forms of child labour.

Good practices to facilitate access to education for children from poor families and rural areas

602. In many countries, children from poor families are more likely to drop out of school. [1420] Moreover, in many States, children living in rural areas face limited access to education [1421] due to the long distances between rural homes and the nearest schools, [1422] the requirement for these children to stay home to work in agriculture with their parents, [1423] the insufficient number of rural schools to absorb all school-aged children [1424] and the closure of schools in rural areas for economic reasons. [1425] The Committee has consistently called on governments to take measures to increase enrolment and attendance rates of children from these vulnerable groups. [1426]

[1416] *Dominican Republic* – CEACR, direct request, 2011; *Lebanon* – CEACR, direct request, 2010; and *Panama* – CEACR, observation, 2011.

[1417] *Brazil* – CEACR, direct request, 2008.

[1418] *Colombia* – CEACR, direct request, 2011.

[1419] *Thailand* – CEACR, observation, 2010.

[1420] See, for example, *Angola* – CEACR, observation, 2011; *Comoros* – CEACR, direct request, 2011; and *Jordan* – CEACR, direct request, 2011.

[1421] See, for example, *Albania* – CEACR, direct request, 2011; *Angola* – CEACR, observation, 2011; *Lesotho* – CEACR, direct request, 2011; *Ukraine* – CEACR, direct request, 2010; and *Viet Nam* – CEACR, direct request, 2006;

[1422] See, for example, *Islamic Republic of Iran* – CEACR, direct request, 2009.

[1423] See, for example, *Lao People's Democratic Republic* – CEACR, direct request, 2010.

[1424] See, for example, *Liberia* – CEACR, direct request, 2011.

[1425] See, for example, *Estonia* – CEACR, direct request, 2011.

[1426] See, for example, *Albania* – CEACR, direct request, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2010; and *Zambia* – CEACR, direct request, 2010.

603. Measures taken in this regard include the establishment of the regional primary education boarding schools in *Turkey* (to ensure access to primary education for children in rural areas and villages and hamlets which do not have schools and for children from poor families) which provided education to 282,132 children in 2006–07 and school transport to 649,329 students in 81 provinces who live in underpopulated and scattered areas. [1427] In addition, school meal programmes have been implemented in a wide variety of countries, including *Bangladesh*, *Ghana*, *Kenya*, *Saint Lucia* and *Slovenia*, to encourage school attendance. [1428] In *Cape Verde*, a programme to facilitate school attendance of children from poor families by paying their school fees, school materials, and school meals, was implemented with the support of the World Food Programme and UNICEF, [1429] and in *Swaziland* a school feeding programme was established for schools in rural areas. [1430] In this regard, the Committee is of the view that governments must continue to take the necessary measures to facilitate access to education for children from poor families due to the important contribution of education in combating the worst forms of child labour.

Taking into account the special situation of girls in rural areas

604. In many member States, girls living in rural areas face additional barriers to their participation in schools. In some member States, girls from rural areas are not aware of their right to education, [1431] and the lack of qualified women teachers in rural areas contributes to their higher drop-out rates. [1432] Moreover, in some member States, parents in rural areas do not want to send their daughters to co-educational schools and, to address this problem, more girls' schools must be established in rural areas. [1433] For example, in *Bangladesh*, the Female Secondary School Assistance Project-II aims to improve the quality of and the access of girls to secondary education in rural areas of the country. [1434] In *Yemen*, the National Action Plan for Children includes a focus on increasing qualified women teachers in rural areas and creating demand for girls' education. [1435] Despite the measures taken in some member States to facilitate access to education for girls from rural areas, the Committee observes that higher drop-out rates and lower attendance rates among this group persist in many States. [1436] It therefore calls on all governments concerned to strengthen the efforts being made in this regard as a step towards reducing the vulnerability of girls living in rural areas to the worst forms of child labour.

[1427] *Turkey* – CEACR, direct request, 2009.

[1428] *Bangladesh* – CEACR, direct request, 2011; *Ghana* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2010; *Saint Lucia* – CEACR, direct request, 2010; and *Slovenia* – CEACR, direct request, 2010.

[1429] *Cape Verde* – CEACR, direct request, 2011.

[1430] *Swaziland* – CEACR, direct request, 2010.

[1431] See, for example, *Iraq* – CEACR, direct request, 2011.

[1432] *Yemen* – CEACR, direct request, 2011.

[1433] See, for example, *Egypt* – CEACR, observation, 2011.

[1434] *Bangladesh* – CEACR, direct request, 2011.

[1435] *Yemen* – CEACR, direct request, 2010.

[1436] See, for example, *Democratic Republic of the Congo* – CEACR, direct request, 2010; *Islamic Republic of Iran* – CEACR, direct request, 2009; *Niger* – CEACR, observation, 2011; *Nigeria* – CEACR, direct request, 2011; *Senegal* – CEACR, direct request, 2011; and *Tajikistan* – CEACR, direct request, 2011.

Children living and working on the street

605. ***The Committee also wishes to highlight the particular vulnerability of street children to the worst forms of child labour. Street children can be found in urban areas in all regions around the world, and are particularly at risk of becoming victims of trafficking,*** [1437] ***forced labour,*** [1438] ***prostitution,*** [1439] ***begging,*** [1440] ***use in the sale and trafficking of drugs*** [1441] ***and other petty crimes,*** [1442] ***in addition to hazardous work.*** [1443]

Programmes to reach out to street children

606. Some States have undertaken national plans of action on street children. [1444] For example, in *Mexico*, the programme of prevention and assistance to girls, boys and young persons living in the streets benefited 212,776 children between 2001 and 2008. [1445] Moreover, shelters [1446] and day centres [1447] for street children have been established in many member States, and these may be combined with child protection units [1448] and the provision of health and social services [1449] for the thorough protection of these children.

607. For the long-term protection of street children from the worst forms of child labour, relevant initiatives must not only remove the children from their vulnerable situation, but also provide for their rehabilitation and social reintegration. For example, in *Uganda*, a programme implemented by the Ministry of Gender, Labour and Social Development identified, withdrew, rehabilitated, resettled and supported 1,136 street children, who also benefited from a programme of non-formal education. [1450] In *Turkey*, the Government operates 36 centres and six homes that offer rehabilitation services through which, by the end of 2008, 4,270 children who lived or worked in the street and their families were provided with housing, social services and social protection. [1451]

[1437] See, for example, *Georgia* – CEACR, direct request, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

[1438] See, for example, *Jordan* – CEACR, direct request, 2011.

[1439] See, for example, *Kyrgyzstan* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, direct request, 2011.

[1440] See, for example, *Italy* – CEACR, direct request, 2011; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Senegal* – CEACR, observation, 2011; *Saudi Arabia* – CEACR, observation, 2010; and *Zimbabwe* – CEACR, observation, 2011.

[1441] See, for example, *Jamaica* – CEACR, direct request, 2011.

[1442] See, for example, *Haiti* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, direct request, 2011.

[1443] See, for example, *Mexico* – CEACR, observation, 2011; *Tajikistan* – CEACR, direct request, 2011; and *Turkey* – CEACR, observation, 2011.

[1444] See, for example, *Panama* – CEACR, observation, 2011.

[1445] *Mexico* – CEACR, observation, 2011.

[1446] See, for example, *Georgia* – CEACR, direct request, 2006; *Germany* – CEACR, direct request, 2011; and *Islamic Republic of Iran* – CEACR, direct request, 2011.

[1447] See, for example, *Egypt* – CEACR, observation, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

[1448] See, for example, *Bulgaria* – CEACR, observation, 2009; and *Morocco* – CEACR, direct request, 2011.

[1449] See, for example, *Cape Verde* – CEACR, direct request, 2011; and *Germany* – CEACR, direct request, 2011.

[1450] *Uganda* – CEACR, direct request, 2010.

[1451] *Turkey* – CEACR, observation, 2011.

Reintegrating street children into educational programmes

608. The Committee also wishes to highlight the importance of education in reaching out to street children, as these children often drop out of school at a very young age or have extremely limited access to education. [1452] In this respect, the Committee has welcomed programmes such as the initiative entitled "Vocational education for street children" in *Kyrgyzstan*. [1453] In *Bangladesh*, several NGOs are implementing projects targeting the withdrawal of street children through non-formal education and skills development activities and, in *Jamaica*, the YMCA (an NGO) offers training, remedial education and vocational training to street boys, with the possibility of mainstreaming these children into technical high schools. [1454] Due to the particular vulnerability of street children, the Committee welcomes the wide range of initiatives implemented by a certain number of member States.

609. However, despite the positive measures taken in numerous member States, vulnerable street children remain a pressing issue in a significant number of urban areas. The Committee observes that the number of street children is growing in a number of member States, [1455] and that several such States lack comprehensive strategies or programmes to address this problem. [1456] In this regard, the Committee must emphasize that the governments concerned should take comprehensive time-bound measures to identify and remove street children from their at-risk situation, and to provide for their rehabilitation and social reintegration into either formal or non-formal education or vocational training, to ensure that these children do not return to the vulnerable situation of living and working on the streets.

Enhanced international cooperation and mutual assistance

610. The existence of the worst forms of child labour is an issue that not only concerns the countries which suffer most from its prevalence, but also the international community as a whole. To ensure the immediate suppression of extreme forms of child labour, mutual assistance and support between member States is of particular importance. [1457] Therefore, *Article 8* of the Convention provides that member States shall take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation and/or assistance, including support for social and economic development, poverty eradication programmes and universal education.

[1452] See, for example, *Czech Republic* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2010; and *Uzbekistan* – CEACR, direct request, 2011.

[1453] *Kyrgyzstan* – CEACR, direct request, 2011. See also *Burkina Faso* – CEACR, direct request, 2011.

[1454] *Bangladesh* – CEACR, direct request, 2011; and *Jamaica* – CEACR, direct request, 2011.

[1455] See, for example, *Djibouti* – CEACR, direct request, 2011; *Ethiopia* – CEACR, direct request, 2011; *Greece* – CEACR, direct request, 2011; *Haiti* – CEACR, direct request, 2011; *Niger* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2011; *Pakistan* – CEACR, direct request, 2011; *Senegal* – CEACR, observation, 2011; *Uzbekistan* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[1456] See, for example, *Jordan* – CEACR, direct request, 2011; and *Malawi* – CEACR, direct request, 2011.

[1457] *Child labour*, 1999, op. cit., p. 79.

International and regional organizations

611. International cooperation implies that countries ratify other international instruments that may have an impact on the eradication of the worst forms of child labour. [1458] In this regard, an important number of countries have entered international, regional and bilateral agreements in order to combat the worst forms of child labour.

612. Countries may also join international or regional organizations or associations. Most member States are, for example, members of Interpol, which helps cooperation between police and the judiciary in countries in the different regions, especially in the fight against trafficking of children. [1459] Some European countries are part of Europol, [1460] the Council of the Baltic Sea States, [1461] or the Regional Centre for Combating Trans-border Crime (the Southeast European Cooperative Initiative). [1462] Southeast Asian countries, through their regional organization (the Association of Southeast Asian Nations – ASEAN), have undertaken some regional activities to help eradicate child commercial sexual exploitation. [1463]

International and regional cooperation

613. Another positive practice that the Committee has observed is that of member States which invest in governmental or non-governmental organizations or provide assistance to other countries in order to combat the worst forms of child labour. For instance, the *United States* Department of Labor contributes, in a large measure, to the ILO–IPEC programme, which provides technical assistance to various countries to combat the worst forms of child labour. Another example is *New Zealand*'s International Aid and Development Agency, which made contributions in 2006–07 to various United Nations agencies (such as UNFPA, UNICEF, UNHCR and UNDP) which contribute to addressing child labour issues. [1464] The Committee has noted with interest that, since 2003, *New Zealand* has contributed to a number of projects regarding the worst forms of child labour which target children involved in trafficking (*Cambodia*, *Indonesia*); children working on the street (*Cambodia*, *United Republic of Tanzania*); children affected by armed conflict (*Papua New Guinea*, *Sudan*); orphans and other vulnerable children (*Namibia*, *United Republic of Tanzania*, *Zimbabwe*); and children involved in commercial sexual exploitation (India, *Philippines*).

[1458] See Part I. See also, for example, *Belgium* – CEACR, direct request, 2006; *Bulgaria* – CEACR, direct request, 2005; *Cyprus* – CEACR, direct request, 2009; *Fiji* – CEACR, direct request, 2007; *Hungary* – CEACR, direct request, 2006; *Kenya* – CEACR, direct request, 2005; *Republic of Korea* – CEACR, direct request, 2006; *Latvia* – CEACR, direct request, 2009; *Mongolia* – CEACR, direct request, 2005; and *Nigeria* – CEACR, direct request, 2005.

[1459] See, for example, *Belgium* – CEACR, direct request, 2006; *Botswana* – CEACR, direct request, 2005; *Bulgaria* – CEACR, direct request, 2005; *Chad* – CEACR, direct request, 2006; *Congo* – CEACR, direct request, 2006; *Hungary* – CEACR, direct request, 2006; *Ireland* – CEACR, direct request, 2005; *Kenya* – CEACR, direct request, 2005; *Republic of Korea* – CEACR, direct request, 2006; *Mongolia* – CEACR, direct request, 2005; *Nigeria* – CEACR, direct request, 2006; and *Oman* – CEACR, direct request, 2005.

[1460] See, for example, *Netherlands* – CEACR, direct request, 2008.

[1461] See, for example, *Lithuania* – CEACR, direct request, 2010; *Poland* – CEACR, direct request, 2010; *Russian Federation* – CEACR, observation, 2010; and *Sweden* – CEACR, direct request, 2010.

[1462] *Republic of Moldova* – CEACR, direct request, 2006.

[1463] See, for example, *Singapore* – CEACR, direct request, 2008.

[1464] *New Zealand* – CEACR, direct request, 2008.

614. Similarly, the Ministry of Foreign Affairs of *Denmark* implemented a programme to combat human trafficking in Eastern Europe for the period 2009–11, with a focus on *Belarus, Republic of Moldova* and *Ukraine*. [1465] Similarly, the Government of *Portugal* supports a variety of projects that promote the education of children in *Angola, Cape Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe* and *Timor-Leste*. [1466] These programmes include projects to improve school attendance rates and reduce drop-out rates (particularly among girls), projects to provide school supplies to disadvantaged children and to construct educational infrastructure.

Cooperation to combat the sale and trafficking and commercial sexual exploitation of children

615. One very important global trend that the Committee has seen emerge is the commitment member States have shown to combating the sale and trafficking and the commercial sexual exploitation of children through mutual assistance.

Regional agreements

616. Several countries have adopted regional cooperation agreements or concluded multilateral or bilateral memoranda of understanding to reduce the flow of children being trafficked across borders and allow for an exchange of information in order to monitor the actions of traffickers. [1467] This is the case in *Benin, Burkina Faso, Côte d'Ivoire, Liberia, Mali, Niger, Nigeria* and *Togo*, which all signed the Multilateral Cooperation Agreement to Combat the Trafficking of Children in West Africa in 2005, under which the governments concerned undertake to adopt measures to develop a common front to prevent, fight, suppress and punish trafficking in persons by mutual cooperation; to protect, rehabilitate and reintegrate victims of trafficking; and to assist each other in investigating, arresting and prosecuting traffickers. [1468] This agreement also establishes a permanent regional monitoring commission on child trafficking.

617. The Committee also noted the "Mekong subregional cooperation in the anti-trafficking process", which was concluded by ministers from *China, Cambodia*, *Lao People's Democratic Republic, Myanmar, Viet Nam* and *Thailand*. [1469] The Mekong project involves the strengthening of multinational and bilateral structures, policies and processes to address trafficking in children and women within a broader migration framework, with the other participant countries. In the framework of this project, several joint memoranda of understanding were signed between the countries to provide assistance to victims of trafficking. The Committee also noted with interest that the project *Ciudades gemelas*, which is aimed at establishing a regional strategy for combating trafficking of children and adolescents for sexual exploitation in MERCOSUR and is funded by the Inter-American Development Bank (IADB), involves

[1465] *Denmark* – CEACR, direct request, 2010. See also *Saudi Arabia* – CEACR, direct request, 2006.

[1466] *Portugal* – CEACR, direct request, 2010.

[1467] *Malaysia* – CEACR, observation, 2010; and *Pakistan* – CEACR, observation, 2011.

[1468] See, for example, *Burkina Faso* – CEACR, observation, 2009; *Gambia* – CEACR, direct request, 2010; *Liberia* – CEACR, direct request, 2011; *Mali* – CEACR, observation, 2010; *Niger* – CEACR, observation, 2011; and *Nigeria* – CEACR, direct request, 2006.

[1469] See, for example, *Cambodia* – CEACR, direct request, 2011; and *Lao People's Democratic Republic* – CEACR, direct request, 2010.

14 border cities of MERCOSUR (*Argentina, Brazil, Uruguay* and *Paraguay*), including Ciudad del Este (*Paraguay*), Foz de Iguazu (*Brazil*) and Puerto Iguazú (*Argentina*). [1470]

Bilateral agreements

618. Many member States have also signed bilateral agreements to enhance cooperation between their enforcement agencies in the field of information exchange and training with a view to eliminating the trafficking and commercial sexual exploitation of children. [1471] The Governments of *Lesotho* and *South Africa*, for instance, have established an anti-trafficking cooperative relationship through which their respective security agencies collaborate on efforts to bring human traffickers to justice. Pursuant to this cooperation, the countries' law enforcement agencies have been holding meetings in towns along their shared border to sensitize the public to the dangers of trafficking. [1472]

National measures aimed at enhancing cooperation

619. Member States may also take measures on their own initiative aimed at enhancing transnational cooperation. In *Kuwait*, for example, the Committee has noted that the draft Trafficking Bill explicitly refers to the question of legal and judicial competence for transnational crimes, which can have a real impact on combating trafficking and the smuggling of migrants, in enhancing international cooperation to prevent and eliminate child trafficking and to ensure that individuals who traffic children across borders are effectively prosecuted. [1473] In *Lithuania*, a repatriation system, along with consular and other necessary assistance, is under development to facilitate the safe and prompt voluntary return of victims of trafficking from foreign countries. [1474] In *Zambia*, the police service established a human trafficking desk as a way of cooperating with other countries to combat human trafficking. [1475]

Moving towards enhanced international cooperation and mutual assistance

620. ***The Committee is of the view that international cooperation between law enforcement agencies is indispensable to prevent and eliminate the sale and trafficking of children and their commercial sexual exploitation, through the collection and exchange of information and assistance with a view to detecting, prosecuting and convicting the individuals involved and repatriating the victims.*** [1476] ***Therefore, where it observes that member States suffer from a more acute problem of sale and trafficking of children in practice, the Committee underlines that they must take measures to combat the trafficking of children through international cooperation, in accordance with Article 8 of the Convention,*** [1477] ***or to strengthen international cooperation through multilateral, regional and bilateral arrangements for the***

[1470] *Paraguay* – CEACR, observation, 2011. See also *Argentina* – CEACR, observation, 2011; and *Uruguay* – CEACR, direct request, 2010.

[1471] See, for example, *Cyprus* – CEACR, direct request, 2009; *Togo* – CEACR, observation, 2011; *United Arab Emirates* – CEACR, observation, 2010; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[1472] *Lesotho* – CEACR, direct request, 2011.

[1473] *Kuwait* – CEACR, direct request, 2010. See also, *Suriname* – CEACR, direct request, 2010; and *Switzerland* – CEACR, direct request, 2006.

[1474] *Lithuania* – CEACR, direct request, 2010.

[1475] *Zambia* – CEACR, observation, 2010.

[1476] *Nicaragua* – CEACR, observation, 2010.

[1477] See, for example, *Libya* – CEACR, direct request, 2011; and *Tunisia* – CEACR, direct request, 2010.

prevention, detection, investigation, repatriation, prosecution and punishment of those responsible for these acts. [1478] ***Furthermore, the Committee requests governments to strengthen cooperation between the countries that have signed the multilateral agreements in order to identify and arrest persons working in networks involving the trafficking of children, and to detect and intercept child victims of trafficking at the borders.*** [1479]

Poverty eradication

621. Member States are required to adopt measures and programmes to combat poverty in their countries so as to ensure that children are less at risk of entering child labour and its worst forms. In cases where the Committee specifically highlights issues of poverty, the Conference Committee on the Application of Standards has called on member States to provide assistance to the governments concerned, in line with *Article 8* of the Convention. [1480]

622. Countries have adopted national action plans and programmes, including national strategic development plans (NSDPs), Poverty Reduction Strategy Papers (PRSPs) and Poverty Reduction Strategy Frameworks (PRSFs) in order to free families from poverty. [1481] Through these various initiatives, ways were determined to increase the well-being of families by establishing mutual help groups (micro-credit), reduce poverty levels, establish conditions which ensure the survival and all-round development of all children, improve the living standards of the population, [1482] and reduce rural poverty, social exclusion in urban areas and precarious living conditions. [1483] Moreover, in the framework of these poverty reduction programmes, the problem of child labour and its worst forms is sometimes taken into account as a cross-cutting issue and placed in the overall framework of improving the situation of children and the role of the family. [1484] Child labour policies are generally implemented in coherence with the established poverty reduction plans, programmes or strategies. [1485]

623. For example, the Committee noted that, in *Djibouti*, a PRSF had been adopted to boost growth with the aim of ensuring the participation of the poorest groups in economic activities, as well as the National Social Development Initiative of the President of the Republic for 2008–11, which focuses on youth unemployment and

[1478] See, for example, *Lithuania* – CEACR, direct request, 2010; *Sweden* – CEACR, direct request, 2010; *Thailand* – CEACR, observation, 2011; and *Turkey* – CEACR, observation, 2011.

[1479] See, for example, *Argentina* – CEACR, direct request, 2009; *Benin* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, observation, 2009; *Chile* – CEACR, direct request, 2009; *Côte d'Ivoire* – CEACR, observation, 2010; and *Ecuador* – CEACR, observation, 2011.

[1480] See, for example, *Democratic Republic of the Congo – Provisional Record* No. 16, ILC, 98th Session, Geneva, 2009, Part II, p. 16/148; *Niger – Provisional Record* No. 22, ILC, 93rd Session, Geneva, 2005, Part 2, p. 22/70.

[1481] See, for example, *Cambodia* – CEACR, direct request, 2011; *Central African Republic* – CEACR, direct request, 2011; *Chad* – CEACR, direct request, 2006; *Democratic Republic of the Congo* – CEACR, direct request, 2011; *Equatorial Guinea* – CEACR, direct request, 2007; *Fiji* – CEACR, direct request, 2007; *Slovenia* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2008.

[1482] See, for example, *Kyrgyzstan* – CEACR, direct request, 2011; and *Madagascar* – CEACR, direct request, 2010.

[1483] *Morocco* – CEACR, direct request, 2011.

[1484] See, for example, *Mali* – CEACR, observation, 2010; *Mozambique* – CEACR, direct request, 2009; and *Nepal* – CEACR, direct request, 2010.

[1485] *Mongolia* – CEACR, direct request, 2005.

provides for assistance for persons most at risk. [1486] Similarly, the Committee noted that the Government of *Lebanon* had adopted a Social Action Plan (SAP) that addresses working children and their households as one of the main social groups characterized by acute poverty and which targets poor households and large families with children either not enrolled in school or under the legal age to work. [1487] The SAP includes cash-assistance support and follow-up services to households that comply with a number of conditions, including ensuring that their children stay in school until the end of compulsory education, as well as programmes focusing on the prevention of school drop-outs.

624. Other practical measures adopted by governments include the provision of education grants to assist poor families; [1488] aid from the World Bank for debt relief; [1489] the provision of loans and microcredit to the poor; [1490] land and credit reform, human development services, job creation, and community participation in governance; [1491] or simply programmes aimed at improving the population's quality of life through the provision of equal opportunities in employment, education, social protection and other important fields. [1492]

625. ***In view of the important correlation between child labour and poverty,*** [1493] ***the Committee emphasizes that poverty reduction programmes contribute to breaking the cycle of poverty, which is essential for the elimination of the worst forms of child labour.*** [1494]

Enforcement and impact

Monitoring mechanisms

626. *Article 5* of the Convention provides that member States shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to the Convention. Such monitoring mechanisms are essential for the effective translation of the relevant legislation into practice. Due to the multidimensional nature of the worst forms of child labour, several different monitoring institutions play an important role in this regard. The Committee considers that collaboration and information sharing between these various institutions is essential for preventing and combating the worst forms of child labour. [1495]

[1486] *Djibouti* – CEACR, direct request, 2009.

[1487] *Lebanon* – CEACR, direct request, 2010.

[1488] *Algeria* – CEACR, direct request, 2011.

[1489] *Guyana* – CEACR, direct request, 2007.

[1490] *Nigeria* – CEACR, direct request, 2006.

[1491] *Philippines* – CEACR, direct request, 2006.

[1492] *Mexico* – CEACR, direct request, 2011.

[1493] *Mauritania* – CEACR, direct request, 2010.

[1494] See, for example, *Grenada* – CEACR, direct request, 2009; *Guinea* – CEACR, direct request, 2007; *Peru* – CEACR, direct request, 2010; and *Uzbekistan* – CEACR, direct request, 2011.

[1495] See, for example, *Belgium* – CEACR, direct request, 2011.

Law enforcement agencies

Good practices in monitoring the worst forms of child labour

627. In most member States, national and local police forces are the primary bodies responsible for monitoring crimes related to child trafficking, child commercial sexual exploitation and the use of children in illicit activities. [1496] Member States should therefore seek to provide specific training to police officers regarding the worst forms of child labour to improve capacity to detect and combat these phenomena, [1497] as well as to prepare officers for the specific needs of child victims of the worst forms of child labour. [1498] Such training can include the incorporation of topics related to the worst forms of child labour into the training curriculum for new officers, workshops and awareness-raising sessions for current officers, capacity-building initiatives and training on sensitive and child-friendly investigation techniques. [1499]

628. The establishment of specific units of officers (trained in issues related to one of the worst forms of child labour) within the police forces appears to have boosted the capacity of these agencies to combat the worst forms of child labour in several member States. These include specific Internet monitoring groups focused on the detection of child pornography, [1500] or trafficking monitoring bodies, [1501] often in the form of a trafficking unit within the law enforcement body, [1502] which assist trafficking victims and gather useful information for investigations, [1503] support child victims of trafficking until their social integration [1504] and organize and intensify joint efforts against human trafficking. [1505] Some member States have also established specialized police units to address child abuse, and these units play a role in combating child commercial sexual exploitation. [1506]

The importance of collaboration with other institutions

629. Cooperation between law enforcement agencies and the labour inspectorate system is essential for the implementation of the Convention. Where insufficient collaboration in this regard has hindered the detection of the worst forms of child labour, the

[1496] See, for example, *Cambodia* – CEACR, direct request, 2009; *Cyprus* – CEACR, direct request, 2011; *Djibouti* – CEACR, direct request, 2009; and *Hungary* – CEACR, direct request, 2011.

[1497] See, for example, *Germany* – CEACR, direct request, 2011; *Mozambique* – CEACR, observation, 2010; and *United Arab Emirates* – CEACR, observation, 2010.

[1498] Law enforcement officers should display adequate sensitivity towards child victims during their removal from the worst forms of child labour and subsequent participation in criminal trials. See, for example, *Mauritius* – CEACR, direct request, 2007; and *Philippines* – CEACR, observation, 2008.

[1499] See, for example, *Czech Republic* – CEACR, direct request, 2011; *Georgia* – CEACR, direct request, 2011; and *Indonesia* – CEACR, observation, 2011.

[1500] See, for example, *Greece* – CEACR, direct request, 2009; *Hungary* – CEACR, direct request, 2011; *Mexico* – CEACR, observation, 2011; and *Tunisia* – CEACR, direct request, 2010.

[1501] See, for example, *Czech Republic* – CEACR, direct request, 2011; *Nigeria* – CEACR, direct request, 2010; *Slovenia* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2010.

[1502] See, for example, *Bangladesh* – CEACR, observation, 2011; *Belgium* – CEACR, direct request, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Latvia* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; and *Tajikistan* – CEACR, direct request, 2011.

[1503] *Mexico* – CEACR, observation, 2011.

[1504] *Paraguay* – CEAR, observation, 2011.

[1505] *Austria* – CEACR, direct request, 2009.

[1506] See, for example, *Niger* – CEACR, observation, 2011; *Paraguay* – CEACR, observation, 2011; and *Swaziland* – CEACR, direct request, 2010.

Committee urges governments to take measures to foster a collaborative relationship between these two bodies. [1507] Moreover, collaboration between law enforcement agencies and the public prosecutor's office can play an important role in ensuring that investigations result in appropriate prosecutions of perpetrators of the worst forms of child labour. [1508]

Gaps in law enforcement

630. ***However, in some member States, the relevant police units have insufficient staff, or few resources, which has a negative impact on the application of the Convention.*** [1509] ***In this context, the Committee calls on the governments concerned to strengthen the capacity of law enforcement officials responsible for combating the worst forms of child labour. This includes ensuring that sufficient resources are allocated to these institutions for the performance of this mandate. Moreover, the Committee observes that in several countries, corruption among law enforcement officials, or complicity with perpetrators, has hindered the effective monitoring of child labour, and particularly child trafficking.*** [1510] ***The Committee expresses its deep concern at these occurrences, and calls on the governments concerned to take immediate and effective measures to ensure that any such complicity by law enforcement officials is investigated and prosecuted.***

Border and immigration officials

631. Border control officials also play a central role in monitoring the application of the Convention, particularly concerning child trafficking, as well as preventing the distribution of child pornography across borders and the use of children for the trafficking of narcotics. For example, the Anti-Trafficking Act of *Nigeria* provides large powers to customs officers and immigration officers with regard to combating trafficking, including the power of arrest. [1511] In *Armenia*, a border control system was launched to prevent human trafficking at the international airport in Yerevan. [1512] Member States also engage in international cooperation to ensure the better detection of the worst forms of child labour at national borders, [1513] and in many States border and immigration officials have received training with regard to detecting child trafficking. [1514] For example, in *Mozambique*, border guard police received training to improve their capacity to identify, assist and guide persons who have been trafficked. [1515] The capacity of these officers to distinguish child victims of trafficking from illegal child migrants is essential for the identification of victims of this worst form of child labour. [1516] For

[1507] See, for example, *Barbados* – CEACR, direct request, 2011.

[1508] See, for example, *Greece* – CEACR, direct request, 2009; *Peru* – CEACR, direct request, 2010; and *United Arab Emirates* – CEACR, observation, 2010.

[1509] See, for example, *Benin* – CEACR, direct request, 2011; *Papua New Guinea* – CEACR, observation, 2011; *Thailand* – CEACR, observation, 2011; and *Zimbabwe* – CEACR, observation, 2011.

[1510] See, for example, *Bangladesh* – CEACR, observation, 2011; *Cambodia* – CEACR, direct request, 2009; *Cameroon* – CEACR, observation, 2011; *Tajikistan* – CEACR, direct request, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

[1511] *Nigeria* – CEACR, direct request, 2011.

[1512] *Armenia* – CEACR, direct request, 2011.

[1513] See paras 610–620 above.

[1514] See, for example, *Liberia* – CEACR, direct request, 2011; and *Indonesia* – CEACR, observation, 2009.

[1515] *Mozambique* – CEACR, observation, 2010.

[1516] See, for example, *Jordan* – CEACR, direct request, 2011.

example, the Committee noted with interest the development in the *United Kingdom* of a best practice guide on trafficking for immigration officers which raises awareness of the difference between trafficking and smuggling, to ensure that victims of trafficking are treated fairly. [1517] In cases where insufficiently regulated borders have permitted the trafficking of children, the Committee urges the governments concerned to take the necessary measures to strengthen border control and immigration services in this regard. [1518]

Labour inspection

Labour inspection and hazardous work

632. Labour inspection systems are particularly relevant for monitoring the prohibition of hazardous child labour. [1519] Strengthening the capacity of labour inspectors to detect children engaged in hazardous work is essential, particularly in countries where children are, in practice, engaged in hazardous work but no such cases have been detected by the labour inspectorate. [1520] In countries where most children engaged in hazardous work are in the agricultural sector, the Committee supports collaboration between the labour inspectorate and the relevant ministry in charge of agriculture to combat hazardous work [1521] and encourages the expansion of the reach of the labour inspectorate to ensure that all types of farm are inspected, including small enterprises with few workers. [1522] Child labour monitoring systems complement the work of labour inspection systems by monitoring areas of hazardous work that are difficult to reach through labour inspection, such as in the informal economy. [1523]

The role of labour inspection in monitoring other worst forms of child labour

633. Labour inspection may also play a role in monitoring worst forms other than hazardous child labour. For example, in *Poland*, training was provided to labour inspectors on the detection of human trafficking for the purpose of forced labour. [1524] In *Zambia*, labour inspectors were trained in the prosecution of child trafficking cases [1525] and in *Brazil* the role of the Special Mobile Inspection Group includes combating the commercial sexual exploitation of children. [1526] Moreover, the Committee noted with interest that in *Gabon* recent legislation provides labour inspectors with the power to question, and have the security forces arrest, any child who they have good reason to think is employed in any activity corresponding to the worst forms of child labour, including in the informal economy. [1527]

[1517] *United Kingdom* – CEACR, direct request, 2006.

[1518] See, for example, *Kazakhstan* – CEACR, direct request, 2011; and *Paraguay* – CEACR, observation, 2011.

[1519] See paras 540–562 above.

[1520] *Thailand* – CEACR, direct request, 2011.

[1521] See, for example, *Uganda* – CEACR, direct request, 2010.

[1522] See, for example, *United States* – CEACR, observation, 2010.

[1523] See, for example, *Albania* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2011; *Malawi* – CEACR, direct request, 2011; *Republic of Moldova* – CEACR, direct request, 2011; and *Turkey* – CEACR, direct request, 2010.

[1524] *Poland* – CEACR, direct request, 2010.

[1525] *Zambia* – CEACR, observation, 2010.

[1526] *Brazil* – CEACR, observation, 2010.

[1527] *Gabon* – CEACR, observation, 2011.

Child protection agencies

634. Child protection agencies address a wide range of issues related to children's welfare, and member States have indicated that these units play a key role in monitoring the worst forms of child labour, in addition to their role in providing services to children removed from these worst forms of child labour. [1528] For example, in *Bulgaria*, the State Agency for Child Protection (SACP) has established coordination mechanisms for referring and servicing cases of child victims of trafficking. [1529] These agencies may take the form of child welfare institutions, [1530] child protection units [1531] or a children's ombudsman, which receive complaints and initiate investigations into issues relating to child protection. [1532] The Committee encourages the involvement of child protection agencies in supporting the detection of victims of the worst forms of child labour, particularly in difficult to reach populations.

Penalties

635. *Article 7(1)* of the Convention requires all member States to "take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions". The types of sanctions to be imposed are not defined by the Convention. However, Paragraph 12 of Recommendation No. 190 specifies that member States should provide that worst forms of child labour – such as all forms of slavery or practices similar to slavery, as well as the use, procuring or offering of a child for prostitution, the production of pornography or pornographic performances, and for illicit activities – are criminal offences. Paragraph 13 provides that Members should ensure that penalties including, where appropriate, criminal penalties are applied for violations of the national provisions for the prohibition and elimination of hazardous work. Paragraph 14 indicates that member States could have recourse to other criminal, civil or administrative remedies, such as special supervision of enterprises which have used the worst forms of child labour and, in cases of persistent violation, consideration of temporary or permanent revoking of permits to operate.

Adoption of sufficiently dissuasive penalties to ensure the effective enforcement of the Convention

636. The Committee has observed that a great number of countries have adopted provisions which impose criminal, administrative and other sanctions, as appropriate, on persons found guilty of the use, procuring or offering of children for the worst forms of child labour. [1533] These penalties vary from one country to another. In *Cambodia*, for

[1528] See, for example, *Antigua and Barbuda* – CEACR, direct request, 2011; *Armenia* – CEACR, direct request, 2011; and *Libya* – CEACR, direct request, 2011.

[1529] *Bulgaria* – CEACR, observation, 2009.

[1530] See, for example, *Chile* – CEACR, direct request, 2007; *Indonesia* – CEACR, direct request, 2011; and *Norway* – CEACR, direct request, 2005.

[1531] See, for example, *Benin* – CEACR, direct request, 2011; and *Malta* – CEACR, direct request, 2007.

[1532] See, for example, *Croatia* – CEACR, direct request, 2011.

[1533] Examples of countries which have adopted comprehensive penalties include *Albania* – CEACR, direct request, 2006; *Angola* – CEACR, direct request, 2005; *Argentina* – CEACR, direct request, 2005; *Bahamas* – CEACR, direct request, 2005; *Bahrain* – CEACR, direct request, 2005; *Barbados* – CEACR, direct request, 2005; *Belarus* – CEACR, direct request, 2005; *Belgium* – CEACR, direct request, 2006; *Botswana* – CEACR, direct request, 2005; *Bulgaria* – CEACR, direct request, 2005; *Cameroon* – CEACR, direct request, 2006; *Chad* – CEACR, direct request, 2006; *Chile* – CEACR, direct request, 2006; *Costa Rica* – CEACR, direct request, 2005; *Croatia* – CEACR, direct request, 2005; *Cyprus* – CEACR, direct request, 2005; *Denmark* – CEACR, direct request, 2006; *El Salvador* – CEACR, direct request, 2005; *Finland* – CEACR, direct request, 2005;

example, the Act on Suppression of Human Trafficking and Sexual Exploitation of 2008 provides for penalties of 15–20 years' imprisonment if a person is found guilty of the sale and trafficking of a minor for cross-border transfer; and of seven to 15 years if a person is found guilty of the purchase of a child for prostitution under 15 years of age, and two to five years if the minor is aged between 15 and 18 years. [1534] Furthermore, section 368 of the Labour Code provides that employers who employ children under 18 years of age under conditions contrary to the provisions of section 177 on hazardous work, are liable to a fine of 31–60 days of the base daily wage of the employee in question. In *Armenia*, the offences of trafficking, prostitution and pornography are punishable by penalties of imprisonment, correctional labour and/or fines, and these offences are more severe if they involve minors. [1535]

Issues of application regarding legislation on penalties

Insufficiently deterrent penalties

637. However, the Committee has observed that some countries have adopted sanctions that are not severe enough to be dissuasive and are too minor to act as a deterrent. [1536] In such cases, the Committee has requested the governments concerned to adopt harsher sanctions allowing for the prosecution of those involved in engaging children in the worst forms of child labour. As a result of its previous comments, the Committee noted with interest that section 3(5) of the Labour Act of *Namibia*, as amended in 2007, increased the fine imposed when a person is found guilty of having employed, required or permitted, a child to work in any circumstances prohibited under section 3, which includes hazardous work; the penalty was raised from 4,000 Namibian dollars (NAD) to NAD20,000, or to imprisonment for a period not exceeding four years. [1537]

Enforcement of penalties

638. The Committee generally requests governments to provide information on the application in practice of these sanctions, so as to observe their effectiveness in enforcing the provisions giving effect to the Convention. [1538] In this manner, the Committee was able to observe that in the *Republic of Moldova* a total number of

France – CEACR, direct request, 2005; *Germany* – CEACR, direct request, 2006; *Greece* – CEACR, direct request, 2005; *Guatemala* – CEACR, direct request, 2005; *Honduras* – CEACR, direct request, 2005; *Ireland* – CEACR, direct request, 2005; *Japan* – CEACR, direct request, 2005; *Republic of Korea* – CEACR, direct request, 2005; *Libya* – CEACR, direct request, 2005; *Luxembourg* – CEACR, direct request, 2005; *Mali* – CEACR, direct request, 2004; *Malta* – CEACR, direct request, 2005; *Morocco* – CEACR, direct request, 2006; *Mozambique* – CEACR, direct request, 2006; *Netherlands* – CEACR, direct request, 2006; *Nicaragua* – CEACR, direct request, 2005; *Nigeria* – CEACR, direct request, 2006; *Norway* – CEACR, direct request, 2006; *Peru* – CEACR, direct request, 2008; *Poland* – CEACR, direct request, 2006; *Portugal* – CEACR, direct request, 2005; *Saint Vincent and the Grenadines* – CEACR, direct request, 2005; *San Marino* – CEACR, direct request, 2005; *Seychelles* – CEACR, direct request, 2004; *Slovenia* – CEACR, direct request, 2006; *Spain* – CEACR, direct request, 2006; *Swaziland* – CEACR, direct request, 2006; *Togo* – CEACR, direct request, 2005; *Tunisia* – CEACR, direct request, 2005; *Ukraine* – CEACR, direct request, 2006; and *United Kingdom* – CEACR, direct request, 2005.

[1534] *Cambodia* – CEACR, direct request, 2010.

[1535] *Armenia* – CEACR, direct request, 2011.

[1536] See, for example, *Iraq* – CEACR, direct request, 2011; *Kuwait* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2010.

[1537] *Namibia* – CEACR, direct request, 2010. See also *New Zealand* – CEACR, direct request, 2006.

[1538] See, for example, *Australia* – CEACR, direct request, 2011; *Austria* – CEACR, direct request, 2007; *Plurinational State of Bolivia* – CEACR, direct request, 2008; *Cape Verde* – CEACR, direct request, 2011; *Mauritania* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; *South Africa* – CEACR, direct request, 2010; and *Yemen* – CEACR, direct request, 2010.

173 persons were convicted for crimes related to trafficking of persons in 2006, of whom seven persons were convicted of trafficking in children. Among the 173 convicted, 67 persons were sentenced to imprisonment, 59 persons were fined, seven were acquitted, and for the others the penalties were either suspended or lifted based on a general pardon. [1539]

639. ***However, the Committee has noted cases in which, despite possessing the required legislation, certain types of worst forms of child labour remain an issue of concern in practice because the penalties which are provided are not effectively enforced. As discussed in the various thematic sections, this can be explained by a number of reasons, including a lack of capacity of law enforcement agencies, failure to indict persons found guilty, the complicity of government officials, or the lack of a close relationship between the public prosecution services and the labour inspectorate.*** [1540] ***The Committee is of the firm view that the best legislation only takes on real value when it is applied. Whatever the severity of the penalties laid down, they will only be effective if they are applied in practice, which requires measures so that they can be brought to the attention of the judicial and administrative authorities, and for these authorities to be strongly encouraged to apply such penalties.***

Statistical information

Measuring the nature, extent and trends of the worst forms of child labour

Sources of statistical information

640. The main sources of statistical information on the nature, extent and trends of the worst forms of child labour are provided by child labour or labour force surveys or rapid assessment surveys (RAs) [1541] and studies.

641. Several countries have included a modular indicator on child labour in their national household or labour force surveys conducted by national offices for statistics in order to satisfy the requirements for information on estimates and the incidence of child labour. [1542] Moreover, national surveys on child labour have been carried out in a considerable number of countries, [1543] and several countries plan to conduct national

[1539] *Republic of Moldova* – CEACR, direct request, 2008.

[1540] See, for example, *Bangladesh* – CEACR, observation, 2011; *Benin* – CEACR, direct request, 2009; *Burkina Faso* – CEACR, observation, 2009; *China* – CEACR, observation, 2011; *Côte d'Ivoire* – CEACR, observation, 2011; *Czech Republic* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, observation, 2011; *Estonia* – CEACR, direct request, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2011; *Jamaica* – CEACR, observation, 2011; *Jordan* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2011; *Malaysia* – CEACR, observation, 2010; *Mongolia* – CEACR, direct request, 2010; *Niger* – CEACR, observation, 2008; *Paraguay* – CEACR, observation, 2011; *Saint Lucia* – CEACR, direct request, 2010; *Saudi Arabia* – CEACR, observation, 2010; *Senegal* – CEACR, observation, 2011; *Slovakia* – CEACR, direct request, 2011; *Sudan* – CEACR, observation, 2010; *Suriname* – CEACR, direct request, 2010; *Thailand* – CEACR, observation, 2011; *United Arab Emirates* – CEACR, observation, 2010; *Uzbekistan* – CEACR, observation, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2011.

[1541] For an explanation of the rapid assessment methodology see: *Child labour statistics*, Report III, 18th International Conference of Labour Statisticians, Geneva, 2008, paras 125–126.

[1542] See, for example, *Dominican Republic* – CEACR, direct request, 2011; *Mexico* – CEACR, direct request, 2011; and *Nigeria* – CEACR, direct request, 2006.

[1543] See, for example, *Benin* – CEACR, direct request, 2011; *Plurinational State of Bolivia* – CEACR, direct request, 2009; *Ecuador* – CEACR, direct request, 2011; *Indonesia* – CEACR, direct request, 2011; *Mali* – CEACR, direct request, 2010; *Namibia* – CEACR, direct request, 2010; *Nigeria* – CEACR, direct request, 2006; *Panama* – CEACR, direct request, 2011; *Turkey* – CEACR, direct request, 2010; and *Zambia* – CEACR, direct request, 2010.

surveys on child labour in the very near future. These include, for example, *Kenya*, *Kyrgyzstan*, *Chile* and *Panama* (second surveys). [1544] However, in certain cases, although the Government had indicated that a national survey on child labour was planned, it has not yet been carried out. [1545] In these cases, the Committee strongly encourages the governments concerned to take the necessary measures to ensure that such a survey is undertaken in the very near future.

642. The Committee has noted that studies or research on a particular aspect of the worst forms of child labour have also been undertaken in some countries. For example, in the *Central African Republic*, a study on the abuse, sexual exploitation and trafficking of children was carried out in 2005. [1546] The Committee has also noted the results of a study on street children commissioned in 2002 by the Child Development Agency in *Jamaica*. [1547] It has also observed that upcoming studies or research on child labour are planned in the near future in several countries such as *Fiji*, *Iraq* and *Peru*. [1548]

643. The ILO–IPEC SIMPOC programme has played an important role in assisting member States in the collection, documentation, processing and analysis of child labour data. Indeed, according to the Global Report of 2010, SIMPOC has provided technical assistance to more than 60 countries and has supported more than 300 child labour surveys, mainly carried out in Latin America and sub-Saharan Africa, of which 66 were national in scope. [1549]

Information on the implementation of provisions prohibiting the worst forms of child labour

644. Information on the number and nature of the infringements reported, investigations, prosecutions, convictions and penalties applied serves both to measure the number of child victims of the worst forms of child labour and the effective implementation and enforcement of the national provisions giving effect to the Convention. A non-negligible number of member States have provided detailed statistical information on crimes relating to the worst forms of child labour, and particularly on the trafficking and commercial sexual exploitation of children. [1550] Nonetheless, data relating to cases of trafficking and prostitution do not always indicate whether victims under the age of 18 are involved. [1551] The Committee has accordingly asked the governments concerned to specify how many of the cases reported were related to children under 18 years of age. [1552] There is also a need for the disaggregation of data to ensure more transparency.

[1544] See *Chile* – CEACR, direct request, 2011; *Kenya* – CEACR, direct request, 2010; *Kyrgyzstan* – CEACR, direct request, 2011; and *Panama* – CEACR, direct request, 2011.

[1545] See, for example, *Trinidad and Tobago* – CEACR, direct request, 2011.

[1546] See *Central African Republic* – CEACR, direct request, 2010.

[1547] See *Jamaica* – CEACR, direct request, 2011.

[1548] See *Fiji* – CEACR, direct request, 2010 (research on the commercial sexual exploitation of children, on street children and on children who live in informal settlements and squatter communities); *Iraq* – CEACR, direct request, 2011 (a study on child labour and hazardous working conditions of children); and *Peru* – CEACR, direct request, 2010 (a study on the situation of indigenous peoples and work by indigenous children).

[1549] *Accelerating action against child labour*, op. cit., para. 106.

[1550] See, for example, *Belarus* – CEACR, direct request, 2011; *Belgium* – CEACR, direct request, 2011; *Czech Republic* – CEACR, direct request, 2011; *Estonia* – CEACR, direct request, 2011; *Greece* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; *Serbia* – CEACR, direct request, 2010; and *Sweden* – CEACR, direct request, 2010.

[1551] See, for example, *Slovakia* – CEACR, direct request, 2011; and *Switzerland* – CEACR, direct request, 2010.

[1552] See, for example, *Singapore* – CEACR, direct request, 2010; and *Slovenia* – CEACR, direct request, 2010.

645. Among the difficulties observed in providing statistical information on the use of children in the worst forms of child labour, the Committee has observed that such estimates remain difficult to obtain due to the hidden nature of some types of work, for example, work in the informal economy, private homes, family enterprises and illicit activities. [1553] In several instances, although member States have provided statistics on child labour, the data do not capture the extent and characteristics of the worst forms of child labour, other than hazardous work, and therefore do not provide information on the number of child victims of the worst forms of child labour. [1554]

646. For this reason, many RAs completed with the help of SIMPOC have assisted countries in obtaining information on invisible forms of child labour. [1555] For example, the Committee has noted that RAs have been carried out on the involvement of children in illicit drug-related activities in *Philippines* and *Thailand*, on the informal employment of children in urban and rural areas in *Uzbekistan* and on child domestic workers in *Ethiopia*. [1556]

647. ***The Committee has nonetheless expressed concern at the lack of the statistical information available on the worst forms of child labour in certain countries on several occasions.*** [1557] ***It therefore recalls the importance of providing information on the manner in which the Convention is applied in practice and emphasizes the necessity to ensure that sufficient and up-to-date data on the prevalence of the worst forms of child labour are made available to determine the magnitude of child labour and, in particular, its worst forms.***

Main findings

648. Among the positive trends observed, the Committee has noted that the incidence of the worst forms of child labour appears to have declined in some countries, such as *Latvia, Oman* and *Viet Nam*. [1558] It has nevertheless observed that the number of children involved in the worst forms of child labour has increased in other countries over the past few years, [1559] and has expressed its concern on numerous occasions at the significant number of child victims of the worst forms of child labour, [1560] and particularly child

[1553] *A future without child labour*, ILC, 90th Session, Geneva, 2002, para. 42.

[1554] See, for example, *Argentina* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2011; *Dominican Republic* – CEACR, direct request, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2011; and *Sudan* – CEACR, direct request, 2010.

[1555] See, for example, *Namibia* – CEACR, direct request, 2010; *Tajikistan* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, direct request, 2011.

[1556] See *Ethiopia* – CEACR, direct request, 2011; *Philippines* – CEACR, direct request, 2010; *Thailand* – CEACR, observation, 2011; and *Uzbekistan* – CEACR, direct request, 2011.

[1557] See, for example, *Armenia* – CEACR, direct request, 2011; *Congo* – CEACR, direct request, 2009; *Democratic Republic of the Congo* – CEACR, direct request, 2009; *Equatorial Guinea* – CEACR, direct request, 2011; *Guinea* – CEACR, direct request, 2011; *Haiti* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2011; *Lebanon* – CEACR, direct request, 2010; *Libya* – CEACR, direct request, 2011; *Seychelles* – CEACR, direct request, 2008; and *Uzbekistan* – CEACR, direct request, 2011.

[1558] See, for example, *Latvia* – CEACR, direct request, 2010; *Oman* – CEACR, direct request, 2008; and *Viet Nam* – CEACR, direct request, 2010.

[1559] For example, in the *Islamic Republic of Iran* the number of children engaged in the worst forms of child labour increased by 35 per cent from 2004 to 2005. See *Islamic Republic of Iran* – CEACR, direct request, 2011. In *Colombia*, the Committee has noted that along with a boost in tourism, the commercial sexual exploitation of children has increased alarmingly, especially in touristic areas, such as the Caribbean. See *Colombia* – CEACR, direct request, 2011.

[1560] See, for example, *Mexico* – CEACR, direct request, 2011; and *Uganda* – CEACR, direct request, 2010.

victims of trafficking and commercial sexual exploitation, [1561] children forcibly recruited for use in armed conflict [1562] and children working in hazardous conditions. [1563]

[1561] See, for example, *Lao People's Democratic Republic* – CEACR, direct request, 2010; and *Liberia* – CEACR, direct request, 2011.

[1562] See, for example, *Central African Republic* – CEACR, observation, 2010; and *Democratic Republic of the Congo* – CEACR, observation, 2011.

[1563] See, for example, *Botswana* – CEACR, direct request, 2011; and *Côte d'Ivoire* – CEACR, observation, 2011.

Part V. Equality, non-discrimination and equal remuneration

Chapter 1

Introduction

649. There is considerable awareness and acceptance of the importance of equality and non-discrimination, as these concepts are at the heart of all human rights discourse. Equality and non-discrimination in employment and occupation is a fundamental principle and human right to which all women and men are entitled, in all countries and in all societies. It impacts on the enjoyment of all other rights. It has been a principal objective of the ILO since it was founded in 1919. The Treaty of Versailles, which incorporates the original ILO Constitution, sets out nine principles "of special and urgent importance", which include "The principle that men and women should receive equal remuneration for work of equal value" and that "standards set by law in each country with respect to conditions of labour should have due regard to the equitable economic treatment of all workers ...". [1564] The Declaration of Philadelphia, adopted in 1944, which forms part of the ILO Constitution, affirms that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". [1565] These principles have been further defined, expanded upon and enshrined in binding international instruments.

650. The first fundamental instruments adopted with the specific objective of promoting equality and eliminating discrimination were the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951. It was recognized from the start that equal remuneration between men and women could not be achieved without the elimination of discrimination in all areas of employment and that other grounds of discrimination should also be the subject of prohibition. Therefore, seven years later, the Conference adopted the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, as the first comprehensive instruments dealing specifically with equality and non-discrimination in respect of employment and occupation. However, other ILO standards expressly prohibiting discriminatory measures in specific areas and for specific groups of workers have been adopted before and after these instruments. [1566]

[1564] Treaty of Versailles, Part XIII, 1919, Article 427. Other fundamental principles set out in this Article include the right of association and the abolition of child labour.

[1565] ILO Constitution, Annex ("Declaration of Philadelphia", 1944).

[1566] *Equality in employment and occupation*, General Survey of the reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 75th Session,

651. Conventions Nos 100 and 111 are mutually reinforcing. Convention No. 100 addresses equality specifically between men and women and concerns remuneration; Convention No. 111 addresses a wider range of grounds, and all aspects of employment and occupation. The objectives of Conventions Nos 100 and 111 are interlinked: the application to all workers of equal remuneration for men and women for work of equal value (Convention No. 100); [1567] the elimination of all discrimination, in respect of all aspects of employment and occupation, through the concrete development of equality of opportunity and treatment (Convention No. 111). [1568]

652. The adoption of Convention No. 100 and Recommendation No. 90 after the Second World War was not a coincidence. Women had been on the front line of production during the war in many countries, and the myth that they could not do certain jobs or were not as productive as men could no longer be sustained. [1569] Providing for equality in remuneration for women and men was an important first step in moving towards wider equality in society, with pay differentials between women and men being one of the most tangible and measurable manifestations of discrimination. Consideration of the multiple and complex links between the principle of equal remuneration and the position and status of men and women more generally in employment and society led to the adoption of Recommendation No. 90 at the same time as Convention No. 100. [1570] Convention No. 100 was the first ILO Convention to promote the principle of equality between men and women, and it changed the future orientation of the ILO's activities with respect to women workers. [1571]

653. Recommendation No. 90 acknowledges that action to remedy wage inequality must be addressed in a broader context. Some of what is in Recommendation No. 90 became central to Convention No. 111 and its accompanying Recommendation (also No. 111). [1572] Linking Convention No. 100 with Convention No. 111 is of particular importance, as equal remuneration for work of equal value cannot be achieved in a general context of inequality. To overcome obstacles in applying the Convention, measures are needed as set out in other Conventions, including on equal opportunities and reconciling work and family responsibilities. [1573]

Geneva, 1988, para. 3, and *Equality in employment and occupation*, Special Survey on equality in employment and occupation, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 83rd Session, Geneva, 1996, para. 243. See also the Home Work Convention, 1996 (No. 177); the Private Employment Agencies Convention, 1997 (No. 181); the Maternity Protection Convention, 2000 (No. 183); the Maritime Labour Convention, 2006; the Domestic Workers Convention, 2011 (No. 189); and the HIV and AIDS Recommendation, 2010 (No. 200).

[1567] *Art. 2*, Convention No. 100; *Equal remuneration*, General Survey of the reports on the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 72nd Session, Geneva, 1986, para. 246.

[1568] *Art. 2*, Convention No. 111.

[1569] The role of women during the war was highlighted by a number of delegates during the discussion of the Convention in 1951: See, for example: *Record of Proceedings*, ILC, 34th Session, Geneva, 1951, pp. 337, 340, 348; see also *Equal remuneration for men and women for work of equal value*, Report V(2), ILC, 33rd Session, Geneva, 1950, p. 53.

[1570] General Survey, 1986, para. 4.

[1571] Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, Report III (1A), 89th Session, Geneva, 2001, p. 18.

[1572] In particular *Para. 6(a), (b)* and *(d)* of Recommendation No. 90, relating to vocational guidance and training, and equality of access to occupations and posts.

[1573] General Survey, 1986, pp. 187–189; the Workers with Family Responsibilities Convention, 1981 (No. 156).

654. The 1958 instruments were designed to promote the application, in all spheres of employment and occupation, of the general principles of equality, dignity and freedom. In providing a specific but broad definition of what constitutes discrimination, Convention No. 111 places the general principle of equality and non-discrimination in the context of the world of work, addressing all forms of discrimination in employment and occupation on the basis of at least seven grounds, namely race, colour, sex, religion, political opinion, national extraction and social origin, with the possibility of extending protection to address discrimination on the basis of other criteria. Additional grounds that have been added by a number of countries include age, health, disability, HIV and AIDS, employment status, nationality and sexual orientation. [1574]

655. Both Conventions highlight the importance of tripartism. They set out broad requirements of active "cooperation" with employers' and workers' organizations, thus directly involving these organizations in the implementation of the Conventions. Under Convention No. 100, Members are to cooperate with employers' and workers' organizations in giving effect to the provisions of the Convention. [1575] Convention No. 111 provides that, with respect to the national equality policy required under the Convention, Members are to seek the cooperation of employers' and workers' organizations, as well as "other appropriate bodies" in promoting the acceptance and observance of this policy. [1576] Cooperation goes beyond "consultation", and includes work performed jointly. [1577] There are also provisions on consultation with employers' and workers' organizations in Convention No. 111 and in Recommendation No. 90, requiring more than merely providing information, but ensuring that the views of those concerned are taken into account by the government before decisions are taken. [1578] Recommendation No. 90 calls for the establishment of job evaluation "in agreement with the employers' and workers' organisations concerned". [1579] ***Conventions Nos 100 and 111 both acknowledge that employers' and workers' organizations must have a key role in their implementation if they are to be effective. Where there is an absence of genuine social dialogue in a country, the application of Conventions Nos 100 and 111 is seriously hindered.*** [1580]

656. In the 25 years since the last General Survey on equal remuneration, and even in the 15 years since the Special Survey on Convention No. 111, there have been many advances in the understanding and implementation of the Conventions. [1581] However, chronic difficulties in their application persist. This part of the Survey highlights, in the light of the information and specific questions that have been examined since the previous Surveys, the broad trends that are emerging as to some of the measures taken, the obstacles encountered and the progress achieved in implementing the principle of non-discrimination and equality of opportunity and treatment in employment and occupation.

[1574] See paras 806–825 below.

[1575] *Art. 4*, Convention No. 100.

[1576] *Art. 3(a)*, Convention No. 111. See also Recommendation No. 111, *Para. 4(9).*

[1577] General Survey, 1988, para. 186.

[1578] Convention No. 111, *Arts 1(1)(b)* and *5(2)*; Recommendation No. 90, *Paras 1*, *2* and *4*.

[1579] *Para. 5*, Recommendation No. 90.

[1580] *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, ILC, 98th Session, Geneva, 2009, and 99th Session, 2010, conclusions, Convention No. 100, *Mauritania*, 2009, and *Islamic Republic of Iran*, Convention No. 111, 2010.

[1581] Three General Surveys on equal remuneration have been carried out in the past, most recently the General Survey, 1986, op. cit. Four General Surveys have also been carried out on Convention No. 111, including most recently the General Survey, 1988, op. cit., and the Special Survey, 1996, op. cit.

Chapter 2

Equal Remuneration Convention, 1951 (No. 100)

Introduction

657. The application of Convention No. 100 involves examining equality at two levels: first, at the level of the job (is the work of equal value?), and then at the level of the remuneration received (is the remuneration equal?). Addressing both these aspects is essential to applying the Convention fully. Determining whether jobs are of equal value requires some method of measuring and comparing the relative value of different jobs, normally through objective job evaluation. Once there is a framework for equal remuneration for work of equal value, ensuring effective application, including through proactive measures, remains an ongoing process. Examining the gender pay gap and its evolution provides an indicator of the practical effect of legislation, policies and practices aimed at applying the principle of equal remuneration for men and women for work of equal value. [1582] In discussing equal remuneration, the overall societal context of equality and non-discrimination cannot be ignored, and needs to be addressed if the principle of the Convention is to truly take root. These aspects, as they have progressed over recent years, are examined in more detail below.

Scope of the Convention and methods of application

Scope of application

658. No provision in either Convention No. 100 or Convention No. 111 limits their scope as regards individuals or branches of activity. Convention No. 100 applies to "all workers", and as affirmed in previous General Surveys, the rule must be that the principle of equal remuneration for men and women shall apply everywhere. [1583] When the Convention was being discussed, a proposal to add a specific reference to "all wage earners and salaried employees irrespective of the branch of economic activity in which they are employed" was opposed on the ground that the text already covers "all workers", and that any enumeration could result in omissions. [1584] ***There are no exclusions***

[1582] See ILC, Committee on the Application of Standards, conclusions, *United Kingdom*, Convention No. 100, 2006. Recommendation No. 90 refers to the progressive application of the principle of the Convention by measures such as decreasing the differentials between rates of remuneration for men and women for work of equal value *(Para. 4(a))*.

[1583] General Survey, 1986, para. 18; *Equal remuneration*, General Survey of the reports relating to the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 80th Session, Geneva, 1975, para. 170.

[1584] *Record of Proceedings*, ILC, 34th Session, Geneva, 1951, p. 615. See also: *Equal remuneration for men and women workers for work of equal value*, Report VII(2), ILC, 34th Session, Geneva, 1951, pp. 57–58.

permitted under Convention No 100: it applies to all workers, both nationals and non-nationals, in all sectors of activity, in the public and the private sectors, and in the formal and informal economy.

Methods of application: Flexibility and impact

659. The obligation of the State in ratifying Convention No. 100 is to "promote" the application of the principle of equal remuneration for men and women for work of equal value by means appropriate to the methods in operation for determining rates of remuneration; and to "ensure" its application to all workers, insofar as this is consistent with such methods. [1585] The Convention provides flexibility in terms of how this can be achieved, [1586] but allows no compromise in the objective to be pursued. [1587] Various means by which the principle of the Convention may be applied are enumerated in the Convention, namely national laws or regulations; legally established or recognized machinery for wage determination; collective agreements between employers and workers; or a combination of these means. [1588] Recommendation No. 90 also refers to ensuring the application of the principle, as rapidly as possible, with respect to work executed under the terms of public contracts. [1589] The intention was to recognize all methods of determining rates of remuneration for the purpose of applying the Convention. [1590]

660. *Legislation.* National laws or regulations are specified in *Article 2(2)(a)* of the Convention as a method of applying the principle of the Convention, and Recommendation No. 90 supports legal enactment for the general application of the principle of equal remuneration for men and women for work of equal value. [1591] The majority of countries have introduced either general legislative provisions on equality and non-discrimination with respect to wages, or specifically on equal remuneration. These are normally found in the labour law, equality legislation or in some instances in special legislation on equal remuneration. [1592]

661. *Wage determination machinery.* The reference to "legally established or recognised machinery for wage determination" was added to the text (*Article 2(2)(b)*) with a view to ensuring that, among others, tribunals and wage boards would be recognized. [1593] State conciliation and arbitration systems involved in wage fixing, as well as minimum wage-fixing machinery are also included. [1594] In recent years, the important role of minimum wages in the context of wage determination machinery has been a particular focus of the Committee, as the setting of minimum wages is an important means by which the Convention is applied. [1595]

[1585] *Art. 2(1).*

[1586] See General Survey, 1986, para. 246.

[1587] ibid., para. 30.

[1588] *Art. 2(2).*

[1589] *Para. 2(c).*

[1590] *Equal remuneration for men and women workers for work of equal value*, 1951, op. cit., p. 48.

[1591] *Para. 3(1).*

[1592] See paras 676–679 below.

[1593] *Equal remuneration for men and women workers for work of equal value*, 1951, op. cit., p. 48.

[1594] General Survey, 1986, para. 216.

[1595] Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), ILC, 89th Session, Geneva, 2001, General Report, para. 47.

662. *Collective agreements.* As a principal means of determining terms and conditions of employment in a number of countries, it was foreseen that collective agreements, whether at national, sectoral or enterprise level, would be a key means of implementing the Convention. *Article 2(2)(c)* refers specifically to "collective agreements between employers and workers" as a means of applying the principle of the Convention. *Article 4* also foresees this role, in the context of cooperation with employers' and workers' organizations in giving effect to the Convention. Collective bargaining has been identified as an important factor in reducing the gender pay gap, [1596] and can therefore be key in the implementation of the Convention. Legislation often interacts with collective agreements in requiring that they include provisions related to equal remuneration for men and women, to address wage discrimination, or declaring null and void provisions in contracts or collective agreements that are in violation of the principle of equal remuneration. [1597] Legislation may acknowledge collective agreements as a principal source of determining rates of remuneration. [1598] There are also legislative provisions for extending collective agreements to other employers. [1599]

Difficulties of application concerning scope of the Convention

663. While some countries have moved to more detailed equal pay or anti-discrimination laws, most continue to deal with equal remuneration issues in the context of the general labour or employment law. As a result, the exclusion of certain groups from the scope of labour law, including civil servants, domestic workers, agricultural workers, workers in export processing zones (EPZs), casual workers, informal economy workers, non-citizens and migrant workers, often leads to difficulties in the application of Convention No. 100. [1600] The scope is also sometimes limited in terms of size of the enterprise. [1601]

[1596] See S. Hayter and B. Weinberg (ed.): "Mind the gap: Collective bargaining and wage inequality", in *The role of collective bargaining in the global economy: Negotiating for social justice* (Geneva, ILO, 2011).

[1597] See, for example, *Austria* – CEACR, direct request, 2010; *Bosnia and Herzegovina* – CEACR, observation, 2006; *Chad* – CEACR, direct request, 2009; *Fiji* – CEACR, observation, 2008; *Haiti* – CEACR, direct request, 2010; *Indonesia* – CEACR, observation, 2007; *Kenya* – CEACR, direct request, 2009; *Nicaragua* – CEACR, direct request, 2010; *Slovakia* – CEACR, observation, 2006; and *Ukraine* – CEACR, observation, 2011. See also General Survey, 1986, paras 75, 171–173 and 226–228.

[1598] See, for example, *Armenia*, Labour Code of 2004; *Gabon*, Labour Code of 1994; *Kazakhstan*, Labour Code of 2007; *Montenegro*, Labour Law No. 49/08; *The former Yugoslav Republic of Macedonia*, Labour Relations Law, 2005; *Turkmenistan* – CEACR, direct request, 2011: Labour Code of 2009; and *Uzbekistan* – CEACR, direct request, 2008: Labour Code of 1995.

[1599] *Belgium* – CEACR, direct request, 2011: Collective agreement No. 25ter of 9 July 2008, on equal remuneration between men and women workers, was made compulsory by Royal Order of 28 September 2008. See also *Slovakia* – CEACR, direct request, 2011 (Act No. 2/1991 Coll. on collective bargaining, as amended in 2007).

[1600] See, for example, *Cambodia* – CEACR, direct request, 2011 (judges, civil servants, personnel of the police, the army, the military police, employees in air and maritime transportation, domestic and household workers); *Kenya* – CEACR, direct request, 2009 (the police, prison service, armed forces, national youth service and employers' dependants, limited categories of employees in respect of whom special problems of a substantial nature arise, as well as categories of employed persons whose terms and conditions of employment are governed by special arrangements); *Syrian Arab Republic*, direct request, 2011 (workers subject to the Civil Servants Basic Law No. 50/2004, workers subject to the Agricultural Relations Law, family members of the employers actually supported by the employer, domestic servants and similar categories, casual workers, part-time workers whose hours of work do not exceed two hours per day and workers in charity associations and organizations); and *Yemen* – CEACR, direct request, 2011 (inter alia, domestic workers, agricultural workers, casual workers). In its report under art. 19 of the Constitution, the Government of Timor-Leste indicates that the Labour Code excludes public servants, family and small-scale holdings and workplaces granted a temporary exemption.

[1601] For example in the *Republic of Korea*, the Enforcement Decree of the Equal Employment Act of 1987 excludes businesses with fewer than five workers from the application of the equal pay provisions of this Act.

664. Many of the excluded groups and sectors are characterized by a high proportion of women and particularly low wages, including domestic workers, agricultural workers and informal economy workers. [1602] These workers are also often excluded from minimum wage fixing, denied a range of benefits and allowances, and may be relatively isolated from other workers. They are often not organized into associations or unions, thus having little collective bargaining power. Particularly in the agricultural sector, there are significant wage disparities between men and women, giving rise to a large number of unequal pay claims, [1603] as well as problems of wage arrears. [1604] Agriculture is also the sector where historically different wage rates were set for women and men in a number of countries.

665. The informal economy also gives rise to particular issues of application. While the principle of the Convention should apply to all workers, including those in the informal economy, [1605] application in both law and practice remains a challenge in this context. Addressing the low wages of women in the informal economy has been an objective of some States, linked to poverty alleviation. The role of the labour inspection services is of particular importance in this area, and generally remains weak. [1606] As a first step towards addressing the issue of equal remuneration between men and women for work of equal value in the informal economy, particularly where there is a large informal economy, the Committee has asked governments to provide information on the extent of the pay differentials and to examine the underlying factors perpetuating pay differentials between men and women in the informal economy, with a view to being able to then develop and implement appropriate measures to promote the principle. [1607]

666. The Convention clearly applies to the public sector. This is emphasized by Recommendation No. 90, which cites as a first measure to implement the Convention the application of equal remuneration for men and women for work of equal value in all occupations "in which rates of remuneration are subject to statutory regulation or public control". [1608] This is due to the fact that the State's wage policy has a strong influence on the private sector, and the State also has an important role in setting an example in pursuing a policy that can serve as a pattern. While in many countries laws embodying

[1602] It is estimated that 83 per cent of domestic workers in the world are women: see *Global and regional estimates on domestic workers*, Domestic Work Policy Brief 4 (Geneva, ILO, 2011); see also paras 707 and 795–797 below. Regarding agricultural workers, see *Egypt* – CEACR, direct request, 2005; *Mozambique* – CEACR, direct request, 2003; *Tajikistan* – CEACR, direct request, 2011; *Uganda* – CEACR, direct request, 2011; and *Zambia* – CEACR, direct request, 2011.

[1603] See *Tunisia* – CEACR, direct requests, 2007 and 2011; and *Yemen* – CEACR, direct request, 2010.

[1604] See *Tajikistan* – CEACR, direct request, 2011.

[1605] For an analysis of the rights gap in the informal economy, see *Decent work in the informal economy*, ILC, 90th Session, Report VI, Geneva, 2002, and the Conclusions concerning decent work and the informal economy adopted by the Conference in 2002. See also ILC, Committee on the Application of Standards, conclusions, Convention No. 100, *Mauritania*, 2009.

[1606] See *Mongolia* – CEACR, direct request, 2006; *Morocco* – CEACR, observation, 2009; and *Nepal* – CEACR, direct request, 2012.

[1607] See, for example, *Bangladesh* – CEACR, observation, 2011; *Burundi* – CEACR, direct request, 2009; and *India* – CEACR, observation, 2006.

[1608] *Para. 2*. According to *Para. 1* of Recommendation No. 90, the application of the principle of equal remuneration for men and women for work of equal value should be ensured with respect to "employees of central government departments or agencies" and encouraged with respect to "employees of state, provincial or local government departments or agencies, where these have jurisdiction over rates of remuneration". In *Romania*, for example, the Framework Act No. 330 on the unitary pay system for public sector employees expressly stipulates that the principle of equal remuneration for work of equal value is one of the fundamental precepts of the pay system: CEACR, direct request, 2012.

the principle of equal remuneration specifically cover the public sector, or do not exclude them, there may still be exclusions of certain groups of workers in the public service, such as state or local authorities, or public servants in general. [1609] Public servants may be covered by special legislation, but this may not refer at all to equal remuneration, [1610] or may address only non-discrimination based on sex generally, [1611] or be limited to equal remuneration for equal, the same or similar work. [1612] Occupational segregation, with women in lower paying occupations in the public service, as well as gender wage disparities, remain concerns. [1613]

667. Where specific groups or sectors are excluded from the general labour law, it needs to be determined whether special laws or regulations apply to them, and whether they provide the same level of rights and protection as the general provisions. [1614] Where groups are excluded from the labour law and there are no specific provisions on equal remuneration for men and women for work of equal value in the law governing their employment, they may still have such rights pursuant to gender equality or anti-discrimination laws. [1615] Where there is no legislation at all covering certain groups regarding equal remuneration and non-discrimination, it needs to be shown how such rights are ensured for these groups in practice. However, in the absence of a clear legislative framework supporting equal remuneration for men and women for work of equal value, it has been difficult for countries to demonstrate that this right has been ensured in practice. Governments should endeavour to extend the application of the principle of the Convention to all workers. [1616]

Thematic issues

Gender pay gap

668. Pay differentials remain one of the most persistent forms of inequality between women and men. [1617] Although explicit policies of providing lower pay for women have for the most part been relegated to the past, the gender pay gap remains one of the most

[1609] General Survey, 1986, para. 203.

[1610] For example, *Fiji*, Public Service Act, 1999; *Lesotho*, Public Service Act, 2005 and Public Service Regulations, 2008; *Montenegro*, Law on civil servants and state employees No. 27/04; *Nepal*, Civil Service Act, 2049 (1993); *Rwanda*, Act No. 22/2002 on civil servants; and *United Republic of Tanzania*, Public Service Act, 2002 (No. 8).

[1611] For example, *Algeria*, General Public Service Regulation (Act No. 06-03 of 2006); *Armenia*, Act on remuneration of civil servants of 2002; *Belarus* Public Service Act, 2003; *Burundi*, Act No. 1/28 of 2006 on civil servants; *Chad*, Act No. 017/PR/2001 of 2001 on Civil Service; *Madagascar*, Act No. 2003-011 on civil servants; *Mali*, Act No. 02-053 of 2002 on civil servants; *Slovakia*, Public Service Act (Act No. 313/2001) and the Civil Service Act (Act No. 312/2001).

[1612] For example, *Iceland* – Act No. 70 of 1996 on the rights and duties of civil servants refers to equal pay between men and women for "equivalent work".

[1613] For example, *Benin* – CEACR, direct request, 2008; *Honduras* – CEACR, observation, 2010; *Jordan* – CEACR, direct request, 2011; and *Republic of Moldova*, direct request , 2011.

[1614] See *Eritrea* – CEACR, direct request, 2007 (civil servants); *Jordan* – CEACR, direct request, 2011 (agricultural workers, domestic workers, gardeners, cooks); *Morocco* – CEACR, direct request, 2005 (domestic workers); and *Turkey* – CEACR, direct request, 2011 (agricultural workers).

[1615] See, for example, *Iceland*, Act on Equal Status and Equal Rights of Women and Men of 2008; *Malta*, Equal Treatment in Employment Regulations of 2004; Norway, Gender Equality Act and Anti-Discrimination Act of 2005.

[1616] See General Survey, 1986, para. 99.

[1617] CEACR, General Report, 2001, para. 38.

obvious examples of structural gender discrimination. [1618] The gender pay gap varies from country to country, and between different sectors within a country. Globally, women earn approximately 77.1 per cent of what men earn (a pay gap of 22.9 per cent) though in some countries women earn considerably less. [1619] If wages of part-time workers are included in the calculation, the gap can increase to much higher levels. [1620]

669. Many countries have made progress in reducing the pay gap, though in others it has stagnated for many years, or even increased. Even where gender pay differences are narrowing, they are doing so extremely slowly: at the current rate it is estimated that another 75 years will be needed to bridge the gap. [1621] ***The continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations, take more proactive measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value.*** [1622] ***Collecting, analysing and disseminating this information is important in identifying and addressing inequality in remuneration.*** [1623]

Promote and ensure application

670. As noted above, while the Convention is flexible regarding the measures to be used and the timing in achieving its objective, it allows no compromise in the objective to be pursued. [1624] Effective measures need to be taken in order to accomplish real progress in attaining the Convention's objective of equal remuneration for men and women for work of equal value. The State, therefore, is obliged to ensure the application of the principle of the Convention principally in the following situations: where the State is the employer or otherwise controls business; where the State is in a position to intervene in the wage-fixing process, for example where the rates of remuneration are subject to public control or statutory regulation, or where there is specific legislation on the issue, or relating to equality and non-discrimination with respect to remuneration. [1625] In promoting the application of the principle where it is not in a position to ensure its application, the State must take vigorous and proactive measures and must act in good faith. [1626]

671. It is acknowledged that the implementation of the Convention may need to be achieved over time. [1627] However, given that the right to equal remuneration for work of equal value is a fundamental right, the period for the full application of the Convention should be as short as possible, with deadlines being fixed for the attainment of specific

[1618] See para. 745 below.

[1619] *A new era of social justice*, Report of the Director-General, Report 1(A), ILC, 100th Session, Geneva, 2011, p. 15. See also *Global wage report 2010/11: Wage policies in a time of crisis* (Geneva, ILO, 2011).

[1620] See, for example, *Austria* – CEACR, observation, 2010; *Japan* – CEACR, observation, 2011; and *United Kingdom* – CEACR, observation, 2007.

[1621] ILO: *A new era of social justice*, op. cit., pp. 11 and 15.

[1622] CEACR, General Report, 2001, para. 49.

[1623] For further details, see paras 887–891 below.

[1624] General Survey, 1986, para. 30.

[1625] ibid., para. 25.

[1626] ibid., para. 29.

[1627] See ILC, Committee on the Application of Standards, conclusions, Convention No. 100, *United Kingdom*, 2006.

objectives. [1628] The State cannot be passive in its approach to implementing the Convention, whether in ensuring or promoting its application. Application of both Conventions Nos 100 and 111 is an ongoing process requiring a continual cycle of assessment, action, monitoring, further assessment and adjustment, including to address new issues and difficulties.

Equal value: The cornerstone of the Convention

672. While equal remuneration for men and women for work of equal value is a principle that is widely accepted, the scope of the concept and its application in practice have been more difficult to grasp and apply in some countries. Unequal remuneration is often due to subtle, chronic problems that are difficult to overcome without a clear understanding of the concepts and their relevance to the workplace and society in general. The Committee has noted that difficulties in applying the Convention in law and practice result in particular from a lack of understanding of the concept of "work of equal value". As a result, the Committee issued a general observation to clarify the meaning of "work of equal value". [1629]

673. ***The concept of "work of equal value" lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality.*** [1630] ***Due to historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (such as in caring professions) and others by men (such as in construction). Often "female jobs" are undervalued in comparison with work of equal value performed by men when determining wage rates.*** [1631] ***The concept of "work of equal value" is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value.*** [1632]

674. "Value" while not defined in the Convention, refers to the worth of a job for the purpose of computing remuneration. [1633] "Value" in the context of the Convention indicates that something other than market forces should be used to ensure the application of the principle, as market forces may be inherently gender-biased. [1634] *Article 1(b)* of the Convention states that the "term 'equal remuneration for men and women workers for work of equal value' refers to rates of remuneration established without discrimination based on sex", clearly excluding any consideration related to the sex of the worker in determining value.

675. While *Article 1* indicates what cannot be considered in determining rates of remuneration, *Article 3* presupposes the use of appropriate techniques for objective job evaluation to determine value, comparing factors such as skill, effort, responsibilities and

[1628] See General Survey, 1975, para. 66: the Committee has indicated three to five years as the most generally accepted period.

[1629] CEACR, general observation, Convention No. 100, 2007, para. 3.

[1630] ibid., para. 1.

[1631] ibid., para. 2.

[1632] ibid., para. 3.

[1633] CEACR, General Report, 2001, para. 42.

[1634] ibid., paras 42–44.

working conditions. [1635] Comparing the relative value of jobs in occupations which may involve different types of skills, responsibilities or working conditions, but which are nevertheless of equal value overall, is essential in order to eliminate pay discrimination resulting from the failure to recognize the value of work performed by women and men free from gender bias. [1636] The Committee recalls that the principle has been applied to compare the remuneration received by men and women engaged in different occupations, such as wardens in sheltered accommodation for the elderly (predominantly women) and security guards in office premises (predominantly men); or school meal supervisors (predominantly women) and garden and park supervisors (predominantly men). [1637]

Legislation

676. Although the principle of the Convention is still not reflected at all in legislation in several countries, [1638] the Committee has been able to note progress in a number of countries in recent years, in all regions, in the adoption of legislation referring expressly to "work of equal value", including *Australia, Bangladesh, Bosnia and Herzegovina, Croatia, Cyprus, Djibouti, Kenya, Malta, Peru, Poland, Republic of Moldova, Romania, Saudi Arabia, Slovenia, Togo, Turkey, United Kingdom (Gibraltar)* and *Zimbabwe.* [1639] The recent Constitutions of *Bolivia* and *Ecuador* also refer to "work of equal value". [1640] The legal provisions regarding equal remuneration for work of equal value are primarily found in the labour law, [1641] while in some countries they are in specific legislation

[1635] CEACR, general observation, 2007, para. 5. Methods of comparing different jobs and determining value are discussed in more detail in paras 695–709 below.

[1636] ibid., para. 5. See also *Canada* – CEACR, observation, 2011; New *Zealand* – CEACR, direct request, 2010, regarding comparing community support workers and health/therapy assistants in the context of a job evaluation exercise.

[1637] CEACR, general observation, 2007, para. 4. See also para. 678 below.

[1638] Such as *Barbados*, *Botswana*, *Gambia*, *Indonesia*, *Japan*, *Lebanon*, *Malaysia*, *Seychelles*, *Saint Kitts and Nevis*, *Trinidad and Tobago*, *Tunisia* and *Zambia*. In its report under art. 19 of the Constitution, the Government of Qatar indicates that there is no legislation on equal remuneration for work of equal value.

[1639] *Australia* – CEACR, observation, 2011 (Fair Work Act, 2009); *Bangladesh* – CEACR, observation, 2009 (Labour Act 2006); *Bosnia and Herzegovina* – CEACR, observation, 2006 (Law on Gender Equality, 2003 (No. 56/03)); *Croatia* – CEACR, direct request, 2011 (Gender Equality Act, 2008); *Cyprus* – CEACR, observation, 2004 (Act to provide equal pay between men and women for the same work or for work to which equal value is attributed); *Djibouti* – CEACR, observation, 2009 (Labour Code, 2006); *Kenya* – CEACR, observation, 2009 (Employment Act, 2007); *Malta* – CEACR, direct request, 2011 (Legal Notice 137 of 2007, amending the Equal Treatment in Employment Regulations, 2004); *Malta* – CEACR, observation, 2005 (Employment and Industrial Relations Act (No. 22), 2002); *Peru* – CEACR, observation, 2008 (Act No. 28938 respecting Equality of Opportunity for Men and Women of 2007); *Poland* – CEACR, observation, 2006 (Labour Code, amendments of 2001 and 2003); *Romania* – CEACR, observation, 2010 (Labour Code (Act No. 53/2003) as amended by Emergency Ordinance No. 55/2006); *Saudi Arabia* – CEACR, observation, 2011 (Ministerial Order No. 2370/1 of 18 September 2010); *Slovenia* – CEACR, observation, 2005 (Employment Relationships Act of 2002); *Togo* – CEACR, direct request, 2010 (Labour Code of 2006); *Republic of Moldova* – CEACR, direct request, 2007 (Act No. 5-XVI of 2006 regarding the assurance of equal opportunities for men and women); *Turkey* – CEACR, observation, 2006 (Labour Act, 2003 (No. 4857)); *United Kingdom (Gibraltar)* – CEACR, observation, 2009 (Equal Opportunities Act, 2006); and *Zimbabwe* – CEACR, observation, 2005 (Amendment Act No. 17 of 2002). See also Timor-Leste, Labour Code, 2002, which is referred to in its report under art. 19 of the Constitution.

[1640] *Plurinational State of Bolivia* – CEACR, observation, 2010 (Constitution of 2009); and *Ecuador* – CEACR, direct request, 2010 (Constitution of 2008).

[1641] For example, *Angola*, General Labour Act No. 2/00 of 1999; *Bangladesh*, Labour Act 2006; *Chad*, Labour Code of 1996; *Cote d'Ivoire*, Labour Code of 1995; *Djibouti*, Labour Code of 2006; *Fiji*, Employment Relations Law of 2007; *France*, Labour Code; *Grenada*, Employment Act No. 14 of 1999; *Latvia*, Labour Code of 2001; *Luxembourg*, Labour Code of 2006; *Malawi*, Employment Act; *Malta*, Employment and Industrial Relations Act of 2002; *Paraguay*, Labour Code of 1993; *Poland*, Labour Code of 1974; *Russian Federation*, Labour Code of 2001; *Serbia*, Labour Code of 2005; *Uganda*, Employment Act of 2006; and *Zimbabwe*, Labour Act of 1985.

dealing with equality and non-discrimination, [1642] and in others there is special legislation on equal remuneration. [1643] Once the area of wages becomes a matter for legislation, full legislative expression should be given to the principle of the Convention. [1644] Often in legislation the complementary aspects of equal remuneration for men and women for work of equal value and non-discrimination on the basis of sex are reflected and are mutually supportive. [1645] However, only prohibiting sex-based wage discrimination generally will not normally be sufficient to give effect to the Convention, as it does not capture the concept of "work of equal value". [1646]

677. While considerable progress has been made in giving full legislative expression to the principle of equal remuneration for men and women for work of equal value, several countries continue to have legislation that is narrower than required under the Convention. Some provisions limit equal remuneration to "equal", "the same" "similar" or "substantially similar" work. [1647] Other formulations that are also too restrictive require equal conditions of work and equal professional ability; [1648] work of an equal level of complexity, responsibility and difficulty, performance under the same working conditions and upon achieving the same efficiency and work results; [1649] the same qualifications and the same conditions of work, or for work performed under equal conditions and with the same skills; [1650] or requiring equal skill, effort and responsibility, performed under similar working conditions. [1651] Even where the term "work of equal value" is provided for in the legislation, in some countries it is then further defined in the

[1642] *Albania* – CEACR, direct request, 2011 (Law on Gender Equality in Society of 2008); *Austria*, Equal Treatment Act 2004; *Estonia*, Gender Equality Act of 2004, as amended on 24 September 2009; *Italy*, Legislative Decree No. 198/2006, a consolidation act called "Code of Equal Opportunities between Men and Women"; *Republic of Moldova*, Act regarding the assurance of equal opportunities for men and women of 2006; *Norway*: Gender Equality Act, 1978; *Romania*, Act on equal opportunities between women and men of 2002; *Saint Lucia*, Equality of Opportunity and Treatment in Employment and Occupation Act of 2000; and *Sweden*: Discrimination Act of 2008.

[1643] For example, *Cyprus*, Act (Amendment) regarding equal remuneration between men and women for the same work or work of equal value of 2009; *Denmark*: Danish (Consolidation) Act No. 899 of 2008 on equal pay to men and women.

[1644] In its general observation, the Committee urged governments, where legal provisions are narrower than the principle of the Convention, to take the necessary steps to amend the legislation: CEACR, general observation, 2007, para. 6.

[1645] General Survey, 1986, para. 66.

[1646] See *Japan* – CEACR, observation, 2008; *Montenegro* – CEACR, direct request, 2011; and *San Marino* – CEACR, direct request, 2004.

[1647] For example, *Belize* – CEACR, direct request, 2010; *Canada* – CEACR, direct request, 2007, with respect to Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan, Northwest Territories, Nunavut and Yukon; *Chile* – CEACR, observation, 2011; *China*, Labour Law 1994; *Colombia* – CEACR, observation, 2010; *El Salvador* – CEACR, direct request, 2009; *Ghana* – CEACR, observation, 2010; *Honduras* – CEACR, observation, 2010; *India* – CEACR, observation 2010; *Jamaica* – CEACR, observation, 2011; *Kazakhstan* – CEACR, observation, 2011; *Mongolia* – CEACR, direct request, 2009; *Mozambique* – CEACR, observation, 2011; *Nepal* – CEACR, observation, 2009; *Nigeria* – CEACR, observation, 2003; *Panama* – CEACR, observation, 2011; *Papua New Guinea* – CEACR, direct request, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2011; *United Arab Emirates* – CEACR, direct request, 2010; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2008.

[1648] See *Cambodia* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2010; and *Comoros* – CEACR, observation, 2011.

[1649] See *Central African Republic* – CEACR, observation, 2010; and *Kyrgyzstan* – CEACR, direct request, 2009.

[1650] See *Azerbaijan* – CEACR, observation, 2011; *Burundi* – CEACR, observation, 2011; *Cameroon* – CEACR, observation, 2010; *Congo* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Kyrgyzstan* – CEACR, direct request, 2011; and *Mauritania* – CEACR, observation, 2009.

[1651] United States, Equal Pay Act, as referenced in the Government's art. 19 report.

legislation or interpreted using similarly restrictive formulations, thus narrowing its scope. [1652] Historical experience has shown that insistence on factors such as "equal conditions of work, skill and output" can be used as a pretext for paying women lower wages than men. [1653] While factors such as skill, responsibility, effort and working conditions are clearly relevant in determining the value of the jobs, when examining two jobs, the value does not have to be the same with respect to each factor – determining value is about the overall value of the job when all the factors are taken into account. [1654]

678. How equal remuneration provisions are interpreted by courts has proven to be key in some countries. For example in *France*, the Court of Cassation, contrary to its previous case law, according to which different duties could not have an equal value, recognized the possibility of comparing the wages of persons performing different duties with a view to determining the existence of any wage discrimination. [1655] Similarly in *Iceland*, in 2005 for the first time a plaintiff succeeded before the Supreme Court in an equal pay case comparing jobs that were different in nature, namely that of a female manager of the social affairs department of a municipality with a male engineer also employed in the municipality. [1656] The European Court of Justice has also addressed a case of equal pay for work of equal value comparing the work of male pharmacists with the work of speech therapists, carried out almost exclusively by women. [1657] However, some courts have also had a role in defining the concept of "work of equal value" in a restrictive manner that does not give full expression to the principle of the Convention. [1658]

679. ***Noting that many countries still retain legal provisions that are narrower than the principle laid down in the Convention, as they do not give expression to the concept of "work of equal value", and that such provisions hinder progress in eradicating gender-based pay discrimination, the Committee again urges the governments of those countries to take the necessary steps to amend their legislation.*** [1659] ***Such legislation should not only provide for equal remuneration for equal, the same or similar work, but also address situations where men and women perform different work that is nevertheless of equal value.*** [1660]

[1652] For example, *Bahamas* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, observation, 2011; *Dominica* – CEACR, direct request, 2010; *Dominican Republic* – CEACR, observation, 2011; *Mauritius* – CEACR, direct request, 2009; *Philippines* – CEACR, observation, 2011; *Slovakia* – CEACR, observation, 2010; *Yemen* – CEACR, direct request, 2011; and *Zimbabwe* – CEACR, direct request, 2011.

[1653] General Survey, 1986, para. 54; General Survey, 1975, para. 36.

[1654] See also paras 700–703 below.

[1655] *France* – CEACR, direct request, 2011 (judgment No. 1509 (09-40.021) of 6 July 2010).

[1656] Case No. 258/2004, decision of 20 January 2005.

[1657] See *Enderby* v. *Frenchay Health Authority*, Case No. C-127/92, 27 October 1993.

[1658] See, for example, *Republic of Korea* – CEACR, observation, 2009. In a decision of 14 March 2003 (2003DO2883), the Supreme Court considered that "work of equal value" referred to jobs that are equal or almost equal in nature.

[1659] See, for example, *Colombia* – CEACR, observation, 2010; *Dominican Republic* – CEACR, observation, 2011; *Egypt* – CEACR, observation, 2011; *El Salvador* – CEACR, direct request, 2011 (public service); *Jamaica* – CEACR, observation, 2010; *Kazakhstan* – CEACR, observation, 2011; *Mozambique* – CEACR, observation, 2011; *Panama* – CEACR, observation, 2009; *Philippines* – CEACR, observation, 2011; *Saint Vincent and the Grenadines* – CEACR, direct request, 2011; and *Ukraine* – CEACR, observation, 2009.

[1660] CEACR, general observation, 2007, para. 3.

Collective agreements

680. There have been some recent examples of collective agreements providing for equal remuneration for work of equal value, including in *Belgium*, *Grenada*, *Romania*, *Singapore* and *Uruguay*. [1661] In other cases, however, collective agreements are limited to equal remuneration for "equal work", or requiring equal work under equal conditions or equal seniority, vocational qualifications, skills, professional ability or output. [1662] Some governments have indicated that there are no collective agreements addressing this issue, [1663] while in other countries, there may still be some collective agreements with separate wage rates for women and men. [1664] Governments should take the necessary steps, in cooperation with the social partners, to ensure that provisions of collective agreements observe the principle of equal remuneration for men and women for work of equal value. [1665]

681. While the Committee regularly requests information on the inclusion of the principle of the Convention in collective agreements, little information in this regard has been provided in government reports. Governments, in cooperation with employers' and workers' organizations, are therefore encouraged to provide this information more regularly in their reports under article 22 of the Constitution.

Minimum wages

682. In recent years, the important role of minimum wages in the context of wage-determination machinery has been a particular focus of the Committee, as the setting of minimum wages is an important means by which the Convention is applied. [1666] Many counties have established or extended minimum wages. [1667] As the Committee noted in its General Survey in 1986, it remains the case that very few countries set out the principle of equality of remuneration between men and women expressly in legal texts respecting minimum wages, [1668] although there has been some recent progress in this regard, including in the *United Republic of Tanzania*, where pursuant to the Labour Institutions Act, wage boards are to take into account the constitutional right to equal remuneration and relevant ILO Conventions and Recommendations. [1669]

[1661] *Belgium* – CEACR, direct request, 2011; *Grenada* – CEACR, observation, 2008; *Romania* – CEACR, direct request, 2010; *Singapore* – CEACR, direct request, 2011; and *Uruguay* – CEACR, observation, 2010. For other examples see General Survey, 1986, paras 227–231.

[1662] See, for example, *Albania* – CEACR, direct request, 2009; *Argentina* – CEACR, direct request, 2011; *Benin* – CEACR, direct request, 2011; *Cameroon* – CEACR, observation, 2008; *Côte d'Ivoire* – CEACR, direct request, 2010; *France* – CEACR, direct request, 2011; *Islamic Republic of Iran* – CEACR, direct request, 2010; *Latvia* – CEACR, direct request, 2011; *Mauritius* – CEACR, direct request, 2009; and *Romania* – CEACR, direct request, 2010.

[1663] See, for example, *Bahamas* – CEACR, direct request, 2011; *Estonia* – CEACR, direct request, 2011; *Guyana* – CEACR, direct request, 2011; *Israel* – CEACR, direct request, 2011; and *Lesotho* – CEACR, direct request, 2008.

[1664] See, for example, *Trinidad and Tobago* – CEACR, observations, 2008 and 2010.

[1665] See also para. 694 below.

[1666] CEACR, General Report, 2001, para. 47.

[1667] ibid.

[1668] General Survey, 1986, para. 217.

[1669] *United Republic of Tanzania* – CEACR, direct request, 2006. See also *Australia* – CEACR, observation, 2011 (Fair Work Act, 2009).

683. As women predominate in low-wage employment, [1670] and a uniform national minimum wage system helps to raise the earnings of the lowest paid, it has an influence on the relationship between men and women's wages and on reducing the gender pay gap. [1671] Minimum wages are, however, often set at the sectoral level, and there is a tendency to set lower wages for sectors predominantly employing women. [1672] Due to such occupational segregation, special attention is needed in the design or adjustment of sectoral minimum wage schemes to ensure that the rates fixed are free from gender bias, and in particular that certain skills considered to be "female" are not undervalued. Governments often state that regulations determining the minimum wage do not make a distinction between men and women. [1673] However, this is not sufficient to ensure that there is no gender bias in the process. ***Rates should be fixed based on objective criteria, free from gender bias, to ensure that the work in sectors with a high proportion of women is not being undervalued in comparison with sectors in which men are predominantly employed.*** [1674] ***In addition, in defining different occupations and jobs for the purpose of fixing minimum wages, gender-neutral terminology should be used to avoid stereotypes as to whether certain jobs should be carried out by a man or a woman.*** [1675]

684. There are now only rare examples of different minimum wages being specified for male and female workers, though some still exist, and it is important that this form of direct wage discrimination be addressed as a matter of urgency. [1676] It is also important to ensure that separate female and male categories are not replaced by apparently neutral terms, for example by changing "labourer (male)" and "labourer (female)" to "labourer

[1670] *Global wage report 2010/11: Wage policies in times of crisis* (Geneva, ILO, 2010), p. 43. See also *Philippines* – CEACR, direct request, 2011.

[1671] See S. Hayter and B. Weinberg (ed.), op. cit. and General Survey, 1975, para. 92. According to the Government of *Hungary*, since the adoption of the compulsory national minimum wage pursuant to Government Decree No. 321/2008 (XII.29), the average pay gap among skilled workers has narrowed: *Hungary* – CEACR, direct request, 2011.

[1672] See, for example, *Bangladesh* – CEACR, observation, 2011 (ready-made garment industry); and *Barbados* – CEACR, direct request, 2010 (domestic workers).

[1673] See, for example, *Ecuador* – CEACR, direct request, 2002; *Pakistan* – CEACR, direct request, 2008; *Panama* – CEACR, direct request, 2011; *Syrian Arab Republic* – CEACR, direct request, 2001; and *Tunisia* – CEACR, direct request, 2011.

[1674] The Committee has raised this issue in the context of a wide range of countries: see for example *Cambodia* – CEACR, direct request, 2011; *Costa Rica* – CEACR, direct request, 2010; *Côte d'Ivoire* – CEACR, direct request, 2010; *Honduras* – CEACR, direct request, 2010; *Indonesia* – CEACR, direct request, 2011; *Iraq* – CEACR, direct request, 2010; *Panama* – CEACR, direct request, 2011; *Philippines* – CEACR, direct request, 2011; *Rwanda* – CEACR, direct request, 2011; *Saint Kitts and Nevis* – CEACR, direct request, 2011; and *South Africa* – CEACR, direct request, 2008. With respect to the role of job evaluation in setting minimum wages, see para. 706 below.

[1675] See *Guyana* – CEACR, direct request, 2011: terms such as "barman, kitchen maid, washman, serviceman" should be avoided; *Sri Lanka* – CEACR, direct request, 2008 (referring to terms such as "foreman" and "watchman"); and *Saint Vincent and the Grenadines* – CEACR, direct request, 2009: "watchman", "houseman", "bellboy", "hostess". See also *Niger* – CEACR, direct request, 2008; and *Mauritius*– CEACR, direct request 2006.

[1676] See, for example, *Grenada* – CEACR, observation, 2010: Minimum Wage Order SRO 11 (2002) providing for separate wage rates for female and male agricultural workers; and *Mauritius* – CEACR, direct requests, 2006, 2008 and 2009: a number of Remuneration Orders continue to contain pay differentials or wage categories based on sex, including in the tea industry, salt manufacturing, sugar industry and catering industry. The Committee was able to note progress in *Sri Lanka* in revising the Wage Board Ordinances regarding the tobacco and cinnamon trades so that they no longer apply differential wage or time/piece rates for men and women: *Sri Lanka* – CEACR, observation, 2009. Progress was also noted in *Saint Lucia*, when the minimum wage orders for agricultural workers with separate wage rates for women and men were revoked: *Saint Lucia* – CEACR, direct request, 2004.

(grade I)" and "labourer (grade II)", if in reality the gender distinction is maintained. [1677] Other issues of concern arising with respect to minimum wages in the context of the Convention are that female-dominated groups may be excluded from its application, and particularly those that are the most vulnerable to wage discrimination, such as domestic and agricultural workers, and workers in export processing zones, [1678] which could constitute indirect discrimination against women. Lack of enforcement of the minimum wage provisions is another concern. [1679] There are, however, some examples of progress being made towards more inclusive minimum wages, in particular to cover domestic workers, including in *Chile*, *Portugal* and *Trinidad and Tobago* in the context of a single national minimum wage, and in *South Africa*, *Switzerland* and *Uruguay*, setting rates specifically for domestic workers. [1680] The Committee notes that the Domestic Workers Convention, 2011 (No. 189), specifically requires ratifying States to take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex. [1681]

685. The lack of understanding by those setting minimum wages of the principle of equal remuneration for men and women for work of equal value has also been raised. [1682] It is important for governments, in cooperation with employers' and workers' organizations, to examine the functioning of the mechanisms for the setting of minimum wages in the light of the need to promote and ensure the principle of equal remuneration for men and women for work of equal value. [1683]

Remuneration: The diversity of elements

686. The Convention sets out a very broad definition of "remuneration" in *Article 1(a)*, which includes not only "the ordinary, basic or minimum wage or salary" but also "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment". The broad definition of remuneration in the Convention captures all elements that a worker may receive for his or her work, including payments in cash as well as in kind; and payments made directly as well as indirectly by the employer to the worker which arise out of the worker's employment.

687. Such a broad definition is necessary since if only the basic wage were being compared, much of what can be given a monetary value arising out of the job would not be captured, and such additional components are often considerable, making up

[1677] See *Sri Lanka* – CEACR, direct request, 2009.

[1678] See, for example, *Honduras* – CEACR, direct request, 2010; *Jordan* – CEACR, direct request, 2011; *Lebanon* – CEACR, direct request, 2010; *Pakistan* – CEACR, observation, 2006; *Seychelles* – CEACR, direct request, 2011; and *United Kingdom (Gibraltar)* – CEACR, observation, 2011. In *Barbados* – CEACR, direct request, 2010, it was noted that the minimum wages for domestic workers had not been increased in over 20 years. See also *Decent work for domestic workers*, Report IV(1), ILC, 99th Session, Geneva, 2010, para. 140 (table IV.1). In *Cyprus* – CEACR, direct request, 2011, however, the Committee was able to note that the extension of minimum wages to employees with sanitation and caring duties had contributed to reducing the gender pay gap.

[1679] See General Survey, 1986, para. 224. See *Jamaica* – CEACR, direct request, 2006; and *Pakistan* – CEACR, observation, 2010, in both countries noting that the number of women who submitted complaints relating to the Minimum Wage Act was significantly higher than men.

[1680] See *Remuneration in domestic work*, Domestic Work Policy Brief No. 1 (Geneva, ILO, 2011).

[1681] Convention No. 189, *Art. 11*. Regarding domestic workers, see also paras 663–664 and 707.

[1682] See, for example, *Egypt* – CEACR, direct request, 2011; and *Saint Vincent and the Grenadines* – CEACR, direct request, 2011.

[1683] See, for example, *Pakistan* – CEACR, observation, 2011.

increasingly more of the overall earnings package. The words "directly or indirectly" were added to the definition of remuneration in the Convention with a view to ensuring that certain emoluments which were not payable directly by the employer to the worker concerned would be covered. [1684] The definition also captures payments or benefits, whether received regularly or only occasionally. [1685]

Legislation

688. Increasingly States are including a broad definition of remuneration in legislation, in line with the definition in *Article 1(a)*. [1686] In some countries, even though the term "equal remuneration" is not actually used in legislation, but rather equal "pay", "wages" or "salary", it is then defined in broad terms in the legislation to include the elements in *Article 1(a)*. [1687] In other countries, reference may be made to equal "pay", "wages" or even "remuneration", without defining such term, or defining it in a manner that restricts the scope of comparison. [1688] The term that is used in the national context is less important than the elements it actually encompasses, and when comparing the value of jobs in terms of monetary value, a comprehensive definition is needed.

689. A difficulty in determining if the Convention has been applied with respect to the definition of "remuneration" arises in a number of countries due to imprecision in definitions in the legislation addressing equal remuneration. For example, the provision relating to the principle of the Convention may refer to "equal pay", but then only the term "wages" or "salary" is defined, and it is not clear if the terms are intended to be interchangeable. [1689] The term "remuneration" needs to be defined with rigour if the Convention is to be applied fully.

[1684] See *Slovakia* – CEACR, direct request, 2008: the Committee noted that payments not directly dependent on the work performed, such as travel expenses and revenue from capital shares and bonds, were also covered under *Art. 1(a)* of the Convention, as it covers both direct and indirect emoluments.

[1685] General Survey, 1986, para. 90.

[1686] See *Angola* – CEACR, observation, 2001 (General Labour Act of 2000); *Belarus* – CEACR, observation, 2002 (Labour Code of 1999); *Benin*, Labour Code of 1998; *Kenya* – CEACR, observation, 2009 (Employment Act 2007); *Malawi* – CEACR, observation, 2002 (Employment Act of 2000); *Namibia*, Labour Act of 2007; *Niger* – CEACR, observation, 1997 (Labour Code of 1996); and *Togo* – CEACR, direct request, 2010 (Labour Code of 2006). In addition, as a result of the European Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), and the need for European States to harmonize their legislation with it, a number of European countries have incorporated a definition similar to that set out in the Convention, including for example *Cyprus* – CEACR, observation, 2011 (Act No. 38(1) of 2009 (Amendment) regarding equal remuneration between men and women for the same work or work of equal value); *Denmark*: (Consolidation) Act No. 899 of 2008 on equal pay to men and women; *Latvia* – CEACR, observation, 2004 (Labour Code of 2001); *Lithuania* – CEACR, observation, 2005 (Labour Code of 2002); *Malta*: Equal Treatment in Employment Regulations, 2004 (as amended by Legal Notice 137 of 2007), regulation 2; *Poland* – CEACR, observation, 2006 (Labour Code, as amended in 2001 and 2006); *Slovakia* – CEACR, observation, 2010 (Labour Code of 2006, as amended by Act No. 348/2007 Coll.); and *Spain* – CEACR, observation, 2006 (Act No. 33 of 2002 modifying section 28 of the consolidated text of the Act on the status of workers).

[1687] See, for example, *Antigua and Barbuda* – CEACR, direct request, 2010 (Labour Code); *Azerbaijan* – CEACR, direct request, 2002 (Labour Code); *Congo* – CEACR, direct request, 2008 (Labour Code); *Croatia*, Labour Code of 2009 and Gender Equality Act of 2008; *Djibouti* – CEACR, observation, 2009 (Labour Code of 2006); *Ghana*, direct request 2008; *Togo* – CEACR, direct request, 2010 (Labour Code of 2006); and *United Kingdom (Gibraltar)* – CEACR, observation, 2009 (Equal Opportunities Act of 2009).

[1688] See, for example, *Australia* – CEACR, direct request, 2011; *Eritrea*, direct request 2011; *Kyrgyzstan* – CEACR, direct request, 2011; *Papua New Guinea* – CEACR, direct request, 2008; *Saint Lucia* – CEACR, observation, 2009; and *Uruguay* – CEACR, direct request, 2010.

[1689] See *Antigua and Barbuda* – CEACR, direct request, 2010; *Armenia* – CEACR, direct request, 2010; *Bahamas* – CEACR, direct request, 2011; *Kazakhstan* – CEACR, direct request, 2010; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011.

Additional emoluments

690. The term "any additional emoluments whatsoever" brings within the ambit of the Convention elements as numerous as they are diverse. [1690] When the Convention was adopted, this broad formulation was preferred rather than making specific reference to, for example, "various bonuses or other allowances". [1691] The use of "any additional emoluments whatsoever" has allowed the Convention to maintain its relevance as different components are added to the overall pay and benefit package that might not have been foreseen at the time the Convention was adopted.

691. "Remuneration" under the Convention includes wage differentials or increments based on seniority, or marital status, cost-of-living allowances, dependency allowances, travel allowances or expenses, housing and residential allowances. [1692] It also includes benefits in kind such as providing uniforms, laundering work clothes and providing accommodation or food. [1693] In some countries, specific benefits and allowances are enumerated in the legislation as being included in remuneration, going beyond basic and ordinary wages, including additional payments and benefits such as uniforms, housing, travel allowances, vacation allowances, productivity bonuses, share of profits, seniority allowances and dependency allowances. [1694] In other cases, even when a broad definition is given of "remuneration", exceptions are provided that limit the emoluments to be included, thus limiting the scope of the application of the principle. [1695]

692. Remuneration also includes all allowances paid under social security schemes financed by the undertaking or industry concerned. [1696] Benefits, and in particular pensions, should not give rise to discrimination on the pretext that they are not employment-related benefits paid directly by the employer and therefore analogous to wages. [1697] The definition of "remuneration" in *Article 1(a)* applies whether emoluments are payable directly or indirectly and arising out of the workers' employment. [1698] The Committee has noted situations where women are excluded or have limited participation in supplementary pension schemes due to the exclusion of certain job categories. In the *Netherlands*, the Government, together with the social partners, undertook a study to determine the number of employees without occupational pensions in order to identify the job categories excluded and the number of women and men affected, and provided

[1690] General Survey, 1986, para. 15.

[1691] *Equal remuneration for men and women workers for work of equal value*, Report VII(1), ILC, 34th Session, Geneva, 1951, pp. 15–16.

[1692] General Survey, 1986, para. 15. See also *Cambodia* – CEACR, direct request, 2011.

[1693] General Survey, 1986, para. 15; see also *Kenya* – CEACR, observation, 2009; and *Sri Lanka* – CEACR, observation, 2009.

[1694] CEACR, General Report, para. 47. See also *Congo* – CEACR, direct request, 2008 (Labour Code); *Mauritania* – CEACR, direct request, 2008 (Labour Code); and *Mauritius* – CEACR, direct request, 2009 (Employment Rights Act 2008).

[1695] See, for example, *Bangladesh*, observation 2009; *Burundi* – CEACR, direct request, 2008; *Cambodia* – CEACR, direct request, 2011; *Slovakia* – CEACR, direct request, 2008; and *Syrian Arab Republic* – CEACR, direct request, 2011.

[1696] See General Survey, 1986, para. 17; see also *Social security and the rule of law*, General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 100th Session, Geneva, 2011, paras 214–217.

[1697] General Survey, 1975, para. 62.

[1698] See General Survey, 1986, paras 16–17.

fiscal incentives to encourage the conclusion of agreements on occupational pensions. [1699]

Discriminatory legislation regarding allowances and benefits

693. Legislation incorporating provisions discriminating directly or indirectly based on sex with respect to remuneration undermines the principle of the Convention. The differential treatment is often linked to the express or implied assumption that the man is the "breadwinner" or the "head of the household" for the purpose of receiving certain allowances or benefits. [1700] In this context, the Committee notes the possibility of allowing both spouses to choose who would benefit from such allowances, rather than starting from the principle that they should systematically be paid to the man, and only in exceptional situations to the woman. [1701] The Committee has also identified situations of direct discrimination where the law provides for different ages for women and men with respect to severance pay, [1702] or encourages women to resign by providing for them to receive compensation when they resign due to marriage or pregnancy. [1703] Such provisions reinforce stereotypes regarding women's aspirations, preferences and capabilities, and their role and responsibilities in society, thus exacerbating labour market inequalities. In some cases such legislation is broadly applicable, and in other cases it is limited to the public service: in either situation, the State is responsible for the enactment of legislation and, therefore, should not put in place a regime that undermines the principle of the Convention. The Committee therefore calls for such provisions to be repealed or amended.

Collective agreements

694. There are also discriminatory provisions in some collective agreements, for example limiting allowances and benefits received by women, such as the granting of transport facilities only to the wife and children of an employee, and thus not to the husband of a female employee. There are also provisions that may result in indirect wage discrimination against women, for example collective agreements that exclude part-time workers from certain bonuses. [1704] In such situations, governments should take the necessary steps, in cooperation with the social partners, to ensure that provisions of collective agreements observe the principle of equal remuneration for men and women for work of equal value. [1705] Even if such a benefit is granted in practice to both male and female employees, maintaining discriminatory provisions in a collective agreement may have the effect of preventing men and women workers from knowing their rights and seeking to assert them. [1706]

[1699] *Netherlands* – CEACR, direct request, 2008; See also *Ireland* – CEACR, direct requests, 2004 and 2007. The Pension Act was amended to include pension rights in the definition of remuneration under section 2(1) of the Employment Equality Act, 1998.

[1700] See *Burundi* – CEACR, direct request, 2011; *Jordan* – CEACR, direct request, 2011; *Indonesia* – CEACR, observation, 2011; and *Turkey* – CEACR, direct request, 2011.

[1701] See, for example, the Committee's recommendations with respect to Jordan's Civil Service Regulations No. 30 of 2007: *Jordan* – CEACR, direct request, 2011.

[1702] See, for example, *Saint Lucia* – CEACR, observation, 2011.

[1703] See *Lebanon* – CEACR, direct request, 2010; and *Syrian Arab Republic* – CEACR, direct request, 2011. See also *Belize* – CEACR, direct request, 2009.

[1704] See *Netherlands* – CEACR, observation, 2009.

[1705] See *Cameroon* – CEACR, observation, 2010. See also *Ghana* – CEACR, direct request, 2004; *Madagascar* – CEACR, observation, 2010; and *Togo* – CEACR, direct request, 2003.

[1706] *Cameroon* – CEACR, observation, 2010; and *Ghana* – CEACR, direct request, 2004.

Comparing jobs, determining value

695. ***The concept of "equal value" requires some method of measuring and comparing the relative value of different jobs.*** [1707] ***There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, Article 3 presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions.*** [1708] *Article 3* also makes it clear that differential rates between workers are compatible with the principle of the Convention if they correspond, without regard to sex, to differences determined by such evaluation. [1709] In the light of persistent gender pay gaps, greater focus is being placed on developing or implementing objective job evaluation methods, and some recent progress has been noted in this regard, including in *Algeria*, *Barbados*, *Belgium*, *Czech Republic*, *Ghana*, *Lithuania*, *Netherlands*, *New Zealand*, *Panama*, *Papua New Guinea*, *Portugal*, *Saint Lucia*, *Switzerland*, *Togo*, *Trinidad and Tobago*, *South Africa* and *Zimbabwe*. [1710] Measures for the objective evaluation of jobs can be taken at the enterprise, sectoral or national level, in the context of collective bargaining, as well as through wage-fixing mechanisms. [1711] The implementation of job evaluation exercises has been shown to have a measurable impact on gender pay differentials. [1712]

696. The reports of some governments have indicated confusion between performance appraisal, which aims at evaluating the performance of an individual worker in carrying out his or her job, and objective job evaluation, which is to measure the relative value of jobs with varying content on the basis of the work to be performed. [1713] Objective job evaluation is concerned with evaluating the job and not the individual worker. [1714]

Scope of comparison

697. Application of the Convention's principle is not limited to comparisons between men and women in the same establishment or enterprise. It allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers. [1715] Ensuring a broad scope of

[1707] General Survey, 1986, para. 138.

[1708] CEACR, general observation, 2007, para. 4.

[1709] *Art. 3(3)*.

[1710] *Algeria* – CEACR, observation, 2011; *Barbados* – CEACR, observation, 1999; *Belgium* – CEACR, direct request, 2011; *Czech Republic* – CEACR, direct request, 2005; *Ghana* – CEACR, direct request, 2010; *Lithuania* – CEACR, direct request, 2010; *Netherlands* – CEACR, direct request, 2009; *New Zealand* – CEACR, observation, 2008; *Panama* – CEACR, observation, 2004; *Papua New Guinea* – CEACR, direct request, 2007; *Portugal* – CEACR, direct requests, 2006 and 2009; *Romania* – CEACR, direct request, 2006; *Saint Lucia* – CEACR, direct request, 2011; *South Africa* – CEACR, direct request, 2008; *Switzerland* – CEACR, observation, 1999; *Togo* – CEACR, direct request, 2010; *Trinidad and Tobago* – CEACR, direct request, 2007; and *Zimbabwe* – CEACR, direct request, 2005.

[1711] CEACR, general observation, 2007, para. 7.

[1712] See, for example, *Barbados* – CEACR, observation, 1999; and *Iceland* – CEACR, direct request, 2009.

[1713] See, for example, *Grenada* – CEACR, direct request, 2008; *Honduras* – CEACR, direct request, 2006; *Malawi* – CEACR, direct request, 2008; *Mongolia* – CEACR, direct request, 2009; *Morocco* – CEACR, direct request, 2009; *Seychelles* – CEACR, direct request, 2008; *Sri Lanka* – CEACR, observation, 2009; and *United Republic of Tanzania* – CEACR, direct request, 2010.

[1714] General Survey, 1986, para. 139.

[1715] CEACR, general observation, 2007, para. 3, and General Survey, 1986, para. 22. In the first Conference discussion of what would become Convention No. 100, an amendment was rejected which would have added to

comparison is essential for the application of the principle of equal remuneration given the continued prevalence of occupational sex segregation. As previously noted, historical attitudes towards the role of women in society, along with stereotypical assumptions regarding women's aspirations, preferences and capabilities and "suitability" for certain jobs, have contributed to occupational sex segregation within the labour market, with women concentrated in certain jobs and certain sectors of activity. [1716] These views and attitudes also tend to result in the undervaluation of "female jobs" in comparison with those of men who are performing different work and using different skills, when determining wage rates. [1717]

698. The reach of comparison between jobs performed by women and men should be as wide as possible, in the context of the level at which wage policies, systems and structures are coordinated. [1718] As effective application of the principle of the Convention is needed, where women are more heavily concentrated in certain sectors or occupations, there is a risk that the possibilities for comparison at the enterprise or establishment level will be insufficient. [1719] In certain countries the scope of comparison is limited to the same employer in legislation. [1720] The European Committee of Social Rights has also considered under the European Social Charter that "[a]s comparisons need to be made in order to determine whether women and men really do receive equal pay, the Committee has consistently found that 'the possibility to look outside an enterprise for an appropriate comparison should exist where necessary' (Conclusions XIII-1, p. 121)". [1721] Similarly, the Committee of Experts has also asked certain governments to extend the scope of comparison beyond the enterprise. [1722]

699. Where comparison is limited to the enterprise, and no comparable worker is employed in the enterprise, the possibility of relying on a hypothetical comparator has been used, including in *Austria*, allowing evidence of what a man might be paid. [1723] In *Canada* (Quebec), a regulation was adopted setting parameters for undertaking a pay equity exercise in the absence of a male-dominated class, linked to duties,

the definition of "equal remuneration for men and women for work of equal value" that it was limited to work performed by the same employer, in the same locality. This amendment had been supplemented by a further amendment which would have linked remuneration to the quality and quantity and other characteristics of the work performed and of the cost of production and services, which was also rejected: *Equal Remuneration for Men and Women for Work of Equal Value*, ILC, Report VII(1), Geneva, 1950, pp. 18–19.

[1716] CEACR, general observation, 2007, para. 2; General Survey, 1975, para. 38; General Survey, 1986, para. 256.

[1717] CEACR, general observation, 2007, para. 2.

[1718] See General Survey, 1986, para. 72.

[1719] ibid.; see *Norway* – CEACR, direct request, 2011.

[1720] In Europe, for example, in *Azerbaijan*, *Czech Republic*, *Iceland*, *Israel*, *Norway*, *Portugal* and *Slovakia*, and also in Latin America, for example, in *El Salvador*, *Guatemala*, *Honduras* and *Panama*. In legislation in certain African countries, the principle of equal remuneration for equal work or for work of equal value is generally not limited to work with the same employer except, for example, in the General Labour Act, 2000, of *Angola* which defines work of equal value as "work carried out for the same employer, when the tasks performed, albeit of a different nature, are determined to be equivalent through the application of objective job evaluation criteria": *Angola* – CEACR, observation, 2003. The same kind of limitation is found in some Caribbean countries, such as *Antigua and Barbuda*, *Bahamas*, *Dominica*, *Jamaica* and *Saint Vincent and the Grenadines*.

[1721] European Committee of Social Rights, with respect to *Iceland* (Gender Equality Act), Conclusions XVIII-2, p. 12.

[1722] See, for example, *Angola* – CEACR, observation, 2001; *Bahamas* – CEACR, direct request, 2007; *Czech Republic* – CEACR, direct request, 2010; *El Salvador* – CEACR, direct request, 2007; *Iceland* – CEACR, direct request, 2011; *Netherlands* – CEACR, direct request, 2009; and *Norway* – CEACR, direct request, 2011.

[1723] *Austria*– CEACR, direct requests, 2008 and 2010.

responsibilities, qualifications, effort and conditions. [1724] Legislation should not exclude the possibility of bringing equal pay claims where no comparator is available within the enterprise, particularly in cases where enterprises predominantly employ women. [1725]

Objective job evaluation methods

700. Job evaluation is a formal procedure which, through analysing the content of jobs, gives a numerical value to each job. [1726] Two jobs that are found to have the same overall numerical value are entitled to equal remuneration. There are different methods of job evaluation. [1727] For the purpose of ensuring gender equality in the determination of remuneration, analytical methods of job evaluation have been found to be the most effective. Such methods analyse and classify jobs on the basis of objective factors relating to the jobs to be compared, such as skills/qualifications, effort, responsibilities and working conditions. [1728] These factors can then be divided into sub-factors, which can ensure that within each factor those aspects typically identified with women are not overlooked. With respect to effort, for example, sub-factors should include not only physical, but also mental and emotional effort, and responsibility can be extended beyond financial responsibility and responsibility for material resources to responsibility for people and for human resources. [1729]

701. ***Whatever methods are used for the objective evaluation of jobs, particular care must be taken to ensure that they are free from gender bias: it is important to ensure that the selection of factors for comparison, the weighting of such factors and the actual comparison carried out are not discriminatory, either directly or indirectly.*** Often skills considered to be "female", such as manual dexterity and those required in the caring professions, are undervalued or even overlooked, in comparison with traditionally "male" skills, such as heavy lifting. [1730] In addition, if job evaluation is to make a positive contribution to resolving wage discrimination and promoting equality, there must be a legal and administrative framework enabling workers to claim equal remuneration on the basis of the assessed value of their jobs, together with a right to claim redress when job evaluation systems have been found to be discriminatory. [1731]

[1724] *Canada* – CEACR, direct request, 2007 (Regulation respecting pay equity in enterprises where there are no predominantly male job classes, 1 August 2010). The Government of Canada noted that, since discrimination is embedded in the social and economic fabric, the absence of a male-dominated class in an enterprise does not indicate an absence of pay discrimination based on sex.

[1725] See *Austria* – CEACR, direct request, 2010; and *United Kingdom* – CEACR, direct request, 2011. See also *United Kingdom* – CEACR, observation, 2007: the Women and Work Commission recommended allowing a hypothetical comparator in equal pay claims, and the introduction of generic or representative equal pay claims.

[1726] See General Survey, 1986, para. 139.

[1727] See examples in the General Survey, 1986, pp. 106–108: non-analytical methods (ranking and grade description); analytical methods (point rating, factor comparison).

[1728] CEACR, general observation, 2007, para. 3.

[1729] See *Promoting pay equity: Gender neutral job evaluation for equal pay* (Geneva, ILO, 2008), Chapter 4.

[1730] CEACR, general observation, 2007, para. 5. With respect to criteria for the evaluation and classification of functions contained in certain collective agreements, a study in *Luxembourg* found that it continued to favour male workers, as traditional male criteria, such as effort and muscular fatigue, were still overvalued in relation to criteria for jobs traditionally occupied by women: *Luxembourg* – CEACR, direct request, 2010.

[1731] General Survey, 1986, para. 152.

702. A number of analytical job evaluation methods have been developed, for example: in *Sweden*, "Steps to Pay Equity"; in *Switzerland*, the ABAKABA and EVALFRI methods; and in *Spain* the ISOS methods. [1732] With respect to the ABAKABA method, the Committee has noted that it takes into consideration characteristics considered to be masculine and feminine, and includes criteria such as repetitiveness and precision of movement, responsibility for the life of others, responsibility for the environment, the number of work interruptions (for example in secretarial and clerical work), empathy and the ability to organize, which are often linked to occupations in which women are predominantly employed. [1733] In the *Czech Republic*, an analytical methodology of job evaluation was developed for manual workers, employees and commercial employees in the private sector. It includes criteria for job evaluation based on factors related to work predominantly associated with women as well as men, including specific job requirements in terms of theoretical education and knowledge, practical experience, dexterity, complexity of the job or the working activity and of working relations, handling information, responsibility for damage and for occupational health and safety, requirements with respect to management and work organization, physical, sensorial and neuro-psychological demands, and the work hazards involved.

703. The rise in the use of job evaluation methods is particularly marked in the public sector, including in *Ghana*, where a job evaluation exercise was undertaken to determine the value of all public sector jobs, with the specific objective of enabling "the Government to reward its employees in accordance with the principle of 'equal pay for equal worth'". The evaluation was made using the point factor method, on the basis of four main job factors (knowledge and skill, responsibility, working conditions and effort), which were subdivided into 13 sub-factors. [1734] In a number of countries, job evaluation has been applied more specifically in the public service. [1735]

Legislation

704. In a number of countries, legislation refers specifically to job evaluation. For example in *Angola*, the legislation setting out the principle of equal remuneration for work of equal value defines "equal value" to include tasks of a different nature determined to be equivalent through the application of objective job evaluation criteria. [1736] In the Labour Code of *Togo*, it is stated that job evaluation methods should

[1732] *Equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report 1(B), ILC, 96th Session, Geneva, 2007, p. 74. See also *Sweden* – CEACR, direct request, 2001; *Switzerland* – CEACR, observation, 1999; and *Spain* – CEACR, direct request, 2005. The Swedish "Steps to Pay Equity" process is available on the website of the Swedish Discrimination Ombudsman (www.do.se) and includes education, occupational experience, training, further education, problem solving and social skills; under responsibility, sub-factors such as responsibility for material resources and information, people, planning, development, results and management; under working conditions, physical conditions as well as mental conditions, including concentration, monotony, availability, trying relationships and stress are evaluated.

[1733] See *Switzerland* – CEACR, observation, 1999, regarding the "Do I earn what I deserve" (VWIV) instrument. The Committee has also noted the Peromnes method used in *South Africa* (CEACR – direct request, 2008), which is a points assessment technique using eight factors, each of which is weighted to determine the position of the job in the grade ranking: problem solving; consequences of judgements; pressure of work; knowledge; job impact; comprehension; educational qualification; and training/experience.

[1734] See *Ghana* – CEACR, direct request, 2010. See also *Czech Republic* – CEACR, direct request, 2005; and *Panama* – CEACR, observation, 2004.

[1735] See, for example, *Papua New Guinea* – CEACR, direct request, 2007; *Trinidad and Tobago* – CEACR, direct request, 2007; and *Zimbabwe* – CEACR, direct request, 2005.

[1736] *Angola* – CEACR, observation, 2001 (General Labour Act of 2000).

be based on objective considerations, based essentially on the tasks to be performed. [1737] In *Indonesia*, a ministerial decision concerning the regulation of the structure and scale of wages provides that enterprises shall establish wage structures and wage scales on the basis of a job analysis, job description and job evaluation. [1738] In *Panama*, an executive decree provides for the development of mechanisms and procedures for the appraisal of tasks to ensure the application of the principle of equal remuneration for men and women for work of equal value. [1739]

Collective agreements

705. Objective job evaluation methods have also been provided for in collective agreements in both the public and private sectors. In *Iceland*, for example, collective agreements have been negotiated between 15 unions and the City of Reykjavik which include provisions for job evaluation. [1740] In *Algeria*, a national level collective agreement contains provisions relating to the classification of jobs which must be established by enterprise agreements on the basis of job descriptions and analysis, evaluation and rating of their content and their classification in accordance with the results of the evaluation. It also sets out specific criteria for job evaluation. [1741] In *Belgium*, a collective agreement on equal remuneration between male and female workers was made compulsory through legislation, explicitly providing that all sectors and enterprises must review and adapt their job classification systems (choice of criteria, weighting of criteria, system of converting their evaluation values into remuneration components) where they are not gender neutral. [1742] The determination of criteria for job evaluation and their weighting are matters on which cooperation between employers and workers is particularly important, giving collective bargaining an important place in this context. [1743]

Minimum wages

706. The fixing of minimum wages can make an important contribution to the application of the principle of equal remuneration. It is therefore important to ensure that a job evaluation method used to design or adjust sectoral or occupational minimum wage schemes is free from gender bias and, consequently, that the choice of factors for comparison, the weighting of these factors and the actual comparison carried out are not inherently discriminatory. In particular, it needs to be ensured that certain skills considered to be "female" are not undervalued or even overlooked, in comparison with traditionally "male" skills. [1744]

[1737] *Togo* – CEACR, direct request, 2010 (Labour Code of 2006).

[1738] *Indonesia* – CEACR, direct request, 2007. See also *Czech Republic* – CEACR, direct request, 2008; *Papua New Guinea* – CEACR, direct request, 2007; *Romania* – CEACR, direct request, 2006; and *Slovakia* – CEACR, direct request, 2010.

[1739] *Panama* – CEACR, observation, 2004.

[1740] *Iceland* – CEACR, direct request, 2009. See also *Spain* – CEACR, direct request, 2011: an extension to an inter-confederation agreement for collective bargaining establishes as a criterion the need to remove differences in pay levels and highlights the usefulness of systems of job evaluation.

[1741] *Algeria* – CEACR, observation, 2011.

[1742] *Belgium* – CEACR, direct request, 2011 (Collective agreement No. 25ter of 2008).

[1743] See General Survey, 1986, para. 152. See also Recommendation No. 90, *Para. 5*; and *Portugal* – CEACR, direct request, 2006.

[1744] See, for example, *Costa Rica* – CEACR, direct request, 2010; *Haiti* – CEACR, direct request, 2010; *Lebanon* – CEACR, direct request, 2010; and *Turkmenistan* – CEACR, direct request, 2011. See also paras 682–685 above.

Domestic workers

707. Particular concerns regarding valuing work have been raised in recent years in the context of domestic workers. Domestic work involves tasks that women have traditionally undertaken in the home without pay, such as taking care of children, the elderly and disabled, as well as cleaning, cooking, shopping and laundry. For this reason, as well as due to stereotyped perceptions, the skills required for domestic work, which are considered to be "innate" to women, are undervalued or even overlooked, thus resulting in the undervaluation of domestic work. [1745] Domestic work is among the lowest paid occupations in any labour market, with domestic workers typically earning less than half, and sometimes no more than 20 per cent, of average wages. [1746] In *Haiti*, the adoption of the Domestic Work Act resulted in bringing these workers within the scope of the provisions of the Labour Code, including on equal opportunities and on equal remuneration for men and women for work of equal value. [1747] The principle of equal remuneration for work of equal value is to apply to domestic workers, whether nationals or non-nationals, and particular attention should be given to ensuring that domestic work is not undervalued due to gender stereotypes. [1748] There seems to be an absence of job evaluation methods in this area, and the Committee considers that appropriate procedures should be established for ensuring the equitable valuing of domestic work.

Promoting job evaluation

708. Various means have been used to promote or ensure the use of objective job evaluation methods. Gathering appropriate information is a key stage in developing job evaluation methods. In *South Africa*, pursuant to the Employment Equity Regulations, employers are required to report to the Department of Labour on the profile of their workforce and income differentials, and are encouraged in this context to use predetermined job evaluation systems to determine the value of jobs. [1749] Research has been undertaken in some countries to examine job evaluation and its impact on identifying and addressing pay differentials. [1750] A number of tools and guides have also been developed to promote and assist in undertaking job evaluation. For example, in *Belgium*, following the evaluation of the EVA (Analytical Evaluation) projects, tools have been made available to enterprises and the social partners, including guidelines for establishing gender-neutral job classifications, a practical guide entitled "Analytical job classification: A basis for a gender-neutral wage policy" and a "Non-sexist checklist for the evaluation and classification of jobs". [1751]

[1745] See CEACR, general observation, 2007, para. 2. See, for example, *Cambodia* – CEACR, direct request, 2011; *Costa Rica* – CEACR, direct request, 2008; *Haiti* – CEACR, direct request, 2010; and *Lebanon* – CEACR, direct request, 2010. See also *Remuneration in domestic work*, op. cit.

[1746] ibid.

[1747] *Haiti* – CEACR, direct request, 2010.

[1748] See *Lebanon* – CEACR, direct request, 2008. See also *Syrian Arab Republic* – CEACR, direct request, 2011.

[1749] *South Africa* – CEACR, direct request, 2008.

[1750] See, for example, *Finland* – CEACR, direct request, 2011; and *Norway* – CEACR, direct requests, 2008 and 2011.

[1751] *Belgium* – CEACR, direct request, 2009. See also *Lithuania* – CEACR, observation, 2007, regarding the tripartite adoption of the "Methodology for the assessment of jobs and positions", which is recommended for use by enterprises, institutions and organizations, and for inclusion in collective agreements.

709. In *New Zealand*, the "equitable job evaluation tool", a gender-neutral system for use in pay investigations and for general use, has been developed with the objective of facilitating better recognition and contribution of female-dominated occupations to the performance of important areas of state services. A voluntary "gender-inclusive job evaluation standard" has also been developed as a practical guide and reference point for ensuring that job evaluation and the remuneration process are carried out in a gender-inclusive way. [1752] In the *Netherlands*, various tools, such as "Quickscan equal pay" and the Management Tool on Equal Remuneration and the Gender-Neutral Job Evaluation Manual, have been developed with a view to assisting employers to carry out objective job evaluation. [1753] In *Portugal*, a methodological guide for the catering and drinks sector has been developed, to provide companies with assistance in the process of job classification with a view to eliminating gender bias and promoting equal remuneration between men and women. [1754]

Measures for effective application

710. Giving legislative effect to the principle of equal remuneration for men and women for work of equal value is important, but not sufficient to achieve the goal of the Convention. [1755] The Committee welcomes the range of proactive measures taken to implement the Convention in practice in a number of countries. These include inclusion in public procurement, the adoption of codes of conduct, equal pay plans, pay equity schemes, pay equity councils, pay valuation guides, the modernization of public personnel classification schemes, undertaking job evaluation exercises, undertaking surveys to identify areas of wage differentials and granting pay equity benefits to compensate for past pay differentials based on sex, and the issuing of wage guidelines. [1756]

711. It is important also to deal with the persistent underlying causes that still need to be addressed in many countries. Gender stereotypes and occupational segregation, in particular, continue to be major underlying issues affecting the application of both Conventions Nos 100 and 111. A comprehensive approach to the reduction and elimination of pay disparity between men and women involving societal, political, cultural and labour market interventions is required. [1757]

Addressing underlying causes

712. Some of the underlying causes of pay inequality have been identified as the following: horizontal and vertical occupational segregation of women into lower paying jobs or occupations and lower level positions without promotion opportunities; lower, less appropriate and less career-oriented education, training and skill levels; household and family responsibilities; perceived costs of employing women; and pay structures. [1758] The establishment of centralized minimum standards, narrow pay dispersion and

[1752] *New Zealand* – CEACR, observation, 2008.

[1753] *Netherlands* – CEACR, direct request, 2009.

[1754] *Portugal* – CEACR, direct request, 2009.

[1755] CEACR, General Report, 2001, para. 49.

[1756] ibid., para. 47.

[1757] ibid., para. 49.

[1758] ibid., para. 40.

transparency of pay and promotion structures have been identified as factors that could address the pay structure differences and help reduce the gender pay gap. [1759]

713. In the context of the adoption of the Convention and Recommendation, it was recognized that there are multiple and complex links between the principle of equal remuneration for men and women, and the position and status of men and women more generally in employment and society. [1760] Social stereotypes that deem certain types of work as suitable for men or women are likely to lead to unequal wages for men and women for work of equal value. Such stereotypes, based on traditional assumptions concerning gender roles in the labour market and in society, including those relating to family responsibilities, channel women and men into different education and training and subsequently into different jobs and career tracks. This occupational gender stereotyping results in certain jobs being held almost exclusively by women, resulting in "female jobs" being undervalued for purposes of wage rate determination. [1761] Recalling that wage inequalities may arise due to the segregation of men and women into certain sectors and occupations, the Committee has asked governments to provide information on the measures taken or envisaged to improve the access of women to a wider range of job opportunities at all levels, including sectors in which they are currently absent or under-represented, with a view to reducing inequalities in remuneration that exist between men and women in the labour market. [1762]

714. ***As wage discrimination cannot be tackled effectively unless action is taken simultaneously to deal with its sources, it is important to address equal remuneration in the context of the more general rights and protections regarding equality and non-discrimination set out in Convention No. 111 and the Workers with Family Responsibilities Convention, 1981 (No. 156).*** This approach is reflected in Recommendation No. 90, which refers to facilitating the application of the Convention through such measures as ensuring equal access to facilities for vocational guidance, employment counselling, vocational training and for placement; encouraging women to use these facilities; providing welfare and social services for workers with family responsibilities; and promoting equality as regards access to occupations and posts. [1763]

715. A number of initiatives have been taken in the context of promoting equal remuneration between men and women for work of equal value to identify the nature and extent of wage inequality and its underlying causes, with a view to addressing them. In the *United Kingdom*, for example, the review of the government action plan for narrowing the gender pay gap indicated that further action was needed to eradicate gender stereotypes in the education system and to support families to balance work and family life with a view to narrowing the gender pay gap. [1764] Research in *Canada* (New Brunswick), similarly indicated that the main causes of the gender wage gap were outdated societal attitudes and practices, including with respect to the family

[1759] ibid., para. 40.

[1760] ibid., para. 41.

[1761] See, for example, *Saudi Arabia* – CEACR, direct request, 2007. See also *Canada* – CEACR, direct request, 2007; *Japan* – CEACR, observation, 2005; and *United Kingdom* – CEACR, direct request, 2010.

[1762] See, for example, *Barbados* – CEACR, direct request, 2010; *Latvia* – CEACR, direct request, 2011; *Malawi* – CEACR, observation, 2009; *Morocco* – CEACR, direct request, 2005; *Peru* – CEACR, observation, 2011; *Poland* – CEACR, direct request, 2011; *Saudi Arabia* – CEACR, direct request, 2007; *Swaziland* – CEACR, direct request, 2009; and *Sweden* – CEACR, direct request, 2010.

[1763] *Para. 6*.

[1764] *United Kingdom* – CEACR, direct request, 2010. See also paras 749–760 below.

responsibilities of women, the surprisingly limited range of occupations made available to women, and the undervaluation of work traditionally undertaken by women. [1765] Each of these contributing factors was then addressed in the Wage Gap Action Plan, setting out clear and measureable benchmarks and targets for achieving pay equity. [1766]

716. Research in *Burundi* indicated considerable occupational segregation in the informal economy, leading to earnings disparities. [1767] The high proportion of women in the informal economy was also identified in *Peru* as one of the reasons for the gender wage gap. [1768] Initiatives aimed at promoting girls' and women's access to education and vocational training, as well as sensitization programmes to overcome traditional stereotypes regarding the role of women in society, have been recommended by the Committee in this context. [1769]

717. The objective of eliminating wage differentials between men and women is set out in the Act on Equal Pay for Men and Women in *France*, and negotiations need to be undertaken every year in occupational sectors and enterprises to define and schedule measures to eliminate wage differentials. [1770] The Act also contains provisions aimed at reconciling professional and family life in order to tackle the structural obstacles to equality. [1771]

718. In *Japan*, the Government issued voluntary guidelines aimed at eliminating wage disparities between men and women, which stress the need to review the dual career track system and promote family-friendly workplaces. Positive action is recommended to overcome wage disparity caused by the limited access of women to certain positions and by length of service requirements. [1772] A programme to address the gender pay gap, based on the recommendations of a tripartite working group, was adopted in *Finland*, setting out various measures regarding pay systems, occupational sex segregation, equality planning, reconciliation of work and family life and corporate social responsibility. [1773]

719. Analysing the differing educational opportunities for women and men, girls and boys, in practice is also important in addressing their future employment opportunities and possibilities to access higher paying jobs. Such measures have been taken, for example, in *Burkina Faso*, with a national policy on the advancement of women resulting in significant improvements in school attendance rates for girls, a reduction in the segregation of women in the labour market and a reduction in wage inequalities. [1774] In *Yemen*, measures have been taken to increase the income levels of rural women and to

[1765] *Canada* – CEACR, direct request, 2007.

[1766] *Canada* – CEACR, observation, 2009. The benchmarks and targets are linked to changing societal attitudes, increasing the sharing of family responsibilities, reducing the job clustering of women and increasing the use of practices to better value work. See also *Netherlands* – CEACR, observation, 2009.

[1767] *Burundi* – CEACR, direct request, 2009.

[1768] *Peru* – CEACR, observation, 2011.

[1769] See *Burundi* – CEACR, direct request, 2009.

[1770] *France*, Act of 2006 on equal pay for men and women.

[1771] *France* – CEACR, observation, 2008.

[1772] See *Japan* – CEACR, observation, 2005. These guidelines have been recently updated, with a similar focus on addressing the underlying causes of wage disparities.

[1773] *Finland* – CEACR, observation, 2009.

[1774] *Burkina Faso* – CEACR, direct request, 2011.

improve their educational levels in order to improve their access to paid employment. [1775]

Proactive measures to promote equal remuneration

National plans and policies

720. The Committee welcomes the adoption by a number of countries of national plans or policies providing specific measures to address the gender pay gap and promote equal remuneration for men and women for work of equal value, including in the *Plurinational State of Bolivia*, *Estonia*, *Finland*, *Honduras*, *Hungary*, *Jordan*, *The former Yugoslav Republic of Macedonia*, *Madagascar*, *New Zealand*, *Slovakia*, *Slovenia*, *Spain* and *United Kingdom*. [1776] In *Jordan*, a tripartite-plus national steering committee for pay equity has recently been established charged with the development of a national strategy to promote pay equity, an action plan and implementation mechanisms. [1777] In *Hungary*, the National Strategic Plan on the Promotion of Gender Equality includes among its aims ensuring equal economic independence of women and men, eliminating the gender pay gap and employment disparities, and eliminating gender stereotypes in society. [1778] In *Honduras*, the Gender Equality and Equity Plan envisages the establishment of statutory and institutional machinery to guarantee compliance with the Convention. A gender perspective has also been introduced into the National Decent Employment Plan with the aim of reducing the gender income gap. [1779] The Plan of Action on Pay and Employment Equity in the public service in *New Zealand* provides for pay and employment equity reviews and response plans, which have been undertaken in a number of departments. [1780]

Public procurement

721. As it accounts for a large proportion of government expenditure, public procurement can be an effective means of ensuring the respect for the principle of the Convention. Recommendation No. 90 foresees the use of public procurement as a means of ensuring the application of the Convention. [1781] A similar provision is found in Recommendation No. 111 regarding non-discrimination in employment and occupation more generally. [1782] Governments may, when drawing up public contracts for the

[1775] *Yemen* – CEACR, direct request, 2010.

[1776] *Plurinational State of Bolivia* – CEACR, direct request, 2008; *Estonia* – CEACR, direct request, 2011; *Finland* – CEACR, observation, 2009; *Honduras* – CEACR, direct request, 2009; *Hungary* – CEACR, direct request, 2011; *Jordan* – CEACR, direct request, 2011; *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2011; *Madagascar* – CEACR, direct request, 2010; *New Zealand* – CEACR, direct request, 2010; *Slovenia* – CEACR, direct request, 2010; *Slovakia* – CEACR, direct request, 2011; *Spain* – CEACR, direct request, 2011; and *United Kingdom* – CEACR, direct request, 2010.

[1777] The Jordanian National Steering Committee for Pay Equity (NSCPE) was officially launched on 25 July 2011: see *Jordan* – CEACR, observation, 2012.

[1778] *Hungary* – CEACR, direct request, 2011.

[1779] *Honduras* – CEACR, direct request, 2009.

[1780] *New Zealand* – CEACR, observation, 2010.

[1781] *Para. 2(c)* provides that the application of equal remuneration for men and women for work of equal value should be ensured with respect to work executed under the terms of public contracts. The linkage between public contracts and wages (including allowances) was addressed in 1949 with the adoption of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94). See *Labour clauses in public contracts*, General Survey concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84), the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 97th Session, Geneva, 2008.

[1782] *Para. 3(b)(ii).*

carrying out of public works or the supply of commodities or services, exert a considerable influence on the remuneration of many workers in the private sector. [1783] It is also important to ensure that the keen competition between contractors to win a state contract does not become a motivating factor for using women as cheap labour. [1784]

722. The Committee has received very little information on the inclusion in public contracts of a specific reference to equal remuneration for men and women for work of equal value. It has been able to note, however, that in *Switzerland*, pursuant to the Public Contracts Act, enterprises performing public contracts must guarantee equal remuneration for men and women for work of equal value, and a specific instrument to monitor compliance has been developed in this context. [1785] Tenderers who do not comply with such requirements are excluded from the tendering procedure. [1786] In other countries, while not necessarily referring specifically to the principle of the Convention, there are requirements to address equality or non-discrimination in the procurement process, or to improve the situation of groups that have been historically subject to discrimination. [1787]

Equal pay audits and plans

723. Given the particular difficulties in having access to pay information, the Committee welcomes and encourages measures requiring information on pay differentials as a means of ensuring transparency, monitoring the pay gap, and as a basis for remedial action, including through the development of a plan addressing equal pay. Such measures are an important means of promoting and ensuring the implementation of the principle of the Convention. These types of requirements are set out in legislation, including in *Canada*, *Denmark*, *Finland*, *Italy*, *Luxembourg*, *South Africa*, *Spain*, *Sweden*, *United Kingdom* and *United Republic of Tanzania*. [1788] In *Finland*, for example, the obligation to develop an equality plan is mandatory for both public and private undertakings with more than 30 workers, and must include information that enables workers to monitor the equality situation in the enterprise, including regarding differences in pay, and must set out measures to achieve pay equity and include a review of the impact of measures previously taken. [1789] In *South Africa*, employers are required to submit "income differential statements" as part of employment equity reports, providing data on remuneration for each occupational category and level, disaggregated by sex and race. Some employers are also required to provide information on barriers to

[1783] See General Survey, 1975, para. 83.

[1784] ibid., para. 85.

[1785] See *Switzerland* – CEACR, direct request, 2006 (Public Contracts Act, 1994).

[1786] *Switzerland* – CEACR, direct request, 2009.

[1787] For example, in *Belgium*: Act on gender mainstreaming in all federal policies, Royal Order of 26 January 2010; *Canada*: Federal Contractors Program; *South Africa*: Preferential Procurement Policy Framework Act, 2000; *United Kingdom* – CEACR, direct request, 2004. See also, as referred to in its report under art. 19 of the ILO Constitution, United States: Executive Order 11246 prohibits federal contractors and subcontractors from discriminating in employment decisions on the basis of race, colour, religion, sex or national origin, including with respect to rates of pay, and requires them to take affirmative action to ensure that equal opportunity is provided in all aspects of employment.

[1788] *Canada (Quebec)* – CEACR, observation, 2011; *Denmark* – CEACR, direct request, 2010; *Finland* – CEACR, observation, 2007; *Luxembourg* – CEACR, direct request, 2008; *South Africa* – CEACR, direct request, 2010; *Spain* – CEACR, direct request, 2011; *Sweden* – CEACR, direct request, 2010; *United Kingdom* – CEACR, direct request, 2011; and *United Republic of Tanzania* – CEACR, direct requests, 2006 and 2011.

[1789] *Finland* – CEACR, observation, 2007.

employment equity with respect to remuneration and benefits and regarding affirmative action measures adopted to address them. [1790]

Sweden – Wage mapping

Discrimination Act, 2008

Chapter 3. Active measures

2. ... Work is to be regarded as of equal value to other work if, on an overall assessment of the requirements and nature of the work, it can be deemed to be equal in value to the other work. The assessment of the requirements of the work is to take into account criteria such as knowledge and skills, responsibility and effort. In assessing the nature of the work, particular account is to be taken of working conditions.

...

10. In order to discover, remedy and prevent unfair gender differences in pay and other terms of employment, every three years the employer is to survey and analyse:

– provisions and practices regarding pay and other terms of employment that are used at the employer's establishment; and
– pay differences between women and men performing work that is to be regarded as equal or of equal value.

The employer is to assess whether existing pay differences are directly or indirectly associated with sex. The assessment is to refer in particular to differences between:

– women and men performing work that is to be regarded as equal; and
– groups of employees performing work that is or is generally considered to be dominated by women, and groups of employees performing work that is to be regarded as of equal value to such work but is not or is not generally considered to be dominated by women.

11. Every three years employers are to draw up an action plan for equal pay in which they report the results of the survey and analysis described in section 10. The plan is to indicate the pay adjustments and other measures that need to be taken to bring about equal pay for work that is to be regarded as equal or of equal value. The plan is to contain a cost estimate and a time plan based on the goal of implementing the necessary pay adjustments as soon as possible and within three years at the latest.

A report on and evaluation of how the planned measures were implemented is to be included in the next action plan.

...

12. Employers are to provide employees' organizations with respect to which they are bound by a collective agreement with the information needed for the organizations to be able to cooperate in the survey, analysis and drawing up of an action plan for equal pay.

724. There are also legislation and collective agreements requiring information and action on equal remuneration with respect to collective agreements. In *Luxembourg*, for example, there is a statutory obligation to negotiate equality plans with regard to employment and remuneration in the framework of collective agreements. [1791] In *Spain*, the legislation establishes the obligation to provide information, whenever a new collective agreement is signed, on the pay structure and measures adopted to promote equality with respect to wages. [1792] A national collective agreement in *Iceland* provides

[1790] *South Africa* – CEACR, direct request, 2010. See also *Austria*: Equal Treatment for Men and Women Act, as amended in 2010, which also requires annual income reports, which are submitted to the works councils.

[1791] *Luxembourg* – CEACR, direct request, 2008 (Labour Code of 2006).

[1792] *Spain* – CEACR, direct request, 2011 (Royal Decree No. 713/2010 of 28 May 2010).

for a statistical survey of inequalities between men and women in relation to remuneration. [1793]

Equality and equal pay bodies

725. Bodies established to address pay equity specifically or in the context of equality more generally can have a central role in the promotion and securing of equal remuneration for men and women for work of equal value. [1794] In *Argentina* for example, provincial tripartite commissions on equality of opportunity and treatment have been established and have developed a strategy with the gender wage gap as a priority theme, relying on conceptual, evidence-based and statistical material. [1795] In *Canada*, a joint advisory committee with employer and worker representation has been established in Quebec to advise the Equal Pay Commission regarding making regulations, developing tools to facilitate the achievement or maintenance of pay equity, and addressing any problems in carrying out the Pay Equity Act. [1796] The Equality and Human Rights Commission of the *United Kingdom* has published guidance material and equal pay audit kits. [1797]

Tools and guides

726. A range of other practical tools, guides and guidelines have been developed to assist workers and employers and their organizations in implementing equal remuneration for men and women for work of equal value, which the Committee considers to have been important in the application of the Convention in practice. [1798] For example in *Germany*, the "Logib-D", an equal pay self-assessment tool for enterprises, has been developed; guidelines on the implementation of the principle of equal remuneration for work of equal value have also been published, which set out the relevant legal provisions, and provide practical recommendations for the parties to collective bargaining, works councils and workers and employers. [1799] Guidelines entitled "Gender equality in your company: The recipes for success" were published in *Estonia* in order to help employers implement gender equality policies in enterprises, in particular regarding equal remuneration and job evaluation. [1800] The guidelines on Equal Employment Opportunities in *Indonesia* give detailed guidance on how to implement the principle of equal remuneration for men and women for work of equal value. [1801] The Tripartite Alliance for Fair Employment Practices in *Singapore* has issued guidelines, including on paying employees wages commensurate with the value of the job, irrespective of age, gender, race, religion and family status. [1802] In *Japan*, consultations

[1793] *Iceland* – CEACR, direct request, 2011.

[1794] Regarding specialized bodies, see paras 877–882 below.

[1795] *Argentina* – CEACR, direct request, 2009.

[1796] *Canada* – CEACR, observation, 2011. See also *Canada* – CEACR, direct request, 2009: a number of labour–management pay equity committees have been established, the mandates of which include recommending a job evaluation tool and methodology, conducting job analysis, and making recommendations.

[1797] *United Kingdom* – CEACR, direct request, 2011.

[1798] A number of tools are related specifically to job evaluation methods: see paras 708–709 above.

[1799] *Germany* – CEACR, direct requests, 2011 and 2008. The Ministry of Equality of Opportunities of *Luxembourg* also makes software available to enterprises to identify wage inequalities (report under art. 19 of the Constitution).

[1800] *Estonia* – CEACR, direct request, 2011.

[1801] *Indonesia* – CEACR, observation, 2007.

[1802] *Singapore* – CEACR, direct request, 2010.

on "Guidelines for Eliminating Differences in Wages Between Males and Females" were recently undertaken between representatives of the Government, employers and workers in the context of the Equal Employment Opportunity Subcommittee. [1803]

Incentives

727. Incentives to promote the voluntary implementation of the principle of the Convention can take many forms. Some examples include providing grants, certifying employers, providing awards or equality labels linked to equal remuneration for work of equal value. In *Spain*, government grants have been awarded to small and medium-sized enterprises for use in the formulation and implementation of equality plans; a "badge for equality" has also been introduced which recognizes measures for achieving equality adopted by enterprises, taking into account factors such as the adoption of an equality plan, sex disaggregated pay data, and the application of systems and criteria relating to occupational classification and pay. [1804] Certification systems or equality labels for "equality employers" have been established recently in *Argentina*, *Belgium*, *France*, *Mexico* and *Spain*, and specifically for wage equality or equal pay in *Iceland* and *Switzerland*. [1805]

Awareness raising and public information

728. Awareness-raising activities on labour rights in general and on gender equality or the rights of women workers are increasingly being carried out by the public authorities, social partners, non-governmental organizations and women's associations in many countries, targeting workers, employers and their organizations, and the general public. [1806] While the specific issue of equal remuneration between men and women appears to be more rarely addressed in this context, there have been some significant initiatives aimed at promoting the principle of the Convention. For instance, in the *Dominican Republic*, the Secretariat of State for Labour implements ad hoc programmes for employers and workers to raise awareness of equality of remuneration that has to be achieved in the world of work. These programmes include radio and television publicity campaigns, brochures, posters and targeted workshops organized jointly by the Department for Gender Equity and the Directorate of Industrial Relations. [1807]

Collective agreements

729. Examining collective agreements from the perspective of equal remuneration for work of equal value can be a useful first step towards addressing the issue through the collective bargaining process. In *Cyprus*, employers' and workers' organizations were invited to examine the compliance of the provisions of collective agreements with the equal pay legislation. [1808] In *Singapore*, the tripartite partners have recommended the

[1803] *Japan*, report under art. 19 of the Constitution.

[1804] *Spain* – CEACR, direct request, 2011. See also *Iceland*: The Ministry of Equality of Opportunities offers financial support to enterprises engaged in an analysis of recruitment, working conditions, training and job evaluation (report under art. 19 of the Constitution).

[1805] *Argentina* – CEACR, direct request, 2011; *Belgium* – CEACR, direct request, 2011; *France* – CEACR, direct requests, 2008 and 2011; *Iceland* – CEACR, direct request, 2011; *Mexico* – CEACR, direct request, 2011; *Spain* – CEACR, direct request, 2011; and *Switzerland* – CEACR, direct request, 2008.

[1806] See, for example, *Burundi* – CEACR, direct request, 2011; and *Gabon* – CEACR, direct request, 2010.

[1807] *Dominican Republic* – CEACR, direct request, 2011. See also, *Afghanistan* – CEACR, observation, 2011; *Dominica* – CEACR, direct request, 2010; *Netherlands* – CEACR, direct request, 2006; *Spain*, direct request 2007; and *United Kingdom* – CEACR, direct request, 2007.

[1808] *Cyprus* – CEACR, direct request, 2011.

inclusion of an equal pay clause in collective agreements, and this is promoted through the website of the Industrial Arbitration Court, which also proposes a model clause. [1809] In *Uruguay*, the Tripartite Commission on Equality of Opportunity and Treatment in Employment unanimously decided to include an equality clause in the wage board round. Under this clause, which is included in collective agreements, the parties agree to promote compliance with Conventions Nos 100 and 111, the Maternity Protection Convention (Revised), 1952 (No. 103), and Convention No. 156, and the MERCOSUR Social and Labour Declaration. [1810] A union initiative in *Denmark* with respect to the design of an Equal Pay Strategy contains a range of measures including with respect to addressing equal pay through collective agreements. [1811]

730. Recalling the need for effective measures in order to accomplish real progress in attaining equal remuneration for men and women for work of equal value, the Committee encourages governments, in cooperation with the social partners, to promote and ensure the principle of the Convention through a range of proactive measures, adapted to the national context.

[1809] *Singapore* – CEACR, direct request, 2008.

[1810] *Uruguay* – CEACR, observation, 2010.

[1811] *Denmark* – CEACR, direct request, 2011.

Chapter 3

Equality of opportunity and treatment in employment and occupation (Convention No. 111)

Introduction

731. Discrimination in employment and occupation is a universal phenomenon and is constantly evolving. Some manifestations of discrimination have acquired more subtle and less visible forms. New forms of discrimination are arising, and others which may be long standing, have only recently been acknowledged. Effectively responding to the complex realities and varieties of ways in which discrimination occurs thus requires the adoption of a range of measures. ***As a first step, it is essential to acknowledge that no society is free from discrimination and that continuous action is required to address it.***

732. The principal objective of Convention No. 111 is to eliminate all discrimination, as defined in the Convention, in respect of all aspects of employment and occupation, through the concrete and progressive development of equality of opportunity and treatment in law and in practice. With a view to achieving the elimination of discrimination in employment and occupation, States are required to develop and implement a multi-faceted national equality policy. ***The implementation of the national equality policy presupposes the adoption of a range of specific and concrete measures, including in most cases the need for a clear and comprehensive legislative framework, and ensuring that the right to equality and non-discrimination is effective in practice. Proactive measures are required to address the underlying causes of discrimination and de facto inequalities resulting from deeply entrenched discrimination.***

Scope of the Convention and methods of application

Scope of application

733. The purpose of Convention No. 111 is to protect all persons against discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction and social origin, with the possibility of extending its protection to discrimination on the basis of other grounds. No provision in the Convention limits its scope as regards individuals or branches of activity. During the discussions of the instrument, a proposal to delete the term "occupation" so as to exclude "independent employment" from its scope was rejected twice based on the explanations provided by the Office that it would hardly seem right for a Convention "not to give to workers wishing to be self-employed any protection against laws, regulations or

practices arbitrarily preventing them from doing so". [1812] Convention No. 111 thus applies to all workers, both nationals and non-nationals, in all sectors of activity, in the public and the private sectors, and in the formal and informal economy.

Methods of application

734. The primary obligation of States that have ratified Convention No. 111 is to declare and pursue a national equality policy, "by methods appropriate to national conditions and practice" *(Article 2)*. The Convention thus leaves considerable flexibility to each country regarding the adoption of the most appropriate methods from the point of view of their nature and timing. [1813] However, the objectives to be pursued cannot be compromised. The State cannot remain passive and implementation is measured by the effectiveness of the national policy and the results achieved. [1814]

735. *Article 3* sets out some of the means of action to be covered by the national policy, including the enactment of legislation and the promotion of such educational programmes as may be calculated to secure the acceptance and observance of the national policy *(Article 3(b))*. Recommendation No. 111 also provides for the formulation and application of a national policy for the prevention of discrimination "by means of legislative measures, collective agreements […], or in any other manner consistent with national conditions and practice". [1815] Convention No. 111 leaves it to each country to decide which legislative measures are appropriate to implement the national policy. Nonetheless, while the Convention does not impose a strict obligation to legislate in all of the areas covered, it does require the State to review whether legislation is needed to secure the acceptance and observance of the policy. The necessity of legislative measures to give effect to the Convention must thus be assessed within the framework of the national policy as a whole, having regard in particular to the other types of measures which may have been taken, and to the effectiveness of the overall action pursued, including whether there are adequate and effective means of redress and remedies. [1816] The enactment of constitutional or legislative provisions or regulations continues to be one of the most widely used means to give effect to the principles of the Convention. [1817]

736. In previous surveys, the Committee underlined the importance of collective agreements in applying the national policy on equality, [1818] and in this context the outcome of cooperation with workers' and employers' organizations is evident. Recommendation No. 111 states that the parties to collective bargaining should ensure "that collective agreements contain no provisions of a discriminatory character in respect

[1812] *Record of Proceedings*, ILC, 40th Session, Geneva, 1957, Appendix X, p. 743, paras 17–19; *Record of Proceedings*, ILC, 42nd Session, Geneva, 1958, Appendix VI, p. 711, paras 15 and 16; and *Discrimination in the field of employment and occupation*, Report IV(1), ILC, 42nd Session, Geneva, 1958, Appendix.

[1813] General Survey, 1988, para. 160.

[1814] See ibid., para. 157, where the Committee stated that the "criterion for application of the Convention should be whether unequivocal results are achieved in pursuing equality of opportunity and treatment in employment and occupation ...".

[1815] See Recommendation No. 111, *Para. 2*.

[1816] *Discrimination (Employment and Occupation)*, General Conclusions on the reports relating to Convention No. 111 and Recommendation No. 111 concerning Discrimination in respect of Employment and Occupation, 1958, Part Three of the Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 47th Session, Geneva, 1963, para. 76; General Survey, 1988, para. 171.

[1817] See paras 850–855.

[1818] See, for example, General Survey, 1988, paras 189–191.

of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment". [1819] Some collective agreements have non-discrimination clauses or provide specifically for equality with respect to certain grounds referred to in the Convention. [1820] In *Argentina*, the General Collective Labour Agreement for the Central Public Administration includes provisions regarding the parties' agreement to eliminate any measure or practice which produces discriminatory treatment or inequality between workers based on a wide range of grounds, in access to employment and during the employment relationship. [1821]

737. In some countries, legislation may expressly require collective agreements to promote equality of opportunity and treatment. For example, in *Luxembourg*, the Labour Code provides that collective agreements must include provisions incorporating the results of negotiations concerning measures to apply the principle of equality between women and men in undertakings or enterprises to which the agreement applies. [1822] Under the Law on Ensuring Equal Rights and Equal Opportunities of Women and Men in *Ukraine*, collective agreements and contracts should contain provisions promoting gender equality and time lines for the implementation of such provisions. [1823] In a number of countries, legislation may also interact with collective agreements in stipulating that discriminatory provisions in collective agreements are null and void, [1824] or making it possible to extend the effects of a collective agreement, including its equality provisions, to other employers and workers. Nonetheless, considering the scarce information provided on the application of the national equality policy through collective agreements, the Committee encourages governments to seek actively cooperation with workers' and employers' organizations with a view to providing this information on a more regular basis in their reports under article 22 of the Constitution.

Difficulties in application

738. Like Convention No. 100, difficulties relating to the scope of application of Convention No. 111 often relate to the exclusion of certain groups from the scope of labour law and employment law, including provisions on equality and non-discrimination. From a review of the existing legislation, the Committee observes that the categories of workers and types of occupations or branches of activities most frequently excluded from the protection from discrimination on the grounds set out in Convention No. 111 are public servants, [1825] domestic workers, [1826] certain agricultural

[1819] *Para. 2(e).*

[1820] See, for example, *Democratic Republic of the Congo* – CEACR, direct request, 2007: the National Inter-occupational Collective Labour Agreement provides that women shall enjoy the same rights at work as men in accordance with the legal provisions and regulations.

[1821] *Argentina* – CEACR, observation, 2009. See also New Zealand – CEACR, direct requests, 2007, 2009 and 2012 regarding the monitoring of equal employment opportunities (EEO) provisions in collective agreements.

[1822] *Luxembourg* – CEACR, observation, 2008.

[1823] *Ukraine* – CEACR, observation, 2011; see also *United Republic of Tanzania* – CEACR, observation, 2009: the Employment and Labour Relations (Code of Good Practice) Rules, 2007, provide that collective agreements shall not contain provisions which discriminate against employees on any of the prohibited grounds in the Employment and Labour Relations Act, 2004.

[1824] See, for example, *Cyprus* – CEACR, observation, 2007. See also para. 662 above.

[1825] See, for example, *Antigua and Barbuda* – CEACR, direct request, 2010; *Benin* – CEACR, direct request, 2011; *Cambodia*, direct request, 2011; and *Turkey* – CEACR, direct request, 2008. In its report under art. 19 of the Constitution, the Government of Thailand indicates that the Labour Protection Act 1998 excludes public sector employees (section 4).

workers, [1827] casual workers, [1828] self-employed workers, [1829] informal economy workers and non-citizens. [1830] Other categories of workers often excluded from the scope of general labour legislation include members of the judiciary, the armed forces, the police force, and sometimes more generally "any worker governed by specific laws or regulations". [1831] Labour laws are also generally limited to wage-earning employment, which accounts, in many countries, only for a limited proportion of the active population.

739. Excluding certain categories or sectors from the scope of general labour law may adversely affect primarily workers of a particular sex or ethnic origin. The Committee has observed that in a number of countries women are concentrated in the agricultural sector or in domestic work, and are highly represented among casual or informal economy workers. In countries where migrant workers constitute an important proportion of the seasonal workers in the agricultural sector or among domestic workers, the exclusions of these categories could constitute indirect discrimination. The application of Convention No. 111 in both law and practice remains a challenge in the informal economy. In a number of countries, concerns have been raised regarding the concentration of women in the informal economy and the difficulties encountered by them in securing formal employment. [1832] In others, women in the informal economy face disadvantages and obstacles relating to access to credit, family obligations and over-qualification for their work, or face sexual harassment. [1833] Difficulties have also been noted regarding the situation of the Roma and of foreign women working in the informal economy in securing the right to enter the labour market. [1834]

740. Where there is a large informal economy, the Committee has considered that more specific information, including statistics disaggregated by sex, is required on the employment situation of informal economy workers or on specific measures taken to promote their access to training and employment opportunities, [1835] including measures enabling women to move from the informal to the formal economy. [1836] The full

[1826] See, for example, *Bangladesh* – CEACR, observation, 2011; *Egypt* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2011; *Ireland* – CEACR, observation, 2009; *Kuwait* – CEACR, observation, 2011; and *Morocco* – CEACR, direct request, 2009.

[1827] See, for example, *Syrian Arab Republic* – CEACR, direct request, 2011; and *Yemen* – CEACR, direct request, 2011. See also *Saudi Arabia* – CEACR, observation, 2009, where the Committee noted that the Labour Law of 1969 also excludes "incidental, seasonal and temporary workers"; *Syrian Arab Republic* and *Saudi Arabia* also exclude part-time workers from the scope of their labour law.

[1828] See, for example, *Angola* – CEACR, direct request, 2008; and *Syrian Arab Republic* – CEACR, direct request, 2011.

[1829] See, for example, *Kenya* – CEACR, observation, 2010; *Malawi* – CEACR, direct request, 2006; and *Zimbabwe* – CEACR, direct request, 2007.

[1830] See, for example, *Sri Lanka* – CEACR, observation, 2010; and *Swaziland* – CEACR, direct request, 2010.

[1831] See, for example, *Burkina Faso* – CEACR, direct request, 2011; *Côte d'Ivoire* – CEACR, direct request, 2011; *Fiji* – CEACR, direct request, 2008 and the Conference Committee on the Application of Standards, conclusions, Convention No. 111, 2011; and *Bolivarian Republic of Venezuela* – CEACR, observation, 2010.

[1832] See, for example, *Mali* – CEACR, direct requests, 2009 and 2011; *Morocco* – CEACR, observation, 2007; *Niger* – CEACR, direct request, 2010; and *Sri Lanka* – CEACR, observation, 2009.

[1833] See, for example, *Mali* – CEACR, direct request, 2009; and *Mongolia* – CEACR, direct request, 2010.

[1834] See, for example, *Serbia* – CEACR, direct request, 2010 (Roma); and *Spain* – CEACR, observation, 2009 (foreign women).

[1835] See, for example, *Angola* – CEACR, observation, 2011, and direct request 2008; *Albania* – CEACR, observation, 2011; *Botswana* – CEACR, observation, 2010; *Brazil* – CEACR, observation, 2004; *Fiji* – CEACR, direct request, 2008; *Honduras* – CEACR, direct request, 2010; and *Indonesia* – CEACR, direct request, 2011.

[1836] See, for example, *Pakistan* – CEACR, observation and direct request, 2010.

application of the principle of equality in employment and occupation to workers in the informal economy will require significant efforts.

741. Convention No. 111 clearly emphasizes the application of the national equality policy in respect of employment under the direct control of the national authority. In many countries provisions on discrimination or equality in the labour law, or dedicated laws on equality, specifically cover the public sector or do not exclude it. Nonetheless, there may still be exclusions of certain groups of workers in the public service, such as those in state or local authorities, or of public servants in general. Laws and regulations covering the public service may not include specific provisions prohibiting discrimination, or may provide protection only with respect to some grounds or regarding some aspects of employment. [1837] Limitations on access based on political affiliation, restrictions on women's employment, as well as occupational segregation, with few women in high level posts in the public service, [1838] and limited access of some minority groups to public service jobs, have been obstacles to implementation of the Convention in some countries. [1839]

742. Where certain categories of workers are excluded from general labour or employment law, it needs to be determined whether special laws or regulations apply to such groups, and whether they provide the same level of rights and protection as the general provisions. [1840] In some cases, protection is provided only in respect of certain grounds or certain aspects of employment. [1841] In the absence of specific laws or regulations, some of the above groups may enjoy protection under dedicated equality or anti-discrimination laws. [1842] However, even in the case of specific equality or non-discrimination legislation covering employment and occupation, the Committee has found that certain categories of workers are excluded from its scope of application, [1843] or that the scope is limited in relation to the size of the enterprise. [1844] ***In the absence of***

[1837] See, for example, *Afghanistan* – CEACR, observation, 2011; *Armenia* – CEACR, direct request, 2010; and *Guinea* – CEACR, observation, 2010.

[1838] For example, *Chile* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, observation, 2009; *El Salvador* – CEACR, observation, 2009; *France (New Caledonia)* – CEACR, direct request, 2011; *Lithuania* – CEACR, observation, 2010; *Paraguay* – CEACR, direct request, 2009; and *Philippines* – CEACR, observation, 2011.

[1839] For example, *France* – CEACR, observation, 2011; *Latvia* – CEACR, observation, 2009; and *New Zealand* – CEACR, direct request, 2010.

[1840] See, for example, *Eritrea* – CEACR, direct request, 2011 (civil servants, domestic workers); *Jordan* – CEACR, direct request, 2011 (agricultural workers, domestic workers, gardeners, cooks); *Morocco* – CEACR, direct request, 2009 (domestic workers), where the Committee has been requesting the Government to ensure that new or draft legislation provides for effective protection.

[1841] See, for example, *Afghanistan* – CEACR, observation, 2011, where the Committee noted that the new Civil Servants Law, 2008, does not cover all the grounds of discrimination and only appears to provide protection against discrimination in respect of recruitment.

[1842] See, for example, *Iceland*, Act on Equal Status and Equal Rights of Women and Men of 2008; *Malta*, Equal Treatment in Employment Regulations of 2004; *Norway*, Gender Equality Act and Anti-Discrimination Act of 2005.

[1843] See, for example, *Ireland* – CEACR, observation, 2010, where the Committee considered that the exemption contained in section 2 of the Employment Equality Act deprives certain domestic workers from protection against discrimination in respect of access to employment.

[1844] In its report under art. 19 of the Constitution, the United States indicates that Title VII of the Civil Rights Act of 1964, prohibiting employment discrimination based on race, colour, religion, sex, and national origin (section 703), only applies to employers engaged in an industry affecting commerce which have 15 or more employees for each working day in each of 20 or more calendar weeks (section 701); see also *Republic of Korea*: the Enforcement Decree of the Equal Employment Act of 1987.

a clear legislative framework supporting equality and non-discrimination, it needs to be shown how such rights are ensured for the above groups in practice. Despite some progress, from the information available, the Committee has found that many of the above categories of workers are largely left unprotected against discrimination, in law or in practice, [1845] ***and recalls the obligation of governments to ensure and promote the application of the principles of the Convention to all workers.***

Thematic issues

Defining discrimination

743. ***Clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur.*** *Article 1(1)(a)* of the Convention defines discrimination as "any distinction, exclusion or preference made on the basis of [certain grounds], which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". Through this broad definition, the Convention covers all discrimination that may affect equality of opportunity and treatment. Any discrimination – in law or in practice, direct or indirect – falls within the scope of the Convention.

Direct and indirect discrimination

744. Direct discrimination occurs when less favourable treatment is explicitly or implicitly based on one or more prohibited grounds. It includes sexual harassment [1846] and other forms of harassment. It is encouraging that legislation in a growing number of countries including *Canada* (Quebec) [1847] and the *United Kingdom* [1848] expressly prohibits and defines "harassment" in respect of any of the prohibited grounds of discrimination, as a form of direct discrimination. "Harassment" in the context of discrimination in employment and occupation has also been addressed through codes of good practice and action plans, for example in Latin America. [1849]

745. Indirect discrimination refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the

[1845] In some cases, the Committee has considered that further information was needed to demonstrate that migrant workers or domestic workers were effectively protected against discrimination in employment and occupation: *Jordan* – CEACR, direct request, 2011; and *Republic of Korea* – CEACR, observation, 2008. See also, for example, *Côte d'Ivoire* – CEACR, direct request, 2010, regarding the lack of protection of public servants and workers without employment contracts.

[1846] See paras 789–794 below.

[1847] Act respecting Labour Standards 2004 (section 81.18).

[1848] Equality Act, 2010 (section 26). The majority of European Union Member States and candidate countries have adopted definitions of harassment similar to those included in Articles 2(3) of the European Council Directive 2000/43/EC (The Race Directive) and the European Council Directive 2000/78/EC (the Framework Directive), and Article 2(1)(c) of the European Council Directive 2006/54/EC (The Recast Directive). Under these EC Directives, harassment is considered to be discrimination when unwanted conduct related to the sex of a person (or racial or ethnic origin, religion or belief, disability, age or sexual orientation) takes place with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

[1849] See *Chile* – CEACR, direct request, 2009; and *Costa Rica* – CEACR, direct request, 2009.

inherent requirements of the job. [1850] In referring to the "effect" of a distinction, exclusion or preference, it is clear that intention to discriminate is not an element of the definition in the Convention, which covers all discrimination irrespective of the intention of the author of a discriminatory act. The Convention also covers situations in which inequality is observed in the absence of a clearly identifiable author, as in some cases of indirect discrimination or occupational segregation based on sex. Challenges related to structural discrimination therefore need to be addressed under the Convention. [1851]

746. While progress has been made in many countries in defining direct discrimination in national legislation, the concept of indirect discrimination does not appear to be well understood and recognized in some regions and some countries. Legal provisions do not always cover the concept of indirect discrimination, or are ambiguous in this regard. [1852] The concept of indirect discrimination is however imperative to identify and address situations in which certain treatment is extended equally to everybody, but leads to discriminatory results for one particular group protected by the Convention, such as women, ethnic and religious groups, or persons of a certain social origin. [1853] Such discrimination is subtle and less visible, making it even more important to ensure there is a clear framework for addressing it, and proactive measures are required to eliminate it. [1854] In some cases, national courts have been guided by the Convention in determining the meaning of indirect discrimination. [1855] In others, where a legal definition of indirect discrimination is absent or unclear, the Committee has asked governments to indicate how protection of workers against such discrimination is being ensured, including by the courts. [1856] When no information is available on relevant judicial decisions in this regard, the Committee has asked governments to consider amending the legislation to provide for an explicit prohibition of indirect discrimination and to include provisions aimed at eliminating such discrimination.

747. The Committee welcomes the recent initiatives explicitly prohibiting and defining direct and indirect discrimination in national legislation. Considerable progress has been made including in *Austria*, *Belgium*, *Bulgaria*, *Cyprus*, *Czech Republic*, *Denmark*, *Estonia*, *Finland*, *France*, *Germany*, *Greece*, *Hungary*, *Italy*, *Latvia*, *Luxembourg*, *Malta*, *Poland*, *Portugal*, *Romania*, *Slovakia*, *Slovenia*, *Sweden* and *United Kingdom* in light of the relevant European Council Directives on equality. [1857] Other countries which have

[1850] Special Survey, 1996, para. 26.

[1851] Under the Convention, the national policy also needs to address discriminatory practices and inequalities that are the result of complex social patterns, institutional structures, policies and legal constructs. See *Time for equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 96th Session, Geneva, 2007, para. 31. See also *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Zambia* – CEACR, direct request, 2011.

[1852] See, for example, *China* – CEACR, direct request, 2010; and *Uganda* – CEACR, direct request, 2011.

[1853] The exclusion of employment categories or sectors in which women predominate from minimum wages or from the labour law more generally could constitute indirect discrimination against women: see paras 684, 739 and 796. Common height and athletic requirements are also likely to constitute indirect discrimination against women: see para. 788 below.

[1854] See para. 856 below.

[1855] The Federal Court of Australia in *Commonwealth of Australia* v. *Human Rights & Equal Opportunity Commission*, ruling in a case relating to age discrimination with respect to promotion, used Convention No. 111 and related comments of the ILO supervisory bodies as a guide to determine that indirect discrimination was covered by the term "discrimination" in section 3(1) of the Human Rights and Equality of Opportunity Law, 1986 (15 December 2000 [2000] FCA 1854, paras 29, 30, 35–45).

[1856] See, for example, *Turkmenistan* – CEACR, direct request, 2011.

[1857] See Art. 2(2)(a) and (b) of Directive 2000/43/EC, Art. 2(2)(a) and (b) of Directive 2000/78/EC and Art. 2(1)(a) and (b) of Directive 2006/54/EC.

defined both direct and indirect discrimination include *Fiji*, *Iceland*, *Kenya*, *Namibia*, *Norway* and *The former Yugoslav Republic of Macedonia*.

Multiple discrimination

748. ***The Committee has consistently emphasized the need to take into consideration and address the effects of multiple discrimination. Practice has shown that in the context of employment and occupation, some grounds of discrimination are not necessarily revealed by distinctive external features, and many individuals may be subject to discrimination based on more than one ground.*** Sex-based discrimination frequently interacts with other forms of discrimination or inequality based on race, national extraction, social origin or religion, or even age, migrant status, disability or health. Addressing multiple discrimination, including through legislation, remains a challenge. Legal approaches requiring each prohibited ground to be addressed separately and independently may prove to be inadequate to capture the manner in which individuals experience discrimination on multiple grounds. While many laws define discrimination with respect to a multitude of grounds, few offer the possibility of filing complaints of discrimination on combined grounds. Only a few countries have attempted to address the concept of multiple discrimination in legislation, including in *Croatia*, where the Anti-Discrimination Act refers to "more serious forms of discrimination" including multiple discrimination, which it defines. It also provides that such elements should be taken into account by the courts when determining the compensation for the victim and the fine to be imposed. [1858] Under the legislation of some countries, public authorities have a positive duty to address multiple discrimination. [1859]

Aspects of employment and occupation covered by the Convention

749. The principle of equality of opportunity and treatment should apply to all aspects of employment and occupation. Under *Article 1(3)* of the Convention "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. The Committee draws attention to its previous surveys of 1988 and 1996 which address in detail the various areas covered by the Convention. [1860] In the present Survey, the Committee will therefore focus on some key issues in this area and on recent developments.

Education, vocational guidance and training

750. Access to education and to a wide range of vocational training courses is of paramount importance for achieving equality in the labour market. It is a key factor in determining the actual possibilities of gaining access to a wide range of paid occupations and employment, especially those with opportunities for advancement and promotion. Not only do apprenticeships [1861] and technical education need to be addressed, but also general education, "on the job training" and the actual process of training. ***Providing***

[1858] *Croatia* – CEACR, observation, 2011: Section 6(1) defines multiple discrimination as "discrimination against certain persons on more than one of the grounds referred to in Article 1(1) of this Act". Similar definitions are found in the Act on Equal Opportunities of *Romania* (section 4) and the Protection against Discrimination Act of *Bulgaria* (section 11). The Equal Treatment Act (private sector) and Federal Equal Treatment Act (Federal Public Sector) of *Austria* also take into account multiple discrimination when determining compensation.

[1859] In addition to *Bulgaria*, see also *Spain*, section 14.6 of Law 3/2007 on Effective Equality between Men and Women.

[1860] General Survey, 1988, paras 76–123; Special Survey, 1996, paras 65–116.

[1861] See, for example, *Dominican Republic* – CEACR, direct request, 2009; *New Zealand* – CEACR, observation, 2010.

vocational guidance and taking active measures to promote access to education and training, free from considerations based on stereotypes or prejudices, is essential in broadening the range of occupations from which men and women are able to choose. [1862]

751. Due consideration should be given to the particular needs of certain population groups. If parts of the population are prevented from attaining the same level of education as others, these differences will impact on future employment opportunities. Accordingly, universal education, compulsory and free of charge to the same level for all, should be one of the fundamental elements of a policy of equality of opportunity and treatment in employment and occupation. [1863] In a number of countries, the Committee has considered that more proactive measures should be taken to facilitate and encourage the access of women and girls to more diversified vocational training, including courses leading to occupations in which men have traditionally been employed. [1864]

Access to employment and to particular occupations

752. The Convention covers access to wage-earning employment (including the public service) and to non-wage work. [1865] "Persons in employment" include "all persons above a specified age who were at work", and "work" includes "not only persons whose status is that of employee" but also persons whose status is that of "worker on own account", an "employer" or an "unpaid family worker". [1866] The term "occupation" is understood to mean the trade, profession or type of work performed by the individual, irrespective of the branch of economic activity to which he or she belongs or of his or her professional status. [1867] Traditional occupations, for example those pursued by indigenous peoples, such as subsistence farming, handicraft production or hunting, are also "occupations" within the meaning of the Convention.

753. The Convention expressly addresses gaining access to employment or to particular occupations, which includes equal access to, and equal treatment by, placement services (and other measures promoting employment), non-discrimination and equal opportunities in selection and recruitment processes, and equal access to particular occupations. The placement and consideration of candidates by public and private employment agencies without discrimination on the grounds set out in the Convention is essential, and the important role of the State in this context is expressly recognized in the 1958 instruments. [1868] Some steps have been noted to ensure equal access of certain

[1862] See, for example, *Bahamas* – CEACR, direct request, 2011; *Bahrain* – CEACR, direct request, 2010; *Lebanon* – CEACR, direct request, 2010; *Morocco* – CEACR, direct request, 2009; and *Nepal* – CEACR, direct request, 2009.

[1863] See, for example, *El Salvador* – CEACR, direct request, 2009; and *Namibia* – CEACR, direct request, 2010 (free education targeting San and Himba communities).

[1864] See *Afghanistan* – CEACR, observation, 2011; *Bahamas* – CEACR, direct request, 2011; *Bahrain* – CEACR, direct request, 2010; *Bangladesh* – CEACR, observation, 2011; *Cameroon* – CEACR, direct request, 2010; *Dominican Republic* – CEACR, direct request, 2009; *Egypt* – CEACR, direct request, 2011; *El Salvador* – CEACR, direct request, 2009; *Haiti* – CEACR, direct request, 2010; *Lebanon* – CEACR, direct request, 2010; *Madagascar* – CEACR, direct request, 2009; *Malta* – CEACR, direct request, 2011; *Morocco* – CEACR, direct request, 2009; *Nepal* – CEACR, direct request, 2009; and *Zambia* – CEACR, direct request, 2009.

[1865] Special Survey, 1996, para. 81.

[1866] ibid., para. 79.

[1867] ibid., para. 79; General Survey, 1988, para. 86.

[1868] Convention, *Art. 3(e)*; Recommendation No. 111, *Para. 3(b)*. With respect to the role of private employment agencies in promoting non-discrimination, the Committee draws attention to the Private Employment Agencies Convention, 1997 (No. 181), which requires member States to ensure that these agencies treat workers without

groups to placement services, or to have placement services address particular issues of discrimination. [1869]

754. The application of the principle of equality guarantees every person the right to have his or her application for a chosen job considered equitably, without discrimination based on any of the grounds of the Convention. The recruitment procedures are of considerable importance in the application of this right and only objective recruitment criteria should be used in the choice of the candidate. [1870] Discriminatory job advertisements remain a major concern, [1871] and some countries, for example the *Ukraine*, have tried to address this through the adoption of specific legal provisions prohibiting discriminatory job advertisements or seeking information on the private life of job applicants. [1872]

755. To address occupational segregation and improve equality of access to public service positions, a number of measures have been put in place, including for women in *Chile*, *Fiji*, *Ghana*, *Republic of Korea*, *Pakistan* and the *Philippines*; for indigenous peoples in *Australia*; for particular castes and tribes in *India*; and for certain minority groups in *Ethiopia* and *Israel*. [1873] These measures include targets, quotas, equal employment opportunity plans, improving and adapting relevant facilities, and improving the collection of statistical information. With respect to public companies, in *Norway* a requirement was introduced to ensure balanced representation of men and women on their boards, resulting in the achievement of a 40 per cent share of women on these boards from 7 per cent a year earlier. [1874]

756. Addressing non-wage work is essential as this category covers the majority of the active population in certain countries, principally in the rural sector, and covers various occupations and professions. Promoting and ensuring access to material goods and services required to carry out an occupation, such as access to land, credit and resources should therefore be part of the objectives of a national policy on equality. [1875] The Committee has noted progress in a number of countries where measures have been taken, sometimes through express attention in national equality plans, to improve access of

discrimination on the basis of the grounds set out in Convention No. 111, or any other form of discrimination covered by national law and practice, such as age or disability *(Art. 5(1))*.

[1869] See *Denmark* – CEACR, direct request, 2011; *Mexico* – CEACR, direct request, 2009; and *Montenegro* – CEACR, direct request, 2011.

[1870] Special Survey, 1996, para. 82.

[1871] See, for example, *Cambodia* – CEACR, direct request, 2011; *Georgia* – CEACR, observation, 2010; *Islamic Republic of Iran* – CEACR, observation, 2011; *Mexico* – CEACR, observation, 2006; *Mongolia* – CEACR, direct request, 2011; and *Qatar* – CEACR, observation, 2010.

[1872] *Ukraine* – CEACR, observation, 2009 (Law on ensuring equal rights and equal opportunities for women and men).

[1873] *Australia* – CEACR, observation, 2011; *Chile* – CEACR, direct request, 2011; *Ethiopia* – CEACR, observation, 2011; *Fiji* – CEACR, observation, 2011; *Ghana* – CEACR, direct request, 2010; *India* – CEACR, observation, 2010; *Israel* – CEACR, observation, 2009; *Republic of Korea* – CEACR, observation, 2009; *Pakistan* – CEACR, observation, 2011; and *Philippines* – CEACR, observation, 2011.

[1874] *Norway* – CEACR, direct request, 2011.

[1875] See, for example, *Benin* – CEACR, direct request, 2011; *Mongolia* – CEACR, direct request, 2011; and *Papua New Guinea* – CEACR, direct request, 2011.

certain ethnic or social groups, as well as of women, to self-employment (women's entrepreneurship), access to credit, land and other goods and services. [1876]

Terms and conditions of employment

757. The concept of "terms and conditions of employment" referred to in the Convention, is further elaborated in *Paragraph 2(b)(iii)–(vi)* of Recommendation No. 111 covering career advancement; job tenure; remuneration for work of equal value; conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment. For a system of career advancement to be free from discrimination, it must first eliminate vertical occupational segregation, which often affects women, as well as certain minority groups, who are often concentrated at the lower levels of certain enterprises, sectors or occupations. Emphasizing the need for unbroken service for advancement or promotion may have a particular impact on women in employment, particularly if interruptions caused by maternity or family responsibilities are not taken into account when calculating length of service. [1877]

758. With regard to security of tenure, dismissal must not take place on discriminatory grounds. [1878] The Committee has noted in a number of countries the need to strengthen protection against dismissal on the ground of pregnancy or absence for maternity leave. [1879]

759. The 1958 instruments extend the principle of equal remuneration for work of equal value, enshrined in Convention No. 100, to other grounds upon which discrimination is prohibited. Equal remuneration for work of equal value should therefore be a component of the national policy on equality of opportunity and treatment in employment and occupation. Legislation in some countries includes provisions expressly providing for equal remuneration for work of equal value with respect to grounds other than sex, [1880] or with respect to all workers without any distinction. [1881]

760. Under Convention No. 111, any discriminatory treatment regarding benefits or conditions of entitlement to social security, the application of statutory or occupational schemes, whether voluntary or compulsory, contributions and the calculation of benefits, should be eliminated. [1882] The Committee has been able to note in recent years the adoption of measures to bring part-time workers, domestic workers or informal economy workers into social security schemes, with the aim of providing greater coverage for women. For example in *India*, the Unorganized Sector Workers Social Security Act was adopted, with a view to facilitating the formulation of policies and programmes for

[1876] See, for example, *Dominica* – CEACR, direct request, 2010; *Gambia*, direct request, 2011; *India* – CEACR, observation, 2008; *Lesotho* – CEACR, direct request, 2011; *Morocco* – CEACR, observation, 2009; and *Nicaragua* – CEACR, direct request, 2008.

[1877] See, for example, *Jordan* – CEACR, observation, 2011.

[1878] This principle is also enshrined in the Termination of Employment Convention, 1982 (No. 158), *Art. 5(d)*.

[1879] See para. 784 below.

[1880] See, for example, *Chad*, Labour Code 1996; and *Malawi*, Employment Act 1999 (No. 6 of 2000).

[1881] See *Algeria*, Act No. 90-11 of 1990 concerning Labour Relations; and *Republic of Moldova*, Labour Code, March 2003.

[1882] Special Survey, 1996, para. 113. Most discriminatory law and practice in this respect relates to inequalities between men and women and is addressed below.

women who have been deprived of social security coverage. [1883] Differences in the statutory pensionable age between women and men can be discriminatory, particularly where the amount of the pension is linked to the length of contributory service, as different retirement ages will result in women receiving a lower pension than men. Earlier retirement ages for women exert a negative impact and can also have a detrimental impact on women's career paths and access to higher-level positions. [1884] Other measures that have been found to be incompatible with the principle of equality of opportunity and treatment of men and women include voluntary retirement schemes aimed at the retirement of women only, and preferential treatment for employment given to sons of early retirees. [1885]

Grounds of discrimination: An evolving area

761. ***In 1958, Convention No. 111 was adopted enumerating seven grounds of discrimination, namely race, colour, sex, religion, political opinion, national extraction and social origin. Those grounds remain as relevant today as they were at the time. It was also foreseen when the Convention was adopted that new manifestations of discrimination would arise or be recognized, which has indeed been the case. The Convention covers those distinctions, exclusions or preferences in employment and occupation that are based on the grounds expressly referred to in Article 1(1)(a) and on any additional grounds determined in accordance with Article 1(1)(b), which should be the focus of a national policy on equality. Additional grounds of discrimination under Article 1(1)(b) have been determined by a number of member States.***

Grounds of discrimination under Article 1(1)(a)

Race, colour and national extraction

762. In the context of the Convention, discrimination on the basis of race and colour is generally examined together as colour is only one, albeit the most apparent, of the ethnic characteristics that differentiate human beings. [1886] Difference of colour, and also national extraction, are often linked to the ground of race in constitutional or legislative provisions adopted to prohibit discrimination. Under the Convention, the term "race" includes any discrimination against linguistic communities or minority groups whose identity is based on religious or cultural characteristics, or national or ethnic origin. [1887] In some countries, national laws with the specific objective of combating racial discrimination define "race" to include race, colour, descent, nationality, ethnic or national origin. [1888] However, the grounds of colour and race should not be considered to

[1883] *India* – CEACR, observation, 2010. See also *Algeria* – CEACR, observation, 2002 (part-time workers and home workers); *Argentina* – CEACR, observation, 2008 (domestic workers); and *Honduras* – CEACR, direct request, 2010 (female domestic workers). See also General Survey, 2011, paras 219–221.

[1884] See *Chile* – CEACR, direct request, 2011; *Lithuania* – CEACR, direct request, 2002; and *Viet Nam* – CEACR, direct request, 2005.

[1885] See, for example, *India* – CEACR, observation, 2007.

[1886] One of the most blatant examples of racial discrimination in recent history was the apartheid regime instituted in *South Africa*, which has since been eradicated. See General Survey, 1988, paras 7 and 239, and Special Survey, 1996, para. 162.

[1887] See, for example, *Georgia* – CEACR, direct requests 2009 and 2012; and *Latvia* – CEACR, observation, 2011 (regarding legislation indirectly discriminating against the Russian language minority group in the country); *Morocco* – CEACR, observations, 2009 and 2012 (Berber (Amazigh)).

[1888] See, for example, *United Kingdom*, the Equality Act of 2010, section 9. See also Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) "the term 'racial

be identical, as colour differences may exist between people of the same "race". [1889] Progress has been noted in *Bulgaria* and *Burkina Faso* due to the explicit inclusion of the previously omitted ground of colour in the labour legislation. [1890] The Committee has considered any discrimination against an ethnic group, including indigenous and tribal peoples, to be racial discrimination within the terms of the Convention. [1891]

763. Ensuring equal opportunities and treatment of ethnic minorities in employment and occupation is of fundamental importance. Ethnic origin or ethnicity, in addition to the grounds of race and colour, is increasingly being referred to in national constitutions, for example, in *Afghanistan*, *Burundi* and *Ecuador*; in labour laws, for example, in *China*, *Fiji* and *Italy*; in specific anti-discrimination or equality legislation, for example, in *Indonesia*, *Norway*, *Trinidad and Tobago*; or in penal laws, for example, in *Guatemala*.

764. When reviewing the application of the principles of the Convention in various countries, the Committee has in many cases examined the grounds of race, colour and national extraction together [1892] as distinctions between these grounds have become increasingly blurred, often due to multiple discrimination. The concept of national extraction covers distinctions made on the basis of a person's place of birth, ancestry or foreign origin. [1893] Discrimination based on national extraction may be directed against persons who are nationals of the country in question, but who have acquired their citizenship by naturalization or who are descendants of foreign immigrants, or persons belonging to groups of different national extraction living in the same State. [1894] Distinctions made between citizens of the same country on the basis of foreign birth or origin is one of the most evident examples. Discrimination based on national extraction also occurs when legislation imposing a State language for employment in public and private sector activities is interpreted and implemented too broadly, and as such disproportionately and adversely affects the employment and occupational opportunities of minority language groups. [1895] In some countries, national policy gives explicit preference to the employment of nationals. Such policies would be contrary to the principle of the Convention if leading in practice to discrimination based on national

discrimination' includes any distinction, exclusion, restriction or preference based on *race, colour, descent, or national or ethnic origin* …". The same definition is used in *Brazil*, Racial Equality Statute, Law No. 12.288 of 2010, section 1.

[1889] See *Kazakhstan* – CEACR, observation, 2010; *Mexico* – CEACR, observation, 2006; and *Viet Nam* – CEACR, direct request, 2005.

[1890] See *Bulgaria* – CEACR, observation, 2003; *Burkina Faso* – CEACR, observation, 2006.

[1891] See, for example, *Australia* – CEACR, observation, 2008, and observation and direct request, 2011; *Plurinational State of Bolivia* – CEACR, observation, 2010; *Burundi* – CEACR, observation, 2009; *Cambodia* – CEACR, direct request, 2011; *Colombia* – CEACR, observation, 2010; *Democratic Republic of the Congo* – CEACR, observation, 2011; *Philippines* – CEACR, direct request, 2011; *Sweden* – CEACR, direct request, 2011.

[1892] See, for example, *Bulgaria* – CEACR, direct request, 2010; *China (Macau Special Administrative Region)* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, observation, 2011; *France* – CEACR, observation, 2011; *Indonesia* – CEACR, observation, 2011; *Israel* – CEACR, observation, 2011; *Latvia* – CEACR, observation, 2011; *Morocco* – CEACR, observation, 2009.

[1893] *Record of Proceedings*, ILC, 42nd Session, Geneva, 1958, Appendix VI, p. 710, para. 11.

[1894] General Survey, 1988, para. 36; and Special Survey 1996, paras 33–34; see *Eritrea* – CEACR, direct request, 2011; *Bolivarian Republic of Venezuela* – CEACR, direct request, 2000. See also *Kuwait* – CEACR, observation, 2010, and direct requests, 2008–09 regarding the difficulties faced by stateless persons in employment and occupation on the basis of national extraction.

[1895] See *Latvia* – CEACR, observations, 2010 and 2011.

extraction, for example non-employment or dismissal of nationals of foreign origin or born abroad, who are treated or perceived as non-nationals. [1896]

765. ***The Committee considers that where labour market inequalities along ethnic lines exist, a national policy to promote equality of opportunity and treatment, as envisaged in Articles 2 and 3 of the Convention, should include measures to promote equality of opportunity and treatment of members of all ethnic groups with respect to access to vocational training and guidance, placement services, employment and particular occupations, and terms and conditions of employment.*** In order to achieve the objective of the Convention, it is necessary to address gaps in training and skills levels, as well as to examine and eliminate other difficulties and barriers that certain groups face in accessing and retaining employment in the various sectors and occupations. [1897]

People of African descent

766. The exclusion and poverty of people of African descent due to racism and racial discrimination was recalled at the Durban review meeting in 2009. [1898] In spite of progress, the challenges faced by people of African descent remain significant under the Convention and the Committee has observed continuing or increasing high unemployment rates, as well as low representation in top management positions and over-representation in low-skilled and informal jobs. The Committee welcomes initiatives such as the adoption of legislation, national plans and measures specifically addressing discrimination against people of African descent. In *Brazil*, for example, the Racial Equality Statute implementing effective equality for Afro descendants provides for affirmative action, vocational training and employment policies for the public and private sector, and the design of policies for their integration. In *Ecuador*, the National Development Plan (2007–10) contained a component aimed at combating historical disparities which hinder the human development of Afro-Ecuadorian persons. [1899] The Committee considers that addressing structural racial inequalities against people of African descent requires a combination of legislative efforts, affirmative action, awareness-raising campaigns and targeted measures aimed at their full participation in social and economic life.

Indigenous and tribal peoples

767. Historical processes have had a profound impact on the occupations and employment situation of indigenous and tribal peoples, leading to a diversity of situations which need to be taken into account when applying the principles of the

[1896] See, for example, *Congo* and *Gabon* – CEACR, direct requests of 2011, where the Committee requested the Government to provide information indicating that, or to take measures to ensure that, the "Gabonization policy" or the policy of "Congolization" or "Africanization" of jobs would not lead to discrimination based on national extraction (e.g. non-hiring of nationals of foreign origin who are believed to be non-nationals).

[1897] See, for example, *New Zealand* – CEACR, observation, 2006.

[1898] Outcome document of the Durban Review Conference, Geneva, 20–24 April 2009. The United Nations General Assembly proclaimed 2011 as the International Year for People of African Descent recognizing them as a distinct group whose human rights must be promoted and protected.

[1899] *Brazil*, Law No. 12.288 of 2010; and *Ecuador* – CEACR, observation, 2012. See also *Colombia* – CEACR, observation, 2012: 2010–14 Development Plan for the Black; Afro-Colombian Palenquera and Raizal Peoples entitled "Towards a multi-ethnic and pluri-cultural Colombia"; *Uruguay* – CEACR, direct request, 2012 regarding measures taken in the context of the programme to strengthen institutional mechanisms in favour of Afro-Uruguayan women.

Convention. [1900] The Committee has examined the situation of indigenous and tribal peoples in the context of the Convention in an increasing number of countries. [1901] Whether they are pastoralists, hunter-gatherers, forest dwellers, workers in the informal economy or formally employed, including in the public service, [1902] indigenous peoples continue to face high levels of discrimination due to persistent prejudices and negative stereotypes, affecting their situation in employment and occupation. Their traditional occupations are often disregarded as outdated or unproductive. Indigenous peoples continue to be over-represented among the poor, the illiterate and the unemployed. [1903]

768. One of the main issues faced by indigenous peoples relates to the lack of recognition of their rights to land, territories and resources, undermining their right to engage in traditional occupations. [1904] Measures should be taken to ensure equality of opportunity and treatment of indigenous peoples in employment and occupation, including their right to engage without discrimination in their traditional occupations and livelihoods. Recognition of the ownership and possession of the lands they traditionally occupy [1905] and access to their communal lands and natural resources for traditional activities is essential. [1906] Access to credit, marketing facilities, agricultural extension and skills training facilities should also be provided on an equal footing with other parts of the population. [1907]

769. Many indigenous women face additional discrimination based on gender in the labour market and within their communities, including limited access to land and material goods. [1908] In this regard, the Committee welcomes strategies aimed at

[1900] Historically, due to societal and institutional racism, especially during colonial times, but also after independence, many indigenous peoples have been exploited or included in labour markets in the most disadvantaged way, for example as bonded labourers. The situation of forced labour of indigenous peoples was a major consideration in the discussions leading to adoption of Convention No. 29. Even today, in some regions indigenous peoples are the most affected by bonded labour: General Survey, 2007, paras 7 and 137 (including footnote 149). See also Part III on forced labour, para. 294.

[1901] *Argentina*, *Australia*, *Bangladesh*, *Plurinational State of Bolivia*, *Botswana*, *Brazil*, *Burundi*, *Cambodia*, *Cameroon*, *Canada*, *Chile*, *Colombia*, *Democratic Republic of the Congo*, *Costa Rica*, *Ecuador*, *El Salvador*, *Ethiopia*, *Fiji*, *Finland*, *Guatemala*, *Guyana*, *Honduras*, *Indonesia*, *Kenya*, *Mexico*, *Mongolia*, *Morocco*, *Namibia*, *Nepal*, *New Zealand*, *Nicaragua*, *Panama*, *Paraguay*, *Peru*, *Philippines*, *South Africa*, *Sweden*, *Uganda*, and *Ukraine*.

[1902] See, for example, *New Zealand* – CEACR, direct request, 2010 (regarding the vertical occupational segregation and ethnic pay gap of Maori in the public service); and *Ukraine* – CEACR, observation, 2011: (regarding the access of Crimean Tartars in the public service).

[1903] United Nations Permanent Forum on Indigenous Issues: *State of the World's Indigenous Peoples* (New York, 2009).

[1904] See, for example, *Australia* – CEACR, direct request, 2011; *Democratic Republic of the Congo* – CEACR, observation, 2011; and *Nicaragua* – CEACR, direct request, 2010.

[1905] In *Plurinational State of Bolivia*, the "Plan Guarani" seeks to restore the fundamental rights of the Guarani people, including the restitution in part of their lands of origin: *Plurinational State of Bolivia* – CEACR, observation, 2010; see also *Finland* – CEACR, direct request, 2009; and *Kenya* – CEACR, direct request, 2010.

[1906] See, for example, *Democratic Republic of the Congo* – CEACR, observation, 2011; *Cambodia* – CEACR, direct request, 2011; *Finland* – CEACR, direct request, 2009; and *Uganda* – CEACR, direct request, 2010.

[1907] General Survey, 1988, para. 35.

[1908] They also have less access to education and training at all levels and higher levels of unemployment. When seeking employment away from their communities, their vulnerability to sexual abuse and harassment, as well as trafficking increases. See *Guatemala* – CEACR, direct request, 2009; and *Panama* – CEACR, direct request, 2010; and *Paraguay* – CEACR, direct request, 2010.

improving the participation of indigenous women in all processes to regularize and issue titles in respect of community ancestral lands. [1909]

770. Indigenous peoples should enjoy equality of opportunity and treatment in accessing vocational training programmes applying to all parts of the population, taking into account their particular needs. [1910] The Committee welcomes the measures taken, for example, in the *Plurinational State of Bolivia*, to give priority to education for rural and indigenous peoples, including the creation of three inter-cultural community indigenous universities, one for the Aymar people, another for the Quechua, and the other for the Guaraní. [1911] Public awareness raising and educational programmes addressing stereotypes and prejudices against indigenous peoples, as well as legal literacy campaigns regarding their rights in the national context, are also essential to promoting understanding and co-existence between different population groups.

771. Recent progress has been made in countries across all regions regarding new legislation both to protect indigenous communities and to promote their equality of opportunity. [1912] Most recently, *Congo* adopted a comprehensive Act on the Promotion and Protection of the Rights of Indigenous Peoples, prohibiting all forms of discrimination against indigenous peoples based on their social origin or their indigenous identity. [1913] Legislation also needs to be effectively implemented, and in some countries, serious problems remain, particularly with regard to indigenous forms of land use and ownership. [1914]

772. The Committee strongly encourages countries to assess the situation in employment and occupation of all ethnic groups in their country, in particular indigenous and tribal peoples, and the discrimination faced by them, and to supply such information in their reports under article 22 of the Constitution. The Committee recalls that the Indigenous and Tribal Peoples Convention, 1989 (No. 169) provides important elements for overcoming discrimination against indigenous and tribal peoples and ensuring their equality of opportunity and treatment. The Committee considers that ratification of this Convention constitutes progress in achieving the objective of Convention No. 111. [1915]

[1909] *Plurinational State of Bolivia* – CEACR, observation, 2010.

[1910] Indigenous and Tribal Peoples Convention, 1989 (No. 169), *Art. 22*.

[1911] *Plurinational State of Bolivia* – CEACR, observation, 2010.

[1912] For example, *Philippines* – CEACR, direct request, 2000 (Indigenous Peoples' Rights Act No. 8371 of 1997); *Nicaragua* – CEACR, observation, 2006 (Decree No. 3584 issuing regulations respecting the autonomous status of the Atlantic coast regions of *Nicaragua*, issued under the Act respecting the common property regime of indigenous peoples and ethnic communities in the autonomous regions of the Atlantic coast).

[1913] Act No. 5-2011 of 25 February of 2011 on the Promotion and Protection of the Rights of Indigenous Peoples. The Act also contains provisions regarding cultural rights, the right to education and to work without any discrimination, and guarantees collective and individual rights to property, possession, access and utilization of lands and natural resources they occupy or use for their subsistence, health care and work.

[1914] See, for example, *Cambodia* – CEACR, direct request, 2011; and *El Salvador* – CEACR, observations, 2010 and 2011.

[1915] See *Central African Republic* – CEACR, direct request, 2012; *Chile* – CEACR, observation, 2009; and *Nicaragua* – CEACR, direct request, 2012.

Roma people

773. Addressing discrimination against the Roma people and promoting their equal opportunities in employment and occupation is a recurrent concern in almost all European countries. The Roma face discriminatory recruitment practices and high unemployment levels, low educational attainment and limited access to quality education, and are concentrated in low-skilled labour irrespective of their educational levels. [1916] The discrimination faced by the Roma is symptomatic of discrimination faced by other groups in different regions. Such discrimination is often exacerbated by negative attitudes due to deeply rooted stereotypes and prejudices about capabilities and preferences. [1917] Segregation of Roma children in education resulting in low educational levels, thus limiting the access of Roma to employment, [1918] is particularly problematic, although developments have been noted in this regard. With a view to addressing the problem of Roma segregation in education, some countries have included the ground of "segregation" in their anti-discrimination laws. [1919] In this regard, the Committee draws attention to the need for concrete and effective measures to ensure and promote equal opportunities with respect to access to education, including pre-school education for Roma children, without discrimination. [1920]

774. Regional initiatives funded by the European Union, and the Decade of Roma Inclusion (2005–15) by the Council of Europe, have given a new impetus to the recognition of the need for targeted measures aimed at Roma inclusion and combating discrimination against them, including in employment and education. [1921] The Committee was able to note progress in the adoption of national action plans and strategies targeting Roma communities in most countries in Europe, for example in *Albania*, *Bosnia and Herzegovina*, *Bulgaria*, *Croatia*, *Finland*, *Hungary*, *Latvia*, *Lithuania*, *Montenegro*, *Portugal* and *Romania*. [1922] Measures range from improving access to vocational training and education, including for Roma children, awareness raising, affirmative action and targeted employment programmes, as well as adopting specific legislative measures. In *Slovenia*, for example, the Roma Community Act defines the rights of the Roma community and provides that the State shall create the

[1916] See, for example, *Croatia* – CEACR, observation, 2011; *Czech Republic* – CEACR, observations, 2003, 2008, 2009 and 2012; and *Poland* – CEACR, direct request, 2011.

[1917] See *Czech Republic* – CEACR, observation, 2004; *France* – CEACR, direct request, 2010; *Finland* – CEACR, direct request, 2011; and *Italy* – CEACR, direct request, 2011.

[1918] See, for example, *Serbia* – CEACR, direct request, 2012; and *Slovenia* – CEACR, direct request, 2012. See also *D.H.* v. *Czech Republic* (App. No. 57325/00, 2007-XII Eur.Ct. H.R): the European Court of Human Rights found that children were segregated on the basis of race in a nationwide education system.

[1919] *Bulgaria*, Protection of Discrimination Act; *Hungary*, Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities.

[1920] See *Croatia* – CEACR, observation, 2010.

[1921] On 19 May 2011, the Council of the European Union also adopted conclusions on an "EU Framework for National Roma Integration Strategies up to 2020", inviting member States to identify the factors characterizing the territorial concentration of marginalized and disadvantaged groups including the Roma; to advance the social and economic inclusion of Roma by guaranteeing their legal rights; and to foster positive changes in attitudes towards Roma by improving public awareness of Roma culture and identity and combating stereotypes, xenophobia and racism.

[1922] *Albania* – CEACR, direct request, 2012; *Bosnia and Herzegovina* – CEACR, direct request, 2010; *Bulgaria* – CEACR, observation, 2007; *Croatia* – CEACR, observation, 2011; *Finland* – CEACR, direct request, 2011; *Hungary* – CEACR, direct request, 2008; *Latvia* – CEACR, direct request, 2011; *Lithuania* – CEACR, direct request, 2010; *Republic of Moldova* – CEACR, direct request, 2011; *Montenegro* – CEACR, direct request, 2010; *Portugal* – CEACR, direct request, 2012; and *Romania* – CEACR, observation, 2006.

conditions for the inclusion of members of the Roma community in the education system and the labour market. [1923] In some countries, measures such as targeted language skills training have been considered to remove barriers hindering Roma access to education, employment and occupation. [1924] While such measures are important, the Committee considers that measures to improve access of the Roma to education at all levels, including education provided in their mother tongue, [1925] also need to be taken. Where Roma choose primarily to be engaged in self-employed activities, they should enjoy equal opportunities to carry out the occupation of their choosing. Progress achieved through the policies and programmes for Roma inclusion and combating discrimination against them should not be affected as a result of the economic downturn and consequent austerity measures. [1926]

775. Proactive measures are also needed to analyse and address the situation of the different groups in the labour market, in cooperation with workers' and employers' organizations, and to improve knowledge and awareness among ethnic and national minorities about anti-discrimination and equality legislation, enforcement mechanisms and procedures. [1927] Policies aimed at combating discrimination against the Roma cannot be effective without measures to address stereotypes and prejudices regarding the capabilities and preferences of the Roma and to promote respect and tolerance between all sections of the population. [1928] Such policies should be implemented without delay. Regular monitoring of the results secured and the progress made is essential. However, the Committee notes that, despite the rise in measures targeting the Roma, information on the impact of such measures is often absent. The Committee therefore welcomes that some countries have taken specific measures, including the creation of specialized structures to monitor and report on the implementation and progress made under national strategies and plans. [1929]

Migrant workers

776. In some countries persons belonging to racial and ethnic minorities mainly consist of foreign workers, immigrants or the descendants of immigrants. While *Article 1(1)(a)* of the Convention does not refer specifically to "nationality", both nationals and non-nationals should be protected from discrimination on the grounds covered by the Convention. Migrant workers are particularly vulnerable to prejudices and differences in treatment in the labour market on grounds such as race, colour and national extraction, often intersecting with other grounds such as gender and religion. The intersection between migration and discrimination should be addressed in the context of the Convention. ***Governments should declare and pursue a national equality policy which***

[1923] See *Slovenia* – CEACR, direct request, 2010.

[1924] See *Lithuania* – CEACR, direct request, 2010; and *Republic of Moldova* – CEACR, direct requests, 2010, 2011.

[1925] See *Romania* – CEACR, observation, 2008.

[1926] See, for example, *Czech Republic* – CEACR, observation, 2012.

[1927] See, for example, *Sweden* – CEACR, direct request, 2010.

[1928] See *France* – CEACR, direct request, 2011; *Poland* – CEACR, direct request, 2011; and *Romania* – CEACR, observation, 2008.

[1929] See *Albania* – CEACR, direct request, 2010; *Bulgaria* – CEACR, observation and direct request, 2012 *Hungary* – CEACR, direct request, 2011; and *Serbia* – CEACR, direct request, 2012.

covers all workers, including migrant workers, with a view to eliminating discrimination against them on all the grounds listed in the Convention. [1930]

777. In some countries, constitutional guarantees on equality or non-discrimination are confined to citizens. [1931] In the absence of any other relevant legislative provisions protecting non-nationals from discrimination in employment and occupation, concrete measures must be taken to protect these workers in practice against discrimination on the grounds enumerated in the Convention. In most instances, it is necessary to ensure that non-nationals are covered by non-discrimination and equality provisions in the labour or other relevant legislation. The Committee has underlined the importance of effective legislative protection, and the promotion and enforcement of such legislation, to ensure that migrant workers are not subject to discrimination and abuse. [1932]

778. The particular vulnerability to discrimination of migrant workers in an irregular situation, especially with respect to conditions of work, including wages, and issues relating to occupational safety and health, as well as workplace injuries, is a concern that needs to be addressed. [1933] The Committee recalls that under the Convention all migrant workers, including those in an irregular situation, must be protected from discrimination in employment on the basis of the grounds set out in *Article 1(1)(a)*. [1934]

779. It should also be ensured that migration laws and policies and their implementation do not result in discrimination against migrant workers based on race, colour and national extraction. [1935] The Committee has noted particular difficulties in the application of the Convention with respect to certain laws and regulations governing the employment of foreign workers. These have included certain employment permit systems and sponsorship systems severely restricting the possibility of workers changing workplaces, employers or sponsors. The Committee considers that where a system of employment of migrant workers places those workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, this could result in discrimination based on the grounds of the Convention. [1936] It is essential that under systems of employment migrant workers enjoy the protection provided by the Convention, in law and practice. Especially in countries where migrant workers constitute a large proportion, and sometimes the majority of the working population, it is important to keep the specific legislation governing migrant workers, including sponsorship systems, under review. The Committee considers that providing for appropriate flexibility for migrant workers to change their employer or

[1930] See *Saudi Arabia* – CEACR, observation, 2009.

[1931] See *Ethiopia* – CEACR, observation, 2011; *Sri Lanka* – CEACR, observation, 2009; and *Swaziland* – CEACR, direct request, 2010.

[1932] See *Bahrain* – CEACR, observation, 2010; and *Sri Lanka* – CEACR, observation, 2010.

[1933] See also *South Africa* – CEACR, direct request, 2010: The Committee noted the decision of the Labour Court of Johannesburg of March 2008 emphasizing that migrant workers in an irregular situation enjoy the right to fair labour practices laid down in the Constitution and the protections enshrined in the Labour Relations Act. With respect to compensation for workplace injuries, the Committee also refers to the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). In this regard see also *Thailand* – CEACR, observation, 2012, Convention No. 19.

[1934] See *Argentina* – CEACR, observation, 2011; *Belarus* – CEACR, direct request, 2011; *Dominican Republic* – CEACR, observation, 2011; *France (French Guiana)* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; and *Spain* – CEACR, observation, 2002.

[1935] See, for example, *Dominican Republic* – CEACR, observation, 2011.

[1936] See, for example, *Bahrain* – CEACR, observation, 2009; *Republic of Korea* – CEACR, observation, 2009; and *Kuwait* – CEACR, observation, 2011. See also Part III on forced labour, para. 295.

their workplace assists in avoiding situations in which they become particularly vulnerable to discrimination and abuse. [1937] Providing legal protection for migrant workers against discrimination and adequate and effective dispute resolution mechanisms are essential in this context. [1938] Fear of retaliation by the employer, including termination or non-renewal of their contract, should be addressed through effective labour inspection and the access of migrant workers to legal remedies, including accessible and speedy complaints procedures. [1939]

780. Migrant domestic workers, notably women, have been particularly affected by the lack of legal protection against discrimination on the grounds of the Convention and restrictive sponsorship systems. [1940] Some positive steps have been undertaken to address the situation of migrant domestic workers through training and information campaigns, steps to review sponsorship systems, the adoption of special regulations covering their conditions of work, model employment contracts [1941] and the strengthening of complaints mechanisms. [1942]

781. Difficulties in application of the Convention to migrant workers also exist in the context of legal employment restrictions for migrant workers in certain job categories, or when precedence is given to residents in respect of hiring and maintaining employment. The practical application of the legislation should not lead to indirect discrimination against migrant workers on the grounds set out in the Convention with respect to hiring and job security. [1943]

Sex discrimination and gender equality

782. Under the Convention, sex discrimination includes distinctions based on the biological characteristics, as well as unequal treatment arising from socially constructed roles and responsibilities assigned to a particular sex (gender). Gender roles and responsibilities are affected by age, race, class, ethnicity and religion, and by the geographical, economic and political environment. In recent years, the concept of gender [1944] has been included in the national legislation of a number of countries, including the *Plurinational State of Bolivia*, *Burundi*, *Comoros*, *Fiji*, *Finland*, *Latvia*, *Russian Federation*, *Rwanda*, *Serbia*, *Seychelles* and *Sweden*, [1945] as a prohibited ground

[1937] See, for example, *Republic of Korea* – CEACR, observation, 2009.

[1938] See, for example, *Kuwait* – CEACR, observation, 2011; *Qatar* – CEACR, observation, 2009, and *Saudi Arabia* – CEACR, observations, 2007 and 2009.

[1939] See, for example, *Republic of Korea* – CEACR, observation, 2009; *Qatar* – CEACR, observation, 2009. See also paras 872–886 below.

[1940] See, for example, *Bahrain* – CEACR, observation, 2009; *Republic of Korea* – CEACR, observation, 2009; *Kuwait* – CEACR, observations, 2009 and 2011; *Qatar* – CEACR, observation, 2008; *Saudi Arabia* – CEACR, observation, 2009; and *United Arab Emirates* – CEACR, direct request, 2009.

[1941] See, for example, *Lebanon* – CEACR, direct request, 2010; and *Jordan* – CEACR, direct request, 2011.

[1942] See also paras 795–797 below (domestic workers).

[1943] See, for example, *Argentina* – CEACR, direct request, 2010; and *China (Macau Special Administrative Region)* – CEACR, direct request, 2011.

[1944] The use of the concept of "gender" as a socio-economic variable to analyse roles, responsibilities, constraints, opportunities and needs of men and women is an essential component to promote equality of opportunity and treatment under the Convention.

[1945] *Plurinational State of Bolivia*, Supreme Decree No. 0213 of 2009; *Burundi*, Act No. 1/28 of 2006 on the general status of public servants; *Comoros*, Public Service Statute (Act No. 04-006/A.U of 2004); *Finland*, the Non-Discrimination Act 2004; *Latvia*, Labour Code 2002; *Russian Federation*, Labour Code 2001; *Rwanda*, Act No. 59/2008 on the prevention and punishment of gender-based violence; *Serbia*, Law on the Prohibition of

of discrimination in employment, but also in the context of a comprehensive legislative strategy to overcome gender discrimination in all aspects of society. [1946]

783. ***The protection against discrimination applies to both men and women, although considerable inequalities, in law and in practice, exist to the detriment of women. Despite the requirement under the Convention to repeal discriminatory legal provisions,*** [1947] ***laws discriminating directly or indirectly against women have not yet been relegated to the past. Women are also over-represented in informal and atypical jobs, including part-time jobs, face greater barriers in gaining access to posts of responsibility, and continue to bear the unequal burden of family responsibilities. Stereotyped assumptions regarding women's aspirations and capabilities, their suitability for certain jobs or their interest or availability for full-time jobs, continue to lead to the segregation of men and women in education and training, and consequently in the labour market.*** [1948]

Pregnancy and maternity

784. Distinctions in employment and occupation based on pregnancy or maternity are discriminatory, as they can only, by definition, affect women. [1949] With a view to improving protection in this regard, most European countries, as well as for example, *Afghanistan*, *Australia*, *China*, *Fiji*, *Gambia*, *Mauritius* and *South Africa* have included the grounds of pregnancy and maternity (or childbirth) among the prohibited grounds of discrimination in national legislation. [1950] Other countries, particularly in Latin America, have adopted legislation prohibiting explicitly the requirement of pregnancy testing as a condition of employment. [1951] Even with such legislative progress, discriminatory practices linked to pregnancy or maternity continue to exist and have been particularly linked to dismissal and denial of the return to work following maternity leave, [1952] the

Discrimination 2009; *Seychelles*, Employment (Amendment) Act 2006; and *Sweden*, Prohibition of Discrimination Act 2003.

[1946] For example, *Azerbaijan*, Law on guarantees of gender equality, 2006; *Bosnia and Herzegovina*, Act on Gender Equality, 2003; *Croatia*, Gender Equality Act 2008; *Iceland*, Act on Equal Status and Equal Rights of Women and Men, No. 10/2008; *Montenegro*, Law on Gender Equality 2007; *Philippines*, The Magna Carta of Women (Republic Act No. 9710); *Tajikistan*, Act No. 89 of 2005 on State guarantees for the equality of men and women and equal opportunities for their realization; *Viet Nam*, Law No. 73/2006/QH11 on Gender Equality; and *Zambia*, Citizens Economic Empowerment Act 2006.

[1947] *Art. 3(b).*

[1948] See *Saudi Arabia* – CEACR, observations, 1997, 2000, 2001, 2004 and 2006. The Committee for many years expressed concern that section 160 of the Labour Code prohibiting co-mingling of men and women in the place of employment ..., might result in de facto occupational segregation on the basis of sex. While section 160 has been repealed, the Labour Code continues to contain a provision stating that "women shall work in all fields suitable to their nature" and prohibiting employing women in hazardous jobs or industries.

[1949] In so far as they do not constitute protective measures in the sense of *Art. 5* of the Convention: see paras 836–840.

[1950] *Afghanistan*, Labour Code, 2007; *Australia*, The Fair Work Act, 2009; *China*, Employment Promotion Law, 2007, and Labour Contract Law, 2008; *Fiji*, Employment Relations Promulgation, 2007; *Gambia*, Labour Act, 2007; *Mauritius*, Employment Rights Act, 2008; and *South Africa*, Employment Equity Act, 1998.

[1951] See, for example, *Chile*, Act No. 19591 of 1998; and *Honduras*, Equal opportunities for Women Act, 2000.

[1952] See, for example, *Angola* – CEACR, observation, 2010; *Belgium* – CEACR, direct requests, 2009 and 2011; *Ecuador* – CEACR, observation, 2010; and *Israel* – CEACR, direct request, 2011. In *Belgium*, the Committee expressed concern at the increase in litigation on discrimination linked to the grounds of pregnancy, confinement and maternity, often due to the lack of information regarding legislation among pregnant women, and workers and employers generally.

use of temporary contracts to discriminate against pregnant women [1953] and mandatory pregnancy testing. [1954] With a view to effectively combating discrimination based on pregnancy and maternity, the Committee has asked the governments concerned to take specific measures in cooperation with the social partners. [1955] The Maternity Protection Convention, 2000 (No. 183), recognizes that maternity protection is a precondition for gender equality and for non-discrimination in employment and occupation. The Committee considers that ratification of Convention No. 183 constitutes important progress in achieving the broader objective of gender equality in employment and occupation, as enshrined in Convention No. 111. [1956]

Workers with family responsibilities

785. Legislative or other measures assisting workers with family responsibilities are essential to promote gender equality in employment and occupation, and measures adopted in this regard are a "natural extension of the well-accepted principles on equality". [1957] With a view to promoting gender equality, several countries have included family responsibilities as a prohibited ground of discrimination in their national legislation. [1958] Other countries have adopted legislative provisions to assist workers with family responsibilities, [1959] ranging from specific improvements relating to entitlements to maternity, paternity and parental leave, [1960] working-time arrangements, the duty of the employer to facilitate employees to combine work and family responsibilities more easily, [1961] or improved protection of part-time workers, [1962] many of whom are women. In *Latvia*, amendments to the Labour Law provide that "any less favourable treatment due to the granting of prenatal or maternity leave, or leave to the father of the child" is deemed to be direct discrimination. [1963] In *Pakistan*, the National Gender Reform Action Plan provides for measures to increase women's employment in the public sector, including through improvements of office facilities to provide for restrooms and

[1953] See *Panama* – CEACR, observation, 2010.

[1954] See, for example, *Dominican Republic* – CEACR, observation, 2011; and *Guatemala* – CEACR, observation, 2010.

[1955] See *Denmark* – CEACR, direct request, 2011; and *Guatemala* – CEACR, observation, 2011.

[1956] See, for example, *Azerbaijan* – CEACR, observation, 2011.

[1957] *Workers with family responsibilities*, General Survey of the reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation No. 165, 1981, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4B), ILC, 80th Session, 1993, para. 266.

[1958] See *Australia*, the Fair Work Act, 2009; *Fiji*, Employment Relations Promulgation, 2007; *Malta*, Equality for Men and Women Act, 2003; *Namibia*, Labour Act, 2007; *Romania*, Labour Code, 2003; and *Rwanda*, Act No. 13/2009 regulating labour.

[1959] See *Czech Republic*, Act No. 115/2000 amending the Labour Code; *Finland*, Employment Contracts Act, 2001; and *Iceland*, Prohibition on termination of employment due to family responsibilities Act No. 27/2000.

[1960] See *Afghanistan*, Labour Code, 2007; *Armenia*, Labour Code, 2004; *Australia*, Paid Parental Leave Act, 2010; *Germany*, Care Time Act, 2008, and Child Support Act, 2008; *Iceland*, Act No. 95/2000 on maternity/paternity leave and parental leave; and *Tajikistan*, Act No. 89 of 2005 on state guarantees for the equality of men and women and equal opportunities for their realization.

[1961] See *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2010 (section 161(2) of the Labour Relations Act 2005).

[1962] See *Republic of Korea* – CEACR, observations, 2008 and 2009 regarding the Act on the Protection etc. … of fixed-term and part-time employees (Act No. 8074 of 2006) prohibiting discrimination on the basis of contract status.

[1963] *Latvia* – CEACR, direct request, 2011 (Labour Act of 2001, amended in March 2010).

day-care facilities. [1964] A number of collective agreements also provide for maternity and paternity leave, or address work and family issues.

786. However, when legislation, collective agreements or other measures reflect the assumption that the main responsibility for family care lies with women or excludes men from certain rights and benefits, [1965] it reinforces and prolongs stereotypes regarding the roles of women and men in the family and in society. The Committee considers that, in order to achieve the objective of the Convention, measures to assist workers with family responsibilities should be available to men and women on an equal footing. [1966] The Workers with Family Responsibilities Convention, 1981 (No. 156), provides important guidance on measures to overcome discrimination based on family responsibilities and to assist workers with family responsibilities with a view to promoting equality of opportunity and treatment between men and women, and between workers with family responsibilities and other workers.

Laws on personal and family relations

787. Laws governing personal and family relations which do not yet provide for equal rights of men and women also continue to have an impact on the enjoyment of equality with respect to work and employment, notably laws authorizing a husband to object to his wife working outside the home, or requiring the husband's permission before his wife can accept certain jobs. Distinctions based on civil status, marital status, or more specifically family situation (particularly as regards responsibilities for dependent persons), are contrary to the Convention when they have the effect of imposing a requirement or condition on an individual of a particular sex that would not be imposed on an individual of the other sex. [1967] The protection provided by the Convention against discrimination applies equally to either sex, and the adoption of national legislation which ensures equal rights and responsibilities for men and women is an important step in the pursuit of equality in society. For instance, the adoption in *Morocco* of legislation ensuring equal rights and responsibilities for men and women within the family and abolishing a number of restrictions in the old Moudawa (Personal Status Code), has been considered by the Committee as a legislative instrument creating a new environment to pursue rapid progress towards equality of opportunity and treatment for men and women in employment and occupation. [1968] Substantial progress was also made in *Lesotho* with the adoption of the Legal Capacity of Married Persons Act of 2006 repealing "common

[1964] *Pakistan* – CEACR, observation, 2011.

[1965] See *Austria* – CEACR, direct request, 2006; *Bahrain* – CEACR, direct request, 2008; *Belarus* – CEACR, direct request, 2011; *Republic of Moldova* – CEACR, direct request, 2006; *Tunisia* – CEACR, direct request, 2010; and *Turkmenistan* – CEACR, direct request, 2011.

[1966] See *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2009; *Turkmenistan* – CEACR, direct request, 2011; and *Uzbekistan* – CEACR, direct request, 2010. See also *Romania* – CEACR, direct request, 2011. The Committee noted that collective agreements for the mining industry (section 7(12)) and the automobile construction (section 126) provide that women caring for children under the age of six have the right to work half time, if they do not have access to a crèche or kindergarten, and that such periods are considered full-time work for the purpose of calculating seniority. A number of collective agreements contain provisions granting women the right to shorter working hours to care for children and the right to additional leave days to care for an ill child. These rights are available to men only when the child's mother is deceased.

[1967] The Committee has noted the incompatibility with the Convention of laws giving the possibility for husbands to prevent their wives from engaging in certain occupations in *Cameroon* – CEACR, observation, 2010; *Chad* – CEACR, observation, 2009; *Democratic Republic of the Congo* – CEACR, observation, 2009; *Djibouti* – CEACR, direct request, 2009; and *Gabon* – CEACR, direct request, 2010.

[1968] *Morocco* – CEACR, observation, 2005 (Family Code, 2004).

law, customary law and any other marriage rules in terms of which a husband acquires marital powers over the person and property of his wife". [1969]

Exclusions from particular jobs

788. The Committee has, on certain occasions, raised concerns regarding discriminatory laws and practices limiting the recruitment of women, including in the judiciary [1970] and the police force, [1971] and the conditions of service applying to them. The Committee has also considered that legal provisions establishing common height and athletic requirements for admission to the police academy are likely to constitute indirect discrimination against women. [1972] Sex discrimination in job advertisements, [1973] age restrictions for hiring women [1974] and the lack of legislative prohibition of discrimination against women in hiring remain concerns. [1975] ***Women should have the right to pursue freely any job or profession and the Committee points out that exclusions or preferences in respect of a particular job in the context of Article 1(2) of the Convention, should be determined objectively without reliance on stereotypes and negative prejudices about men's and women's roles.*** [1976]

Sexual harassment

789. ***Sexual harassment undermines equality at work by calling into question the integrity, dignity and well-being of workers. It damages an enterprise by weakening the bases upon which work relationships are built and impairing productivity.*** [1977] ***Over the years, the Committee has consistently expressed the view that sexual harassment, as a serious manifestation of sex discrimination and a violation of human rights, is to be addressed within the context of the Convention. Given the gravity and serious repercussions of sexual harassment, the Committee recalls its general observation highlighting the importance of taking effective measures to prevent and prohibit sexual harassment at work.*** [1978] ***Such measures should address both quid pro quo and hostile environment sexual harassment, and the Committee's general observation provides further guidance in this regard.*** [1979]

[1969] *Lesotho* – CEACR, observation, 2010.

[1970] See *Egypt* – CEACR, direct request, 2011; *Kuwait* – CEACR, observation, 2011; and *Islamic Republic of Iran* – CEACR, observation, 2011.

[1971] See *Nigeria* – CEACR, observation, 2011.

[1972] See *Greece* – CEACR, observation, 2009 (Presidential Decree No. 90 of 7 April 2003).

[1973] See *Cambodia* – CEACR, direct request, 2011; and *Mongolia* – CEACR, direct request, 2011. See also *Qatar* – CEACR, observation, 2009. The Committee recalled that stereotyped assumptions regarding women's capabilities and "suitability" for certain jobs contribute to discrimination in hiring.

[1974] See *Islamic Republic of Iran* – CEACR, observation, 2011; and *Nigeria* – CEACR, observation, 2011.

[1975] See *Philippines* – CEACR, observation, 2008.

[1976] See, for example, *Comoros* – CEACR, direct request, 2008; *Côte d'Ivoire* – CEACR, observation, 2011; *Greece* – CEACR, observation, 2001; *Ireland* – CEACR, observation, 2009; *Islamic Republic of Iran* – CEACR, observation, 2011; *Nigeria* – CEACR, observation, 2011; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2009. See also paras 838–840 below.

[1977] CEACR, general observation, Convention No. 111, 2003, p. 463.

[1978] ibid., pp. 463–464.

[1979] ibid., p. 463: Definitions of sexual harassment contain the following elements: (1) (quid pro quo): any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men which is unwelcome, unreasonable and offensive to the recipient; and a person's rejection of, or

790. Progress has been made in a number of countries through legislative measures regarding sexual harassment in employment and occupation. For example, *Dominican Republic*, *Honduras*, *Mexico*, *Namibia* and Timor-Leste [1980] have adopted provisions in the labour codes, whereas others, such as *Costa Rica*, *Israel*, *Peru*, *Philippines*, *Rwanda*, *South Africa* and *Uruguay*, have adopted specific legislation on sexual harassment. [1981] Nonetheless, some governments maintain that sexual harassment is unknown to the culture, traditions or practice of the country, illustrated by the fact that no complaints have been filed. [1982] The Committee recalls that the absence of complaints regarding sexual harassment does not necessarily indicate that this form of sex discrimination does not exist; rather, it is likely to reflect the lack of an appropriate legal framework, the lack of awareness, understanding and recognition of this form of sex discrimination among government officials, and workers and employers and their organizations, as well as the lack of access to or the inadequacy of complaints mechanisms and means of redress, or fear of reprisals.

791. Specific legislative gaps remain relating to effective prevention of, and protection against, sexual harassment. While several laws provide for both quid pro quo and hostile work environment as constitutive elements of sexual harassment, such as in *Austria* [1983] and Timor-Leste, some laws on sexual harassment lack clear definitions, [1984] or do not take into account one of these two elements of sexual harassment. [1985] In this respect, the Committee considers that without a clear definition and prohibition of both quid pro quo and hostile work environment sexual harassment, it remains doubtful whether the legislation effectively addresses all forms of sexual harassment. [1986]

792. The Committee considers that addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses (which is often the case), and the fact that criminal law generally focuses on sexual assault or "immoral acts", and not the full range of behaviour that constitutes sexual harassment in employment and occupation. [1987] The Committee also considers that legislation under which the sole redress available to victims of sexual harassment is termination of the employment relationship, while retaining the right to compensation, does not afford

submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job; or (2) (hostile work environment): conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

[1980] Report of Timor-Leste under art. 19 of the Constitution referring to the Labour Code 2002.

[1981] *Costa Rica*, Act No. 8805, amending Act No. 7476 concerning sexual harassment in employment and teaching (28 April 2010); *Israel*, Act on the Prevention of Sexual harassment 1998; *Peru*, Act No. 27942 of 2003 on the prevention and punishment of sexual harassment; *Philippines*, Anti-Sexual Harassment Act (Republic Act No. 7877) of 1995; *Rwanda*, Act No. 59/2008 on the prevention and punishment of gender based violence; *South Africa*, Employment Equity Act 1998 and Code of Good Practice on the Handling of Cases of Sexual Harassment; and *Uruguay*, Act No. 18561 concerning sexual harassment at work and in teaching relationships (18 August 2009).

[1982] See, for example, *Mauritania* – CEACR, direct request, 2009; *Saudi Arabia* – CEACR, observation, 2010; and *Sudan* – CEACR, direct request, 2011.

[1983] Federal Equality of Treatment Act. See also *Bulgaria*, Act of 2003 on Protection against Discrimination.

[1984] See *China* – CEACR, direct request, 2010; *Iraq* – CEACR, direct request, 2011; *Jordan* – CEACR, direct request, 2011; and *Viet Nam* – CEACR, observation, 2010.

[1985] For example, *Serbia* does not refer to quid pro quo in its legislation, whereas, *Benin*, *Burkina Faso*, *Niger*, *Paraguay* and *Ukraine* do not refer to hostile work environment.

[1986] See *Jordan* – CEACR, direct request, 2011; and *France* – CEACR, direct request, 2011.

[1987] See *Kuwait* – CEACR, observation, 2010; and *Qatar* – CEACR, direct request, 2012.

sufficient protection for victims of sexual harassment, since it in fact punishes them and could dissuade victims from seeking redress. [1988]

793. The scope of the protection against sexual harassment should cover all employees, male and female, with respect not only to employment and occupation, but also vocational education and training, access to employment and conditions of employment. [1989] The Human Rights Act and the Employment Relations Act of *New Zealand* provide for a broad scope of employer liability, which includes the actions of clients, customers and co-workers, and protect all employees from sexual harassment, including home workers and persons intending to work. [1990] Other legislation, for example in the *Netherlands*, *Romania* and *Uganda*, imposes an obligation on employers to take measures to prevent sexual harassment at the workplace. [1991] Sexual harassment has also been addressed at the regional level, particularly in the European Union and in the Caribbean. [1992] In the absence of legislation, the courts have been instrumental in adopting guidelines on sexual harassment which have the force of law until adequate and effective legislation is in place. [1993] The guidelines set by the High Court in *Bangladesh*, for example, provided a detailed definition of quid pro quo and hostile environment, sexual harassment, guidance for employers and educational institutions to prevent sexual harassment, as well as guidance on a complaints mechanism and criminal proceedings.

794. The range of practical measures adopted by governments to address sexual harassment varies from help lines, legal assistance or support units to assist victims of sexual harassment, [1994] structures mandated to institute labour-related administrative proceedings regarding cases of sexual harassment, [1995] or training for the social partners and labour inspectors. [1996] Other countries, such as *Indonesia*, *Italy*, *Lesotho* and *Sri Lanka*, have elaborated codes of conduct or guidelines applicable both in the private and

[1988] See *Gambia* – CEACR, direct request, 2012; *Honduras* – CEACR, direct request, 2012; and *Mexico* – CEACR, observation, 2009.

[1989] *El Salvador*, Decree 520 provides for protection only for women; *Uganda*, the Employment Act, section 7 does not cover harassment by co-workers (direct request, 2011); *Chile*, Act No. 20005 of 8 March 2005, which defines and prescribes penalties for sexual harassment. In its direct request of 2007, the Committee considered that the Act was narrower in terms of the persons to be protected and those to be considered liable, as well as in terms of the areas of application and procedures for protecting victims.

[1990] *New Zealand* – CEACR, direct request, 2006: Employment Relations Act, 2000; Human Rights Act, 1993, No. 82; see also *Luxembourg* – CEACR, direct request, 2002.

[1991] *Netherlands* – CEACR, direct request, 2008: the Working Conditions Act obliges employers to implement a policy of protection against sexual harassment, violence and aggression; and *Romania*: Act No. 202/2002 includes the obligation to communicate the sexual harassment policy within enterprises and provides for disciplinary sanctions in case of infringements.

[1992] Article 2(1)(d) and Article 26 of Directive 2006/54/EC (Recast Directive); CARICOM Model Legislation on Sexual Harassment, clauses 3 and 4.

[1993] See, for example, *India* – CEACR, observation, 1998 (Judgement of Supreme Court of *India* in *Vishaka and Ors.* v. *the State of Rajasthan and Ors.* of 13 August 1997); *Bangladesh* – CEACR, observation, 2011 (Judgement of the *Bangladesh* High Court of 14 May 2009 in *Bangladesh National Women Lawyers Association* v. *Government of Bangladesh and Others*).

[1994] For example: *Madagascar* – CEACR, direct request, 2008; and *Bolivarian Republic of Venezuela* – CEACR, direct request, 2009.

[1995] For example: *Croatia*: Office for Gender Equality; *Denmark*: Equal Opportunities Board; *El Salvador*: Special Unit for Gender Issues and the Prevention of Discrimination in Employment; and *Namibia*: possibility for the Labour Commission to appoint a conciliator to attempt to resolve the dispute.

[1996] See *Sweden* – CEACR, direct request, 2009; and *El Salvador* – CEACR, direct request, 2011.

the public sectors, [1997] or have adopted, such as in *Fiji*, a national policy on sexual harassment in the workplace developed in consultation with the tripartite social partners, establishing the employer's responsibilities and a grievance procedure.

Domestic workers

795. Current estimates of domestic workers indicate that, of the 52.6 million domestic workers worldwide, the vast majority are women (83 per cent), accounting for 7.5 per cent of female wage employment worldwide. [1998] As noted previously, domestic workers are often excluded from legislative protection against discrimination. However, all workers, including domestic workers, should enjoy equality of opportunity and treatment on the grounds of the Convention in all aspects of employment. Domestic workers, whether national or foreign workers, face discrimination with respect to a range of terms and conditions of work, social security and access to training with a view to promotion or better job opportunities. They are relatively isolated from other workers, and thus have little collective bargaining power, and are particularly vulnerable to abuse and sexual harassment. Legal and practical measures are needed to ensure their effective protection against discrimination. [1999] The Committee draws attention to the increased vulnerability of migrant domestic workers to multiple forms of discrimination due to the nature of their employment relationship, the lack of legislative protection, stereotypical views regarding gender roles and the undervaluing of this type of employment. [2000]

796. In some countries, progress has been noted regarding the protection of domestic workers in legislation. In *Haiti*, the Domestic Work Act provides that domestic workers will be covered by certain provisions of the Labour Code, including related to equal rights and obligations for men and women, equal remuneration, and maternity protection. [2001] In *Canada*, the Labour Standards Act (Quebec) was amended to cover domestic workers, following the findings that the exclusion of this predominantly female group of workers from the scope of the Act constituted indirect discrimination. [2002] In *Argentina*, efforts have been made to regularize domestic workers, many of whom are undocumented foreign workers, in order to improve their protection under the legislation *(Patria Grande Plan)*. In addition, a special compulsory social security scheme has been established for domestic workers with contributions payable by the employer. [2003] The Committee considers that improving equality of treatment of domestic workers in terms of social security is an important step. It is also essential that domestic workers, foreign or national, enjoy equal opportunities and treatment and are protected against

[1997] *Indonesia*: Guidelines on Sexual Harassment at the Workplace (2011); *Lesotho*: Code of good practice on sexual harassment in the workplace (2003); *Italy*: Codes of conduct on sexual harassment (2003); and *Sri Lanka*: Code of conduct and procedures to address sexual harassment in the workplace (2007).

[1998] *Global and regional estimates on domestic workers*, op. cit.

[1999] See, for example, *Argentina* – CEACR, observation, 2009.

[2000] See also para. 707.

[2001] *Haiti* – CEACR, direct request, 2010.

[2002] *Canada* – CEACR, direct request, 2005. See also United States (State of New York): on 31 August 2010, the Domestic Workers Bill of Rights was signed into law, amending the New York State Human Rights Law, the New York State Labor Law and the New York State Workers' Compensation Law, with a view to protecting domestic workers from harassment based on race, colour, sex, religion and national origin. The legislation is the first of its kind in the United States.

[2003] *Argentina* – CEACR, observation, 2010.

discrimination on all the grounds set out in the Convention in respect of all aspects of employment and occupation, including, but going beyond, social security. [2004]

797. The Committee draws specific attention to the Domestic Workers Convention, 2011 (No. 189), which provides comprehensive guidance on measures to ensure decent work for domestic workers, and which specifically requires ratifying States to respect, promote and realize, with respect to domestic workers, the elimination of discrimination in employment and occupation, ensure fair terms of employment as well as decent working conditions. [2005] The Committee considers that ratification of Convention No. 189 constitutes progress in pursuing the objective of equality enshrined in Convention No. 111.

Religion

798. The Convention aims to provide protection against religious discrimination in employment and occupation, which often arises as a result of a lack of religious freedom or intolerance towards persons of a particular faith, a different faith, or towards those who profess no religion. The expression and manifestation of religion is also protected. [2006] Problems relating to the coexistence of communities of different religions may give rise to problems similar to those encountered in multi-ethnic or multinational communities. Appropriate measures need to be adopted to eliminate all forms of intolerance. [2007] Religious discrimination has been particularly acute in some countries where only certain religious minorities have been recognized by law, leading to severe exclusion and intolerance towards unrecognized religions. [2008] In other cases, provisions in the penal law regarding blasphemy which establish sentences of imprisonment for members of certain groups who, inter alia, preach or propagate their faith, whether by spoken or written words, or by visible representations, particularly affect certain religious minorities and are contrary to the Convention. [2009]

799. The freedom to practise a religion can be hindered by the requirements or practices of a trade or occupation, for example, in the case of religious holidays, special types of clothing or work conditions, or when taking up a certain position requires an oath incompatible with a religious belief or practice. In these cases, the worker's right to practise his or her faith or belief needs to be weighed against the need to meet the requirements inherent in the job, as provided in *Article 1(2)* of the Convention. [2010] However, the protection afforded by the Convention with regard to equality of opportunity and treatment without discrimination on the basis of religion would be meaningless if it did not include all aspects equally, or at very least, the most important aspects of religious practice. [2011] Legal provisions permitting discrimination based on religious belief against school teachers have also been considered to constitute a

[2004] ibid.

[2005] Convention No. 189, *Arts 3, 6* and *11*.

[2006] General Survey, 1988, para. 47.

[2007] See, for example, *Islamic Republic of Iran* – CEACR, observation, 2011.

[2008] See, for example, *Islamic Republic of Iran* – CEACR, observation, 2011; and *Egypt* – CEACR, direct request, 2011.

[2009] See *Pakistan* – CEACR, observation, 2010.

[2010] Special Survey, 1996, para. 42.

[2011] General Survey, 1988, para. 52.

hindrance to equal opportunity and treatment, and measures should be taken to repeal such exceptions to the prohibition against discrimination. [2012]

800. Mandatory dress codes for women, or the prohibition of the wearing of religious signs, including head coverings, has raised issues of application under the Convention relating to discrimination based on sex and religion. [2013] With regard to legislation prohibiting the wearing in public schools of any conspicuous religious signs or apparel on pain of disciplinary measures, including expulsion, the Committee has found it important that measures be taken to ensure that the application of such legislation does not have the effect of reducing the opportunities of girls to find employment in the future. [2014] Similarly, laws or regulations prohibiting all forms of head coverings applying to men and women on university premises may have a discriminatory effect on women with regard to their access to university education, and subsequent employment. [2015] In other cases, the Committee has considered that regulations imposing a mandatory dress code for women in the public sector, or rules imposing observance of the Islamic veil for students in universities and higher education institutions, could have a negative impact on the employment of women in the sector or their access to education. [2016] Some positive steps have been noted in the area of "religious appearance or dress", for example in *Australia* (South Australia) where legislation explicitly prohibits discrimination on this ground. [2017]

801. ***Discrimination on the basis of actual or perceived religion, combined with exclusions and distinctions based on other grounds such as race, national extraction, sex and social origin, as well as nationality, appears to have acquired greater significance, especially in the context of increasing global movements of people looking for better opportunities, and concerns about countering and preventing terrorism. Measures to promote tolerance and coexistence among religious, ethnic and national minorities and awareness-raising on the existing legislation prohibiting discrimination are therefore essential to achieving the objectives of the Convention.***

Social origin

802. Discrimination and lack of equal opportunities based on social origin refers to situations in which an individual's membership of a class, socio-occupational category or caste determines his or her occupational future, either because he or she is denied access to certain jobs or activities, or is assigned only certain jobs. It may include household registration if privileges are attached to this registration. [2018] Even in societies with considerable social mobility, or in less highly stratified societies, a number of obstacles continue to prevent effective equality of opportunity for various social

[2012] See, for example, *United Kingdom*, Northern Ireland – CEACR, direct request, 2011 and observation, 2012 (the Fair Employment and Treatment (NI) Order, 1998 (section 71)).

[2013] See *Denmark* – CEACR, direct request, 2011; *France* – CEACR, observation, 2011; *Turkey* – CEACR, observation, 2009; and *United Kingdom* – CEACR, direct request, 2010.

[2014] *France* – CEACR, observation, 2011, Act No. 2004-228 of 15 March 2004 and its implementing circular No. 2004-084 of 18 May 2004 concerning the prohibition of wearing in public schools any conspicuous religious signs or apparel on pain of disciplinary measures including expulsion: the Committee has considered that its application needs to be regularly reviewed and it should be ensured that pupils who have been expelled nonetheless have adequate opportunities to acquire education and training.

[2015] See, for example, *Turkey* – CEACR, observation, 2011.

[2016] See *Islamic Republic of Iran* – CEACR, observation, 2006.

[2017] *Australia* – CEACR, observation, 2011 (Amendments to the South Australia Equal Opportunity Act, 1984).

[2018] See *China* – CEACR, direct request, 2009.

categories. [2019] Changes in the structure and dynamics of the labour market are redefining patterns of social stratification and social mobility. [2020]

803. In a number of countries, the ground of social origin is not covered in the legislation, [2021] although there has been recent progress, for example in *Belgium*, with regard to amendments incorporating this ground into equality legislation. [2022] National legislation sometimes refers to social status, defining it in terms broad enough to cover social origin as understood in the context of the Convention. [2023] In others, the ground of "social condition" has been defined as covering "social origin". [2024]

804. Over the past 15 years, the Committee has addressed social origin discrimination in a number of countries, [2025] which persists despite legislation and affirmative action measures, and some of which relates to long-standing deeply entrenched discrimination faced by certain castes in respect of employment and occupation. The Committee notes in this regard that Dalits, and largely Dalit women, are usually engaged in the practice of manual scavenging due to their social origin, and a range of measures have been taken to address this practice; however, despite these efforts, many people still find themselves trapped in this inhumane and degrading practice. [2026] The Committee notes that it has been observed in some countries that persons emanating from certain geographical areas or socially disadvantaged segments of the population (other than persons with an ethnic minority background) face exclusions with respect to recruitment, without any consideration of their individual merits. [2027] Indications regarding the rise in social inequalities in some countries have highlighted the continuing relevance of addressing discrimination based on class and socio-occupational categories. [2028]

Political opinion

805. Protection against discrimination on the basis of political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions. It also covers discrimination based on political affiliation. The protection of political opinion applies to opinions which are either expressed or demonstrated, but does not apply where violent methods are

[2019] General Survey, 1988, paras 54–56; and Special Survey, 1996, paras 43–44. See also *India* – CEACR, observation, 2009.

[2020] *Time for Equality at Work*, Global Report on the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 91st Session, 2003, p. 2. Societal attitudes towards a concentration of certain formerly or presently stigmatized or marginalized social, ethnic or national groups may perpetuate new forms of discrimination based on a person's social origin; see also *China* – CEACR, direct request, 2009.

[2021] See, for example, *Austria* – CEACR, direct request, 2010; *Belarus* – CEACR, direct request, 2011; *Netherlands* – CEACR, observation, 2010; and *Sweden* – CEACR, direct request, 2010.

[2022] *Belgium* – CEACR, observation, 2009.

[2023] The Constitutional Court of the *Republic of Korea* defined "social status" in 1995 as the "status a person occupies for a long term, and that is accompanied by social estimation".

[2024] See *Canada* – CEACR, observation, 2011.

[2025] See, for example, *Bangladesh* – CEACR, observation, 2011; *China* – CEACR, direct request, 2010; *India* – CEACR, observation, 2010; *Nepal* – CEACR, observation, 2009; *Pakistan* – CEACR, observation, 2010; and *Sri Lanka* – CEACR, direct request, 2009.

[2026] See, for example, *India* – CEACR, observation, 2010. See also Conference Committee on the Application of Standards: *India* – conclusions, Convention No. 111, 2007.

[2027] See, for example, *Austria* – CEACR, direct request, 2008.

[2028] See, for example, *Canada* – CEACR, observation, 2011.

used. [2029] The protection afforded by the Convention is not limited to differences of opinion within the established framework of principles. [2030] The general obligation to conform to an established ideology or to sign an oath of political allegiance is discriminatory. [2031] Cases where political opinion is taken into consideration as a prerequisite for a given job should be objectively examined under judicial scrutiny to determine whether this prerequisite is actually justified by the inherent requirements of the particular job. [2032] While in a number of countries discriminatory laws and the absence of adequate legal protection against discrimination based on political opinion remain an issue, others have recently included "political opinion" as a prohibited ground or have repealed discriminatory laws setting out restrictions based on political opinion. [2033] Although the effects of discrimination based on political opinion are primarily related to the public service, [2034] they are not confined thereto, partly because distinctions between the public and private sectors are becoming increasingly blurred. The Committee has continued to monitor employment restrictions in the public service affecting persons linked to former political systems, for example, in Central and Eastern Europe. [2035]

Additional grounds of discrimination under Article 1(1)(b)

806. The seven grounds listed in *Article 1(1)(a)* of the Convention represent a minimum standard on which agreement was reached in 1958. The Convention also provides for the determination of additional grounds of discrimination, after consultation with representative employers' and workers' organizations, and with other appropriate bodies. [2036] This participation of employers' and workers' organizations, either directly or through a specialized body, is of particular importance since it provides an additional guarantee of the acceptance and implementation of national policies adopted in accordance with the Convention. [2037]

807. There has been a clear trend towards the inclusion in national legislation of a broad range of prohibited grounds of discrimination, beyond those set out in the Convention. [2038] The Committee welcomes that countries are increasingly making use of the possibility provided under *Article 1(1)(b)*, and are taking measures, including

[2029] See Special Survey, 1996, para. 45.

[2030] General Survey, 1988, para. 57; see also, for example, *Cuba* – CEACR, direct request, 2012.

[2031] See *Bolivarian Republic of Venezuela* – CEACR, observation, 2010.

[2032] Special Survey, 1996, para. 47; *Czech Republic* – CEACR, observation, 2010. See also paras 827–831 below.

[2033] See *Argentina* – CEACR, observation, 2004; *Mozambique* – CEACR, observation, 1998; *New Zealand* – CEACR, observation, 2003; *Paraguay* – CEACR, observation, 2007; and *Slovakia* – CEACR, observation, 1998.

[2034] See General Survey, 1988, paras 57–63, for a description of the various manifestations in law and in practice of political opinion, which is prevalent in the public service.

[2035] See *Albania* – CEACR, direct request, 2010; *Czech Republic* – CEACR, observation, 2012; and *Lithuania* – CEACR, observation, 2010. In a related ruling in July 2004, in *Sidabras and Džiautas* v. *Lithuania*, the European Court of Human Rights relied on Convention No. 111 and the practice of the ILO supervisory bodies regarding employment restrictions based on political opinion. The Court cited the Committee's General Surveys and relevant individual observations.

[2036] *Art. 1(1)(b)*.

[2037] Responses in several reports under art. 19 of the Constitution indicate that the social partners have participated in determining additional grounds of discrimination through their participation in the legislative process (*Benin*, *Côte d'Ivoire*, *Cyprus*, *Luxembourg*, *South Africa* and *Zimbabwe*).

[2038] In its 1996 Special Survey, the Committee elaborated upon legislative developments regarding the grounds of age, disability, family responsibilities, language, matrimonial status, nationality, property, sexual orientation, state of health and trade union membership.

providing legislative protection, to address discrimination based on additional grounds, such as age, health, disability, HIV and AIDS, employment status, nationality, sexual orientation, and gender identity. From the information on law and practice available to the Committee, the number and type of additional grounds that have been added varies considerably among countries. It is thus impossible to draw up an exhaustive list of grounds that might result in discrimination, and new grounds are likely to emerge and become widespread in future.

808. While the Convention does not set out a particular mechanism for States to extend the coverage of the Convention to additional grounds, the Committee has considered that when information received from governments and workers' and employers' organizations indicates that legislation or policies concerning discrimination based on additional grounds have been adopted after consultation with the social partners, the Government has availed itself of the possibility envisaged under *Article 1(1)(b)*. [2039] However, the Committee is concerned that in some countries, upon the adoption of new labour legislation, previously available protection against discrimination based on additional grounds has been withdrawn. In such cases, the Committee has asked governments to hold consultations with the representative employers' and workers' organizations and other appropriate bodies concerning these additional grounds with a view to maintaining the previous level of protection. [2040]

809. It should also be noted that a number of other ILO instruments specifically prohibit discrimination or contain prohibited grounds of discrimination other than those referred to in *Article 1(1)(a)* of Convention No. 111, including, for example, trade union membership, age and disability. [2041]

Real or perceived HIV status

810. The Committee welcomes the rapid development of the inclusion in legislation of HIV status as a prohibited ground of discrimination, and related policies. With respect to real or perceived HIV status as a prohibited ground of discrimination, some member States provide such protection as a constitutional right. [2042] Some provide protection for real or perceived HIV status under other prohibited grounds of discrimination, such as "disability", "health", "other status", etc. [2043] Other member States have integrated real or perceived HIV status as a specific prohibited ground of discrimination in their national labour legislation. [2044] Some have issued specific policies, codes of practices, etc. for the employment relationship, [2045] while in others anti-discrimination clauses have

[2039] See *Austria* – CEACR, direct request, 2008; *France* – CEACR, observation, 2010; Malta – CEACR, direct request, 2012; and *South Africa* – CEACR, observation, 2005. See also the representation under article 24 of the ILO Constitution by the General Confederation of Labour – *Force ouvrière* alleging non-observance by *France* (GB.300/20/6), which addressed age discrimination in the context of *Art. 1(1)(b)*.

[2040] See *Czech Republic* – CEACR, observation, 2010 (Family responsibilities, marital or family status or membership of, or activity in, political parties, trade unions or employers' organizations); *Kazakhstan* – CEACR, observation, 2011 (citizenship); and *Namibia* – CEACR, observation, 2010 (sexual orientation).

[2041] See Special Survey, 1996, para. 243. See also para. 650 above.

[2042] See *Burundi* – CEACR, direct request, 2008; and *Ecuador* – CEACR, observation, 2010. The South African Constitutional Court has interpreted the national Constitution to cover HIV status as a prohibited ground of discrimination: Case No. CCT 17/00, Judgment of 28 September 2000.

[2043] See, for example, *Canada* – CEACR, observation, 1993; and *United Kingdom* – CEACR, observation, 2007.

[2044] See *Burundi* – CEACR, observation, 2007; *Central African Republic* – CEACR, direct request, 2010; *Kenya* – CEACR, observation, 2010; *Mozambique* – CEACR, direct request, 2010; *Namibia* – CEACR, observation, 2010; *Seychelles* – CEACR, direct request, 2009; *Uganda* – CEACR, direct request, 2010; and *Zimbabwe* – CEACR, direct request, 2003.

been included in collective agreements. [2046] General HIV and AIDS laws have been adopted in some member States, with some containing sections providing specific protection to prevent HIV-related stigma and discrimination in the context of the employment relationship. [2047]

811. Legislation and policies sometimes limit protection from employment-related discrimination and stigma to persons living with HIV, that is, to persons who are in fact HIV-positive. National laws and policies should provide for protection from discrimination and stigma on the basis of "real or perceived HIV status", as contemplated in the HIV and AIDS Recommendation, 2010 (No. 200), in order to cover those discriminated against on the basis of stereotyping. [2048] Protection should cover those affected by HIV, such as family members and children who are orphaned or vulnerable due to HIV or AIDS, and migrant workers.

812. ***Recommendation No. 200 provides considerable guidance in terms of addressing discrimination based on HIV and AIDS.*** [2049] ***The resolution adopted by the International Labour Conference upon the adoption of the Recommendation, calls for the promotion of the extension under Article 1(1)(b) of Convention No. 111 "so that the protection afforded under the Convention is extended to real or perceived HIV status".*** [2050] ***The Committee encourages governments that have not yet done so to extend the application of the Convention as proposed in the resolution.***

Age

813. Addressing discrimination based on age has become an important part of public policy in a number of countries. [2051] Under the Convention, age is considered a physical condition for which there are particular needs and in respect of which special measures of protection and assistance may be necessary. [2052] Age discrimination relates primarily to age limits imposed in access to particular occupations, a compulsory retirement age and unjustified restrictions between men and women regarding entitlement to social security benefits. [2053] Many countries have recently changed their legislation to bring both sexes onto an equal footing in respect of retirement age. [2054] Vaguely formulated

[2045] See *Nicaragua* – CEACR, direct request, 2010; and *Jamaica*, direct requests 2007 and 2008.

[2046] See *Argentina* – CEACR, observation, 2009. The General Workers Union – *Portugal* (UGT) indicates that it has advocated the introduction in collective agreements of non-discrimination clauses covering HIV status. UGT also promotes awareness raising on Recommendation No. 200 (report under art. 19 of the Constitution).

[2047] See *Botswana* – CEACR, direct request, 2004; *Canada* – CEACR, observation, 1993, and direct request, 1994; *Chad* – CEACR, observation, 2010; *China* – CEACR, direct request, 2010; *Djibouti* – CEACR, direct request, 2009; *Madagascar* – CEACR, observation, 2008; *Papua New Guinea* – CEACR, direct request, 2010; *Philippines* – CEACR, direct request, 2001; and *Romania* – CEACR, observations, 2006 and 2008.

[2048] See *Paras 3(c)* and *9–11*. Stereotyping arises, for example, because the persons concerned belong to regions of the world or segments of the population perceived to be at greater risk or vulnerable to HIV infection, including men who have sex with men, injecting drug users and sex workers.

[2049] *Para. 3(c)*. See also Case No. TST-RR-104.900-64.2002.5.04.0022 of the Superior Labour Court of Brazil (September 2011) and Case No. JS178/09 of the Labour Court of *South Africa*, both referring specifically to Convention No. 111 and Recommendation No. 200, in determining that there had been discrimination.

[2050] Resolution concerning the promotion and the implementation of the Recommendation on HIV and AIDS and the world of work, adopted by the Conference in 2010, para. 8. See also *Para. 9* of Recommendation No. 200.

[2051] See Special Survey, 1996, paras 61–62 and 247–254.

[2052] *Art. 5(2).* See also Older Workers Recommendation, 1980 (No. 162), *Paras 3* and *5*. See also paras 836–837 below.

[2053] Special Survey, 1996, paras 247–254.

[2054] See General Survey, 2011, paras 222–223.

legal provisions, for example allowing discrimination "which has a just cause" or provisions in collective agreements permitting different treatment of persons under the age of 18 in respect of remuneration, may lead to unjustified restrictions based on age, and the Committee closely follows the practical application of such provisions. [2055] Age discrimination may also arise when, for example, seniority systems prolong the effects of previous discriminatory practices with regard to women and ethnic minorities, leading to multiple discrimination. Younger workers may also be particularly affected by age discrimination, especially in the context of economic downturns. [2056]

814. Over the past 15 years, the Committee has noted steady and rapid progress in the adoption of legal provisions prohibiting discrimination on the basis of age. A number of countries have included "age" in their constitution, such as the new Constitution of the *Dominican Republic*. [2057] In most cases, the ground of age has been included in general labour legislation [2058] or in specific anti-discrimination or equality acts, especially in Europe. [2059] Other countries have adopted specific legislation prohibiting age discrimination, such as in the *Republic of Korea*, where the Act on prohibition of age discrimination in employment and employment promotion for the aged introduces a ban on age discrimination, including indirect discrimination at every stage of employment. [2060] In some countries, legislation specifically provides that awards and enterprise agreements must include terms that prohibit discrimination based on age. [2061] The Committee particularly welcomes clauses in collective agreements aimed at eliminating discrimination on this ground. For example, the General Collective Labour Agreement for the Central Public Administration in *Argentina* provides that the parties agree to eliminate any measure or practice which produces discriminatory treatment or inequality between workers based on, among other grounds, age.

815. To address de facto inequalities that may exist for older or younger workers, some countries have provided for special measures, including affirmative action in their Constitution or labour legislation, in accordance with *Article 5(2)* of the Convention. [2062] The Committee has been able to observe that in a wide range of countries, across regions, practical measures, policies and programmes are being taken to address the situation of older or younger workers, ranging from studies, promotional and awareness

[2055] See *Denmark* – CEACR, direct request, 2010; and *Norway* – CEACR, direct request, 2011. See also *Austria* – CEACR, direct request, 2010: The Committee noted with interest that the Vienna Provincial High Court in April 2007 held that there was discrimination on the ground of age under the collective agreement for the meat industry to the extent that it provided for different wage levels for shop assistants above 18 years of age in their first two years, and trainees in the same job under the age of 18.

[2056] See *Equality at Work: The continuing challenge*, op. cit., p. 50.

[2057] *Dominican Republic* – CEACR, observation, 2011 (art. 39 of the Constitution of 26 January 2010).

[2058] For example, *Algeria* – CEACR, observation, 2011; *Australia* – CEACR, observation, 2011; *China (Macau Special Administrative Region)* – CEACR, observation, 2011; *Chad* – CEACR, observation, 2011; *Fiji* – CEACR, observation, 2008; *Georgia* – CEACR, observation, 2009; *Kazakhstan* – CEACR, observation, 2011; *Luxembourg* – CEACR, observation, 2008; *Norway* – CEACR, observation, 2011; *Portugal* – CEACR, observation, 2006; and *Russian Federation* – CEACR, observation, 2008. See also Republic of Maldives, Employment Act, 2008.

[2059] See *Croatia* – CEACR, observation, 2011; *Cyprus* – CEACR, observation, 2007; *Germany* – CEACR, observation, 2007; *Israel* – CEACR, observation, 2009; *Slovakia* – CEACR, observation, 2006; *Slovenia* – CEACR, observation, 2006; *Romania* – CEACR, observation, 2008; *Serbia* – CEACR, observation, 2010; and *Sweden* – CEACR, observation, 2010.

[2060] *Republic of Korea* – CEACR, observation, 2009.

[2061] *Australia* – CEACR, observation, 2011.

[2062] For example, *Equatorial Guinea* – CEACR, direct request, 2011.

campaigns, [2063] inclusion in equality plans [2064] and equality labels. [2065] Countries are also paying increased attention to including young persons in employment promotion programmes, specific training and vocational training programmes. [2066]

Disability

816. The principle of equality of opportunity and treatment between persons with disabilities and other workers is also enshrined in the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), [2067] and in the United Nations Convention on the Rights of Persons with Disabilities, 2006. Disability discrimination manifests itself in many ways and is often structural due to exclusion and stigmatization starting at a very early age. Failure to provide reasonable accommodation is widely considered to be an unacceptable form of discrimination. [2068]

817. The Committee has been able to note recent advancements in a number of countries in addressing discrimination based on disability and in promoting equality for persons with disabilities through the adoption of legislative and practical measures. Over the last ten years, provisions prohibiting discrimination in employment on the basis of disability have been included in several constitutions, [2069] general labour legislation, [2070] specific anti-discrimination or equality legislation, [2071] specific legislation on disability, [2072] legislation covering the civil service [2073] and penal codes. [2074] The ground of disability has also been included in collective agreements and codes of conduct. [2075] In a number of countries, legislation provides, in general terms, that special measures for persons with

[2063] *Ireland* – CEACR, direct request, 2011; and *Mexico* – CEACR, direct request, 2011.

[2064] *Honduras* – CEACR, direct request, 2010.

[2065] *Belgium* – CEACR, direct request, 2011.

[2066] See *France* – CEACR, observation, 2011; *Haiti* – CEACR, direct request, 2010; *Honduras* – CEACR, direct request, 2010; *Jordan* – CEACR, direct request, 2008; *Morocco* – CEACR, direct request, 2009; *Peru* – CEACR, direct request, 2010; and *Tunisia* – CEACR, direct request, 2010.

[2067] Ratified by 82 member States (as of 9 December 2011).

[2068] See *Achieving equal employment opportunities for people with disabilities through legislation: Guidelines* (Geneva, ILO, 2007), p. 30. See also art. 27(1)(i) of the United Nations Convention on the Rights of Persons with Disabilities to which 109 countries are party.

[2069] For example, *Dominican Republic*, *Ecuador*, *Eritrea*, *Finland*, *Rwanda* and *Switzerland*.

[2070] For example, in *Albania*, *Australia*, *Bahamas*, *China*, *Fiji*, *Kazakhstan*, *Kenya*, *Latvia*, *Malawi*, *Malta*, *Republic of Moldova*, *Morocco*, *Niger*, *Norway*, *Poland* and *Portugal*.

[2071] For example, in *Belgium*, *Bulgaria*, *Croatia*, *Germany*, *Greece*, *Guyana*, *Hungary*, *Ireland*, *Italy*, *Luxembourg*, *Malta*, *Romania*, *Serbia*, *Slovakia*, *Sweden* and *Trinidad and Tobago*.

[2072] For example, in *Canada*, *Ethiopia*, *Norway*, *Panama*, *Republic of Korea*, *Slovenia*, *Uganda* and *United Kingdom*.

[2073] For example, in *Afghanistan*, *France*, *Luxembourg* and the *Philippines*.

[2074] See *Turkey* – CEACR, observation, 2011 (section 122 of the Penal Code provides for imprisonment for a term of six months to one year or a judicial fine in the case of discrimination on a number of grounds, including disability).

[2075] See *Argentina* – CEACR, observation, 2009 (2006 General Collective Agreement for the Central Public Administration); *Belgium* – CEACR, direct request, 2011 (Collective agreement No. 95 concluded 10 October 2008); and *Mauritius* – CEACR, direct request, 2006: Code of Conduct for a Conflict Free Workplace (2003). In *Slovenia*, legislation provides that employers must consider the ILO Code of practice on managing disability in the workplace so as to ensure equal opportunities of disabled persons in employment.

disabilities shall not be considered discrimination, in accordance with *Article 5(2)* of the Convention. [2076]

818. Other laws provide for the adoption of affirmative action measures, including quotas. [2077] The Committee particularly welcomes specific legislation providing comprehensive protection against discrimination and promoting equal opportunities for persons with disabilities. For example, in *Norway*, the Disability and Accessibility Act applies to all employment and occupation, and defines and prohibits direct and indirect discrimination, harassment and victimization. It also contains provisions on reasonable accommodation and the burden of proof. Public authorities, as well as public and private employers, are obliged to make active, targeted and systematic efforts to prevent discrimination and ensure equal opportunities, and to report thereon, and employers' and workers' organizations have a corresponding duty. [2078] In addition promoting equal opportunities of persons with disabilities has been addressed through national employment policies, special incentives, creation of specific government structures, awareness raising and training, including for labour inspectors, and comprehensive skills training programmes. [2079]

819. Despite the progress made, legislative gaps exist. For example, in some countries legal protection against discrimination based on disability does not cover all aspects of employment, for example, omitting dismissal, [2080] or it allows for restrictions when it can be demonstrated that the job requirements relied on as a ground for hiring the disabled person at a lower rate of pay are "reasonable". [2081] In this regard, the Committee recalls the principle of the Convention that effective protection against discrimination should be provided in respect of all aspects of employment and occupation. The Committee also recalls that exceptions relating to inherent requirements of a particular job should be interpreted restrictively and on a case-by-case basis. [2082]

Nationality

820. Protection against discrimination based on actual or perceived nationality and ensuring and promoting equal opportunities and treatment in the labour market is fundamental to migrant workers. In the present context of the increasing movement of male and female workers looking for better job opportunities in countries other than their

[2076] See *Mozambique* – CEACR, direct request, 2010. Pursuant to section 54(2) of the Labour Act No. 23/2007, measures targeting certain disadvantaged groups on the basis of their disability shall not be considered discrimination, and pursuant to section 28(1) employers shall promote the adoption of appropriate measures to enable persons with disabilities to enjoy the same rights as other workers with respect to access to employment, vocational training and promotion. Under section 28(3) special measures may be established by law or collective labour regulation instruments. See also paras 836–837 below.

[2077] See *Ethiopia* – CEACR, observation, 2012; and *Slovakia* – CEACR, observation, 2010. With regard to quotas, see *Plurinational State of Bolivia*, direct request 2008; *Nepal* – CEACR, observation, 2009; *Slovenia* – CEACR, observation, 2008; and *Turkmenistan* – CEACR, direct request, 2011.

[2078] *Norway* – CEACR, direct request, 2011 (Act of 2008).

[2079] Examples of national employment policies include: *Gambia* – CEACR, direct request, 2011; *United Republic of Tanzania* (Zanzibar) – CEACR, direct request, 2010 (special incentives or procurement policies); *Canada* (Quebec) – CEACR, direct request, 2011; *Spain* – CEACR, direct request, 2011 (special structures in Government); *Panama* – CEACR, direct request, 2008; *Poland* – CEACR, direct request, 2007 (awareness raising and training); *Mexico* – CEACR, direct request, 2011; and *Panama* – CEACR, direct request, 2008. In its report under art. 19 of the Constitution, the Government of Thailand refers to the establishment of the Fund for Empowerment of Persons with Disabilities.

[2080] See *Namibia* – CEACR, observation, 2010.

[2081] See, for example, *Bahamas*, sections 6 and 7 of the Employment Act.

[2082] See paras 827–831 below.

own, the Committee draws attention to *Paragraph 8* of Recommendation No. 111: with respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949 (No. 97), relating to equality of treatment and to those of its accompanying Recommendation No. 86 relating to the lifting of restrictions on access to employment. [2083] The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), contains the same definitions and terms as those given in Convention No. 111 and provides for the adoption and implementation of a national policy designed to promote and guarantee equality of opportunity and treatment for persons who as migrant workers or as members of their family are lawfully admitted to the territory. [2084]

821. The actual or perceived nationality of certain workers is, in many cases, used as a reason for different treatment. The Committee welcomes the fact that an increasing number of countries have included the grounds of nationality or citizenship in their constitutions and national legislation. [2085] Many migrants face multiple discrimination, as nationality often intersects with other grounds and it may be difficult to determine whether discriminatory treatment faced by migrant workers is exclusively based on their nationality, or on racial, ethnic, religious or other grounds. [2086] In some cases, the Committee has addressed this problem in the context of discrimination based on the grounds set out in *Article 1(1)(a)*. [2087]

822. The Committee welcomes the measures taken in several countries with a view to improving equality of opportunity and treatment of foreign workers and their integration in the labour market. Some positive steps have been noted, such as the National Plan for Labour Regularization in *Argentina*, diversity charters and integration programmes in some European countries, and measures addressing employment agencies. [2088] For example, legal provisions have been adopted in *Spain* to regulate the registration of

[2083] See *Discrimination in the field of employment and occupation*, Report VII(2), ILC, 40th Session, Geneva, 1957, p. 111, on the reasons why the position of foreign immigrants should be mentioned in the Recommendation.

[2084] In accordance with the migrant workers instruments, not only should migrant workers lawfully within the territory of a ratifying State enjoy equal treatment (*Art. 6* of Convention No. 97), they should also benefit from a national policy designed to promote equality of opportunity and treatment (Part II of Convention No. 143), which implies the adoption of positive measures (*Arts 10* and *12*). *Para. 16(1)* of Recommendation No. 86 provides for the possibility for migrants authorized to reside in a territory and members of their families to be admitted to employment in the same conditions as nationals.

[2085] For example, *Chad*, Labour Code (Act No. 38/PR/96); *Djibouti*, Labour Code 2006; *Eritrea*, Labour Proclamation No. 118 of 2001; *Finland*, Non-discrimination Act (21/2004); Japan, Labour Standards Act; *Kenya*, Employment Act 2007; *Republic of Korea*, Labour Standards Act (Law No. 5309); *Lithuania*, Labour Code 2002; *Republic of Moldova*, Labour Code of 2003; *Mongolia*, Law on Employment Promotion 2001; *Serbia*, Act on the Prohibition of Discrimination No. 22/09; *Seychelles*, Employment (Amendment) Act, 2006; *Syrian Arab Republic*, Labour Law, 2010; and *Tajikistan*, Labour Code 1997.

[2086] See in this context, United Nations Committee on the Elimination of Racial Discrimination (CERD) *general Recommendation No. 30 on discrimination against non-citizens*, 10/01/2004, which provides that under the Convention differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the legitimate light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

[2087] See paras 776–781 above. See also on nationality, discrimination and migrant workers: *Equality at work: The continuing challenge*. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 100th Session, 2011, pp, 34–40.

[2088] *Argentina* – CEACR, observation, 2011; *Denmark* – CEACR, direct request, 2011; and *France* – CEACR, observation, 2011.

non-European Union workers in public employment services and employment agencies. [2089]

823. The Committee considers that Conventions Nos 97 and 143 and the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) are complementary and mutually reinforcing. The Committee also draws attention to the "ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration", adopted by an ILO tripartite meeting of experts in 2005. The Framework could assist countries in adopting national policies designed to promote equality of opportunity and treatment for migrant workers and to protect them against discrimination.

Sexual orientation and gender identity

824. The Committee is encouraged by the increasing number of member States that have included the ground of sexual orientation in constitutional guarantees and legislative provisions on equality reflecting the recognition of the need to ensure equality of opportunity and treatment and non-discrimination for lesbian, gay, bisexual and transgender people. The ground of perceived or actual sexual orientation is not specifically stated in the Convention, [2090] although legislation in some States determines that the criterion of sex or gender includes sexual orientation. [2091] In recent years, further progress has been noted in a range of countries regarding legislative and practical measures aimed at eliminating discrimination on the basis of this ground and promoting equality of opportunity and treatment in employment of lesbian, gay, bisexual and transgender people. [2092] The progressive legal recognition in a number of countries of marriage or cohabitation of same-sex couples reflects a growing awareness of the need to provide employment rights and benefits derived from legally recognized marriage or partnership. [2093]

825. In Europe, the Charter of Fundamental Rights of the European Union prohibits any discrimination based on sexual orientation [2094] and European Union Member States have aligned their national legislation on equality with the Framework Directive on Equal Treatment. In some countries, such as *Ecuador*, sexual orientation has been included in the Constitution. In *Australia*, *China*, *Mauritius* and *Mozambique*, this ground has been included in the general labour legislation. Sexual orientation has also been referred to in human rights legislation or in specific legislation on non-discrimination and equal treatment, for example, in *Canada*, *Mexico*, *Malta* and *South Africa*. The Equality Act of the *United Kingdom* refers to both sexual orientation and gender reassignment, and the non-discrimination legislation in *Albania* and *Serbia* prohibits discrimination based on

[2089] *Spain* – CEACR, observation, 2008.

[2090] Sexual orientation is referred to in the Private Employment Agencies Recommendation, 1997 (No. 188), *Para. 9*, and in Recommendation No. 200, *Para. 14(e)*.

[2091] See, for example, *Croatia*, Gender Equality Act of 2008.

[2092] See, for example, *South Africa* – CEACR, observation 2005. The Committee noted with interest South Africa's confirmation that it considers sexual orientation, age, disability, culture and language set out in its equality legislation as grounds to be covered under the Convention.

[2093] See, for example, *Argentina*, Act No. 26618, 21 July 2010. See also *Römer* v. *City of Hamburg*, 10 May 2011, in which the Court of Justice of the European Union ruled that if the State restricts civil marriage to opposite-sex couples, it must nevertheless grant same-sex couples, despite not being married, access to all the employment benefits for married couples.

[2094] 2000/C364/01, Article 21(1).

sexual orientation and gender identity. [2095] Discrimination in employment and occupation on the basis of sexual orientation has also been addressed through collective agreements, surveys, and complaints structures. [2096]

Measures not deemed to be discrimination

826. Not all distinctions, exclusions and preferences are deemed to be discrimination within the meaning of the Convention. These include: (i) measures based on the inherent requirements of a particular job *(Article 1(2))*; (ii) measures warranted by the protection of the security of the state *(Article 4)*; and (iii) special measures designed for protection and assistance *(Article 5)*.

Distinctions, exclusions or preferences based on inherent requirements

827. Pursuant to *Article 1(2)* of the Convention, any "distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination". In its General and Special Surveys of 1988 and 1996, the Committee provided detailed explanations of the meaning of this exception and the manner in which it should be applied. [2097] As problems regarding the application of this provision continue to arise, it is important to recall that the exception must be interpreted restrictively so as to avoid undue limitation of the protection that the Convention is intended to provide. [2098]

828. The concept of "a particular job" refers to a specific and definable job, function or tasks, and any limitation must be required by the characteristics of the particular job, in proportion to its inherent requirements. [2099] Systematic application of requirements involving one or more of the grounds of discrimination set out in the Convention is inadmissible. In no circumstances should the same requirement involving one or more of the grounds of discrimination be applied to an entire sector of activity or occupation, especially in the public service. [2100] Careful examination of each individual case is required. The general exclusion of certain jobs or occupations, including in export processing zones or the public service, from the scope of the measures intended to promote equality of opportunity and treatment is contrary to the Convention. [2101]

829. Most of the cases regarding the application of *Article 1(2)* addressed by the Committee have related to distinctions based on sex, religion, political opinion or national extraction restricting access to employment and occupation. [2102] The complexity

[2095] *United Kingdom*, Equality Act 2010, sections 7 and 12; *Albania*, Protection from Discrimination Law (No. 10221, 2010), section 1; and *Serbia*, Act on Prohibition of Discrimination No. 22/09 of 2009, section 2(1).

[2096] *Italy* – CEACR, direct request, 2011: The Department of Equal Opportunities and National Statistics Institute conducted from 2009–11 the first multipurpose survey on discrimination based on gender, sexual orientation and gender identity and ethnic origin. *Argentina* – CEACR, observation, 2010 (General Labour Agreement for the Central Public Administration); and *Belgium* – CEACR, direct request, 2010 (Collective Agreement No. 95).

[2097] See General Survey, 1988, paras 124–133, and Special Survey, 1996, paras 118–122.

[2098] See, for example, *Côte d'Ivoire* – CEACR, observation, 2011.

[2099] See, for example, *Latvia* – CEACR, observation, 2011.

[2100] See *Indonesia* – CEACR, observation, 2011. Section 18(i) of the Recruitment of Civil Servants, Government Regulation No. 98/2000 dated 10 November 2000, provides that civil servants are to be dismissed upon becoming members and/or leaders of political parties.

[2101] General Survey, 1988, para. 127, and Special Survey, 1996, para. 119.

[2102] See above regarding national extraction, gender equality, religion and political opinion, paras 764, 788, 798–801 and 805.

of some of the examples illustrates the importance of providing full particulars on the practical application of this provision in order to be able to assess adequately which cases can be deemed to be non-discriminatory within the meaning of the Convention, and the Committee has regularly requested such information.

830. There are very few instances where the grounds listed in the Convention actually constitute inherent requirements of the job. For example, distinctions on the basis of sex may be required for certain jobs, such as those in the performing arts or those involving physical intimacy. These distinctions should still be determined on an objective basis and take account of individual capacities. [2103] Overly broad exceptions in equality legislation excluding domestic workers from the protection of discrimination in respect of access to employment may lead to discriminatory practices by employers against these workers, contrary to the Convention. The Committee considers that the right to respect for private and family life should not be construed as protecting conduct that infringes the fundamental right to equality of opportunity and treatment in employment and occupation, including conduct consisting of differential treatment of candidates for employment on the basis of any of the grounds covered by *Article 1* of the Convention where this is not justified by the inherent requirements of the particular job. [2104]

831. Restrictions for a narrow range of jobs associated with particular religious or political institutions or non-profit organizations and organizations specifically promoting the well-being of an ethnic group may be acceptable. Criteria such as political opinion, national extraction and religion may be taken into account as inherent requirements of certain posts involving special responsibilities. [2105] However, the inherent requirements of the particular job must still be evaluated in the light of the actual bearing of the tasks performed on the institution's or organization's objective. Political opinion may in certain circumstances constitute a bona fide qualification for certain senior posts which are directly concerned with developing government policy. [2106] However, this is not the case when conditions of a political nature are laid down for public employment in general, or for certain other professions. It is essential that such restrictions are not carried beyond certain limits – to be evaluated on a case-by-case basis – as such practices may then come into conflict with the Convention's provisions calling for the implementation of a policy designed to eliminate discrimination on the basis of political opinion, in particular in respect of public employment. [2107] In order to come within the scope of the exception provided for in *Article 1(2)*, the criteria used must correspond in a concrete and objective way to the inherent requirements of a particular job.

State security versus equality

832. Under the Convention, any "measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice". [2108] Measures to protect the security of the State exist in almost all countries, and are frequently accompanied by a ban on the holding of public or elected office or on the

[2103] See *Saint Lucia* – CEACR, direct request, 2010.

[2104] See *Ireland* – CEACR, observation, 2009.

[2105] See *Slovakia* – CEACR, direct request, 2010.

[2106] Special Survey, 1996, para. 422.

[2107] General Survey, 1963, para. 42; General Survey, 1988, para. 127.

[2108] *Art. 4*; Recommendation No. 111, *Para. 7*.

exercise of certain occupations. However, in order to avoid any undue limitations on the protection which the Convention seeks to guarantee, this exception should be interpreted strictly. [2109]

833. Considering the increase in measures to protect state security at the national and international levels, the Committee considers it necessary to recall some principles with respect to the application of *Article 4* of the Convention. [2110] Firstly, the measures must affect an individual on account of activities he or she is justifiably suspected or proven to have undertaken. They become discriminatory when taken simply by reason of membership of a particular group or community. [2111] Secondly, the measures refer to activities qualifiable as prejudicial to the security of the State. The mere expression of opinions or religious, philosophical or political beliefs is not a sufficient basis for the application of the exception. [2112] Persons engaging in activities expressing or demonstrating opposition to established political principles by non-violent means are not excluded from the protection of the Convention by virtue of *Article 4*. [2113]

834. Thirdly, all measures of state security should be sufficiently well defined and precise to ensure that they do not become instruments of discrimination on the basis of any ground prescribed in the Convention. [2114] Provisions coached in broad terms, such as "lack of loyalty", "the public interest" or "anti-democratic behaviour" or "harm to society" [2115] must be closely examined in the light of the bearing which the activities concerned may have on the actual performance of the job, tasks or occupation of the person concerned. [2116] Otherwise, such measures are likely to entail distinctions and exclusions based on political opinion or religion, contrary to the Convention. [2117]

835. In addition to these substantive conditions, the legitimate application of this exception must respect the right of the person affected by the measures "to appeal to a competent body established in accordance with national practice". It is important that the appeals body be separate from the administrative or governmental authority and offer a guarantee of objectivity and independence. It must be competent to hear the reasons for

[2109] Examples recently noted by the Committee include *China (Macau Special Administrative Region)*, *Congo*, *Indonesia*, *Kenya*, *Lithuania* and *Viet Nam*.

[2110] General Survey, 1988, paras 135–138.

[2111] ibid., para. 135.

[2112] See General Survey, 1988, para. 57; Special Survey, 1996, paras 45 and 125. See also para. 805 above on political opinion.

[2113] See, for example, *China (Macau Special Administrative Region)* – CEACR, direct request, 2009; and *Indonesia* – CEACR, direct request, 2011.

[2114] See, for example, *Lithuania* – CEACR, observation, 2010.

[2115] See, for example, *Viet Nam* – CEACR, direct request, 2004, and observation, 2012.

[2116] See *Congo* – CEACR, direct request, 2011; and *Kenya* – CEACR, direct request, 2012.

[2117] General Survey, 1988, para. 136. See also *Lithuania* – CEACR, observation, 2010: the Committee noted that the European Court of Human Rights, in its judgement of 27 July 2004, in the case of *Sidabras and Džiautas* v. *Lithuania*, held that the restrictions imposed under the Act on the Evaluation of the USSR Former Permanent Employees of the Organization (SSC Act) on the applicants to apply for private sector jobs violated their rights under art. 14 (prohibition of discrimination) in conjunction with art. 8 (private life) of the European Convention on Human Rights. Taking the Committee of Expert's surveys and observations concerning similar situations into account, the Court held that section 2 of the SSC Act was a disproportionate measure. In the Court's view, such a legislative scheme must be considered as lacking the necessary safeguards for avoiding discrimination and for guaranteeing adequate and appropriate judicial supervision of the imposition of such restrictions (para. 59).

the measures taken against the appellant and to afford him or her the opportunity to present his or her case in full.

Special measures of protection and assistance

836. *Article 5* of the Convention provides for the adoption of special measures of protection and assistance, which shall not be deemed to be discrimination. Such measures are important for ensuring equality of opportunity in practice as they address specific needs or the effects of past discrimination with a view to restoring a balance. These consist of two types. First, the special measures of protection and assistance provided for in international labour Conventions and Recommendations *(Article 5(1))*. These concern, for example, workers with family responsibilities, indigenous peoples, older workers, persons with disabilities or persons living with HIV or AIDS, as well as those protecting maternity. [2118] They are expressly recognized as not being discriminatory within the meaning of the Convention. The provision ensures that the ratification and application of Convention No. 111 does not come into conflict with other ILO standards covering such workers.

837. Secondly, pursuant to *Article 5(2)*, any Member may, after consultation with representative employers' and workers' organizations, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance. The term "special measures of protection or assistance" is meant to cover the widest possible range of measures concerning different categories of workers in need of protection and assistance. The measures often include affirmative action, such as the quota system for employment of scheduled castes and tribes in *India*, [2119] and in *Peru* where indigenous communities must represent a minimum of 15 per cent of the candidates for Congress. [2120]

Protective measures versus equality

838. With regard to ILO standards governing maternity, the Committee wishes to emphasize that maternity requires differential treatment to achieve genuine equality. Maternity protection should be provided to enable women to fulfil their maternal role without being marginalized in the labour market. However, in a number of countries protective measures for women go beyond maternity protection and are thus discriminatory. The Committee emphasizes that a major shift over time has occurred from a purely protective approach concerning the employment of women to one based on promoting genuine equality between men and women and eliminating discriminatory law and practice.

839. Protective measures for women may be broadly categorized into those aimed at protecting maternity in the strict sense, which come within the scope of *Article 5*, and those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society, which are contrary to the Convention and constitute obstacles to the recruitment and

[2118] For a discussion on some of these measures, see the specific sections regarding gender equality (paras 782–797), indigenous peoples (paras 767–772), disability (paras 816–819), age (paras 813–815), and real or perceived HIV status (paras 810–812).

[2119] See *India* – CEACR, observation, 2010.

[2120] *Peru* – CEACR, direct request, 2010. See also *Art. 4(1)* of Convention No. 169, which provides that special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned. See also paras 862–864 below.

employment of women. [2121] In many countries, general protective legislation for women has been revisited and questioned, which has resulted, in some instances, in the repeal of discriminatory provisions. [2122] In other countries, the revision or adoption of new labour codes have provided an opportunity to remove provisions imposing a general prohibition of night work for women, gender-based limitations on working hours and excluding women from occupations or sectors due to their sex, rather than their capacity to perform the job. [2123]

840. Nonetheless, in a number of countries, protective measures continue to exclude women from certain occupations due to stereotyped assumptions regarding their role and capabilities or what is "suitable to their nature". [2124] ***In this regard, the Committee considers that protective measures applicable to women's employment which are based on stereotypes regarding women's professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women in employment and occupation. In addition, provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health.*** [2125] With a view to repealing discriminatory protective measures applicable to women's employment, it may be necessary to examine what other measures, such as improved health protection of both men and women, adequate transportation and security, as well as social services, are necessary to ensure that women can access these types of employment on an equal footing with men. [2126]

National policy on equality

841. The primary obligation of ratifying States is to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof *(Article 2)*. In moving towards this objective, appropriate measures should be adopted in line with the underlying principles enumerated in *Article 3* of the Convention and *Paragraph 2* of the Recommendation.

Immediate, progressive and effective application

842. Though offering considerable flexibility, some concrete measures are immediately required under the Convention. Ratifying States must declare a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation *(Article 2)*; repeal any statutory provisions and modify any administrative

[2121] For example, *Angola* – CEACR, direct request, 2011; *Azerbaijan* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, direct request, 2008; *Cameroon* – CEACR, direct request, 2010; and *Central African Republic* – CEACR, direct request, 2010.

[2122] For example, *Republic of Korea* – CEACR, observation, 2007.

[2123] For a discussion relating to protective measures regarding night work for women, see also *Night work of women in industry*, General Survey of the reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, the Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 89th Session, Geneva, 2001, pp. 2–4.

[2124] For example, *Azerbaijan*, Decision No. 170 of 20 October 1999; and *Bangladesh*, Labour Act, 2006 (XLII of 2006), sections 39, 40, 42 and 87.

[2125] See *Mali* – CEACR, direct request, 2011; and *Russian Federation* – CEACR, observation, 2010.

[2126] See *Papua New Guinea* – CEACR, direct request, 2011.

instructions or practices inconsistent with the equality policy *(Article 3(c))*; and supply reports on the results achieved of the action taken *(Article 3(f))*. Other measures to give effect to the principle of the Convention may be implemented more progressively. These include the enactment of legislation and the promotion of educational programmes to secure the acceptance and observance of the national policy *(Article 3(b))* and cooperation with other appropriate bodies in promoting its acceptance and observance *(Article 3(a))*.

843. The responsibility of the State in pursuing a national policy against discrimination is of particular importance. [2127] The State not only possesses direct means for applying the policy in public sector employment, but can also play a role in setting an example for other employers and in promoting the observance of the policy in other sectors. [2128] The Convention requires the State to ensure the application of the policy in respect of employment under the direct control of a national authority and in the activities of vocational guidance, vocational training and placement services under the direction of a national authority. [2129] In accordance with the Recommendation, the national policy should take into account that measures to promote equality of opportunity and treatment are a matter of public concern. The public authorities must, in all their activities, apply the national equality policy provided for in *Article 2* of the Convention, free of all discrimination. [2130]

844. ***The Convention requires the national equality policy to be effective. It should therefore be clearly stated, which implies that programmes should be or have been set up, all discriminatory laws and administrative practices are repealed or modified, stereotyped behaviours and prejudicial attitudes are addressed and a climate of tolerance promoted, and monitoring put in place.*** [2131] ***Measures to address discrimination, in law and in practice, should be concrete and specific. They should make an effective contribution to the elimination of direct and indirect discrimination and the promotion of equality of opportunity and treatment for all categories of workers, in all aspects of employment and occupation and in respect of all the grounds covered by the Convention.*** [2132] ***Treating certain groups differently may be required to eliminate discrimination and to achieve substantive equality for all groups covered by the Convention.*** [2133]

845. For the purpose of achieving the objectives of the Convention, it is essential to acknowledge that no society is free from discrimination and that continuous action is required to address it. Discrimination in employment and occupation is both universal and constantly evolving. Some manifestations of discrimination have acquired more subtle and less visible forms, which are more difficult to identify and address. [2134] Under the Convention, the promotion of equality of opportunity and treatment is not aimed at a stable situation, but is to be achieved in successive stages in the course of which the

[2127] See General Survey, 1963, para. 94.

[2128] See Recommendation No. 111, *Para. 3(b)*.

[2129] *Art. 3(d)* and *(e)*; Recommendation No. 111, *Para. 3(a)(i)* and *(ii)*.

[2130] See Recommendation, *Paras 2(a)* and *(c)*.

[2131] See, for example, *Saudi Arabia* – CEACR, observation, 2007.

[2132] General Survey, 1988, para. 162.

[2133] See paras 836–840 above, and paras 862–864 below.

[2134] See *Time for equality at work*, op. cit., p. 2, ILC, 2003. See also *Equality at work: The continuing challenge*, op. cit.

national equality policy must be adjusted to newly emerging forms of discrimination for which solutions must be found. [2135]

846. Nonetheless, a number of governments continue to assert that certain forms of discrimination addressed under the Convention do not exist in their countries, [2136] or that there have been no complaints of discrimination, and therefore no action is required to apply the Convention. [2137] A number of governments also indicate that the Convention does not give rise to any difficulties in practice, or is fully applied, without providing further information on the content of, or the means by which the national policy is applied. [2138] The Committee considers that such a position is contrary to the spirit of the Convention and is a considerable obstacle to its implementation. [2139]

847. When assessing whether a given country has declared and is pursuing a national equality policy in accordance with the Convention, the Committee has been guided by the criteria of effectiveness, taking into account the national conditions. The Convention envisages that the results achieved in the implementation of the national equality policy are being regularly assessed with a view to reviewing and adjusting existing measures and strategies on a continuing basis. Such continual monitoring, assessment and adjustment is required, not only of the measures in place to promote equality, but also of their impact on the situation of the protected groups and the incidence of discrimination. [2140] It is therefore essential that measures of an economic or political nature do not undermine the principles of equality and non-discrimination or adversely affect the progress achieved by previous action taken to promote equality.

Multifaceted policy

848. The implementation of a national equality policy presupposes the adoption of a range of specific measures, which often consist of a combination of legislative and administrative measures, collective agreements, public policies, affirmative action measures, dispute resolution and enforcement mechanisms, specialized bodies, practical programmes and awareness raising. [2141] Since its Special Survey in 1996, the Committee has been able to examine a wealth of non-discrimination and equality laws and policies. While evidencing considerable progress, the measures taken to implement the Convention are often confined to one ground or only some of the grounds, often sex and increasingly race, colour and national extraction.

849. Substantial progress has been made in many countries in adopting comprehensive gender equality policies and action plans that include employment and occupation. [2142]

[2135] CEACR, General Report, 2009, para. 106; See also *Kuwait* – CEACR, observation, 2009.

[2136] See, for example, *Belarus* – CEACR, direct request, 2011.

[2137] See, for example, *Libya* – CEACR, observation, 2008; and *Viet Nam* – CEACR, observation, 2010.

[2138] See, for example, *Sudan* – CEACR, observation, 2010; and *Tunisia* – CEACR, observation, 2011.

[2139] See CEACR, General Report, 2009, para. 106.

[2140] The importance of continual monitoring has been emphasized by the Committee in a number of cases related to discrimination based on race, colour and national extraction: *Austria* – CEACR, direct request, 2010; *Cyprus* – CEACR, direct request, 2011; *Czech Republic* – CEACR, observation, 2008; *France*, observations, 2008 and 2011; *Portugal* – CEACR, direct request, 2009; and *Serbia* – CEACR, direct request, 2010.

[2141] CEACR, General Report, 2009, para. 107.

[2142] See, for example, *Cape Verde* – CEACR, direct request, 2009; *Estonia* – CEACR, direct request, 2011; *Gambia* – CEACR, direct request, 2011; *Honduras* – CEACR, direct request, 2010, *Pakistan* – CEACR, observation, 2011. See also Japan: Third Basic Plan for Gender Equality, approved in December 2010 (report under art. 19 of the Constitution).

The pace has been slower in respect of the other grounds set out in *Article 1(1)(a)*. Whereas discrimination on the grounds of race, colour and national extraction, as well as religion, is generally prohibited in the national legislation of most countries, far fewer countries have adopted proactive and comprehensive measures aimed at promoting substantive equality in respect of these grounds. Generally, less emphasis has been given to assessing the actual results secured by the measures to implement these policies. The Committee recalls that, even though the relative importance of the problems relating to each of the grounds may differ for each country, when reviewing the situation and deciding on the measures to be taken, it is essential that attention be given to all the grounds in implementing the national policy. The Committee has repeatedly felt the need to remind countries of this obligation under the Convention.

Constitutional and legislative developments

850. Some governments have indicated that they are in full compliance with the Convention, as equality is constitutionally guaranteed and there are no discriminatory provisions in their laws. The Committee must emphasize that a constitutional provision and the absence of discriminatory provisions in legislation, or the absence of complaints, is not sufficient to fulfil the obligations of the Convention; nor is it an indicator of the absence of discrimination in practice. While the repeal of discriminatory legislation is an immediate obligation under the Convention, it is only a first step in implementing a national equality policy.

851. Constitutional clauses which expressly provide that international agreements and treaties prevail over national law, while important, do not exempt States from adopting national legislation to implement the principles laid down in the Convention. The provisions of the Convention, even where prevailing over national law, may not be sufficient in themselves to provide effective legal protection from discrimination to individual workers. [2143] In addition, provisions in constitutions guaranteeing, in general terms, equality before the law, freedom of opinion, access to the public sector or the right to employment, while important, are insufficient to give effect to the Convention. [2144] The Committee welcomes the steps taken in recent years by a number of countries to strengthen constitutional guarantees, for example by including a positive duty of the State to promote equality between men and women, [2145] expanding the list of prohibited grounds of discrimination [2146] or including grounds previously omitted. [2147] Nonetheless constitutional provisions providing for equality of opportunity and treatment, although important, have generally not proven to be sufficient to address specific cases of discrimination in employment and occupation. [2148] A more detailed legislative framework is also required.

852. Legislation is still one of the most widely used means of ensuring and promoting acceptance and observance of the national policy designed to promote equality of opportunity and treatment in employment and occupation. For most countries, legislation seems to be an indispensable step in giving effect to the principle of the Convention, and

[2143] Special Survey, 1996, para. 212.

[2144] CEACR, General Report, 2009, para. 109; see also, for example, *Nepal* – CEACR, observation, 2008.

[2145] See *Plurinational State of Bolivia* – CEACR, observation, 2010; and *Luxembourg* – CEACR, observation, 2008.

[2146] See *Costa Rica* – CEACR, observation, 2011; and *Rwanda* – CEACR, observation, 2006.

[2147] See *Botswana* – CEACR, observation, 2010.

[2148] CEACR, General Report, 2009, para. 109.

considerable progress has been made in this regard. In recent years, such progress has been marked by more comprehensive provisions on equality and non-discrimination in general labour laws, for example, in *Australia* and the *United Republic of Tanzania*, [2149] or the adoption of specific non-discrimination or equality legislation covering one or more grounds, particularly in Europe, but also for example in *Indonesia* and *Viet Nam*. [2150] The Committee has been encouraged by legislative initiatives in countries recognizing the need to address the more subtle and systemic manifestations of discrimination, such as occupational segregation, and to promote substantive equality. While a legal approach exclusively based on the imposition of a negative duty not to discriminate has proven effective in eliminating the most flagrant forms of direct discrimination, the Committee welcomes the adoption by a growing number of countries of legislation encompassing both a duty to prevent and combat discrimination and to promote equality of opportunity and treatment in employment and occupation. [2151] Such legislation may prove to be more effective in addressing structural discrimination and meeting the concerns of those most vulnerable to discrimination, who tend to make less use of the law because of a lack of awareness or a fear of reprisals. The Committee particularly welcomes the language in some legislation referring to "actual, perceived or supposed characteristics" with respect to the protected grounds. [2152]

853. Where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention. [2153] In recent years, the Committee has been able to note progress in a number of countries in this regard, for example in *Australia*, *Belgium*, *Croatia*, *Fiji*, *Kenya*, *Serbia* and *The former Yugoslav Republic of Macedonia*. [2154] ***In this context, the Committee draws attention to the need to review continually the protection afforded by the national legislation to ensure that it remains appropriate and effective, particularly in light of the regularly changing context and newly emerging grounds.***

854. Even in countries where the adoption of legislation has been an important means of declaring and pursuing a national policy on equality, the principles of the Convention are often only partially reflected in the legislation, which does not therefore provide full protection. On a number of occasions, the Committee has found that some of the grounds set out in *Article 1(1)(a)* of the Convention have been omitted, [2155] or that not all aspects of employment and occupation have been addressed, and particularly recruitment. [2156] Given the persisting patterns of discrimination on the grounds set out in the Convention,

[2149] *Australia* – CEACR, observation, 2011; and *United Republic of Tanzania* – CEACR, observation, 2009.

[2150] *Indonesia* – CEACR, observation, 2011; and *Viet Nam* – CEACR, observation, 2008.

[2151] See below, para. 860.

[2152] See *Fiji* – CEACR, observation, 2008 (Employment Relations Promulgation 2007, sections 6(2) and 75).

[2153] General Survey, 1988, para. 171; Special Survey, 1996, para. 206.

[2154] *Australia* – CEACR, observation, 2011 (the Fair Work Act, 2009); *Belgium* – CEACR, observation, 2009 (Anti-discrimination Act, 2007); *Croatia* – CEACR, observation, 2011 (Anti-discrimination Act, 2008); *Fiji*, observation 2008 (Employment Relations Promulgation, 2007); *Kenya* – CEACR, observation, 2010 (Employment Act, 2007); *Serbia* – CEACR, observation, 2010 (Law on the Prohibition of Discrimination, 2009); and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2009 (Labour Relations Act, 2005).

[2155] See *Algeria* – CEACR, observation, 2011; *Austria*, direct request, 2010; *Azerbaijan* – CEACR, observation, 2011; *Bahamas* – CEACR, direct request, 2011; *Bangladesh* – CEACR, observation, 2011; *Cameroon* – CEACR, observation, 2010; *Islamic Republic of Iran* – CEACR, observation, 2011; *Lao People's Democratic Republic* – CEACR, direct request, 2012; and *Sweden*, direct request, 2010.

[2156] See *Armenia* – CEACR, direct request, 2011; *Bangladesh* – CEACR, observation, 2011; *Rwanda* – CEACR, observation, 2011; and *Saint Kitts and Nevis* – CEACR, direct request, 2010.

in most cases there is a need for comprehensive legislation containing explicit provisions defining and prohibiting direct and indirect discrimination on at least all of the grounds set out in the Convention, and in all aspects of employment and occupation, in order to ensure the full application of the Convention. [2157]

855. The Committee has observed that a number of features in legislation contribute to addressing discrimination and promoting equality, and it particularly welcomes legislation containing the following: coverage of all workers; provision of a clear definition of direct and indirect discrimination, as well as sexual harassment; the prohibition of discrimination at all stages of the employment process; the explicit assignment of supervisory responsibilities to competent national authorities; the establishment of accessible dispute resolution procedures; the establishment of dissuasive sanctions and appropriate remedies; the shifting or reversing of the burden of proof; the provision of protection from retaliation; affirmative action measures; and provision for the adoption and implementation of equality policies or plans at the workplace, as well as the collection of relevant data at different levels.

Promoting equality through proactive measures

856. ***Legislative measures to give effect to the principles of the Convention are important, but not sufficient to achieve its objective.*** [2158] ***Effectively responding to the complex realities and variety of ways in which discrimination occurs requires the adoption of differentiated measures. Proactive measures are required to address the underlying causes of discrimination and de facto inequalities resulting from discrimination deeply entrenched in traditional and societal values.*** [2159] ***The Committee welcomes the range of proactive measures taken by States to give effect to the Convention in practice.***

National plans and strategies

857. Further advances have been made in adopting national plans and policies setting specific goals and objectives to achieve equality of opportunity and treatment, or for combating discrimination. Some of these contain comprehensive measures in the area of legislative reform, affirmative action, awareness raising and training. A large number focus on gender equality, such as in *Belarus*, *Benin*, *Costa Rica*, Japan and *Philippines*. Others focus specifically on race, such as the National Plan for the Promotion of Racial Equality in *Brazil*, although a growing number have wider coverage, such as the national anti-discrimination plans in *Argentina* and *Lithuania*. Some countries have adopted specific policies to promote equality in the public service. For example, in *France*, a charter for the promotion of equality in the three branches of the public service aims to establish recruitment conditions tailored to needs without discrimination, make career paths more dynamic, raise the awareness of and train employees in the administration, and disseminate good practices. [2160] Other countries have adopted similar policies for persons with disabilities, [2161] the Roma, [2162] ethnic minorities or persons of immigrant background. [2163]

[2157] See, for example, *Bahrain* – CEACR, observation, 2009; CEACR, General Report, 2009, para. 109.

[2158] See General Survey, 1988, para. 159; See also *Azerbaijan* – CEACR, observation, 2011; *Bosnia and Herzegovina* – CEACR, observation, 2003; *Sao Tome and Principe* – CEACR, direct request, 2006; and *Sierra Leone* – CEACR, observation, 2011.

[2159] See, for example, *Senegal* – CEACR, observation, 2006.

[2160] *France* – CEACR, observation, 2011.

[2161] See, for example, *Jamaica* – CEACR, direct request, 2010.

858. Monitoring the implementation of plans and policies in terms of results and effectiveness is essential, although very few countries have established specific reporting procedures or mechanisms to this end. The proliferation of plans and strategies, whether to promote gender equality, Roma inclusion, or to combat discrimination, has not been accompanied by regular information on the results secured by the action taken to implement them, and the Committee has regularly reminded governments of their obligation under *Article 3(f)* of the Convention in this regard. The Committee also emphasizes the important role of worker' and employers' organizations in developing and promoting the acceptance and observance of national policies and plans, as well as in evaluating their impact. The cooperation and consultation processes provided for in the Convention and Recommendation assist in ensuring that the measures enjoy wide support and that policies are effectively implemented. [2164]

Public procurement

859. *Paragraph 3(b)(ii)* of Recommendation No. 111, specifically refers to the possibility of making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles of the Convention. [2165] The Committee acknowledged in previous General Surveys the importance of equality clauses in public procurement. [2166] Little information has been received since then regarding national law and practice in this respect, although different types of public procurement frameworks have been put in place. They consist primarily of the adoption of a general policy, mainly through a general clause aimed at respect for equality of opportunity and treatment; [2167] others are aimed at improving the situation of a specific group of persons who have been historically disadvantaged, or provide for gender mainstreaming in the framework of procurement procedures. [2168] The Preferential Procurement Policy Framework Act of *South Africa* provides for the possibility of establishing a preferential procurement policy with the specific goal of "contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability through the allocation of additional preference points when the specific goal can be attained by the tender". [2169] In *Canada*, a range of legislation and programmes at both the federal and provincial levels have been developed concerning public procurement and equality. [2170]

[2162] See paras 773–775 above.

[2163] See, for example, *Cambodia* – CEACR, direct request, 2011; *France* – CEACR, observation, 2011; *Kenya* – CEACR, direct request, 2010; *Nepal* – CEACR, direct request, 2010; and *Norway* – CEACR, direct request, 2011.

[2164] Convention No. 111, *Arts 3(a)* and *5(2)*; Recommendation No. 111, *Para. 4(9)*.

[2165] See also paras 721–722 above.

[2166] General Survey, 1971, para. 67; General Survey, 1988, para. 177.

[2167] See, for example, *Australia* – CEACR, observation, 2011.

[2168] *Belgium* – CEACR, direct request, 2010.

[2169] See *South Africa*, Preferential Procurement Policy Framework Act, 2000, and the Broad-based Black Economic Empowerment Act, 2003. See also *Zambia* – CEACR, direct requests, 2011 and 2012.

[2170] For instance, in *Canada* the Federal Contractors Program (FCP), established in 1986, aims to achieve workplace equity for designated groups experiencing discrimination in the Canadian labour market, namely women, aboriginal peoples, persons with disabilities and members of visible minorities. Comprehensive guidance is provided through the Federal Government's website for those who are subject to the Program. See also *Canada* – CEACR, direct request, 2012, regarding the Employment Equity Compliance Reviews conducted under the FCP, resulting in 150 employees being ineligible to receive contracts. In the United States, the Small Business Act Public Law 85-536 ensures the participation of those socially and economically disadvantaged persons who

Equality planning

860. Promoting equality at the enterprise level has in some countries been an important element of strategies to promote equality of opportunity and treatment in employment and occupation. In a number of countries, legislation requires certain public or private employers to adopt equality plans, equal opportunity plans or employment equity plans. [2171] Through such equality planning, employers can play a crucial role in collecting statistical information on the representation of different groups in the workforce, finding solutions to address existing inequalities and adopting affirmative action measures within the enterprise. Under the Equal Treatment Act in *Hungary* "[b]udgetary organizations employing more than 50 persons, as well as legal entities in which the State has a majority ownership are obliged to draw up an equal opportunities plan". In *South Africa* legislation requiring employers to adopt employment equity plans allows them to set clear objectives and adopt affirmative action measures. With a view to assisting employers and improving compliance with the obligation to develop equality plans, codes of good practice have been developed in some countries, such as *South Africa* and *United Republic of Tanzania*.

Codes, tools and guides

861. The Committee welcomes the initiatives taken in a number of countries to complement non-discrimination and equality legislation with tools and guidance, such as codes of practice, codes of conduct or guidelines, most of which have focused on a particular issue, such as sexual harassment, HIV and AIDS or persons with disabilities. In *Barbados*, the Code of practice on HIV/AIDS and other life-threatening illnesses in the workplace was developed by the social partners and the Ministry of Labour for the public service. [2172] In Singapore, tripartite guidelines were developed on non-discrimination in job advertisements, as well as tripartite guidelines on fair employment practices. In *Estonia*, the Estonian–French twinning project led to a compilation of European good practices and guidelines for employers to promote gender equality in enterprises in relation to recruitment, training and careers, pay and work–life balance. A network of employers, workers' representatives, gender experts and other relevant actors was subsequently created with a view to exchanging information, experience and good practices in promoting gender equality in enterprises.

Affirmative action measures

862. Affirmative action measures are aimed at ensuring equality of opportunity in practice, taking into account the diversity of situations of the persons concerned, so as to halt discrimination, redress the effects of past discriminatory practices and restore a balance. They are part of a broader effort to eliminate all inequalities and an important component of the national equality policy, required under *Article* 2. [2173] To be in accordance with the Convention, such measures must genuinely pursue the objective of equality of opportunity, be proportional to the nature and scope of the protection or

are members of groups that have suffered discriminatory practices (Black Americans, Hispanic Americans, Native Americans, Indian tribes, Asian Pacific Americans, Native Hawaiian Organizations and other minorities) in a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government.

[2171] See *Finland* – CEACR, direct request, 2007; *Hungary* – CEACR, direct request, 2011; *Montenegro* – CEACR, direct request, 2010; and *South Africa* – CEACR, direct request, 2010.

[2172] *Barbados* – CEACR, direct request, 2011.

[2173] At a very early stage, the Committee considered that "in suitable cases – and subject to periodic re-examination of their continued justification – these measures may in fact be considered essential elements in a policy designed to achieve true equality", General Survey, 1963, para. 39.

assistance needed or of the existing discrimination, and be examined periodically in order to ascertain whether they are still needed and remain effective. Affirmative action grounded on prior consultation and the consent of the stakeholders, including workers' and employers' organizations, helps to ensure that the measures taken are broadly accepted, effective and in line with the principle of non-discrimination. [2174]

863. Affirmative action has mostly been used to address gender inequality, but also de facto inequalities in education and training, employment and occupation that affect certain ethnic or national minorities, indigenous peoples, certain social groups, persons with disabilities, older persons, and persons with HIV. Most affirmative action addressing gender equality has emerged from legislation, such as in *Brazil* and *Bulgaria*, [2175] and in the majority of cases is aimed at the public sector, setting quotas or targets on the representation of women. In Timor-Leste, for example, legislation provides for a mandatory gender balance in the composition of the Administrative Council of the Employment and Vocational Training Fund and the Development of the Labour Force Institute. [2176]

864. In *Peru*, a Directive adopted by the Ministry of the Interior provides that 25 per cent of managerial posts in the non-police state department shall be occupied by women. [2177] The Magna Carta of the *Philippines* states that the number of women in third-level positions in Government shall correspond to a "50–50 gender balance". [2178] A target of 30 per cent has been set in *Ghana* in order to ensure adequate representation of women at the district and sub-district levels of the administration. [2179] Other countries that have set similar targets and quotas to correct gender inequalities in representation in the public administration include *Belgium*, *Belize*, *Bulgaria*, *Cambodia*, *Cuba*, *El Salvador*, *India*, Japan, *Nepal* and *Pakistan*. Affirmative action measures setting goals for the representation of ethnic minorities have been adopted in *Israel*, where 10 per cent of all civil servants must come from Arab, Druze and Circassian population groups. [2180] The Updated Strategic Plan in *Australia* (South Australia) establishes targets to increase aboriginal workforce participation. [2181] *Ireland* and *Slovenia* have established quotas to ensure that employers hire a percentage of persons with disabilities at the workplace. [2182]

[2174] See, for example, *Fiji* – CEACR, direct requests, 2006, 2008 and 2011; and *Greece* – CEACR, direct request, 2003.

[2175] *Brazil*, Decree No. 6872 of 2009; and *Bulgaria*, Act on Protection against Discrimination.

[2176] Timor-Leste, Decree-Law 29/2008 on the Employment and Vocational Training Fund; Decree-Law 08/2008 on the Development of the Labour Force Institute.

[2177] *Peru* – CEACR, observation, 2011.

[2178] *Philippines* – CEACR, observation, 2011.

[2179] *Ghana* – CEACR, direct request, 2010.

[2180] *Israel* – CEACR, direct request, 2011.

[2181] *Australia* – CEACR, observation, 2011. With regard to affirmative action to address "racially disadvantaged groups", see *Namibia*, Affirmative Action (Employment) Act; *Namibia* – CEACR, direct request, 2005 and observations, 2010 and 2012.

[2182] *Ireland* – CEACR, direct request, 2011: the Civil Service holds special competitions with a view to ensuring that 3 per cent of all recruits are persons with disabilities; *Slovenia* – CEACR, direct request, 2007 (the Decree Establishing Employment Quota for Disabled Persons (No. 111/2005) requires every employer with at least 20 workers to employ a certain proportion of disabled persons).

Awareness raising and public information

865. During the early discussions on the Convention, a large number of countries indicated the importance they attached to educational programmes as a means of giving effect to the Convention, [2183] a concern which is reflected in *Article 3(b)*. [2184] Educational programmes are instrumental in enhancing understanding and knowledge about the legislative and policy framework on equality and non-discrimination in employment and occupation. Public awareness raising is also essential to address prejudices and stereotypes regarding the professional abilities and aspirations of certain groups which lead to exclusion and discrimination in society and the labour market. [2185] In a number of countries, the Committee has stressed the importance of combating xenophobia, discrimination and stereotypes by actively promoting respect and tolerance, without which the coexistence of different groups in society is illusive. [2186] Without respect of the rule of law and maintenance of a climate of tolerance, many de facto inequalities are left unaddressed, and the progress made at the policy level stagnates or is reversed. The special role of equality bodies in fostering public understanding and acceptance of the principles of non-discrimination is specifically recognized in the Recommendation. [2187]

866. Awareness-raising measures vary from one country to another. In *Belgium*, *Ecuador*, *Lesotho* and *Switzerland*, guidelines and handbooks on sexual harassment and other gender issues have been adopted. [2188] In *Madagascar* and *Mexico*, workshops, training or campaigns have covered sexual harassment, equal remuneration and occupational segregation, and in *Mozambique*, programmes to mobilize various sectors to address HIV and AIDS included training of 25 educators and awareness raising for 16,000 informal sector vendors. [2189] In the *Republic of Moldova*, the National Employment Agency disseminates information on national policies and legislation concerning equal opportunities and treatment. [2190] Some countries have involved the media in raising awareness on discrimination issues and promoting equality, such as *Burundi* and *Kuwait*. [2191] *Norway* adopted the project "Top 10 International Women", aiming to increase awareness and promote recognition of the competence and skills of immigrant women. [2192]

[2183] See *Discrimination in the field of employment and occupation*, Report VII(2), ILC, 40th Session, Geneva, 1957, pp. 81–83.

[2184] *Art. 3(b)* provides for the promotion of "… such educational programmes as may be calculated to secure the acceptance and observance" of the national equality policy.

[2185] See, for example, *Belarus* – CEACR, direct request, 2011; *Burkina Faso* – CEACR, direct request, 2011; *Croatia* – CEACR, observation, 2010; *Dominican Republic* – CEACR, observation, 2011; *Eritrea* – CEACR, direct request, 2011; *Guatemala* – CEACR, direct request, 2010; *Kazakhstan* – CEACR, direct request, 2009; *Kenya* – CEACR, direct request, 2009; *New Zealand* – CEACR, direct request, 2010; *Papua New Guinea* – CEACR, direct request, 2011; and *Senegal* – CEACR, observation, 2009.

[2186] See, for example, *France* – CEACR, observation, 2011; *Islamic Republic of Iran* – CEACR, observation, 2011; *Libya* – CEACR, observation, 2010; and *Slovakia* – CEACR, observation, 2008.

[2187] *Para. 4(a)*. See also Chapter 4.

[2188] *Belgium* – CEACR, direct request, 2011; *Ecuador* – CEACR, direct request, 2010; *Lesotho* – CEACR, direct request, 2011; and *Switzerland* – CEACR, direct request, 2012.

[2189] *Madagascar* – CEACR, direct request, 2011; *Mexico* – CEACR, direct requests, 2009 and 2011; and *Mozambique* – CEACR, direct request, 2011.

[2190] Report under art. 19 of the ILO Constitution.

[2191] *Burundi* – CEACR, direct request, 2011; and *Kuwait* – CEACR, direct request, 2009.

[2192] *Norway* – CEACR, direct request, 2010.

867. Awareness raising aimed at, or in cooperation with, workers and employers and their organizations generates broader understanding of the principles enshrined in the Convention. In *Bulgaria*, the Commission on the Protection against Discrimination has collaborated with the national workers' and employers' organizations and signed framework agreements on cooperation for the prevention of discrimination in the field of labour with the trade union confederation and the agency for persons with disabilities. [2193] In *Finland*, the national awareness-raising campaign "YES – Equality is priority" focuses on new forms of positive action to be developed and tested in the area of employment and entrepreneurship. [2194]

[2193] *Bulgaria* – CEACR, observation, 2009.

[2194] *Finland* – CEACR, direct request, 2011.

Chapter 4

Monitoring and enforcement relating to Conventions Nos 100 and 111

868. Monitoring and enforcement of equality and anti-discrimination laws and policies is an important aspect in determining if there is effective implementation of Conventions Nos 100 and 111. Adequately resourced and responsive procedures and institutions, which are accessible to all groups, are critical in this context. A number of countries have acknowledged the need to strengthen monitoring and enforcement mechanisms, including the labour inspectorate, specialized equality or equal pay bodies and the courts, in order to better address non-discrimination and equality in employment and occupation. The role of the labour inspectorate and specialized equality bodies has been a particular focus of the Committee in recent years given the developments in those areas.

869. Another important aspect of monitoring implementation of the Conventions is the collection and analysis of statistics. In order to be able to address appropriately discrimination and unequal pay, and to determine if measures taken are having a positive impact, data and research on the actual situation, including the underlying causes, are essential, and the Committee regularly calls on governments to provide such information and analysis.

870. The Committee also regularly requests governments to provide detailed information on the nature and number of complaints lodged with the various judicial, quasi-judicial and administrative bodies. Where no cases or complaints, or very few, are being lodged, this is likely to indicate a lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals. [2195] The fear of reprisals or victimization is a particular concern in the case of migrant workers. [2196] The lack of complaints or cases could also indicate that the system of recording violations is insufficiently developed.

871. ***The Committee invites member States to raise awareness of the relevant legislation, to enhance the capacity of the competent authorities, including judges, labour inspectors and other public officials, to identify and address cases of discrimination and unequal pay, and also to examine whether the applicable substantive and procedural provisions, in practice, allow claims to be brought***

[2195] CEACR, General Report, 2009, para. 113. See also Convention No. 100: *Morocco* – CEACR, observation, 2009; *Bangladesh* – CEACR, observation, 2011; *Estonia* – CEACR, direct request, 2011; *Indonesia* – CEACR, direct request, 2011; and *Panama* – CEACR, direct request, 2011.

[2196] See, for example, Convention No. 111: *Syrian Arab Republic* – CEACR, direct request, 2011. With respect to migrant domestic workers, see *Bahrain* – CEACR, observation, 2010 and *Saudi Arabia* – CEACR, observation, 2009.

successfully. [2197] ***The Committee also stresses the need to collect and publish information on the nature and outcome of discrimination and equal remuneration complaints and cases, as a means of raising awareness of the legislation and of the avenues for dispute resolution, and in order to examine the effectiveness of the procedures and mechanisms.*** [2198]

The labour inspectorate

872. Where provisions on non-discrimination, equality and equal remuneration are set out in labour laws, the supervision of the relevant provisions often rests in the first instance with the labour inspection services. [2199] Their role normally includes detecting and addressing violations during inspection visits, reporting such violations and imposing sanctions. They may also be given an important role in prevention, including providing technical information and advice. [2200] There is evidence of an emerging role for labour inspectors in monitoring equality and diversity in the workplace, and increased interaction with specialized equality bodies. [2201]

873. Measures to increase the role of the labour inspection services to address equality and non-discrimination have been taken, for example in *Poland*, where equal treatment of non-citizens recently became an additional component of the supervision of the labour legislation by the labour inspectorate. [2202] Given the importance of minimum wages in the context of equal remuneration and improving the wages of low-paid workers, [2203] enforcing the payment of minimum wages can also be significant. [2204] As previously mentioned, some countries have adopted specific legislation requiring the development and implementation by employers of plans to prevent discrimination and promote equality. [2205] In *South Africa*, the Labour Department is responsible for monitoring the adoption and implementation of these plans. [2206]

874. Many governments continue to face difficulties in establishing and maintaining adequate labour inspection services to carry out their monitoring duties. [2207] The lack of human and material resources has an impact on the capacity of labour inspectors to address discrimination and equal remuneration issues. In most cases, labour inspectors may be able to intervene and provide guidance and redress only on the basis of individual complaints rather than on a more systematic and comprehensive basis during

[2197] CEACR, General Report, 2009, para. 113. See also CEACR, general observation, 2007, para. 8. See also Convention No. 111: *Islamic Republic of Iran* – CEACR, observation, 2011; *Saudi Arabia* – CEACR, observation, 2007.

[2198] CEACR, General Report, 2009, ibid.

[2199] For example in *Belgium*, *Bulgaria*, *Chile*, *Denmark*, *France*, *Lebanon*, and in most French-speaking countries of Africa and most countries in Latin America.

[2200] General Survey, 2006, para. 85.

[2201] ibid., p. 54; see section on specialized bodies, paras 877–882.

[2202] See Convention No. 111: *Poland* – CEACR, direct request, 2011. See also *Saint Lucia* – CEACR, direct request, 2011; *Slovakia* – CEACR, direct request, 2010; and *Slovenia* – CEACR, direct request, 2010.

[2203] See paras 682–685 above.

[2204] See, for example, *Guatemala* – CEACR, direct request, 2007 (Convention No. 100).

[2205] See paras 723–724, 860.

[2206] See also *United Republic of Tanzania* – CEACR, observation, 2010 (Convention No. 111).

[2207] General Survey, 1986, paras 104 and 224; General Survey, 1988, para. 193; General Survey, 2006, para. 370.

regular inspections at the workplace. In some countries, however, such as *Mexico*, [2208] the means at the disposal of labour inspection services in charge of reporting discriminatory practices and violence in the workplace have been reinforced. [2209] In other countries, special units have been created within the labour inspectorate, such as in *El Salvador*. [2210] In order to assess the effective application of Conventions Nos 100 and 111, the Committee requests governments to provide detailed information on the inspections conducted, the number and type of violations reported or detected, action taken and the outcome thereof. [2211]

875. Some governments point out the difficulties faced by labour inspectors in identifying cases of discrimination, in particular cases of pay discrimination, or of determining whether equal remuneration is being provided for work of equal value, particularly where men and women do not perform the same work. [2212] The Committee recalls the importance of training labour inspectors to increase their capacity to prevent, detect and remedy such instances [2213] and requests governments to implement adequate training programmes. [2214] Recent positive developments with respect to training in this area were noted in a number of countries, including *Guinea-Bissau*, *Honduras*, *Mauritius* and *Yemen*. [2215] In *Spain*, the National Plan of Action on the Inspectorate for Labour and Social Security highlights the importance of the proper handling of complaints for failure to provide equal remuneration. [2216]

876. The Committee welcomes the growing number of initiatives to provide labour inspectors with guidance and instructions. In *Costa Rica*, a ministerial directive on the treatment of discrimination cases was issued to the National Labour Inspection Department. [2217] In the *Czech Republic*, an instruction for labour inspectors was issued, explaining the legal provisions on gender equality in force and providing practical guidance to labour inspectors on how to conduct equality inspections, as well as detailed methodological instructions for inspections regarding determining equal remuneration through an analytical method for assessing work value. [2218] Discrimination and equality

[2208] *Mexico* – CEACR, direct request, 2011 (Convention No. 111).

[2209] See also *Slovenia* – CEACR, direct request, 2011 (Convention No. 100).

[2210] Convention No. 111: *El Salvador* – CEACR, direct requests, 2009 and 2011. See also *Republic of Moldova* – CEACR, direct request, 2011.

[2211] See, for example, Convention No. 111: *Albania* – CEACR, direct request, 2011; Convention No. 100: *Lesotho* – CEACR, direct request, 2011; and *Turkmenistan* – CEACR, direct request, 2011.

[2212] See, for example, *Mali* – CEACR, direct request, 2011 (Convention No. 100).

[2213] See, for example, *Saint Vincent and the Grenadines* – CEACR, direct request, 2011 (Convention No. 100).

[2214] See, for example, Convention No. 100: *Malawi* – CEACR, direct request, 2011; *Malaysia* – CEACR, direct request, 2011; and *Panama* – CEACR, direct request, 2011.

[2215] See *Guinea-Bissau* – CEACR, direct request, 2011 (Convention No. 100); *Honduras* – CEACR, observation, 2009 (Convention No. 81); *Mauritius* – CEACR, direct request, 2009 (Convention No. 100); and *Yemen* – CEACR, direct request, 2011 (Convention No. 111) where a project includes training of male and female officials of the Labour Inspection Directorate to conduct more gender-responsive labour inspections.

[2216] *Spain* – CEACR, direct request, 2005 (Convention No. 100).

[2217] *Costa Rica* – CEACR, direct request, 2004 (Convention No. 111). See also *China (Macau Special Administrative Region)* – CEACR, direct request, 2011 (Convention No. 100) regarding the adoption of guidance on equal remuneration for work of equal value issued by the Labour Inspection Department.

[2218] *Czech Republic* – CEACR, observation, 2005 (Convention No. 111), and observation, 2007 (Convention No. 100). See also *Cyprus* – CEACR, direct request, 2011 (Convention No. 100) regarding a project on reducing the gender pay gap, including through the establishment of an effective inspection mechanism and the preparation of guides and tools.

issues have also been addressed through targeted inspection campaigns or plans, as in *France* and *Mongolia*. [2219]

Specialized bodies

877. With a view to better addressing discrimination and promoting equality, the trend noted in previous general surveys of establishing specialized bodies has continued, [2220] and recently, some of these bodies have been restructured. These bodies have a diversity of mandates, in terms of the scope of their activities – from promotional/advisory to investigatory/decision-making – and in terms of the subjects they can address. The broad functions of these bodies are representative of the wide range of strategies that are needed to combat discrimination and promote equality. The role of specialized bodies in awareness raising and dealing with complaints is foreseen in Recommendation No. 111. [2221]

878. A wide range of awareness-raising and promotional activities are undertaken by these bodies, including conducting studies, organizing promotional campaigns and offering assistance and training to workers and employers and their organizations. For example, in *Namibia*, the Employment Equity Commission carried out an impact assessment study, and as a result provided assistance to, and training for, employers to strengthen affirmative action at the enterprise level. [2222] A large amount of information and a number of tools are disseminated by specialized bodies, often through their websites. [2223] The role of specialized equality bodies in analysing and advising on legislation, policies and plans of action is also important given their particular expertise in non-discrimination and equality issues. [2224]

879. Many specialized bodies have a specific function in the dispute resolution process, including examining complaints. In particular, the responsibility for enforcing anti-discrimination and equality legislation, and investigating complaints often lies with specialized equality bodies, which may themselves be established through the legislation. [2225] In *Norway*, for example, the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal have the authority to make recommendations and give rulings with respect to decisions by, or general practices of, governmental and state institutions, including regarding laws that might contravene equality and anti-discrimination legislation. The Ombud has the competence to investigate alleged non-compliance with the law and make recommendations, which can

[2219] Convention No. 111: *France* – CEACR, direct request, 2011; and *Mongolia* – CEACR, direct request, 2011.

[2220] General Survey, 1988, para. 197 et al.; General Survey, 1996, para. 225 et al.

[2221] *Para. 4.*

[2222] *Namibia* – CEACR, observation, 2008 (Convention No. 111).

[2223] See, for example, *Argentina* – CEACR, direct request, 2011 (Convention No. 100) regarding the Tripartite Commission on Equality of Opportunity and Treatment.

[2224] See, for example, Convention No. 100: *Honduras* – CEACR, direct request, 2006 and *Panama* – CEACR, direct request, 2010, regarding the role of the National Institute for Women (INAM) and the Women's Institute, respectively.

[2225] See, for example, Convention No. 111: the Ethnic Relations Commission in *Guyana* – CEACR, direct request, 2011 and the Equality and Anti-Discrimination Ombud in *Norway* – CEACR, direct request, 2009. See also *Brazil* – CEACR, direct request, 2010, regarding the establishment of the Commission for Equal Opportunities on the basis of Gender, Race, Ethnic Origin and for Persons with Disabilities and to Combat Discrimination (Order No. 219 of 7 May 2008). Such bodies have also been established through collective agreement, such as in *Argentina* – CEACR, direct request, 2009 (Convention No. 100).

be appealed before the Tribunal. The rulings of the Tribunal are administratively binding but may be overruled by a court of law. [2226]

880. In terms of subject matter, there are a large number of specialized bodies addressing discrimination based on sex, and promoting gender equality. [2227] A number of countries have also established specialized bodies to address discrimination based on race, colour or national extraction, [2228] or, as in the case of *Indonesia*, have given the National Human Rights Commission a central role in that regard. [2229] In a number of recent cases, equality bodies have had an important role specifically in addressing equal remuneration for men and women, including the development and implementation of job evaluation methods. In *Malta*, for example, the National Commission for the Promotion of Equality recommended the adoption by the Government of specific measures "seeking to establish a system of job evaluation which enables the objective appraisal of jobs with special attention to reduce the wage gap between male- and female-dominated sectors of employment" and "establishing a national system of job classification that would make it possible to compare work of equal value even across different occupational sectors". [2230] In *Sweden*, the recently established Office of the Equality Ombudsman has responsibility for supervising pay surveys, which are required under the Discrimination Act, to determine if there are unjustified wage differentials. Bodies dealing uniquely with equal pay issues have also been established, though these are less prevalent. [2231]

881. Specialized bodies are increasingly dealing with an expanded range of issues. Some equality bodies dealing with specific grounds have in recent years been merged to address a wider range of grounds of discrimination, potentially allowing one body to address cases of discrimination based on more than one ground, or on grounds that are difficult to disentangle, thus addressing systemic and multiple discrimination. [2232] For example, the Equality and Anti-Discrimination Ombud of *Norway* was established through the merging of the Equality Ombud, the Equality Centre and the Centre against Ethnic Discrimination, and the Office of the Equality Ombudsman in *Sweden* was formed through the merger of four previous anti-discrimination bodies into a single body. The Equality and Human Rights Commission in the *United Kingdom* brings together the mandates of three previous equality commissions, with the new Commission addressing discrimination based on age, disability, gender including gender reassignment, race,

[2226] *Norway* – CEACR, direct request, 2008 (Convention No. 111).

[2227] For example: *Algeria*, the National Council for the Family and Women; *Austria*, the Ombud for Equal Treatment between women and men in employment and occupation; *Belgium*, the Institute for Equality of Women and Men; *Bosnia and Herzegovina*, the Gender Equality Agency; *Chile*, National Service for Women; *Ecuador*, National Gender Equality Council; *Estonia*, Gender Equality and Equal Treatment Commissioner; *Honduras*, National Institute for Women; *Israel*, the Authority for the Advancing of Women; *Jamaica*, the Bureau of Women's Affairs; *Mali*, the National Bureau for the Promotion of Women; *Mexico*, National Institute of Women; *Panama*, the Women's Institute; and *South Africa*, Commission of Gender Equality.

[2228] For example: *Argentina*, National Institute against Discrimination, Xenophobia and Racism; *Belgium*, the Centre for Equal Opportunities and the Fight against Racism; *Italy*, Office for the Promotion of Equality of Treatment and Elimination of Discrimination based on Race and Ethnic Origin; *Spain*, the Observatory on Racism and Xenophobia; and *Uruguay*, Commission to Promote Ethnic–Racial Equity in Employment.

[2229] *Indonesia* – CEACR, observation, 2011 (Convention No. 111): (the National Human Rights Commission (Komnas HAM)).

[2230] *Malta* – CEACR, direct request, 2011 (Convention No. 100).

[2231] Convention No. 100: *Canada* – CEACR, direct request, 2009 (Quebec Pay Equity Commission); and *Norway* – CEACR, direct request, 2007 (Equal Pay Commission).

[2232] See para. 748 above.

religion and belief, and sexual orientation. [2233] With the consolidation of bodies, however, it needs to be ensured that the new body has the necessary means and resources, both human and financial, to undertake its expanded mandate, and respond effectively to issues related to discrimination in employment and occupation, and promote equality. [2234]

882. The importance of coordination between specialized equality bodies and labour inspectorates has been stressed in previous General Surveys, [2235] and progress has recently been made in this regard. In *Spain*, for example, a protocol of cooperation was signed between the Ministry for Equality and the labour inspectorate for monitoring situations involving wage discrimination and reducing the wage gap. Under this protocol, the labour inspectorate carries out controls, the results of which are communicated to the Ministry for Equality, which analyses the existing wage gap and the sectors in which this is most pronounced. [2236] In *Belgium*, the collaboration between the Centre for Equal Opportunities and the Fight against Racism and the labour inspectorate was strengthened, resulting in a greater number of inspections of employment agencies and temporary work agencies, and has led to the identification of cases of discrimination based on ethnic origin, race and colour. [2237] In *France*, the former High Authority to Combat Discrimination and Promote Equality (HALDE), which became part of the Defender of Rights in 2011, collaborates closely with the labour inspectorate to exchange information and documents, provide each other with advice, and investigate jointly discrimination cases at work. [2238]

Courts and tribunals

883. The judicial process of individual complaints to courts or labour tribunals, including providing appropriate remedies and imposing sanctions, remains a common feature in the enforcement of anti-discrimination and equal remuneration provisions. Courts and tribunals have an important role in developing jurisprudence furthering the principles of Conventions Nos 100 and 111, and in providing remedies including orders for equal remuneration, compensation and reinstatement. Particular decisions of courts and tribunals in relation to the Conventions have been addressed in Chapters 2 and 3. [2239]

[2233] See also *Denmark* – CEACR, direct request, 2011 (Convention No. 111) noting that the Board of Equal Treatment became operational in 2009, replacing the Board on Gender Equality and the Ethnic Equality Board. It can receive complaints regarding discrimination on the grounds of gender, race, colour, religion or belief, political opinion, sexual orientation, age, disability, or national, social or ethnic origin.

[2234] See, for example, *France* – CEACR, direct request, 2011 (Convention No. 111).

[2235] General Survey, 1986, para. 258; General Survey, 1988, para. 194.

[2236] *Spain* – CEACR, direct request, 2011 (Convention No. 100).

[2237] *Belgium* – CEACR, direct request, 2011 (Convention No. 111).

[2238] See also Convention No. 111: France – CEACR, direct request, 2011; *Australia* – CEACR, direct request, 2011 regarding the establishment of the Fair Work Ombudsman who can engage the Fair Work Inspectors.

[2239] For example, with respect to the role of the courts in the context of equal remuneration for work of equal value, see para. 678 above. In the context of Convention No. 111, courts and tribunals have addressed a wide range of issues, including indirect discrimination (para. 746), racial discrimination (para. 773), migrant workers (para. 778), sexual harassment (para. 793), political opinion (para. 805), HIV status (paras 810 and 812), age (para. 813), sexual orientation (para. 824) and state security (para. 834).

Access to procedures and remedies

884. The accessibility of all groups to the various mechanisms addressing discrimination and equal pay remains a challenge, and issues such as cost, delays, representation and standing, the burden of proof, and fear of victimization are often raised as obstacles. [2240] The issue of lack of physical access has also been raised, where, for example, dispute resolution bodies are available only in the capital city, as well as lack of access in practice, where the groups subject to discrimination are not represented on the adjudication body, thus they may not have confidence in the system. [2241] As many of the concerns related to accessibility have been associated historically with formal judicial proceedings based on individual complaints, they have in part stimulated the rise in specialized bodies.

885. The burden of proof can be a significant obstacle, particularly as much of the information needed in cases related to equality and non-discrimination is in the hands of the employer. The Committee welcomes the progress in a number of countries in amending legislation to provide for the shifting of the burden of proof to the employer in discrimination and equal remuneration cases, normally once the complainant has produced prima facie or plausible evidence of a violation. The Committee considers that this is a useful means of correcting a situation that could otherwise result in inequality. [2242] A number of countries, based on the requirement in European directives for shifting the burden of the proof in discrimination cases, have adopted such provisions. [2243] In *Kenya*, the Employment Act provides for the shifting of the burden of proof to the employer in the case of an alleged violation of the provisions on non-discrimination, which incorporates the right to equal remuneration for work of equal value. [2244] Pursuant to the Civil Rights Act, in the United States, the Equal Employment Opportunity Commission receives and investigates complaints of discrimination, and where an investigation reveals reasonable cause to believe that a complaint is true, the Commission uses informal methods of conference, conciliation and persuasion to eliminate the unlawful employment practice, and in the absence of a settlement, the matter can be brought before the courts, either by the Commission or by the complainant. [2245]

886. Fear of victimization, both for complainants and witnesses, is also often raised as a concern in the effective enforcement of the principles of the Conventions. Effective protection against reprisals for those who lodge complaints or bring cases, and for witnesses, is essential for the implementation and enforcement of the principles of the

[2240] General Survey, 1988, paras 223–226. See also Special Survey, 1996, paras 230–234.

[2241] See, for example, *Saudi Arabia* – CEACR, observation, 2007 (Convention No. 111).

[2242] Special Survey, 1996, para. 231.

[2243] Directive 2000/43/EC (art. 8) and Directive 2006/54/EC (art. 19): where a person establishes facts from which it may be presumed that there has been direct or indirect discrimination, the burden shifts to the respondent to prove that there had been no breach in the principle of equal treatment. See also, for example, *Cyprus* – CEACR, observation, 2011 (Convention No. 100).

[2244] Convention No. 111: *Kenya* – CEACR, observation, 2010. See also: *Belgium* – CEACR, observation, 2009; *Chile* – CEACR, observation, 2009; *Cyprus* – CEACR, direct request, 2011; *Denmark* – CEACR, direct request, 2011; *France* – CEACR, observation, 2011; *Lithuania* – CEACR, observation, 2010; *Luxembourg* – CEACR, observation, 2008; *Norway* – CEACR, observation, 2008; *Poland* – CEACR, observation, 2006; and *The former Yugoslav Republic of Macedonia* – CEACR, direct request, 2009.

[2245] In its report under art. 19 of the ILO Constitution, the United States Government refers to the Civil Rights Act, Title VII, section 706.

Conventions, and governments are urged to ensure that such protection is provided. [2246] The Committee notes the recent progress made in a number of countries in reinforcing legislative protection against victimization provided to those bringing cases of violations of non-discrimination and equal remuneration provisions, including in *Cyprus*, *France*, *Luxembourg*, *Malta*, *Romania*, and *Slovakia*, as well as in *Madagascar* where protection of witnesses to sexual harassment is also specifically provided. [2247] The importance of adequate remedies and sanctions has been stressed regularly by the Committee, including providing for reinstatement. [2248] In the context of protection against victimization, where someone has been dismissed due to raising a complaint, reinstatement is normally the most appropriate remedy. [2249] Allowing trade unions to bring complaints is also important as it reduces the risk of reprisals and is also likely to serve as a deterrent to discriminatory action. [2250]

Statistics

887. While substantial information is often provided on the various measures taken to promote equality and fight against discrimination, the Committee, guided by criteria of effectiveness, is often obliged to request or urge governments to supply information on the actual impact of these measures, taking into account the national conditions and practice of the country concerned. There is indeed a significant disparity in the type and extent of information, including statistical data, supplied by governments. The availability of reliable data to measure discrimination, including unequal remuneration, depends to some extent on the resources allocated for the collection and the analysis of statistical data in general and varies from country to country. [2251] Initiatives are being taken at the national level to create, develop and maintain a statistical data collection and recording system. [2252] The Committee also examines labour market surveys or labour force surveys that are prepared on a regular basis in some countries. [2253]

888. An analysis of the position and pay of men and women in all job categories, within and between sectors, is required to address fully the continuing remuneration gap between men and women, yet there continues to be a lack of collection of appropriate statistics which are needed in order to undertake an assessment of the nature and extent of the pay gap. [2254] Noting the lack of data, the Committee has indicated the manner in

[2246] See, for example, Convention No. 111: *Brazil* – CEACR, observation, 2004; *Costa Rica* – CEACR, observation, 2010; *Guatemala* – CEACR, observation, 2010; *Hungary* – CEACR, direct request, 2011; and *Netherlands* – CEACR, direct request, 2002.

[2247] Convention No. 100: *Cyprus* – CEACR, observation 2011; *Malta* – CEACR, observation, 2005. Convention No. 111: *Cyprus* – CEACR, observation, 2007; *France* – CEACR, observation, 2011; *Luxembourg* – CEACR, observation, 2008; *Madagascar* – CEACR, direct request, 2006; *Malta* – CEACR, direct request, 2007; *Romania* – CEACR, observation, 2008; and *Slovakia* – CEACR, observation, 2006.

[2248] Special Survey, 1996, para. 233; General Survey, 1988, paras 226–230.

[2249] General Survey, 1988, para. 226. Recent legislation has been adopted in *Luxembourg* in this context: CEACR, observation, 2008, Convention No. 111.

[2250] General Survey, 1988, para. 220.

[2251] See, for example, *Guinea* – CEACR, direct request, 2011 (Convention No. 111).

[2252] See, for example, Convention No. 111: *Liberia* – CEACR, direct request, 2011; and *Rwanda* – CEACR, direct request, 2011.

[2253] See, for example, *Algeria* – CEACR, direct request, 2011 (Convention No. 111).

[2254] CEACR, General Report, 2001, para. 46. For example, the National Congress of Thai Labour indicates that there is no data collection on income disparity in *Thailand* (report under art. 19 of the Constitution).

which statistics should be collected in order to undertake such an assessment. Governments have been urged to analyse the national situation in order to determine the nature and extent of the pay gap, by sector if possible, as a starting point in addressing equal remuneration for work of equal value. [2255] The Committee recalls its general observation, providing specific guidance on the type of statistics, disaggregated by sex, which should be provided, and urges governments to provide such information in its reports under article 22 of the Constitution, or if such information is not yet available, to supply all the information that is currently available to them and to continue to work towards the compilation of full statistical information.

General observation concerning Convention No. 100

In order to assist the Committee in evaluating the application of the principle of equal remuneration, and in accordance with the provisions of the Labour Statistics Convention, 1985 (No. 160), the Committee asks the governments to provide the fullest possible statistical information, disaggregated by sex, in their reports, with regard to the following:

(i) the distribution of men and women in the public sector, the federal and/or state civil service, and in the private sector by earnings' levels and hours of work (defined as hours actually worked or hours paid for), classified by: (1) branch of economic activity; (2) occupation or occupational group or level of education/qualification; (3) seniority; (4) age group; (5) number of hours actually worked or paid for; and, where relevant, by (6) size of enterprise and (7) geographical area; and

(ii) statistical data on the composition of earnings (indicating the nature of earnings, such as basic, ordinary or minimum wage or salary, premium pay for overtime and shift differentials, allowances, bonuses and gratuities, and remuneration for time not worked) and hours of work (defined as hours actually worked or paid for), classified according to the same variables as the distribution of employees (subparagraphs (1)–(7) of paragraph (i) above).

Where feasible, statistics on average earnings should be compiled according to hours actually worked or paid for, with an indication of the concept of hours of work used. Where earnings data are compiled on a different basis (e.g. earnings per week or per month), the statistics on the average number of hours of work should refer to the same time period (that is, by week or by month). [1]

[1] CEACR, 1999, pp. 354–355.

889. As occupational gender segregation is an issue of considerable relevance to the implementation of Conventions Nos 100 and 111, [2256] the Committee regularly calls on governments to provide information and analysis, including statistical data, disaggregated by sex, regarding participation in education, vocational training, and in the various sectors and occupations in the public and private sectors, and where possible, also in the informal economy. [2257] With a view to addressing discrimination based on race, colour and national extraction, and assessing the results of measures taken, the Committee also regularly requests information, disaggregated by sex, on the labour market situation of particular groups, including migrant workers, the Roma, and indigenous and tribal peoples. While overall there remains a lack of employment-related data going beyond those disaggregated by sex, the Committee has received statistical information, for example, from *Peru* on the labour market situation of indigenous peoples, in the public and private sectors, from *Croatia* regarding the Roma, and from

[2255] CEACR, General Report, 2001, para. 46.

[2256] See paras 712–719 above.

[2257] See, for example, *Chad* – CEACR, observation, 2010 (Convention No. 111).

Norway by sex and origin, indicating a difference in employment rates between male and female immigrants. [2258]

890. Positive developments have been noted by the Committee, in particular with respect to the preparation by ministries or governmental institutions of specific reports, studies or surveys that may be made in collaboration with statistics institutes. For instance, in *Belgium*, the annual reports on "the wage gap between men and women" now include data disaggregated by nationality. [2259] The social partners can also play an important role in collecting and analysing the relevant statistics. In *Iceland*, the employers' and workers' confederations concluded a protocol to collective agreements, providing for the establishment of a statistical study concerning gender inequalities in relation to wages. In *Denmark*, the social partners assist their membership in understanding equal pay statistics and making them operational and applicable. [2260]

891. While some countries have put in place laws, policies and procedures that allow for the collection of appropriate sex-disaggregated statistical data, [2261] globally such data is available only to a limited extent, and data on ethnic or other social groups is even less prevalent. [2262] Appropriate data and statistics are crucial in determining the nature, extent and causes of discrimination and unequal remuneration, to set priorities and design appropriate measures, to monitor and evaluate the impact of such measures, and make any necessary adjustments. The Committee, therefore, calls on all governments to collect and analyse relevant data, including comparable statistics to enable an accurate assessment of changes over time.

[2258] Convention No. 111: *Croatia* – CEACR, observation, 2011; *Norway* – CEACR, direct request, 2009; and *Peru* – CEACR, direct request, 2011.

[2259] *Belgium* – CEACR, direct request, 2011 (Convention No. 100). See also Convention No. 111: *Argentina* – CEACR, direct request, 2011; *France* – CEACR, observation, 2011; *Indonesia* – CEACR, direct request, 2011; *Italy* – CEACR, direct request, 2011; *Togo* – CEACR, direct request, 2011; *Uzbekistan* – CEACR, direct request, 2011; and also Convention No. 100: *Hungary* – CEACR, direct request, 2011; and *Peru* – CEACR, observation, 2011.

[2260] Convention No. 111: *Iceland* – CEACR, direct request, 2011; and *Denmark* – CEACR, direct request, 2011, Convention No.100.

[2261] CEACR, General Report, 2009, para. 118. See, for example, Convention No. 111: *Bosnia and Herzegovina* – CEACR, direct request, 2006; and *Denmark* – CEACR, direct request, 2011.

[2262] Some countries indicate that data regarding ethnic or racial origin is difficult to collect due to data protection legislation: see, for example, Convention No. 111: *Austria* – CEACR, direct request, 2010; and *Czech Republic* – CEACR, observation, 2009.

Part VI. Obstacles to ratification and technical assistance [2263]

Chapter 1

Freedom of association and collective bargaining

Obstacles to ratification and future prospects

892. The Committee notes with satisfaction that since the publication of its General Survey in 1994, Convention No. 87 has been ratified by 41 member States [2264] and Convention No. 98 by 36 member States. [2265] This brings the total number of ratifications of Convention No. 87 to 150 and that of Convention No. 98 to 160. [2266] The Committee notes that several countries state that they are not in a position to ratify the Conventions, citing various difficulties or do not take up any position on the question of ratification. Some countries state the provisions of the Conventions will be considered at a later date, in some cases with the assistance of a body set up for that purpose, while others point out more generally that their legislation is, on the whole, compatible with the Conventions or adequately governs the rights of workers' and employers' organizations. The Committee nevertheless continues to observe with concern that several of the countries with the highest percentage of the world population still have not ratified these fundamental and enabling Conventions and encourages them to vigorously pursue efforts to this end.

[2263] The information contained in this part is based on the reports due under art. 19 of the Constitution, the document *Ratification and promotion of fundamental and governance ILO Conventions* (GB.310/LILS/5(&Add.)) and the information submitted by governments in the framework of the country baselines under the ILO Declaration Annual Review (2000–11).

[2264] *Angola, Armenia, Bahamas, Botswana, Cambodia, Cape Verde, Chile, Democratic Republic of the Congo, El Salvador, Equatorial Guinea, Eritrea, Estonia, Fiji, Gambia, Georgia, Grenada, Indonesia, Kazakhstan, Kiribati, Libyan Arab Jamahiriya, Lithuania, Malawi, Mauritius, Montenegro, Mozambique, Namibia, Papua New Guinea, Republic of Moldova, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Serbia, South Africa, Sri Lanka, United Republic of Tanzania, Timor-Leste, Turkmenistan, Uganda, Vanuatu, Zambia, Zimbabwe.*

[2265] *Armenia, Botswana, Burundi, Cambodia, Chile, Congo, El Salvador, Eritrea, Estonia,, Equatorial Guinea, Gambia, Kazakhstan, Kiribati, Kuwait, Lithuania, Madagascar, Mauritania, Republic of Moldova, Montenegro, Mozambique, Namibia, Nepal, New Zealand, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, Serbia, Seychelles, South Africa, Suriname, Switzerland, Timor-Leste, Turkmenistan, Vanuatu, Zambia, Zimbabwe.*

[2266] As of 22 June 2011.

893. The Government of *Afghanistan* indicates that ILO technical assistance is needed to support the process of ratification of Conventions Nos 87 and 98. The Government of *Somalia* indicates that once a peaceful process could allow the adoption of new laws, the ratification of the ILO fundamental Conventions will be possible.

894. The Government of the *Islamic Republic of Iran* indicates that it is working with the social partners and the ILO on amending the Labour Code in order to prepare the ground for the ratification of Conventions Nos 87 and 98. The Government of the *United Arab Emirates* indicates that the ratification of Conventions Nos 87 and 98 is being contemplated under the Decent Work Country Programme (DWCP) and that ILO technical assistance is needed to find an alternative scheme for workers' representation.

895. The Government of the *Republic of Korea* explains that, at present, it is difficult to ratify Conventions Nos 87 and 98 because some provisions of the national labour legislation are not in conformity with the relevant international labour standards. Moreover, the ratification prospects for these instruments seems restricted due to continuous controversies over trade union pluralism at the enterprise level and a ban on wage payment to full-time union officials.

896. According to the Government of the *United States*, federal legislation and practice appears to be in general conformity with ILO Conventions Nos 87 and 98, although some challenges persists and no recent in-depth tripartite analysis has been performed regarding these Conventions. The Government further indicates that, to the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would welcome such proposals.

897. According to the Government of *China*, their national Constitution and other laws in principle protect the rights covered by Convention Nos 87 and 98 but in comparison with the Conventions, there are no concrete, special and detailed legislative provisions.

898. With regard to Convention No. 87, the Government of *Guinea-Bissau* indicates that while the ratification instrument has been signed by the previous Head of State in 2009, due to the political change, the ratification process must be repeated with ILO technical assistance. The Government of *Nepal* indicates that the process of ratification of Convention No. 87 was interrupted by the political transition period. However, the new Government is contemplating to ratify the Convention in the near future.

899. The Government of *Iraq* indicates that the national labour law of 1952 is not in conformity with Convention No. 87. However, a draft text has been submitted to the National Assembly with a view to amending the national labour legislation. Once this process is complete, the Convention could be ratified. The Government of *Jordan* indicates that the tripartite committee which had been set up two years ago proposed bringing national labour laws into a closer compliance with the requirements of Convention No. 87. The Government of *Sudan* refers to the ongoing revision of constitutional and civil laws, which must be completed before the ratification of Convention No. 87 could be considered. It further indicates that a tripartite committee has been set up to draft a new labour code.

900. The Government of *Malaysia* indicates that for the time being, the ratification of Convention No. 87 is not considered to be a priority as this instrument is not relevant to its national situation and historical background. The Government of *Myanmar* considers that the ILO should cooperate with Myanmar with regard to the ratification of the ILO fundamental Conventions and indicates that the ratification of non-ratified fundamental Conventions would be considered when appropriate.

901. The Government of *New Zealand* indicates it cannot ratify Convention No. 87 given that ILO jurisprudence requires that sympathy strikes and strikes on general social and economic issues should be able to occur without legal penalty. This has been contrary to New Zealand's employment relations legislative framework under successive governments.

902. The Government of *Brazil* indicates that Federal Constitution established in the legislation the principle of unity within the trade union movement, which prevents it to ratify Convention No. 87. The Government of *Morocco* indicates that non-compliance of certain provisions of public law with the principles of Convention No. 87, as the special status of certain categories of workers prevents the ratification of Convention No. 87.

903. The Government of *Mexico* indicates that, although national laws contain provisions prohibiting anti-union discrimination, they do not contain specific provisions protecting workers' and employers' organizations and their mutual interference and that the reason why it did not ratify this Convention is related to a reservation it wishes to make under *Article 1.2(b)* of the Convention.

904. The Government of *Canada* indicates that before initiating a technical review of Convention No. 98, the Canadian Government is waiting for a Supreme Court of Canada decision which is expected to clarify the scope of guarantee of freedom of association under the Canadian Charter of Rights and Freedoms. The Committee notes that the Supreme Court has rendered its decision in the *Fraser* case on 29 April 2011 and that it confirmed that section 2(*d*) of the Charter also protects the right to collective bargaining. Considering the foregoing, the Committee trusts that the Government will consider the ratification of Convention No. 98.

Technical assistance

905. *Technical assistance received.* During the last few years, many state Members have benefited from the technical assistance provided by the Office regarding the application of Conventions Nos 87 and 98. Many governments received technical assistance in order to bring their legislation into conformity with these two instruments, and more particularly with the right to strike, [2267] or collective bargaining, [2268] or with the principle of freedom of association. [2269]

[2267] See, for example *Mali* – Report III (Part 2), 2010, para. 37; *Slovakia* – answer 34 of the questionnaire sent under art. 19 of the Constitution, 2011 (answer 34 of the questionnaire).

[2268] See, for example, *Costa Rica* – Report III (Part 2), 2009, para. 53; *Dominican Republic* – answer 34 of the questionnaire; *Slovakia* – answer 34 of the questionnaire; *Bulgaria* – answer 34 of the questionnaire; *Ecuador* – answer 34 of the questionnaire; *Sri Lanka* – answer 34 of the questionnaire; *Turkey* – answer 34 of the questionnaire; *El Salvador* – Report III (Part 2), 2009, para. 87.

[2269] *Ethiopia* – Report III (Part 2), 2010, para. 62; *Nicaragua* – Report III (Part 2), 2009, para. 59; *El Salvador* – Report III (Part 2), 2009, para. 87; *Namibia* – Report III (Part 2), 2007, para. 55; *Malawi* – Report III (Part 2), 2007, para. 55; *Argentina* – Report III (Part 2), 2010, para. 65, Report III (Part 2), 2007, para. 55; *Bahrain*, *Colombia*, *Ecuador*, *Panama*, *Peru*, *Ukraine* – Report III (Part 2), 2007, para. 55; *Bulgaria* – answer 34 of the questionnaire; *Ecuador* – answer 34 of the questionnaire; *Sri Lanka* – answer 34 of the questionnaire; *Turkey* – answer 34 of the questionnaire; *Cameroon* – Report III (Part 2), 2006, para. 44; *Russian Federation* – Report III (Part 2), 2006, para. 44.

906. Others received technical assistance in order to better promote social dialogue. [2270] Many countries also hosted follow-up missions to the conclusions adopted by the Conference at its previous sessions. [2271] Moreover, training activities were organized by the Office for both judges [2272] and civil servants. [2273]

907. *Technical assistance requested.* Furthermore, some governments have expressed their interest in receiving, or indicated that they would soon receive, technical assistance from the Office in the answers that they provided to the questionnaire sent under article 19 of the Constitution. [2274] For instance, some have indicated wishing to receive technical assistance in order to evaluate the conformity of their legislation (see, for example, *Pakistan*, *Turkey*, and *Chile*) or their practices (see, for example, *Belize*, *Benin*, *Pakistan*, and *Peru*) with the principles of freedom of association as developed by the supervisory mechanisms. Others wish to be equipped with tools to better promote syndicalism (see, for example, *El Salvador*) or re-evaluate their legislation on collective bargaining (see, for example, *China* and *Canada*). Finally, the setting of trade unions' representativity criteria has been the subject of a technical assistance request (see, for example, *Tunisia*), as well as the fundamental labour rights of civil servants (see, for example, *Zimbabwe*).

[2270] *Philippines* – answer 34 of the questionnaire; *Georgia* – answer 34 of the questionnaire.

[2271] *Argentina* – Report III (Part 2), 2006, para. 35; *Belarus* – Report III (Part 2), 2009, para. 44, answer 34 of the questionnaire; *Colombia* – Report III (Part 2), 2010, paras 31–32, Report III (Part 2), 2006, para. 35; *Egypt* – Report III (Part 2), 2010, para. 33; *Guatemala* – Report III (Part 2), 2010, para. 34, Report III (Part 2), 2009, para. 47, Report III (Part 2), 2008, para. 41; *Cambodia* – Report III (Part 2), 2009, para. 45; *Djibouti* – Report III (Part 2), 2009, para. 46; *Bosnia and Herzegovina* – Report III (Part 2), 2008, para. 39. Furthermore, Costa Rica and Guatemala have recently received technical assistance missions respectively from 16–20 May 2011 and 9–13 May 2011.

[2272] *Chile* – Report III (Part 2) 2010, para. 66; *Colombia* – Report III (Part 2), 2009, para. 86; *Congo* – Report III (Part 2), 2008, para. 73; *Rwanda* – Report III (Part 2), 2008, para. 73.

[2273] El Salvador – answer 34 of the questionnaire; Philippines – answer 34 of the questionnaire.

[2274] See answers provided to question 35 of the questionnaire.

Chapter 2

Elimination of forced labour

Obstacles to ratification and future prospects

908. The forced labour Conventions are among the most widely ratified of all ILO Conventions. To date, Conventions Nos 29 and 105 have received 175 and 171 ratifications respectively. [2275] Six countries that have not yet ratified any of the forced labour Conventions sent their reports under article 19 of the ILO Constitution, also providing information on measures taken with a view to ratifying these Conventions and indicating the obstacles preventing the ratification.

Convention No. 29

909. The Government of the *Republic of Korea* stated that it was difficult to ratify the Convention because the ILO considers that the supplementary military service imposed under the Military Service Act is not work of purely military character and is non-voluntary by nature; consequently it does not fall under the limits of exception provided for under *Article 2(2)* of the Convention. The Government considers that there are special circumstances facing the Republic of Korea in relation to the maintenance of the conscription system. The Committee encourages the Government to continue to seek ILO advice with a view to enabling it to ratify this Convention in the very near future and facilitate its implementation.

910. The Government of the *United States* stated that in order to determine whether a Convention should be recommended to the United States Senate for advice and consent to ratification, the Tripartite Advisory Panel on International Labour Standards has to conduct a thorough legal analysis of the provisions of the Convention. In the case of Convention No. 29 it has only undergone a partial review and, consequently, it is not possible to state with certainty what may be the obstacles to ratification of Convention No. 29. The Government indicated, however, that federal legislation appears to be in general conformance with the principles of the Convention.

911. Neither the Government of the Republic of Korea nor the Government of the United States referred to ratification prospects in the near future.

[2275] Since the publication of its last General Survey on the eradication of forced labour, in 2007, *Canada*, *Samoa*, *Timor-Leste* and *Viet Nam* have ratified Convention No. 29, and *Samoa* has ratified Convention No. 105.

Convention No. 105

912. Available information shows that three countries indicated their intention to ratify the Convention:

– The Government of the *Republic of Korea* indicated that the revision of the Criminal Code Act which is under review by the National Assembly could make it more consistent with the Convention. The revision of the Act would be taken into consideration for the ratification of the Convention.

– Referring to the lack of qualified human resources to carry out the ratification process, the Government of *Timor-Leste* asked for ILO technical assistance to support this process in 2011.

– The Government of *Viet Nam* indicated that it was in the process of adjusting national legislation in view of the ratification of the Convention and that the Ministry of Labour, Invalids and Social Affairs made a study and is now collecting comments in order to have the Convention ratified in 2011–12.

913. Two Governments referred to certain difficulties preventing ratification. The Government of *Japan* drew attention to the fact that the interpretation of the precise scope of forced labour practices prohibited by the Convention was not clear enough, and that further surveys on the relation between the relevant national legislation and the provisions of the Convention was needed. The Government of *Malaysia* referred to the difference of interpretation between the Government and the ILO supervisory bodies on the impact that work carried out during imprisonment may have on ensuring compliance with the Convention. The Government views the activities undertaken during imprisonment as upgrading prisoners' skills rather than forced labour. While indicating that it does not envisage any new developments in this regard, the Government stated that it does not preclude any further discussion and consultations with the ILO to look at the Convention.

Technical assistance

914. The Committee has on numerous occasions drawn the Governments' attention to the importance of the technical assistance from the Office to help governments and the social partners to address the complex issues of forced labour at the national level. Such technical assistance should focus on the promotion of the awareness-raising and capacity-building programmes, the development of the national legislation and the law enforcement machinery, in order to ensure the effective implementation of the forced labour Conventions.

915. In its comments addressed to ratifying States, the Committee invited the governments concerned to avail themselves of the technical assistance of the ILO in order to facilitate the process of bringing their laws and practice into compliance with the Conventions, [2276] sometimes in accordance with the proposal of the Conference Committee on the Application of Standards. In a number of reports supplied under article 19 of the ILO Constitution on the Fundamental Principles and Rights at Work, the governments requested the Office's technical assistance on various issues related to the application of the forced labour Conventions and their ratification. [2277] Some

[2276] See, for example, *Congo* – CEACR, observation (Convention No. 29), 2011; *Indonesia* – CEACR, observation (Convention No. 105), 2009; *Ireland* – CEACR, direct request (Convention No. 29), 2011; *Sudan* – CEACR, observation (Convention No. 29), 2010.

[2277] *Albania* (request for technical assistance in the preparation of reports on the application of the Conventions); *Azerbaijan* (request for advisory support and technical assistance on certain issues related to the implementation

Governments informed the Office of the measures taken with the technical assistance of the ILO. [2278]

of the Conventions); *Burundi* (request for technical assistance and expertise in the evaluation of forced labour and trafficking cases); *Central African Republic* (request for technical assistance in training of labour administration and labour inspection officers and in the preparation of reports on the application of the Conventions); *Chile* (request for technical assistance in the organization of training seminars and workshops on the fundamental ILO Conventions for public officials and representatives of the social partners); *Côte d'Ivoire* (request for ILO assistance in the preparation of the in-depth study on forced labour and trafficking situation in the country); *Peru* (request for ILO assistance in the organization of training for the Ministry of Labour officials on the policy measures aiming at the eradication of forced labour); *Senegal* (request for technical assistance in the preparation of reports on the application of the Conventions); *Timor-Leste* (request for technical assistance to carry out the ratification process for Convention No. 105 and to fulfil the reporting obligations on the ratified fundamental Conventions).

[2278] Such information has been supplied in article 19 reports by the following countries: *Benin, Indonesia, Malaysia, Pakistan, Peru* and *Poland*. See also *Pakistan* – CEACR, observation (Convention No. 29), 2011.

Chapter 3

Elimination of child labour

Obstacles to ratification and future prospects

916. To date, 174 countries have ratified Convention No. 182 and 161 countries have ratified Convention No. 138. In particular, in the last ten years there has been a resurgence in interest in Convention No. 138. Almost 60 per cent of ratifications have occurred since Convention No. 182 was adopted in 1999. The advent of this second standard on child labour was quite beneficial to the ratification rate of Convention No. 138; due to the complementary approaches contained in the Conventions, many States which undertook ratification of Convention No. 182 subsequently adopted Convention No. 138.

917. However, obstacles to ratification remain in several States. In reports submitted under article 19 of the ILO Constitution, several States have highlighted that, while the spirit of the Convention is respected in their country, their domestic legislation is not in complete conformity with the technical requirements of the Convention. [2279] The Committee observes that some of these technical issues, particularly relating to light work, could be overcome through full use of the flexibility clause contained in *Article 4* of the Convention. In this regard, several States of the Industrialized Market Economy Countries have emphasized that their national law and practice meets the fundamental objectives of the Convention. [2280] Additionally, some States have indicated that they lack the ability to apply the Convention in practice due to resource constraints or the socio-economic conditions of the country (including difficulties in monitoring the large number of children engaged in the informal economy). [2281] Nevertheless, several States have indicated that a review of the ratification of the Convention is under way, or that such a review will be undertaken in the near future. [2282]

Technical assistance

918. Numerous member States have benefited from technical assistance from the Office regarding the implementation of the fundamental child labour Conventions. For example, following the discussions at the Conference Committee on the Application of Standards

[2279] These technical elements include a minimum age for admission to light work (such as in New Zealand, in addition to some states in Australia and some provinces in Canada) and the minimum age of 18 for admission to hazardous work (such as in Mexico).

[2280] Australia, Canada, New Zealand and United States.

[2281] Such as in Bangladesh, India (which emphasized the policy of ratifying a Convention only when both law and practice are in full conformity with the Convention), and Timor-Leste.

[2282] Responses from Australia (priority for consideration for ratification in the 2011–12 biennium), *Canada* (technical review began in 2011) and New Zealand (engaged in an ongoing dialogue with the ILO).

in 2005, both *Qatar* and *Niger* received technical assistance with regard to the implementation of Convention No. 182, and the Committee was subsequently able to note the significant progress made in these two cases. [2283] Furthermore, following the discussion of the Conference Committee on the application of Convention No. 138 in *Malaysia* in 2009, technical assistance was provided which contributed to the adoption of the Children and Young Persons (Employment) (Amendment) Act 2010, which addressed the outstanding issues concerning minimum age for admission to work, hazardous work and light work.

919. Other countries which have received technical assistance for the implementation of the fundamental child labour Conventions, as indicated in their reports submitted under article 19 of the ILO Constitution include *Belize*, *Brazil*, *Bulgaria*, *Burundi*, *Ethiopia*, *Indonesia*, *Jamaica*, *Republic of Moldova*, *Namibia*, *Pakistan*, *Philippines*, *Romania*, *Senegal* and *South Africa*. This support was often provided within the framework of an ILO–IPEC technical cooperation project. In addition, significant technical assistance has been given to governments with regard to possible ratification, including Australia, Bangladesh, Canada and *Timor-Leste* with respect to Convention No. 138. [2284] Moreover, several Governments have indicated, in their reports submitted under article 19 of the ILO Constitution, that prior to ratification, they received technical assistance from the Office, including the *Czech Republic* and *Sri Lanka*. Technical assistance activities have also included national and subregional workshops on the application of Conventions and reporting obligations (such as one held in 2010 for five member States of the South African Development Community).

920. Recognizing the positive impact of technical assistance on the implementation of Conventions Nos 138 and 182, the Committee has consistently encouraged governments to consider availing themselves of technical assistance, where appropriate, including *Ethiopia*, *Lebanon*, *Lesotho*, *Liberia*, *Malaysia*, *Nigeria*, *Sudan*, *United Arab Emirates* and *Uzbekistan*. [2285] Moreover, several member States have, in their reports submitted under article 19 of the ILO Constitution, requested the Office's technical support regarding various issues related to the application of the child labour Conventions. [2286]

[2283] Following the Committee's comments concerning the trafficking of children to *Qatar* for use in camel racing (a form of hazardous work), a technical advisory mission was undertaken to Qatar in March 2006. Following this mission, the Committee noted with satisfaction that the Government had adopted a number of practical measures aimed at effectively ensuring that camel owners do not use children under 18 years for camel racing. In Niger, following a fact-finding mission in 2007, the Committee noted with interest several measures taken to address child labour in artisanal gold mines and the use of a child for begging for economic purposes.

[2284] The Government of Australia indicates that it was provided with a particular useful response to a request for assistance in 2009, and that this will be used as a basis for considering ratification of the Convention in 2011–12. The Government of Canada indicates that it was provided advice with regard to Convention No. 138 in the context of a technical review, and the Government of Bangladesh indicates that technical support came in the form of seminars and workshops.

[2285] *Ethiopia* – CEACR, direct request, 2011; *Lebanon* – CEACR, observation, 2011; *Liberia* – CEACR, direct request 2011; *Lesotho* – CEACR, observation, 2011; *Malaysia* – CEACR, observation, 2010; *Nigeria* – CEACR, observation, 2010; *Sudan* – CEACR, observation, 2010; *United Arab Emirates* – CEACR, observation, 2010; and *Uzbekistan* – CEACR, observation, 2010.

[2286] For example, *Albania*, *Antigua and Barbuda*, *Central African Republic*, *Chile* and *Sri Lanka*.

Chapter 4

Equality of opportunity and treatment

Obstacles to ratification and future prospects

921. The Committee would like to underline that Conventions Nos 100 and 111 have almost reached universal ratification, with 168 and 169 ratifications registered respectively out of 183 member States, and welcomes the indications from several Governments of the steps being taken toward the ratification of these Conventions.

922. Concerning the ratification of Convention No. 100, the Committee notes that the Government of Liberia has indicated that the ratification process was under way and that the revised national labour law had been submitted to the Senate. The Government of Kuwait stated that the ratification had been discussed between the Ministry of Labour and Social Affairs and the social partners and that it had to be submitted to the Council of Ministers and the Parliament, while the Government of Bahrain indicated its intention to establish a tripartite committee that would deal with the ratification of the unratified fundamental Conventions. The Government of Somalia has also indicated its intention to ratify the Convention once the political instability of the country was overcome and the necessary legislation could be adopted. However, the Government of Qatar stated that there was no mechanism to define clearly the concept of "equal remuneration for work of equal value", making it difficult for workers' and employers' organizations to implement it, particularly in the context of freedom of contract and the flexible labour market approach.

923. With respect to Convention No. 111, the Government of Japan indicated that given the wide range of discrimination grounds in employment and occupation provided for in the Convention, the conformity of national legislation with the Convention had to be carefully examined before it could be ratified. The Government of Thailand indicated that the ratification procedure involves public consultations by the Council of Ministers and the approval of the National Assembly. The Government of Malaysia considers that article 153(2) of the Federal Constitution providing for a privilege to the Bumiputeras in the public sector was an obstacle to the ratification of the Convention.

924. With respect to those countries that have ratified neither Convention No. 100 nor Convention No. 111, the Committee notes that the Government of Brunei Darussalam is considering the possibility of ratifying them, and that the Governments of Oman and Suriname indicated that a reform of the national legislation was needed prior to proceeding with ratification. The Governments of Maldives and Solomon Islands indicated that the ratification needed to be submitted to the Parliament. The Government of Timor-Leste indicates that Conventions Nos 100 and 111 are priorities for ratification; however, there are constraints due to the lack of qualified human resources to carry out the ratification process and reporting. It requested, as did the Government of Myanmar, ILO technical assistance in this regard. The Government of the United States stated that

the President's Committee on the ILO (PC/ILO), on the basis of a tripartite consensus, pledged to work toward the successful completion of the ratification process for Convention No. 111.

925. With respect to concerns raised regarding Convention No. 100, the Committee has sought to clarify the concept of "work of equal value" in its general observation, and through this General Survey. In terms of determining "work of equal value", objective job evaluation methods have been developed and used in all regions, and greatly assist in the application of the Convention. Concerning Convention No. 111, the Committee recalls that it allows for considerable flexibility in determining the methods to achieve the objectives of the Convention, though they need to be effective in addressing discrimination and promoting equality. Cooperation with workers' and employers' organizations in developing and ensuring the promotion of the national equality policy could be a means of overcoming some of the obstacles raised. The Committee also recalls that action required under the Convention is an ongoing process, and the elimination of discrimination in employment and occupation has not yet been achieved in any country. Concerning preferential treatment being given to one group, the Committee recalls that not all distinctions, exclusions or preferences are discriminatory under the Convention, and the particular situation raised would need to be examined to determine if it were justified in achieving the aims of the Convention.

926. The Committee wishes to underline the overall intention of most countries to ratify Conventions Nos 100 and 111. The Committee notes with interest that most of the obstacles enumerated do not appear to be insurmountable and believes that the universal ratification of these two Conventions will soon be reached. The Committee wishes to call the attention of all those countries that have not yet ratified the Conventions that the technical assistance of the Office is at their disposal. The Committee expects that, in the case of those countries that have already initiated the corresponding procedures, the Office will soon be in a position to register their ratifications.

Technical assistance

927. Concerning technical assistance, the Committee notes the requests conveyed by several member States through the reports submitted pursuant to articles 19 and 22 of the ILO Constitution with respect to both Conventions Nos 100 and 111. The nature and the objectives of the assistance requested are varied.

928. Some countries have requested assistance from the ILO with respect to legislation or policies. *Mauritania* requested assistance to prepare a legal instrument prohibiting sexual harassment in employment and occupation. *Saudi Arabia* and *Seychelles* have requested assistance with respect to the development of a policy on equality, and *Thailand* referred to assistance needed regarding integrating gender into labour policies, plans and practices. Requests of technical assistance also refer to training addressed to governmental institutions or to social partners with respect to a wide range of issues, such as training on the concept of work or equal value (*Central African Republic, Mauritania* and *Mauritius*) or training on public policies on equal opportunities (*Peru*). Some countries requested that specific training be provided to labour inspectors in order to enhance their capacity to identify and address cases of discrimination in general, and violation of the principle of equal remuneration (*El Salvador, Guinea Bissau, Rwanda* and *United Republic of Tanzania*). Some countries have also requested training with respect to sexual harassment (*El Salvador, Mali* and *Uruguay*).

929. Collection of statistical data on the situation of men and women in the labour market was also the object of requests for technical assistance (*Albania, Cape Verde, Guinea-Bissau, Guinea, Malawi* and *Sierra Leone*), as well as the realization of studies or research to determine the nature, extent and causes of wage inequalities (*Albania* and *Syrian Arab Republic*), or studies on job classifications (*Guinea-Bissau*). Countries such as *Côte d'Ivoire, Malawi, Mali, Mauritius, Rwanda, Saint Vincent and the Grenadines,* and *Sierra Leone* have requested technical assistance in order to undertake objective job evaluation. Technical assistance has also been requested to organize awareness-raising campaigns on gender and HIV and AIDS issues, as well as concerning migration for employment (*Mauritius* and *Senegal*).

930. In those cases of persisting problems of application of the Conventions, the Committee has called the attention of a number of Governments concerning the possibility of benefiting from the technical assistance of the Office, including with respect to the following: drafting or reviewing legislation to ensure that there is a specific prohibition of both direct and indirect discrimination at all stages of employment and occupation (*United Arab Emirates*) as well as to ensure that legislation adequately reflects the principle of equal remuneration for work of equal value (*Guatemala, Mozambique* and *Sao Tome and Principe*); collecting statistical data (*Gabon* and *Guinea*); to apply objective job evaluation methods (*Cambodia* and *Sri Lanka*); and to ensure the application of Convention No. 111 (*Bangladesh*).

Part VII. Conclusions

931. The Committee welcomes this opportunity to address all eight fundamental Conventions together in a General Survey for the first time in the ILO's history, with a view to contributing to a better understanding of the inter-relationship and mutually reinforcing nature of these Conventions. The eight fundamental Conventions form an integral part of the United Nations human rights framework, and their ratification is an important sign of commitment to human rights. The Committee, therefore, calls on those member States that have not yet ratified all eight fundamental Conventions to do so, with a view to achieving universal ratification by 2015.

932. Over the last 20 years, the Committee has noted hundreds of important cases of progress in law and practice on the application of ratified ILO Conventions, more than 50 per cent of which concern the application of the eight fundamental Conventions. These cases of progress are in part a direct result of the fact that a number of countries have achieved full democracy over the past decades and have developed systems and mechanisms to protect human rights. In this respect, the Committee welcomes the fact that the provisions of the fundamental Conventions and the principles of the supervisory bodies have been applied in a significant number of countries through the jurisprudence of the national courts. Much of this progress is linked, however, to the action of the ILO supervisory bodies (which include in particular the Committee of Experts on the Application of Conventions and Recommendations, the Conference Committee on the Application of Standards of the International Labour Conference and the Committee on Freedom of Association) and the action of the Office at headquarters and in the field, through technical cooperation and technical assistance. The ILO supervisory machinery is thus both relevant and effective, is a valuable tool for the development of decent work and is essential to guarantee the rights of employers and workers. This vital mission explains the increasing interest of the international community in promoting the rights contained in these fundamental Conventions and the significant resources dedicated to the ILO to achieve this strategic objective. Moreover, an analysis of the "cases of interest" noted by the Committee in its reports (which are a reflection of the positive steps taken by the authorities) highlights that a very high number of draft laws and policies are under preparation or already submitted to the national legislative authorities, more often than not as a result of the Committee's previous requests to this end. This trend illustrates the importance of tripartite dialogue at the national level in improving the application of the ratified Conventions, which in turn reveals the vitality and dynamism of the interaction between governments and the Committee.

933. Despite these positive developments, the Committee notes that serious problems persist in a significant number of countries, as described below. The concern also extends to the fact that some member States with the highest populations have not ratified the eight fundamental Conventions. Moreover, in the context of the recent financial and economic crisis, the implementation of these Conventions has been jeopardized in a number of countries. The Committee stresses the importance of being

particularly vigilant in times of economic downturn to ensure the full implementation of these Conventions.

934. As regards Convention No. 87, the Committee underlines that in the absence of a democratic system in which fundamental rights and civil liberties are respected, freedom of association cannot be fully developed. In this respect, the Committee notes with serious concern the acts of violence against trade union leaders (murders, death threats, abductions, etc.) among certain countries in Latin America and Asia. Some acts of violence also target employers in some countries. The Committee stresses that the rights of workers' and employers' organizations can only be exercised in a democracy, in a climate where human rights are recognized and that is free from violence, pressure or threats of any kind against the leaders and members of these organizations. The Committee calls on all governments to ensure that this principle is respected.

935. The Committee further notes that one of the main concerns indicated by trade union organizations is the negative impact of precarious forms of employment on trade union rights and labour protection, notably short-term temporary contracts repeatedly renewed; subcontracting, even by certain governments in their own public service to fulfil statutory permanent tasks; and the non-renewal of contracts for anti-union reasons. Some of these modalities often deprive workers' access to freedom of association and collective bargaining rights, particularly when they hide a real and permanent employment relationship. Some forms of precariousness can dissuade workers from trade union membership. The Committee wishes to highlight the importance of examining in all member States, within a tripartite framework, the impact of these forms of employment on the exercise of trade union rights.

936. Other pressing matters concerning the application of Convention No. 87 include the denial and restrictions on the right of association of certain categories of workers (public servants, seafarers, workers in export processing zones, domestic workers, etc.). In a significant number of countries, the legislation contains restrictions on the categories of persons who may hold trade union office (distinction between nationals and foreigners), restrictions on the free election of trade union leaders, the requirement of an excessive number of workers or employers to establish a trade union or an employers' organization, refusal to register organizations or the requirement of prior authorization. Finally, a certain number of the Committee's comments concern the imposition by law of a trade union monopoly, denial of the right to establish federations and confederations, or limitations on their functions, dissolution of organizations by administrative authority and the prohibition of more than one union in a single enterprise or sector. The comments also address restrictions on various aspects of the right to strike, including the prohibition of this right for public servants other than those exercising authority in the name of the State; the imposition of compulsory arbitration; the prohibition of strikes in services which are not essential in the strict sense of the term; the denial of the right to strike for federations and confederations; the imposition by the government of minimum services without consulting the parties; and the imposition of penal sanctions for strike action.

937. As regards Convention No. 98, the problems which arise most frequently concern on the one hand, the slowness of administrative and judicial procedures in cases of anti-union discrimination or interference and the lack of sufficiently dissuasive sanctions; in some cases, the protection against acts of anti-union discrimination or interference only covers part of these acts. On the other hand, the problems concern the denial of the right of collective bargaining to all public servants or to public servants who are not engaged in the administration of the State and the requirement for trade union organizations to represent too high a proportion of workers to be recognized or to engage in collective

bargaining. In a number of countries, collective bargaining is subordinated to the government's economic policy. Finally, some countries exclude certain subjects from collective bargaining, or in some cases submit it to compulsory arbitration, restrict the right of the parties to determine the level of bargaining or prohibit collective bargaining for specific categories of workers or by federations and confederations.

938. In some countries, employers' organizations also face problems to organize freely outside the pre-established structure determined by governments or legislation and to exercise their right to free and voluntary collective bargaining at the level of their own choosing (at the industry level for example) and as determined by mutual agreement with the workers' organizations. In some cases, the employers' leaders also suffer reprisals for their actions in defence of the employers' interests.

939. The Committee underlines the importance of solving the problems highlighted in respect of freedom of association and collective bargaining given that they are not only fundamental rights at work but also because of their essential contribution to democracy as well as to economic and social development.

940. As regards Convention No. 29, the Committee observes that there are still instances of various forms of forced or compulsory labour imposed directly by the State, in violation of international standards, either for the purposes of production or service (such as various kinds of the national service obligations, e.g. the use of conscripts for non-military purposes, powers to call up labour outside emergency circumstances or restrictions on the freedom of workers to terminate employment, in particular in the public service and essential services), or as a punishment (e.g. where convicted persons are hired to or placed at the disposal of private parties).

941. The Committee observes that, in spite of the adoption of the constitutional and legislative provisions prohibiting forced labour, various problems of application in practice still exist in a number of countries. Thus, there are instances of vestiges of slavery and other slavery-like practices which still survive in certain countries, sometimes connected with abductions in the context of armed conflicts in various parts of the world. Forced labour is very often linked to poverty and discrimination, particularly if exacted in the private economy, and even more often – in the informal economy. There are cases of the entrapment of people through various forms of debt bondage and trafficking in persons for the purposes of sexual and labour exploitation. Members of the most vulnerable groups (such as migrant workers, domestic workers, agricultural workers, informal sector workers, members of indigenous communities) are the most affected.

942. In particular, the Committee expresses concern about the vulnerable situation of migrant workers, including migrant domestic workers, who are often subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuse, which cause their employment to be transformed into situations that could amount to forced labour. The Committee requests the governments concerned to take all the necessary measures, both in legislation and in practice, to further increase the protection of this category of workers, providing the necessary assistance so as to enable them to assert their rights and denounce any abuses of which they may be victims. The Committee also requests the governments concerned to take all the measures necessary to identify, release and rehabilitate the victims of forced labour (such as bonded labourers and victims of trafficking or slavery-like practices) and to punish perpetrators, through strengthening labour inspection and law enforcement machinery, and by imposing adequate penal sanctions.

943. Over the past decade, the Committee has been systematically examining the problem of human trafficking in its numerous comments addressed to the ratifying States. The increasing trend of the trafficking in persons for the purposes of sexual and labour exploitation stands out as the most urgent problem of the twenty-first century in relation to Convention No. 29. The nature of this scourge requires the cooperation of all States, as all the regions of the world are affected. The concerted efforts of States have led to the adoption of special anti-trafficking laws, as well as new policies in this field. In this connection, the Committee emphasizes the importance of prevention and protection measures, as well as measures to strengthen the law enforcement machinery for the purposes of the efficient prosecution of traffickers and the strict application of penal sanctions, as required by the Convention, bearing in mind the recovery and social reintegration of the victims.

944. Finally, with a view to ensuring that the courts apply effective sanctions against persons who exact forced labour, the Committee has placed emphasis on obtaining information on the judicial proceedings initiated and the nature of the sanctions imposed by the courts. With a view to bringing an end to forced labour practices, it is indispensable for the legislation to define precisely the constituent components of the practice that is to be repressed and to establish sufficiently dissuasive penal sanctions. Moreover, as the vulnerability of the great majority of victims of forced labour has an impact on the extent to which they are able to assert their rights, States have to make every effort to ensure that the labour inspection services, the forces of order and the judicial authorities are provided with the necessary resources to identify forced labour practices, bring such practices to an end, prosecute those responsible, impose administrative, penal and economic sanctions that are commensurate with the seriousness of the violation and, finally, ensure that the victims are assisted effectively and are compensated for the damages they have suffered.

945. In relation to Convention No. 105, the examination of national law and practice has shown that there are still cases where freedom of expression remains subject to restrictions enforced by sanctions involving compulsory labour. Similar sanctions are applicable for various breaches of labour discipline by public servants or seafarers, or for participation in strikes. Provisions imposing such sanctions are often too general in scope to be compatible with the Convention, although the governments concerned sometimes express the intention of repealing or amending the provisions in question in order to ensure compliance.

946. Since the last General Survey on forced labour, the Committee has noted with satisfaction on a number of occasions the repeal of penal provisions punishing the organization or participation in strikes with penalties of imprisonment involving compulsory labour. However, in certain countries there still exist provisions restricting the right to strike (e.g. in public service or essential services) enforceable with sanctions involving an obligation to perform labour. In examining the compatibility of national legislation respecting strikes with Convention No. 105 – in so far as such legislation is enforceable with sanctions that may involve compulsory labour – the Committee has followed the principles developed in the field of freedom of association, and in particular, the principle of the proportionality of sanctions and that measures of imprisonment should not be imposed for the mere fact of organizing or participating in a peaceful strike. The Committee therefore considers that the necessary measures should be taken in order to ensure, both in legislation and in practice, that no sanctions involving compulsory labour can be imposed for the mere fact of a peaceful participation in strikes.

947. The Committee once again emphasizes the relevance and value of the concept of the prohibition of forced labour in all its forms, as established by the ILO Conventions. The definition of forced labour given in Convention No. 29 covers all the existing forms of this scourge, imposed both by the State and private persons, both "traditional" forms (such as *vestiges of slavery* or *slave-like practices* or various forms of *debt bondage*) and the relatively new forms of entrapment of people that have emerged in recent decades (such as *human trafficking*). Noting also a recent tendency that anti-trafficking laws are punishing the crime of trafficking with severe penal sanctions, the Committee recalls that all other existing forms of forced labour referred to above should not be dealt with as lesser offences and should be punished with sufficiently dissuasive penal sanctions which should be strictly enforced, as required by Convention No. 29. Moreover, it is necessary to emphasize that, in contrast with certain regional or universal instruments covering specific forced labour practices, the ILO forced labour Conventions, in line with the status of the abolition of forced labour as a peremptory norm of international law on human rights, require governments to develop a comprehensive legal and policy framework combating forced labour in all its forms.

948. As regards Convention No. 138, while child labour in the age group 5–17 years has continued to decline, the Committee notes with serious concern that child labour still affects 215 million children in the world. The incidence of child labour is more prevalent in sub-Saharan Africa where one in four children and adolescents are child labourers, compared to some one in eight in Asia and the Pacific and one in ten in Latin America and the Caribbean. Approximately 60 per cent of child labourers worldwide are engaged in the agricultural sector, and although there are legislative gaps in this regard, the main difficulty is the application of the Convention to this sector in practice. The Committee stresses that strengthened monitoring and targeted programmatic measures in the agricultural sector are essential for the eradication of child labour.

949. The Committee notes with serious concern that domestic work is a particularly problematic area, as an estimated 15.5 million children are engaged in domestic work worldwide. Moreover, a considerable number of children are engaged in hazardous domestic work in many countries. The Committee strongly emphasizes that the governments concerned should take the necessary measures in order to ensure that children engaged as domestic workers are not exploited in hazardous work conditions.

950. In relation to both Conventions Nos 138 and 182, the Committee considers that free and compulsory education is one of the most effective means of combating child labour and welcomes that important advances have been registered in the past decade, including rapid progress towards the goal of universal primary education. However, the situation remains alarming and a large number of countries are far from reaching the goal of universal primary education by 2015. The Committee notes with serious concern that there are globally 68 million children out of school. Among the difficulties observed, the Committee notes that there is an important gap between school enrolment ratios for girls and boys. Another gap the Committee wishes to identify is the absence of the provision of quality education. The Committee calls on the governments concerned to take the necessary measures to improve the functioning of the education system, in particular by increasing school enrolment and attendance rates of both boys and girls under the minimum age for admission to employment or work, including through ensuring access to free basic education.

951. As regards Convention No. 182, an area of serious concern for the Committee is the persistence of the compulsory recruitment of children into national armed forces or non-state armed groups in conflicts around the world. This practice, in violation of Convention No. 182, may also lead to other serious violations of the rights of children, in

the form of abductions, murders and sexual violence. The Committee calls on the governments concerned to take immediate and effective measures to put a stop in practice to the use of child soldiers and to ensure that thorough investigations and robust prosecutions of the perpetrators of these egregious crimes are carried out and sufficiently effective and dissuasive penalties are applied in practice, together with adequate provisions for the rehabilitation of child victims.

952. Moreover, the compulsory mobilization of children in the context of school programmes, where children are removed from public schools and made to work during school hours, is another area of grave concern. As the practice of compulsory labour within schools is often deep-rooted within the education system and production processes of the country, many legislative measures have proven too weak or ineffective to address the phenomenon. Member States in which children are engaged in compulsory labour through their schools must take immediate and effective measures to put a stop to this serious violation in practice.

953. Over the past decade, the Committee has observed that while children are trafficked globally for commercial sexual and labour exploitation, a significant number of countries have prohibited the sale and trafficking of children. This reflects a real commitment to combat a problem that appears to be steadily on the increase in some parts of the world. The problem of child trafficking stems from the exploitation of children compounded by a lack of effective enforcement of the legislation, either due to a lack of resources or low rate of prosecutions and convictions. The Committee also expresses serious concern regarding reports of complicity of government officials in the trafficking of children. In addition, a high number of member States have adopted effective and time-bound measures to combat trafficking, including through the implementation of programmes or national plans of action. These include the establishment of shelters or crisis centres for child victims of trafficking which provide services aimed at satisfying the daily needs and preparing the social integration of child victims of violence and trafficking, including legal, medical and psychological help, assistance with repatriation and vocational or educational training, and a safe place of residence. As this problem affects in practice a greater number of girls than boys, particularly in the case of child trafficking for sexual exploitation or domestic work, the Committee stresses that member States must take measures taking into account the special situation of girls in these efforts.

954. The Committee has also observed over the past decade positive legislative as well as programmatic measures taken by governments in order to combat the commercial sexual exploitation of children. However, with globalization, new problems have arisen, with regard to the exploitation of children in pornography through the Internet as well as the growth of child sex tourism. Enforcing the relevant legislation has been difficult, particularly due to the transnational nature of these crimes. The Committee therefore urges source, transit and destination countries of Internet child pornography and child sex tourism to strengthen their efforts to investigate, prosecute and convict perpetrators of these worst forms of child labour, and to pursue their efforts towards full and effective cooperation.

955. The Committee observes with serious concern that a considerable number of children are estimated to be employed in hazardous work globally: approximately 53 million children (4.3 per cent) aged 5–14 years and 62 million children (16.9 per cent) aged 15–17 years were estimated to be performing hazardous labour in 2008. A positive trend that has emerged is that a great number of countries have adopted legislation to prohibit children under 18 years of age from carrying out hazardous work. However, as national legislation often fails to cover children who perform hazardous work outside of

a labour relationship, the Committee calls on the governments concerned to take measures to ensure that self-employed children or those working in the informal economy are protected from hazardous work.

956. As regards Conventions Nos 100 and 111, there is considerable awareness and acceptance of the importance of equality and non-discrimination, as these concepts are at the heart of all human rights discourse. Acute violations of the Conventions continue. In addition, there are subtle, chronic problems and deeply embedded attitudes that underlie discrimination and unequal pay, which are often more difficult to identify and overcome. Therefore, regular assessment, action, monitoring, further assessment and adjustment, including to address de facto inequalities, is necessary if progress is to be achieved. In addition, the national equality policy required under Convention No. 111, which should incorporate measures to ensure equal remuneration for work of equal value, needs to go beyond legislation prohibiting discrimination, and include vigorous proactive measures to promote equality, effective enforcement and remedies, and monitoring of the impact of measures. The Committee notes the increasing role of specialized equality bodies, such as equality bodies and ombudspersons, in this respect, and the importance of means to assess impact and progress. It is also essential to address the underlying causes of discrimination and unequal pay, including occupational segregation and gender stereotyping.

957. The exclusion of certain groups from legislation providing for non-discrimination and equal remuneration for work of equal value remains a concern, limiting their rights and protections, and denying them access to remedies and redress. Such groups include civil servants, domestic workers, migrant workers, informal economy workers, agricultural workers, workers in export processing zones, and non-citizens. Of particular concern in this context is the vulnerability of migrant domestic workers to discrimination, including on multiple grounds, and their low wages due to the persistent undervaluing of their work. The Committee also stresses the need to monitor closely the impact of austerity measures on the employment situation of groups particularly vulnerable to the impact of the economic crisis, including ethnic minorities, so as to address effectively direct or indirect discrimination, including unequal pay that may occur. The need for Governments to promote tolerance among and between different groups of the population is essential in this context.

958. The Committee recalls that pay differentials remain one of the most persistent forms of inequality, and that globally, the gender pay gap is approximately 23 per cent, and likely much higher if the wages of those not working full time in regular employment are included. Difficulties in applying Convention No. 100 in law and in practice have resulted in particular from a lack of understanding of the scope and implications of the concept of "work of equal value", which permits a broad scope of comparison, including between jobs of an entirely different nature. In order to establish whether different jobs are of equal value, the Committee stresses that there has to be an examination of the respective tasks involved, on the basis of entirely objective and non-discriminatory criteria, yet this step is absent in a number of countries. Considerable progress is still needed in developing and applying objective job evaluation methods. The Committee also notes that very few countries promote the principle of equal remuneration for men and women for work of equal value in the context of minimum wage fixing, though this can be an important means by which the Convention is applied.

959. The Committee is concerned that in a number of countries, legal provisions are still narrower than the principle laid down in Convention No. 100, thus denying an effective legal framework for the application of the principle. There also continue to be discriminatory provisions in legislation and collective agreements, limiting certain

allowances or benefits to men. The Committee urges the governments concerned to take the necessary steps to amend their legislation to ensure the right to equal remuneration for men and women for work of equal value, and to repeal any discriminatory provisions relating to allowances or benefits.

960. As regards Convention No. 111, the Committee observes that substantial progress has made been in many countries to adopt comprehensive gender equality policies and action plans, though translating such policies and plans into substantive equality in employment and occupation is often lacking. The Committee is concerned about the persistence of restrictions on the jobs women can do, either in law or in practice, which are based on stereotyped assumptions. The Committee also expresses concern that far fewer countries have adopted proactive and comprehensive measures aimed at combating discrimination and promoting substantive equality in respect of other grounds of discrimination, including race, colour and national extraction. Such measures are important given the persistent and sometimes increasing discrimination against specific groups, including ethnic and religious minorities, indigenous and tribal peoples, the Roma, and people of African descent. It is essential that in implementing the national policy required under the Convention, attention be given to all the grounds, and to the changing face of discrimination. As there is often a fine line between the various grounds of discrimination in practice, as well as complex intersections between them, the Committee considers that more attention needs to be given to addressing multiple and structural discrimination.

961. The Committee welcomes the increased awareness of the many manifestations of discrimination, and the consequent attention being given to addressing an expanded range of grounds, including discrimination based on real or perceived HIV status, age, disability, nationality and sexual orientation, and encourages those countries that have not yet done so to consider addressing such grounds through legislation and proactive measures.

962. Noting the importance in most countries of a legislative framework to ensure the right to non-discrimination and ensure effective enforcement, the Committee calls on countries to review regularly the protection afforded by the legislation to ensure that it remains appropriate and effective, particularly in the light of the regularly changing context and newly emerging grounds of discrimination. The Committee observes that a number of features contribute to addressing discrimination and promoting equality. Therefore, it particularly welcomes legislation containing the following: covering all workers; providing a clear definition of direct and indirect discrimination as well as sexual harassment; prohibiting discrimination at all stages of the employment process; explicitly assigning supervisory responsibilities to competent national authorities; establishing accessible dispute resolution; providing dissuasive sanctions and appropriate remedies; shifting or reversing the burden of proof; providing protection from retaliation; allowing for affirmative action measures; and providing for the adoption and implementation of equality policies or plans at the workplace, as well as the collection of relevant data at different levels.

* * *

963. The eight Conventions, taken together, are all the more relevant today in the face of global economic and other challenges impinging on the welfare and livelihood of workers in all regions. They provide the key ethical and normative framework for fundamental rights in the world of work which require even more rigorous implementation at the national level through effective laws, policies, resources, practical programmes, mechanisms and capacity building. Indeed, they are part and parcel of the

overarching architecture for the universality of human rights, offering protection to all, and responding closely to the quest for social justice in a globalized setting. Actually and potentially, they are catalytic to the UN system, the international community and local communities as a whole. To this end, various issues permeating this General Survey invite greater attention for the future.

964. In this regard, the Committee considers that the informal economy presents not only a formidable challenge with regard to the application of the fundamental Conventions to informal economy workers, but also a call to action, where the fundamental principles and rights at work can have an important impact on the rights and protection of workers worldwide. The Committee, therefore, calls on all member States to take concrete steps towards ensuring that workers in the informal economy benefit fully from the principles and rights set out in the eight fundamental Conventions.

965. The Committee also observes that agricultural workers are a group to whom the right to organize is sometimes denied, and in which bonded labour is the most widespread. Moreover, women and migrant workers are often concentrated in the agricultural sector, where wages are in general particularly low. Finally, around 60 per cent of child labourers worldwide are engaged in the agricultural sector, and the main difficulty is the application of the child labour Conventions to this sector in practice. The Committee calls on governments to ensure that agricultural workers enjoy the rights and are afforded the protections established in the fundamental Conventions.

966. The Committee wishes to highlight that domestic workers represent a group that are, in many States, denied decent work, and the interconnectivity of the fundamental Conventions is evident in the particular manner in which the principles apply to this vulnerable group. While trade unions have increased their efforts to reach out to domestic workers, the labour legislation in a number of countries still does not cover this category of workers, as a result of which there are no legal provisions applicable to them, including in relation to trade union rights, and there are no institutions or inspectors for their enforcement. Moreover, in numerous countries, domestic workers are trapped in situations of forced labour, and in many cases they are restrained from leaving the employers' homes through threats or violence. Furthermore, in several countries, domestic work remains excluded from the scope of application of the national legislation, which is particularly problematic in countries where there are a high number of children under the minimum age engaged in this sector. Additionally, some child domestic workers are exploited under conditions that qualify as forced labour. Finally, current estimates on domestic workers indicate that of the 52.6 million domestic workers worldwide, the vast majority are women (83 per cent). In a range of countries the scope of legislation embodying the principle of equal remuneration for men and women for work of equal value does not extend to domestic workers, and they typically earn less than half, and sometimes no more than 20 per cent, of average wages. The Committee urges all member States to ensure that the principles of the fundamental Conventions are applied to domestic workers, and encourages them to consider ratifying the Domestic Workers Convention, 2011 (No. 189).

967. The Committee observes that with globalization, international migration has continued to increase with millions of women and men leaving their homes and crossing national borders each year. In this regard, the Committee notes that several countries still contain restrictions of varying degrees of importance relating to nationality and residence, including citizenship requirements for the establishment of trade unions for migrant workers. Furthermore, these workers are often subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse, which transforms their employment into situations

analogous to forced labour. For migrant workers, their regular or irregular situation in the national territory may have an impact on their ability to turn to the competent authorities. In addition, children who migrate from the countryside to work in urban areas may be particularly vulnerable to exploitative work, and in several countries, such children comprise the majority of domestic workers and street children in urban centres. Moreover, the children of migrant workers face unequal access to education, considerably increasing their risk for engagement in child labour. Finally, migrant workers are particularly vulnerable to prejudices and differences in treatment in the labour market on grounds such as race, colour and national extraction which often intersect with other grounds such as gender and religion. The Committee underlines that the vulnerable situation of these workers reinforces the importance of ensuring that they benefit from the rights and protections provided for in the fundamental Conventions.

968. In this respect, some of the problems related to the application of the eight Conventions, including in the informal economy, can be addressed through various enforcement mechanisms, including through labour inspection. The Committee wishes to underline the key role the labour inspectorate plays in implementing the Conventions, and calls on the governments concerned to strengthen the capacity and expand the reach of the labour inspectorate, not only in order to identify violations and to ensure that the protections guaranteed by the fundamental Conventions are afforded to all workers, but also in order to enable it to have an important role in the prevention of violations of the Conventions. Moreover, cooperation between the labour inspectorate and law enforcement bodies, such as the police, border control officials, immigration officers and the judiciary, is essential for the conduct of rapid, effective and impartial investigations, and where appropriate, initiating prosecutions against those responsible for violations, bearing in mind that the main objective of the labour inspection system is to protect the rights and interests of workers. In this regard, the effective cooperation between the labour inspection services and the justice system can be achieved through the adoption of legal provisions and the implementation of educational measures and the exchange of information. The Committee calls on governments concerned to strengthen the capacity of law enforcement agencies to ensure that perpetrators of violations of the Conventions are prosecuted and that sufficiently effective and dissuasive penalties are imposed so as to avoid creating a climate of impunity.

969. Finally, the Committee wishes to underline that social dialogue is both a key contributing process to the implementation of the fundamental Conventions, and a positive outcome when these Conventions are effectively applied. Where there is an absence of genuine social dialogue in a country, the application of the fundamental Conventions is seriously hindered. In this regard, the Committee welcomes the increasingly important role of employers' and workers' organizations in the improved application of the fundamental Conventions. However, many member States have indicated that they require further technical assistance and/or cooperation to ensure better implementation of the fundamental Conventions. The Committee therefore considers it essential to provide technical assistance to such member States, and this assistance should focus on, inter alia, the promotion of awareness-raising and capacity-building programmes, the development of the national legislation and the strengthening of relevant monitoring mechanisms.

970. The Committee is of the view that the abovementioned trends, as well as challenges, in the implementation of the Conventions, illustrated in this General Survey, present a clear picture of the interconnected and mutually reinforcing relationship between the eight fundamental Conventions. Therefore, the Committee can only emphasize the vital importance of not only ratifying, but also effectively implementing,

these fundamental Conventions, with a view to building a social framework to ensure peace, stability, economic development and prosperity and social justice worldwide.

Appendix

List of ratifications of fundamental Conventions and of reports received pursuant to Article 19

	C029	C087	C098	C100	C105	C111	C138	C182	Questions for all member States (32-37)
Afghanistan	--	--	--	*Ratified*	*Ratified*	*Ratified*	--	--	--
Albania	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Algeria	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Angola	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Antigua and Barbuda	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Argentina	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Armenia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Australia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Austria	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Azerbaijan	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Bahamas	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Bahrain	*Ratified*	**Received**	**Received**	**Received**	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Bangladesh	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Barbados	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Belarus	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Belgium	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Belize	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Benin	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Bolivia, Plurinational State of	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Bosnia and Herzegovina	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Botswana	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Brazil	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Brunei Darussalam	--	--	--	--	--	--	--	*Ratified*	--
Bulgaria	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Burkina Faso	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Burundi	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Cambodia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Cameroon	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Canada	**Received**	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Cape Verde	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--	*Ratified*	--
Central African Republic	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Chad	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Chile	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
China	**Received**	**Received**	**Received**	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**
Colombia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Comoros	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--

	C029	C087	C098	C100	C105	C111	C138	C182	Questions for all member States (32-37)
Congo	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Costa Rica	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Côte d'Ivoire	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Croatia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Cuba	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**	**Received**
Cyprus	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Czech Republic	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Democratic Republic of the Congo	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Denmark	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Djibouti	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Dominica	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Dominican Republic	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Ecuador	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Egypt	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
El Salvador	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Equatorial Guinea	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Eritrea	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--	--
Estonia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Ethiopia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Fiji	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Finland	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
France	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Gabon	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Gambia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Georgia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Germany	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Ghana	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--	*Ratified*	--
Greece	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Grenada	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Guatemala	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Guinea	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Guinea-Bissau	*Ratified*	--	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Guyana	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Haiti	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Honduras	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Hungary	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Iceland	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
India	*Ratified*	**Received**	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**	**Received**	**Received**
Indonesia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Iran, Islamic Republic of	*Ratified*	**Received**	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Iraq	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Ireland	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Israel	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Italy	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Jamaica	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Japan	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**	**Received**	*Ratified*	*Ratified*	**Received**
Jordan	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Kazakhstan	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Kenya	*Ratified*	--	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Kiribati	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--

	C029	C087	C098	C100	C105	C111	C138	C182	Questions for all member States (32-37)
Korea, Republic of	**Received**	**Received**	**Received**	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**
Kuwait	*Ratified*	*Ratified*	*Ratified*	--	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Kyrgyzstan	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Lao People's Democratic Republic	*Ratified*	**Received**	**Received**	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**
Latvia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Lebanon	*Ratified*	--	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Lesotho	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Liberia	*Ratified*	*Ratified*	*Ratified*	--	*Ratified*	*Ratified*	--	*Ratified*	--
Libya	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Lithuania	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Luxembourg	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Madagascar	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Malawi	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Malaysia	*Ratified*	**Received**	*Ratified*	*Ratified*	**Received**	**Received**	*Ratified*	*Ratified*	**Received**
Maldives, Republic of	--	--	--	--	--	--	--	--	--
Mali	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Malta	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Marshall Islands	--	--	--	--	--	--	--	--	--
Mauritania	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Mauritius	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Mexico	*Ratified*	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Moldova, Republic of	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Mongolia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Montenegro	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Morocco	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Mozambique	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Myanmar	*Ratified*	*Ratified*	--	--	--	--	--	--	--
Namibia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Nepal	*Ratified*	--	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Netherlands	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
New Zealand	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Nicaragua	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Niger	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Nigeria	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Norway	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Oman	*Ratified*	**Received**	**Received**	**Received**	*Ratified*	**Received**	*Ratified*	*Ratified*	**Received**
Pakistan	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Panama	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Papua New Guinea	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Paraguay	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Peru	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Philippines	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Poland	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Portugal	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Qatar	*Ratified*	**Received**	**Received**	**Received**	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Romania	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Russian Federation	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Rwanda	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Saint Kitts and Nevis	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Saint Lucia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--	*Ratified*	--
Saint Vincent and the Grenadines	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Samoa	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--

	C029	C087	C098	C100	C105	C111	C138	C182	Questions for all member States (32-37)
San Marino	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Sao Tome and Principe	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Saudi Arabia	*Ratified*	**Received**	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**	*Ratified*	**Received**
Senegal	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Serbia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Seychelles	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Sierra Leone	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--	--	--
Singapore	*Ratified*	--	*Ratified*	*Ratified*	--	--	*Ratified*	*Ratified*	--
Slovakia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Slovenia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Solomon Islands	*Ratified*	--	--	--	--	--	--	--	--
Somalia	*Ratified*	--	--	--	*Ratified*	*Ratified*	--	--	--
South Africa	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Spain	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Sri Lanka	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Sudan	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Suriname	*Ratified*	*Ratified*	*Ratified*	--	*Ratified*	--	--	*Ratified*	--
Swaziland	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Sweden	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Switzerland	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Syrian Arab Republic	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Tajikistan	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Tanzania, United Republic of	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Thailand	*Ratified*	**Received**	**Received**	*Ratified*	*Ratified*	**Received**	*Ratified*	*Ratified*	**Received**
The former Yugoslav Republic of Macedonia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Timor-Leste	*Ratified*	*Ratified*	*Ratified*	**Received**	**Received**	**Received**	**Received**	*Ratified*	**Received**
Togo	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Trinidad and Tobago	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Tunisia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Turkey	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Turkmenistan	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--	--	--
Tuvalu	--	--	--	--	--	--	--	--	--
Uganda	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Ukraine	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
United Arab Emirates	*Ratified*	**Received**	**Received**	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
United Kingdom	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
United States	**Received**	**Received**	**Received**	**Received**	*Ratified*	**Received**	**Received**	*Ratified*	**Received**
Uruguay	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Uzbekistan	*Ratified*	--	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Vanuatu	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--	*Ratified*	--
Venezuela, Bolivarian Republic of	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**
Viet Nam	*Ratified*	**Received**	**Received**	*Ratified*	**Received**	*Ratified*	*Ratified*	*Ratified*	**Received**
Yemen	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Zambia	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	--
Zimbabwe	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	*Ratified*	**Received**